

P.L. 2004, CHAPTER 78, *approved July 2, 2004*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 967

1 AN ACT concerning public acquisition and sales of real property ¹by
2 certain cities¹ and supplementing P.L.1971, c.199 (C.40A:12-1 et
3 seq.).

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. Notwithstanding any provision of law to the contrary, in the
9 case of a municipality ¹with a population of 265,000 or greater,
10 according to the latest federal decennial census,¹ that has adopted a
11 "Mayor-Council Plan" of government pursuant to the provisions of the
12 "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et
13 seq.), no resolution pertaining to a transfer, exchange, lease,
14 acquisition, or sale of real property shall be adopted by the municipal
15 council unless first presented by the mayor. Nothing in P.L.1971,
16 c.199 (C.40A:12-1 et seq.) shall be interpreted as altering the
17 separation of powers that exists in municipalities ¹with a population of
18 265,000 or greater, according to the latest federal decennial census,¹
19 that have adopted a "Mayor-Council" plan of government pursuant to
20 the provisions of the "Optional Municipal Charter Law," P.L.1950,
21 c.210 (C.40:69A-1 et seq.), or assigning to the municipal council in
22 such municipalities the entire and exclusive function, including all
23 constituent elements, of transferring, exchanging, leasing, acquiring,
24 and conveying real property. In municipalities ¹with a population of
25 265,000 or greater, according to the latest federal decennial census,¹
26 that have adopted a "Mayor-Council" plan of government pursuant to
27 the provisions of the "Optional Municipal Charter Law," P.L.1950,
28 c.210 (C.40:69A-1 et seq.), all administrative functions pertaining to
29 the transfer, exchange, lease, acquisition, and conveyance of municipal
30 property, including identifying the parcels to be transferred,
31 exchanged, leased, acquired, or conveyed, identifying prospective
32 sellers, purchasers or transferees and negotiating the terms and
33 conditions of sale, shall be exercised by the mayor or his designee,
34 subject to approval by the municipal council.

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36 2. This act shall take effect immediately, and shall be retroactive
37 to January 1, 2002.

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted June 21, 2004.

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3 Clarifies mayor's authority to determine conditions of transfer,
4 exchange, lease, acquisition, and sale of real property in certain cities.

SENATE, No. 967

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED FEBRUARY 9, 2004

Sponsored by:
Senator SHARPE JAMES
District 29 (Essex and Union)

SYNOPSIS

Clarifies mayor's authority to determine conditions of acquisition and sale of real property in mayor-council form of government.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public acquisition and sales of real property and
2 amending P.L.1971, c.199.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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

9 2. Definitions. The following words shall have the following
10 meanings, unless the context clearly indicates the contrary:

11 (a) "Acquire" shall include acquisition by gift, devise, purchase,
12 exchange, grant, lease, condemnation, or installment purchase
13 agreement unless otherwise indicated.

14 (b) "Buildings" shall include any building or buildings and any
15 structures, improvements, ingress or egress, grounds or plazas,
16 necessary and incidental to the purpose of the building and the safety,
17 comfort and well-being of its occupants.

18 (c) "Capital improvements" shall include, in addition to buildings,
19 any structures, fixtures, edifices, byways, parking lots, service
20 facilities, and any other facility necessary and incidental to the lawful
21 performance of any function of a county or municipality.

22 (d) "County" means any county of this State of whatever class.

23 (e) "Municipality" means any town, township, borough, village or
24 city of whatever class heretofore or hereafter created under general or
25 special charter.

26 (f) "Personal property" shall mean any personal property necessary
27 and incidental to the furnishing, refurnishing or refurbishing of a
28 building. "Personal property" shall also include, but not be limited to,
29 office furniture, office equipment, office supplies, computers,
30 computer equipment, telephone equipment, cameras, tractors, lawn
31 mowers, dump trucks, golf carts, modular office trailers, tools,
32 janitorial supplies and farm animals.

33 (g) "Real property" shall include, in addition to the usual
34 connotations thereof, development rights or easements, or any right,
35 interest or estate in the area extending above any real property, or
36 capital improvement thereon, to such a height or altitude as any title,
37 interest or estate in real property may extend, commonly known as "air
38 rights."

39 (h) "Resolution" or "ordinance" when used in connection with the
40 action of a county or municipality means a resolution or ordinance
41 adopted by the governing body of the county or municipality. In any
42 case in which a resolution or ordinance authorizing the expenditure of
43 public moneys is required to be approved by any other board, body 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 underlined thus is new matter.

1 commission of the State, county or municipality, "resolution" or
2 "ordinance" shall mean also adopted or approved by the board, body
3 or commission authorized to take such action on behalf of the State,
4 county or municipality. In the case of a municipality which has
5 adopted a "Mayor-Council Plan" of government pursuant to the
6 provisions of the "Optional Municipal Charter Law," P.L.1950, c.210
7 (C.40:69A-1 et seq.), no resolution pertaining to an acquisition or sale
8 of real property shall be adopted by the municipal council unless first
9 presented by the mayor. Nothing in P.L.1979, c.199 (C.40A:12-1 et
10 seq.) shall be interpreted as altering the separation of powers that
11 exists in municipalities that have adopted a "Mayor-Council" plan of
12 government pursuant to the provisions of the "Optional Municipal
13 Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), or assigning to
14 the municipal council in such municipalities the entire and exclusive
15 function, including all constituent elements, of acquiring and
16 conveying real property. In municipalities that have adopted a
17 "Mayor-Council" plan of government pursuant to the provisions of the
18 "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et
19 seq.), all administrative functions pertaining to the acquisition and
20 conveyance of municipal property, including identifying the parcels to
21 be acquired or conveyed, identifying prospective sellers, purchasers
22 or transferees and negotiating the terms and conditions of sale, shall
23 be exercised by the mayor or his designee, subject to approval by the
24 municipal council.

25 (i) "Sale" shall include the conveyance of any estate, interest,
26 easement or title to, or the waiver, release, or modification of any
27 conditions, restrictions or limitations on any real property, capital
28 improvement or personal property of the county or municipality, but
29 shall not include any lease or exchange of such property.

30 (cf: P.L.1995, c.12, s.1)

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32 2. This act shall take effect immediately, and shall be retroactive to
33 January 1, 2002.

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STATEMENT

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38 This bill would amend the definitional section of the "Local Lands
39 and Buildings Law," section 2 of P.L.1971, c.199 (C.40A:12-2), to
40 clarify the role of the mayor in determining the conditions of the
41 acquisition, sale, transfer, or lease of real property in the mayor-
42 council form of government. The bill adds to the law's definition of
43 "resolution" to provide that, in the case of a municipality which has
44 adopted a "Mayor-Council Plan" of government pursuant to the
45 provisions of the "Optional Municipal Charter Law," P.L.1950, c.210
46 (C.40:69A-1 et seq.), no resolution concerning the acquisition, sale,

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1 transfer, or lease of local lands and buildings shall be adopted unless
2 first presented to the council by the mayor. This bill is specifically
3 intended to overrule the holding in Council of the City of Newark v.
4 James, 232 N.J.Super. 449 (App. Div. 1989), which asserted that the
5 statutes authorizing the public sale of real property, by resolution or
6 ordinance, assigned to the city council and not to the mayor, of
7 municipalities operating under the mayor-council plan, the choice of
8 what properties to sell and the conditions of the sale. It is more
9 consistent with the mayor-council plan to recognize the authority of
10 the mayor, as the chief executive officer of the municipality, to initiate
11 those land purchase and sale decisions and determine the terms and
12 conditions for acquisition and sale, upon approval by council, rather
13 than to cut the mayor out of the process.

ASSEMBLY FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 967

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 2004

The Assembly Financial Institutions and Insurance Committee reports favorably, and with committee amendments Senate Bill No. 967 (SCS).

As amended by the committee, this bill, the Senate Bill No. 967 (SCS), supplements the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.), to clarify the role of the mayor in municipalities with a population of 265,000 or greater, according to the latest federal decennial census, in determining the conditions of the acquisition, sale, transfer, exchange or lease of real property under the mayor-council form of government. The bill provides that, in the case of a municipality with a population of 265,000 or greater, which has adopted a "Mayor-Council Plan" of government pursuant to the provisions of the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), no resolution concerning the acquisition, sale, transfer, exchange, or lease of local lands and buildings could be adopted unless first presented to the council by the mayor.

COMMITTEE AMENDMENTS

The committee amendments limit application of the provisions of the bill to municipalities under the mayor-council form of government with a population of 265,000 or greater, according to the latest federal decennial census.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 967**

STATE OF NEW JERSEY

DATED: MARCH 1, 2004

The Senate Community and Urban Affairs Committee reports a Senate Committee Substitute for Senate Bill No. 967.

This committee substitute would supplement the "Local Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.), to clarify the role of the mayor in determining the conditions of the acquisition, sale, transfer, exchange or lease of real property in the mayor-council form of government. The substitute provides that, in the case of a municipality which has adopted a "Mayor-Council Plan" of government pursuant to the provisions of the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), no resolution concerning the acquisition, sale, transfer, exchange, or lease of local lands and buildings could be adopted unless first presented to the council by the mayor. This bill is specifically intended to overrule the holding in Council of the City of Newark v. James, 232 N.J.Super. 449 (App. Div. 1989), which asserted that the statutes authorizing the public sale of real property, by resolution or ordinance, assigned to the city council and not to the mayor, of municipalities operating under the mayor-council plan, the choice of what properties to sell and the conditions of the sale. It is more consistent with the mayor-council plan to recognize the authority of the mayor, as the chief executive officer of the municipality, to initiate those land purchase, transfer, exchange, lease, and sale decisions and, to determine the terms and conditions for acquisition, transfer, exchange, lease, and sale, upon approval by council, rather than to cut the mayor out of the process.