

HOUSE No. 4459

The Commonwealth of Massachusetts

Text of House document numbered 4441, being the text of amendments recommended by the committee on Ways and Means, as adopted by the House, as changed by the committee on Bills in the Third Reading, and as amended by the House. January 28, 2010.

In the Year Two Thousand and Ten

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. The third paragraph of section 1D of chapter 69 of the General Laws, as
2 appearing in the 2008 Official Edition, is hereby amended by striking out the fourth sentence and
3 inserting in place thereof the following two sentences:- The standards shall provide for
4 instruction in the issues of nutrition and exercise. The standards may provide for instruction in
5 the issues of physical education, HIV/AIDS education, violence prevention and drug, alcohol
6 and tobacco abuse prevention.

7 SECTION 2. The fourteenth paragraph of section 1I of said chapter 69, as so appearing,
8 is hereby amended by striking out clauses (j) and (k) and inserting in place thereof the following
9 three clauses:-

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 three 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: (1) la
28 carte lines in school cafeterias; (2) school stores; (3) school snack bars; (4) vending machines; or
29 (5) any other locations in public schools; provided, however, that competitive foods or beverages
30 shall not include foods sold or provided as part of the United States’ School Breakfast Program,
31 School Lunch Program and Child and Adult Care Program.

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) non-sweetened carbonated water; (iii) 100 per cent fruit juice; (iv) nonfat or
48 low-fat dairy drinks.

49 (c) The department, in consultation with the department of elementary and secondary
50 education, shall establish regulations for the phase-in and implementation of nutrition standards
51 for competitive foods and beverages sold or provided in public schools developed pursuant to
52 subsection (b). In establishing these regulations, the department, in consultation with the
53 department of elementary and secondary education, shall consider such factors as: (1) adequate
54 phase-in time for public schools to implement new nutritional standards; (2) additional training
55 in nutrition and diet available for school food service directors; (3) the current capacity,
56 resources and equipment available in public school kitchens to prepare recommended foods; (4)
57 the times of the school day during which the guidelines shall apply; and (5) adequate amounts of
58 time for school lunch periods; provided, however, that the departments shall create reasonable
59 exceptions from said standards and guidelines for competitive foods or beverages sold before or
60 after the end of the school day, during school-sponsored fundraisers and events, at booster sales,
61 concession stands and other activities at school-related events.

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

68 (e) The department, in consultation with the department of elementary and secondary
69 education, shall conduct a review of the implementation of this section and the appropriateness
70 of maintaining the leading nutritional standards at least once every 5 years after the effective date
71 of this section, and shall report the findings of its review to the speaker of the house of
72 representatives, the president of the senate, the joint committee on health care financing, the
73 joint committee on public health and the joint committee on education. To assist in the review of
74 said standards, the department shall use the most updated peer-reviewed scientific studies and
75 data concerning appropriate nutritional standards for foods sold outside of reimbursable meal
76 programs in schools as well as the United States Department of Health and Human Services' and
77 the United States Department of Agriculture's most current dietary guidelines for healthy
78 Americans. Included in its review, the department shall consider: (1) the proportion of public
79 schools that have successfully implemented the standards and guidelines for competitive foods
80 and beverages; (2) challenges or barriers experienced by public schools upon implementation of
81 the competitive foods and beverages standards; (3) changes in revenue received from the sale of
82 federally reimbursable school meals; (4) changes in total revenue from federal reimbursable
83 meals and competitive sales combined that were lost or gained after implementation of the
84 standards for competitive foods and beverages; (5) notable changes in student participation in the
85 federal reimbursable meals programs; and (6) recommendations for improvement of the
86 standards and guidelines for competitive foods and beverages.

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

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

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

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

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

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

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

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

(c) recommending that school districts hold recess before lunch so that students can build up an appetite, make nutritious choices and battle against childhood obesity.

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

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

The commission shall be co-chaired by the commissioners of the departments of public health, elementary and secondary education, and early education and care, or their designees; and shall include: the commissioner of mental health or his designee; the commissioner of medical assistance or his designee; the commissioner of agricultural resources or his designee; the commissioner of transitional assistance or his designee, the commissioner of insurance or his designee; the chair of the statewide student advisory council or his designee; 5 members appointed by the governor, 1 of whom shall be an expert in childhood nutrition, 1 of whom shall be an expert in exercise and fitness and 1 of whom shall be an expert in eating disorders; two members to be appointed by the senate president; one member to be appointed by the senate minority leader; two members to be appointed by the speaker of the house of representatives; and one member to be appointed by the house minority leader. Said commission members shall serve without compensation.

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

- (a) Developing and implementing a method for evaluating annual progress toward the goals of the statewide plan;
- (b) Making recommendations to the governor and General Court relative to the revision of school nutrition standards in coordination with ongoing efforts pursuant to section (e) of section 90 of chapter 71; and.
- (c) recommending that school districts hold recess before lunch so that students can build up an appetite, make nutritious choices and battle against childhood obesity.

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

SECTION 6. Notwithstanding any general or special law to the contrary, the department of elementary and secondary education shall evaluate the success of the chef's pilot program in

the Boston public school system and identify other schools in the commonwealth where such a program may be implemented and shall include a proposed budget for implementing a similar program in such additional schools and shall report its findings to the joint committee on public health and the joint committee on education on or before December 31, 2010.

SECTION 6A. (a) The department of agricultural resources in collaboration with the department of elementary and secondary education shall collect data including, but not limited to: (1) school districts and other educational institutions interested in purchasing Massachusetts' farm products; (2) the type and amount of such products schools wish to purchase; (3) the name of the appropriate contact person from the interested school district; (4) farm organizations and businesses that market Massachusetts' farm products; and (5) the availability of Massachusetts' farm products by type and amount of the product, the names and contact information of farmers and farm organizations and businesses marketing such products.

(b) Based upon the data collected pursuant to paragraph (a), the department of agriculture in collaboration with the department of elementary and secondary education shall work with programs that facilitate acquisition of local agricultural products by public schools, including the Massachusetts Farm to School Project, to develop a mechanism and process by which schools interested in purchasing Massachusetts' farm products may notify farms; provided that such a process ensures fair opportunities for all farms interested in selling products to schools; and provided further that fair negotiation and pricing processes are established for purchasing and selling of Massachusetts' farm products to schools

(c) A report shall be made to the governor, the speaker of the house of representatives, the president of the senate, the joint committee on education; the joint committee on public health, and the house and senate chairs of the joint committee on environment, natural resources and agriculture that details the results of the data collected, the steps taken to comply with paragraph (b) and any recommendations, together with drafts of legislation necessary to carry recommendations into effect on or before March 1, 2011.

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

SECTION 7A. Section 4 of chapter 30B of the General Laws, as so appearing, is hereby amended by striking out the figure '\$25,000', in line 17, and inserting in place thereof the following figure:- \$50,000.

SECTION 7B. Notwithstanding any general or special law to the contrary, and to the extent permitted by federal law, the trustees or officers of a state college or university designated by them, when purchasing products of agriculture as defined in section 1A of chapter 128 of the General Laws, including but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products or products processed into value added products as part of a Massachusetts farm operation, shall, to the extent feasible, prefer such products grown in the commonwealth or products produced using products grown in the commonwealth as well as fish, seafood, and other aquatic products.

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

SECTION 9. The department of public health shall investigate the utility of developing and implementing pilot initiatives to reduce childhood obesity through school-based, behavioral and incentive-driven programs such as iMove, Planet Health, and others. The department shall report on the findings of this investigation no later than 18 months after the effective date of this act.

SECTION 10. Chapter 71 of the General Laws as appearing in the 2004 Official Edition is hereby amended by adding at the end thereof, the following sections:--

1. (a) The Department of Elementary and Secondary Education in collaboration with the Department of Public Health shall promulgate regulations requiring all school districts including local and regional districts to convene a School Wellness Advisory Committee that shall in accordance with federal laws and regulations to develop and to recommend to the superintendent of schools and school committee a school district wellness policy addressing school nutrition, nutrition education, and physical activity. The committee shall include, but need not be limited to, school committee members, school administrators, school nurses, food service directors, food service staff, parents of students in the school district, students, physical and health education teachers, dietitians, health care professionals and interested community members. Existing committees shall qualify as a School Wellness Advisory Committee as long as they meet the standards in this section.

(b) The Department of Elementary and Secondary Education may promulgate regulations and minimum standards to provide guidance for said committees to develop school district wellness policies. These committees shall solicit input from parents, teachers, students and community members and shall hold at least 1 public hearing in the local or regional school district. The policies adopted by said committee may address issues and goals, including, but not limited to all of the following:

- (1) Implementing the nutritional standards set forth by the United States Department of Agriculture and state laws and regulations;
- (2) Improving nutritional standards by increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables

available at all locations where food is sold and ensuring, to the extent possible, that the food is served is fresh;

- (3) Considering the diverse religious and cultural preferences and requirements in food among the student body as well as food allergies;
- (4) Ensuring that all food served to students throughout the day and after student meets federal and state food safety requirements;
- (5) Integrating requirements for Physical Education classes in Grades K-12. Physical Education shall be not less than 150 minutes per week at the elementary level and 225 minutes per week in middle and high school levels;
- (6) Ensuring regular professional development for food services staff meets the requirements laid out by the American Dietetic Association and the School Nutrition Association including but not limited to training for food services staff to integrate state and federal nutrition standards into meals and snacks provided to students;
- (7) Ensuring that nutrition education include strategies for children to understand and engage in healthy eating habits as well as components relating to the medical and behavioral implications of unhealthy eating, not limited to risk of type 2 diabetes, heart disease, kidney disease, stroke and cancer;
- (8) Improving the quality of physical education curricula by including classroom lectures which identify the benefits of physical activity and health as well as selecting physical activities which encourage students to exercise their large muscle groups;
- (9) Creating and enforcing physical education requirements to promote healthful levels of vigorous physical activity;
- (10) Implementing a Safe Routes to School, hereinafter referred to as SRTS program, pursuant to the federal SAFETEA-LU Strategic Highway Safety Plan, 23 U.S.C. 148 to encourage those students who reside within walking, 1 mile, or bicycling, 3 miles, distance from school to take these active modes of transportation to and from school. The SRTS program can include both educational and encouragement elements, and may also entail work with the local municipality to implement infrastructure improvements such as improved street crossings, traffic calming, new or repaired sidewalks, or bicycle/walking paths. Schools and school districts shall call on SRTS program housed with the Executive Office of Transportation for assistance in the development of SRTS programs;
- (11) Altering the economic structures in place to encourage healthy eating by students and reduce dependency on generating profits for the school from the sale of unhealthy foods;
- (12) Creating nutritional guidelines and limitations for school fundraisers operated on school premises from one half hour before school begins, during school hours and to one half hour after school ends;
- (13) Developing a financing plan to implement its policies;
- (14) Increasing the availability of organic fruits and vegetables and school gardens; and
- (15) Collaborating with local farmers' markets.

(c) Each School Wellness Advisory Committee shall review and evaluate the school district policy every three years. This review shall ensure that the policy is in accordance with federal laws and regulations, and shall consider ongoing changes in nutritional standards and requirements for physical education. The evaluation shall include input from, but not be limited to, the following individuals or groups: the superintendent of schools, the school committee, the

280 parent-teacher association, physical education teachers, nutrition and health education teachers,
281 school nurses food service providers, and students. Upon completion of the evaluation, the
282 School Wellness Advisory Committee shall make recommendations to amend, change or rewrite
283 the school/regional district wellness policy. Said reservations to the school/regional district
284 wellness policy shall be completed prior to the start of the next school year following the
285 completion of the evaluation.