

CHAPTER 22A
SCHOOL FACILITY LEASE PURCHASE
AGREEMENTS

Authority

N.J.S.A. 18A:4-15 and 18A:20-4.2(f).

Source and Effective Date

R.1993 d.544, effective October 8, 1993.
See: 25 N.J.R. 3588(a), 25 N.J.R. 4901(c).

Chapter Expiration Date

Pursuant to Executive Order No. 22(1994), Chapter 22A, School Facility Lease Purchase Agreements, expires on April 8, 2000. See: 26 N.J.R. 3783(a) and 3942(a).

Chapter Historical Note

Chapter 22A, originally Facilities for the Physically Handicapped in Public School Buildings, was adopted as R.1976 d.250, effective August 6, 1976. See: 8 N.J.R. 320(a), 8 N.J.R. 415(b). That chapter was repealed by R.1979 d.139, effective July 1, 1979. See: 11 N.J.R. 9(a), 11 N.J.R. 223(d).

Chapter 22A, School Facility Lease Purchase Agreements, became effective December 19, 1988 as R.1988 d.590. See: 20 N.J.R. 2127(a), 20 N.J.R. 3127(b).

Pursuant to Executive Order No. 66(1978), Chapter 22A was re-adopted as R.1993 d.544. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. APPROVAL OF LEASE PURCHASE AGREEMENTS

6:22A-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Defeasance” means the process by which a district board of education completes an early buy out of a lease purchase agreement by obtaining the approval of the voters or board of school estimate to issue general obligation bonds to acquire ownership of the property prior to the expiration of the agreement.

“Effective interest cost” means the semiannual discount rate which equates future payments relating to the bonds, including the principal, interest and associated expenses to the net issue proceeds.

“Net issue proceeds” means the par amount of the bonds plus accrued interest and original issue premium, less any original issue discount, underwriting spread, costs of issuance, insurance premium and letter of credit fees.

“Net present value cost savings” means the current value of a future payment or series of payments discounted at the effective interest cost.

“Percentage of net present value cost savings” means the total net present value cost savings divided by the principal amount of the prepaid certificates of participation.

“Present value” means the current value of a future payment, or series of payments discounted at an appropriate discount rate.

“Refinance” means the process by which a district board of education sells new certificates of participation at lower interest rates to refund all or a portion of the existing certificates of participation, thereby lowering the annual rental payments under the lease purchase agreement.

“School building” means any educational facility or education support facilities necessary for a local district to achieve its goals and objectives pursuant to Chapter 212, Laws of 1975.

Amended by R.1993 d.544, effective November 1, 1993.
See: 25 N.J.R. 3588(a), 25 N.J.R. 4901(c).

6:22A-1.2 Approval procedures for an original lease purchase agreement

(a) A district board of education planning to acquire a site and to construct a school building and/or to make additions, alterations, renovations and improvements to existing buildings or to acquire a site and building by lease purchase agreement shall comply with the following:

1. The district board of education shall have the site approved by the Bureau of Facility Planning Services in accordance with N.J.A.C. 6:22-1.2.

2. The district board of education shall have the educational specifications, schematic plans, preliminary plans, and final plans for a new building and/or for additions, alterations, renovations and improvements to existing buildings approved by the Bureau of Facility Planning Services in accordance with N.J.A.C. 6:22 and the State Uniform Construction Code prior to any party obtaining a construction permit.

3. The district board of education shall have the educational specifications and schematic plans approved by

the Bureau of Facility Planning Services prior to obtaining the Commissioner's approval of a lease purchase agreement in excess of five years.

4. The district board of education shall adopt a resolution on the projected maximum funding level.

(b) A district board of education planning to transfer or lease land or rights or interests therein, including any building thereon to any party as a part of a lease purchase transaction involving a lease purchase agreement in excess of five years, shall have such transfer or lease to a third party documented by a ground lease agreement, which shall be submitted to the Commissioner for approval.

(c) A district board of education may include the cost of related equipment and/or furniture in the overall project cost of a lease purchase agreement for a new school building, a renovated school building or additions made to an existing school building provided the cost of such equipment and/or furniture is amortized over the first five years of the lease purchase payment schedule in accordance with N.J.S.A. 18A:18A-42(f).

(d) A district board of education shall conduct two public hearings, prior to adoption of a resolution endorsing the lease purchase concept and approving the submission of an application to the Commissioner.

1. All provisions of the Open Public Meetings Act (N.J.S.A. 10:4-6 thru 21) shall be followed as well as:

i. The two public hearings shall be held at least 14 days apart;

ii. Notice of the public hearings shall be separately published at least once for each hearing in at least one newspaper published in the district and if no newspaper be published therein, then in at least one newspaper circulating in said district not less than seven days prior to the date fixed for each public hearing; and

iii. The notice shall fix a date, place and time for the holding of the public hearings and shall include a description of the proposed school building project, estimated cost and the proposed method of financing.

2. The public hearings shall provide the taxpayers and other interested persons an opportunity to present questions or other commentary to the district board of education with respect to the proposed school building project, estimated cost and the proposed method of financing.

(e) Not sooner than seven days after the second public hearing a district board of education may, by an affirmative vote of at least two-thirds of the full membership of the board, adopt a resolution endorsing approval of the lease purchase concept and authorizing the chief school administrator and/or board secretary to advertise and solicit proposals for the selection of a lessor and underwriter in connection with a lease purchase agreement and to request the approval of the Commissioner and the Local Finance Board in the Department of Community Affairs of a lease purchase agreement in excess of five years.

(f) A district board of education requesting the Commissioner's approval of a lease purchase agreement in excess of five years shall submit to the Commissioner and the Local Finance Board in the Department of Community Affairs an Application for Permission to Lease Purchase Facilities, Form 101A, prescribed by the Commissioner (this form is available at the Division of Financial Services, 225 East State Street, CN 500, Trenton, New Jersey), a copy of the ground lease agreement, if applicable, a lease with an option to purchase agreement or similar document, and an agent or trust agreement, if applicable.

(g) A district board of education shall also file with the Commissioner the following documents:

1. A board resolution authorizing submission of Form 101A to the Commissioner;

2. A narrative which clearly establishes the relationship of the proposed project to the district's goals and objectives for a thorough and efficient education established pursuant to N.J.S.A. 18A:7A-1 et seq.;

3. Copies of board minutes for the two public hearings, resolution and vote on the projected maximum funding level, and the resolution endorsing approval of the lease purchase concept and authorizing the chief school administrator or board secretary to advertise for proposals for the selection of underwriter/lessor;

4. The lease purchase agreement which shall contain the following provisions:

i. Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f);

ii. All construction contracts let by public school districts or let by developers or owners of property used for school purposes shall be competitively bid pursuant to N.J.S.A. 18A:20-4.2(f); and

iii. The district board of education at its sole discretion may refinance the lease purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the lease period;

5. Evidence of clear title and appropriate title insurance to proposed building site(s) or any land stated in the ground lease;

6. A copy of the commitment or application for insurance or other credit enhancement for the proposed issuance of certificates of participation, if applicable;

7. Evidence the site can be serviced by all utilities necessary for the operation of the property;

8. Approval letters from the governmental agencies having jurisdiction over the development of the subject property, including, but not limited to the Department of Environmental Protection and Energy and the Pinelands Commission;

9. A copy of a letter from the Bureau of Facility Planning Services indicating:

- i. Approval of the project's schematic plans, and educational specifications; or
- ii. Conceptual approval of the proposed improvements, if approval of the schematic plans and educational specifications are not required;

10. Proposed credit ratings on the issue, and credit rating agencies;

11. A copy of a letter from the school district's county superintendent endorsing the lease purchase agreement and indicating the project's necessity for the school district to meet its goals and objectives for a thorough and efficient education;

12. A copy of the newspaper advertisement for the request for proposals;

13. The list of persons and/or firms to which the request for proposals was sent and the respondents to the request for proposals;

14. The comparative analysis of proposals showing the following:

- i. The construction costs;
- ii. The financing costs;
- iii. The underwriting fees, legal fees and issuance expenses;
- iv. If appropriate, the cost of insurance and/or a rating for the proposed issue;
- v. The anticipated interest rate or methodology for calculating the interest rate at the time of issuance; and
- vi. The proposal selected; and

15. If project is related to actual or anticipated overcrowding, documentation that the present educational facilities are or will be less than 80 percent adequate within five years and that the planned educational facilities will be fully utilized within 10 years.

(h) The Commissioner or a designee shall hold a conference prior to the Commissioner approving any request for approval of a lease purchase agreement in excess of five years. All documents required and the application must be submitted in duplicate and in final form and received at least 15 days prior to the scheduled conference. At the conference the district board of education shall be required to document and discuss at a minimum the following:

1. The newspaper advertisement for the request for proposals;
2. The list of persons and/or firms to which the request for proposals was sent;
3. The responses to the request for proposals; and

4. The comparative analysis of proposals.

(i) Within 15 days after the conference for approval of a lease purchase agreement in excess of five years, the Commissioner shall endorse his or her consent upon the application, if in accordance with N.J.S.A. 18A:20-4.2(f), as amended, the Commissioner shall be satisfied that the lease purchase agreement is in the best interest of the school district, and that the relationship of the proposed lease purchase project to the district goals and objectives pursuant to Chapter 212, Laws of 1975 has clearly been established and the documents and information presented at the conference support the request of the district board of education for the proposed lease purchase agreement.

(j) Lease purchase agreements in excess of five years shall be submitted to the Local Finance Board in the Department of Community Affairs for approval subsequent to approval by the Commissioner.

(k) A district board of education having entered into a lease purchase agreement shall include in its annual general fund budget the full rental payment attributable to a lease purchase agreement. The principal portion of the payment shall be reflected in the capital outlay section and the interest portion of the payment shall be reflected in the general current expense section of the annual budget consistent with generally accepted accounting principles (GAAP). The county superintendent of schools, acting as proxy for the Commissioner, shall not approve such budget in accordance with N.J.S.A. 18A:7D-27 when a district board of education does not include such rental payment in its annual general fund budget unless the Commissioner or his or her designee has consented in writing to such approval.

(l) A district board of education having entered into a lease purchase agreement in excess of five years shall not terminate, change or alter the approved lease purchase agreement and accompanying legal documents pertaining thereto, without first obtaining the written consent of the Commissioner.

(m) Upon completion of the transaction, counsel shall file with the Commissioner an opinion stating the following:

1. The transaction is in conformance with local, state and Federal law; and
2. The parties hereto are properly organized; are in good standing; have the requisite power and have been properly authorized to enter into this transaction.

(n) Upon completion of a lease purchase agreement in excess of five years, a district board of education shall file the Official Statement of the transaction with the Commissioner.

1. The Official Statement (Prospectus) is a document published by the issuer which generally discloses material information on a new issue of municipal securities includ-

ing the purposes of the issue, how the securities will be repaid, and the financial, economic and social characteristics of the issuing government.

Amended by R.1993 d.544, effective November 1, 1993.
See: 25 N.J.R. 3588(a), 25 N.J.R. 4901(c).

6:22A-1.3 Approval procedures to refinance a lease purchase agreement

(a) A district board of education proposing to refinance a lease purchase agreement shall adopt a resolution requesting the approval of the Commissioner and the Local Finance Board in the Department of Community Affairs for said transaction.

(b) A district board of education requesting approval to refinance a lease purchase agreement shall submit to the Commissioner and the Local Finance Board in the Department of Community Affairs an Application for Refinancing, Form 201, prescribed by the Commissioner. This form is available at the Division of Financial Services, 225 East State Street, CN 500, Trenton, New Jersey.

(c) A district board of education shall also file with the Commissioner the following documents:

1. A copy of the board resolution requesting approval of the refinancing and the board's vote;
2. An opinion of counsel assuring the Commissioner that the refinancing is permitted under the original or modified lease purchase agreement and is in conformance with local, Federal and state statutes;
3. The list of persons and/or firms which the board of education contacted concerning the refinancing, the one selected and the specific reasons for the selection;
4. A copy of the amended rent payment schedule;
5. A schedule of sources and uses of the lease purchase agreement refinancing proceeds;
6. An analysis of the escrow account under the proposed refinancing;
7. A copy of the documents in final draft form with amendments and modifications, if necessary, to the lease purchase, ground lease, trustee or agent and assignment agreements, in order to effect the refinancing;
8. A copy of the updated insurance or other credit enhancement commitment, modified to cover refinancing, if applicable;
9. Proposed credit ratings on the issue, and credit rating agencies;
10. A detailed analysis of the percentage of net present value cost savings to the school district of at least three percent using the effective interest cost method as the discount rate based on an analysis of the total refunding issue to include the following for each payment:

- i. Date;
- ii. Prior debt service;
- iii. New debt service;
- iv. Savings (prior debt service minus new debt service);
- v. Present value factor;
- vi. Present value savings (savings times present value factor);
- vii. Cumulative present value savings; and
- viii. Totals of items (c)10ii through vii above.

(d) Within 15 days after the receipt of the Application for Refinancing—Form 201 and related documents, the Commissioner shall endorse his or her consent upon the application, if the Commissioner shall be satisfied that the refinancing is in the best interest of the school district.

(e) An application to refinance a lease purchase agreement shall be submitted to the Local Finance Board in the Department of Community Affairs for approval subsequent to approval by the Commissioner.

New Rule, R.1993 d.544, effective November 1, 1993.
See: 25 N.J.R. 3588(a), 25 N.J.R. 4901(c).

6:22A-1.4 Approval procedures for a defeasance of a lease purchase agreement

(a) A district board of education proposing to seek voter or board of school estimate approval for the defeasance of a lease purchase agreement through the issuance of general obligation bonds shall adopt a resolution requesting the approval of the Commissioner for said transaction.

(b) A district board of education requesting approval for the defeasance of a lease purchase agreement shall submit to the Commissioner an Application for Defeasance, Form 201A, prescribed by the Commissioner (this form is available at the Division of Financial Services, 225 East State Street, CN 500, Trenton, New Jersey) and the following documents:

1. A copy of the board resolution requesting the Commissioner's approval of the defeasance of the lease purchase agreement through the issuance of general obligation bonds and the board's vote;
2. An opinion of counsel assuring the Commissioner that the prepayment of the lease purchase agreement is permitted under the original or modified lease purchase agreement and is in conformance with local, state and Federal statutes;
3. A copy of the documents in final draft form with amendments and modifications, if necessary, to the lease purchase, ground lease, trustee or agent and assignment agreements, in order to effect the defeasance;

4. A schedule of sources and uses of bond issue proceeds;

5. A detailed analysis of the percentage of net present value cost savings to the school district using the effective interest cost method as the discount rate based on an analysis of the total new bond issue to include the following for each payment:

- i. Date;
- ii. Prior debt service;
- iii. New debt service;
- iv. Savings (prior debt service minus new debt service);
- v. Present value factor;

vi. Present value savings (savings times present value factor);

vii. Cumulative present value savings; and

viii. Totals of items (b)5ii through vii above.

(c) The application shall support a net present value cost savings and will be reviewed strictly on the merits of the cost savings without consideration of any debt service aid to which the district board of education may be entitled.

(d) Within 15 days after the receipt of the Application for Defeasance—Form 201A and related documents, the Commissioner shall endorse his or her consent upon the application, if the Commissioner shall be satisfied that the defeasance of the lease purchase agreement is in the best interest of the school district. Such approval is contingent upon board of school estimate approval or voter adoption of the specific ballot question as applicable.