

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

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

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

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

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

14 products of agriculture, make reasonable efforts to facilitate the purchase of such products of  
15 agriculture grown or produced using products grown in the commonwealth.

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

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

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

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

35 prevention, including teen dating violence, bullying prevention, conflict resolution and drug,  
36 alcohol and tobacco abuse prevention.

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

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

41 (k) global education; and

42 (l) nutrition and wellness programs.

43 SECTION Chapter 111 of the General Laws is hereby amended by adding the following  
44 section:-

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

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

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

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

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

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

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

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

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

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

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

76 (2) All competitive foods or beverages sold or provided in public schools shall be limited  
77 to foods or beverages that comply with the nutritional standards; provided, however, that the  
78 nutritional standards shall not apply, unless a public school district or board of trustees elects to  
79 apply the nutritional standards beyond this timeframe, to competitive foods or beverages sold on  
80 school grounds up to 30 minutes before the beginning of the school day or 30 minutes after the  
81 end of the school day, with the exception of competitive foods or beverages sold through  
82 vending machines, in which case the nutritional standards shall apply at all times; and provided  
83 further, that the department may make reasonable exceptions for the application of the nutritional  
84 standards to competitive foods or beverages sold during the school day at booster sales,  
85 concession stands, and other school-sponsored or school-related fundraisers and events.

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

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

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

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

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

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

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

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

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

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

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

118 (e) Every 5 years, the department, in consultation with the department of elementary and  
119 secondary education, shall conduct a review of the nutritional standards and update the  
120 nutritional standards as needed pursuant to subsection (c). In August of the last year of the 5-  
121 year period, the department shall report the findings of the review to the speaker of the house of  
122 representatives, the president of the senate, the joint committee on health care financing, the joint  
123 committee on public health and the joint committee on education. The report shall include, but  
124 not be limited to, the following information:

125 (1) an assessment of the success of implementing the nutritional standards in public  
126 schools;

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

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

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

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

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

137 (f) The department, in collaboration with the department of elementary and secondary  
138 education, shall promulgate regulations facilitating the establishment of school wellness advisory

139 committees within school districts in order to maximize school districts' eligibility as recipients  
140 of federal grant awards. The regulations may require the wellness advisory committees to  
141 develop and recommend district-wide wellness policies addressing school nutrition, nutrition  
142 education and physical activity. The regulations may further require the wellness advisory  
143 committees to periodically review the district-wide wellness policies and implement any  
144 recommendations made as a result of this review prior to the following school year. Committee  
145 members may include school administrators, school nurses, food service directors, food service  
146 staff, parents of students in the school district, students, physical and health education teachers,  
147 dietitians, health care professionals and interested community members.

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

158 SECTION (a) There is hereby established a commission on school nutrition and  
159 childhood obesity for the purpose of making an investigation and study of childhood obesity and  
160 effective programs promoting proper nutrition and exercise for the children of the  
161 commonwealth. The commission shall be co-chaired by the commissioner of public health and

162 the commissioner of elementary and secondary education, or their designees, and shall also  
163 include: the commissioner of mental health or the commissioner's designee; the commissioner of  
164 agricultural resources or the commissioner's designee; the chair of the statewide student advisory  
165 council or the chair's designee; 2 members appointed by the Massachusetts Association of  
166 School Superintendents; 1 member appointed by the Massachusetts Secondary School  
167 Administrators' Association; 1 member appointed by the Massachusetts nutrition board; 1  
168 member appointed by the Massachusetts Association for Health, Physical Education, Recreation  
169 and Dance; 1 member appointed by the American Heart Association; 1 member appointed by the  
170 American Diabetes Association; 1 member appointed by the Massachusetts Parent Teacher  
171 Association; 1 member appointed by the Massachusetts Academy of Pediatrics; 1 member of the  
172 Massachusetts School Nutrition Association; 2 members appointed by the governor, 1 of whom  
173 shall be a representative of the food or beverage industry; 3 members appointed by the senate  
174 president and 3 members appointed by the speaker of the house of representatives. The members  
175 of the commission shall serve without compensation.

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

185 department of public health in subsection (c) of section 222 of chapter 111 of the General Laws,  
186 for students both inside and outside of the school setting; (4) the appropriate levels of physical  
187 education and activity for all children of the commonwealth; and (5) the utility of developing and  
188 implementing pilot initiatives to reduce childhood obesity through school-based, behavioral and  
189 incentive-driven programs.

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

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

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

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

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

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

209 (4) the types of locally-grown farm and locally-harvested fish products available; and

210 (5) the names and contact information of farmers, farm organizations, fishermen, or fish  
211 processors marketing the locally-grown farm products.

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

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

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

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

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

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

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

228 harvested fish products may notify farms; provided, however, that the process ensures fair  
229 opportunities for all farms or fish processors interested in selling products to public schools in  
230 accordance with applicable laws and regulations

231 (d) The department of agricultural resources, in consultation with the department of  
232 elementary and secondary education, shall file a report with the office of the governor, the  
233 speaker of the house of representatives, the president of the senate, the joint committee on  
234 education, the joint committee on public health and the joint committee on environment, natural  
235 resources and agriculture that details the results of the data collected under subsections (a) and  
236 (b) of this section, the steps taken to comply with subsection (c) and any recommendations,  
237 together with drafts of legislation necessary to carry out those recommendations, by March 1,  
238 2011.

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