

40A:12-13

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40A:12-13 (Clarifies the law concerning municipal power to convey land by private sale to a private developer for redevelopment)

LAWS OF: 1984

CHAPTER: 111

Bill No: S1633

Sponsor(s): Pallone

Date Introduced: May 14, 1984

Committee: Assembly: /////

Senate: County and Municipal Government

Amended during passage: Yes Amendments during passage denoted by astrisks

Date of Passage: Assembly: June 28, 1984

Senate: June 18, 1984

Date of Approval: August 3, 1984

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments, adopted 6-28-84 (with statement)

Committee statement: Assembly No
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

8-3-84

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SENATE, No. 1633

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1984

By Senator PALLONE

Referred to Committee on County and Municipal Government

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
2 to 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 munic-
13 ipality 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
23 all the bids may be rejected. The invitation to bid may also

**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 May 17, 1984.**

****—Assembly amendment adopted June 28, 1984.**

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

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

164D ***Notwithstanding the provisions of any law, rule or regulation*
164E *to the contrary, a private developer who has purchased real*
164F *property or capital improvements pursuant to this subsection shall*
164G *not convey or otherwise dispose of all or any portion of that*
164H *property or those improvements without first offering the muni-*
164I *cipality which sold the property or improvements a right of first*
164J *refusal to purchase the property or improvements at the price*
164K *paid to the municipality by the developer. The right of first*
164L *refusal granted herein shall be a condition of the original sale by*
164M *the municipality, and shall be expressed in the deed or other*
164N *instrument of conveyance for the property or improvements.***

165 All sales either public or private may be made for cash or upon
166 credit. A deposit not exceeding 10% of the minimum price or value
167 of the property to be sold may be required of all bidders. When
168 made upon credit, the county or municipality may accept a pur-
169 chase-money mortgage, upon terms and conditions which shall be
170 fixed by the resolution of the governing body; provided, however,
171 that such mortgage shall be fully payable within five years from
172 the date of the sale and shall bear interest at a rate equal to that
173 authorized under Title 31 of the Revised Statutes, as amended and
174 supplemented, and the regulations issued pursuant thereto, or the
175 rate last paid by the county or municipality upon any issue of notes
176 pursuant to the Local Bond Law (chapter 2 of Title 40A of the
177 New Jersey Statutes), whichever is highest. The governing body
178 may, by resolution, fix the time for closing of title and payment of
179 the consideration.

180 In all sales made pursuant to this section, the governing body of

181 any county or municipality may provide for the payment of a com-
182 mission to any real estate broker, or authorized representative
183 other than the purchaser actually consummating such sale; pro-
184 vided, however, that no commission shall be paid unless notice of
185 the governing body's intention to pay such a commission shall have
186 been included in the advertisement of sale and the recipient thereof
187 shall have filed an affidavit with the governing body stating that
188 said recipient is not the purchaser. Said commissions shall not
189 exceed, in the aggregate, 5% of the sale price, and be paid, where
190 there has been a public sale, only in the event that the sum of the
191 commission and the highest bid price does not exceed the next
192 highest bid price (exclusive of any realtor's commission). As used
193 in this section, "purchaser" shall mean and include any person,
194 corporation, company, association, society, firm, partnership, or
195 other business entity owning or controlling, directly or indirectly,
196 more than 10% of the purchasing entity.

1 2. This act shall take effect immediately.

STATEMENT

Some question has arisen as to whether municipalities are able to convey real property including land and improvements to a private redeveloper by private sale in order to implement a redevelopment project. The purpose of this bill is to clarify the law in order to make clear that a municipality may convey land by private sale to a private developer to carry out a redevelopment project.

51633 (1984)

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1633

with Senate Committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 1984

Senate Bill No. 1633 would clarify existing law in order to firmly establish that a municipality, when acting as a redevelopment agency or a housing authority, may convey real property or capital improvements by private sale to a private developer in order to carry out a redevelopment project.

Currently, under the "Local Housing Authorities Law," P. L. 1938, c. 19 (C. 55:14A-1 et seq.), a municipality may act in the capacity of a local housing authority. Under the "Redevelopment Agencies Law," P. L. 1949, c. 306 (C. 40:55C-1 et seq.), a municipality may act in the capacity of a local redevelopment agency. In these capacities, the municipality is granted broad statutory powers to participate in the redevelopment of a blighted area or an area in need of rehabilitation. Among those powers is the authority to acquire and convey property for redevelopment purposes.

However, under section 13 of the "Local Lands and Buildings Law," P. L. 1971, c. 199 (C. 40A:12-13), a municipality is required, with certain exceptions, to sell property at public auction to the highest bidder. The statutory exceptions do not presently include a private sale for the purposes of redevelopment.

Senate Bill No. 1633 would amend section 13 of the "Local Lands and Buildings Law," P. L. 1971, c. 199 (C. 40A:12-13), to permit a municipality, when acting in the capacity of a redevelopment agency or local housing authority, to convey real property or capital improvements by private sale to a private developer as part of a redevelopment project. In so permitting, this bill expressly reconciles the "Local Lands and Buildings Law" with the broad authority granted a municipality under the "Local Housing Authorities Law" and the "Redevelopment Agencies Law." Property conveyed under the bill would be permitted to be sold according to the value it would represent as part of a redevelopment project.

In recognizing that the long term public benefits of community redevelopment outweigh the immediate benefits of publicly selling property to the highest bidder, S-1633 is consistent with principles enunciated

by the Superior Court of New Jersey in *Ott v. West New York*, 92 N. J. Super. 184 (Law Div. 1966). While handed down before the enactment of the "Local Lands and Buildings Law," the *Ott* decision involved public-bidding language and concepts from R. S. 40:60-26 et seq., now repealed, from which, in part, section 13 of the "Local Lands and Buildings Law" derives.

The committee amendments are technical and clarifying in nature.

JUN 28 1984

Assembly amendments
to

senate Bill No. 1633 Sca

(by Assemblyman Herman)
(Galvin)

end:

Page	Sec.	Line
5	1	After 164c

Insert new material as follows:

"Notwithstanding the provisions of any law, rule or regulation to the contrary, a private developer who has purchased real property or capital improvements pursuant to this subsection shall not convey or otherwise dispose of all or any portion of that property or those improvements without first offering the municipality which sold the property or improvements a right of first refusal to purchase the property or improvements at the price paid to the municipality by the developer. The right of first refusal granted herein shall be a condition of the original sale by the municipality, and shall be expressed in the deed ^{or other instrument} of conveyance for the property or improvements."

STATEMENT

This amendment would grant a municipality the right of first refusal, in the case of a resale by a private developer, of real property or capital improvements which the developer acquired by private sale from the municipality as part of a redevelopment project and in conjunction with a redevelopment plan.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT
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TRENTON, N.J. 08625

Release: FRIDAY, AUGUST 3, 1984

Governor Thomas H. Kean has signed legislation which will permit a local governing body, when acting as a redevelopment agency, to sell municipality owned property without offering it to the highest bidder at a public auction.

The two bills in the package, S-1633 and S-1634, were sponsored by State Senator Frank Pallone, D-Monmouth. Identical legislation was first sponsored in the Assembly by Assemblyman Joseph A. Palaia, R-Monmouth.

The two bills are designed to permit a municipality to sell property to a developer as part of a specific redevelopment plan. The bills make clear that although sale of public property at public auction is the generally desirable method, in the instance of a redevelopment plan, the intent of the plan could be thwarted or delayed should the property not be sold to the developer whose plan had been approved by the redevelopment agency, in this case the governing body of the municipality.

Enactment of the two bills will enable the city of Asbury Park to proceed with approved plans for the redevelopment of the city's oceanfront area.

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Bills

Page Two

August 3, 1984

S-1634 clarifies the powers of a municipality to convey property when acting as a redevelopment agency by authorizing the sale without auction of property for the specific use as set out in a plan developed by the governing body.

S-1633 amends the Local Lands and Buildings Law to permit sale without public bid, requiring the land to be sold at "use value," that is, the value at which the municipality determines the land should be sold for specific redevelopment purposes. The bill also grants the municipality the right of first refusal in the case of subsequent resale by a private developer. The bill establishes the right of the municipality to repurchase the land from the redeveloper at the same price for which it was originally sold. Such right must be a condition of the deed transferring the property to the redeveloper.

The Governor also signed the following bills:

A-2284, sponsored by Assemblyman Thomas A. Pankok, D-Salem, which provides that employees of municipal port authorities shall be part of the Civil Service System in cases where the municipality creating the authority is already included in the Civil Service system.

A-1631, sponsored by Assemblyman Thomas J. Deverin, D-Middlesex, which requires every nursing home and residential health care facility to establish a written "heat emergency action plan" to deal with problems caused by very hot weather conditions. The plan must detail the procedures the facility will follow in the event of a heat emergency, which is defined as a condition in which the indoor temperature is 85 degrees fahrenheit for continuous period of four hours or longer.

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