



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
August 7, 2008

Honorable Members of the
Law and Legislation Committee

Subject: Legislative Position: Support SB 1420 to add a section to the California Health and Safety Code relating to food facilities.

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee adopt a support position on SB 1420.

Contact: Michelle Heppner, Special Projects Manager, (916) 808-1226

Presenters: Michelle Heppner, Special Projects Manager

Department: Office of the City Manager

Division: Governmental Affairs

Organization No: 0310

Description/Analysis

Issue: Mayor Fargo and Councilmember Cohn requested that staff bring forward SB 1420 for the Committee's consideration.

Senate Bill 1420, authored by Senators Alex Padilla and Carole Migden, will require each food facility that shares the same name with at least 14 other food facilities in the state, regardless of ownership, to make nutritional information available to consumers for all standard menu items, defined as items that are on a menu for six months or longer, exclusive of condiments, alcoholic beverages, and other items placed on a table or counter for general use without charge. The nutritional information that is required includes, but is not limited to, total calories, saturated fat, trans fat, carbohydrates and sodium.

Under existing federal law, the Nutrition Labeling and Education Act requires all packaged foods sold outside of restaurants to include nutritional content information on the packaging and requires restaurants to provide nutritional content information on food items for which a nutrient or health-related claim is made by the restaurant.

Under existing state law, the California Retail Food Code (CRFC) imposes various health and safety requirements on restaurants, and makes violations of these requirements subject to criminal penalties. CRFC establishes the authority of local environmental health jurisdictions to adopt a food safety inspection program with oversight by the State Department of Public Health.

Obesity has reached epidemic proportions in the United States, affecting one-third of all adults, 27 percent of children, and 21 percent of adolescents. According to the authors of this bill, over 60,000 Californians become obese or overweight each year, which causes chronic medical problems that in turn, can significantly impact health providers and health insurance agencies.

In March 2008, New York City's Menu Education and Labeling (MEAL) Act took effect, requiring all restaurant chains with 15 or more locations to disclose on menus next to the name of the food the number of calories, grams of saturated fat plus trans fat, and milligrams of sodium contained in a standard serving of the food. Menu boards would have to disclose the number of calories per serving. Restaurants such as Starbucks, Jamba Juice, IHOP, Quizno's and Subway have already begun to comply.

In May 2008, Los Angeles County released a study showing that posting calorie information on restaurant menus and menu boards could have a sizable impact on the obesity epidemic, even with moderate changes in consumer behavior. The study found that of just 10% of consumers ordered reduced-calorie (approximately 100 less) meals, as a result of the availability of calorie information, it would result in approximately 39% decrease in the annual weight gain in the county population.

Policy Considerations: While some restaurants provide nutritional information on websites, and fewer provide nutritional information upon request, most restaurants provide no nutritional information at all. SB 1420 will ensure that consumers who want to eat healthier have access to the nutritional information they need in order to make healthier food choices.

Environmental Considerations: None.

Committee/Commission Action: None.

Rationale for Recommendation: Knowledge is power in the fight against obesity. Senate Bill 1420 provides consumers with the information they need in order to improve their health by making better nutritional decisions.

Financial Considerations: SB 1420 presents no fiscal impact on the City.

Emerging Small Business Development (ESBD): None.

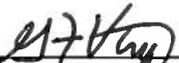
Respectfully Submitted by: _____


Michelle Heppner
Special Projects Manager

Approved by: _____


Patti Bisharat
 Director of Governmental Affairs

Recommendation Approved:



RAY KERRIDGE
City Manager

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Attachment 1: County of Los Angeles Summary Health Impact Assessment

May 2008

Menu Labeling as a Potential Strategy for Combating the Obesity Epidemic

A Health Impact Assessment

Paul Simon, Christopher J. Jarosz, Tony Kuo, and Jonathan E. Fielding

Executive Summary

Mandated posting of calorie information on menus and menu boards at fast food and other large chain restaurants has garnered growing public and legislative support as a potential strategy for addressing the obesity epidemic. However, no studies to our knowledge have sought to quantify the potential impact of this strategy on the epidemic. To address this gap, we conducted a health impact assessment of menu labeling, as proposed in California's Senate Bill 120 in 2007 and in the current Senate Bill 1420, on the obesity epidemic in Los Angeles County.

Data on population weight gain from the California Department of Education Physical Fitness Testing Program and the Los Angeles County Health Survey were used to quantify the obesity epidemic in Los Angeles County. Additional data to estimate the number of meals served annually at large chain restaurants in the county, the percentage of restaurant patrons that would order reduced calorie meals as a result of menu labeling, and the amount of calorie reductions that would result from patron response to calorie postings were examined using published and unpublished data sources. Multiple scenarios of restaurant patron response to calorie postings were examined to estimate a plausible range of impacts of menu labeling on the obesity epidemic.

Using conservative assumptions that calorie postings would result in 10% of large chain restaurant patrons ordering reduced calorie meals, with an average reduction of 100 calories per meal, and no compensatory increase in other food consumption, menu labeling would avert 38.9% of the 6.75 million pound average annual weight gain in the county population aged 5 years and older. Substantially larger impacts would be realized if higher percentages of restaurant patrons ordered reduced calorie meals or average per meal calorie reductions increased. These findings suggest that mandated menu labeling at fast food and other large chain restaurants could have a sizable salutary impact on the obesity epidemic, even with only modest changes in consumer behavior.

What is a Health Impact Assessment?

A health impact assessment is a combination of procedures, methods, and tools by which a policy, program, or project may be judged in terms of its potential effects on the health of a population, and the distribution of those effects within the population.[†]

[†] Health Impact Assessment: Main Concepts and Suggested Approach. Brussels, Belgium: European Centre for Health Policy, World Health Organization Regional Office for Europe; 1999. Gothenburg Consensus Paper.

Available at : <http://www.euro.who.int/document/PAE/Gothenburgpaper.pdf>. Accessed March 25, 2008.

Subject: Support Position on SB 1420

July 15, 2008

Attachment 2 - Draft Letter of Support

July 15, 2008

The Honorable Alex Padilla
California Senate
State Capitol, Room 4032
Sacramento, CA 95814
ATTN: Legislative Director

SUBJECT: Support SB 1420

Dear Senator Padilla:

On behalf of the City of Sacramento, I am pleased to write in support of SB 1420. SB 1420 would aid in the national fight against obesity by making calorie content as obvious as possible to customers. Requiring all restaurant chains with at least 14 branches or franchises to make specific nutrition information available for all standard menu items will also provide consistency to consumers to help them manage their calorie intake whilst enjoying the variety of food options available to them. Currently, only a few restaurants provide nutritional information and usually only upon request.

Thank you for introducing this important legislation.

Sincerely,

SANDY SHEEDY, Chair
Law and Legislation Committee

cc: Senator Darrell Steinberg
Senator Dave Cox
Senator Carole Migden
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates

Attachment 3: Bill Text

AMENDED IN SENATE MAY 13, 2008

SENATE BILL

No. 1420

Introduced by Senators Padilla and Migden
(Principal coauthor: Assembly Member DeSaulnier)
(Coauthors: *Senators Alquist, Cedillo, and Romero*)

February 21, 2008

An act to add Section 114094 to the Health and Safety Code, relating to food facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1420, as amended, Padilla. Food facilities: nutritional information.

The California ~~Uniform Retail Food Facilities Law (CURFFL)~~ Code provides for the regulation of health and sanitation standards for retail food facilities by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing ~~CURFFL~~ *this code*. A violation of any of these provisions is punishable as a misdemeanor.

This bill would require each food facility in the state that meets specified criteria to provide nutritional information that includes, per standard menu item, the total number of calories, *grams of carbohydrates*, grams of saturated fat, grams of trans fat, and milligrams of sodium. It would also require the menu boards to include the total number of calories *for each listed item*. The bill would provide that, on and after July 1, 2009, a food facility that violates the provisions of the bill is guilty of an infraction, and would specifically provide that a violation of these provisions is not a misdemeanor. By creating an infraction and adding a new local enforcement duty, this bill would impose a state-mandated local program.

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The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 ~~(a) Research continues to reveal the strong link between diet~~
4 ~~and health, and that diet-related diseases start early in life.~~

5 *(a) Over the past two decades, there has been a significant*
6 *increase in the number of meals prepared or eaten outside the*
7 *home, with an estimated one-third of calories being consumed in,*
8 *and almost one-half of total food dollars being spent on, food*
9 *purchased from or eaten at restaurants and other food facilities.*

10 (b) Increased caloric intake is a key factor contributing to the
11 alarming increase in obesity in the United States. According to the
12 Centers for Disease Control and Prevention, two-thirds of
13 American adults are overweight or obese, and the rates of obesity
14 have tripled in children and teens since 1980.

15 (c) Obesity increases the risk of diabetes, heart disease, stroke,
16 some cancers, and other health problems.

17 ~~(d) Basic nutritional information is extremely important to~~
18 ~~consumers who are dealing with chronic diseases like~~
19 ~~cardiovascular disease and diabetes.~~

20 ~~(e) Over the past two decades, there has been a significant~~
21 ~~increase in the number of meals prepared or eaten outside the~~
22 ~~home, with an estimated one-third of calories and almost one-half~~
23 ~~(46 percent) of total food dollars being spent on food purchased~~
24 ~~from or eaten at restaurants and other food facilities.~~

25 *(d) Broader availability of nutrition information regarding foods*
26 *served at restaurants and other food service establishments would*

1 *allow customers to make more informed decisions about the food*
2 *they purchase.*

3 ~~(f)~~

4 (e) Three-quarters of American adults report using food labels
5 on packaged foods, which are required by the federal Nutrition
6 Labeling and Education Act of 1990.

7 (f) *Availability of nutrition information regarding restaurant*
8 *food assists consumers who are monitoring their diets or dealing*
9 *with chronic diseases such as cardiovascular disease and diabetes.*

10 (g) Consumers should be provided with point of purchase access
11 to nutritional information when eating out in order to make
12 informed decisions involving their health and diet.

13 (h) It is the intent of the Legislature to provide consumers with
14 better access to nutritional information about prepared foods sold
15 at food facilities so that consumers can understand the nutritional
16 value of available foods.

17 SEC. 2. Section 114094 is added to the Health and Safety Code,
18 to read:

19 114094. (a) Each food facility in this state that operates under
20 common ownership or control with at least 14 other food facilities
21 with the same name in the state that offer for sale substantially the
22 same menu items, or operates as a franchised outlet of a parent
23 company with at least 14 other franchised outlets with the same
24 name in the state that offer for sale substantially the same menu
25 items, shall make nutritional information available to consumers
26 for all standard menu items. This information shall include, but
27 not be limited to, all of the following, per standard menu item, as
28 usually prepared and offered for sale:

29 (1) Total number of calories.

30 (2) Total number of grams of saturated fat.

31 (3) Total number of grams of trans fat.

32 (4) Total number of *grams* of carbohydrates.

33 (5) Total number of milligrams of sodium.

34 ~~(b) Each food facility described in subdivision (a) that uses a~~
35 ~~standard menu shall provide the nutritional information next to~~

36 (b) *The nutrition information required in subdivision (a) shall*
37 *be provided next to each item on the menu in a size and typeface*
38 *that is clear and conspicuous. A page of the menu shall include,*
39 *in a clear and conspicuous manner, the following statement:*
40 *“Recommended limits for a 2,000 calorie daily diet are 20 grams*

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1 of saturated fat and 2,300 milligrams of sodium.” If the food
2 facility also uses a menu board, the food facility may limit the
3 nutritional information listed on the menu board to the total number
4 of calories per item in a size and typeface that is clear and
5 conspicuous.

6 (c) Each food facility described in subdivision (a) that uses only
7 a menu board shall provide on the menu board the total number
8 of calories per item in a size and typeface that is clear and
9 conspicuous. This type of food facility shall, upon request, make
10 the other nutritional information described in subdivision (a)
11 available to consumers in writing at the point of sale.

12 (d) Menus and menu boards may include a disclaimer that
13 indicates that there may be minimal variations in nutritional content
14 across servings, based on slight variations in overall size and
15 quantities of ingredients, and based on special ordering.

16 (e) ~~The nutritional information required by this section shall be~~
17 ~~based upon a verifiable analysis of the menu item, which may~~
18 ~~include the use of nutrient databases, laboratory testing, or other~~
19 ~~reliable methods of analysis; determined on a reasonable basis.~~
20 *For purposes of this section, “reasonable basis” means any*
21 *reasonable means of determining nutrition information for a*
22 *standard menu item, as recognized by the federal Food and Drug*
23 *Administration, including, but not limited to, nutrient databases*
24 *and laboratory analyses. A reasonable basis determination of*
25 *nutrition information shall be required only once per standard*
26 *menu item, provided that portion size is reasonably consistent and*
27 *the covered food facility follows a standardized recipe and trains*
28 *to a consistent method of preparation.*

29 (f) Notwithstanding Section 113789, for purposes of this section,
30 food facility does not include any of the following:

31 (1) Certified farmers’ markets.

32 (2) Commissaries.

33 (3) *Grocery stores, except for separately owned food facilities*
34 *to which this section otherwise applies that are located in the*
35 *grocery store. For purposes of this paragraph, “grocery store”*
36 *means a store primarily engaged in the retail sale of canned food,*
37 *dry goods, fresh fruits and vegetables, and fresh meats, fish, and*
38 *poultry. “Grocery store” includes convenience stores.*

39 (3)

40 (4) Licensed health care facilities.

- 1 ~~(4)~~
 2 (5) Mobile support units.
 3 ~~(5)~~
 4 (6) Public and private school cafeterias.
 5 ~~(6)~~
 6 (7) Restricted food service facilities.
 7 ~~(7)~~
 8 (8) Temporary food facilities.
 9 ~~(8)~~
 10 (9) Vending machines.
 11 ~~(9) Grocery stores, except for separately owned food facilities~~
 12 ~~to which this section otherwise applies that are located in the~~
 13 ~~grocery store. For purposes of this paragraph, "grocery store"~~
 14 ~~means a store primarily engaged in the retail sale of canned foods,~~
 15 ~~dry goods, fresh fruits and vegetables, and fresh and prepared~~
 16 ~~meats, fish, and poultry, and includes convenience stores.~~
 17 (g) For purposes of this section, a standard menu item does not
 18 include food items that are on the menu for less than six months,
 19 condiments, other items placed on the table or counter for general
 20 use without charge ~~and~~, alcoholic beverages, *or packaged foods*
 21 *otherwise subject to the nutrition labeling requirements of the*
 22 *federal Nutrition Labeling and Education Act of 1990.*
 23 (h) Commencing July 1, 2009, a food facility that violates this
 24 section is guilty of an infraction, punishable by a fine of not less
 25 than fifty dollars (\$50) or more than five hundred dollars (\$500),
 26 which may be assessed by a local enforcement agency. However,
 27 a food facility may not be found to violate this section more than
 28 once during an inspection visit. ~~Notwithstanding Section 114395~~
 29 ~~114395~~, a violation of this section is not a misdemeanor.
 30 *(i) If any provision of this section, or the application thereof, is*
 31 *for any reason held invalid, ineffective, or unconstitutional by a*
 32 *court of competent jurisdiction, the remainder of this section, shall*
 33 *not be affected thereby, and to this end, the provisions of this*
 34 *section are severable.*
 35 SEC. 3. No reimbursement is required by this act pursuant to
 36 Section 6 of Article XIII B of the California Constitution for certain
 37 costs that may be incurred by a local agency or school district
 38 because, in that regard, this act creates a new crime or infraction,
 39 eliminates a crime or infraction, or changes the penalty for a crime
 40 or infraction, within the meaning of Section 17556 of the

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1 Government Code, or changes the definition of a crime within the
2 meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 However, if the Commission on State Mandates determines that
5 this act contains other costs mandated by the state, reimbursement
6 to local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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Attachment 4: Bill Analysis

SB 1420
Page 1

Date of Hearing: July 2, 2008

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Mark Leno, Chair

SB 1420 (Padilla) - As Amended: May 13, 2008

Policy Committee: HealthVote:10 - 5

Urgency: No State Mandated Local Program:
Yes Reimbursable: Yes

SUMMARY

This bill requires restaurant chains with at least 14 branches (including franchises) to make specific nutrition information available for all standard menu items. Specifically, this bill:

- 1) Requires the restaurant to provide information on total calories, grams of saturated fat, grams of trans fat, carbohydrates, and milligrams of sodium.
- 2) Requires that the food facility display the information next to each item on the menu and requires that the menu state total recommended daily limits.
- 3) Allows a restaurant that uses a menu board to list the total number of calories per item.
- 4) Exempts alcoholic beverages and certain food facilities, such as farmers' markets, grocery stores, and schools from the requirements in this bill.
- 5) Makes violation of this law an infraction and punishable by a fine of up to \$500.

FISCAL EFFECT

- 1) One-time costs in excess of \$100,000 for the Department of Public Health to develop regulations to clarify implementation and enforcement and to develop a list of statewide restaurants that meet the 14-or-more threshold and require the listing of nutritional information in their restaurants.

- 2) On-going annual costs of approximately \$100,000 to maintain and update the list of applicable restaurants and to monitor local enforcement activities.
- 3) Reimbursable mandate costs potentially in excess of \$100,000 dollars due to the increased workload associated with health inspectors verifying the existence of the required nutritional information.
- 4) A 2005 study conducted for the California Department of Health Services suggests that overweight and obese Californians cost the state \$2.8 billion per year through a combination of Medi-Cal costs and employer costs for state employees. A recent Los Angeles County study (discussed below) found that menu labeling can have a significant impact on people's weight. This study found that a modest 100 calorie reduction by 10% of restaurant patrons would result in a 38% reduction in overall annual weight gain throughout the population for people ages five and up. Therefore, if the change in eating patterns resulted in a 1% reduction in the costs associated with obesity (e.g. health care costs associated with diabetes, gall bladder disease, cancer, heart disease, osteoarthritis, and workers' compensation costs and lost work productivity for state employees) , it would save the state almost \$30 million per year.

COMMENTS

1) Rationale . According to the sponsors of this bill, the American Heart Association, the California Center for Public Health Advocacy (CCPHA), and the American Cancer Society, this bill is an effort to establish standardized nutritional information at the point of sale at large chain restaurants.

While some restaurants provide nutritional information on websites, and fewer provide nutritional information upon request, most restaurants provide no nutritional information at all. Consumers who want to eat healthier do not have the nutritional information they need to make healthier choices.

2) Los Angeles County Study . In response to this bill, the Los Angeles County Department of Public Health conducted a health impact assessment of mandatory menu labeling. The study found menu labeling would be an effective way to reduce the number of overweight and obese Californians. According to the study,

a modest reduction in calorie consumption would have a significant impact in the annual weight gain of the population. As an example, the study found that if 10% of the customers at these restaurants reduced their consumption by 100 calories, annual weight gain across the population would be reduced by 40%. Their findings suggest that mandated menu labeling at fast food and other large chain restaurants could have a significant impact on the obesity epidemic, even with modest changes in consumer behavior.

3) New York City Posting Requirements . New York City adopted a regulation that took effect on March 31, 2008, to require restaurants, including franchisees, with at least 15 locations nationwide to post calorie content for all menu items on menus and menu boards. According to information from the National Restaurant Association, the city's health inspectors will enforce the menu-labeling rules in conjunction with routine restaurant inspections.

4) Local Ordinances . The San Francisco Board of Supervisors passed an ordinance in February 2008, effective July 2008, to require restaurant chains with 20 or more outlets in the state to post calorie information on menu boards and menu placards and require calorie, fat, carbohydrate, and sodium information to be disclosed on menus.

The Santa Clara County Board of Supervisors passed a menu-labeling ordinance earlier this month, effective in September, to apply to restaurants on unincorporated land that offer prepared, non-prepackaged foods for sale and consumption and operate at least 14 locations in California. In addition, according to background information from the author's office, San Mateo County and the City of Berkeley are also moving forward with enacting similar nutritional disclosure ordinances.

5) Opposition . The California Restaurant Association, contends market realities in the foodservice market make implementation of this bill impractical, if not impossible. CRA cites difficulties such as customization of orders by the consumer, differing nutritional content on a similarly sized portion (e.g. the amount of fat in a steak or how it is cooked), or even variation of portion size, such as the size of a baked potato. CRA also expresses concern that creativity in the kitchen, especially in fine dining establishments, will be

discouraged under this bill. CRA also believes that the cost of compliance will be significant and that the bill exposes food service establishments to potential liability.

6)Related Legislation . AB 2572 (Parra) codifies the current practice among many restaurant chains of providing nutritional information upon request. That bill is pending in the Senate Appropriations Committee.

SB 120 (Padilla) of 2007, which was substantially similar to SB 1420, was vetoed. In his veto message, the governor stated the bill "would place burdens and costs upon some restaurant owners while imposing no burdens or costs on others. In addition, this bill provides restaurants with little flexibility for how they provide consumers with nutritional information."

Analysis Prepared by : Julie Salley-Gray / APPR. / (916)
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