

Legislative Analysis



SCHOOL FOOD PURCHASES UNDER \$100,000: EXEMPT FROM FORMAL COMPETITIVE BIDDING

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House Bill 6365 (Substitute H-1)
Sponsor: Lee Gonzales

House Bill 6366 (Substitute H-1)
Sponsor: Geoff Hansen
Committee: Agriculture

First Analysis (9-15-08)

BRIEF SUMMARY: House Bills 6365 and 6366 would allow school districts, public school academies, and intermediate school districts (ISDs) to make food purchases costing less than \$100,000—the amount of the federal small purchase threshold—without formal competitive bids.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on intermediate districts, school districts, and public school academies. The proposed change in the competitive bidding threshold for food purchases could create savings by allowing increased flexibility and allowing districts to take advantage of certain purchase deals without having to go through a competitive bid process. However, the proposed threshold could also increase costs if districts increasingly enter contracts for goods at a higher price than would have been achieved through competitive bidding.

THE APPARENT PROBLEM:

Around the country, initiatives exist on the federal, state, and local levels to promote serving fresh and local food in schools, often referred to as "farm-to-school" programs. The potential benefits of serving more fresh and local foods in schools include having fresher, more nutritious food in schools thereby improving children's health; promoting farmland preservation; using less fuel for transporting food long distances; as well as providing economic benefits to local farmers. Purchasing food locally would funnel school food dollars back into the local economy.

Although farm-to-school programs are operating in many areas of Michigan, federal and state procurement rules have been perceived as an obstacle to the adoption of such programs. At the federal level, however, one major obstacle was recently removed. The most recent federal Farm Bill, effective October 1, 2008, now allows schools to specify local or geographic preferences in bids for school food contracts. Supporters of House Bills 6365 and 6366 say that raising the state small purchase threshold for school food purchases will remove an additional state-level obstacle that discourages schools from serving fresh and local foods in their food programs.

The small purchase threshold, currently \$20,102 in Michigan, is the dollar level at which formal competitive bidding procedures must be followed for purchases. (With respect to school food, however, even contracts falling under the small purchase threshold must be awarded in a fair and open manner under United States Department of Agriculture (USDA) regulations.) The formal competitive bidding procedures are considered an obstacle to implementing a school to food program because the requisite paperwork and regulatory requirements are burdensome and require that the lowest bid be accepted.

Absent a lower state or local level, the federal small purchase threshold is \$100,000 for school food purchases. Michigan's small purchase threshold is currently \$20,102. The bills would raise the state threshold to \$100,000 for school food purchases, to make it easier for schools to purchase locally grown or produced food. For purchases under the \$100,000 threshold, schools would more flexibility to adopt procurement methods suitable to their needs while still complying with federal regulations that the process be open and fair.

THE CONTENT OF THE BILL:

The Revised School Code requires school districts, public school academies, and intermediate school districts (ISDs) to adopt written procurement policies and to obtain competitive bids and board approval for purchases of supplies, materials, and equipment (single items or groups of items) exceeding a specified dollar threshold for a single transaction, sometimes called the "small purchase threshold."

In addition, schools using money from their food service accounts to purchase food for school lunches are subject to federal procurement rules. The federal small purchase threshold amount is currently \$100,000. The state small purchase threshold is much lower, currently \$20,102. (Local districts may also have a lower threshold.) Purchases exceeding the state small purchase threshold must be made after competitive bidding. (Purchases through the cooperative bulk purchasing program operated by the Department of Management and Budget do not require competitive bids.) Under federal rules, however, even purchases made under the \$100,000 threshold must be awarded after open and fair bid procedures whether or not formal competitive bidding procedures are required.

House Bills 6365 and 6366 would amend the Revised School Code to create an additional state law exception allowing school districts, public school academies, and ISDs to make food purchases costing less than \$100,000 without competitive bids and would update the generally-applicable small purchase threshold amount to \$20,102 to reflect the actual current level after previously-made adjustments for inflation. The small purchase threshold would continue to be adjusted annually for inflation.

House Bill 6365 applies to school districts and charter schools (MCL 380.1274). House Bill 6366 applies to intermediate school districts (MCL 380.623a).

BACKGROUND INFORMATION:

According to the United States Department of Agriculture (USDA), \$100,000 is the current federal small purchase threshold under applicable federal regulations. In other words, school food authorities can purchase food costing \$100,000 or less without using formal competitive bidding proposals unless a lower small purchase threshold exists at the state level, as it does in Michigan, or at the local level.

A school cannot intentionally split purchases to fall below the federal small purchase threshold. An example provided by the USDA is that if a school food authority plans to purchase \$150,000 worth of lettuce for its salad bar, it may not split the purchase into two purchases of \$75,000 each. But it could specify different varieties of lettuce it wants to purchase and award two or more lettuce contracts to more than one supplier.

For more information about food-to-school programs, including procurement rules, see *"Eat Smart-Farm Fresh! A Guide to Buying and Serving Locally-Grown Produce in School Meals,"* Working Draft, December 2005, published by the USDA, Food and Nutrition Service, available online at:

http://www.fns.usda.gov/cnd/Guidance/Farm-to-School-Guidance_12-19-2005.pdf.

(Note, however, that the prohibition against including a geographic or local preference in bids described in this USDA guide was repealed in the most recent federal Farm Bill. Local geographic preferences, such as asking in bids for "Michigan apples," are now allowed.)

See National Farm to School Program Fact Sheet, *"Bid Local--Local Farm Products Allowed in School Bids"*: http://www.farmentoschool.org/files/publications_179.pdf.
http://www.farmentoschool.org/files/publications_178.pdf.

See also USDA Memo dated, July 9, 2008, entitled "Applying Geographic Preferences in Procurements for the Child Nutrition Program," available online at:
http://www.farmentoschool.org/files/publications_178.pdf.)

ARGUMENTS:

For:

The bill will make it easier for school districts to purchase more locally grown or produced food. Serving more fresh and local foods in school meals would improve the quality of school meals, improve children's health; provide environmental benefits, and provide economic benefits to local farmers and communities.

Against:

While serving more fresh and local foods may well have many positive benefits, the bills could potentially increase school food costs. The effect on school food budgets, whether positive or negative, is not presently known.

POSITIONS:

The Food Bank Council of Michigan testified in support of the bills. (9-10-08)

The Food System Economic Partnership (FSEP) testified in support of the bills. (9-10-08)

The Grand Traverse Area Catholic Schools testified in support of the bills. (9-10-08)

Michael W. Hamm, Ph.D., C.S. Mott Professor of Sustainable Agriculture, Michigan State University, testified in support of the bills. (9-10-08)

The Michigan Catholic Conference testified in support of the bills. (9-10-08)

The Michigan Environmental Council indicated support of the bills. (9-10-08)

The Michigan Farm Bureau indicated support of the concept of the bills. (9-10-08)

The Michigan Food Policy Council indicated support of the bills. (9-10-08)

The Michigan Land Use Institute testified in support of the concept of the bills. (9-10-08)

Springport High School, Jackson, Michigan, testified in support of the bills. (9-10-08).

The Department of Education indicated neutrality on the bills. (9-10-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.