

Department of Legislative Services  
 Maryland General Assembly  
 2016 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 602  
 Finance

(Senator Conway, *et al.*)

Maryland Healthy Vending Machine Act

This bill requires that at least 75% of the packaged food and beverage options offered in a “food and beverage vending machine” located on property owned or managed by the State be “healthy food or beverage options.” The Department of Health and Mental Hygiene (DHMH) must enforce the bill (including performing inspections and conducting trainings), periodically revise and update the requirements for healthy food and beverage options, and submit required reports. The bill also establishes penalty provisions for noncompliant food and beverage vending machine operators.

Fiscal Summary

**State Effect:** General fund expenditures for DHMH increase by \$554,300 in FY 2017 to hire staff and contract with local health departments (LHDs) to conduct an initial assessment of affected vending machines, develop food guidelines, conduct required outreach and education programs, and inspect vending machines. Out-year costs reflect annualization and assume greater compliance and the need for fewer inspections. Potentially significant one-time costs and operational impacts for some State agencies to the extent that modifications to existing vending machine contracts are required. General fund revenues increase to the extent civil fines are imposed for noncompliance.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
GF Expenditure	\$554,300	\$648,100	\$331,900	\$344,800	\$358,200
Net Effect	(\$554,300)	(\$648,100)	(\$331,900)	(\$344,800)	(\$358,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** The bill is not expected to have a material impact on local governments.

**Small Business Effect:** Potential meaningful impact on small business food and beverage vending machine companies.

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## Analysis

**Bill Summary:** The bill applies to food and beverage vending machines located on property owned or managed by the State, including State government office buildings, roadside rest stops, State parks and recreation centers, and State colleges and universities. For food and beverage vending machines located on State property that has been leased to a private entity, DHMH must encourage the tenant to comply with the bill's requirements. The bill may not be construed to require a unit of State government to place a food and beverage vending machine on State property.

*Healthy Food and Beverage Options:* In general, a healthy beverage option may have no more than 40 calories per package, with the exception of (1) fat free milk; (2) 1% low fat dairy milk; (3) calcium or vitamin D fortified soy milk with less than 200 calories per container; and (4) packages containing 12 ounces or less of 100% fruit juice, vegetable juice, or fruit juice combined with water, with no added caloric sweeteners and no more than 200 milligrams of sodium per container.

A healthy food option must contain (1) no more than 200 calories per package; (2) no more than 0.5 grams of trans fat per serving; (3) less than 35% of calories from fat, except for foods containing 100% nuts or seeds; (4) less than 10% of calories from saturated fat; (5) no more than 35% of calories from total sugars, except for 1% or 2% fat or nonfat dairy products, nondairy milk products, fruits, and vegetables; and (6) no more than 200 milligrams of sodium per package. Sugarless chewing gum and mints are considered healthy food options.

The bill specifies that *any* packaged food and beverage option offered in a vending machine may contain no more than 0.5 grams of trans fat per service and 200 milligrams of sodium per package. The bill also requires a healthy food or beverage option to be displayed and stocked in a certain position within a machine. An operator must ensure that a purchaser has access to certain nutritional information prior to purchasing the food or beverage.

*DHMH Enforcement and Oversight:* DHMH must enforce the bill and may inspect affected vending machines and receive reports regarding potential noncompliance. DHMH must disseminate information and conduct trainings on the bill's requirements.

Beginning October 1, 2018, and every two years thereafter, DHMH must report to the Governor and the General Assembly on the implementation of and compliance with the

bill's requirements, as well as recommendations for improving the healthy food or beverage option standards and operator compliance, if necessary.

Beginning October 1, 2021, and every five years thereafter, DHMH must review, and if necessary revise and update, the requirements for healthy food and beverage options to reflect advancements in nutrition science, dietary data, and product availability.

*Penalty Provisions:* A person who violates the bill's requirements is subject to a civil fine of at least \$100 that is paid by the food and beverage vending machine operator for a first violation and at least \$500 for each subsequent violation. A person who commits five or more violations within a six-month period may not operate a food and beverage vending machine on State property and is subject to a civil fine of at least \$1,000.

**Current Law:** In order to operate a vending machine in the State, a person must have a valid license that covers that machine. A person who violates this requirement is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$100. The Comptroller is responsible for enforcing vending machine provisions under Title 17 of the Business Regulation Article but has the authority to delegate this responsibility. In general, licenses are issued, and licensing fees are collected, by the circuit court clerk in each local jurisdiction. Although the licenses are issued by the circuit court clerk, the Judiciary (Administrative Office of the Courts) maintains the central electronic licensing system for these licenses. The vending machine license fee is \$2.50.

**Background:** According to the bill's preamble, by 2018, diseases caused by poor nutrition may cost Maryland's health care system at least \$7.6 billion in direct medical costs, half of which will be publicly funded. Approximately 81,000 individuals are employed by the State, and reducing the impact of diet-related diseases will support a more productive and valuable workforce. Maryland spends more than \$700 million each year to fund its employee health benefits program, and reducing chronic diseases through improvements to the State's food environment may help improve employee health and reduce taxpayer costs. The preamble also advises that, according to the U.S. Centers for Disease Control and Prevention, making healthier food and beverages more widely available in vending machines can help reduce Type 2 diabetes, obesity, and other chronic diseases.

The federal government imposes similar requirements on food and beverages sold through vending machines at the U.S. Department of Health and Human Services and in all properties managed by the General Services Administration. At these locations, all packaged foods must contain 0 grams of trans fat and less than 230 mg of sodium per serving. At least 25% of all packaged food choices must be less than 200 calories per package (excluding nuts and seeds without added fats or caloric sweeteners), have 10% or fewer total calories from saturated fat (excluding nuts and seeds without added fats), and have 35% or fewer calories from sugar (excluding fruits or vegetables without added

caloric sweeteners). At least 50% of beverage choices (other than 100% juice and unsweetened milk) must contain 40 calories or less per serving. A prospective purchaser must have access to nutrition information prior to purchasing the food.

**State Fiscal Effect:**

*DHMH Administrative Costs:* DHMH must enforce the provisions of the bill and may inspect food and beverage vending machines. DHMH has determined that three permanent full-time positions are needed to implement the bill, in addition to contractual expenses to hire inspectors for LHDs. However, the Department of Legislative Services (DLS) advises that at least some of the added responsibilities incurred by this legislation are not ongoing and, thus, may be performed in part by a contractual employee.

Accordingly, general fund expenditures for DHMH increase by \$554,297 in fiscal 2017, which reflects the bill’s October 1, 2016 effective date. This assumes that enforcement is delayed for approximately three months. (Alternatively, at a higher cost, staff could be hired on July 1, 2016, in order to implement the bill by the October 1, 2016 effective date.) This estimate reflects the cost of hiring one regular full-time program administrator and one full-time contractual health policy analyst to identify affected vending machines, conduct trainings and educational outreach, provide contract management with LHDs, develop a list of qualifying food and beverage products, collect and review program data and fulfill reporting requirements, and coordinate enforcement. It includes salaries, fringe benefits, one-time start-up costs, travel, communications, and ongoing operating expenses. The estimate also includes contractual expenditures to contract with LHDs for seven coordinators of special programs employees to perform inspections and receive and investigate noncompliance reports throughout the State.

	<u><b>FY 2017</b></u>	<u><b>FY 2018</b></u>
Contractual Position	1.0	(1.0)
Regular Position	1.0	
Contractual Expenses for LHD Inspectors	\$443,405	\$553,222
Salaries and Fringe Benefits	92,547	86,995
Other Operating Expenses	<u>18,345</u>	<u>7,903</u>
<b>Total DHMH State Expenditures</b>	<b>\$554,297</b>	<b>\$648,120</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and continued contractual employment of LHD employees to conduct inspections and enforcement but at a lower level, assuming greater compliance in the out-years. DLS notes that, to the extent that the initial assessment of affected vending machines throughout the State reveals that vending machines are clustered in a small geographic location or are insignificant in number, the number of inspectors contracted through LHDs may be lower.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

*Implementation Costs for State Agencies and Institutions of Higher Education:* The impact for State agencies and institutions of higher education varies depending on whether the entity owns and operates its own vending machines, what types of products are currently offered in the machines, and whether the entity contracts with an outside vendor. For example, the Department of Labor, Licensing, and Regulation; the Department of Juvenile Services; and the Department of General Services (DGS) all advise that the bill has no significant fiscal or operational impact on those departments as they have vendor contracts. The Maryland School for the Deaf advises that K-12 educational facilities in the State already have healthy vending options.

However, the Maryland Business Enterprise Program for the Blind (MBEP) within the Maryland State Department of Education's Division of Rehabilitation Services runs vending machines for DGS and advises the bill has a significant operational impact because any current contracts must be renegotiated to comply with the bill's requirements. This may result in less favorable commission terms for the program, but any specific impact cannot be estimated at this time. MBEP also advises that it is unclear whether current machines may need to be replaced in order to comply with the bill's requirements. To the extent that current machines must be replaced, costs could increase significantly.

Similarly, the University System of Maryland (USM) advises that the bill's requirements may result in higher vendor costs, which DLS assumes may result in a lower commission for USM. USM notes that the bill's definition of a vending machine is broad and may include certain food service machines like self-service beverage and cereal dispensers in university dining halls. USM advises that compliance for these expanded types of machines would be extremely difficult.

*Vending Machine Revenues:* The bill's impact on vending machine revenues for State entities is indeterminate because any impact depends on consumer preferences and purchasing habits. MBEP advises that it began contracting for more limited healthy options in some of its vending machines in the last six months. These changes have resulted in wide-ranging impacts, both positive and negative, depending on the location. MBEP receives \$490,228 in revenues from vending machine sales on State property. Morgan State University advises that the university receives approximately \$200,000 annually in vending revenues, and it is unsure how the bill's provisions will affect revenues.

**Local Fiscal Effect:** The Maryland Association of County Health Officers advises that there are existing local and State employee wellness programs and initiatives that largely

encompass the bill's goal. As such, many LHDs are already in compliance with the bill, and the bill's requirements have minimal impact. However, expenditures and revenues associated with enforcement and inspection of vending machines across the State will have an impact on LHD employees, as discussed above.

**Small Business Effect:** Significant operational impact and potential significant fiscal impact for small business vending machine vendors to comply with the bill's requirements. Expenditures on vending products may increase and current machines may need to be replaced or retrofitted to meet the requirements of the bill. Because the bill's requirements are effective upon the October 1, 2016 effective date, some companies may lose revenues and incur costs to replace current stocks of vending machine food and beverages. Any impact on vending machine revenues for small businesses is indeterminate and will depend on consumer preferences and purchasing habits.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1498 (Delegate Hayes, *et al.*) - Economic Matters.

**Information Source(s):** Maryland Association of County Health Officers; Maryland State Department of Education; Maryland School for the Deaf; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of General Services; Department of Health and Mental Hygiene; Department of Human Resources; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Blind Industries and Services; Department of Legislative Services

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