

18A:20-4.2 and 18A:20-6

**LEGISLATIVE HISTORY CHECKLIST**

**NJSA:** 18A:20-4.2 and 18A:20-6 (School districts-- convey property through lease purchase agreement)

**CHAPTER 183**

**Laws Of:** 1986

**Bill No:** A2858

**Sponsor(s):** Palaia and Villane

**Date Introduced:** June 19, 1986

**Committee: Assembly:** Education

**Senate:** Education

**Amended during passage:** Yes Substituted for S2343 (not attached since identical to A2858). Amendments during passage denoted by asterisks.

**Date of Passage: Assembly:** September 15, 1986

**Senate:** October 23, 1986

**Date of Approval:** December 9, 1986

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee statement: Assembly** Yes

**Senate** Yes

**Fiscal Note:** No

**Veto Message:** No

**Message on Signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

12-9-86

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## ASSEMBLY, No. 2858

## STATE OF NEW JERSEY

INTRODUCED JUNE 19, 1986

By Assemblymen PALAIA and VILLANE

AN ACT concerning the acquisition of school buildings by lease purchase agreements and amending N. J. S. 18A:20-4.2 and N. J. S. 18A:20-6.

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

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

2 18A:20-4.2. The board of education of any school district may,  
3 for school purposes:

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

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

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

14 (d) Borrow money therefor, with or without mortgage; in the  
15 case of a type II district without a board of school estimate, when  
16 authorized so to do at any annual or special school election and in  
17 the case of a type II district having a board of school estimate,  
18 when the amount necessary to be provided therefor shall have been  
19 fixed, determined and certified by the board of school estimate,  
20 and in the case of a type I district when an ordinance authorizing  
21 expenditures for such purpose is finally adopted by the governing

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted October 2, 1986.

22 body of a municipality comprised within the district; provided,  
 23 however, that no such election shall be held nor shall any such  
 24 resolution of a school estimate board or ordinance of a municipal  
 25 governing body be introduced to authorize any lease of any build-  
 26 ing for a term exceeding one year until the proposed terms of such  
 27 lease have been reviewed and approved by the Commissioner of  
 28 Education and the Local Finance Board in the Department of  
 29 Community Affairs;

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

43 (f) Acquire by lease purchase agreement a site and school build-  
 44 ing; provided that the site and building meet guidelines and regu-  
 45 lations of the Department of Education and that any lease purchase  
 46 agreement in excess of five years shall be approved by the Commis-  
 47 sioner of Education and *provided that for any lease purchase agree-*  
 48 *ment in excess of five years the Local Finance Board in the Depart-*  
 49 *ment of Community Affairs shall determine \*within 30 days\* that*  
 50 *the cost and the financial terms and conditions of the agreement are*  
 51 *reasonable.* As used herein, a "lease purchase agreement" refers  
 52 to any agreement which gives the board of education as lessee the  
 53 option of purchasing the leased premises during or upon termina-  
 54 tion of the lease with credit toward the purchase price of all or part  
 55 of rental payments which have been made by the board of educa-  
 56 tion in accordance with the lease. *As part of such a transaction*  
 57 *approved by the Commissioner of Education, the board of educa-*  
 58 *tion may transfer \*or lease\* land or rights in land, including any*  
 59 *building thereon, \***[for fair market value]**\* \*after publicly ad-*  
 60 *vertising for proposals for the transfer for nominal or fair market*  
 61 *value,\* to the party selected by the board of education, by negotia-*  
 62 *tion or otherwise, \*after determining that the proposal is in the*  
 63 *best interest of the taxpayers of the district,\* to construct or to*  
 64 *improve and to \*lease or to\* own or to have ownership interests*

65 *in the site and the school building to be leased pursuant to*  
 66 *such lease purchase agreement, notwithstanding the provisions of*  
 67 *any other law to the contrary. \*The land and any building thereon*  
 67A *which is described in a lease purchase agreement entered into pur-*  
 67B *suant to this amendatory act, shall be deemed to be and treated as*  
 67C *property of the school district, used for school purposes pursuant*  
 67D *to R. S. 54:4-3.3, and shall not be considered or treated as prop-*  
 67E *erty leased to another whose property is not exempt and shall not*  
 67F *be assessed as real estate pursuant to section 1 of P. L. 1949, c. 177*  
 67G *(C. 54:4-2.3).\** *Any lease purchase agreement authorized by this*  
 67H *section shall contain a provision making payments thereunder*  
 67I *subject to the annual appropriation of funds sufficient to meet the*  
 67J *required payments or shall contain an annual cancellation clause;*

68 (g) Establish with an individual or entity authorized to do busi-  
 69 ness in the State a tenancy in common, condominium, horizontal  
 70 property regime or other joint ownership arrangement on a site  
 71 contributed by the school district; provided the following condi-  
 72 tions are met:

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

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

80 (3) The school district shall not make any payment for use  
 81 of the building other than its pro rata share of costs of mainte-  
 82 nance and improvements;

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

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

88 (6) Any such agreement shall be approved by the Commis-  
 89 sioner of Education and the Local Finance Board in the De-  
 90 partment of Community Affairs.

1 2. N. J. S. 18A :20-6 is amended to read as follows:

2 18A :20-6. Any lands or rights or interest therein sold by any  
 3 board of education, *except lands conveyed as part of a lease pur-*  
 4 *chase agreement pursuant to N. J. S. 18A :20-4.2 (f)*, shall be sold  
 5 at public sale, to the highest bidder, after advertisement of the sale  
 6 in a newspaper published in the district, or, if none is published  
 7 therein, then in a newspaper circulating in the district, in which the

8 same is situate at least once a week for two weeks prior to the sale  
9 unless:

10 a. The same are sold to the State, or a political subdivision  
11 thereof, in which case they may be sold at private sale without  
12 advertisement; or

13 b. The sale or other disposition thereof in some other manner is  
14 provided for in this Title.

1 3. This act shall take effect immediately.

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#### EDUCATION—GENERAL

Permits school district to convey district owned property as part  
of a lease purchase agreement.

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ASSEMBLY, No. 2858

STATE OF NEW JERSEY

INTRODUCED JUNE 19, 1986

By Assemblymen PALAIA and VILLANE

AN ACT concerning the acquisition of school buildings by lease purchase agreements and amending N. J. S. 18A:20-4.2 and N. J. S. 18A:20-6.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
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6 situate in a municipality or municipalities adjoining the district,  
7 but no more than 25 acres may be so acquired in any one such  
8 municipality, without the district, except with the consent, by  
9 ordinance, of such municipality;

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

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

14 (d) Borrow money therefor, with or without mortgage; in the  
15 case of a type II district without a board of school estimate, when  
16 authorized so to do at any annual or special school election and in  
17 the case of a type II district having a board of school estimate,  
18 when the amount necessary to be provided therefor shall have been  
19 fixed, determined and certified by the board of school estimate,  
20 and in the case of a type I district when an ordinance authorizing  
21 expenditures for such purpose is finally adopted by the governing

**Matter printed in italics thus is new matter.**

22 body of a municipality comprised within the district; provided,  
23 however, that no such election shall be held nor shall any such  
24 resolution of a school estimate board or ordinance of a municipal  
25 governing body be introduced to authorize any lease of any build-  
26 ing for a term exceeding one year until the proposed terms of such  
27 lease have been reviewed and approved by the Commissioner of  
28 Education and the Local Finance Board in the Department of  
29 Community Affairs;

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

43 (f) Acquire by lease purchase agreement a site and school build-  
44 ing; provided that the site and building meet guidelines and regu-  
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47 sioner of Education and *provided that for any lease purchase agree-*  
48 *ment in excess of five years the Local Finance Board in the Depart-*  
49 *ment of Community Affairs shall determine that the cost and the*  
50 *financial terms and conditions of the agreement are reasonable. As*  
51 *used herein, a "lease purchase agreement" refers to any agreement*  
52 *which gives the board of education as lessee the option of purchas-*  
53 *ing the leased premises during or upon termination of the lease with*  
54 *credit toward the purchase price of all or part of rental payments*  
55 *which have been made by the board of education in accordance with*  
56 *the lease. As part of such a transaction approved by the Commis-*  
57 *sioner of Education, the board of education may transfer land or*  
58 *rights in land, including any building thereon, for fair market value*  
59 *to the party selected by the board of education, by negotiation or*  
60 *otherwise, to construct or to improve and to own or to have owner-*  
61 *ship interests in the site and the school building to be leased pur-*  
62 *suant to such lease purchase agreement, notwithstanding the*  
63 *provisions of any other law to the contrary. Any lease purchase*  
64 *agreement authorized by this section shall contain a provision mak-*

65 *ing payments thereunder subject to the annual appropriation of*  
 66 *funds sufficient to meet the required payments or shall contain an*  
 67 *annual cancellation clause;*

68 (g) Establish with an individual or entity authorized to do busi-  
 69 ness in the State a tenancy in common, condominium, horizontal  
 70 property regime or other joint ownership arrangement on a site  
 71 contributed by the school district; provided the following condi-  
 72 tions are met:

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

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

80 (3) The school district shall not make any payment for use  
 81 of the building other than its pro rata share of costs of mainte-  
 82 nance and improvements;

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

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 87 the site meet regulations of the Department of Education; and

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1 2. N. J. S. 18A :20-6 is amended to read as follows:

2 18A :20-6. Any lands or rights or interest therein sold by any  
 3 board of education, *except lands conveyed as part of a lease pur-*  
 4 *chase agreement pursuant to N. J. S. 18A :20-4.2 (f)*, shall be sold  
 5 at public sale, to the highest bidder, after advertisement of the sale  
 6 in a newspaper published in the district, or, if none is published  
 7 therein, then in a newspaper circulating in the district, in which the  
 8 same is situate at least once a week for two weeks prior to the sale  
 9 unless:

10 a. The same are sold to the State, or a political subdivision  
 11 thereof, in which case they may be sold at private sale without  
 12 advertisement; or

13 b. The sale or other disposition thereof in some other manner is  
 14 provided for in this Title.

1 3. This act shall take effect immediately.



**STATEMENT**

This bill permits a local board of education which seeks to enter into a lease purchase agreement for the acquisition of a school building to convey district owned land to be used for the building site to the party selected by the board to construct or improve a school building. At present, a school district may only sell land at a public sale to the highest bidder.

The bill provides that the Local Finance Board in the Department of Community Affairs must first determine that the cost, terms and conditions of any lease-purchase agreement for a period in excess of five years are reasonable. In addition, the bill requires that any lease purchase agreement entered into by a school district must contain a provision making payments under the agreement subject to the annual appropriation of funds sufficient to meet the required payments or an annual cancellation clause.

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**EDUCATION—GENERAL**

Permits school district to convey district owned property as part of a lease purchase agreement.

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ASSEMBLY EDUCATION COMMITTEE  
STATEMENT TO  
**ASSEMBLY, No. 2858**  
**STATE OF NEW JERSEY**

DATED: SEPTEMBER 8, 1986

The Assembly Education Committee favorably reports this bill.

This bill permits a local board of education to transfer land at a fair market price to a party selected by the board to build or improve a school building as part of a lease purchase agreement. As used in this act, a lease purchase agreement is one which gives the school district the option of purchasing the leased property during or upon termination of the lease with credit toward the purchase price for all or part of the rental payments made by the board.

The Commissioner of Education must approve any lease purchase agreement in excess of five years and the Local Finance Board in the Department of Community Affairs must determine that the cost, terms and conditions of the agreement are reasonable. In addition the commissioner must also approve any land transfer which is part of a lease purchase transaction. The bill also requires that any lease purchase agreement entered into by a school district must contain an annual cancellation clause or a provision making payments under the agreement subject to the annual appropriation of funds sufficient to meet the required payments.

This bill provides an exception to present law which provides that a school district may only sell land at a public sale to the highest bidder.

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SENATE EDUCATION COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2858**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: OCTOBER 2, 1986

The Senate Education Committee favorably reports this bill with amendment.

As amended, this bill permits a local board of education to transfer land at a fair market price to a party selected by the board to build or improve a school building as part of a lease purchase agreement. As used in this act, a lease purchase agreement is one which gives the school district the option of purchasing the leased property during or upon termination of the lease with credit toward the purchase price for all or part of the rental payments made by the board.

The Commissioner of Education must approve any lease purchase agreement in excess of five years and within 30 days the Local Finance Board in the Department of Community Affairs must determine that the cost, terms and conditions of the agreement are reasonable. In addition the commissioner must also approve any land transfer which is part of a lease purchase transaction, and the local board of education would be required to publicly advertise for proposals for the transfer. The bill also requires that any lease purchase agreement entered into by a school district must contain an annual cancellation clause or a provision making payments under the agreement subject to the annual appropriation of funds sufficient to meet the required payments. Any land or buildings leased by a school district under this arrangement would be considered school property and would be exempt from taxation.

In 1982, school districts were authorized to acquire land and/or school buildings through a lease-purchase arrangement, provided that any such arrangement in excess of five years had the approval of the Commissioner of Education and the Local Finance Board in the Department of Community Affairs (P. L. 1981, c. 410). However, there were no provisions for the conveyance of land owned by a school district for this purpose. This bill provides an exception to present law under which a school district may only sell land at a public sale to the highest

bidder unless the property is sold to the State or a political subdivision thereof (N. J. S. 18A:20-6).

The committee amended this bill to require that the Local Finance Board make its determination within 30 days; require the local board of education to advertise for proposals; and, to clarify that the land once leased by a school district would be considered school property and would be exempt from taxation.

As amended, this bill is identical to the Senate Committee Substitute for Senate Bill Nos. 2343 and 2382.

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1 3. This act shall take effect immediately.

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