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Senate Bill 139 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Patrick J. Colbeck
Committee: Education

Date Completed: 4-27-15

RATIONALE

The Healthy, Hunger-Free Kids Act was signed into law by President Obama in December 2010. The Act, among other things, requires the U.S. Department of Agriculture to establish nutritional standards for food served in schools. Those standards were promulgated in a rule called the "Smart Snacks in School" rule. The rule specifies the nutritional guidelines for all food and beverages sold to students on campus during the school day.¹ Although it generally applies to fund-raisers, the rule grants an exemption for the sale of food or beverages that do not meet the standards, for the purpose of infrequent school-sponsored fund-raisers.² The rule allows state education agencies to adopt a policy specifying the frequency of these exemptions. The Michigan Department of Education does not allow any exemptions from the Smart Snacks in School rule for fund-raisers.³

As a result, food sold to students during the school day, for consumption at school, must comply with the rule. Some contend that Department's decision not to allow for exempt fund-raisers undermines local control over school food programs and puts a burden on extracurricular programs that rely on certain fund-raisers, such as bake sales, to raise money for field trips, equipment, or other operating expenses. To address this issue, it has been suggested that the Department should specify a frequency for specially exempted fund-raisers for food sold during school hours.

CONTENT

The bill would amend the Revised School Code to do the following:

- Require the Department of Education to take all steps necessary to ensure maximum State and local control over the implementation of school breakfast and lunch programs.**
- Require the Department to establish an upper limit on the number and frequency of fund-raising activities during school hours that would allow the sale of food or beverage not meeting Federal nutritional standards.**
- Require the upper limit to be not less than three such activities per week.**

The bill would take effect 90 days after it was enacted.

Section 1272a of Code requires the board of a K to 12 school district to establish school breakfast and lunch programs for all full-time pupils enrolled and in regular daily attendance at each school in the district. Under Section 1272b, for those programs, all of the following apply:

¹ A summary of the nutrition standards is available at: "Nutrition Standards for All Foods Sold in School", www.fns.usda.gov/sites/default/files/allfoods_summarychart.pdf, retrieved 3-23-15. The rule defines "school day" as the period from the midnight before, to 30 minutes after the end of the official school day". 7 CFR § 210.11(5). Items that are not intended to be consumed during the school day are not covered under the rule, and the rule does not apply to events that take place after the school day.

² 7 CFR § 210.11(b)(4).

³ See "Smart Snacks in Schools" (website), Michigan Department of Education, at: http://www.michigan.gov/mde/0,4615,7-140-43092_50144-327975--,00.html

- Nutritional standards prescribed by the United States Department of Agriculture (USDA) must be met and maintained.
- The board of a school district or board of directors of a public school academy may charge a fee for meals or milk, not to exceed the average daily cost of the meals or milk, less any food or financial assistance received by the board or board of directors.
- The board or board of directors must provide free and reduced price meals and free milk to all eligible pupils; ensure the confidentiality of applications for eligibility; and ensure that eligible pupils are not discriminated against or overtly identified.
- The board or board of directors must provide for parent and pupil participation in planning and evaluating school meals and other food sold on school premises.

The bill would require the Department to take all steps necessary to ensure maximum State and local control over the implementation of school meal programs established under Section 1279a. This would include establishing an upper limit on the number and frequency of fund-raising activities that could take place in a public school during school hours that allowed the sale of food or beverage items that did not meet USDA-prescribed nutritional standards. The Department would have to ensure that the upper limit was not less than three fund-raising activities per week. For the purposes of the upper limit, an ongoing fund-raising activity that was scheduled to take place at more than one time during a school day, throughout the school day, or for more than one school day would be considered a single fund-raising activity.

MCL 380.1272b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The State's policy does not accommodate common methods of funding extracurricular activities, e.g., bake sales. Many extracurricular programs rely on fund-raisers held during school hours to fund field trips, purchase items useful to the programs, or otherwise pay for those programs. The bill would require the Department to allow schools to hold each week at least three fund-raisers that would sell food not meeting the Federal nutrition standards. This would maintain the nutrition standards in schools while allowing a forum for bake sales and other related fund-raisers. The bill also would encourage local and State control over school food programs, to move away from a federally controlled system.

Opposing Argument

The bill would encourage students to make poor health decisions and would promote and perpetuate continued obesity in children and adolescents. According to the American Heart Association, over the past 40 years, the rate of obesity for school-age children has tripled, and one-third of children in the United States are overweight or obese. Obesity places children at risk for a number of chronic health problems and lifelong health conditions, and contributes to low self-esteem in children. Nationwide, the estimated cost of obesity could be as high as \$147 billion annually.⁴

Students consume nearly half of their daily calories at school. Accordingly, the choice of food and beverages available to them can make a significant difference to their health. The nutrition standards adopted by the USDA, and implemented by the Michigan Department of Education, are meant to address that impact. There are plenty of options available to students and extracurricular groups that can be used to meet fund-raising goals while also meeting the Federal nutrition guidelines. These might include using food items that comply with the standards, using fund-raisers that do not require the sale of food, selling noncompliant food items outside of school hours,

⁴ Eric A. Finkelstein, et al., "Annual Medical Spending Attributable to Obesity: Payer-and Service-Specific Estimates", *Health Affairs*, September/October 2009, vol. 28 no. 5, 822-831.

or selling food items or taking orders for items that are not intended to be consumed immediately, e.g., taking orders for Girl Scout cookies.⁵

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a small negative impact on the Department of Education. To comply with the bill, the Department would need to modify the school fund-raising section of its nutrition guidelines. The costs would be minimal and the Department would not require additional funds in order to implement the amended standards.

The bill could have a positive impact on schools that raise funds by selling food during school hours, as they would be allowed to sell food that does not meet nutrition standards. This impact would be minimal, since these types of fund-raising activities do not generate a large amount of revenue for schools; however, they are used to supplement extracurricular programs and activities.

Fiscal Analyst: Cory Savino

⁵ According to the USDA, items distributed in bulk quantities, or precooked items, intended to be consumed at home are not required to meet the Smart Snack rules. See "Fundraisers and Smart Snacks: Food Not Intended for Consumption at School", retrieved 4-24-2015, at: <http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks>.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.