S T A T E O F N E W Y O R K

1587--A

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sens. OPPENHEIMER, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the development and implementation of statewide school nutrition standards for food and beverages that are sold to students and the review of school wellness policies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as "the school nutrition act of 2012".

S 2. The education law is amended by adding a new section 915-a to read as follows:

S 915-A. FOOD AND BEVERAGE NUTRITION STANDARDS. 1. A. THE COMMISSIONER, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF AGRICULTURE AND MARKETS, THE OFFICE OF GENERAL SERVICES AND WITH INPUT FROM, INCLUDING BUT NOT LIMITED TO, AT LEAST ONE REPRESENTATIVE EACH FROM THE SCHOOL FOOD SERVICE DIRECTORS; SCHOOL BOARDS; SCHOOL ADMINISTRATORS; CERTIFIED DIETICIANS/NUTRITIONISTS OR REGISTERED DIETICIANS; THE PEDIATRIC MEDICAL COMMUNITY; THE PUBLIC HEALTH COMMUNITY; COMPREHENSIVE CARE CENTERS FOR EATING DISORDERS, ESTABLISHED PURSUANT TO ARTICLE TWENTY-SEVEN-J OF THE PUBLIC HEALTH LAW; AND THE AGRICULTURAL COMMUNITY, SHALL DEVELOP BY DECEMBER THIRTY-FIRST, TWO THOUSAND THIRTEEN, STATEWIDE SCHOOL NUTRITION STANDARDS FOR FOOD AND BEVERAGES THAT ARE SOLD TO STUDENTS EXCLUSIVE OF THOSE PROVIDED THROUGH THE FEDERAL SCHOOL MEAL PROGRAMS. THE COMMISSIONER SHALL SEEK TO ENSURE THAT SUCH INPUT REPRESENTS A BALANCED AND COMPREHENSIVE PERSPECTIVE. SUCH NUTRITION STANDARDS SHALL BE DEVELOPED TO PROMOTE A HEALTHFUL DIET TAKING INTO ACCOUNT A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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PREPONDERANCE OF THE NUTRITIONAL, SCIENTIFIC AND MEDICAL KNOWLEDGE WHICH IS CURRENT AT THE TIME SUCH RECOMMENDATIONS ARE MADE.

B. NO LATER THAN JUNE THIRTIETH, TWO THOUSAND FOURTEEN, THE BOARD OF REGENTS SHALL PROMULGATE REGULATIONS BASED ON THE NUTRITIONAL STANDARDS RECOMMENDED BY THE COMMISSIONER. SUCH REGULATIONS SHALL APPLY TO SCHOOL MEALS, EXCLUSIVE OF THOSE PROVIDED THROUGH FEDERAL OR SCHOOL MEAL PROGRAMS, ENTREES, SNACKS AND BEVERAGES SOLD OR SERVED ON SCHOOL GROUNDS IN EACH SCHOOL DISTRICT, NON-PUBLIC SCHOOL, BOARD OF COOPERATIVE EDUCATION AND CHARTER SCHOOL THAT PARTICIPATES IN A PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966, COLLECTIVELY REFERRED TO IN THIS SECTION AS "SCHOOL DISTRICTS", DURING THE SCHOOL DAY FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, SCHOOL CAFETERIAS, A LA CARTE LINES, SCHOOL STORES, OR VENDING MACHINES. SUCH REGULATIONS SHALL BE APPLICABLE IN THE TWO THOUSAND THIRTEEN--TWO THOUSAND FOURTEEN SCHOOL YEAR.

C. NOTWITHSTANDING ANY OTHER PARAGRAPH OF THIS SUBDIVISION, THIS SECTION AND REGULATIONS PROMULGATED HEREUNDER SHALL NOT APPLY TO: (I) FOODS AND BEVERAGES PROVIDED UNDER THE FEDERAL CHILD AND ADULT CARE FOOD PROGRAM, WHICH SHALL BE SUBJECT TO THE REQUIREMENTS IMPOSED UNDER THAT PROGRAM; (II) FOODS AND BEVERAGES SOLD, SERVED OR OFFERED AT AFTER SCHOOL ACTIVITIES ATTENDED BY BOTH ADULTS AND STUDENTS, SUCH AS CONCERTS AND SPORTING EVENTS; OR (III) FOODS AND BEVERAGES SOLD: (A) BY STUDENTS, THEIR IMMEDIATE FAMILY MEMBERS OR GUARDIANS OR SCHOOL EMPLOYEES, (B) THROUGH SOURCES OTHER THAN SCHOOL CAFETERIAS, A LA CARTE LINES, VENDING MACHINES, AND SCHOOL STORES, (C) AFTER THE END OF THE LAST SCHEDULED MEAL PERIOD OF THE SCHOOL DAY, AND (D) ONLY FOR THE PURPOSE OF RAISING FUNDS TO SUPPORT SCHOOL ACTIVITIES.

D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS SECTION AND REGULATIONS PROMULGATED HEREUNDER SHALL NOT PROHIBIT NOR RESTRICT THE ACQUISITION AND UTILIZATION OF ANY FOOD ITEM AVAILABLE THROUGH FEDERALLY FUNDED PROGRAMS SUCH AS THE USDA COMMODITIES PROGRAM AND DEPARTMENT OF DEFENSE FOOD PROGRAMS.

2. ON OR BEFORE JULY FIRST, TWO THOUSAND FOURTEEN, THE COMMISSIONER, IN COLLABORATION WITH THE DEPARTMENT OF HEALTH AND INCLUDING BUT NOT LIMITED TO, AT LEAST ONE REPRESENTATIVE EACH FROM THE SCHOOL FOOD SERVICE DIRECTORS; SCHOOL BOARDS; SCHOOL ADMINISTRATORS; CERTIFIED DIETICIANS/NUTRITIONISTS OR REGISTERED DIETICIANS; COMPREHENSIVE CARE CENTERS FOR EATING DISORDERS, ESTABLISHED PURSUANT TO ARTICLE TWENTY-SEVEN-J OF THE PUBLIC HEALTH LAW; AND THE PEDIATRIC MEDICAL COMMUNITY SHALL ISSUE RECOMMENDATIONS FOR METHODS AND THE PRACTICALITY OF PROVIDING STUDENTS WITH AGE APPROPRIATE INFORMATION REGARDING THE NUTRITIONAL CONTENT OF SCHOOL MENU ITEMS.

3. ON OR BEFORE JULY FIRST, TWO THOUSAND FOURTEEN, THE COMMISSIONER, IN COLLABORATION WITH THE DEPARTMENT OF AGRICULTURE AND MARKETS, AND INCLUDING BUT NOT LIMITED TO, AT LEAST ONE REPRESENTATIVE EACH FROM THE SCHOOL FOOD SERVICE DIRECTORS; SCHOOL BOARDS; SCHOOL ADMINISTRATORS; AND THE AGRICULTURAL COMMUNITY, SHALL ISSUE RECOMMENDATIONS ON INCREASING OPPORTUNITIES FOR NEW YORK STATE FARMS AND FARMERS TO COLLABORATE WITH SCHOOL DISTRICTS.

4. RECOMMENDATIONS ISSUED PURSUANT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL BE ISSUED IN A REPORT TO THE LEGISLATURE AND THE GOVERNOR ON OR BEFORE JULY FIRST, TWO THOUSAND FOURTEEN. COPIES OF SUCH REPORT SHALL BE MADE AVAILABLE TO SCHOOL DISTRICTS.

5. BEGINNING WITH THE TWO THOUSAND FOURTEEN--TWO THOUSAND FIFTEEN SCHOOL YEAR, AND EACH YEAR THEREAFTER, SCHOOL DISTRICTS SHALL RECEIVE AN ADDITIONAL FIFTEEN CENTS (ABOVE THE AMOUNT PROVIDED FOR THE TWO THOUSAND

TWELVE--TWO THOUSAND THIRTEEN SCHOOL YEAR), PER THE NUMBER OF FEDERALLY REIMBURSABLE BREAKFASTS AND LUNCHES SERVED IN THE PRIOR FISCAL YEAR TO STUDENTS, IN ACCORDANCE WITH AN ACT OF CONGRESS ENTITLED THE "NATIONAL SCHOOL LUNCH ACT", P.L. 79-396, AS AMENDED, OR THE PROVISIONS OF THE "CHILD NUTRITION ACT OF 1996", P.L. 89-642, AS AMENDED.

6. IF AT THE COMMENCEMENT OF THE TWO THOUSAND FOURTEEN--TWO THOUSAND FIFTEEN SCHOOL YEAR, A SCHOOL DISTRICT HAS AN EXISTING CONTRACT WITH A COMPANY TO PROVIDE VENDING OR OTHER FOOD AND BEVERAGE SERVICES WHICH WOULD BE BREACHED BY COMPLIANCE WITH THE REGULATIONS ESTABLISHED PURSUANT TO THIS SECTION, SUCH STANDARDS THAT AFFECT SUCH CONTRACT SHALL BE APPLICABLE TO THE SCHOOL DISTRICT ON THE DAY FOLLOWING THE END OF THE CURRENT TERM OF SUCH CONTRACT OR ON THE DATE ON WHICH THE CONTRACT IS TERMINATED, WHICHEVER IS EARLIER. SUCH STANDARDS SHALL APPLY TO ALL CONTRACTS THAT ARE ISSUED, RENEWED, MODIFIED, ALTERED OR AMENDED AFTER THE START OF THE TWO THOUSAND FOURTEEN--TWO THOUSAND FIFTEEN SCHOOL YEAR.

S 3. The education law is amended by adding a new section 918-a to read as follows:

S 918-A. LOCAL SCHOOL WELLNESS POLICIES. 1. ON OR BEFORE JULY FIRST, TWO THOUSAND THIRTEEN, EACH SCHOOL DISTRICT, NON-PUBLIC SCHOOL, BOARD OF COOPERATIVE EDUCATIONAL SERVICES AND CHARTER SCHOOL THAT PARTICIPATES IN ANY PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966, COLLECTIVELY REFERRED TO IN THIS SECTION AS "SCHOOL DISTRICTS", SHALL BEGIN A REVIEW OF THEIR SCHOOL WELLNESS POLICIES TO DETERMINE THE EFFECTIVENESS AND ADEQUACY OF SUCH POLICY. IN THE COURSE OF SUCH REVIEW, THE GOVERNING BODY OR OFFICER OF THE SCHOOL DISTRICTS SHALL:

A. INVOLVE, AT A MINIMUM, PARENTS AND GUARDIANS, STUDENTS, REPRESENTATIVES OF THE SCHOOL FOOD AUTHORITY, SCHOOL ADMINISTRATORS, SCHOOL NURSES OR OTHER HEALTH STAFF, CERTIFIED DIETICIANS/NUTRITIONISTS OR REGISTERED DIETICIANS IF AVAILABLE, PHYSICAL EDUCATION STAFF, AND TEACHERS;

B. CONSIDER ANY RECOMMENDATIONS MADE BY A SCHOOL DISTRICT NUTRITION ADVISORY COMMITTEE ESTABLISHED IN SECTION NINE HUNDRED EIGHTEEN OF THIS ARTICLE, IF SUCH COMMITTEE HAS BEEN FORMED BY THE SCHOOL DISTRICT;

C. EVALUATE THE IMPLEMENTATION OF THE DISTRICT'S WELLNESS POLICY;

D. EVALUATE PROGRESS IN ACHIEVING GOALS FOR NUTRITION EDUCATION, AND OTHER SCHOOL BASED ACTIVITIES THAT ARE DESIGNED TO PROMOTE STUDENT WELLNESS;

E. CONSIDER RECOMMENDATIONS FOR HEALTHY FUNDRAISING ACTIVITIES, CLASSROOM EVENTS AND CELEBRATIONS;

F. (I) EVALUATE THE ROLE OF HEALTH EDUCATION AS PART OF THE CURRICULUM TO PROVIDE KNOWLEDGE AND TEACH SKILLS TO HELP STUDENTS ADOPT AND MAINTAIN LIFELONG, HEALTHY EATING PATTERNS IN BALANCE WITH PHYSICAL ACTIVITY; AND

(II) EVALUATE THE RELATIONSHIP BETWEEN THE RELEVANT COMPONENTS OF THE DISTRICT CURRICULUM AND WELLNESS POLICY, INCLUDING BUT NOT LIMITED TO HEALTH EDUCATION AND PHYSICAL EDUCATION; AND

G. EVALUATE OPPORTUNITIES FOR INCREASED PHYSICAL ACTIVITY DURING THE DAY.

2. THE REVIEW OF THE DISTRICT WELLNESS POLICY SHALL INCLUDE AT LEAST ONE PUBLIC MEETING TO ALLOW FOR MAXIMUM PARTICIPATION BY THE PUBLIC. SUCH PUBLIC MEETING MAY TAKE PLACE AS PART OF A REGULARLY SCHEDULED BOARD MEETING.

3. A. THE INITIAL REVIEW OF DISTRICT WELLNESS POLICIES SHALL BE COMPLETED BY JULY FIRST, TWO THOUSAND FOURTEEN. FOLLOWING SUCH INITIAL

REVIEW, EACH DISTRICT SHALL COMMENCE A SUBSEQUENT REVIEW OF THEIR WELLNESS POLICY, AT A MINIMUM, ONCE EVERY FIVE YEARS, IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION.

B. CHANGES TO DISTRICT WELLNESS POLICIES AS A RESULT OF THESE REGULAR REVIEWS SHALL BE ADOPTED BY THE BOARD AND MADE AVAILABLE TO THE PUBLIC IN A MANNER TO BE DETERMINED BY THE LOCAL BOARD.

4. EACH SCHOOL DISTRICT SHALL MAKE THE CURRENT WELLNESS POLICY OF THE DISTRICT AVAILABLE TO THE DEPARTMENT UPON REQUEST.

S 4. Subdivision 1 of section 2854 of the education law is amended by adding a new paragraph (g) to read as follows:

(G) A CHARTER SCHOOL SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS NINE HUNDRED FIFTEEN-A AND NINE HUNDRED EIGHTEEN-A OF THIS CHAPTER.

S 5. This act shall take effect immediately.