

**HOUSE . . . . . No. 4441**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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An Act relative to school nutrition..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1D of chapter 69 of the General Laws, as so appearing, is hereby  
2 amended by striking out the ninth sentence, in lines 30 to 32, inclusive, and inserting in place  
3 thereof the following 2 sentences:- The standards shall provide for instruction in the issues of  
4 nutrition and exercise. The standards may provide for instruction in the issues of physical  
5 education, HIV/AIDS education, violence prevention and drug, alcohol and tobacco abuse  
6 prevention.

7 SECTION 2. Section 1I of said chapter 69 is hereby amended by striking out  
8 subparagraphs (j) and (k), in lines 176 and 177, and inserting in place thereof the following 3  
9 subparagraphs:-

10 (j) multi-cultural education training for students and teachers;

11 (k) global education; and

12 (l) nutrition and wellness programs.

13 SECTION 3. Chapter 111 of the General Laws is hereby amended by adding the  
14 following 3 sections:-

15 Section 222. The department, in consultation with the department of elementary and  
16 secondary education, shall establish, and periodically review, guidelines for: (i) the training of all  
17 elementary, middle and high school nurses in behavioral health and appropriate treatment and  
18 resources for eating disorders; (ii) the recognition, treatment and availability of resources for  
19 children at risk for and diagnosed with type 2 diabetes; (iii) professional development and  
20 training of school nurses and aid staff to gain the most up-to-date knowledge on eating disorder  
21 and type 2 diabetes treatment and identification; and (iv) the establishment of a referral program  
22 where medical resources in the community shall collaborate with schools to identify children in  
23 need of services and provide these resources through in-school, outpatient and inpatient settings,  
24 where appropriate.

25 Section 223. (a) As used in this section, the following words shall, unless the context  
26 clearly requires otherwise, have the following meanings:-

27 “Competitive foods or beverages”, all foods or beverages sold or provided in à la carte  
28 lines in school cafeterias, school stores, school snack bars or vending machines or any other  
29 locations in public schools; provided, however, that competitive foods or beverages shall not  
30 include foods sold as part of the National School Lunch Program and School Breakfast and Child  
31 Care and Adult Programs.

32 “Elementary school”, a public school that maintains any of grades pre-kindergarten to  
33 grade 8, inclusive.

34 “High school”, a public school that maintains any of grades 9 to 12, inclusive.

35 “Middle school”, a public school that maintains any of grades 5 to 9, inclusive.

36 “Public school”, an elementary, middle, high, charter or innovation school operated by a  
37 public school district or board of trustees pursuant to chapter 71.

38 “Leading nutritional standards”, the Institute of Medicine’s April 2007 report, Nutrition  
39 Standards for Foods in Schools: Leading the Way Toward Healthier Youth.

40 (b) The department shall develop nutritional guidelines and standards for the sale or  
41 provision of competitive foods or beverages in public schools; provided, however, that  
42 competitive foods or beverages sold or provided in public schools shall be limited to foods or  
43 beverages that comply with the leading nutritional standards and other regulations promulgated  
44 by the department. Such competitive foods and beverages may include: (1) foods that are (i)  
45 non-fried fruits or non-fried vegetables; (ii) whole grains and related combination products; (iii)  
46 nonfat and low-fat dairy products; and (2) beverages that are (i) water without additives or  
47 carbonation; (ii) 100 per cent fruit juice; (iii) nonfat or low-fat dairy drinks.

48 (c) The department in consultation with the department of elementary and secondary  
49 education shall establish regulations for the phase-in and implementation of nutrition standards  
50 for competitive foods and beverages sold or provided in public schools developed pursuant to  
51 paragraph (b). In establishing these regulations, the department, in consultation with the  
52 department of elementary and secondary education, shall consider such factors as: (1) adequate  
53 phase-in time for public schools to implement new nutritional standards; (2) additional training  
54 in nutrition and diet available for school food service directors; and (3) the current capacity,  
55 resources and equipment available in public school kitchens to prepare recommended foods.

56 (d) Competitive food items not prepackaged with nutritional information by the  
57 distributor that are not fresh fruit or fresh vegetables shall be required to have nutritional  
58 information including: calories, percentage of calories from fat, percentage of calories from  
59 saturated fat, cholesterol, protein, carbohydrate, fiber, calcium, iron, vitamin A and vitamin C,  
60 available to students, either on a display case, in a binder or within information packets held by  
61 food service staff for requests by students.

62 (e) The department in consultation with the department of elementary and secondary  
63 education shall conduct a review of the implementation of this section and the appropriateness of  
64 maintaining the leading nutritional standards at least once every 5 years after the effective date of  
65 this section, and shall report the findings of its review to the speaker of the house of  
66 representatives, the president of the senate, the joint committee on health care financing, the  
67 joint committee on public health and the joint committee on education. To assist in the review of  
68 said standards, the department shall use the most updated peer reviewed scientific studies and  
69 data concerning appropriate nutritional standards for foods sold outside of reimbursable meal  
70 programs in schools as well as the United States Department of Health and Human Services' and  
71 the United States Department of Agriculture's most current dietary guidelines for healthy  
72 Americans. Included in its review, the department shall consider: (1) the proportion of public  
73 schools that have successfully implemented the standards and guidelines for competitive foods  
74 and beverages; (2) challenges or barriers experienced by public schools upon implementation of  
75 the competitive foods and beverages standards; (3) changes in revenue received from the sale of  
76 federally reimbursable school meals; (4) changes in total revenue from federal reimbursable  
77 meals and competitive sales combined that were lost or gained after implementation of the  
78 standards for competitive foods and beverages; (5) notable changes in student participation in the

79 federal reimbursable meals programs; and (6) recommendations for improvement of the  
80 standards and guidelines for competitive foods and beverages.

81 (f) Public schools shall offer for sale fresh fruit and non-fried vegetables at any location  
82 where food is sold.

83 (g) Public schools shall make available plain, potable water to all public school students  
84 during the school day at no cost.

85 (h) Public schools shall not use fryolators in the preparation of food; provided, however,  
86 that the department, in consultation with the department of elementary and secondary education,  
87 may establish reasonable exceptions for the use of fryolators in the preparation of food sold after  
88 the end of the school day, during school-sponsored fundraisers and events, at booster sales,  
89 concession stands and other activities at school-related events.

90 (i) The department of elementary and secondary education shall require implementation  
91 of competitive food and beverage standards in public schools in accordance with this section and  
92 shall be responsible for enforcing said standards.

93 Section 224. The department in consultation with the department of elementary and  
94 secondary education shall (i) collect data and review and analyze trends in reported cases of  
95 obesity and eating disorders in students; (ii) develop reporting requirements to assist in the  
96 collection of said data; and (iii) conduct a study of whether students are receiving appropriate  
97 and adequate, effective and quality care in the treatment of their obesity or eating disorder.

98 The department shall annually, on or before January 15, report the results of its review to  
99 the joint committee on public health and the joint committee on education.

100 SECTION 4. Section 223 of said chapter 111, inserted by section 3, is hereby amended  
101 by striking out the definition of “Leading nutrition standards” and inserting in place thereof the  
102 following definition:-

103 “Leading nutrition standards”, the Institute of Medicine’s April 2007 report, Nutrition  
104 Standards for Foods in Schools: Leading the Way Toward Healthier Youth and other  
105 recommendations made pursuant to subsection (e).

106 SECTION 5. There is hereby established a commission on childhood obesity which shall  
107 be responsible for developing a statewide plan to reduce childhood obesity through the  
108 promotion of evidence-based programs to provide proper nutrition and exercise for the children  
109 of the commonwealth. Said commission shall make a comprehensive review of current  
110 evidence-based research and programs that promote proper nutrition for children at each stage of  
111 development as well as appropriate levels of physical education and activity for all children.  
112 Said programs shall, insofar as possible, involve parents and families to ensure that the effort to  
113 reduce childhood obesity is not limited to time in school.

114 The commission shall be co-chaired by the commissioners of the departments of public  
115 health, elementary and secondary education, and early education and care, or their designees; and  
116 shall include: the commissioner of mental health or his designee; the commissioner of medical  
117 assistance or his designee; the commissioner of agricultural resources or his designee; the  
118 commissioner of transitional assistance or his designee, the commissioner of insurance or his  
119 designee; the chair of the statewide student advisory council or his designee; and 5 members  
120 appointed by the governor, 1 of whom shall be an expert in childhood nutrition, 1 of whom shall

121 be an expert in exercise and fitness and 1 of whom shall be an expert in eating disorders. Said  
122 commission members shall serve without compensation.

123 In developing said statewide plan to reduce childhood obesity, the commission shall  
124 consider such concepts as:

125 (a) Requiring health insurance programs supported in whole or in part with public funds  
126 to include coverage for nutrition counseling, weight loss clinics, wellness programs and other  
127 programs that promote proper nutrition and exercise for children;

128 (b) Requiring private health insurers, by establishing mandated insurance benefits, to  
129 cover nutrition counseling, weight loss clinics, wellness programs and other programs that  
130 promote proper nutrition and exercise for children; and

131 (c) Developing and implementing a method for evaluating annual progress toward the  
132 goals of the statewide plan.

133 The commission shall annually assess the progress in the state toward reducing childhood  
134 obesity, make recommendations relative to the reduction of childhood obesity rates taking into  
135 consideration the ongoing efforts to evaluate the appropriateness of maintaining leading  
136 nutritional standards in public schools pursuant to subsection (e) of section 223 of chapter 111 of  
137 the General Laws and provide a copy of the statewide plan and drafts of legislation necessary to  
138 carry its statewide plan into effect, including an estimate the fiscal impact of the statewide plan,  
139 if any, by filing the same with the governor, the house and senate committees on ways and  
140 means, the joint committee on public health and the joint committee on education.

141 SECTION 6. Notwithstanding the provisions of any general or special law to the  
142 contrary, the department of elementary and secondary education shall evaluate the success of the  
143 chef's pilot program in the Boston public school system and identify other schools in the  
144 commonwealth where such a program could be implemented and shall include a proposed  
145 budget for implementing a similar program in such additional schools and shall report its  
146 findings to the joint committee on public health and the joint committee on education on or  
147 before December 31, 2010.

148 SECTION 7. The departments of public health and elementary and secondary education  
149 shall promulgate rules and regulations to carry out the provisions of section 223 of chapter 111  
150 of the General Laws within 90 days of the effective date of this act; provided that these  
151 regulations shall become effective for the fiscal year following final approval of said regulations;  
152 provided, however, that not less than 12 months shall have elapsed between final approval of the  
153 regulations and the date of implementation in order to provide sufficient time to implement the  
154 regulations.

155 SECTION 8. Section 4 shall take effect on February 1, 2015.