

**HOUSE . . . . . No. 4919**

Adopted by the House, on motion of Mr. Sanchez of Boston, as a further amendment of the Senate amendment to the House Bill relative to school nutrition (House, No. 4459). July 21, 2010.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand and Ten**

By striking out all after the enacting clause (as inserted by amendment by the Senate), and inserting in place thereof the following:—

1           **SECTION 1.** Section 23B of chapter 7 of the General Laws, as appearing in the  
2 2008 Official Edition, is hereby amended by striking out, in lines 2 and 3, the words “or  
3 authority”, and inserting in place thereof the following words:-, authority or trustees or officers  
4 of a state college or university designated by such trustees.

5           **SECTION 2.** Said section 23B of said chapter 7, as so appearing, is hereby further  
6 amended by striking out subsection (b) and inserting in place thereof the following 2  
7 subsections:-

8           (b) To effectuate the preference for those products of agriculture grown or produced  
9 using locally-grown products, the state purchasing agent responsible for procuring the products  
10 on behalf of a state agency, authority or trustees or officers of a state college or university  
11 designated by such trustees shall, in advertising for bids, contracts or otherwise procuring  
12 products of agriculture, make reasonable efforts to facilitate the purchase of such products of  
13 agriculture grown or produced using products grown in the commonwealth.

14 (c) The state purchasing agent responsible for procuring the products on behalf of a state  
15 agency or authority shall purchase the products of agriculture grown or produced using products  
16 grown in the commonwealth, unless the price of the goods exceeds, by more than 10 per cent, the  
17 price of products of agriculture grown or produced using products grown outside of the  
18 commonwealth.

19 **SECTION 3.** Section 4 of chapter 30B of the General Laws, as so appearing, is hereby  
20 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

21 (d) A procurement officer who follows sound business practices may award contracts  
22 which include individual purchases of less than \$25,000 to Massachusetts farm operations for the  
23 procurement of products of agriculture as defined in section 1A of chapter 128 including, but not  
24 limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products and  
25 products processed into value added products, that are grown or produced using products grown  
26 in the commonwealth as well as fish, seafood and other aquatic products, without seeking  
27 quotations as required under subsection (a).

28 **SECTION 4.** The third paragraph of section 1D of chapter 69 of the General Laws, as so  
29 appearing, is hereby amended by striking out the fourth sentence and inserting in place thereof  
30 the following 2 sentences:- The standards shall provide for instruction in the issues of nutrition  
31 and exercise. The standards may provide for instruction in the issues of physical education,  
32 human immunodeficiency virus and acquired immune deficiency syndrome education, violence  
33 prevention, including teen dating violence, bullying prevention, conflict resolution and drug,  
34 alcohol and tobacco abuse prevention.

35           **SECTION 5.** The fourteenth paragraph of section 1I of said chapter 69, as so appearing,  
36 is hereby amended by striking out clauses (j) and (k) and inserting in place thereof the following  
37 3 clauses:-

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

39           (k) global education; and

40           (l) nutrition and wellness programs.

41           **SECTION 6.** Chapter 111 of the General Laws is hereby amended by adding the  
42 following section:-

43           Section 222. (a) As used in this section, the following words shall have the following  
44 meanings:-

45           “Competitive foods or beverages”, all foods or beverages sold or provided in: (i) à la  
46 carte lines in school cafeterias; (ii) school stores; (iii) school snack bars; (iv) vending machines;  
47 and (v) any other locations in public schools; provided, however, that competitive foods or  
48 beverages shall not include foods sold or provided as part of the School Breakfast Program, the  
49 School Lunch Program and the Child and Adult Care Food Program of the United States  
50 Department of Agriculture; provided further, that competitive foods or beverages shall not  
51 include non-sweetened carbonated water.

52           “Nutritional standards”, the standards promulgated by the department in accordance with  
53 subsection (c).

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

56 “School day”, the hours of the day that students must attend school.

57 (b) The department, in consultation with the department of elementary and secondary  
58 education and the department of mental health, shall establish, and periodically  
59 review, guidelines for:

60 (1) the training of all public school nurses in behavioral health and appropriate screening  
61 and resources for the treatment of childhood obesity and behavioral health disorders, including  
62 eating disorders;

63 (2) the recognition, treatment and availability of resources for children at risk for and  
64 diagnosed with childhood obesity and type 2 diabetes;

65 (3) professional development and training of public school nurses and aid staff to gain the  
66 most up-to-date knowledge on childhood obesity, eating disorders and type 2 diabetes so that  
67 they can become more effective at screening for these conditions and making appropriate  
68 referrals for treatment; and

69 (4) the establishment of a referral program where medical resources in the community  
70 shall collaborate with public schools to identify children in need of nutritional services, and  
71 provide these resources through in-school, outpatient and inpatient settings, where appropriate.

72 (c)(1) The department shall promulgate regulations establishing nutritional standards for  
73 the sale or provision of competitive foods or beverages in public schools.

74 (2) All competitive foods or beverages sold or provided in public schools shall be limited  
75 to foods or beverages that comply with the nutritional standards; provided, however, that the  
76 nutritional standards shall not apply, unless a public school district or board of trustees elects to

77 apply the nutritional standards beyond this timeframe, to competitive foods or beverages sold on  
78 school grounds up to 30 minutes before the beginning of the school day or 30 minutes after the  
79 end of the school day, with the exception of competitive foods or beverages sold through  
80 vending machines, in which case the nutritional standards shall apply at all times; and provided  
81 further, that the department may make reasonable exceptions for the application of the nutritional  
82 standards to competitive foods or beverages sold during the school day at booster sales,  
83 concession stands, and other school-sponsored or school-related fundraisers and events.

84 (3) In developing the regulations, the department shall consider nutritional and dietary  
85 recommendations developed by state, federal and independent departments and health advisory  
86 associations including, but not limited to: the United States Department of Health and Human  
87 Services, the United States Department of Agriculture, the American Dietetic Association, the  
88 national School Nutrition Association, the Institute of Medicine, the American Heart Association  
89 and the School Nutrition Association of Massachusetts; provided, however, that the department,  
90 where appropriate, may develop the regulations in conformity with federal nutritional standards.

91 (4) The regulations shall include, but not be limited to, the following requirements for  
92 public schools:

93 (i) making available plain, potable water to all public school students during the day, at  
94 no cost to the students;

95 (ii) offering for sale fresh fruit and non-fried vegetables at any location where food is  
96 sold; provided, however, that this shall not include non-refrigerated vending machines and  
97 vending machines which dispense only beverages;

98 (iii) making nutritional information available to students for non-prepackaged  
99 competitive foods or beverages; provided, however, that this shall not include fresh fruit or fresh  
100 vegetables and foods or beverages sold during the school day at booster sales, concession stands,  
101 and other school-sponsored or school-related fundraisers and events;

102 (iv) prohibiting fryolators in the preparation of competitive foods; provided, however,  
103 that the department may establish exceptions for the use of fryolators in the preparation of  
104 competitive foods sold during the school day at booster sales, concession stands and other  
105 school-sponsored or school-related fundraisers and events; and

106 (v) ensuring that all foods, including competitive foods or beverages sold or provided to  
107 students during the school day, meet state and federal food safety requirements.

108 (d) The department, in collaboration with the department of elementary and secondary  
109 education, shall assist public schools in the implementation of the nutritional standards relative to  
110 the sale or provision of competitive foods or beverages in public schools. The assistance may  
111 include:

112 (1) additional training in nutrition and diet available for school food service directors;

113 (2) an assessment of a school's capacity, resources and equipment to prepare and provide  
114 recommended foods; and

115 (3) recommendations on the duration of school lunch periods.

116 (e) Every 5 years, the department, in consultation with the department of elementary and  
117 secondary education, shall conduct a review of the nutritional standards and update the  
118 nutritional standards as needed pursuant to subsection (c). In August of the last year of the 5-

119 year period, the department shall report the findings of the review to the speaker of the house of  
120 representatives, the president of the senate, the joint committee on health care financing, the joint  
121 committee on public health and the joint committee on education. The report shall include, but  
122 not be limited to, the following information:

123 (1) an assessment of the success of implementing the nutritional standards in public  
124 schools;

125 (2) the challenges or barriers experienced by public schools upon implementation of the  
126 nutritional standards and guidelines for the sale or provision of competitive foods and beverages;

127 (3) changes in revenue received from the sale of federally-reimbursable school meals;

128 (4) changes in total revenue from federally-reimbursable school meals and competitive  
129 sales combined that were lost or gained after implementation of the nutritional standards and  
130 guidelines for the sale or provision of competitive foods and beverages;

131 (5) notable changes in student participation in the federally-reimbursable school meals  
132 programs; and

133 (6) recommendations for improvement of the nutritional standards and guidelines for the  
134 sale or provision of competitive foods and beverages.

135 (f) The department, in collaboration with the department of elementary and secondary  
136 education, shall promulgate regulations facilitating the establishment of school wellness advisory  
137 committees within school districts in order to maximize school districts' eligibility as recipients  
138 of federal grant awards. The regulations may require the wellness advisory committees to  
139 develop and recommend district-wide wellness policies addressing school nutrition, nutrition

140 education and physical activity. The regulations may further require the wellness advisory  
141 committees to periodically review the district-wide wellness policies and implement any  
142 recommendations made as a result of this review prior to the following school year. Committee  
143 members may include school administrators, school nurses, food service directors, food service  
144 staff, parents of students in the school district, students, physical and health education teachers,  
145 dietitians, health care professionals and interested community members.

146 (g) To promote food safety, the department, in collaboration with the department of  
147 elementary and secondary education, shall promulgate regulations requiring local health officials  
148 to conduct food safety inspections at public schools, in accordance and with the frequency  
149 required by state and federal law, or as a result of public complaint or food recall, and to track  
150 and report the results of these inspections for each school to the department and the department  
151 of elementary and secondary education, including any violations and steps to remediate the  
152 violations. The regulations may include minimal qualifications for local health officials  
153 responsible with conducting food safety inspections at public schools. All reports and  
154 information collected or received by the departments pursuant to the requirements of this  
155 subsection shall be public records pursuant to section 7 of chapter 4.

156 **SECTION 7.** (a) There is hereby established a commission on school nutrition and  
157 childhood obesity for the purpose of making an investigation and study of childhood obesity and  
158 effective programs promoting proper nutrition and exercise for the children of the  
159 commonwealth. The commission shall be co-chaired by the commissioner of public health and  
160 the commissioner of elementary and secondary education, or their designees, and shall also  
161 include: the commissioner of mental health or the commissioner's designee; the commissioner of  
162 agricultural resources or the commissioner's designee; the chair of the statewide student advisory

163 council or the chair's designee; 2 members appointed by the Massachusetts Association of  
164 School Superintendents; 1 member appointed by the Massachusetts Secondary School  
165 Administrators' Association; 1 member appointed by the Massachusetts nutrition board; 1  
166 member appointed by the Massachusetts Association for Health, Physical Education, Recreation  
167 and Dance; 1 member appointed by the American Heart Association; 1 member appointed by the  
168 American Diabetes Association; 1 member appointed by the Massachusetts Parent Teacher  
169 Association; 1 member appointed by the Massachusetts Academy of Pediatrics; 1 member of the  
170 Massachusetts School Nutrition Association; 2 members appointed by the governor, 1 of whom  
171 shall be a representative of the food or beverage industry; 3 members appointed by the senate  
172 president and 3 members appointed by the speaker of the house of representatives. The members  
173 of the commission shall serve without compensation.

174 (b) The commission shall conduct a comprehensive review of programs promoting proper  
175 nutrition for children at each stage of development, both inside and outside of the school setting.  
176 The commission's review shall consider, but not be limited to: (1) current school district  
177 practices concerning nutrition and physical education in public schools, including, but not  
178 limited to, physical education course offerings, class duration and frequency and the physical  
179 space and time allotted, if any, for public school students to participate in recess each week; (2)  
180 current practices related to the treatment and management of childhood obesity, type 2 diabetes  
181 and eating disorders in the school setting; (3) methods for encouraging the consumption of well-  
182 balanced, healthy meals, in accordance with the nutritional standards established by the  
183 department of public health in subsection (c) of section 222 of chapter 111 of the General Laws,  
184 for students both inside and outside of the school setting; (4) the appropriate levels of physical  
185 education and activity for all children of the commonwealth; and (5) the utility of developing and

186 implementing pilot initiatives to reduce childhood obesity through school-based, behavioral and  
187 incentive-driven programs.

188 (c) The commission shall file a report detailing its review and recommendations, along with  
189 any legislative proposals to implement the recommendations, with the clerk of the senate and the  
190 clerk of the house of representatives not later than July 31, 2011.

191 **SECTION 8.** Notwithstanding any general or special law to the contrary, the department  
192 of elementary and secondary education shall evaluate the success of the Boston public school  
193 system's pilot program, known as Chefs in Schools, to provide healthy, cost-effective meals to  
194 students during the school day. The department's report shall identify other public schools in the  
195 commonwealth in which similar programs may be implemented and shall include an estimated  
196 budget for implementing such programs. The department shall report its findings to the joint  
197 committee on public health and the joint committee on education by December 31, 2010.

198 **SECTION 9.** (a) The department of agricultural resources shall collect data including,  
199 but not limited to:

200 (1) public school districts and other educational institutions currently purchasing locally-  
201 grown farm and locally-harvested fish products, as well as school districts or other educational  
202 institutions not yet preferentially purchasing locally-grown farm or locally-harvested fish  
203 products;

204 (2) the type of farm or fish products public schools wish to purchase;

205 (3) farms interested in selling locally-grown farm or locally-harvested fish products to  
206 public schools or other educational institutions;

207 (4) the types of locally-grown farm and locally-harvested fish products available; and  
208 (5) the names and contact information of farmers, farm organizations, fishermen, or fish  
209 processors marketing the locally-grown farm products.

210 (b) The department of elementary and secondary education shall collect and report data  
211 including, but not limited to:

212 (1) the name of the procurement contact person at each public school district;

213 (2) a list of public school districts that feature locally-grown or locally-harvested fish  
214 foods on their published cafeteria menus;

215 (3) a list of public school districts that have school garden or greenhouse projects;

216 (4) a list of public school districts that include local agriculture or fishing in their  
217 curricula; and

218 (5) a list of public school districts that include serving locally-grown or locally-harvested  
219 foods in their wellness policies as a strategy to encourage healthy student meals.

220 (c) Based upon the data collected under subsections (a) and (b), the department of  
221 agricultural resources, in consultation with the department of elementary and secondary  
222 education, shall work with programs that facilitate the acquisition of local agricultural products  
223 or locally-harvested fish products by public schools, including existing farm-to-school projects,  
224 to develop a process by which farms or fish processors interested in selling to public schools may  
225 notify public schools and public schools interested in purchasing locally-grown farm or locally-  
226 harvested fish products may notify farms; provided, however, that the process ensures fair

227 opportunities for all farms or fish processors interested in selling products to public schools in  
228 accordance with applicable laws and regulations

229 (d) The department of agricultural resources, in consultation with the department of  
230 elementary and secondary education, shall file a report with the office of the governor, the  
231 speaker of the house of representatives, the president of the senate, the joint committee on  
232 education, the joint committee on public health and the joint committee on environment, natural  
233 resources and agriculture that details the results of the data collected under subsections (a) and  
234 (b) of this section, the steps taken to comply with subsection (c) and any recommendations,  
235 together with drafts of legislation necessary to carry out those recommendations, by March 1,  
236 2011.

237 **SECTION 10.** Notwithstanding any general or special law to the contrary, the  
238 department of public health, in consultation with the department of elementary and secondary  
239 education, shall develop the nutritional standards as provided in section 222 of chapter 111 of the  
240 General Laws not later than January 1, 2011 and the nutritional standards shall be implemented  
241 in public schools not later than August 1, 2012.”.