

40A:12-13

LEGISLATIVE HISTORY CHECKLIST

NJSA 40A:12-13

Laws of 1975 Chapter 339

Bill No. S 1067

Sponsor(s) Dugan

Date Introduced April 4, 1974

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes Amendments during passage denoted by asterisks

Date of passage: Assembly Jan. 8, 1976

Senate Nov. 25, 1974

Date of approval March 3, 1976

Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly No

Senate Yes

Fiscal Note No

Veto message No

Message on signing No

Following were printed:

Reports No

Hearings No

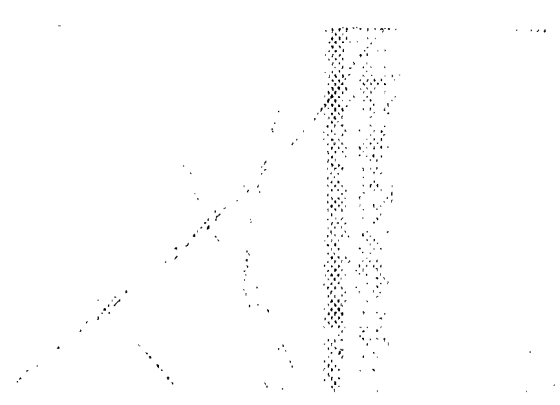
Cited in sponsor's statement:

974.901 State Commission of Investigation.
I83 Annual Report, 1971.

10/4/76

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CHAPTER 339 LAWS OF N. J. 1975
APPROVED 3-3-76

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SENATE, No. 1067

STATE OF NEW JERSEY

INTRODUCED APRIL 4, 1974

By Senator DUGAN

Referred to Committee on Judiciary

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 public sale to the highest bidder after advertisement
12 thereof in a newspaper circulating in the municipality or municipi-
13 palities in which the lands are situated by two insertions at least
14 once a week during 2 consecutive weeks, the last publication to be
15 not earlier than 7 days prior to such sale. In the case of public
16 sales, the governing body may by resolution fix a minimum price,
17 or prices, with or without the reservation of the right, to reject
18 all bids where the highest bid is not accepted. Notice of such
19 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

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

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 conditiions 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 advertisements 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 improvement
47 or personal property subject to the conditions or restrictions im-
48 posed, or interest or estate retained, which the county or munici-
49 pality proposes to retain or impose.

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

53 The county or the municipality may elect or reject either or both
54 options and the highest bid for each. Such acceptance or rejec-
55 tion shall be made not later than at the second regular meeting
56 of the governing body following the sale, and, if the governing
57 body shall not so accept such highest bid, or reject all bids, said
58 bids shall be deemed to have been rejected. Any such sale may be
59 adjourned at the time advertised for not more than 1 week with-
60 out readvertising.

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

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

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

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

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

106 In the case of any sale of real property hereafter made pur-
107 suant to subsection (b) of this section, in no event shall the
108 price agreed upon with the owner be less than the difference
109 between the highest bid accepted for the real property subject
110 to easements (Option A) and the highest bid rejected for the

111 real property not subject to easements (Option B). After the
112 adoption of the resolution or ordinance, and compliance by the
113 owner of said real property with the terms thereof said real
114 property shall be free, and entirely discharged of and from
115 such rights of the public and of the county or municipality,
116 as the case may be, but no such release shall affect the right
117 of lawful occupancy or use of any such real property by any
118 municipal or private utility to occupy or use any such real
119 property lawfully occupied or used by it.

120 A list of the property so authorized to be sold, pursuant to
121 subsection (b) of this section, together with the minimum prices
122 respectively, as determined by the governing body, shall be included
123 in the resolution or ordinance authorizing the sale, and said list
124 shall be posted on the bulletin board or other conspicuous space in
125 the building *in* which the governing body usually holds its regular
126 meetings, and advertisement thereof made in a newspaper circu-
127 lating in the municipality or municipalities in which the real
128 property, capital improvement or personal property is situated
129 within 5 days following enactment of said resolution or ordinance.
130 Offers for any or all properties so listed may thereafter be made to
131 the governing body or its designee for a period of 20 days following
132 the advertisement herein required, at not less than said minimum
133 prices, by any prospective purchaser, real estate broker, or other
134 authorized representative. In any such case, the governing body
135 may reconsider its resolution or ordinance, not later than 30 days
136 after its enactment, and advertise the real property, capital im-
137 provement, or personal property in question for public sale pur-
138 suant to subsection (a) of this section.

139 Any county or municipality selling any real property, capital
140 improvement or personal property pursuant to subsection (b) of
141 this section shall file with the Director of the Division of Local
142 **[Finance]** *Government Services* in the Department of Community
143 Affairs, sworn affidavits verifying the publication of advertisements
144 as required by this subsection.

145 All sales either public or private may be made for cash or upon
146 credit. A deposit not exceeding 1% of the minimum price or value
147 of the property to be sold may be required of all bidders. When
148 made upon credit, the county or municipality may accept a pur-
149 chase-money mortgage, upon terms and conditions which shall be
150 fixed by the resolution of the governing body; provided, however,
151 that when such mortgage shall be fully payable within 5 years from
152 the date of the sale and shall bear interest at a rate equal to that

153 authorized under Title 31 of the Revised Statutes, as amended and
154 supplemented, and the regulations issued pursuant thereto, or the
155 rate last paid by the county or municipality upon any issue of notes
156 pursuant to the Local Bond Law (chapter 2 of Title 40A of the
157 New Jersey Statutes), whichever is highest. The governing body
158 may, by resolution, fix the time for closing of title and payment of
159 the consideration.

160 In all sales made pursuant to this section, the governing body of
161 any county or municipality may provide for the payment of a com-
162 mission to any real estate broker, or authorized representative
163 other than the purchaser actually consummating such sale~~], but~~
164 ~~said]~~; *provided, however, that no commission shall be paid unless*
165 *notice of the *~~[availability thereof]~~* *governing body's intention*
166 *to pay such a commission* shall have been included in the advertise-*
167 *ment of sale and the recipient thereof shall have filed an affidavit*
168 *with the governing body stating that said recipient is not the pur-*
169 *chaser. Said commissions shall not exceed, in the aggregate, 5%*
170 *of the sale price, and be paid, where there has been a public sale,*
171 *only in the event that the sum of the commission and the highest*
172 *bid price does not exceed the next highest bid price (exclusive of*
173 *any realtor's commission). As used in this section, "purchaser"*
174 *shall mean and include any person, corporation, company, associa-*
175 *tion, society, firm, partnership, or other business entity owning or*
176 *controlling, directly or indirectly, more than 10% of the purchasing*
177 *entity.*

1 2. This act shall take effect immediately.

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154 supplemented, and the regulations issued pursuant thereto, or the
155 rate last paid by the county or municipality upon any issue of notes
156 pursuant to the Local Bond Law (chapter 2 of Title 40A of the
157 New Jersey Statutes), whichever is highest. The governing body
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159 the consideration.

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162 mission to any real estate broker, or authorized representative
163 other than the purchaser actually consummating such sale, but
164 said; *provided, however, that no commission shall be paid unless*
165 *notice of the availability thereof shall have been included in the*
166 *advertisement of sale and the recipient thereof shall have filed an*
167 *affidavit with the governing body stating that said recipient is not*
168 *the purchaser. Said commissions shall not exceed, in the aggregate,*
169 *5% of the sale price, and be paid, where there has been a public*
170 *sale, only in the event that the sum of the commission and the*
171 *highest bid price does not exceed the next highest bid price (ex-*
172 *clusive of any realtor's commission). As used in this section,*
173 *"purchaser" shall mean and include any person, corporation, com-*
174 *pany, association, society, firm, partnership, or other business*
175 *entity owning or controlling, directly or indirectly, more than 10%*
176 *of the purchasing entity.*

1 2. This act shall take effect immediately.

STATEMENT

This bill is one of a package of three implementing recommenda-
tions made by the State Commission of Investigation in its 1971
Annual Report, based upon its investigation into the development
of the Point Breeze area of Jersey City.

This particular bill would amend the "Local Lands and Buildings
Law" (P. L. 1971, c. 199, C. 40A:12-1 et seq.), to effectively bar
any payment of brokerage fees on sales of public lands to pur-
chasers of such lands.

The S. C. I. Annual Report noted that, "the statute does not
define the term 'purchaser' nor does it require that the decision
to pay a commission be included in the conditions publicly adver-
tised nor in the contract for sale." This bill would satisfy these
needs by defining "purchaser" to "mean and include any person,
corporation, company, association, society, firm, partnership, or
other business entity owning or controlling, directly or indirectly,

more than 10% of the purchasing entity;" and, by prohibiting the payment of commissions "unless notice of the availability thereof shall have been included in the advertisement of sale and the recipient thereof shall have filed an affidavit with the governing body stating that said recipient is not the purchaser."

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1067

STATE OF NEW JERSEY

DATED: JUNE 4, 1974

This bill, with committee amendments, implements recommendations made by the State Commission of Investigation in its 1971 Annual Report, based upon its investigation into the development of the Point Breeze area of Jersey City. It would amend the "Local Lands and Buildings Law" (P. L. 1971, c. 199, C. 40A:12-1 et seq.), to effectively bar any payment of brokerage fees on sales of public lands to purchasers of such lands and would require notice to the public that the governing body intends to pay such a commission.

The S.C.I. Annual Report noted that, "the statute does not define the term 'purchaser' nor does it require that the decision to pay a commission be included in the contract for sale." The lack of definition has resulted in a part owner of a corporation being able to receive a brokerage commission on his corporation's purchase of public lands. This would be prevented by defining "purchaser" to include corporations and those who own or control, directly or indirectly, more than 10% of the purchasing entity.

The committee amendment is for clarification purposes.