

## CHAPTER 146

AN ACT concerning certain lease purchase agreements and leasing arrangements entered into by public school districts and amending N.J.S.18A:20-4.2 and N.J.S.18A:18A-42.

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

1. N.J.S.18A:20-4.2 is amended to read as follows:

Powers of boards concerning real property.

18A:20-4.2. The board of education of any school district may, for school purposes:

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

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

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

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

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

(f) Acquire, with the approval of either the commissioner, or voters or board of school estimate, as applicable, improvements or additions to school buildings through lease purchase agreements not in excess of five years. The agreement shall be recorded as an expenditure of the General Fund of the district. The commissioner shall approve the agreement only upon a demonstration by the district that the lease purchase payments and any operating expenses related to the agreement can be included within the district's net budget spending growth limitation and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs and extracurricular activities. If the commissioner cannot approve the agreement, the board of education may frame a separate question to authorize the lease purchase agreement and obtain voter or board of school estimate approval to enter into the agreement. A district may, without separate prior approval of the commissioner, also acquire equipment through a lease purchase agreement not in excess of five years or in the case of a lease purchase agreement entered into for the acquisition of school buses not in excess of 10 years, provided that the amount of the first installment and each subsequent installment for the lease purchase payments is included in the budget that is advertised and submitted for approval to the voters of the district or the board of school estimate, as appropriate. As used herein, a "lease purchase agreement" refers to any agreement which gives the board of education as lessee the option of purchasing the leased equipment or improvements or additions to existing school buildings during or upon termination of the lease, with credit toward the purchase price of all or part of rental payments which have

been made by the board of education in accordance with the lease. As part of such a transaction, the board of education may transfer or lease land or rights in land, including any building thereon, after publicly advertising for proposals for the transfer for nominal or fair market value, to the party selected by the board of education, by negotiation or otherwise, after determining that the proposal is in the best interest of the taxpayers of the district, to construct or to improve and to lease or to own or to have ownership interests in the site and the school building to be leased pursuant to such lease purchase agreement, notwithstanding the provisions of any other law to the contrary. The land and any building thereon which is described in a lease purchase agreement entered into pursuant to this amendatory act, shall be deemed to be and treated as property of the school district, used for school purposes pursuant to R.S.54:4-3.3, and shall not be considered or treated as property leased to another whose property is not exempt, and shall not be assessed as real estate pursuant to section 1 of P.L.1949, c.177 (C.54:4-2.3). Any lease purchase agreement authorized by this section shall contain a provision making payments thereunder subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause and shall require all construction contracts let by public school districts or let by developers or owners of property used for school purposes to be competitively bid, pursuant to N.J.S.18A:18A-1 et seq.;

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

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

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

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

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

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

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

(h) Acquire through sale and lease-back textbooks and non-consumable instructional materials provided that the sale price and principal amount of the lease-back do not exceed the fair market value of the textbooks and instructional materials and that the interest rate applied in the lease-back is consistent with prevailing market rates or is less.

2. N.J.S.18A:18A-42 is amended to read as follows:

Multiyear contracts.

18A:18A-42. All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.18A:18A-5 shall be awarded for a period not to exceed 12 consecutive months. Any board of education may award a contract for longer periods of time as follows:

a. Supplying of:

(1) Fuel for heating purposes, for any term not exceeding in the aggregate, three years;

(2) Fuel or oil for use of automobiles, autobuses, motor vehicles or equipment, for any term not exceeding in the aggregate, three years;

(3) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam; or

- b. Plowing and removal of snow and ice, for any term not exceeding in the aggregate, three years; or
- c. Collection and disposal of garbage and refuse, for any term not exceeding in the aggregate, three years; or
- d. Data processing service, for any term of not more than seven years; or
- e. Insurance, including the purchase of insurance coverages, insurance consultant or administrative services, and including participation in a joint self-insurance fund, risk management program or related services provided by a school board insurance group, or participation in an insurance fund established by a county pursuant to N.J.S.40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than three years; or
- f. Leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind and textbooks and non-consumable instructional materials, for any term not exceeding in the aggregate, five years; except that contracts for the leasing of school buses may be awarded for any term not exceeding in the aggregate ten years. Contracts awarded pursuant to this subsection shall be awarded only subject to and in accordance with rules and regulations promulgated by the State Board of Education; or
- g. Supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services, for a term not exceeding five years; or
- h. (Deleted by amendment, P.L.1999, c.440.)
- i. Driver education instruction conducted by private, licensed driver education schools, for any term not exceeding in the aggregate, three years;
- j. Provision or performance of goods or services for the purpose of conserving energy in the buildings owned by any local board of education, the entire price of which shall be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; except that these contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy costs;
- k. Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;
- l. Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;
- m. Food supplies and food services for any term of not more than three years;
- n. Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities or other contracting units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to exceed the term of that contract.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. the contract shall be awarded by resolution of the board of education upon a finding by the board of education that the services are being performed in an effective and efficient manner; b. no such contract shall be extended so that it runs for more than a total of five consecutive years; c. any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. the terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section 18A:18A-42, including any two-year or one-year extensions, except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a school board insurance group, participation

in an insurance fund established by a county pursuant to N.J.S.40A:10-6 or contracts for thermal energy authorized pursuant to subsection a. above, and contracts for the provision or performance of goods or services to promote energy conservation authorized pursuant to subsection j. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause. All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., except that a contract may be extended by mutual agreement of the parties to the contract when a board of education has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

3. This act shall take effect immediately.

Approved July 10, 2001.