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FISCAL IMPACT REPORT

SPONSOR Gonzales DATE TYPED 2/14/05 HB 598

SHORT TITLE Competitive Foods In Schools Act SB _____

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		See Narrative		

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

Public Education Department (PED)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

HB 598 adds a new section to the Competitive Foods In Schools Act establishing nutritional standards and portion size guidelines for public schools. The new section seeks to eliminate “junk foods” and control portion sizes offered on school breakfast, lunch, and after school snack menus. The Act would also restrict vending machine sales items to bottled water and other qualifying healthy foods and beverages. Advertising graphics on vending machines could only promote healthy nutrition or physical activity. The Act would also require a preference for New Mexico grown food and beverage items for purchase in the USDA meals programs and for competitive food and beverage sales. “Competitive food” means a food offered or sold at school

other than a food served throughout the USDA's school breakfast, lunch and after school snack programs. Schools would not be able to sell competitive foods and beverages one hour before school through one-half hour after the school day. The standards would include that school fundraising activities use nonfood items or meet the standards described in the bill. Contracts for food and beverage vending would not bind school districts to exclusive or multi-year provisions. Food and beverages, through redeemable coupons, would not be used as rewards or withholding same, for punishment.

Significant Issues

The DOH has the following comment:

The 2004 reauthorization of the federal Child Nutrition Act requires local education authorities to establish a school nutrition policy that provides nutrition guidelines for all foods on campus by July 31, 2006. The provisions in HB 598 are comprehensive enough to satisfy the national requirement and reflect the recommendations in the *Dietary Guidelines for Americans 2005* released by the United States Departments of Agriculture and Health and Human Services in January 2005.

Seventy-five percent (75%) of New Mexicans believe that sales of unhealthy food in public schools should be eliminated and 71% of New Mexico adults would like to eliminate advertising of unhealthy food and drinks on public school grounds, according to a February 2004 survey conducted in English and Spanish with 800 New Mexico adults.

PERFORMANCE IMPLICATIONS

The PED reports that improved eating habits and physical activity will impact public school performance measures regarding reading/language arts and math.

The PED will be required to solicit input and hold hearings before adopting and promulgating rules, and the bill's deadline of having of August 1, 2005 may be difficult to meet.

FISCAL IMPLICATIONS

Many schools have multi-year and exclusive contracts with vending companies resulting in additional dollars to schools. APS receives approximately \$1 million annually in exclusive rights fees for vending sales. The PED reports Competitive Benefits Administrators anticipate a loss of approximately \$3 million annually if exclusive right fees were not allowed.

The DOH report in addition to diabetes, overweight children have a higher incidence of psychosocial distress, orthopedic problems, liver disease, sleep apnea, high blood pressure and asthma. The economic burden of these chronic diseases is devastating to our state's economy, representing a high percentage of Medicaid dollars spent for health care services. Data on the direct medical costs attributable to obesity show an estimated \$324 million of all adult medical expenditures are attributable to obesity in New Mexico; of these \$51 million is spent within the Medicare population, and \$84 million is spent within the Medicaid population.

The DOH note examples of school districts no longer operating in the red. Folsom Cordova School District in Sacramento, California upgraded with healthy choices and now has a \$400

thousand reserve; the annual budget increased 10% due to increased food services revenue. Whitefish Central School in Montana replaced junk foods and soda with fruit, bagels, 100% juice beverages, water and milk with school profits remaining the same. North Community High School in Minnesota increased the number of vending machines from four to 16, stocked 13 machines with water or 100% juices for \$1.00, and soda and fruit drinks for \$1.25. Soda sales went down, but vending machine profits increased to \$4 thousand per year with water the best seller.

ADMINISTRATIVE IMPLICATIONS

DOH and PED would jointly participate in developing standards and regulations with existing staff and resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 10, which creates a committee to study and make recommendations on current nutritional offerings in public schools.

Similar to SB 295, but does not address foods and beverages at school related activities and events and positive messaging for healthy nutrition and increased physical activity.

Conflicts with HB 61, requiring the PED to develop regulations for competitive food standards.

TECHNICAL ISSUES

With regard to current exclusive or multi-year contracts, the PED is concerned a school district may not withstand a challenge based upon Article II, Section 19 of the NM Constitution, stating, "No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature."

The PED notes setting limitations on types of graphics used may violate "commercial speech" implicating 1st Amendment rights.

The Act requires the PED to promulgate rules requiring food and beverages used during celebrations to comply with the standards in the Act. However, the Act exempts celebrations and nutrition education lessons from the time restrictions on competitive foods in the Act.

OTHER SUBSTANTIVE ISSUES

The PED reports:

- 80% of school districts sell food that competes with school meal programs: most of the food is low in nutrients and high in calories.
- \$12-\$14 billion is spent each year to market unhealthy food to children by the food industry.

ALTERNATIVES

All good and beverages sold or served in all public schools should meet the nutrition standards set forth by the U.S. department of Agriculture *Dietary Guidelines for Americans*.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The DOH state local school districts may continue to be without guidance from the state level when setting nutrition policy.

New Mexico may not see a decrease in the number of overweight children related to their lack of physical activity and poor nutritional habits.

POSSIBLE QUESTIONS

Are there provisions for the foods in areas students cannot access, such as teacher and staff lounges?

AHO/sb:njw