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40A:12-13

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:12-13 (Municipal property--certain--permit sale to private development)

LAWS OF: 1985

CHAPTER 535

BILL NO: A3013

Sponsor(s): McEnroe

Date Introduced: December 17, 1984

Committee: Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: April 29, 1985

Senate: January 13, 1986

Date of Approval: January 21, 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

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Chapter 535 Law of 1985
Approved 1-21-86

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ASSEMBLY, No. 3013

STATE OF NEW JERSEY

INTRODUCED DECEMBER 17, 1984

By Assemblyman McENROE

AN ACT concerning the sale and use of certain property by municipalities and amending 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 improvement 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 municipi-
13 pality or municipalities in which the lands are situated, by two
14 insertions at least once a week during two consecutive weeks, the
15 last publication to be not earlier than seven days prior to such sale.
16 In the case of public sales, the governing body may by resolution fix
17 a 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

**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:

***—Assembly committee amendment adopted February 28, 1985.**

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
 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 one 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 munici-
101 pality, 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 sub-
130 section (b) of this section, together with the minimum prices, respec-
131-132 tively, as determined by the governing body, shall be included in
133 the resolution or ordinance authorizing the sale, and said list shall
134 be posted on the bulletin board or other conspicuous space in the
135 building which the governing body usually holds its regular meet-
136 ings, and advertisement thereof made in a newspaper circulating in
137 the municipality or municipalities in which the real property,
138 capital improvement or personal property is situated, within five
139 days following enactment of said resolution or ordinance. Offers
140 for any or all properties so listed may thereafter be made to the
141 governing body or its designee for a period of 20 days following
142 the advertisement herein required, at not less than said minimum
143 prices, by any prospective purchaser, real estate broker, or other
144 authorized representative. In any such case, the governing body
145 may reconsider its resolution or ordinance, not later than 30 days
147 after its enactment, and advertise the real property, capital im-
148 provement, or personal property in question for public sale pur-
149 suant to subsection (a) of this section.

150 Any county or municipality selling any real property, capital
151 improvement or personal property pursuant to subsection (b) of
152 this section shall file with the Director of the Division of Local
153 Government Services in the Department of Community Affairs,

154 sworn affidavits verifying the publication of advertisements as
155 required by this subsection.

156 (c) By private sale of a municipality in the following case:

157 A sale to a private developer by a municipality, when acting as a
158 redevelopment agency pursuant to section 8 of P. L. 1956, c. 212
159 (C. 40:55C-37) or a local housing authority pursuant to section 8
160 of P. L. 1956, c. 211 (C. 55:14A-56). The real property or capital
161 improvements may be made available at their use value, which
162 represents the value (whether expressed in terms of rental or capi-
163 tal price) at which the municipality determines such should be made
164 available in order that it may be developed or redeveloped for the
165 purposes specified in the redevelopment plan formulated in ac-
166 cordance with the "Redevelopment Agencies Law," P. L. 1949,
167 c. 306 (C. 40:55C-1 et seq.) or the "Local Housing Authorities
168 Law," P. L. 1938, c. 19 (C. 55:14A-1 et seq), as appropriate.

169 Notwithstanding the provisions of any law, rule or regulation
170 to the contrary, a private developer who has purchased real
171 property or capital improvements pursuant to this subsection shall
172 not convey or otherwise dispose of all or any portion of that
173 property or those improvements without first offering the muni-
174 cipality which sold the property or improvements a right of first
175 refusal to purchase the property or improvements at the price
176 paid to the municipality by the developer. The right of first
177 refusal granted herein shall be a condition of the original sale by
178 the municipality, and shall be expressed in the deed or other in-
179 strument of conveyance for the property or improvements; *except*
180 *that if the municipality has established rules or requirements con-*
181 *cerning the use and sale of the property or the improvements and*
182 *requires as part of the sale that the use of the property or improve-*
183 *ment is subject to those rules or requirements, the private developer*
184 *may convey or otherwise dispose of the property pursuant to those*
185 *rules or requirements without first offering the municipality the*
186 *right of first refusal.*

187 All sales, either public or private, may be made for cash or upon
188 credit. A deposit not exceeding 10% of the minimum price or value
189 of the property to be sold may be required of all bidders. When
190 made upon credit, the county or municipality may accept a pur-
191 chase-money mortgage, upon terms and conditions which shall be
192 fixed by the resolution of the governing body; provided, however,
193 that such mortgage shall be fully payable within five years from
194 the date of the sale and shall bear interest at a rate equal to that
195 authorized under Title 31 of the Revised Statutes, as amended and
196 supplemented, and the regulations issued pursuant thereto, or the

197 rate last paid by the county or municipality upon any issue of notes
198 pursuant to the "Local Bond Law" [(chapter 2 of Title 40A of the
199 New Jersey Statutes)], (*N. J. S. 40A:2-1 et seq.*), whichever is
200 highest. The governing body may, by resolution, fix the time for
201 closing of title and payment of the consideration.

202 In all sales made pursuant to this section, the governing body of
203 any county or municipality may provide for the payment of a com-
204 mission to any real estate broker, or authorized representative
205 other than the purchaser actually consummating such sale; pro-
206 vided, however, that no commission shall be paid unless notice of
207 the governing body's intention to pay such a commission shall have
208 been included in the advertisement of sale and the recipient thereof
209 shall have filed an affidavit with the governing body stating that
210 said recipient is not the purchaser. Said commissions shall not
211 exceed, in the aggregate, 5% of the sale price, and be paid, where
212 there has been a public sale, only in the event that the sum of the
213 commission and the highest bid price does not exceed the next
214 highest bid price (exclusive of any ***[realtor's]*** **real estate*
215 *broker's** commission). As used in this section, "purchaser" shall
216 mean and include any person, corporation, company, association,
217 society, firm, partnership, or other business entity owning or con-
218 trolling, directly or indirectly, more than 10% of the purchasing
219 entity.

1 2. This act shall take effect immediately.

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 212 there has been a public sale, only in the event that the sum of the
 213 commission and the highest bid price does not exceed the next
 214 highest bid price (exclusive of any realtor's commission). As used
 215 in this section, "purchaser" shall mean and include any person,
 216 corporation, company, association, society, firm, partnership, or
 217 other business entity owning or controlling, directly or indirectly,
 218 more than 10% of the purchasing entity.

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STATEMENT

The purpose of this bill is to permit a municipality, which was established its own rules or requirements concerning the disposal of property or improvements developed or redeveloped by a private developer and which is acting as a redevelopment agency or a local housing authority, to sell the property or improvements to the private developer at private sale based upon those rules.

Under present law, the private developer must offer the municipality the right of first refusal to purchase the property or improvements at the price at which the property or improvements were originally bought from the municipality at private sale. Some municipalities, however, have established their own rules or requirements concerning the disposal of the property or improvements by a private developer. This bill would permit these municipalities to require, as part of the sale to the private developer, that any subsequent sale or conveyance of the property or improvement by the developer shall be subject to those rules.

A3013 (1985)

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ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3013
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 1985

The purpose of this bill is to permit a municipality, which has established its own rules or requirements concerning the disposal of property or improvements developed or redeveloped by a private developer and which is acting as a redevelopment agency or a local housing authority, to sell the property or improvements to the private developer at private sale based upon those rules or requirements.

Currently, under section 13 of P. L. 1971, c. 199 (C. 40A:12-13), the private developer must offer the municipality the right of first refusal to purchase the property or improvements at the price at which the property or improvements were originally bought from the municipality at private sale. Some municipalities, however, have established their own rules or requirements concerning the disposal of the property or improvements by a private developer. This bill permits these municipalities to require, as part of the sale to the private developer, that any subsequent sale or conveyance of the property or improvement by the developer shall be subject to those rules or requirements.

The Assembly committee amendment is technical in nature.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3013

STATE OF NEW JERSEY

DATED: JANUARY 13, 1986

The purpose of this bill is to permit a municipality, which has established its own rules or requirements concerning the disposal of property or improvements developed or redeveloped by a private developer and which is acting as a redevelopment agency or a local housing authority, to sell the property or improvements to the private developer at private sale based upon those rules or requirements.

Currently, under section 13 of P. L. 1971, c. 199 (C. 40A:12-13), the private developer must offer the municipality the right of first refusal to purchase the property or improvements at the price at which the property or improvements were originally bought from the municipality at private sale. Some municipalities, however, have established their own rules or requirements concerning the disposal of the property or improvements by a private developer. This bill permits these municipalities to require, as part of the sale to the private developer, that any subsequent sale or conveyance of the property or improvement by the developer shall be subject to those rules or requirements.