

SENATE, No. 586

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Senator BENNETT

1 AN ACT concerning the approval of lease purchase agreements,
2 amending N.J.S.18A:20-4.2 and supplementing chapter 20 of Title
3 18A of the New Jersey Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. N.J.S.18A:20-4.2 is amended to read as follows:
9 18A:20-4.2. The board of education of any school district may, for
10 school purposes:

11 (a) Purchase, take and condemn lands within the district and lands
12 not exceeding 50 acres in extent without the district but situate in a
13 municipality or municipalities adjoining the district, but no more than
14 25 acres may be so acquired in any one such municipality, without the
15 district, except with the consent, by ordinance, of such municipality;

16 (b) Grade, drain and landscape lands owned or to be acquired by
17 it and improve the same in like manner;

18 (c) Erect, lease for a term not exceeding 50 years, enlarge,
19 improve, repair or furnish buildings;

20 (d) Borrow money therefor, with or without mortgage; in the case
21 of a type II district without a board of school estimate, when
22 authorized so to do at any annual or special school election; and in the
23 case of a type II district having a board of school estimate, when the
24 amount necessary to be provided therefor shall have been fixed,
25 determined and certified by the board of school estimate; and in the
26 case of a type I district, when an ordinance authorizing expenditures
27 for such purpose is finally adopted by the governing body of a
28 municipality comprised within the district; provided, however, that no
29 such election shall be held nor shall any such resolution of a school
30 estimate board or ordinance of a municipal governing body be
31 introduced to authorize any lease of any building for a term exceeding
32 one year, until the proposed terms of such lease have been reviewed
33 and approved by the Commissioner of Education and the Local
34 Finance Board in the Department of Community Affairs;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (e) Construct, purchase, lease or otherwise acquire a building with
2 the federal government, the State, a political subdivision thereof or any
3 other individual or entity properly authorized to do business in the
4 State; provided that: (1) the noneducational uses of the building are
5 compatible with the establishment and operation of a school, as
6 determined by the Commissioner of Education; (2) the portion of the
7 building to be used as a school meets regulations of the Department of
8 Education; (3) the board of education has complied with the
9 provisions of law and regulations relating to the selection and approval
10 of sites; and (4) in the case of a lease, that any lease in excess of five
11 years shall be approved by the Commissioner of Education and the
12 Local Finance Board in the Department of Community Affairs;

13 (f) Acquire by lease purchase agreement a site and school building;
14 provided that the site and building meet guidelines and regulations of
15 the Department of Education and provided that for any lease purchase
16 agreement in excess of five years: (1) the lease purchase agreement
17 [shall be] is approved by the Commissioner of Education as in the best
18 interest of the school district after determining that the relationship of
19 the proposed lease purchase project to the district's goals and
20 objectives established pursuant to P.L.1975, c.212 (C.18A:7A-1 et
21 seq.) has clearly been established, present educational facilities are less
22 than 80 percent adequate, the new educational facilities to be acquired
23 will be fully utilized within 10 years, and under existing statutes there
24 is no more economical alternative method of providing the new
25 educational facilities; and [provided that for any lease purchase
26 agreement in excess of five years] (2) the Local Finance Board in the
27 Department of Community Affairs [shall determine] determines within
28 30 days that the cost and the financial terms and conditions of the
29 agreement are reasonable, and the amounts to be expended will not
30 materially impair the credit of any municipality comprised within the
31 district or substantially reduce its ability, during the ensuing 10 years,
32 to pay punctually capital lease obligations and the principal and
33 interest of its debts, or supply essential public improvements and
34 services. Prior to entering into a lease purchase agreement in excess
35 of five years, the board of education shall demonstrate to the
36 Commissioner of Education that it has unsuccessfully attempted to
37 obtain voter approval of the proposed capital project by submission of
38 the question of the capital project and the method of financing to the
39 voters at a regular or special school election. As used herein, a "lease
40 purchase agreement" refers to any agreement which gives the board of
41 education as lessee the option of purchasing the leased premises
42 [during or upon termination of the lease] at any time during the lease
43 period without penalty, with credit toward the purchase price of all [or
44 part of] rental payments which have been made by the board of
45 education in accordance with the lease. As part of such a transaction
46 approved by the Commissioner of Education, the board of education

1 may transfer or lease land or rights in land, including any building
2 thereon, after publicly advertising for proposals for the transfer for
3 nominal or fair market value, to the party selected by the board of
4 education, by negotiation or otherwise, after determining that the
5 proposal is in the best interest of the taxpayers of the district, to
6 construct or to improve and to lease or to own or to have ownership
7 interests in the site and the school building to be leased pursuant to
8 such lease purchase agreement, notwithstanding the provisions of any
9 other law to the contrary. The land and any building thereon which is
10 described in a lease purchase agreement entered into pursuant to this
11 amendatory act, shall be deemed to be and treated as property of the
12 school district, used for school purposes pursuant to R.S.54:4-3.3,
13 and shall not be considered or treated as property leased to another
14 whose property is not exempt, and shall not be assessed as real estate
15 pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any lease
16 purchase agreement authorized by this section shall contain a provision
17 making payments thereunder subject to the annual appropriation of
18 funds sufficient to meet the required payments or shall contain an
19 annual cancellation clause, and no rent shall be prepaid or capitalized.
20 A lease purchase agreement shall require all construction contracts let
21 by public school districts or let by developers or owners of property
22 used for school purposes to be competitively bid, pursuant to
23 P.L.1977, c.114 (N.J.S.18A:18A-1 et seq.);

24 (g) Establish with an individual or entity authorized to do business
25 in the State a tenancy in common, condominium, horizontal property
26 regime or other joint ownership arrangement on a site contributed by
27 the school district; provided the following conditions are met:

28 (1) The individual or entity agrees to construct on the site, or
29 provide for the construction thereon, a building or buildings for use of
30 the board of education separately or jointly with the individual or
31 entity, which shall be subject to the joint ownership arrangement;

32 (2) The provision of the building shall be at no cost or at a reduced
33 cost to the board of education;

34 (3) The school district shall not make any payment for use of the
35 building other than its pro rata share of costs of maintenance and
36 improvements;

37 (4) The noneducational uses of the building are compatible with the
38 establishment and operation of a school, as determined by the
39 Commissioner of Education;

40 (5) The portion of the building to be used as a school, and the site,
41 meet regulations of the Department of Education; and

42 (6) Any such agreement shall be approved by the Commissioner of
43 Education and the Local Finance Board in the Department of
44 Community Affairs.

45 (cf: P.L.1991, c.477, s.1)

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1 2. (New section) Prior to voting on a resolution to enter into a
2 lease purchase agreement pursuant to subsection (f) of
3 N.J.S.18A:20-4.2, a board of education shall hold a public hearing to
4 discuss and to receive public comment on lease purchase agreements
5 and other means of financing school facilities. Not sooner than 14 days
6 after the public hearing, the board may adopt, by a majority vote, a
7 resolution proposing a lease purchase agreement. Following the
8 adoption of the resolution, the board shall hold a second public hearing
9 at which the lease purchase proposal shall be explained and the public
10 shall be afforded the opportunity to ask questions and comment. Not
11 sooner than 14 days after the second public hearing the board may, by
12 an affirmative vote of two-thirds of the members of the board, adopt
13 a resolution authorizing the chief school administrator and the board
14 secretary or business administrator to proceed with the lease purchase
15 agreement as provided in subsection (f) of N.J.S.18A:20-4.2.

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17 3. This act shall take effect immediately.

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STATEMENT

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22 This bill establishes additional procedures and criteria for the
23 approval of a lease purchase agreement for public school facilities.
24 Under the bill, before the approval of a lease purchase agreement in
25 excess of five years: (1) the Commissioner of Education would need
26 to determine that present educational facilities are less than 80 percent
27 adequate, the new educational facilities to be acquired will be fully
28 utilized within 10 years, and under existing statutes there is no more
29 economical alternative method of providing the new educational
30 facilities; and (2) the Local Finance Board in the Department of
31 Community Affairs would need to determine that the amounts to be
32 expended will not materially impair the credit of any municipality
33 comprised within the district or substantially reduce its ability, during
34 the ensuing 10 years, to pay punctually capital lease obligations and
35 the principal and interest of its debts, or supply essential public
36 improvements and services. These criteria presently apply to the
37 review process conducted in connection with the issuance of bonds for
38 educational facilities. In addition, the board of education would be
39 required to demonstrate to the commissioner that it has unsuccessfully
40 attempted to obtain voter approval of the proposed capital project by
41 submission of the question of the capital project and the method of
42 financing to the voters at a regular or special school election.

43 The bill permits a board of education to purchase the leased
44 premises at any time during the lease period without penalty and
45 prohibits prepayment or capitalization of rent.

46 A final requirement is for a board of education to hold two public

1 hearings on the proposed lease purchase agreement and to proceed
2 with the agreement only upon an affirmative vote of two-thirds of the
3 members of the board.

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8 Establishes additional requirements for the approval of board of
9 education lease purchase agreements.