

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 829 (Senators Ferguson and Pinsky)
Budget and Taxation and Finance

Health - Maryland Combating Childhood Obesity Grant Program

This bill establishes a Maryland Combating Childhood Obesity Program (MCCOP) and Fund (MCCOF) to provide grants to nonprofit organizations and public schools that provide opportunities for physical activity to public school students enrolled in kindergarten through grade eight. In addition, the bill imposes the State sales and use tax on snack food by repealing the current exemption. The Comptroller must distribute 40% of the sales and use tax revenue attributable to the sale of snack food to MCCOF before making any distributions to the Transportation Trust Fund (TTF) or the general fund.

The bill takes effect July 1, 2011, and terminates June 30, 2016.

Fiscal Summary

State Effect: Total revenues increase by \$26.2 million in FY 2012. The estimate reflects a general fund revenue increase of \$14.9 million and a special fund revenue increase of \$11.3 million (which includes a MCCOF revenue increase of \$10.5 million and a TTF revenue increase of \$834,500). Future year revenues represent 2% annual growth. General fund expenditures increase by \$187,200 in FY 2012, which reflects a one-time cost for a new tax processing system. MCCOF special fund expenditures increase by \$10.3 million in FY 2012, which includes \$10.2 million for grant awards and \$97,800 for program administration. Future year special fund expenditures reflect inflation.

(\$ in millions)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	\$14.9	\$15.2	\$15.3	\$15.6	\$15.9
SF Revenue	\$11.3	\$11.6	\$12.0	\$12.2	\$12.5
GF Expenditure	\$.2	\$0	\$0	\$0	\$0
SF Expenditure	\$10.3	\$10.5	\$10.7	\$11.0	\$11.2
Net Effect	\$15.7	\$16.2	\$16.6	\$16.9	\$17.2

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Snack food” means potato chips and sticks, corn chips, pretzels, cheese puffs and curls, pork rinds, extruded pretzels and chips, popped popcorn, nuts and edible seeds, and specified snack mixtures.

A grant from the program may be used to offer nutrition information and provide healthy snacks and meals. A grant may not, however, be used to provide activities that are offered (1) by a public school as part of, or instead of, the public school’s required physical education program; or (2) at a public school that is open to children who are enrolled in a private school or who are homeschooled. To be eligible for a grant from the program, an organization or school must apply the best practices for the operation of out-of-school programs from the Maryland Out-of-School Time Programs’ Quality Standards Framework as established by the Maryland Out-of School Time Network.

An organization or school that receives a grant from the program must report, as specified by the bill, to the Secretary of Health and Mental Hygiene, who must administer the fund and adopt regulations to carry out the program. The Department of Health and Mental Hygiene must use 2.5% of the fund annually to pay the costs of administering the program; these costs may include technical assistance, professional development, and training opportunities for grantees. The balance of the fund must be used to award program grants.

Current Law: The current State sales and use tax rate is 6%. The State sales and use tax is not generally imposed on the sale of food (including snack food) by retail stores.

After making required distributions to the refund and administrative costs accounts, the Comptroller must pay into TTF, for fiscal 2012 and 2013, 5.3% of the remaining sales and use tax revenue; and, beginning in fiscal 2014, 6.5% of the remaining sales and use tax revenue. The Comptroller must pay the remaining sales and use tax revenue into the general fund.

Background: The General Assembly approved a tax on the retail sale of snack food at the first special session of 1991. The “snack tax” was repealed at the 1996 session with a delayed effective date of July 1, 1997. At the 2004 session, the Senate approved a provision in the Budget Reconciliation and Financing Act that would have imposed a 5%

sales and use tax on snack food; however, this provision was not included in the enacted legislation.

The sales and use tax is the State’s second largest source of general fund revenue, accounting for \$3.7 billion in fiscal 2011 and \$3.8 billion in fiscal 2012, according to the December 2010 revenue forecast.

The National Conference of State Legislatures (NCSL) reports that, over the last 30 years, the percentage of children who are overweight has more than quadrupled for children ages 6 to 11 and more than tripled for youths ages 12 to 19. NCSL also reports that, in addition to reducing the risk of chronic disease, exercise helps academic performance, contributes to healthy physical development, and reduces the risk for depression.

State Revenues: Total sales tax revenues increase by approximately \$26.2 million in fiscal 2012 as shown in **Exhibit 1**. The estimate includes a general fund increase of \$14.9 million, an MCCOF increase of \$10.5 million, and a TTF revenue increase of \$834,485. The estimate is based on available data provided by *Snack Food and Wholesale Bakery* and the following facts and assumptions:

- specified snack food sales totaled approximately \$26.04 billion for fiscal 2010;
- snack food sales in Maryland are proportionate to its share of the U.S. population (1.87%);
- total snack food sales in Maryland will decline 6% in the first year as a result of the imposition of the tax; and
- thereafter, snack food sales revenues increase by 2% annually, which is based on prior year sales data.

Future year estimates reflect inflation and increased distributions to TTF beginning in fiscal 2014. Future year estimates do not account for any potential changes in eating habits and consumption beyond fiscal 2012.

Exhibit 1
Estimated Revenues from Taxing Specified Snack Foods
(\$ in Millions)

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
General Fund	\$14.91	\$15.21	\$15.31	\$15.62	\$15.94
TTF	0.83	0.85	1.06	1.09	1.11
MCCOF	<u>10.50</u>	<u>10.71</u>	<u>10.92</u>	<u>11.14</u>	<u>11.36</u>
Total	\$26.24	\$26.77	\$27.30	\$27.85	\$28.40

State Expenditures: General fund expenditures increase by \$187,200 and MCCOF expenditures increase by \$10.3 million, which includes \$10.2 million for grant awards and \$97,815 for program administration.

The Comptroller's Office advises that the current tax processing system cannot accommodate the distribution of sales tax revenue from sales of specific goods. Accordingly, general fund expenditures increase by \$187,200 in fiscal 2012 to reflect the cost of a one-time system modification.

MCCOF expenditures increase by \$10.3 million in fiscal 2012, including \$10.2 million (representing 97.5% of the fund) for grant awards and \$97,815 for program administration, which reflects that cost of hiring one full-time program administrator and contracting for training services. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Program Administrator	1
Salary and Fringe Benefits	\$66,280
Operating Expenses	<u>31,535</u>
Total FY 2012 MCCOF Administrative Expenses	\$97,815

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. In addition, because the bill specifies that DHMH must use 2.5% of MCCOF each year for program administration, it is assumed that special funds in excess of the amount needed for administration cannot be awarded for grants and instead build a fund balance that cannot be used – by approximately \$165,000 annually. Otherwise, it is assumed that the remaining 97.5% of the fund is awarded each year for grants.

Legislative Services notes that MCCOP has a termination date of June 30, 2016. Accordingly, the program administrator position necessitated by this bill is expected to be either terminated or absorbed into another function before fiscal 2017.

Small Business Effect: Potential decrease in revenues for small businesses (such as convenience stores) that sell snack foods, if consumers alter their purchasing behavior due to the imposition of the tax. Expenditures increase for small businesses that must (1) file additional sales and use tax returns; and (2) modify their current systems to account for the collection of the sales and use tax on specific products that are considered snack foods.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 716 (Delegate Walker, *et al.* - Health and Government Operations) is not identical.

Information Source(s): *Snack Food and Wholesale Bakery*, U.S. Census Bureau, Department of Health and Mental Hygiene, Comptroller's Office, Maryland Department of Transportation, Department of Legislative Services

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mc/mwc

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