

BILL NUMBER: SB 65 CHAPTERED
BILL TEXT

CHAPTER 458
FILED WITH SECRETARY OF STATE SEPTEMBER 22, 2003
APPROVED BY GOVERNOR SEPTEMBER 20, 2003
PASSED THE SENATE SEPTEMBER 4, 2003
PASSED THE ASSEMBLY SEPTEMBER 2, 2003
AMENDED IN ASSEMBLY AUGUST 28, 2003
AMENDED IN ASSEMBLY JUNE 26, 2003
AMENDED IN SENATE MAY 5, 2003
AMENDED IN SENATE APRIL 10, 2003

INTRODUCED BY Senators Torlakson, Escutia, and Ortiz
(Principal coauthors: Assembly Members Jackson and Leno)

JANUARY 16, 2003

An act to amend Section 35182.5 of the Education Code, relating to school district governing boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 65, Torlakson. School district governing boards: contracts.

Existing law prohibits the governing board of a school district from entering into a contract that grants exclusive advertising rights, or grants the right to the exclusive sale of carbonated beverages, throughout the district to a person, business, or corporation unless the governing board of the school district has adopted a policy after a public hearing to ensure that the district has internal controls in place regarding the expenditure of public funds.

This bill would make those provisions applicable to any contract for the sale of carbonated beverages or nonnutritious beverages or nonnutritious food, as defined, within the school district. The bill would, in addition, prohibit a governing board from entering into or renewing that contract or authorizing a school within the district to enter into or renew that contract, unless the governing board provides to parents, guardians, pupils, and members of the public an opportunity to comment on the contract during a public hearing conducted at a regularly scheduled board meeting. The bill would require the board to clearly identify in the meeting agenda the contract to be discussed. The bill would, in addition, specify certain activities that would meet the public hearing requirements for beverage and food contracts. The bill would prohibit the contract from including a confidentiality clause, and would require the board to make the contract accessible to the public.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 35182.5 of the Education Code is amended to read:

35182.5. (a) The Legislature finds and declares all of the following:

(1) State and federal laws require all schools participating in

meal programs to provide nutritious food and beverages to pupils.

(2) State and federal laws restrict the sale of food and beverages in competition with meal programs to enhance the nutritional goals for pupils, and to protect the fiscal and nutritional integrity of the school food service programs.

(3) Parents, pupils, and community members should have the opportunity to ensure, through the review of food and beverage contracts, that food and beverages sold on school campuses provide nutritious sustenance to pupils, promote good health, help pupils learn, provide energy, and model fit living for life.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Nonnutritious beverages" means any beverage that is not any of the following:

(A) Drinking water.

(B) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(C) An electrolyte replacement beverage that contains 42 grams or less of added sweetener per 20 ounce serving.

(D) A 100 percent fruit juice, or fruit-based drink that is composed of 50 percent or more fruit juice and that has no added sweeteners.

(2) "Added sweetener" means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within any fruit juice that is a component of the beverage.

(3) "Nonnutritious food" means food that is not sold as part of the school breakfast or lunch program as a full meal, and that meets any of the following standards:

(A) More than 35 percent of its total calories are from fat.

(B) More than 10 percent of its total calories are from saturated fat.

(C) More than 35 percent of its total weight is composed of sugar.

This subparagraph does not apply to the sale of fruits or vegetables.

(c) The governing board of a school district may not do any of the following:

(1) Enter into or renew a contract or permit a school within the district to enter into or renew a contract that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district to a person, business, or corporation, unless the governing board of the school district does all of the following:

(A) Adopts a policy after a public hearing of the governing board to ensure that the district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a Request for Proposal.

(B) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. The governing board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party

contracting with the school board.

(3) Enter into a contract or permit a school within the district to enter into a contract for electronic products or services that requires the dissemination of advertising to pupils, unless the governing board of the school district does all of the following:

(A) Enters into the contract at a noticed public hearing of the governing board.

(B) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils.

(C) Makes a finding that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils.

(D) Provides written notice to the parents or guardians of pupils that the advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians.

(E) Offers the parents the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents or guardians at any time.

(d) A governing board may meet the public hearing requirement set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts that grant the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district, by either of the following:

(1) Review of the contract at a public hearing by a Child Nutrition and Physical Activity Advisory Committee established pursuant to Section 49433 that has contract review authority for the sale of food and beverages.

(2) (A) An annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.

(B) The public hearing shall include, but not be limited to, a discussion of all of the following:

(i) The nutritional value of food and beverages sold within the district.

(ii) The availability of fresh fruit, vegetables, and grains in school meals and snacks, including, but not limited to, locally grown and organic produce.

(iii) The amount of fat, sugar, and additives in the food and beverages discussed.

(iv) Barriers to pupil participation in school breakfast and lunch programs.

(C) A school district that holds an annual public hearing consistent with this paragraph is not released from the public hearing requirements set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts not discussed at the annual public hearing.

(e) The governing board of the school district shall make accessible to the public any contract entered into pursuant to paragraph (1) of subdivision (c) and may not include in that contract a confidentiality clause that would prevent a school or school district from making any part of the contract public.

(f) The governing board of a school district may sell advertising, products, or services on a nonexclusive basis.

(g) The governing board of a school district may post public signs indicating the district's appreciation for the support of a person

or business for the district's education program.

(h) Contracts entered into prior to January 1, 2004, may remain in effect, but may not be renewed if they are in conflict with this section.