

## SENATE, No. 2314

[March 9, 2010 - Text of the Senate amendment (Ways and Means) to the House Bill relative to school nutrition (House, No. 4459)]

### The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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1           **SECTION 1.** Subsection (a) of section 23B of chapter 7 of the General Laws, as  
2 appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 2 and 3, the  
3 words “agency or authority”, and inserting in place thereof the following words:- agency,  
4 authority or trustees or officers 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 subsection (b) and inserting in place thereof the following 2 subsections:-

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

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

16 price of products of agriculture grown or produced using products grown outside of the  
17 commonwealth.

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

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

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

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

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

37 (k) global education; and

38 (l) nutrition and wellness programs.

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

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

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

49 “Nutritional standards”, the standards promulgated by the department, in consultation  
50 with the department of elementary and secondary education, in accordance with subsection (c).

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

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

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

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

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

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

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

69 (c)(1) The department, in consultation with the department of elementary and secondary  
70 education, shall promulgate regulations establishing nutritional standards for the sale or  
71 provision of competitive foods or beverages in public schools.

72 (2) All competitive foods or beverages sold or provided in public schools shall be limited  
73 to foods or beverages that comply with the nutritional standards; provided, however, that the  
74 nutritional standards shall not apply to competitive foods or beverages sold on school grounds up  
75 to 30 minutes before the beginning of the school day or 30 minutes after the end of the school  
76 day with the exception of competitive foods or beverages sold through vending machines, in  
77 which case the nutritional standards shall apply at all times; and provided further, that the  
78 department may make reasonable exceptions for the application of the nutritional standards to

79 competitive foods or beverages sold during the school day at booster sales, concession stands,  
80 and other school-sponsored or school-related fundraisers and events.

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

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

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

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

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

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

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

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

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

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

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

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

121 (1) an assessment of the success of implementing the nutritional standards in public  
122 schools;

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

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

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

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

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

133 **SECTION 7.** (a) There is hereby established a commission on school nutrition and  
134 childhood obesity for the purpose of making an investigation and study of childhood obesity and  
135 effective programs promoting proper nutrition and exercise for the children of the  
136 commonwealth. The commission shall be co-chaired by the commissioner of public health and  
137 the commissioner of elementary and secondary education, or their designees, and shall also  
138 include: the commissioner of mental health or the commissioner's designee; the commissioner of  
139 agricultural resources or the commissioner's designee; the chair of the statewide student advisory  
140 council or the chair's designee; 2 members appointed by the Massachusetts association of school  
141 superintendents; 1 member appointed by the Massachusetts association of secondary school

142 administrators; 1 member appointed by the Massachusetts nutrition board; 2 members appointed  
143 by the governor, 1 of whom shall be a representative of the food or beverage industry; 1 member  
144 appointed by the senate president and 1 member appointed by the speaker of the house of  
145 representatives. The members of the commission shall serve without compensation.

146 (b) The commission shall conduct a comprehensive review of programs promoting proper  
147 nutrition for children at each stage of development, both inside and outside of the school setting.  
148 The commission's review shall consider, but not be limited to: (1) current school district  
149 practices concerning nutrition and physical education in public schools; (2) current practices  
150 related to the treatment and management of childhood obesity, type 2 diabetes and eating  
151 disorders in the school setting; (3) methods for encouraging the consumption of well-balanced,  
152 healthy meals, in accordance with the nutritional standards established by the department of  
153 public health in subsection (c) of section 222 of chapter 111 of the General Laws, for students  
154 both inside and outside of the school setting; and (4) the appropriate levels of physical education  
155 and activity for all children of the commonwealth.

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

159 **SECTION 8.** Notwithstanding any general or special law to the contrary, the department  
160 of elementary and secondary education shall evaluate the success of the Boston public school  
161 system's a pilot program, known as Chefs in Schools to provide healthy, cost-effective meals to  
162 students during the school day. The department's report shall identify other public schools in the  
163 commonwealth in which similar programs may be implemented and shall include an estimated

164 budget for implementing such programs. The department shall report its findings to the joint  
165 committee on public health and the joint committee on education by December 31, 2010.

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

168 (1) public school districts and other educational institutions currently purchasing locally-  
169 grown farm products, as well as school districts or other educational institutions not yet  
170 preferentially purchasing locally grown farm products;

171 (2) the type of farm products public schools wish to purchase;

172 (3) farms interested in selling locally-grown farm products to public schools or other  
173 educational institutions;

174 (4) the types of locally-grown farm products available; and

175 (5) the names and contact information of farmers and farm organizations marketing the  
176 locally-grown farm products.

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

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

180 (2) a list of public school districts that feature locally-grown foods on their published  
181 cafeteria menus;

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

183 (4) a list of public school districts that include local agriculture in their curricula; and

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

186 (c) Based upon the data collected under subsections (a) and (b), the department of  
187 agricultural resources, in consultation with the department of elementary and secondary  
188 education, shall work with programs that facilitate the acquisition of local agricultural products  
189 by public schools, including the farm-to-school project developed by the department of  
190 agricultural resources, to develop a process by which farms interested in selling to public schools  
191 may notify public schools and public schools interested in purchasing locally-grown farm  
192 products may notify farms; provided, however, that the process ensures fair opportunities for all  
193 farms interested in selling products to public schools in accordance with applicable laws and  
194 regulations.

195 (d) The department of agricultural resources, in consultation with the department of  
196 elementary and secondary education, shall file a report with the office of the governor, the  
197 speaker of the house of representatives, the president of the senate, the joint committee on  
198 education, the joint committee on public health and the joint committee on environment, natural  
199 resources and agriculture that details the results of the data collected under subsections (a) and  
200 (b) of this section, the steps taken to comply with subsection (c) and any recommendations,  
201 together with drafts of legislation necessary to carry out those recommendations, by March 1,  
202 2011.

203 **SECTION 10.** Notwithstanding any general or special law to the contrary, the  
204 department of public health, in consultation with the department of elementary and secondary

205 education, shall develop the nutritional standards as provided in section 222 of chapter 111 of the  
206 General Laws not later than January 1, 2011 and the nutritional standards shall be implemented  
207 in public schools not later than August 1, 2012.