

**HOUSE . . . . . No. 4438**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

By Mr. Sánchez of Boston, for the committee on Public Health, on Senate, No. 861, and House, Nos. 2063, 2075 and 2092, a Bill relative to school nutrition (House, No. 4438). January 25, 2010.

An Act relative to school nutrition.

FOR THE COMMITTEE:

NAME:

Jeffrey Sánchez

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# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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. Chapter 6 of the General Laws is hereby amended by adding at the end  
2 thereof, the following new section:

3           Section 214. There is hereby established the Governor's Commission on Childhood Obesity  
4 which shall be responsible for developing, maintaining and coordinated a statewide plan to  
5 reduce childhood obesity through promotion of evidence-based programs to provide proper  
6 nutrition and exercise for the children of the Commonwealth. Said commission shall make a  
7 comprehensive review of current evidence-based research and programs that promote proper  
8 nutrition for children at each stage of development as well as appropriate levels of physical  
9 education and activity for all children, and shall annually assess the progress in the state toward  
10 reducing childhood obesity and report to the Governor and the general public. Said programs  
11 shall, insofar as possible, involve parents and families to ensure that the effort to reduce  
12 childhood obesity is not limited to time in school.

13           The commission shall be co-chaired by the commissioners of the departments of public health,  
14 education, and early education and care, or their designees; and shall include: the commissioner  
15 of mental health or his designee; the commissioner of medical assistance, or his designee; the  
16 commissioner of agricultural resources, or his designee; the commissioner of transitional  
17 assistance, or his designee, the commissioner of insurance, or his designee; the chair of the  
18 statewide student advisory council, or a designee; and five additional members appointed by the  
19 Governor; one of whom shall be an expert in childhood nutrition, one of whom shall be an expert  
20 in exercise and fitness, and one of whom shall be an expert in eating disorders. Said commission  
21 members shall serve without financial compensation.

22           In developing and evaluating said statewide plan to reduce childhood obesity, the commission  
23 shall consider such concepts as:

- 24 a) Requiring health insurance programs supported in whole or in part with public funds, to  
25 include coverage for nutrition counseling, weight loss clinics, wellness programs, and other  
26 programs that promote proper nutrition and exercise;
- 27 b) Requiring private health insurers, by establishing mandated insurance benefits, to cover  
28 nutrition counseling, weight loss clinics, wellness programs, and other programs that promote  
29 proper nutrition and exercise;
- 30 c) Developing and implementing a method for evaluating annual progress toward the goals of the  
31 statewide plan;
- 32 d) Making recommendations to the Governor and General Court relative to the revision of school  
33 nutrition standards in coordination with ongoing efforts pursuant to section (e) of section 92 of  
34 chapter 71.

35 SECTION 2. Chapter 15 of the General Laws is hereby amended by inserting after section 1E  
36 the following section:—

37 Section 1E½ (a) The department of public health, in consultation with the department of  
38 education, shall establish, and periodically review, regulations and guidelines for the training of  
39 all elementary, middle, and high school nurses in behavioral health and appropriate treatment  
40 and resources for eating disorders; recognition, treatment and resources for children at risk for  
41 and diagnosed with type 2 diabetes; regulations and guidelines for professional development and  
42 training of school nurses and aid staff to gain the most up-to-date knowledge on eating disorder  
43 and type 2 diabetes treatment and identification; and guidelines to establish a referral program  
44 where medical resources in the community shall collaborate with schools to identify children in  
45 need of services and provide these resources through in-school, outpatient and inpatient settings,  
46 where appropriate.

47 SECTION 3. Section 1D of chapter 69 of the General Laws, as appearing in the 2006 Official  
48 Edition, is hereby amended by striking out the ninth sentence and inserting in place thereof the  
49 following 2 sentences:- The standards shall provide for instruction in the issues of nutrition and  
50 exercise. The standards may provide for instruction in the issues of physical education, AIDS  
51 education, violence prevention, and drug, alcohol, and tobacco abuse prevention.

52 SECTION 4. Section 1I of said Chapter 69 is hereby amended by adding the following  
53 subparagraph after the words “global education”: (l). nutrition and wellness programs.

54 SECTION 5. Chapter 71 of the General Laws is hereby amended by adding at the end thereof the  
55 following section:—

56 Section 92. (a) The following words, as used in this section, shall have the following meanings,  
57 unless the context clearly requires otherwise:—

58 “Competitive foods or beverages”, all foods or beverages sold or provided in à la carte lines in  
59 school cafeterias, school stores, school snack bars or vending machines or any other locations in  
60 public schools but not including foods sold as part of the National School Lunch Program and  
61 School Breakfast and Child Care and Adult Programs.

62 “Elementary school”, a public school that maintains any grade from pre-kindergarten to grade 6,  
63 inclusive, but no grade higher than grade 8.

64 “High school”, a public school maintaining any of grades 9 to 12, inclusive.

65 “Middle school”, a public school that maintains any of grades 5 or 6 to 9, inclusive, but no grade  
66 higher than grade 9.

67 “Public school”, an elementary, middle, high school or charter school as defined in this chapter.

68 “Leading Nutritional Standards”, the Institute of Medicine April 2007 report, Nutrition Standards  
69 for Foods in Schools: Leading the Way toward Healthier Youth.

70 (b) The department of public health in consultation with the department of education shall  
71 establish guidelines for the phase-in and implementation of nutrition standards for competitive  
72 foods and beverages sold or provided in public schools. In establishing these guidelines, the  
73 department of public health in consultation with the department of education shall consider such  
74 factors as: (1) adequate phase-in time for public schools to implement new nutritional standards;  
75 (2) the times of the school day during which the guidelines shall apply; (3) additional training in  
76 nutrition and diet available for school food service directors; (4) the current capacity, resources,  
77 and equipment available in public school kitchens to prepare recommended foods; (5) adequate  
78 amounts of time for school lunch periods; provided that the departments shall create reasonable  
79 exceptions from said standards and guidelines for competitive foods or beverages sold before or  
80 after the end of the school day, during school-sponsored fundraisers and events, and at booster  
81 sales, concession stands and other activities at school-related events.

82 (c) The department of public health shall develop nutritional guidelines and standards for the sale  
83 or provision of competitive foods or beverages in Massachusetts public schools within the  
84 requirements of this section, provided that competitive foods or beverages sold or provided in  
85 public schools shall be limited to foods or beverages that comply with the leading nutritional  
86 standards and other regulations promulgated by the department. Such competitive foods and  
87 beverages may include: (1) foods that are (i) non-fried fruits or non-fried vegetables; (ii) whole  
88 grains, and related combination products; (iii) nonfat and low-fat dairy products; and (2)  
89 beverages that are (i) water without additives or carbonation; (ii) 100 per cent fruit juice; (iii)  
90 nonfat or low-fat dairy drinks.

91 (d) Competitive food items not prepackaged with nutritional information by the distributor that  
92 are not fresh fruit or fresh vegetables shall be required to have nutritional information (calories,

93 percentage of calories from fat, percentage of calories from saturated fat, cholesterol, protein,  
94 carbohydrate, fiber, calcium, iron, vitamin A and vitamin C) available to students, either on a  
95 display case, in a binder or within information packets held by food service staff for requests by  
96 students.

97 (e) The department of public health in consultation with the department of education shall  
98 conduct a review of the implementation of this section and the appropriateness of maintaining  
99 the standards recommended by the leading nutritional standards within 5 years of the effective  
100 date of this section. Upon review of said standards, the department of public health shall use the  
101 most updated recommendations made by authoritative scientific and public health organizations  
102 concerning appropriate nutritional standards for foods sold outside of reimbursable meal  
103 programs in schools as well as the United States department of health and human services' and  
104 the United States department of agriculture's most current dietary guidelines for healthy  
105 Americans. Included in its review, the department shall consider: (1) the proportion of public  
106 schools that have successfully implemented the standards and guidelines for competitive foods  
107 and beverages; (2) challenges or barriers experienced by public schools upon implementation of  
108 the competitive foods and beverages standards; (3) changes in revenue received from the sale of  
109 federally reimbursable school meals; (4) changes in total revenue (federal reimbursable meals  
110 and competitive sales combined) lost or gained after implementation of the standards for  
111 competitive foods and beverages; (5) notable changes in students participation in the federal  
112 reimbursable meals programs; (6) recommendations for improvement of said standards and  
113 guidelines.

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

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

118 (h) The department of public health in consultation with the department of education shall  
119 establish guidelines for the phase-out of fryolators in all public schools in the commonwealth  
120 within five years from the effective date of this act. These guidelines shall include, but need not  
121 be limited to (1) a timeline for the removal of all fryolators from public schools; (2) a list of  
122 alternative products to replace those prepared in fryolators; (3) mechanisms for monitoring and  
123 enforcing the removal of fryolators from all public schools in the commonwealth.

124 (i) The department of education shall require implementation of competitive food and beverage  
125 standards in public schools in accordance with this section and shall be responsible for enforcing  
126 said standards.

127 SECTION 6. Section 92 of Chapter 71 of the General Laws is hereby amended by striking the  
128 definition "Leading Nutrition Standards" and inserting in place thereof the definition:—

129 “Leading Nutrition Standards””, the Institute of Medicine April 2007 report, Nutrition Standards  
130 for Foods in Schools: Leading the Way toward Healthier Youth and other recommendations  
131 made pursuant to subsection (e) of section 92 of chapter 71.

132 SECTION 7. Chapter 111 of the General Laws is hereby amended by adding the following  
133 section:—

134 Section 222. The department of public health in consultation with the department of education  
135 shall review and analyze the trend in reported cases of obesity and eating disorders in students.  
136 Such review shall include but not be limited to:

137 (a) development and promulgation of data collection and reporting regulations and guidelines  
138 associated with the implementation of this section;

139 (b) evaluation of the trends of reported cases of obesity and eating disorders across the  
140 Commonwealth;

141 (c) study of the access to quality health care and whether students are receiving appropriate and  
142 adequate care in the treatment of their obesity or eating disorder.

143 Said information shall be reported to the governor’s commission on childhood obesity  
144 established pursuant to section 6 of this act.

145 SECTION 8. (a) Notwithstanding any general or special law to the contrary, the department of  
146 agricultural resources in consultation with the department of education shall make an  
147 investigation into the feasibility of developing and establishing a farm-to-school program to  
148 facilitate and promote the purchase of Massachusetts’ farm products by schools, universities and  
149 other educational institutions in the commonwealth. The investigation shall include: (1) the  
150 development of a farm-to-school program that facilitates the acquisition of Massachusetts’ farm  
151 products by schools, universities and educational institutions; (2) the development of  
152 procurement channels to more efficiently access Massachusetts’ farm products; (3) an analysis of  
153 the capacity of schools to appropriately store, process, prepare, and serve farm products in  
154 schools, labor costs required to support the program; and (4) the manner in which such a  
155 program may include 1 or more activities that promote a comprehensive approach to nutrition  
156 and wellness, including, but not limited to school garden programs, cooking demonstrations and  
157 food samplings, and farm tours.

158 (b) The department of agricultural resources in collaboration with the department of education  
159 shall collect data including, but not limited to: (1) school districts and other educational  
160 institutions interested in purchasing Massachusetts’ farm products; (2) the type and amount of  
161 such products schools wish to purchase; (3) the name of the appropriate contact person from the  
162 interested school district; (4) farm organizations and businesses that market Massachusetts’ farm  
163 products; and (5) the availability of Massachusetts’ farm products, including but not limited to,

164 the types and amount of products, the names and contact information of farmers, and farm  
165 organizations and businesses marketing such products.

166 (c) Based upon the data collected from the investigation, the department of agriculture in  
167 collaboration with the department of education shall develop a mechanism and process by which  
168 schools interested in purchasing Massachusetts' farm products may notify farms; provided that  
169 such a process ensures fair opportunities for all farms interested in selling products to schools;  
170 and provided that fair negotiation and pricing processes are established for purchasing and  
171 selling of Massachusetts' farm products to schools.

172 (d) A report shall be made to the speaker of the house of representatives, the president of the  
173 senate, the governor, the house and senate chairs of the joint committee on health care financing,  
174 the house and senate chairs of the joint committee on public health, and the house and senate  
175 chairs of the joint committee on environment, natural resources and agriculture that details the  
176 results of the investigation and study and provides recommendations, together with drafts of  
177 legislation necessary to carry recommendations into effect, not less than 1 year after the effective  
178 date of this section.

179 SECTION 9. Notwithstanding the provisions of any other general or special law to the contrary,  
180 the department of education shall evaluate the success of the chef's pilot program in the Boston  
181 Public Schools and identify other schools in the commonwealth where such a program could be  
182 implemented including, but not limited to a proposed budget for implementing a similar program  
183 in such additional schools.

184 SECTION 10. The department of public health shall report the findings of the review made  
185 pursuant to paragraph (e) of section 92 of chapter 71 to the speaker of the house of  
186 representatives, the president of the senate, the house and senate chairs of the joint committee on  
187 health care financing and the house and senate chairs of the joint committee on public health on  
188 or before September 1, 2014.

189 SECTION 11. The departments of public health and education shall promulgate rules and  
190 regulations to carry out the provisions of section 92 of chapter 71 within 90 days of its  
191 implementation, provided that these regulations shall become effective for the fiscal year  
192 following final approval of said regulations, provided, however, that not less than twelve months  
193 shall have elapsed between final approval of the regulations and the date of implementation in  
194 order to provide sufficient time to implement the regulations.

195 SECTION 12. Section 6 shall take effect five years after the implementation of this act.