

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

House Bill 1095  
Ways and Means

(Delegate Smith, *et al.*)

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**Public Schools - Nutrition Standards - Vending Machines and Marketing**

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This bill requires each local board of education to develop and implement a policy that requires all foods and beverages sold from a vending machine in an area of a public school that is accessible to students at any time during the day to comply with (1) the Maryland Nutrition Standards for All Foods Sold in Schools adopted by the State Board of Education and (2) the wellness policy adopted by the local school system. A local board of education must develop and implement a policy that requires all oral, written, and visual marketing on a public school campus for foods and beverages to comply with those same standards and policies. The bill also repeals provisions of current law related to vending machines that sell food of minimal nutritional value.

The bill takes effect July 1, 2015, and applies only prospectively to leases, agreements, and claim contracts awarded on or after July 1, 2015.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Local school system revenues from vending machines that sell food and beverages that do not comply with the Maryland Nutrition Standards and the wellness policy adopted by the local school system decrease; however, the decrease may be partially, if not fully, offset by the sale of foods and beverages that do comply. Likewise, local school system revenues from marketing contracts may decrease significantly; however, the decrease may be partially offset by marketing that does comply.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Local school systems are subject to federal law and regulations through participation in federal food and nutrition programs, including (among others) the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and other programs for free and reduced-price meals and free milk in schools. The federal Healthy, Hunger-Free Kids Act of 2010 requires schools to offer nutritious, well-balanced, and age-appropriate meals to all the children they serve to improve their diets and safeguard their health. Children age five and older must be offered lunches that meet the following nutrition standards for their age/grade group: specified food components and food quantities; zero grams of trans fat per serving or a minimal amount of naturally occurring trans fat; less than 10% of total calories from saturated fat; reduced amount of sodium; and following the applicable recommendations from the 2010 Dietary Guidelines for Americans.

The Maryland State Department of Education (MSDE) monitors local school compliance with federal law regarding school food and nutrition programs. The Maryland Code of Regulations indicates that local school systems are subject to administrative review by MSDE and/or the U.S. Department of Agriculture (USDA) for the purpose of evaluating the administration of a food and nutrition program.

USDA prohibits schools from selling foods of minimal nutritional value (FMNV) during meal periods anywhere reimbursable meals are sold or eaten. Chapter 312 of 2005, the Student Health Promotion Act of 2005, requires Maryland public school vending machines that sell FMNV to have and use timing devices that automatically prohibit or allow access to vending machines in accordance with policies established by local boards of education.

According to the Maryland Nutrition Standards for All Foods Sold in Schools adopted by the State Board of Education on June 27, 2014, and effective July 1, 2014, all foods and beverages sold to students on the public school campus, including cafeteria a la carte items, vending machines, school stores, and fundraising activities, from 12:01 a.m. until 30 minutes after the end of the official school day must meet the nutrition standards described below.

All foods (other than foods offered in the NSLP and SBP) must fall into one of the following categories:

- be whole grain-rich (*i.e.*, at least 50% whole grain by weight or listed as first ingredient);
- first ingredient must be a fruit, vegetable, dairy product or protein food;
- be a combination of food that consists of at least ¼ cup of fruit and/or vegetable; or
- contain at least 10% of the Daily Value of a nutrient of public health concern – *i.e.*, calcium, potassium, vitamin D, or dietary fiber (this criterion will expire on July 1, 2016).

Foods must also meet the all of the standards shown in **Exhibit 1**.

**Exhibit 1**  
**Maryland Nutrition Standards for All Foods Sold in School**

Calories		Sodium		Fats			Sugar
Snack/Side Dish	Entrees	Snack/ Side Dish	Entrees	Total Fat	Saturated Fat	Trans Fat	Weight Sugar/ Total Weight
≤ 200 calories	≤ 350 calories	230 mg (After 7/1/2016 ≤ 200 mg)	480 mg	35% of calories	<10% of calories	Zero grams	35% of total weight from sugar

Source: Maryland State Department of Education

Beverages must also meet the standards shown in **Exhibit 2**.

**Exhibit 2**  
**Beverage Standards for Maryland Schools**

	Elementary	Middle	High School
Plain Water or Plain Carbonated Water	Any Size	Any Size	Any Size
Low-fat Milk, unflavored Nonfat Milk, flavored or unflavored	≤ 8 fl oz	≤ 12 fl oz	≤ 12 fl oz
100% Fruit/Vegetable Juice	≤ 8 fl oz	≤ 12 fl oz	≤ 12 fl oz
100% Fruit/Vegetable Juice -diluted with water, with or without carbonation -with no added sweeteners	≤ 8 fl oz	≤ 12 fl oz	≤ 12 fl oz
Other flavored and/or carbonated beverages -soda is not allowed	Not allowed	Not allowed	If ≤ 12 fl oz must meet: ≤40 calories/8 oz ≤60 calories/ 12 oz If ≤ 20 fl oz must meet: ≤5 calories/8 oz ≤10 calories/ 12 oz
Caffeine, beyond naturally occurring trace amounts	Not allowed	Not allowed	Not allowed

Source: Maryland Department of Education

Under the federal Child Nutrition and Women, Infants and Children Reauthorization Act, since 2004 all local school systems participating in the NSLP or other federal nutrition programs were required to create local school system wellness policies. The federal Healthy, Hunger-Free Kids Act of 2010, added new provisions for local school wellness policies related to implementation, evaluation, and publicly reporting on progress of local school wellness policies.

**Background:** According to the U.S. Centers for Disease Control and Prevention (CDC), childhood obesity has more than tripled in the past 30 years. CDC reports that childhood obesity has increased from 6.5% in 1980 to 19.6% in 2008 among children ages 6 to 11; and from 5.0% to 18.1% among children ages 12 to 19 for this time period. Obesity generally results from an imbalance between calories consumed and calories expended. Obese youth are more likely than others to be obese or overweight in adulthood, and obesity is linked to increased risk of future cardiovascular disease, diabetes, stroke, and other serious health conditions. FMNV contribute to obesity.

In 2009, food companies spent \$150 million marketing to children in schools. According to one study, the majority of public school students are exposed to some form of food and beverage marketing at school. In 2012, 70% of elementary and middle school students and 90% of high school students attended schools with food marketing. A national survey found that 67% of schools have advertising for foods that are high in fat or sugar. Other studies show that labeling and signage on school campuses affect students' food selections at school.

**Local Revenues:** Many local school systems allow school administrators to raise revenues by contracting with vending machine companies. The bill restricts this practice to vending machine companies that sell food and beverages that comply with the Maryland Nutrition Standards and the wellness policy adopted by the local school system. Due to increased interest in health and wellness, many companies sell healthier prepackaged products that may comply; thus the revenue decreases may be partially, if not fully offset. However, there is no information readily available on the comparative value of the vending machine contracts.

Likewise, local school system marketing revenues may decrease significantly; however, the decrease may be partially offset by marketing that does comply. Information on marketing revenues has not been provided to the Department of Legislative Services; thus, a more accurate estimate cannot be determined. There are currently no statewide regulations limiting marketing in schools, and local school systems are not required to set policies. Thus, regulation of marketing may cause local school systems to forego future revenue sources.

Existing vending machine and marketing contracts are not affected. The amount of future revenues that may be lost cannot be reliably estimated.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 504 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland State Department of Education, U.S. Department of Agriculture, U.S. Centers for Disease Control and Prevention, Food Marketing Workgroup, Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2015  
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