

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

Senate Bill 100 (Senator Stone)  
Education, Health, and Environmental Affairs

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**Public Schools and Child Care Centers - Artificial Color Additives - Prohibition**

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This bill prohibits public schools and child care centers from purchasing, selling, using, or serving food products containing man-made artificial color additives after July 1, 2010. The State Board of Education may adopt regulations to implement the bill.

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**Fiscal Summary**

**State Effect:** None. The bill does not affect State funding for public schools.

**Local Effect:** Local school expenditures for school meal programs may increase beginning in FY 2011. Potential decrease in revenues from school-based vending machines beginning in FY 2011. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful. Child care center expenditures for meals may increase beginning in FY 2011.

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**Analysis**

**Current Law:** Any federal rule or regulation on the use of a color additive is automatically adopted as a regulation of the State. With the assistance of the local health department, each local board of education must provide a healthful school environment.

A person must be licensed by the Maryland State Department of Education (MSDE) before operating a child care center in the State; centers operated by religious organizations are generally exempt from licensing requirements but may be required to obtain letters of compliance. The State Superintendent of Schools is charged with

adopting rules and regulations for child care centers that ensure the safety, proper care, health, and sound development of the children in their care.

**Background:** A color additive is any dye, pigment, or substance which, when added or applied to a food, drug, or cosmetic, or to the human body, is capable (alone or through reactions with other substances) of revealing color.

The U.S. Food and Drug Administration (FDA) regulates color additives in the United States. Color additives are subject to approval by the agency and may only be used in compliance with the approved uses, specifications, and restrictions. In the approval process, FDA evaluates safety data to ensure that a color additive is safe for its intended purposes. Since absolute safety of any substance can never be proven, decisions about the safety of color additives or other food ingredients are made on the best scientific evidence available.

FDA considers the nine-certified artificial colors allowed in food to be safe, but recent studies have suggested a relationship between artificial colors and hyperactivity in children. The United Kingdom Food Standards Agency asked manufacturers to eliminate certain colors that showed adverse behavioral effects in children given drinks containing four artificial colors.

Of the nine-certified artificial colors, two are restricted to specific uses. The bill encompasses the seven fully approved artificial colors and one of the restricted colors, Orange B. Orange B is restricted to casings or surfaces of frankfurters and sausages. Citrus Red No. 2, which is not included in the bill, is restricted to being used on the skins of oranges not intended for processing.

School-based child nutrition programs are federal entitlement programs, operating in public and nonprofit private schools and residential child care institutions. Local school systems and child care centers are reimbursed for each meal served; however, the amount of reimbursement is less than the actual cost of producing a school meal. The U.S. Department of Agriculture (USDA) sets nutritional standards and meal pattern requirements for schools that receive reimbursement.

Children from families with incomes at or below 130% of the poverty level are eligible for free meals. Those with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals, for which students can be charged no more than 40 cents. Children from families with incomes over 185% of poverty pay full price, though their meals are still subsidized to some extent. Local school food authorities set their own prices for full-price meals, but must operate their meal services as nonprofit programs.

**Local Revenues:** Many schools and school systems in Maryland and other states have turned to vending machine sales to raise additional school revenue. Each year, exclusive contracts with vending machine companies can generate thousands of dollars in revenue for schools. Many of the foods and drinks sold in school vending machines contain artificial color additives. Research done for obesity studies has shown that replacing sodas with water and 100% fruit juice in school vending machines dramatically reduces revenues. It is assumed that replacing foods and drinks in school vending machines with foods that do not contain artificial colorings may cause a similar decline in vending machine revenues.

**Local Expenditures:** According to the School Nutrition Association, most local school districts are reimbursed \$2.57 per free lunch served; however, it costs an average of about \$2.92 to produce a school lunch. School systems partially offset the cost to produce school lunches through full-price meals, State funds, and commodity foods obtained through the USDA.

Artificial food colorings are widely used in food products; therefore, prohibiting man-made artificial food coloring in school meals may limit the availability of food distributors and increase cost for school meal programs. Local school systems generally operate their school nutrition programs at a loss, so any increase in food prices will increase school expenditures and may increase student meal prices.

**Small Business Effect:** The bill subjects child care centers to the same restrictions on artificial food colorings in foods as local school systems; therefore, centers may face similar increases in food expenditures. Some child care centers participate in the federal child nutrition programs and must operate their meal programs on limited budgets.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education, Department of Health and Mental Hygiene, School Nutrition Association, U.S. Department of Agriculture, Department of Legislative Services

**Fiscal Note History:** First Reader - February 8, 2009  
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