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FISCAL IMPACT REPORT

SPONSOR Feldman DATE TYPED 3/10/05 HB _____

SHORT TITLE Competitive Foods in School Act SB 295

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None				

Conflicts with HB 61,

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Education Department

SUMMARY

Synopsis of Bill

SB 295 creates a new section of the Public School Code called the “Competitive Food in Schools Act.” The Act:

1. Defines “competitive beverage” and “competitive food” as beverage/food offered or sold at school other than those served through the federal school breakfast or lunch program.
2. Requires the PED to “approve a list of competitive foods and competitive beverages approved for offer or sale at public schools and charter schools.” This approval must be based on the provisions of the Act.
3. Forbids contracts for food and beverage vending to be bound by exclusive or multi-year provisions.
4. Forbids schools to utilize coupons for food and beverages to be utilized as rewards or be withheld as punishment for individual students or groups of students.
5. Excludes graphics that do not promote “one hundred percent fruit and vegetable juices, water, milk, physical activity and health” from vending machines located on school property.

6. Requires school personnel to eat food and drink beverages that comply with the Act when eating with their students at school.
7. Restricts the time for sale of competitive foods on an elementary school campus. Competitive foods may not be sold in elementary schools from one hour before school starts through one-half hour after school ends. Celebrations and nutrition education lessons are exempt from this section.
8. Sets requirements for the types of competitive food that may be sold at middle and high schools from one hour before school starts through one-half hour after school ends. Celebrations and nutrition education lessons are exempt from this section.
9. Requires the PED, in conjunction with the Department of Health, to adopt and promulgate rules by August 1, 2005 for compliance with the act and provides specifics as to what the rules must require, as follows:
 - a. A preference for New Mexico-grown foods
 - b. A preference for minimally processed, naturally nutrient-dense-per-calorie food and beverages
 - c. A preference for school fundraising activities that use nonfood items and to require that when used, food must meet the provisions in the Act.
 - d. Require districts to involve students in creating school wellness policies, limits school celebrations that involve the use of food and beverages, and require that food and beverages at celebrations comply with the standards of the Act.

Significant Issues

- Many schools currently have business partner relationships in their local community that provide food and beverage coupons for rewards for individual students or groups. SB 295 would forbid schools from continuing this practice.
- Many current contracts between schools and vendors allow schools to choose the graphics utilized in vending machines. Section 6 of the bill would set limitations on the types of graphics that may be utilized by excluding non-conforming graphics. The PED believes this provision brings the bill into the area of constitutional law referred to as “commercial speech” and may implicate the 1st Amendment to the U.S. Constitution.
- Section 7 of the bill sets limitations as to what school personnel may eat when eating with students. The PED believes this provision poses several issues. If a school district has entered into a bargaining agreement with a labor union, such a provision could be grievable since arguably failure to eat what the law says could be considered misconduct and result in discipline. A more significant problem with this section is a combined reading of portions of the School Personnel Act. Sections 22-10A-2(A), (D), 22-10A-4(A), (F), 22-10A-24 and 22-10A-27 will not permit a school district to terminate or discharge a tenured licensed employee except for just cause. By statute, “just cause means a reason that is rationally related to an employee's competence or turpitude or the proper performance of his duties and that is not in violation of the employee's civil or constitutional rights.” The PED believes Section 7 may be subject to challenge under this provision.
- SB 295 restricts the time for sale of competitive foods on an elementary school campus. This does not allow for provisions in areas in which students cannot access competitive food, such as teacher/staff lounges.

PERFORMANCE IMPLICATIONS

PED is concerned that given these multi-year and exclusive contracts with vending companies, whether a school district could withstand a challenge based upon Article II, Section 19 of the New Mexico Constitution, which states, “No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.”

Improved physical activity and eating habits will impact public school performance measures and benchmarks regarding reading/language arts and math testing proficiency.

FISCAL IMPLICATIONS

Many schools currently have multi-year and exclusive contracts with vending companies. These typically result in additional dollars to schools on top of the vending sales dollars (exclusive rights fees). Albuquerque Public Schools receives approximately \$ million annually in exclusive rights fees. SB 295 would impact on this funding for schools. PED estimates a loss of approximately \$3 million annually if exclusive right fees are not allowed.

Over time, the provisions of the bill may positively impact public health and reduce the health care costs associated with poor nutrition and obesity.

ADMINISTRATIVE IMPLICATIONS

The PED staff would be required to adopt and promulgate rules to be in compliance with the Act. Given that the PED must hold public hearings to adopt rules, the bill’s deadline of August 1, 2005 may be difficult to meet.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 61, which requires the PED to develop regulations for competitive food standards. SB 295 will provide those standards as part of statute and require PED to adopt and promulgate rules to be in compliance with the Act.

TECHNICAL ISSUES

Page 3, lines 19-21, and page 4, lines 4-5, exempt celebrations and nutrition education lessons from the time restrictions on competitive foods in the act; however, page 6, lines 16 – 19, requires the PED to promulgate rules that require food and beverages used during celebrations comply with the standards in the Act.

OTHER SUBSTANTIVE ISSUES

Eighty percent of school districts sell food that competes with school meal programs; most of the food is low in nutrients and high in calories.

\$12 to 14 billion are spent each year to market unhealthy food to children by the food industry.

The New Mexico Action for Healthy Kids, the New Mexico Pediatric Society, the New Mexico Coalition to Promote Physical Activity and Nutrition and over 30 other New Mexico organiza-

tions support measures to assure that schools create a healthy environment where children can learn and develop lifelong habits of good nutrition and physical activity. All food 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 PED will use other statutory authority for regulating competitive foods in schools.

AHO/lg