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TO: Members, House Health and Human Services Committee

FROM: Jay Himes, PASBO Executive Director
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SUBJECT: Support A06363 (Baker) to House Bill 1572

DATE: June 28, 2010

On Tuesday, June 29, the House Health and Human Services Committee will consider House Bill 1572, legislation introduced by Rep. Mike Gerber that would mandate nutrition standards for all foods sold individually outside of school lunch and breakfast programs. We respectfully urge you to support the amendment offered by Republican Chair Matt Baker, recognizing local school district authority and the responsibility of the Pennsylvania Department of Education to develop and publish nutrition standards.

The Pennsylvania Association of School Business Officials (PASBO), the Pennsylvania Association of School Administrators (PASA) and the Pennsylvania School Boards Association (PSBA) are deeply concerned with several provisions in House Bill 1572, including:

The Department of Education's current nutrition guidelines for foods served to students are not considered. Pursuant to section 1422.3 of the Public School Code, added in 2007, the Department shall "publish recommended nutritional guidelines for food and beverages in schools on the department's website..." The comprehensive three-tier system of nutritional guidelines cover a la carte foods, vending food and beverages, classroom parties, fundraisers and more. They were developed with significant stakeholder input, including PASBO, PSBA and the Administration. Local education agencies (LEAs) that implemented the Department's guidelines by 2007-08 and 2008-09, or exceeded the guidelines, qualified to receive a supplemental reimbursement (see page 2).

House Bill 1572 does not amend the Public School Code to change the duties of the Department. So, it is unknown whether there would be two sets of nutrition standards, i.e. those mandated under House Bill 1572 and those recommended by the Department. This would surely cause frustration and confusion for school food service operations.

House Bill 1572 would severely limit healthy school meal/snack options for students. The bill imposes a 100 calorie limit as well as fat, sodium and sugar restrictions for food sold individually outside of reimbursable school meals. The Department's current recommended nutritional guidelines provide that foods contain less than or equal to 250 calories, and draft student nutrition regulations (see page 2) require each item to contain less than or equal to 200 calories. Both specifically exclude a la carte food/snacks offered as reimbursable meal components from caloric, fat, sodium and sugar restrictions, as they are governed by USDA regulations.

Coupled with the bill's mandated criteria for fat, sodium and sugars, the 100 calorie restriction in House Bill 1572 would severely limit what school food service operations could offer as healthy meal and snack options, especially if the bill's nutrition standards do not exclude foods offered a la carte that are reimbursable meal components, and would result in a loss of revenue. For example, the traditional, lowfat school lunch 4x6 pizza containing 379 calories could not be sold. A hamburger itself is 200 calories; the roll is an additional 110 calories. Just one slice of wheat bread can be 80 calories. Healthier snack options like baked potato chips, yogurt and dried fruits could not be sold. A medium-size banana can easily contain more than 100 calories; a cup of raisins can run upward of 250 calories.

No supplemental financial incentive is provided in House Bill 1572 to help offset costs. Under the School Nutrition Incentive (SNI) Program, established pursuant to section 1337.1(c.1) of the Public School Code, added in 2007, "a supplemental school lunch and breakfast reimbursement [is provided] to any school in [an LEA] that has adopted and implemented the nutritional guidelines for food and beverages available on each school campus published by the department..." Nearly three-quarters of LEAs, and almost two-thirds of school buildings, participate in the SNI Program, reflecting the commitment of LEAs to provide healthier food options.

House Bill 1572 does not provide for any increased reimbursement, constituting another unfunded mandate for schools. Further, since state mandated nutrition standards would likely trump any recommended standards published by the Department, it is unclear whether House Bill 1572 invalidates the current incentive provided under the SNI Program, possibly leaving LEAs with no reimbursement to cover increased costs.

Local school district authority is dismissed. While LEAs were required to implement the Department's standards in all identified areas, exactly as written in order for schools to receive the supplemental state reimbursement, federal and state law requiring the establishment of local school wellness policies (LSWPs) provided flexibility to LEAs in determining nutrition standards, a required component of LSWPs. This responsibility was placed at the local level so the individual needs of each LEA could be addressed. Additionally, LEAs were required to involve a broad group of individuals in policy development.

House Bill 1572 dismisses the voluntary efforts already taken by LEAs and the significance of local input in determining campus food provisions.

House Bill 1572 overlaps and duplicates the State Board of Education's efforts to develop student nutrition regulations. The State Board of Education has relied on stakeholder input to craft regulations relative to student nutrition and physical activity. Since last June it has held several meetings with stakeholder groups and, more recently, it took formal action to submit draft regulations regarding student nutrition for regulatory review. Under the regulatory review process, the public and legislative standing committees will have an opportunity to provide comment.

Federal legislative activity with regard to child nutrition is overlooked. The U.S. Senate Agriculture Committee recently approved the Healthy, Hunger-Free Kids Act, which, in part, requires the U.S. Secretary of Agriculture to establish and revise national standards for all foods sold in school throughout the school day outside the federally subsidized school lunch and breakfast programs consistent with the most recent Dietary Guidelines for Americans, which are updated every five years. The effective date of the legislation is October 1, 2010, pending passage by the U.S. Congress.

House Bill 1572 overlooks the frequency by which standards enacted into state statute would have to be amended to comply with federal law. In our opinions, it would neither be efficient nor effective to insert nutrition standards into state statute.

For these reasons, we urge the Committee to vote "Yes" on the Baker Amendment #A06363 to House Bill 1572.

The amendment would direct the Department to review and update the Department's recommended nutritional guidelines pursuant to any guidance or regulations issued by the United States Secretary of Agriculture; require the Department to publish a list of foods of beverages that meet the criteria of the Department's recommended nutritional guidelines; require LEAs to provide assurance to the Department that their local wellness policies provide for nutritional guidelines that meet the Department's nutritional guidelines; encourage LEAs to utilize refrigerated snack vending machines and to limit foods and beverages sold individually to only lowfat and nonfat milk, fruits and vegetables; and qualify LEAs that meet or exceed the Department's recommended nutritional guidelines for the supplemental reimbursement provided under the SNI Program.

Thank you, in advance, for your support of the Baker Amendment #A06363 to House Bill 1572.

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