

Public Notice

Education

State Board of Education

Notice of Action on Petition for Rulemaking

Educational Facilities

Use of Lease-Purchase Agreements

N.J.A.C. 6A:26-10.1

Petitioner: Gerald Reiner.

Take notice that on February 6, 2020, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner, requesting the State Board of Education amend N.J.A.C. 6A:26-10.1 to include language that prohibits lease purchases for equipment from being used to fund a project unless the lease-purchase agreement is approved before the project is awarded.

The petitioner specifically requested the State Board adopt an amendment at N.J.A.C. 6A:26-10.1(a), which allows a school district to acquire improvements or additions to school facilities through lease-purchase agreements of five years or less if the lease-purchase agreement provides for the funding in full to the school district upon commencement of construction of the school facilities project. The rule also prohibits school districts from entering into lease-purchase agreements of more than five years in duration. The petitioner requested to add a provision stating that school districts may only enter into a contract to spend the funds from the proceeds of a lease-purchase if the financing is approved by a district board of education resolution before incurring the obligation or award.

A notice acknowledging receipt of the petition was published in the March 16, 2020, New Jersey Register at 52 N.J.R. 535(b). A notice of action indicating that additional time was needed for the Department to deliberate about this petition was published in the May 18, 2020, New Jersey Register at 52 N.J.R. 1085(b). Executive Order 127 (2020) extended the deadlines pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.1, 4.2, and 4.3 for any Executive Branch department or agency to act on any currently pending petition for rulemaking or on any petition for rulemaking filed during the Public Health Emergency originally declared in Executive Order No. 103 (2020). Deadlines that would otherwise occur sooner are extended until 90 days after the last day of the Public Health Emergency originally declared in Executive Order No. 103 (2020).

After further deliberation, the Department has determined that the petitioner's requested amendment is unnecessary because State statute and rules already contain sufficient protections that require school districts to demonstrate appropriate funding levels to meet their obligations under lease-purchase agreements. State statute and rules also insulate school districts in case future funding is insufficient to meet the agreements.

Pursuant to N.J.S.A. 18A:20-4.2, N.J.A.C. 6A:26-10 provides rules for school districts that acquire improvements or additions to school facilities through lease-purchase agreements, including for the purchase of equipment. Both the authorizing law and the existing rules contain requirements to ensure that the school district will have sufficient funds for a lease-purchase agreement. N.J.S.A. 18A:20-4.2(f) requires Commissioner approval of a lease-purchase agreement for improvements and additions to school buildings "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 tax levy 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 statute allows the district board of education to submit a separate question for voter or board of school estimate approval to finance the agreement and enter into it. N.J.A.C. 6A:26-10.3 contains the same requirements. The statutory and regulatory provisions ensure that school districts have identified sufficient funds for lease-purchase agreements for improvements or additions to school facilities.

N.J.S.A. 18A:20-4.2 provides that school districts may only enter into lease-purchase agreements for equipment “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.” N.J.A.C. 6A:26-10.1(d) requires the school district to file the lease-purchase agreement with the executive county superintendent, thereby allowing the Department to monitor such agreements. Additionally, a school district would be required to submit a school facilities project application if an equipment purchase requires construction. N.J.A.C. 6A:26-10.3 also requires the school district to comply with the more stringent lease-purchase requirements for Commissioner approval. The existing rules ensure that school districts have identified sufficient funds for lease-purchase agreements for equipment.

N.J.S.A. 18A:20-4.2(f) requires all lease-purchase agreements, whether for improvements, additions, or equipment, to 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.” N.J.A.C. 6A:26-10.1(d)1 and 10.4(a)1 contain the same requirement. The State statute and rules insulate a school district in case future appropriations,

which cannot be known at the time the school district enters into the lease-purchase agreement, are insufficient to meet the school district's obligations under the agreement.

Therefore, the petitioner's request is denied.