STATE OF NEW YORK

3376

2019-2020 Regular Sessions

IN SENATE

February 6, 2019

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to the required number of days school is in session and providing schools the option to operate one hundred eighty days of instruction or the equivalent number of hours of pupil instruction

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature finds and declares that a number of schools nationwide have implemented a flexible school week schedule while still maintaining the statutorily required amount of instructional time. This type of flexibility has resulted in savings on such items as energy, transportation and substitute teacher costs, along with better attendance, less time lost to extracurricular activities, more opportunities for teacher training and appointments, and longer class periods for instructional time. Many of the districts in other states which have already implemented flexible school schedules tend to be smaller and rural with long transportation routes to and from schools, and with no other option to save costs other than to close schools or layoff staff. Given the fiscal crisis facing New York as well as rising fuel, energy, and transportation costs, a flexible school week schedule based on the equivalent hours of pupil instruction may offer schools operational flexibility without jeopardizing the amount of instructional time required by law.

New York state is without legal authority to operate less than one hundred eighty days of instruction without forfeiting state aid. The lack of operational flexibility in school districts, in particular regard to instructional days, is a problem largely unaddressed in state statute or regulation. A well-planned alternative school week schedule can be cost-effective, and can provide flexibility for those school districts in fiscal crisis, while maintaining a quality education.

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

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Therefore, the legislature finds that enactment of this legislation is necessary and appropriate to make certain that school boards, after thorough review and public comment, have the discretion and authority to provide local school districts with operational flexibility to modify the number of instructional days per year, while maintaining the quality of education at the particular school or schools requesting a flexible school week schedule.

§ 2. Section 551 of the education law, as added by chapter 414 of the laws of 1972, is amended to read as follows:

§ 551. Apportionment. 1. In order to meet proper health, welfare and safety standards in qualifying schools for the benefit of the pupils enrolled therein, there shall be apportioned health, welfare and safety grants by the commissioner to each qualifying school for the school years beginning on and after July first, nineteen hundred seventy-one, an amount equal to the product of thirty dollars multiplied by the average daily **or equivalent hourly** attendance of pupils receiving instruction in such school, to be applied for costs of maintenance and repair. Such apportionment shall be increased by ten dollars multiplied by the average daily **or equivalent hourly** attendance of pupils receiving instruction in a school building constructed prior to nineteen hundred forty-seven. In no event shall the per pupil annual allowance computed under this section exceed fifty per centum of the average per pupil cost of equivalent maintenance and repair in the public schools of the state on a state-wide basis, as determined by the commissioner, and in no event shall the apportionment to a qualifying school exceed the amount of expenditures for maintenance and repair of such school as reported pursuant to section five hundred fifty-two of this article.

2. The apportionment pursuant to this section shall be reduced by one one hundred eightieth for each day less than one hundred eighty days that such school was actually in total session in the base year, **or a school failing to comply with the equivalent number of hours of pupil instruction shall forfeit from its apportionment an amount determined by applying a ratio of the number of hours the school was in noncompliance in relation to the required minimum equivalent number of hours of pupil instruction,** except that the commissioner may disregard such reduction up to five days **or the equivalent number of hours** if he finds that the school was not in session for one hundred eighty days **or the equivalent number of hours of pupil instruction** because of extraordinary adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel or the destruction of a school building, and if the commissioner further finds that such school cannot make up such days **or the equivalent number of hours** of instruction during the school year. No such reduction shall be made, however, for any day on which such school was in session for the purpose of administering the regents examinations or the regents scholarship examinations, or any day, not to exceed three days, **or the equivalent number of hours** when such school was not in session because of a conference of teachers called by the principal of the school.

§ 3. Subdivision 2 of section 1704 of the education law, as amended by chapter 543 of the laws of 1971, is amended to read as follows:

2. Except as otherwise provided by law, no board of education or community board in the city school district of the city of New York shall provide for a school year consisting of fewer than one hundred eighty days of school **or the equivalent number of hours of pupil instruction**.

§ 4. Paragraphs a and c of subdivision 2 of section 2117 of the education law, as added by chapter 744 of the laws of 1952, are amended to read as follows:

a. The whole time school has been maintained in their district during the year ending on June thirtieth previous to the date of such report, and stating what portion of the time such school has been taught by qualified teachers, and the whole number of days, **or the equivalent number of hours of pupil instruction,** including holidays, in which the school was taught by qualified teachers.

c. The number of children taught in the district during such year by qualified teachers, and the aggregate days' **or equivalent hours'** attendance of all such children.

§ 5. The first undesignated paragraph of section 3107 of the education law, as amended by chapter 784 of the laws of 1961, is amended to read as follows:

In cities having a population of one million or more, employees of the board of education who are members of the New York city teachers' retirement system shall be granted sick leave due to personal illness. Such sick leave shall be on the basis of at least ten days for each year of service, cumulative to a maximum of two hundred days. Members shall upon application be granted a retirement leave of absence with full pay consisting of one-half of their accumulated unused sick leave, up to a maximum of one school term or the equivalent number of school days **or the equivalent number of hours of pupil instruction**.

§ 6. Paragraph a of subdivision 4 of section 3204 of the education law is amended to read as follows:

a. A full time day school or class, except as otherwise prescribed, shall be in session for not less than one hundred ninety days each year, **or the equivalent number of hours of pupil instruction,** inclusive of legal holidays that occur during the term of said school and exclusive of Saturdays.

§ 7. Paragraphs d, k and l of subdivision 1 of section 3602 of the education law, as amended by section 11 of part B of chapter 57 of the laws of 2007, are amended to read as follows:

d. "Average daily attendance" shall mean the total number of attendance days **or the equivalent number of hours of pupil instruction** of pupils in a public school of a school district in kindergarten through grade twelve, or equivalent ungraded programs, plus the total number of instruction days **or the equivalent number of hours of pupil instruction** for such pupils receiving homebound instruction including pupils receiving instruction through a two-way telephone communication system, divided by the number of days **or equivalent hours** the district school was in session as provided in this section. The attendance of pupils with disabilities attending under the provisions of paragraph c of subdivision two of section forty-four hundred one of this chapter shall be added to average daily **or equivalent hourly** attendance.

(1) Equivalent attendance shall mean the quotient of the total number of student hours of instruction in programs in a public school of a school district or a board of cooperative educational services leading to a high school diploma or a high school equivalency diploma as defined in regulations of the commissioner for pupils under the age of twenty-one not on a regular day school register of the district, divided by one thousand. Average daily **or equivalent hourly** attendance shall include the equivalent attendance of the school district. For the purposes of secondary school weighting, such equivalent attendance shall be consid-

ered as average daily **or equivalent hourly** attendance in grades seven through twelve.

(2) In computing average daily **or equivalent hourly** attendance, school districts may, with the commissioner's approval, exclude attendance for those days **or equivalent number of hours of pupil instruction,** on which school attendance was adversely affected because of an epidemic or manmade or natural disaster or act of terrorism. In computing such attendance, the school district shall: (i) determine the number of religious holidays which fall on a school day **in which school is scheduled to be in session** within a school year according to regulations established by the commissioner, such religious holidays to be duly recognized as such for purposes of this section by duly adopted resolution of the board of education; (ii) deduct the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (iii) deduct such religious holidays from the total number of days **or equivalent number of hours of pupil instruction** of session, by grade level; and (iv) compute the average daily **or equivalent hourly** attendance for the school year.

k. "Attendance ratio" shall mean the number computed to four decimals without rounding when the aggregate days **or equivalent hours** attendance is divided by the possible aggregate attendance of all pupils in attendance in the district, as computed for each school district by the commissioner by June first of the year following the attendance year.

l. "Average daily membership" shall mean the possible aggregate attendance of all pupils in attendance in a public school of the school district in kindergarten through grade twelve, or equivalent ungraded programs, including possible aggregate attendance for such pupils receiving homebound instruction, including pupils receiving instruction through a two-way telephone communication system, with the possible aggregate attendance of such pupils in one-half day kindergartens multiplied by one-half, divided by the number of days **or equivalent number of hours of pupil instruction** the district school was in session as provided in this section. The full time equivalent enrollment of pupils with disabilities attending under the provisions of paragraph c of subdivision two of section forty-four hundred one of this chapter shall be added to average daily **or equivalent hourly** membership. Average daily **or equivalent hourly** membership shall include the equivalent attendance of the school district, as computed pursuant to paragraph d of this subdivision. In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to subdivision four of section forty-one hundred one of this chapter or a pupil is living on federally owned land or property, such pupil's possible aggregate attendance shall be counted as part of the possible aggregate attendance of the school district in which such pupil is enrolled.

§ 8. Paragraphs a and b of subdivision 2 of section 3602 of the education law, as amended by section 13 of part B of chapter 57 of the laws of 2007, are amended to read as follows:

a. Computation of resident weighted average daily **or equivalent hourly** attendance. For purposes of this section weighted average daily **or equivalent hourly** attendance of a school district for any school year shall be computed as follows:

(1) Weighted average daily **or equivalent hourly** attendance shall be determined by using the average daily **or equivalent hourly** attendance of public school pupils in a full-day kindergarten and grades one through

six as the basic unit, with the attendance of such pupils in one-half day kindergartens measured at one-half of such basic unit and the attendance of such pupils in grades seven through twelve measured at one and one-quarter of such basic unit. The sum of all such units of attendance shall be the weighted average daily **or equivalent hourly** attendance.

(2) In computing such attendance, the school district shall (i) determine the number of religious holidays which fall on a school day **in which school is scheduled to be in session** within a school year according to regulations established by the commissioner, such religious holidays to be duly recognized as such for purposes of this section by duly adopted resolution of the board of education; (ii) deduct the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (iii) deduct such religious holidays from the total number of days **or equivalent number of hours** of session, by grade level; (iv) compute the weighted average daily **or equivalent hourly** attendance for the school year.

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to subdivision four of section forty-one hundred one of this chapter or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the weighted average daily **or equivalent hourly** attendance of the school district in which such pupil is enrolled.

(4) Resident weighted average daily **or equivalent hourly** attendance for purposes of determining the aid ratio of a school district for any school year shall be the weighted average daily **or equivalent hourly** attendance for the school year immediately preceding the base year, less the weighted average daily **or equivalent hourly** attendance of nonresident pupils attending public schools in the district for such school year, plus the weighted average daily **or equivalent hourly** attendance of pupils resident in the district but attending public schools in another district or state plus the weighted average daily **or equivalent hourly** attendance of pupils resident in the district but attending full-time a school operated by a board of cooperative educational services or a county vocational education and extension board for such school year. The attendance of nonresident pupils attending public school in the district and resident pupils attending such schools outside of the district shall be determined by applying to the number of such pupils registered during the school year in each case the ratio of aggregate days **or equivalent hours** attendance to the possible aggregate days **or equivalent hours** attendance of all pupils in attendance in the district. Indian pupils of a reservation attending public school, or pupils living on the United States military reservation at West Point attending public school, shall be deemed to be resident pupils of the district providing such school, for purposes of this paragraph. Where a school district has entered into a contract with the state university pursuant to subdivision two of section three hundred fifty-five of this chapter under which the school district makes payments in the nature of tuition for the education of certain children residing in the district, such children for whom such tuition payments are made shall be deemed to be resident pupils of such district for the purposes of this paragraph.

(5) In determining the resident weighted average daily **or equivalent hourly** attendance of a component school district of a central high school district for computing the aid ratio the weighted average daily

or equivalent hourly attendance of high school pupils residing in such component district and attending the central high school shall be included. The resident weighted average daily **or equivalent hourly** attendance of a central high school district itself shall be the sum of the resident weighted average daily **or equivalent hourly** attendance of each component school district computed as provided in the first sentence of this paragraph.

(6) Notwithstanding the provisions of subparagraphs four and five of this paragraph, when a school district shall experience an increase in resident weighted average daily **or equivalent hourly** attendance during the current year because of the closing in whole, or in part, of a non-public school or a campus school, or a school previously operated by the United States government on the United States military reservation at West Point, the commissioner, in computing any aid ratio of such district, shall permit the use of such additional resident weighted average daily **or equivalent hourly** attendance for aid ratio purposes during the current year and the next succeeding year, provided that such additional resident weighted average daily **or equivalent hourly** attendance attributable to such closing, or part thereof, shall be in excess of one hundred students; provided, however, that such district which qualifies for an increase in total wealth pupil units pursuant to paragraph f of this subdivision, shall use the increase in resident weighted average daily **or equivalent hourly** attendance, even if such increase in resident weighted average daily **or equivalent hourly** attendance is less than one hundred.

b. Computation of adjusted average daily **or equivalent hourly** attendance. For purposes of this section adjusted average daily **or equivalent hourly** attendance of a school district for any school year shall be computed as follows:

(1) Adjusted average daily **or equivalent hourly** attendance shall be determined by using the average daily **or equivalent hourly** attendance of public school pupils in a full-day kindergarten and grades one through twelve as the basic unit, with the attendance of such pupils in one-half day kindergartens measured at one-half of such basic unit. The sum of all such units of attendance shall be the adjusted average daily **or equivalent hourly** attendance.

(2) In computing such attendance, the school district shall (i) determine the number of religious holidays which fall on a school day **in which school is scheduled to be in session** within a school year according to regulations established by the commissioner, such religious holidays to be duly recognized as such for purposes of this section by duly adopted resolution of the board of education; (ii) deduct the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (iii) deduct such religious holidays from the total number of days **or equivalent number of hours** of session, by grade level; (iv) compute the adjusted average daily **or equivalent hourly** attendance for the school year.

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to subdivision four of section forty-one hundred one of this chapter or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the adjusted average daily attendance of the school district in which such pupil is enrolled.

§ 9. Paragraph e of subdivision 1 of section 3602-c of the education law, as amended by chapter 740 of the laws of 1982, is amended to read as follows:

e. "Average daily attendance" shall mean the total number of attendance days **or the equivalent number of hours** of pupils receiving services divided by the number of days **or equivalent hours** the public school was in session for each attendance period. For each such attendance period the total number of attendance days **or equivalent number of hours** for each such pupil shall be determined by multiplying the number of days **or equivalent hours** on which each such pupil was in attendance by the ratio obtained by dividing the number of class periods of each such pupil by the total number of class periods, not to exceed five, operated by the public school during the school day. Only pupils residing in this state shall be included in such computation.

§ 10. Paragraph m of subdivision 12 and subdivision 16 of section 3602-e of the education law, paragraph m of subdivision 12 as amended by section 19 of part B of chapter 57 of the laws of 2007 and subdivision 16 as amended by section 18 of part A of chapter 57 of the laws of 2013, are amended to read as follows:

m. a process for the waiver of the time requirements established pursuant to this subdivision in order to authorize the operation of a summer universal prekindergarten program limited to the months of July and August, upon a finding by the commissioner that the school district is unable to operate the program during the regular school session because of a lack of available space pursuant to regulations of the commissioner. Notwithstanding any other provision of this section to the contrary, such process shall provide for a reduction of the aid per prekindergarten pupil payable for pupils served pursuant to such waiver by one one-hundred eightieth of the aid per prekindergarten pupil determined pursuant to paragraph a of subdivision ten [~~or subparagraph (i) of paragraph b of subdivision ten a~~] of this section for each day **or equivalent hour** less than one hundred eighty days **or the equivalent number of hours** that the summer program is in session.

16. The grant payable to a school district pursuant to this section in the current year shall be reduced by one one-hundred eightieth for each day less than one hundred eighty days that the universal prekindergarten classes of the district were actually in session, **or a district failing to comply with the equivalent number of hours of pupil instruction shall forfeit from its total state aid allocation an amount determined by applying a ratio of the number of hours the district was in noncompliance in relation to the required minimum equivalent number of hours of pupil instruction,** except that the commissioner may disregard such reduction for any deficiency that may be disregarded in computing total foundation aid pursuant to subdivision seven or eight of section thirty-six hundred four of this [~~chapter~~] **part** and in addition may disregard a reduction for any deficiency that is caused by a delay in the opening of public school classes due to extraordinarily adverse weather conditions or other cause cited in such subdivision seven of section thirty-six hundred four that results in cancellation of the prekindergarten program or of transportation to such program.

§ 11. Subdivisions 7 and 8 of section 3604 of the education law, subdivision 7 as amended by section 3 of part B of chapter 54 of the laws of 2016 and subdivision 8 as amended by chapter 260 of the laws of 2012, are amended and five new subdivisions 7-c, 7-d, 7-e, 7-f and 7-g are added to read as follows:

7. No district shall be entitled to any portion of such school moneys on such apportionment unless the report of the trustees or board of education for the preceding school year shall show that the public schools were actually in session in the district and taught by a qualified teacher or by successive qualified teachers or by qualified teachers for not less than one hundred eighty days **or the equivalent number of hours of pupil instruction**. The moneys payable to a school district pursuant to section thirty-six hundred nine-a of this [~~chapter~~] **part** in the current year shall be reduced by one one-hundred eightieth of the district's total foundation aid for each day less than one hundred eighty days that the schools of the district were actually in session, **or a district failing to comply with the equivalent number of hours of pupil instruction shall forfeit from its total state aid allocation an amount determined by applying a ratio of the number of hours the district was in noncompliance in relation to the required minimum equivalent number of hours of pupil instruction,** except that the commissioner may disregard such reduction, up to five days, **or the equivalent number of hours** in the apportionment of public money, if he finds that the schools of the district were not in session for one hundred eighty days **or the equivalent number of hours** because of extraordinarily adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, lack of electricity, natural gas leakage, unacceptable levels of chemical substances, a credible threat to student safety as reasonably determined by a lead school official**,** or the destruction of a school building either in whole or in part, and if, further, the commissioner finds that such district cannot make up such days **or equivalent hours** of instruction by using for the secondary grades all scheduled vacation days which occur prior to the first scheduled regents examination day in June, and for the elementary grades all scheduled vacation days which occur prior to the last scheduled regents examination day in June. For the purposes of this subdivision, "scheduled vacation days" shall mean days on which the schools of the district are not in session and for which no prohibition exists in subdivision eight of this section for them to be in session.

7-c. For the purposes of this section, "one hundred eighty days" means one hundred eighty days of instruction or the equivalent number of hours of pupil instruction per school year based on a different number of days of instruction approved by the school district governing board or charter school governing body.

7-d. The local school board, in its discretion, may authorize some or all of its schools to modify the number of instructional days per year after thorough review and public comment. Before authorizing some or all of its schools to modify the number of instructional days per year, the school board, shall within its review, include, but not be limited to, consideration of the following:

a. how the school or schools will maintain a quality education;

b. the reason for the request;

c. the educational benefit to pupils;

d. ways to negotiate the changes with the collective bargaining unit representing the employees affected by the changes;

e. input from employees affected by the changes but not represented by a collective bargaining agreement;

f. the impact of an alternative school week schedule on primary grade pupils; and

g. the impact of an alternative school week schedule on working parents who may be required to find child care services for their school age children due to the shortened school week.

7-e. After review, but not limited to the considerations set forth in subdivision seven-d of this section, a school board shall conduct at least one public hearing, to gather public input, and to provide at least thirty days notice to the public prior to such hearing. The school board may authorize some or all of its schools to modify the number of instructional days per year provided the total number of hours of instruction per year is no less than the minimum number of instructional hours per year established by the commissioner's regulations for that particular group of pupils. Subject to a policy developed and adopted by the board of any school district, the board may provide for a school term consisting of school hours.

7-f. A district failing to comply with the required minimum hours of pupil instruction per year as established by the commissioner's regulations, shall forfeit from its total state aid allocation an amount determined by applying a ratio of the number of hours the district was in noncompliance in relation to the required minimum number of hours as established by the commissioner. Not later than August first, the board of each district shall certify to the department the number of hours of pupil instruction in the previous school year. If the district did not provide at least the required minimum number of hours of pupil instruction as established by the commissioner, the deduction of state aid shall be made in the following fiscal year from the first payment of state school aid.

7-g. The commissioner shall promulgate regulations establishing the minimum number of hours of pupil instruction per year.

8. No school shall be in session on a Saturday or a legal holiday, except general election day, Washington's birthday and Lincoln's birthday, and except that driver education classes may be conducted on a Saturday. A deficiency not exceeding four days or the equivalent number of hours during any school year caused by teachers' attendance upon conferences held by superintendents of schools of city school districts or other school districts employing superintendents of schools shall be excused by the commissioner, notwithstanding any provision of law, rule or regulation to the contrary, a school district may elect to schedule such conference days or the equivalent number of hours in the last two weeks of August, subject to collective bargaining requirements pursuant to article fourteen of the civil service law, and such days or the equivalent number of hours shall be counted towards the required one hundred eighty days of session, provided however, that such scheduling shall not alter the obligation of the school district to provide transportation to students in non-public elementary and secondary schools or charter schools. The commissioner shall excuse a deficiency not exceeding four days or the equivalent number of hours during such school year caused by teachers' attendance upon conferences held by such superintendents, provided that at least two such conference days or the equivalent number of hours during such school year shall be dedicated to staff attendance upon conferences providing staff development relating to implementation of the new high learning standards and assessments, as adopted by the board of regents. Notwithstanding any other provision of law, rule or regulation to the contrary, school districts may elect to use one or more of such allowable conference days or the equivalent number of hours in units of not less than one hour each to provide staff development activities relating to implementation of the new high learn-

ing standards and assessments. A district making such election may provide such staff development during the regularly scheduled daily **or equivalent hourly** session and apply such units to satisfy a deficiency in the length of one or more daily **or equivalent hourly** sessions of instruction for pupils as specified in regulations of the commissioner. The commissioner shall assure that such conference days **or the equivalent number of hours** include appropriate school violence prevention and intervention training, and may require that up to one such conference day **or the equivalent number of hours** be dedicated for such purpose.

§ 12. Subdivision 2-a of section 3635 of the education law, as amended by chapter 424 of the laws of 2005, is amended to read as follows:

2-a. The superintendent of each city school district, in a city having a population in excess of one million, shall prepare a public school calendar and shall notify officials of nonpublic schools to which transportation has been requested not later than the first day of June in each year, of the days on which the public schools [~~will~~] **are scheduled to** be in session in the following school year. Such school district which provides transportation to nonpublic schools shall provide such transportation for the same number of days as the public schools are open but shall not provide transportation services for more than one hundred eighty days. Officials of each nonpublic school to which transportation is provided by a city school district of a city having a population in excess of one million may notify such district, not later than the first day of July of each school year, of a maximum of five days, exclusive of Saturdays, Sundays or legal holidays upon which public schools are required to be closed, on which the public schools are scheduled to be closed, except that in any year in which the first or last day of Passover and Easter Sunday are separated by more than seven days, such officials may notify the district of a maximum of ten days, but such school district will be required to provide for transportation to such nonpublic school provided that such five or ten additional days, whichever is applicable, are limited to the following: the Tuesday, Wednesday, Thursday and Friday after Labor Day, Rosh Hashanah, Yom Kippur, the week in which public schools are closed for spring recess, December twenty-fourth and the week between Christmas day and New Year's day, the Tuesday, Wednesday, Thursday and Friday after the observance of Washington's birthday, and, in the boroughs of Brooklyn and Queens only, Anniversary Day as designated in section twenty-five hundred eighty-six of this chapter.

§ 13. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.