

40A:12-13

LEGISLATIVE HISTORY CHECKLIST

NJSA 40A:12-13 (Public property -- county & municipal -- sale or lease through oral bids & public auctions)

LAWS 1981 CHAPTER 330

Bill No. A544

Sponsor(s) Riley

Date Introduced Pre-filed

Committee: Assembly County Government

Senate County & Municipal Government

Amended during passage Yes ~~XX~~ Amendments denoted by asterisks according to Governor's recommendations

Date of Passage: Assembly Sept. 29, 1980

Re-enacted 11-23-81

Senate June 15, 1981

Re-enacted 12-10-81

Date of approval Dec. 14, 1981

Following statements are attached if available:

Sponsor statement Yes ~~XX~~

Committee Statement: Assembly Yes ~~XX~~ No

Senate Yes ~~XX~~

Fiscal Note Yes ~~XX~~ No

Veto Message Yes ~~XX~~

Message on signing Yes ~~XX~~ No

Following were printed:

Reports Yes ~~XX~~ No

Hearings Yes ~~XX~~ No

DO NOT WRITE IN THESE SPACES

6/22/81

PP

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ASSEMBLY, No. 544

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1980 SESSION

By Assemblyman RILEY

AN ACT to amend the "Local Lands and Buildings Law," approved
June 9, 1971 (P. L. 1971, c. 199).

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

1 1. Section 13 of P. L. 1971, c. 199 (C. 40A:12-13) is amended to
2 read as follows:

3 13. Sales of real property, capital improvements or personal
4 property; exceptions; procedure. Any county or municipality may
5 sell any real property, capital improvements or personal property,
6 or interests therein, not needed for public use, as set forth in the
7 resolution or ordinance authorizing the sale, other than county or
8 municipal lands, real property otherwise dedicated or restricted
9 pursuant to law, and, except as otherwise provided by law, all such
10 sales shall be made by one of the following methods:

11 (a) By **open** public sale **at auction** to the highest bidder after
12 advertisement thereof in a newspaper circulating in the munici-
13 pality or municipalities in which the lands are situated by two
14 insertions at least once a week during 2 consecutive weeks, the last
15 publication to be not earlier than 7 days prior to such sale. In the
16 case of public sales, the governing body may by resolution fix a
17 minimum price, or prices, with or without the reservation of the
18 right, to reject all bids where the highest bid is not accepted. Notice
19 of such reservation shall be included in the advertisement of the sale
20 and public notice thereof shall be given at the time of sale. Such
21 resolution may provide, without fixing a minimum price, that upon
22 the completion of the bidding, the highest bid may be accepted or
23 all the bids may be rejected. The invitation to bid may also
24 impose restrictions on the use to be made of such real property,
25 capital improvement or personal property and any conditions of
26 sale as to buildings or structures, or as to the type, size, or other

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

27 specifications of buildings or structures to be constructed thereon,
28 or as to demolition, repair, or reconstruction of buildings or struc-
29 tures, and the time within which such conditions shall be operative,
30 or any other conditions of sale in like manner and to the same extent
31 as by any other vendor. Such conditions shall be included in the
32 advertisement, as well as the nature of the interest retained by the
33 county or municipality. Such restrictions or conditions shall be
34 related to a lawful public purpose and encourage and promote fair
35 and competitive bidding of the county or municipality and shall
36 not, in the case of a municipality, be inconsistent with or impose
37 a special or higher standard than any zoning ordinance or building,
38 plumbing, electrical, or similar code or ordinance then in effect in
39 the municipality.

40 In any case in which a county or municipality intends to retain
41 an estate or interest in any real property, capital improvement or
42 personal property, in the nature of an easement, contingent or
43 reversionary, the invitation to bid and the advertisement required
44 herein shall require each bidder to submit one bid under each
45 Option A and Option B below.

46 (1) Option A shall be for the real property, capital improve-
47 ment or personal property subject to the conditions or re-
48 strictions imposed, or interest or estate retained, which the
49 county or municipality proposes to retain or impose.

50 (2) Option B shall be for the real property, capital improve-
51 ment or personal property to be sold free of all such restric-
52 tions, conditions, interests or estates on the part of the county
53 or municipality.

54 The county or the municipality may elect or reject either or both
55 options and the highest bid for each. Such acceptance or rejection
56 shall be made not later than at the second regular meeting of the
57 governing body following the sale, and, if the governing body shall
58 not so accept such highest bid, or reject all bids, said bids shall be
59 deemed to have been rejected. Any such sale may be adjourned
60 at the time advertised for not more than 1 week without readver-
61 tising.

62 (b) At private sale when authorized by resolution, in the case
63 of a county, or by ordinance, in the case of a municipality, in the
64 following cases:

65 (1) A sale to any political subdivision, agency, department,
66 commission, board or body corporate and politic of the State of
67 New Jersey or to an interstate agency or body of which the
68 State of New Jersey is a member or to the United States of
69 America or any department or agency thereof.

70 (2) A sale to a person submitting a bid pursuant to subsec-
71 tion (a) of this section where all bids have been rejected,
72 provided that the terms and price agreed to shall in no event
73 be less than the highest bid rejected and provided further that
74 the terms and conditions of sale shall remain identical.

75 (3) A sale by any county or municipality when it has or shall
76 have conveyed its right, title and interest in any real property,
77 capital improvement or personal property not needed for
78 public use, and it was assumed and intended that there should
79 be conveyed a good and sufficient title in fee simple to said real
80 property, capital improvement or personal property, free of all
81 encumbrances and the full consideration has been paid there-
82 for, and it shall thereafter appear that the title conveyed was
83 insufficient or that said county or municipality at the time of
84 said conveyance was not the owner of some estate or interest
85 in said real property, capital improvement or personal prop-
86 erty or of some encumbrances thereon and the county or
87 municipality shall thereafter acquire a good and sufficient title
88 in fee simple, free of all encumbrances of said real property,
89 capital improvement or personal property or shall acquire
90 such outstanding estate or interest thereon or outstanding
91 encumbrance thereon and said county or municipality, by
92 resolution of the governing body and without the payment of
93 any additional consideration, has deemed to convey or other-
94 wise transfer to said purchaser, his heirs or assigns, such after-
95 acquired title, or estate or interest in, or encumbrance upon,
96 such real property, capital improvement or personal property
97 to perfect the title or interest previously conveyed.

98 (4) A sale of an easement upon any real property previously
99 conveyed by any county or municipality may be made when the
100 governing body of any county by resolution, or any municipi-
101 lity, by ordinance, has elected to release the public rights in
102 the nature of easements, in, on, over or under any real property
103 within the county or the municipality, as the case may be, upon
104 such terms as shall be agreed upon with the owner of such
105 lands, if the use of such rights is no longer desirable, necessary
106 or required for public purposes.

107 (5) A sale to the owner of the real property contiguous to
108 the real property being sold provided that the property being
109 sold is less than the minimum size required for development
110 under the municipal zoning ordinance and is without any capi-
111 tal improvement thereon; except that when there is more than
112 one owner with real property contiguous thereto, said prop-

113 erty shall be sold to the highest bidder from among all such
114 owners. Any such sale shall be for not less than the fair market
115 value of said real property.

116 In the case of any sale of real property hereafter made pursuant
117 to subsection (b) of this section, in no event shall the price agreed
118 upon with the owner be less than the difference between the highest
119 bid accepted for the real property subject to easements (Option A)
120 and the highest bid rejected for the real property not subject to
121 easements (Option B). After the adoption of the resolution or
122 ordinance, and compliance by the owner of said real property with
123 the terms thereof, said real property shall be free, and entirely
124 discharged of and from such rights of the public and of the county
125 or municipality, as the case may be, but no such release shall affect
126 the right of lawful occupancy or use of any such real property by
127 any municipal or private utility to occupy or use any such real
128 property lawfully occupied or used by it.

129 A list of the property so authorized to be sold, pursuant to
130 subsection (b) of this section, together with the ***[minmmum]***
131 *minimum* prices respectively, as determined by the governing
132 body, shall be included in the resolution or ordinance authorizing
133 the sale, and said list shall be posted on the bulletin board or other
134 conspicuous space in the building which the governing body usually
135 holds its regular meetings, and advertisement thereof made in a
136 newspaper circulating in the municipality or municipalities in which
137 the real property, capital improvement or personal property is
138 situated within 5 days following enactment of said resolution or
139 ordinance. Offers for any or all properties so listed may thereafter
140 be made to the governing body or its designee for a period of 20
141 days following the advertisement herein required, at not less than
142 said minimum prices, by any prospective purchaser, real estate
143 broker, or other authorized representative. In any such case, the
144 governing body may reconsider its resolution or ordinance, not later
145 than 30 days after its enactment, and advertise the real property,
146 capital improvement, or personal property in question for public
147 sale pursuant to subsection (a) of this section.

148 Any county or municipality selling any real property, capital
149 improvement or personal property pursuant to subsection (b) of
150 this section shall file with the Director of the Division of Local
151 Government Services in the Department of Community Affairs,
152 sworn affidavits verifying the publication of advertisements as
153 required by this subsection.

154 All sales either public or private may be made for cash or upon
155 credit. A deposit not exceeding 10% of the minimum price or value

156 of the property to be sold may be required of all bidders. When
 157 made upon credit, the county or municipality may accept a pur-
 158 chase-money mortgage, upon terms and conditions which shall be
 159 fixed by the resolution of the governing body; provided, however,
 160 that **[any]** such mortgage shall be fully payable within 5 years from
 161 the date of the sale and shall bear interest at a rate equal to that
 162 authorized under Title 31 of the Revised Statutes, as amended and
 163 supplemented, and the regulations issued pursuant thereto, or the
 164 rate last paid by the county or municipality upon any issue of notes
 165 pursuant to the Local Bond Law (chapter 2 of Title 40A of the
 166 New Jersey Statutes), whichever is highest. The governing body
 167 may, by resolution, fix the time for closing of title and payment of
 168 the consideration.

169 In all sales made pursuant to this section, the governing body of
 170 any county or municipality may provide for the payment of a com-
 171 mission to any real estate broker, or authorized representative
 172 other than the purchaser actually consummating such sale; pro-
 173 vided, however, that no commission shall be paid unless notice of
 174 the governing body's intention to pay such a commission shall have
 175 been included in the advertisement of sale and the recipient thereof
 176 shall have filed an affidavit with the governing body stating that
 177 said recipient is not the purchaser. Said commisisions shall not
 178 exceed, in the aggregate, 5% of the sale price, and be paid, where
 179 there has been a public sale, only in the event that the sum of the
 180 commission and the highest bid price does not exceed the next
 181 highest bid price (exclusive of any realtor's commission). As used
 182 in this section, "purchaser" shall mean and include any person,
 183 corporation, company, association, society, firm, partnership, or
 184 other business entity owning or controlling, directly or indirectly,
 185 more than 10% of the purchasing entity.

186 **[Nothing contained herein shall be construed as to require the*
 187 *submission of sealed written bids with respect to the sale of any*
 188 *property by a county or municipality, and any such sale may be con-*
 189 *ducted by open auction not based upon submitted sealed written*
 190 *bids.]**

1 ****[**2. Section 14 of P. L. 1971, c. 199 (C. 40A:12-14) is amended
 2 to read as follows:

3 14. Leasing of county or municipal real property, capital im-
 4 provements or personal property. Any county or municipality may
 5 lease any real property, capital improvement or personal property
 6 not needed for public use as set forth in the resolution or ordinance
 7 authorizing the lease, other than county or municipal real property

8 otherwise dedicated or restricted pursuant to law, and except as
9 otherwise provided by law, all such leases shall be made in the
10 manner provided by this section.

11 (a) In the case of a lease to any private person, said lease shall
12 be made by **open** public letting **at auction** to the highest bidder
13 after advertisement thereof in a newspaper circulating in the
14 municipality or municipalities in which the leasehold is situated by
15 two insertions at least once a week during 2 consecutive weeks; the
16 lease publication to be not earlier than 7 days prior to the letting
17 of the lease. The governing body may, by resolution, fix a minimum
18 rental with the reservation of the right to reject all bids where the
19 highest bid is not accepted. Notice of such reservation shall be in-
20 cluded in the advertisement of the letting of the lease and public
21 notice thereof shall be given of the time of the letting of the lease.
22 Such resolution may provide that upon the completion of the
23 bidding, the highest bid may be accepted or all of the bids may be
24 rejected. It shall also set out the conditions, restrictions and limita-
25 tions upon the tenancy subject to the lease. Acceptance or rejection
26 of the bid or bids shall be made not later than at the second regular
27 meeting of the governing body following the opening of the bids,
28 and, if the governing body shall not so accept such highest bid, or
29 reject all bids, said bids shall be deemed to have been rejected.
30 Any such award may be adjourned at the time advertised for not
31 more than 1 week without readvertising.

32 (b) In the case of a lease to a public body, the lease may be upon
33 such terms and conditions and for nominal or other consideration
34 as the governing body of the county or municipality shall approve
35 by ordinance or resolution.

36 (c) In the case of a lease to a nonprofit corporation for a public
37 purpose, the lease shall be authorized by resolution, in the case
38 of a county, or by ordinance, in the case of a municipality, and may
39 be for nominal or other consideration. Said authorization shall
40 include the nominal or other consideration for the lease; the name
41 of the corporation or corporations who shall be the lessees; the
42 public purpose served by the lessee; the number of persons benefit-
43 ing from the public purpose served by the lessees, whether within
44 or without the municipality in which the leasehold is located; the
45 term of the lease, and the officer, employee or agency responsible
46 for enforcement of the conditions of the lease. Said ordinance or
47 resolution shall also require any nonprofit corporation holding a
48 lease for a public purpose pursuant to this section, to annually
49 submit a report to the officer, employee or agency designated by the

50 governing body, setting out the use to which the leasehold was put
51 during each year, the activities of the lessee undertaken in further-
52 ance of the public purpose for which the leasehold was granted; the
53 approximate value or cost, if any, of such activities in furtherance
54 of such purpose; and an affirmation of the continued tax-exempt
55 status of the nonprofit corporation pursuant to both State and
56 Federal law.】**

57 **Nothing herein contained shall be construed as to require the*
58 *submission of sealed written bids with respect to the lease of any*
59 *property by a county or municipality, and any such lease proceeding*
60 *may be conducted by open auction not based upon submitted sealed*
61 *written bids.**

1 ****[3.]**** **2.** This act shall take effect immediately.

49 submit a report to the officer, employee or agency designated by the
50 governing body, setting out the use to which the leasehold was put
51 during each year, the activities of the lessee undertaken in further-
52 ance of the public purpose for which the leasehold was granted; the
53 approximate value or cost, if any, of such activities in furtherance
54 of such purpose; and an affirmation of the continued tax-exempt
55 status of the nonprofit corporation pursuant to both State and
56 Federal law.

57 *Nothing herein contained shall be construed as to require the*
58 *submission of sealed written bids with respect to the lease of any*
59 *property by a county or municipality, and any such lease proceeding*
60 *may be conducted by open auction not based upon submitted sealed*
61 *written bids.*

1 3. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to permit counties and municipalities to sell or lease public property not required for a public use by the submission of oral bids and open public auctions, rather than through the submission of sealed written bids. A recent court decision (*Disposmatic Corporation v. Mayor and Council of the Town of Kearny*, 162 N. J. Super. 489, 393 A. 2d 610 (Chancery 1978)) appears to require the submission of sealed written bids for property sales and leases pursuant to the "Local Lands and Buildings Law." It is the contention of several local government officials that an open oral bidding process, and the conduct of property sale and lease proceedings at an open auction, will result in significantly greater economic returns to the counties and municipalities of New Jersey. This bill would amend the "Local Lands and Buildings Law" to specifically authorize these procedures.

A544 (1981)

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 544

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 1981

Assembly Bill No. 544 would amend the "Local Lands and Buildings Law" (N. J. S. 40A:12-1 et seq.) to permit local governments to sell or lease public property not required for public use by submission of oral bids at open public auctions, rather than through the submission of sealed bids.

A recent court decision (*Disposmatic Corporation v. Kearney*, 162 N. J. Super 489) appears to require the submission of sealed written bids for property leases under the "Local Lands and Buildings Law." The logic of that decision would appear to extend also to sales.

The League of Municipalities supports the bill, stating that "the conduct of property sale and lease procedures at an open auction will result in significantly greater economic returns to municipalities."

In a December 4, 1980 letter to the Senate Committee the Commissioner of Community Affairs, Joseph A. LeFante, stated:

"As a response to the court decision in *Disposmatic Corp. vs. Mayor and Council of Kearny*, this bill appears to create problems rather than to remedy them. The *Disposmatic* case concerned only the lease of real property (land), and the decision arrived at took into account and relied heavily upon the Local Public Contracts Law. However, this bill not only addresses the matter of leasing property, but also the sale of property. The prevalent practice in the field with regard to sales is open for public auction, i.e., oral bidding. The language added by Assembly Bill No. 544 regarding sale of property opens the door for sale by sealed bids as well as by auction. The department feels it is inappropriate to change by amendatory legislation public sale procedures in response to a court case which had no relevance to the sale of public property.

On the matter of leasing public property, the department has no strong opinion whether such leasing should be conducted by public auction/oral bidding or under a requirement for sealed bids. How-

ever, the department does believe that only one procedure should apply, not the "either-or" situation, which would be created by this bill. The department's feeling in this regard stems from a desire to forestall further "in pari materia" readings of this statute against the Local Public Contracts Law which might weaken the later statute."

The Senate committee shared the commissioner's concerns regarding the bill, and determined to remedy the difficulty by amending the sale and lease procedures of the "Local Lands and Buildings Law" to specifically provide that public sales and leases be conducted by "open public sale (or lease) at auction."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 16, 1981

ASSEMBLY BILL NO. 544 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 544 (OCR) with my objection, for reconsideration.

This bill amends the "Local Lands and Buildings Law" to provide that local governments sell or lease public property not needed for public use by oral bids at public auctions rather than by sealed written bids. I am advised that with respect to sales, this bill preserves the present practice of oral bidding at public auctions. However, presently, leasing is done by written sealed bids and I see no reason to change that rule.

Accordingly, I herewith return Assembly Bill No. 544 (OCR) for reconsideration and recommend that it be amended as follows:

Page 5, Section 2: Delete in its entirety.

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY