



JOS... RIVERA  
78<sup>th</sup> Assembly District

Legislative Office Bldg., Rm. 536  
Albany, NY 12248  
(518) 455-5414  
Fax: (518) 455-5322

2488 Grand Concourse, Rm. 416  
Bronx, NY 10458  
(718) 933-2204  
Fax: (718) 933-2535

## THE ASSEMBLY STATE OF NEW YORK ALBANY

CHAIRMAN  
Task Force on Food, Farm  
and Nutrition Policy

COMMITTEES  
Aging  
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### **NYS FARM-TO-SCHOOL LAW LEGISLATIVE HISTORY AND BACKGROUND**

For more than 25 years the NYS Assembly Task Force on Food, Farm and Nutrition Policy worked to support New York agriculture through increased consumption of locally-grown and produced foods. Although the Chairs of the Task Force have mostly been from NYC or downstate urban and suburban Districts, currently without any farms, they understood the importance of thriving agriculture to other regions of the State; the overall economy; urban and suburban consumers who cherish fresh, quality foods; and, our State's open space and watersheds.

In 2002, the Task Force developed and sponsored the Farm-to-School Law which was supported by agricultural advocacy organizations, school foodservice directors, nutritionists, agricultural economic specialists, chefs and environmentalists. Over the years these groups have sought to expand the use of New York farm products in school meal programs and other government institutions, as well as the private sector such as supermarkets, restaurants and food processing.

The Farm-to-School program does not operate in a vacuum. It was built on the following Task Force sponsored laws: the Farm Direct Marketing Program was created in the State Department of Agriculture and Markets (DAM) in 1979 and 1981; the State Finance law providing incentives for the Office of General Services and other State agencies to purchase New York farm products was passed in 1984; and, the General Municipal Law (GML) was amended in 1980 and 1986 to allow schools to buy a specified amount of locally-grown foods direct from farmers without bidding requirements. Several years ago the U.S. Department of Agriculture (USDA) established its Small Farms/School Meals Initiative as an "important step toward improving both the economic stability of small farmers and the long-term health of children in our school systems." Cornell University, as part of a national consortium, received a federal grant to develop or expand farm-to-school pilot projects in New York.

Unfortunately, even with these laws and programs in place prior to 2002 there had not been much local food buying by State agencies or schools, and New Yorkers had become more disconnected from their food supply. To counter that, in 1996, the Task Force along with many food and nutrition advocates began sponsoring New York Harvest for New York Kids Week, and information about farm, food and education organizations was mailed annually to 1,400 school foodservice directors around the State. These packets were to: educate and inspire school children and their families to eat more New York-grown foods as part of a program to improve their diets; provide linkages between schools and local agriculture, both in the classroom and

and support for Farm-to-School activities as well as the ultimate passage of the law. When the Farm-to-School legislation was developed, the Harvest Week concept was incorporated and responsibility was given to DAM and the State Education Department (SED).

A group of foodservice directors and other advocates working toward the goal of increasing links between farms and schools came to the Legislature because the schools found it difficult to identify a sufficient number of farmers or sellers of New York farm products from whom they could buy. Identifying farmers was a requirement of SED regulations under the seldom-used State GML law allowing non-bid purchases of local farm products. School foodservice directors, under pressure to keep costs down, keep student customers happy, and complete reams of paperwork, do not have the time or ability to do a lot of outreach to the farm community. Many directors were unaware of what types and quantities of New York products are available.

The same types of problems affected farmers. Farms can be extremely difficult businesses to operate and they do not have much time for marketing or selling. Even those who directly market their products are not familiar with the special needs of schools.

The legislative response to these concerns was to get DAM and SED working together to help both the schools and farmers. Schools needed to better understand how they could benefit from New York foods, what products they could get, and from whom they could get them. Farmers needed to recognize the potential market, what schools want, and how the foods must be packaged and delivered. The school market is a special one and deserves special attention. School meal programs are publicly funded and, therefore, have a role in supporting public needs such as helping local economies and local agriculture whenever possible. The Farm-to-School program, however, would not only benefit farmers. Fresh, nutritious local foods benefit children and their families as demonstrated by the WIC and Senior Farmers Market Nutrition Program (FMNP) which improves the health of farmers' pocketbooks as well as participating families and seniors.

Since the passage of the 2002 Farm-to-School Law, DAM and SED, school foodservice directors, farmers, educators and advocates have been working diligently to promote the goals of Farm-to-School but many felt there were still procurement barriers. Although the law allowing for direct non-bid purchases of local farm products predated the Farm-to-School Law by over 15 years, schools had not been taking advantage of this exemption because of lack of awareness, confusion and a perception that direct purchases from farmers would be difficult under the existing law and regulations. In 2004, Task Force legislation was introduced and passed to amend the General Municipal Law (GML) to reflect input from school districts, farm groups, academia and food businesses who had been working to implement the Farm-to-School program. The amendments did not change the basic purpose of the existing law and the new provisions still provided protection for farmers and taxpayers with controls to prevent favoritism or overspending by school districts. However, the goal of the changes was to make it easier for interested schools and farmers to do business.

Page three

The reasons changes were made to the old law are described below. They mainly affected how schools needed to reach out to farmers, provide evenhanded opportunities for sales, and reach prices that are fair

to both farmers and taxpayers.

1. The old SED regulations required that schools, at a minimum, notify farmers in their districts that they intend to purchase using the provisions of GML Subdivision 9 (see below). The first change in the law specified that the farmers involved would be from New York State instead of using the term “local”. The goal was to not only increase purchases from New York farmers but also to make it clear that farmers need not be limited to only the local school district, county or region, but could be from the entire State.
2. The second change allowed purchases from associations of farmers with more than 10 members which was the previous standard. The reason for this was that the volume requirements for larger schools might be difficult to meet. If a school cannot find an individual farm or 10-member association of farms able or willing to sell to them what they need, they should be able to apply to SED to get permission to buy from a larger association of NYS farmers.
3. There had been a \$.15 per pupil annual cap on direct farm purchases and that was raised to \$.20 because it had not been increased in nearly 20 years. It would be very unlikely that any school district would meet their cap, especially large districts who would likely find it difficult to buy from farmers who could meet their volume requirements, but this increase allows for future growth.
4. The amended law requires DAM input into the new SED regulations to reflect the Farm-to-School program. One way the agencies could work together is by sharing information about schools willing to buy and farmers willing to sell. This information could be available through SED and DAM web-sites and/or publications, or other means that allow New York farmers and schools to find each other across the State.
5. Prior to the 2004 amendments schools were required to use a USDA wholesale pricing system to determine a price threshold for local farm products. The amended law requires schools get price quotes for local farm products before they buy them and or use other mechanisms for getting comparative prices. The comparison prices can now be based on NYS farm products so that schools and farmers are not restricted by comparing artificially low wholesale prices of imported products. For example, schools should be able to buy New York-grown Red Delicious apples at similar New York prices not at New Zealand or Washington State prices.
6. The amended law requires the development of regulations for situations when more than one farmer offers to sell the same product to schools. The new language requires schools to provide a fair opportunity to all interested farmers and choose the successful seller or sellers based on the usual criteria they use in their traditional purchases (i.e., low price, quality, reliability, delivery, etc.). Prior to this there were regulations requiring schools to proportionally divide up purchases among competing bidders even if one bid was lower.
7. The last change directed SED to eliminate the need for any more paperwork and recordkeeping than is necessary and normally required for purchasing, unless there is some defensible reason.

For example, if food purchase records are normally kept for three years then that should be the length of time they are kept for direct-farm purchases. The old regulations required six years of record retention only for direct purchases.

**Current Status:** Part of the above changes to procurement, and perhaps, the entire GML Subdivision 9 law, have come under question because of federal Farm Bill language and USDA regulations which prohibit geographic purchasing preferences.

The Farm-to-School Laws in New York were passed because elected officials recognized the significant benefits to our State from increased purchases of local foods. Profitable farms not only benefit the farmer and community but maintain open space for their neighbors and tourists to enjoy and help protect our natural resources, for example the New York City watershed. Increased use of local fruit and vegetables could also help address concerns about poor nutrition in school. The legislators who sponsored these laws, including over 20 NYC Assemblymember sponsors of the Farm-to-School Law, believed that New York State should make every possible effort to maximize the use of government funding for school meals to purchase nutritious, locally produced foods to benefit the health of students, our local economies and environment and provide new opportunities for Upstate and Downstate, city, suburban and rural residents to support each other. These laws are by no means an answer to all of the barriers faced by farmers and foodservice directors, but were designed to encourage more purchasing and respond to concerns about laws, regulations and practices that may unnecessarily create roadblocks.

## **New York Farm-to-School Related Laws**

(Includes the opening section of law and the relevant paragraphs or subdivisions)

### **Farm-to-School Law**

*Agriculture and Markets Law (2002)*

Section 16. General powers and duties of department. The department through the commissioner shall have power to:

5-b. Establish, in cooperation with the commissioner of education, a farm-to-school program to facilitate and promote the purchase of New York farm products by schools, universities and other educational institutions under the jurisdiction of the education department.

The department shall solicit information from the education department regarding school districts and other educational institutions interested in purchasing New York farm products, including but not limited to, the type and amount of such products schools wish to purchase and the name of the appropriate contact person from the interested school district. The department shall make this information readily available to interested New York farmers, farm organizations and businesses that market New York farm products. The department shall provide information to the education department and interested school districts and other educational institutions about the availability of New York farm products, including but not limited to, the types and amount of products, and the names and contact information of farmers, farm organizations and businesses marketing such products.

The commissioner shall report to the legislature on the need for changes in law to facilitate the purchases of such products by schools and educational institutions.

The department shall also coordinate with the education department, and school food service, education, health and nutrition, farm, and other interested organizations in establishing a promotional event, to be known as New York Harvest For New York Kids Week, in early October each year, that will promote New York agriculture and foods to children through school meal programs and the classroom, at farms and farmers' markets and other locations in the community.

*Education Law (2002)*

Section 305. General powers and duties. The commissioner of education is hereby charged with the following powers and duties:

31. The commissioner shall cooperate with the commissioner of agriculture and markets in establishing a farm-to-school program and coordinating New York Harvest For New York Kids Week as described in subdivision five-b of section sixteen of the agriculture and markets law. The commissioner's responsibilities shall include, but not be limited to, compiling information for the department of agriculture and markets from school districts and other educational institutions under the department's jurisdiction interested in purchasing New York farm products and disseminating to those districts and institutions information from the department of agriculture and markets about the availability of New York farm products, and contact information for farmers and other businesses marketing such products. The commissioner shall report to the legislature about the need for changes in law to facilitate the purchase of such products by schools and other institutions.

**Law Permitting Direct Purchases by Schools of Local Farm Products Without Competitive Bids**  
*General Municipal Law* Section 103. Advertising for bids; letting of contracts; criminal conspiracies.  
(2004)

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than twenty thousand dollars and all purchase contracts involving an expenditure of more than ten thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district, to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section.

9. Notwithstanding the foregoing provisions of this section to the contrary, a board of education may, on behalf of its school district, separately purchase eggs, livestock, fish, dairy products (excluding milk), juice, grains, and species of fresh fruit and vegetables directly from New York State producers or growers, or associations of producers and growers, provided that:

(a) such association of producers or growers is comprised of ten or fewer owners of farms who also operate such farms and who have combined to fill the order of a school district as herein authorized, provided however, that a school district may apply to the commissioner of education for permission to purchase from an association of more than ten owners of such farms when no other producers or growers have offered to sell to such school;

(b) the amount that may be expended by a school district in any fiscal year for such purchases shall not exceed an amount equal to twenty cents multiplied by the total number of days in the school year multiplied by the total enrollment of such school district;

(c) all such purchases shall be administered pursuant to regulations promulgated by the commissioner of education.

Such regulations shall: be developed in consultation with the commissioner of agriculture and markets to accommodate and promote the provisions of the farm-to-school program established pursuant to subdivision five-b of the section sixteen of the agriculture and markets law and subdivision thirty-one of section three hundred five of the education law as added by chapter two of the laws of two thousand two; ensure that the prices paid by a district for any items so purchased do not exceed the prices of comparable local farm products that are available to districts through their usual purchases of such items; ensure that all producers and growers who desire to sell to school districts can readily access information in accordance with the farm-to-school law; include provisions for situations when more than one producer or grower seeks to sell the same product to a district to ensure that all such producers or growers have an equitable opportunity to do so in a manner similar to the usual purchasing practices of such districts; develop guidelines for approval of purchases of items from associations of more than ten growers and producers; and, to the maximum extent practicable, minimize additional paperwork, recordkeeping and other similar requirements on both growers and producers and school districts.