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SENATE BILL 595

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Cynthia Nava

AN ACT

**RELATING TO HEALTH; REQUIRING A PERMIT FROM THE DEPARTMENT OF
HEALTH TO SELL CERTAIN FOOD OR DRINK IN PUBLIC SCHOOLS;
CREATING A FUND; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. PUBLIC SCHOOL FOOD AND DRINK VENDOR PERMIT
REQUIRED--STUDENT WELLNESS FUND CREATED.--**

**A. Except as provided in Subsection D of this
section, a person shall not offer food or drink for sale in a
public school without a valid public school food and drink
vendor permit for that school. A school district or public
school shall not enter into any agreement or otherwise allow a
person to offer food or drink for sale in a public school
unless that person has a valid public school food and drink
vendor permit for that school.**

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1 B. Public school food and drink vendor permits
2 shall be issued by the department of health and shall be valid
3 from the date issued through the following June 30. The
4 department shall impose the following fees for the permits:

5 (1) seven hundred fifty dollars (\$750) for a
6 permit to sell food or drink in a public school facility that
7 includes a high school;

8 (2) five hundred dollars (\$500) for a permit
9 to sell food or drink in a public school facility that does not
10 include a high school but includes a middle school; and

11 (3) two hundred fifty dollars (\$250) for a
12 permit to sell food or drink in a public school facility that
13 contains only an elementary school.

14 C. The requirement for a public school food and
15 drink vendor permit applies to:

16 (1) each person who owns or leases one or more
17 vending machines that are placed in a public school for the
18 purpose of dispensing food or drink; and

19 (2) unless exempted pursuant to Subsection D
20 of this section, each person who operates a location in a
21 public school, other than a vending machine, from which food or
22 drink is sold.

23 D. The requirement for a public school food and
24 drink vendor permit does not apply to:

25 (1) a person selling food or beverage as part

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1 of a school meal program that meets guidelines established by
2 the United States department of agriculture; or

3 (2) a nonprofit organization temporarily
4 selling food or drink from a location other than a vending
5 machine.

6 E. Receipts from the issuance of public school food
7 and drink vendor permits shall be deposited by the department
8 of health into the "student wellness fund", hereby created in
9 the state treasury. Earnings from investment of the student
10 wellness fund shall be credited to the fund. Money in the
11 student wellness fund is subject to appropriation by the
12 legislature for school-based health centers and child nutrition
13 and wellness education activities. Any unexpended or
14 unencumbered balance remaining at the end of a fiscal year
15 shall not revert. Disbursements from the student wellness fund
16 shall be made upon warrants drawn by the secretary of finance
17 and administration pursuant to vouchers signed by the secretary
18 of health.

19 F. The secretary of health and the secretary of
20 public education shall jointly promulgate such rules as are
21 necessary to carry out the provisions of this section,
22 including procedures for an application process for schools to
23 apply for grants from the student wellness fund.

24 Section 2. TEMPORARY PROVISION--EXISTING VENDING MACHINE
25 CONTRACTS. --

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1 A. A person who owns or leases one or more vending
2 machines that are in a public school on July 1, 2005, and
3 otherwise subject to the requirement for a public school food
4 and drink vendor permit pursuant to Section 1 of this act, may,
5 subject to the provisions of Subsection B of this section,
6 continue dispensing food or drink without a permit if:

7 (1) each vending machine is in the public
8 school pursuant to a contract entered into prior to January 1,
9 2005;

10 (2) the term of the contract extends beyond
11 July 1, 2005; and

12 (3) the contract does not allow the vending
13 machine to be removed from the public school prior to July 1,
14 2005.

15 B. A person meeting the qualifications of
16 Subsection A of this section who does not increase the number
17 of vending machines in the school is exempt from the
18 requirement for a public school food and drink vendor permit
19 until the date that the contract terminates or any earlier
20 date, specified in the contract, that allows the vending
21 machine to be removed from the school or provides for contract
22 renegotiation.

23 Section 3. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 2005.