

§§1-6 -  
C.40A:11-4.7 to  
40A:11-4.12  
§10 - Repealer  
§11 - Note

P.L. 2018, CHAPTER 156, *approved December 17, 2018*  
Assembly, No. 3112

1 AN ACT authorizing the electronic purchase of certain commodities  
2 and services and sale of surplus personal property by local units  
3 of government and school districts, supplementing P.L.1971,  
4 c.198 (C.40A:11-1 et seq.), amending P.L.1971, c.199,  
5 N.J.S.18A:20-6, and P.L.1978, c.91, and repealing P.L.2001,  
6 c.30.

7  
8 **BE IT ENACTED** by the Senate and General Assembly of the State  
9 of New Jersey:

10  
11 1. (New section) This act shall be known and may be cited as  
12 the "Local Unit Electronic Procurement Act."

13  
14 2. (New section) The Legislature finds and declares that  
15 advances in electronic technology offer opportunities to enhance  
16 governmental efficiencies. In order to explore these avenues of  
17 improved government efficiency and commerce, it is in the best  
18 interests of this State to allow local units of government to adopt  
19 proven technologies for the procurement of goods, services, public  
20 works construction, and sale of surplus personal and real property  
21 through means of electronic technology, and to allow the  
22 Department of Community Affairs to promulgate standards for the  
23 use of these technologies that provide for the integrity and  
24 procedural protections of sealed public bidding and competitive  
25 contracting translated to an electronic environment.

26  
27 3. (New section) As used in this P.L. , c. (c. ) (pending  
28 before the Legislature as this bill):

29 "Director" means the Director of the Division of Local  
30 Government Services in the Department of Community Affairs;

31 "Electronic procurement" means the use of computer technology  
32 and the Internet for the advertising and submission of public bids,  
33 providing notice of revisions or addenda to advertisements or bid  
34 documents, the receipt of proposals and quotations, competitive  
35 contracting, the use of reverse auctions, and related practices to  
36 assist in determining the lowest responsible bidder or proposer who  
37 is most advantageous, price and other factors considered, as

**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 appropriate, for goods and services, the sale of personal property,  
2 and other public procurement-related activities and services as may  
3 be determined appropriate by the director;

4 "Goods and services" means any work, labor, commodities,  
5 equipment, materials, or supplies of any tangible or intangible  
6 nature, except real property or any interest therein, provided or  
7 performed through a contract awarded by a contracting agent,  
8 including goods and property subject to N.J.S.12A:2-101 et seq.;

9 "Local unit" means a school district as defined in the "Public  
10 School Contracts Law," N.J.S.18A:18A-1 et seq., or a contracting  
11 unit as defined in the "Local Public Contracts Law," P.L.1971,  
12 c.198 (C.40A:11-1 et seq.);

13 "Public works construction" means any contract that is subject to  
14 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-  
15 56.25 et seq.); and

16 "Real property" shall include, in addition to the usual  
17 connotations thereof, development rights or easements, or any right,  
18 interest, or estate in the area extending above any real property, or  
19 capital improvement thereon, to such a height or altitude as any  
20 title, interest, or estate in real property may extend, commonly  
21 known as "air rights," and subject to, but not limited to, the "Local  
22 Lands and Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

23

24 4. (New section) Local units are authorized to use electronic  
25 procurement practices for such purposes as may be authorized by  
26 the governing body of the local unit, and subject to the provisions  
27 of P.L. , c. (C. ) (pending before the Legislature as  
28 this bill).

29

30 5. (New section) A local unit or joint purchasing unit or  
31 cooperative pricing system is also authorized to use electronic  
32 procurement practices for the following purposes:

33 (a) to purchase electric generation service, electric related  
34 service, gas supply service, or gas related service, either separately  
35 or bundled, for its own facilities so long as the purchase otherwise  
36 complies with the provisions of the "Electric Discount and Energy  
37 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.); and

38 (b) the sale of surplus personal property that shall otherwise  
39 comply with the provisions of section 36 of P.L.1971, c.198  
40 (C.40A:11-36).

41 Contracts awarded for the administration of electronic  
42 procurement practices shall be subject to the requirements of the  
43 "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.)  
44 and the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.,  
45 except that they shall be considered as purposes for which  
46 competitive contracting may be used.

47

48 6. (New section) a. The director, in consultation with the State

1 Comptroller and pursuant to the “Administrative Procedure Act,”  
2 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and  
3 regulations to effectuate the provisions of this act.

4 The rules promulgated pursuant to this section shall include, but  
5 shall not be limited to, practices that, notwithstanding any other law  
6 to the contrary:

7 (1) convert the law, principals, safeguards, and procedures  
8 related to sealed bidding to an electronic procurement environment;

9 (2) authorize local units of government to accept commercial  
10 standards for electronic forms of bid security; and

11 (3) establish minimum standards that must be met by systems  
12 and services providing and administering electronic procurement  
13 activities.

14 The director shall also consult with the Attorney General to  
15 develop safeguards to protect against collusion and bid rigging,  
16 with the Division of Purchase and Property in the Department of  
17 Treasury to develop practices used for electronic procurement, and  
18 with the Office of Information Technology in, but not of, the  
19 Department of Treasury, to ensure the privacy and security of  
20 electronic transactions.

21 b. With regard to the notices, advertising bids, or requests for  
22 proposals required to be published in an official newspaper of the  
23 local unit, such notices, advertising bids, or requests for proposals,  
24 as appropriate, shall not be eliminated under the provisions of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill),  
26 and shall continue to be published as required by law.

27 c. Notwithstanding any law, rule, or regulation to the contrary,  
28 plans and specifications for public works construction contracts that  
29 require the seal and signature of a professional engineer, architect,  
30 or land surveyor may be included in an electronic file used for  
31 electronic procurement as long as the original document from which  
32 the electronic file is derived contains a physical or electronic seal  
33 and signature as otherwise required by law; however, if and when  
34 the State Board of Engineers and Land Surveyors and the New  
35 Jersey State Board of Architects adopt rules to permit digital seals  
36 and signatures, those rules shall supersede this provision.

37

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

40 13. Sales of real property, capital improvements or personal  
41 property; exceptions; procedure. Any county or municipality may  
42 sell any real property, capital improvement or personal property, or  
43 interests therein, not needed for public use, as set forth in the  
44 resolution or ordinance authorizing the sale, other than county or  
45 municipal lands, real property otherwise dedicated or restricted  
46 pursuant to law, and, except as otherwise provided by law, all such  
47 sales shall be made by one of the following methods:

1 (a) By open public sale at auction to the highest bidder after  
2 advertisement thereof in a newspaper circulating in the municipality  
3 or municipalities in which the lands are situated, by two insertions  
4 at least once a week during two consecutive weeks, the last  
5 publication to be not earlier than seven days prior to such sale. In  
6 the case of public sales, the governing body may by resolution fix a  
7 minimum price or prices, with or without the reservation of the  
8 right to reject all bids where the highest bid is not accepted. Notice  
9 of such reservation shall be included in the advertisement of the  
10 sale and public notice thereof shall be given at the time of sale.  
11 Such resolution may provide, without fixing a minimum price, that  
12 upon the completion of the bidding, the highest bid may be accepted  
13 or all the bids may be rejected. The invitation to bid may also  
14 impose restrictions on the use to be made of such real property,  
15 capital improvement or personal property, and any conditions of  
16 sale as to buildings or structures, or as to the type, size, or other  
17 specifications of buildings or structures to be constructed thereon,  
18 or as to demolition, repair, or reconstruction of buildings or  
19 structures, and the time within which such conditions shall be  
20 operative, or any other conditions of sale, in like manner and to the  
21 same extent as by any other vendor. Such conditions shall be  
22 included in the advertisement, as well as the nature of the interest  
23 retained by the county or municipality. Such restrictions or  
24 conditions shall be related to a lawful public purpose and encourage  
25 and promote fair and competitive bidding of the county or  
26 municipality and shall not, in the case of a municipality, be  
27 inconsistent with or impose a special or higher standard than any  
28 zoning ordinance or building, plumbing, electrical, or similar code  
29 or ordinance then in effect in the municipality.

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

36 (1) Option A shall be for the real property, capital improvement  
37 or personal property subject to the conditions or restrictions  
38 imposed, or interest or estate retained, which the county or  
39 municipality proposes to retain or impose.

40 (2) Option B shall be for the real property, capital improvement  
41 or personal property to be sold free of all such restrictions,  
42 conditions, interests or estates on the part of the county or  
43 municipality.

44 The county or the municipality may elect or reject either or both  
45 options and the highest bid for each. Such acceptance or rejection  
46 shall be made not later than at the second regular meeting of the  
47 governing body following the sale, and, if the governing body shall  
48 not so accept such highest bid, or reject all bids, said bids shall be

1 deemed to have been rejected. Any such sale may be adjourned at  
2 the time advertised for not more than one week without  
3 readvertising.

4 (b) At private sale, when authorized by resolution, in the case of  
5 a county, or by ordinance, in the case of a municipality, in the  
6 following cases:

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

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

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

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

47 (5) A sale to the owner of the real property contiguous to the  
48 real property being sold; provided that the property being sold is

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

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

1 Any county or municipality selling any real property, capital  
2 improvement or personal property pursuant to subsection (b) of this  
3 section shall file with the Director of the Division of Local  
4 Government Services in the Department of Community Affairs,  
5 sworn affidavits verifying the publication of advertisements as  
6 required by this subsection.

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

11 (d) A county or municipality is also authorized to use electronic  
12 procurement practices in accordance with the provisions of P.L. ,  
13 c. (C. ) (pending before the Legislature as this bill) for the  
14 sale or lease of real property pursuant to the "Local Lands and  
15 Buildings Law," P.L.1971, c.199 (C.40A:12-1 et seq.).

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

30 In all sales made pursuant to this section, the governing body of  
31 any county or municipality may provide for the payment of a  
32 commission to any real estate broker, or authorized representative  
33 other than the purchaser actually consummating such sale;  
34 provided, however, that no commission shall be paid unless notice  
35 of the governing body's intention to pay such a commission shall  
36 have been included in the advertisement of sale and the recipient  
37 thereof shall have filed an affidavit with the governing body stating  
38 that said recipient is not the purchaser. Said commissions shall not  
39 exceed, in the aggregate, 5% of the sale price, and be paid, where  
40 there has been a public sale, only in the event that the sum of the  
41 commission and the highest bid price does not exceed the next  
42 highest bid price (exclusive of any real estate broker's commission).  
43 As used in this section, "purchaser" shall mean and include any  
44 person, corporation, company, association, society, firm,  
45 partnership, or other business entity owning or controlling, directly  
46 or indirectly, more than 10% of the purchasing entity.  
47 (cf: P.L.2000, c.126, s.26)

1 8. N.J.S.18A:20-6 is amended to read as follows:

2 18A:20-6. Any lands or rights or interests therein sold by any  
3 board of education, except lands conveyed as part of a lease  
4 purchase agreement pursuant to N.J.S. 18A:20-4.2(f), shall be sold  
5 **【at】** , after advertisement of public sale, to the highest bidder 【  
6 after】 . A board of education is authorized to use electronic  
7 procurement practices in accordance with P.L. , c. (C. )  
8 (pending before the Legislature as this bill) for the advertisement of  
9 sale or lease of land and real property thereon, and shall also  
10 publish advertisement of the sale or lease in a newspaper published  
11 in the district, or, if none is published therein, then in a newspaper  
12 circulating in the district, in which the same is situate, at least once  
13 a week for two weeks prior to the sale, unless:

14 a. The same are sold to the State, or a political subdivision  
15 thereof, in which case they may be sold at private sale without  
16 advertisement; or

17 b. The sale or other disposition thereof in some other manner is  
18 provided for in this Title.

19 (cf: P.L.1986, c.183, s.2)

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21 9. Section 1 of P.L.1978, c.91 (C.18A:20-8.2) is amended to  
22 read as follows:

23 1. a. Except as otherwise provided pursuant to section 14 of  
24 P.L.2007, c.137 (C.18A:7G-45), whenever any board of education  
25 shall by resolution determine that any tract of land, whether there is  
26 a building thereon or not, or part or all of a school building, is not  
27 necessary for school purposes, but which it does not desire to  
28 dispose of for reason that the property may, at some future time,  
29 again be required for school purposes, it may authorize the lease  
30 thereof for a term extending beyond the official life of the board;  
31 provided that the noneducational uses of such building or tract of  
32 land are compatible with the establishment and operation of a  
33 school, as determined by the Commissioner of Education, if joint  
34 occupancy of such site is considered. A board of education is  
35 authorized to use electronic procurement practices in accordance  
36 with the provisions of P.L. , c. (C. ) (pending before the  
37 Legislature as this bill) for the advertisement of lease of land, and  
38 any building on that land. The lease shall be binding upon the  
39 successor board as follows:

40 (1) After advertisement of the request for bids to lease to the  
41 highest bidder in a newspaper published in the school district, or, if  
42 none is published therein, then in a newspaper circulating in the  
43 district in which the same is situate, at least once a week for two  
44 weeks prior to the date fixed for the receipt and opening of bids,  
45 and, at the discretion of the board of education, electronic  
46 advertisement, unless:

47 (2) The same is leased to the federal government, State, a  
48 political subdivision thereof, another school district, any board,



1 body or commission of a municipality within the school district, any  
2 volunteer fire company or rescue squad actively engaged in the  
3 protection of life and property and duly incorporated under the laws  
4 of the State of New Jersey, or to any American Legion post,  
5 Veterans of Foreign Wars, or other recognized veterans'  
6 organization of the United States of America, located in the  
7 municipality or the county, as a meeting place for such  
8 organization, or to a nonprofit child care service organization duly  
9 incorporated under the laws of the State of New Jersey, or to a  
10 nonprofit hospital duly licensed under the laws of the State of New  
11 Jersey, or to a nonprofit organization duly licensed under the laws  
12 of the State of New Jersey to provide emergency shelter for the  
13 homeless, or to a nonprofit senior citizen organization, or to a  
14 nonprofit historic preservation organization duly incorporated under  
15 the laws of the State of New Jersey, in which case the same may be  
16 leased by private agreement for a nominal fee without  
17 advertisement for bids.

18 b. Any lease in excess of five years shall be approved by the  
19 Commissioner of Education.

20 (cf: P.L.2007, c.137, s.47)

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22 10. P.L.2001, c.30 is repealed.

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24 11. This act shall take effect on the first day of the 10th month  
25 next following enactment.

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#### STATEMENT

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30 This bill would authorize local units of government to use  
31 electronic procurement technologies. The bill defines "local unit"  
32 as contracting units as defined in the "Local Public Contracts Law,"  
33 P.L.1971, c.198 (C.40A:11-1 et seq.). The bill authorizes these  
34 local units to use electronic procurement practices for such  
35 purposes as may be authorized by the governing body of the local  
36 unit, and subject to the provisions of the bill.

37 Under the bill, a local unit, joint purchasing unit, or cooperative  
38 pricing system is also authorized to use electronic procurement  
39 practices for the following purposes:

40 a) the purchase of electric generation service, electric related  
41 service, gas supply service, or gas related service, either separately  
42 or bundled, for its own facilities so long as the purchase otherwise  
43 complies with the provisions of the "Electric Discount and Energy  
44 Competition Act," P.L.1999, c.23 (C.48:3-49 et al.);

45 b) the sale of surplus personal property that shall otherwise  
46 comply with the provisions of section 36 of P.L.1971, c.198  
47 (C.40A:11-36); and

48 c) the sale of real property that shall otherwise comply with the

1 sale and lease provisions of the “Local Lands and Buildings Law,”  
2 P.L.1971, c.199 (C.40A:12-1).

3 A local unit using electronic procurement technologies must  
4 continue to publish any notices, advertising bids, and requests for  
5 proposals required by law to be published in the official newspaper  
6 of the local unit.

7 Contracts awarded for the administration of electronic  
8 procurement practices pursuant to the bill would be subject to the  
9 requirements of the "Local Public Contracts Law," P.L.1971, c.198  
10 (C.40A:11-1 et seq.), and the "Public School Contracts Law,"  
11 N.J.S.18A:18A-1 et seq., as appropriate, except that they are to be  
12 considered as purposes for which competitive contracting may be  
13 used.

14 The bill also requires the Director of the Division of Local  
15 Government Services in the Department of Community Affairs, in  
16 consultation with other State government entities, to promulgate  
17 rules and regulations to effectuate the provisions of the bill.

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23 Authorizes local units of government subject to “Local Public  
24 Contracts Law” and “Public School Contracts Law” to use  
electronic procurement technologies.