

# INSTITUTIONAL PROCUREMENT OF LOCAL FOOD: MASSACHUSETTS POLICY SNAPSHOT

This snapshot is part of a six-state series exploring demand-side policies in New England that support public institutions' ability to increase purchases of local food. These **snapshots**, links to **resources**, a **regional report** with comparative findings and recommendations, a **database** and **scan** of all policies discussed, and other related information can be found on [FINE's policy page](#). These documents are current as of May 2019.

## KEY STATE LAWS AND INITIATIVES:

- **Gen. L. Ch. 30B § 4d**: Establishes a local food **small purchase threshold**, allowing local government bodies, including school districts, to purchase up to \$35,000 of Massachusetts agricultural products without soliciting more than one price quote.
- **Gen. L. Ch. 7 § 23B**: Creates a **price preference** for agricultural products grown in or produced from products grown in Massachusetts. Requires state agencies, colleges, and universities to use "reasonable efforts" to purchase locally produced foods. Further, state agencies must purchase a locally grown product if it is within 10 percent of the price of a product that was grown outside of Massachusetts.
- **Gen. L. Ch 2. 20 § 6C**: Establishes a Massachusetts **food policy council** to generate recommendations to increase the production, sales, and consumption of Massachusetts-grown foods through institutional purchasing, in addition to several other goals.
- **Gen. L. Ch. 6 § 15BBBBBB**: Establishes a celebration of **Farm-to-School Month** in October.
- **Commonwealth Quality Program**: Helps consumers, including institutions, identify state-grown products produced using safe and environmentally sound practices. The **Commonwealth Quality Program** certification is administered by the Massachusetts Department of Agricultural Resources.

## KEY PLAYERS:

A number of state-based groups impact institutional procurement of foods grown in Massachusetts. [Massachusetts Farm to School](#) and the [UMass System](#) are particularly significant leaders in the education sector. Municipal food policy councils also play a role in increasing institutional procurement of local food, alongside regional planning organizations and food hubs, aggregators, and distributors. The statutorily established [Massachusetts Food Policy Council](#), made up of 17 state agency representatives, legislators, and industry members, develops recommendations to advance state

food systems goals. In 2015, the food policy council accepted the [Massachusetts Local Food Action Plan](#), which focuses, in part, on institutional procurement initiatives. The [Massachusetts Food System Collaborative](#) works to promote, monitor, and facilitate implementation of the Local Food Action Plan. [A consortium of nine “Buy Local” organizations](#) support relationship-building, awareness, and demand for local products in communities throughout Massachusetts, and some of these efforts extend to institutions.

## BACKGROUND ON LOCAL PROCUREMENT INITIATIVES IN MASSACHUSETTS:

The state legislature enacted two pieces of demand-side legislation in 2006 to increase institutional procurement of local food: a **small purchase threshold** and a **price preference**. The small purchase threshold encompasses “fruits, vegetables, eggs, dairy products, meats, crops, horticultural products and products processed into value added products, that are grown or produced using products grown in the commonwealth as well as fish, seafood, and other aquatic products.” The price preference requires that state agencies, including colleges and universities, use “reasonable efforts” to purchase local products. State agencies, excluding colleges and universities, must purchase a local product if the local option is within 10 percent of the price of a non-local product. These policies were the first in the state that directly favored institutional purchasing of local food. Additionally, the Massachusetts Department of Agricultural Resources’ (MDAR) **Commonwealth Quality Program**, a third-party audit system created in 2010, helps growers sell to institutional markets in the state by providing access to affordable food safety certification. Several other statutes provide opportunities for increased visibility of institutional procurement efforts, but do not directly influence purchasers. These include the state **food policy council**, created in 2010, and the designation of October as **Farm-to-School Month** in 2016.

## CURRENT STATUS OF LOCAL PROCUREMENT IN MASSACHUSETTS:

Massachusetts’ strong interest in farm to institution purchasing is especially evident in the state’s public education sector. Legislation related to local procurement in the state focuses specifically on Massachusetts-produced goods, rather than defining or considering “local” on a regional scale. The UMass System is purchasing nearly 20 percent of food served at their campuses locally, using a regional definition for “local” as defined by the national nonprofit Real Food Challenge (from within a 250-mile radius). The UMass System is on track to procure 50 percent of their food from New England by 2060, a goal established in [A New England Food Vision](#) created by [Food Solutions New England](#). Other public colleges in the state, including [Westfield State University](#), are also engaged in local sourcing efforts. Further, [nearly 70 percent](#) of Massachusetts’ more than 400 public school districts are participating in some level of farm to school programming. As of the 2015 Farm to School Census, more than [\\$10.2 million](#) has been spent by schools on foods grown in Massachusetts.

The degree to which the current policy framework in Massachusetts is impacting or being utilized by institutions varies. The state employs staff who work indirectly on initiatives related to institutional procurement of local food; for example, one MDAR position includes coordination of the state **food policy council**. However, there is no formal tracking mechanism for purchases of local food made by state entities, so it is difficult to ascertain the level of state investment in local procurement.

The [Massachusetts Commonwealth Quality Program](#) is designed, in part, to provide food safety assurance to purchasers that “producers, harvesters and processors not only meet stringent federal, state and local regulatory requirements, but also employ best management practices and production

standards that ensure consumers receive the safest, most wholesome products available.” The UMass System utilizes the Commonwealth Quality Program in lieu of other food safety documentation; however, the university buys most of their products through a distributor who is eager to assist producers in acquiring nationally recognized food safety certification. In the past two years, MDAR has modified the Commonwealth Quality Program to be compliant with federal food safety requirements for produce farms under the Food Safety Modernization Act Produce Safety Rule (FSMA PSR).

In the case of the **\$35,000 small purchase threshold**, UMass has at least once taken advantage of this policy to purchase directly from a Massachusetts farm without engaging in a quote solicitation process. However, Chris Howland of UMass Auxiliary Enterprises says, “The procurement threshold is negligible for us because we have a prime vendor contract for produce. We write into the contract stipulations that we’re able to buy a certain percentage of produce locally.” Buying through their prime vendor for produce simplifies operations for UMass, and effectively circumvents the need for, or utility of, a procurement threshold. Further, many K-12 schools are not able to take advantage of this threshold. According to Simca Horwitz, co-director of Massachusetts Farm to School, “The problem is that the federal law is actually stricter than the state law, and so for K-12 schools that are operating the federally funded school lunch program, they have to follow the federal guidelines.” Participation in these programs binds schools to federal procurement regulations, which set a lower threshold (\$10,000) for making purchases without soliciting quotes. The Massachusetts small purchase threshold is therefore only advantageous to entities that are solely bound by state procurement law.

Massachusetts’ **price preference** creates an opportunity for state agencies, such as the **Department of Correction** and the **Department of Children and Families**, to purchase locally grown goods at a higher cost than products grown outside the state. However, because many state agencies are in multimillion dollar statewide, agency-specific purchasing contracts with national distributors, the policy does not operate how the legislature may have envisioned. First, the scale of these large purchasing contracts decreases the price of each individual good in the contract through economies of scale, making it difficult for smaller producers growing, raising, or harvesting lower product volumes to directly compete. Additionally, the statewide contracts require vendors to bid on the entire suite of products requested, including goods that are not grown in New England. It may also be challenging and unrealistic for purchasers to directly compare prices between specific goods in the contract when they are purchased alongside dozens or hundreds of other items. The incentive for compliance with the policy is low and utilization of the policy in the existing procurement system is impractical, given the manner in which state agencies currently engage in procurement. As noted above, without reporting requirements for state agencies, it is challenging to draw conclusions about the efficacy of policies like the price preference.

There are a number of barriers to increased institutional procurement of local food in Massachusetts. According to Horwitz, “We don’t have a lot of local meat available because there’s a strong retail market for those products in the state, so there’s not a lot of wholesale product available for institutions.” Howland added additional context, stating, “I think there could be some improvements in the local poultry segment. We’ve been able to increase our local poultry purchases, but we buy a lot of chicken. Our largest vendor is Perdue, but we’d like to see what we can do to move some of that to Massachusetts. There’s always the volume issue, not having enough production, and the cost, because smaller-scale farmers obviously aren’t going to be able to match that Perdue price. So there has to be some in-between type of solution.”

Horwitz also noted distribution and traceability as challenges in Massachusetts. “There’s a lot of local produce available to institutions, but the product traceability is an issue. Distribution is another big challenge, finding producers who are able to deliver, or distributors who actually provide traceability.”

MDAR has provided over \$3 million in support to producers, processors, and other food and farming businesses, many of which serve institutions, through the [Massachusetts Food Venture Program](#). Additionally, the [Massachusetts Food Trust Program](#) provides loans, grants, and business assistance to organizations increasing access to healthy food in low-income, underserved areas of the state.

## KEY TAKEAWAYS:

- The \$35,000 **small purchase threshold** has reduced the procurement burden for local governments to buy foods grown in Massachusetts. However, conflicts between state and federal procurement law nullify the utility of the threshold for federally funded entities.
- The **price preference** policy is not fully utilized, in part because of the large purchasing contracts many state agencies operate within. A lack of clear information about the policy, and minimal incentive to comply with it, also decrease its use and effectiveness.
- Over the past two years, regulatory requirements of the FSMA PSR have been integrated into the **Commonwealth Quality Program**. This transition has contributed to increasing the program’s relevance as a seal that is as competitive nationally as other governmental or third-party food safety certification programs. This update has the additional advantage of affording farmers one combined visit for market access certification and a regulatory compliance inspection. More than 100 growers are currently participating in the **Commonwealth Quality Program**, though there is still some confusion among both growers and purchasers about the changes to the program.
- The **food policy council’s** regular convenings allow for consistent discussion of initiatives related to local food procurement and provide an opportunity for councilmembers to share information, build relationships, and collaborate on programs. The council accepted the Local Food Action Plan in 2015. This Plan does not include specific goals or tracking mechanisms, and there is no consistent state funding for the council’s efforts; in light of some of these factors, the council has yet to act further on a number of initiatives specified in the Local Food Action Plan.
- The establishment of October as **Farm-to-School Month** has formalized a time of year for schools to participate in farm to school education, engagement, and local food procurement. This initiative helps raise awareness and motivate additional local food procurement efforts in the state.

## RECOMMENDATIONS:

- There is opportunity for Massachusetts to increase its investment in institutional procurement of local food, particularly following the publication of the Massachusetts [Local Food Action Plan](#) in 2015. The plan provides many concrete recommendations for increasing the viability of the state's agricultural economy, as well as the health and well-being of Massachusetts' residents.
- The state **food policy council** should continue to work to implement the recommendations made in the Massachusetts Local Food Action Plan. The legislators on the council should work with their colleagues in the legislature to clarify the council's mandate and abilities and ensure that the council is as empowered and effective as possible in advancing the priorities outlined in the Local Food Action Plan. In 2019, the Massachusetts legislature formed a [Food System Caucus](#), which could provide a welcoming forum for discussion of these issues. The council should also continue to work to coordinate and build relationships among municipal food policy councils throughout the state, and continue to act as a clearinghouse to share knowledge and best practices. MDAR, the Department of Public Health, and the Department of Elementary and Secondary Education met in May 2019 to explore the creation of an interagency farm to school task force that will provide additional support for local procurement efforts in the state.
- To increase the effectiveness of the 10 percent **price preference**, the [Harvard Food Law and Policy Clinic](#) recommends providing additional educational materials and trainings on the law for purchasing entities, increasing tracking and reporting requirements, and creating a benchmark for minimum local purchases by state agencies. Read more of the Harvard Food Law and Policy Clinic's analysis and recommendations [here](#).
- The **Commonwealth Quality Program** provides additional sourcing options and credibility for some producers. This program may be underutilized at times because of pressure within institutions for compliance with nationally recognized third-party food safety certification programs. To combat this, the state should continue its engagement and educational efforts targeted at both farmers and purchasers to ensure they understand the rigorous food safety compliance that the **Commonwealth Quality Program** requires.
- In addition to **Farm-to-School Month**, the state could focus its energies on creating grant programs for schools to dedicate more staff and time to develop programming focused on local food. As of the date of publication of this document, companion bills are currently in the Massachusetts [House](#) and [Senate](#), drafted in partnership with Massachusetts Farm to School, that seek to address some of these issues through a farm to school grant program. This legislation was modeled, in part, from a similar program in [Vermont](#). To further increase institutional procurement in K-12 schools, another option the state could consider is an additional reimbursement for purchases of local food. Programs of this nature exist in other states, including [Michigan](#) and [Oregon](#).
- Many producers face challenges in transporting their products themselves and consequently work with distributors. The widespread use of distributors creates a need for product traceability, which some distributors fail to provide in an accurate or adequate manner. The state could provide funding resources to distributors to advance and streamline this process, and could provide incentives to distributors who prioritize carrying and distributing locally grown foods, possibly through creation of a local food distributor certification.

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The analysis and recommendations in this snapshot do not necessarily reflect the entirety of the opinions of any of the contributors. Rather, individuals who provided insights and feedback for this project provided their expertise to specific portions of this document's contents. We have done our best to create an accurate representation of the information collected through research and interviews, and we welcome feedback on this product.

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To learn more about the Center for Agriculture and Food Systems at Vermont Law School, visit: [www.vermontlaw.edu/CAFS](http://www.vermontlaw.edu/CAFS)



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