STATE OF NEW YORK

2161

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to use of school facilities by not-for-profit and charitable organizations for after-school programs

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

Section 1. Subdivision 1 of section 414 of the education law is amended by adding a new paragraph (l) to read as follows:

(l) For bona fide after-school programs operated by a not-for-profit or charitable organization. Such programs shall present some form of educational instruction or academic material, or promote physical education, arts instruction, community service or other activities to promote youth development.

§ 2. Subdivision 2 of section 414 of the education law, as amended by chapter 513 of the laws of 2005, is amended to read as follows:

2. **(a)** The trustees or board of education shall determine the terms and conditions for such use which may include rental at least in an amount sufficient to cover all resulting expenses for the purposes of paragraphs (a), (b), (c), (d), (e), (g), (i), (j) and (k) of subdivision one of this section. Any such use, pursuant to paragraphs (a), (c), (d), (h) and (j) of subdivision one of this section, shall not allow the exclusion of any district child solely because said child is not attending a district school or not attending the district school which is sponsoring such use or on which grounds the use is to occur.

(b) For purposes of paragraph (1) of subdivision one of this section, the trustees or board of education may provide that either no fee or a minimal fee be imposed upon the not-for-profit or charitable organization, and shall, in no event, impose a fee greater than the actual expenses incurred through the rental of the space used by the not-for-profit or charitable organization. Actual expenses may include any addi-

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

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tional staff or contractor time, facilities maintenance activities, utilities charges and additional security measures incurred directly due to the presence of the program in the schoolhouse or on the grounds when not in use for school purposes and activities conducted by the program. Actual expenses shall not include any staff or contractor time, maintenance activities, utility costs or security measures that would have been incurred if the program had not been held. If more than one organization is holding an activity in the schoolhouse or on the grounds when not in use for school purposes at the same time, actual expenses shall be divided proportionately between such organizations and shall not exceed the total actual expenses incurred. The not-for-profit or charitable organization, upon request, shall be provided with documentation of the actual expenses incurred.

§ 3. Subdivision 27 of section 2590-h of the education law, as amended by chapter 345 of the laws of 2009, is amended to read as follows:

27. Promulgate regulations, in conjunction with each community superintendent, establishing a plan for providing access to school facilities in each community school district, when not in use for school purposes, in accordance with the provisions of section four hundred fourteen of this chapter. Such plan shall set forth a reasonable system of fees not to exceed the actual costs and specify that no part of any fee shall directly or indirectly benefit or be deposited into an account which inures to the benefit of the custodians or custodial engineers. Actual costs may include any additional staff or contractor time, facilities maintenance activities, utilities charges and additional security measures incurred directly due to the presence of an organization in school facilities when not in use for school purposes and the activities conducted by that organization. Actual costs shall not include any staff or contractor time, maintenance activities, utility costs or security measures that would have been incurred if those activities had not been held. If more than one organization is holding an activity in the school facilities when not in use for school purposes at the same time, actual costs shall be divided proportionately between such organizations and shall not exceed the total actual costs incurred. The plan shall provide that the organization shall, upon request, be provided with documentation of the actual costs incurred. Notwithstanding any other provision of law, rule or regulation to the contrary, such plan may provide that either no fee or a minimal fee shall be charged for the use of school facilities by a not-for-profit or charitable organization that presents some form of educational instruction or academic material, or provides physical education, arts instruction, community service or other activities to promote youth development.

§ 4. Subdivision 27 of section 2590-h of the education law, as amended by chapter 720 of the laws of 1996, is amended to read as follows:

27. Develop, in conjunction with each community superintendent, a plan for providing access to school facilities in each community school district, when not in use for school purposes, in accordance with the provisions of section four hundred fourteen of this chapter. Such plan shall set forth a reasonable system of fees not to exceed the actual costs and specify that no part of any fee shall directly or indirectly benefit or be deposited into an account which inures to the benefit of the custodians or custodial engineers. Actual costs may include any additional staff or contractor time, facilities maintenance activities, utilities charges and additional security measures incurred directly due to the presence of an organization in school facilities when not in use for school purposes and the activities conducted by that organization.

Actual costs shall not include any staff or contractor time, maintenance activities, utility costs or security measures that would have been incurred if those activities had not been held. If more than one organization is holding an activity in the school facilities when not in use for school purposes at the same time, actual costs shall be divided proportionately between such organizations and shall not exceed the total actual costs incurred. The plan shall provide that the organization shall, upon request, be provided with documentation of the actual costs incurred. Notwithstanding any other provision of law, rule or regulation to the contrary, such plan may provide that either no fee or a minimal fee shall be charged for the use of school facilities by a not-for-profit or charitable organization. The use of such facilities shall only be for bona fide after-school programs that present some form of educational instruction or academic material, or promote physical education.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to subdivision 27 of section 2590-h of the education law, made by section three of this act, shall be subject to the expiration and reversion of such section, pursuant to subdivision 12 of section 17 of chapter 345 of the laws of 2009, as amended, when upon such date the provisions of section four of this act shall take effect.