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BILL ANALYSIS

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Senate Bill 91 (as introduced 1-26-05)
Sponsor: Senator Virg Bernero
Committee: Health Policy

Date Completed: 9-21-05

CONTENT

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

- **Require the board of a school district or board of directors of a public school academy (PSA) to adopt and implement a local school nutrition policy.**
- **Require the board to establish a coordinated school health team to implement a healthy school plan of action and review and approve the sale and distribution of food and beverages at school.**
- **Require the board to monitor the district's or PSA's compliance with the local policy and with the State school nutrition policy, and submit to the State Board of Education biannual resolutions confirming compliance or including a plan of action to achieve compliance.**
- **Allow the Superintendent of Public Instruction to impose an administrative fine against a school administrator for a violation of the local or State school nutrition policy, and require the fines to be deposited into the School Aid Fund (SAF).**
- **Require the Attorney General to bring a civil action to recover unpaid fines.**
- **Prohibit a school district or PSA from entering into, renewing, or extending a contract that was inconsistent with the requirements of the bill after its effective date.**

The bill is described below in further detail.

Local School Nutrition Policy

The bill would require the board of a school district or the board of directors of a PSA to adopt and implement a local school nutrition policy. (The bill specifies a deadline of April 1, 2005.) The policy would apply only to food and beverage products sold or distributed at school that were not part of a Federally regulated child nutrition program.

For an elementary or middle school, the policy would have to prohibit the sale or distribution at school at any time of a food or beverage that met any of the following criteria:

- It was classified by the U.S. Department of Agriculture (USDA) as a food of minimal nutritional value.
- More than 30% of the calories were from fat or more than 10% were from saturated fat.
- It contained at least 40% sugar or other sweetener by volume.
- It was a juice drink containing less than 50% fruit or vegetable juice.

For a high school, the policy would have to prohibit the sale or distribution of a food or beverage described above at school during school hours.

(Under the bill, “at school” would mean in a classroom, in a school cafeteria or lunchroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it was held on school premises.)

School Health Team

To assist in achieving statewide implementation of the State school nutrition policy adopted by the State Board of Education (described below, under **BACKGROUND**), a school district board or PSA board of directors would have to establish a coordinated school health team and a healthy school plan of action for the district or PSA. (The bill specifies a deadline of August 1, 2005.) The district or PSA would have to submit the plan of action to the Department of Education.

The coordinated school health team would have to coordinate the implementation of the healthy school plan of action and the State Board school nutrition policy in the district or PSA. The team also would have to review and approve the sale and distribution at school of food and beverage products, except for foods and beverages that were part of a Federally regulated child nutrition program. The school district or PSA board would have to ensure that a food or beverage product was not sold or distributed at school unless it had been approved by the school health team, or the product was part of a Federally regulated child nutrition program. (The bill specifies a beginning date of August 1, 2005.)

Compliance & Administrative Fines

The board of a school district or PSA would have to monitor the district’s or PSA’s compliance with the local policy adopted under the bill and with the State policy adopted by the State Board. At least every two years, the board would have to submit to the State Board a resolution that either confirmed that the district or PSA was in compliance with the policies, or described areas of noncompliance and a plan of action for achieving compliance.

The Department’s Director of the School Meals Office would have to monitor compliance by school districts and PSAs with the local and State school nutrition policies. If the Director found that there were repeated violations of either policy in a district or PSA, he or she would have to report this finding to the Superintendent of Public Instruction. If, after providing notice and an opportunity for a hearing, the Superintendent found that there had been a violation of either policy, he or she could impose against a school administrator determined to be responsible a maximum administrative fine of \$100 for each violation.

The Director of the School Meals Office would have to advise the Attorney General of the failure of any person to pay an administrative fine imposed under the bill. The Attorney General would have to bring a civil action in a court of competent jurisdiction to recover the fine. The fines collected under the bill would have to be paid to the SAF.

If a fine were imposed against a school administrator under the bill, the district or PSA board could not provide to him or her any compensation or additional work assignment that was intended to reimburse the administrator for the fine, or that was intended to allow him or her to recover the fine.

Scope of the Bill

The bill states that it would not do, and would not require a local school nutrition policy to do, either of the following:

- Prohibit a food or beverage prohibited under the policy from being sold or distributed in an employee lunchroom or other area of a school that was inaccessible to pupils.
- Prohibit the distribution of sports drinks approved by the school athletic director at a school-sponsored athletic event or practice occurring at any time.

Contracts

If a school district or PSA had in effect on the bill's effective date a contract that was inconsistent with the bill's requirements, it would not have to implement the local school nutrition policy or any other inconsistent provision of the bill until the contract expired. Beginning on the bill's effective date, a school district or PSA could not enter into, renew, or extend a contract that was inconsistent with the bill's requirements.

Proposed MCL 380.1271

BACKGROUND

The State Board of Education adopted its Policy on Offering Healthy Food and Beverages in Venues Outside of the Federally Regulated Child Nutrition Programs in December 2003. The Policy encourages all Michigan school buildings to offer and promote food and beverage as described below, regardless of grade level:

- Offer whole and enriched grain products that are high in fiber, low in added fats and sugars, and served in appropriate portion sizes consistent with the current USDA standards.
- Offer fresh, frozen, canned, or dried fruits and vegetables using healthy food preparation techniques, and offer 100% fruit juice in servings of 12 ounces or less.
- Offer nonfat, low-fat, plain, and/or flavored milk and yogurt, and nonfat and/or low-fat real cheese, rather than imitation cheese.
- Offer nuts, nut butters, seeds, trail mix, or soybean snacks in maximum portions of one ounce, and offer portions of up to three ounces of cooked lean meat, poultry, or fish using healthy food preparation techniques.
- If offered, serve accompaniments, such as sauces, dressings, and dips, in servings of one ounce or less.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Based on preliminary information, it is estimated that this bill would have a minimal negative fiscal impact on both State government and local school districts. Under this bill, State government would incur additional costs in two ways: 1) Additional costs would be incurred by the Department of Education and the Attorney General's Office because they would be responsible for overseeing and enforcing schools' compliance with the proposed food nutrition requirements; and 2) the State also would have to cover the costs that individual school districts would incur to implement the proposed food nutrition requirements because these new requirements would be mandated by the State. Local school districts that have a contract with a soft drink distributor and are currently receiving revenue from the sale of soft drinks in their schools would potentially lose at least a portion of this revenue if they currently sell soft drinks during school hours.

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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.