

# ASSEMBLY, No. 2387

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 28, 2008

**Sponsored by:**

**Assemblywoman ALISON LITTELL MCHOSE**

**District 24 (Sussex, Hunterdon and Morris)**

**Assemblyman GARY R. CHIUSANO**

**District 24 (Sussex, Hunterdon and Morris)**

**SYNOPSIS**

Clarifies provisions of law concerning commissions and buyer's premiums for sale of local government real estate.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning commissions and buyer's premiums on the sale  
2 of municipal and county owned real property and amending  
3 P.L.1971, c.199.

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

7  
8 1. Section 13 of P.L.1971, c.199 (C.40A:12-13) is amended to  
9 read as follows:

10 13. **[Sales of real property, capital improvements or personal**  
11 **property; exceptions; procedure.]** Any county or municipality may  
12 sell any real property, capital improvement or personal property, or  
13 interests therein, not needed for public use, as set forth in the  
14 resolution or ordinance authorizing the sale, other than county or  
15 municipal lands, real property otherwise dedicated or restricted  
16 pursuant to law, and, except as otherwise provided by law, all such  
17 sales shall be made by one of the following methods:

18 (a) By open public sale at auction to the highest bidder after  
19 advertisement thereof in a newspaper circulating in the municipality  
20 or municipalities in which the lands are situated, by two insertions  
21 at least once a week during two consecutive weeks, the last  
22 publication to be not earlier than seven days prior to such sale.

23 A municipality or county may contract with a real estate broker  
24 to conduct the public auction and may provide for either payment of  
25 a commission by the municipality or county or through the payment  
26 of a "buyer's premium" by the highest bidder. A commission or  
27 "buyer's premium" shall not exceed 5% of the sales price, and be  
28 paid to the real estate broker for the provision of its services, which  
29 may include, but shall not be limited to: conducting advertising and  
30 marketing for the auction, preparing auction information packages,  
31 answering questions from prospective bidders, conducting the  
32 auction, and executing contract documents. A "buyer's premium"  
33 may be imposed by a municipality or county upon a buyer pursuant  
34 to a public sale entered into pursuant to this section and used in lieu  
35 of the payment of a commission authorized under this section,  
36 however, a "buyer's premium" shall not exceed 5% of the sales  
37 price.

38 For the purposes of this subsection:

39 "buyer's premium" means consideration in addition to the bid  
40 price, usually described as a percentage added to the final bid, to be  
41 paid by the buyer as part of the purchase price; and

42 "real estate broker" means a person, firm or corporation duly  
43 licensed as a real estate broker pursuant to R.S.45:15-1 et seq.

**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 In the case of public sales, the governing body may by resolution  
2 fix a minimum price or prices, with or without the reservation of the  
3 right to reject all bids where the highest bid is not accepted. Notice  
4 of such reservation shall be included in the advertisement of the  
5 sale and public notice thereof shall be given at the time of sale.  
6 Such resolution may provide, without fixing a minimum price, that  
7 upon the completion of the bidding, the highest bid may be accepted  
8 or all the bids may be rejected.

9 The invitation to bid may also impose restrictions on the use to  
10 be made of such real property, capital improvement or personal  
11 property, and any conditions of sale as to buildings or structures, or  
12 as to the type, size, or other specifications of buildings or structures  
13 to be constructed thereon, or as to demolition, repair, or  
14 reconstruction of buildings or structures, and the time within which  
15 such conditions shall be operative, or any other conditions of sale,  
16 in like manner and to the same extent as by any other vendor. Such  
17 conditions shall be included in the advertisement, as well as the  
18 nature of the interest retained by the county or municipality. Such  
19 restrictions or conditions shall be related to a lawful public purpose  
20 and encourage and promote fair and competitive bidding of the  
21 county or municipality and shall not, in the case of a municipality,  
22 be inconsistent with or impose a special or higher standard than any  
23 zoning ordinance or building, plumbing, electrical, or similar code  
24 or ordinance then in effect in the municipality.

25 In any case in which a county or municipality intends to retain an  
26 estate or interest in any real property, capital improvement or  
27 personal property, in the nature of an easement, contingent or  
28 reversionary, the invitation to bid and the advertisement required  
29 herein shall require each bidder to submit one bid under each  
30 Option A and Option B below.

31 (1) Option A shall be for the real property, capital improvement  
32 or personal property subject to the conditions or restrictions  
33 imposed, or interest or estate retained, which the county or  
34 municipality proposes to retain or impose.

35 (2) Option B shall be for the real property, capital improvement  
36 or personal property to be sold free of all such restrictions,  
37 conditions, interests or estates on the part of the county or  
38 municipality.

39 The county or the municipality may elect or reject either or both  
40 options and the highest bid for each. Such acceptance or rejection  
41 shall be made not later than at the second regular meeting of the  
42 governing body following the sale, and, if the governing body shall  
43 not so accept such highest bid, or reject all bids, said bids shall be  
44 deemed to have been rejected. Any such sale may be adjourned at  
45 the time advertised for not more than one week without  
46 readvertising.

1 (b) At private sale, when authorized by resolution, in the case of  
2 a county, or by ordinance, in the case of a municipality, in the  
3 following cases:

4 (1) A sale to any political subdivision, agency, department,  
5 commission, board or body corporate and politic of the State of  
6 New Jersey or to an interstate agency or body of which the State of  
7 New Jersey is a member or to the United States of America or any  
8 department or agency thereof.

9 (2) A sale to a person submitting a bid pursuant to subsection  
10 (a) of this section, where all bids have been rejected, provided that  
11 the terms and price agreed to shall ~~in no event~~ be ~~less~~ greater  
12 than the highest bid rejected, and provided further that the terms  
13 and conditions of sale shall remain identical.

14 (3) A sale by any county or municipality, when it has or shall  
15 have conveyed its right, title and interest in any real property,  
16 capital improvement or personal property not needed for public use,  
17 and it was assumed and intended that there should be conveyed a  
18 good and sufficient title in fee simple to said real property, capital  
19 improvement or personal property, free of all encumbrances and the  
20 full consideration has been paid therefor, and it shall thereafter  
21 appear that the title conveyed was insufficient or that said county or  
22 municipality at the time of said conveyance was not the owner of  
23 some estate or interest in said real property, capital improvement or  
24 personal property or of some encumbrances thereon, and the county  
25 or municipality shall thereafter acquire a good and sufficient title in  
26 fee simple, free of all encumbrances of said real property, capital  
27 improvement or personal property or shall acquire such outstanding  
28 estate or interest therein or outstanding encumbrance thereon and  
29 said county or municipality, by resolution of the governing body  
30 and without the payment of any additional consideration, has  
31 deemed to convey or otherwise transfer to said purchaser, his heirs  
32 or assigns, such after-acquired title, or estate or interest in, or  
33 encumbrance upon, such real property, capital improvement or  
34 personal property to perfect the title or interest previously  
35 conveyed.

36 (4) A sale of an easement upon any real property previously  
37 conveyed by any county or municipality may be made when the  
38 governing body of any county, by resolution, or any municipality,  
39 by ordinance, has elected to release the public rights in the nature of  
40 easements, in, on, over or under any real property within the county  
41 or the municipality, as the case may be, upon such terms as shall be  
42 agreed upon with the owner of such lands, if the use of such rights  
43 is no longer desirable, necessary or required for public purposes.

44 (5) A sale to the owner of the real property contiguous to the  
45 real property being sold; provided that the property being sold is  
46 less than the minimum size required for development under the  
47 municipal zoning ordinance and is without any capital improvement  
48 thereon; except that when there is more than one owner with real

1 property contiguous thereto, said property shall be sold to the  
2 highest bidder from among all such owners. Any such sale shall be  
3 for not less than the fair market value of said real property. When  
4 there is only one owner with real property contiguous to the  
5 property being sold, and the property is less than an eighth of the  
6 minimum size required for development under the municipal zoning  
7 ordinance and is without any capital improvement thereon, the fair  
8 market value of that property may be determined by negotiation  
9 between the local unit and the owner of the contiguous real  
10 property. The negotiated sum shall be subject to approval by  
11 resolution of the governing body, but in no case shall that sum be  
12 less than one dollar.

13 In the case of any sale of real property hereafter made pursuant  
14 to subsection (b) of this section, in no event shall the price agreed  
15 upon with the owner be less than the difference between the highest  
16 bid accepted for the real property subject to easements (Option A)  
17 and the highest bid rejected for the real property not subject to  
18 easements (Option B). After the adoption of the resolution or  
19 ordinance, and compliance by the owner of said real property with  
20 the terms thereof, said real property shall be free, and entirely  
21 discharged of and from such rights of the public and of the county  
22 or municipality, as the case may be, but no such release shall affect  
23 the right of lawful occupancy or use of any such real property by  
24 any municipal or private utility to occupy or use any such real  
25 property lawfully occupied or used by it. A list of the property so  
26 authorized to be sold, pursuant to subsection (b) of this section,  
27 together with the minimum prices, respectively, as determined by  
28 the governing body, shall be included in the resolution or ordinance  
29 authorizing the sale, and said list shall be posted on the bulletin  
30 board or other conspicuous space in the building which the  
31 governing body usually holds its regular meetings, and  
32 advertisement thereof made in a newspaper circulating in the  
33 municipality or municipalities in which the real property, capital  
34 improvement or personal property is situated, within five days  
35 following enactment of said resolution or ordinance. Offers for any  
36 or all properties so listed may thereafter be made to the governing  
37 body or its designee for a period of 20 days following the  
38 advertisement herein required, at not less than said minimum prices,  
39 by any prospective purchaser, real estate broker, or other authorized  
40 representative. In any such case, the governing body may  
41 reconsider its resolution or ordinance, not later than 30 days after its  
42 enactment, and advertise the real property, capital improvement, or  
43 personal property in question for public sale pursuant to subsection  
44 (a) of this section.

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

1 sworn affidavits verifying the publication of advertisements as  
2 required by this subsection.

3 (c) By private sale of a municipality in the following case: A  
4 sale to a private developer by a municipality, when acting in  
5 accordance with the "Local Redevelopment and Housing Law,"  
6 P.L.1992, c.79 (C.40A:12A-1 et al.).

7 All sales, either public or private, may be made for cash or upon  
8 credit. A deposit not exceeding 10% of the minimum price or value  
9 of the property to be sold may be required of all bidders. When  
10 made upon credit, the county or municipality may accept a  
11 purchase-money mortgage, upon terms and conditions which shall  
12 be fixed by the resolution of the governing body; provided,  
13 however, that such mortgage shall be fully payable within five years  
14 from the date of the sale and shall bear interest at a rate equal to  
15 that authorized under Title 31 of the Revised Statutes, as amended  
16 and supplemented, and the regulations issued pursuant thereto, or  
17 the rate last paid by the county or municipality upon any issue of  
18 notes pursuant to the "Local Bond Law" (N.J.S.40A:2-1 et seq.),  
19 whichever is higher. The governing body may, by resolution, fix  
20 the time for closing of title and payment of the consideration.

21 In all sales made pursuant to this section, the governing body of  
22 any county or municipality may provide for the payment of a  
23 commission to any real estate broker, or authorized representative  
24 other than the purchaser actually consummating such sale;  
25 provided, however, that no commission shall be paid unless notice  
26 of the governing body's intention to pay such a commission shall  
27 have been included in the advertisement of sale and the recipient  
28 thereof shall have filed an affidavit with the governing body stating  
29 that said recipient is not the purchaser. Said commissions shall not  
30 exceed, in the aggregate, 5% of the sale price, and be paid, where  
31 there has been a **[public]** private sale pursuant to paragraph (2) of  
32 subsection (b) of this section, only in the event that the sum of the  
33 commission and the highest bid **[price]** rejected does not exceed  
34 the **[next highest bid]** sale price (exclusive of any real estate  
35 broker's commission). As used in this section, "purchaser" shall  
36 mean and include any person, corporation, company, association,  
37 society, firm, partnership, or other business entity owning or  
38 controlling, directly or indirectly, more than 10% of the purchasing  
39 entity.

40 (cf: P.L.2000, c.126, s.26)

41

42 2. This act shall take effect immediately.

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#### STATEMENT

46

47 This bill would clarify that a municipality or county that wishes  
48 to auction off real property that is not needed for public use may

1 enter into a contract with a real estate broker to conduct the auction.  
2 The contract could provide for compensation to the broker by either  
3 payment of a commission by the municipality or county or through  
4 the payment of a “buyer’s premium” by the highest bidder. A  
5 commission or “buyer’s premium” could not exceed 5% of the sales  
6 price of the real property. Real estate brokers often contract with  
7 municipalities to conduct auctions and provide services such as:  
8 conducting advertising and marketing for the auction, preparing  
9 auction information packages, answering questions from  
10 prospective bidders, conducting the auction, and executing contract  
11 documents. While the practice of hiring real estate brokers to  
12 conduct auctions on behalf of municipalities is a long-standing  
13 practice, their hiring and compensation have not been specifically  
14 addressed in the statutes.

15 The bill defines “buyer's premium” as consideration in addition  
16 to the bid price, usually described as a percentage added to the final  
17 bid, to be paid by the buyer as part of the purchase price.

18 The bill would also clarify an existing provision of law to limit  
19 the amount of a real estate commission that could be paid after a  
20 county or municipality enters into a private sale of excess real  
21 property after it has conducted an auction and rejected all bids.