



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4999 (as enrolled)
Sponsor: Representative Rob VerHeulen
House Committee: Michigan Competitiveness

Date Completed: 10-16-17

RATIONALE

A number of local governments around the United States have imposed a sales tax on sweetened beverages, either with voter approval or by action of the local legislative body. The tax is sometimes called a "soda tax", but it is not necessarily restricted to soft drinks. Depending on the jurisdiction, the tax also might be imposed on such items as presweetened coffee or tea, sports drinks, fruit drinks that are not 100% juice, and syrups or concentrates used to make sweetened beverages. In other places, diet soda might be taxed, as well. The communities that collect a beverage tax include Berkley and San Francisco, California; Boulder, Colorado; Philadelphia, Pennsylvania; and Seattle, Washington. Commonly, the tax on sweetened beverages is promoted as a way to fight obesity and other health risks. The Berkley ordinance, for example, includes a finding that, "there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay". In other communities, such as Philadelphia, the tax is promoted as a way to raise funds for public purposes, such as schools and parks. Whether the tax is designed to raise revenue or prevent health problems, however, many people believe that it is inappropriate for local units of government to tax the sale or manufacture of food or beverage. Reportedly, in communities where the tax has been imposed, it has had negative consequences for consumers, employees, and businesses. In Cook County, Illinois, the county commissioners adopted a sweetened beverage tax in November 2016 and, on October 11, 2017, voted to repeal it. In some cities, such as Santa Fe, New Mexico, and Telluride, Colorado, the voters have rejected a beverage tax. Although no local unit of government in Michigan has adopted a tax on food or beverage, and it is questionable whether doing so would be permissible under the State Constitution, it has been suggested that local units be prevented by statute from taking this action.

CONTENT

The bill would create a new statute to prohibit a local unit of government from imposing a tax or fee on the sale, manufacture, or distribution of food.

Specifically, except as otherwise provided by Federal law or a law of this State, a local unit of government could not do either of the following:

- Impose an excise tax on the manufacture, distribution, wholesale sale, or retail sale of food for immediate consumption or nonimmediate consumption.
- Enact, enforce, or administer any ordinance, regulation, resolution, policy, rule, or directive imposing a tax or fee on the manufacture, distribution, wholesale sale, or retail sale of food for immediate consumption or nonimmediate consumption.

"Local unit of government" would mean any local government or its subdivision, including a city, village, township, county, or educational institution; a local public authority, agency, board, commission, or other local governmental, quasi-governmental, or quasi-public body; or a public

body that acts or purports to act in a commercial, business, economic development, or similar capacity for a local government or its subdivision.

"Food" would mean that term as defined in Section 1107 of the Food Law (i.e., "articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article").

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Regardless of whether a tax on sweetened beverages or other food is designed to raise revenue or is touted as a way to prevent obesity, diabetes, or other health problems, the tax is a bad idea. This was recently demonstrated by the repeal of Cook County's soda tax, which was scheduled to take effect in March 2017 and will no longer be collected as of December 1. Rather than paying the tax or forgoing the purchase, shoppers evidently left the county to buy the beverages they wanted, as well as their other groceries. Businesses in the county lost sales, while others chose not to locate there. In Philadelphia, where a tax on soda (including diet soft drinks) went into effect on January 1, 2017, beverage manufacturers and distributors were reporting losses and announcing layoffs three months later, according to an article in the *New York Post* ("Philly's soda tax is crushing the city's beverage business", 3-5-17). Reportedly, PepsiCo blamed a 43% drop in business on the new tax and announced that it would be laying off 80 to 100 employees over the next few months, while one retailer said that he expected to lay off 300 workers at his company's six Philadelphia stores.

In addition to hurting businesses and costing people their jobs, beverage taxes are regressive, harming low-income shoppers the most. Consumers are also hurt when grocery stores or quick shops are forced to close or others choose not to locate where a beverage tax is in effect. This contributes to the problem of "food deserts" in neighborhoods where grocery stores are scarce and many residents might not have reliable transportation to shop elsewhere. In addition, consumers are hurt when retailers raise prices on other items in order to compensate for the loss of beverage sales.

Furthermore, retailers are faced with a regulatory nightmare when some local units of government impose beverage taxes while others do not, the taxes imposed apply to different products, and the tax rates vary among jurisdictions.

In Michigan, Article 9, Section 8 of the State Constitution prohibits a tax from being charged or collected on the sale or use of food for human consumption, except in the case of food prepared for immediate consumption, and except for alcoholic beverages. There might be some ambiguity, however, as to whether local units of government may impose a tax or fee on food or beverages. Rather than leaving this possibility open, the State should enact a preemptive prohibition against such a local measure, as House Bill 4999 would do.

Opposing Argument

The bill would deny local units of government the opportunity to raise badly needed revenue. Municipalities throughout the State are struggling with crumbling infrastructure, unfunded pension liabilities, and the basic needs of their residents, such as police and fire protection. There is no evidence that any cities or counties in Michigan have considered a beverage tax, but if they did, it would reflect their serious need for funds. Rather than simply taking away one potential source of revenue, the State should give communities the tools necessary to strengthen municipal finances.

Opposing Argument

Local governments should have the option to implement innovative initiatives that will improve the health of their residents, including measures to improve nutrition and reduce obesity. According

to the American Cancer Society Cancer Action Network, approximately 20% of all cancers are caused by poor diet, physical inactivity, excess weight, and excess alcohol consumption. Members of the public and private sectors and community organizations should work together to implement policy and environmental changes that support healthy eating and active living. One approach to reaching that goal is an economic disincentive to purchase and consume sugary drinks. The bill, however, would preclude a local tax or fee on any food or beverages, including those that are known to contribute to health risks.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would not result in an immediate fiscal impact because no local government in Michigan currently levies an excise tax on food. Under current law, some types of local governments arguably have the authority to levy an excise tax. However, it is unknown whether a local government would surpass possible legal hurdles and seek voter approval in the future to levy an excise tax on food, or the rate or extent of the tax base that would be approved. These factors make it impossible to estimate the future revenue loss to local governments that could result from the proposed prohibition against a local excise tax on food. The bill would have no fiscal impact on State government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.