



Reducing Food Waste in Massachusetts

Briefing paper prepared for the legislature, July 26, 2017

Submitted on behalf of the Massachusetts Food System Collaborative, Harvard Food Law and Policy Clinic, Conservation Law Foundation, Daily Table, Boston Area Gleaners, Food For Free Committee, Lovin' Spoonfuls, Bill Emerson Food Donation Act Awareness Campaign, Spoiler Alert, Food Link, Greater Boston Food Bank, Worcester County Food Bank, Central Mass Grown, Berkshire Grown, and Community Involved in Sustaining Agriculture.

According to the Massachusetts Department of Environmental Protection (MassDEP), food waste and other organic material make up approximately 25 percent of all waste disposed of every year. This translates into over one million tons of compostable waste landfilled annually, of which 900,000 tons is food. In 2014, Massachusetts implemented the Commercial Food Waste Disposal Ban for facilities that dispose of one ton or more food waste per week. That waste is now banned from landfills and municipal waste combustors, and work is underway to divert the organic waste to a variety of uses. A key challenge in doing so is to ensure that this food surplus is directed to where it is most needed, with an emphasis on addressing hunger through donations and distribution to food insecure households.

Food waste reduction is a primary goal of the 2015 *Massachusetts Local Food Action Plan* (<http://mafoodsystem.org/plan/>), a project funded by the state and accepted by the Massachusetts Food Policy Council as guidance toward a sustainable and equitable food system in Massachusetts. The Massachusetts Food System Collaborative works to facilitate implementation of the Plan, and has developed this set of policy priorities along with key food system stakeholders. Several pieces of legislation introduced in 2017 take steps toward many of these priorities, and we encourage the legislature to adopt a comprehensive package that encompasses elements of those proposals along with the following recommendations. Such a measure would represent significant progress toward food waste reduction in Massachusetts and toward reducing food insecurity.

Priorities for comprehensive legislation to divert edible food from the waste stream

Tax incentives

In order to incentivize donations, the state should provide a tax credit to individuals, businesses, and institutions that donate food to nonprofit organizations that distribute that

food to those in need. S.1495/H.2626 offers a credit of 15% of the Fair Market Value (FMV) of the food, and S.838/H.3327 offers a credit of the total FMV, with a \$2,000 annual cap. Note that other bills, such as H.3348, offer tax deductions for donations, but given the low profit margins of farms and their ability to deduct their costs against losses, such a deduction would not be enough of an incentive for them to take advantage of it.

In order to further encourage donation of healthy foods, and to support Massachusetts farms and businesses, consideration should be given to an increased tax credit, perhaps an additional 5%, for donations of vegetables, fruits, fresh and frozen meat, eggs, and dairy products grown or raised in Massachusetts, and for prepared foods made in Massachusetts in conditions that meet Massachusetts and federal health regulations.

As provided for in S.838/H.3327, the credit should be provided even if nonprofit food recovery organizations charge a nominal amount that covers the cost of handling.

The credit should cover transportation costs for the donated food. The cost of transporting food from the donor to the recipient can be significant, and even prohibitive. California has enacted such a credit, providing donors with “an amount equal to 50 percent of the transportation costs paid or incurred by the taxpayer in connection with the transportation of that donated agricultural product.”

Liability

Elimination of liability concerns is another important element of comprehensive food waste legislation. Under the current MA Good Samaritan law (ch. 94, § 328) liability protections are only available when food is donated to a nonprofit organization that then distributes that food to those in need. These liability protections should be extended to food service establishments, retail stores, and farms donating directly to end recipients. Extending protections to direct donations could help increase efficiency and enable timely use of perishable food. The currently proposed language in H.3238, S.848, S.838, and H.3327 does this.

Additionally, the MA Good Samaritan law should be amended to provide liability protection regardless of compliance with any laws, regulations, or ordinances regulating the packaging or labeling of food. Many food labeling requirements are not essential to food safety, such as the net weight of the item. These requirements impose extraneous burdens on donors and food recovery organizations by forcing them to meet all labeling standards, even when many food labeling rules are not essential to ensure food safety.

While current MA liability protections already states that donated food must not be misbranded and adulterated, legislation should direct the Department of Public Health to

create regulations about food safety for food donations, including guidance for municipal boards of health to consider.

Standardize food date labeling language

In order to help reduce consumer confusion, and help to keep edible food from being disposed of, the state should standardize date labeling requirements. Language in S.415/H.3244 does this, but we recommend updating the proposed standardized language to reflect the recently announced private sector initiative, where “Best If Used By” dates are an indicator of quality, and “Use By” dates are an indicator of safety (<http://www.gmaonline.org/news-events/newsroom/grocery-industry-launches-new-initiative-to-reduce-consumer-confusion-on-pr/>).

Reduce food waste in schools

The Department of Elementary and Secondary Education (DESE) should be directed to create guidance documents for voluntary programs encouraging the donation of surplus food from school meals, as in S.292.

Offer Versus Serve allows students to decline some of the food offered in a federally reimbursable school lunch or breakfast, in order to reduce food waste and permit students to choose the foods they want to eat. Currently required in Massachusetts high schools, this program should be expanded to elementary and middle schools as well. None of the pending legislation addresses this.

Since students with less than 30 minutes to eat lunch waste a significantly larger amount of food than those with ample time, the legislature should enact mandatory minimum lunch periods or promote longer lunch periods.

Food waste audits at schools can help determine whether portion sizes are appropriate as well as what foods are preferred by students. Allocate funds to conduct waste audits in school cafeterias, in an effort to reduce school food waste statewide.

Strengthen Organic Waste Ban

While the Commercial Food Waste Disposal Ban represents a significant commitment on the part of the Commonwealth to divert food waste, general knowledge about the Ban is limited and resources provided to the Department of Environmental Protection to consistently manage and enforce the ban are insufficient. Legislative action should be taken supporting the Ban, promoting food donation and recovery efforts, and allocating funds to support the Ban.

As called for in S.439/H.2944, establishing a legislative committee to review best practices in waste reduction, imposing surcharges on landfilled or incinerated waste that

would go toward public education about waste reduction, taking steps to incentive decreased waste generation at the municipal level, requiring measures that would make it easier to enforce waste bans, and broadening the organics waste ban to cover producers generating more than a half ton of food waste per week (rather than the existing threshold of one ton), should all be considered as well.

Implement a food recovery challenge

Massachusetts should invest in and create educational materials and campaigns for schools, consumers, businesses, and nonprofits about food waste reduction practices, and should develop and implement a food recovery challenge, as has been done nationally by the EPA (<https://www.epa.gov/sustainable-management-food/food-recovery-challenge-frc>).

Food waste bills filed in the 190th General Court

- **An Act authorizing school districts to donate excess food to local voluntary assistance programs**, S.292, Senator Barbara A. L'Italien, Joint Committee on Education
- **An Act decreasing food waste by standardizing the date labeling of food**, S.415/H.3244, Senator Eileen M. Donoghue/Representative Hannah Kane, Joint Committee on Public Health
- **An Act encouraging the donation of food to people in need**, S.838/H.3327, Senator Eileen M. Donoghue/Representative Hannah Kane, Joint Committee on the Judiciary
- **An Act protecting businesses that donate to food banks**, H.879, Representative Kevin J. Kuros, Joint Committee on the Judiciary
- **An Act relative to direct food donations**, S.848, Senator Ryan C. Fattman, Joint Committee on the Judiciary
- **An Act relative to food donations**, H.1199, Representative Paul McMurtry, Joint Committee on Public Health
- **An Act relative to solid waste practices**, S.439/H.2944, Senator Anne M. Gobi/Representative RoseLee Vincent, Joint Committee on Environment, Natural Resources and Agriculture
- **An Act relative to the charitable donation of not readily marketable food**, H.3238, Representative Susan Williams Gifford, Joint Committee on Public Health
- **An Act relative to the charitable donation of wholesome food**, S.1495/H.2626, Senator Joseph A. Boncore/Representative Aaron Michlewitz, Joint Committee on Revenue
- **An Act to provide a tax deduction for charitable donations of food by farmers**, H.3348, Representative Paul A. Schmid, III, Joint Committee on Revenue