STATE OF NEW YORK

3681

2019-2020 Regular Sessions

IN SENATE

February 12, 2019

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the public lands law, in relation to establishing a right of first refusal in municipalities for state land to be sold at public auction

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 33 of the public lands law, as amended by chapter 360 of the laws of 1983, subdivision 2 as amended by chapter 119 of the laws of 2000, paragraph (b) of subdivision 2 as amended by chapter 187 of the laws of 2007, subdivision 3 as separately amended by chapters 360 and 471 of the laws of 1983 and subdivision 5 as added by chapter 95 of the laws of 2000, is amended to read as follows:

§ 33. Sale of unappropriated state lands; **right of first refusal;** notice and place of public sales. 1. [~~The~~] **(a) Prior to the public sale of unappropriated state land, the office of general services must first offer to sell such land to the local governments in which it is located subject to the following conditions:**

(i) if the local government intends to use such land in perpetuity for park and/or municipal recreation purposes, the commissioner of general services shall offer the land to the local government for the sum of one dollar;

(ii) if the local government intends to use such land for other municipal purposes, the commissioner of general services shall offer the land to the local government for a sum equal to the current appraised value determined by such commissioner or for no more than the same consideration for which it is proposed to be sold to a person or private entity, whichever is less;

(iii) the deed conveying unappropriated state land to a local government pursuant to subparagraph (i) or (ii) of this paragraph shall

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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include a clause specifying the purpose for which the land is being conveyed and reverting the land to the state if it is not utilized for the specific purpose enumerated or the specifically enumerated use ceases;

(iv) the governing body of such municipality shall exercise its right to purchase unappropriated state land for a purpose set forth in subparagraph (i) or (ii) of this paragraph within ninety days after receipt of such written offer from the office of general services or within any greater length of time that may be provided for in a written agreement between the office of general services and such local government;

(v) the offer to purchase any such unappropriated state land made to any municipality in which such real property is situated shall not constitute a right to purchase and such offer may be withdrawn by the commissioner of general services at any time.

(b) If the unappropriated state land is located within an incorporated village, the commissioner of general services shall first offer such land to the incorporated village. The governing body of such village shall exercise its right to purchase such land for a purpose set forth in subparagraph (i) or (ii) of paragraph (a) of this subdivision within ninety days after receipt of such written offer from the office of general services or within any greater length of time that may be provided for in a written agreement between the office of general services and such village. If the incorporated village does not exercise its right to purchase such land within said time frame, then the commissioner of general services shall offer the unappropriated land for sale to the town in which such land is located.

(c) If the unappropriated state land is located within a town but outside of the borders of any incorporated village or is located in a village but the village does not exercise its right as set forth in paragraph (b) of this subdivision, the commissioner of general services shall offer such land to the town. The governing body of such town shall exercise its right to purchase such land for a purpose set forth in subparagraph (i) or (ii) of paragraph (a) of this subdivision within ninety days after receipt of such written offer from the office of general services or within any greater length of time that may be provided for in a written agreement between the office of general services and such town. If the town does not exercise its right to purchase such land within said time frame, then the commissioner of general services shall offer the unappropriated land for sale to the county in which such land is located.

(d) If the unappropriated state land is located within a city, the commissioner of general services shall first offer such land to the city. The governing body of such city shall exercise its right to purchase such land for a purpose set forth in subparagraph (i) or (ii) of paragraph (a) of this subdivision within ninety days after receipt of such written offer from the office of general services or within any greater length of time that may be provided for in a written agreement between the office of general services and such city. If the city does not exercise its right to purchase the unappropriated state land within said time frame, then such commissioner shall offer the unappropriated land for sale to the county in which such land is located.

(e) The governing body of such county shall exercise its right to purchase unappropriated state land for a purpose set forth in subparagraph (i) or (ii) of paragraph (a) of this subdivision within ninety days after receipt of such written offer from the office of general services or within any greater length of time that may be provided for

in a written agreement between the office of general services and the county. If the county does not exercise its right to purchase the unappropriated state land within said time frame, then the commissioner of general services may dispose of said land in accordance with all applicable laws.

(f) The procedure set forth in this subdivision shall supplement any other procedures in effect with regard to the sale of unappropriated state land.

2. Subject to the provisions of subdivision one of this section, the commissioner of general services may, from time to time, sell unappropriated state lands at public auction or by sealed bids in such parcels as he deems for the best interests of the state. Previous to every sale, he or she shall fix the lowest sum at which each lot may be sold, and shall designate at least one newspaper in the county where the lands to be sold are situated, in which the commissioner shall cause notice of the time, place and description of sale to be published, at least once a week for four weeks, successively, before the sale. Such notice need not be published in any other paper or papers, and any statute requiring additional publication of notices or advertisements by state officers or a department, board, bureau or commission of the state shall not apply to such notice. The commissioner may designate a representative of his or her office to conduct such sale. All such sales shall be held at the county seat of the county where the property is situated, unless otherwise directed by the commissioner.

Upon such sales of unappropriated state land to a purchaser procured by any licensed real estate broker and the payment of the purchase price in the amount offered by such broker in behalf of the purchaser, the commissioner of general services is authorized to pay, subject to such terms and conditions as the commissioner may prescribe, a commission to such broker out of monies available therefor. Uniform rates of commission shall, from time to time, be fixed by the commissioner but shall not exceed six percentum of the purchase price. No commission shall be paid for the procuring of any sale unless (1) written authority of the broker to make such offer on a form acceptable to the commissioner, signed by the person for whom he or she is acting, shall be filed with the commissioner before the day of the sale and unless (2) the broker shall furnish to the commissioner evidence in such form and extent as he may require establishing that the purchaser was procured as the result of the broker's services. In no event shall a broker who is paid a commission by the commissioner as herein provided accept any other commission or fee from any person or source for brokerage services relating to the sale of such unappropriated state land.

[~~2.~~] 3. (a) Whenever a street or highway, including any adjacent land acquired or held by the state in connection with such street or highway, the title to the bed of which is in the state, shall have been legally abandoned or closed, in whole or in part, the commissioner of general services may sell and convey at public auction or by sealed bids at not less than the appraised value, in such parcels as he or she directs, all the right, title and interest of the state in such abandoned or closed street or highway, or the part so abandoned or closed, and in any adjacent land acquired or held by the state in connection with such street or highway; and where, in the judgment of such commissioner, a public auction is not for the best interests of the state the commissioner, in his or her discretion, may sell and convey such parcels of said lands at private sale to the owners of adjacent lands for a price not less than

the appraised value and on such terms and conditions as the commissioner may impose.

(b) The commissioner of general services may sell and convey parcels of unappropriated state land which (i) do not constitute legal building lots in the municipality in which they are located and (ii) have an appraised value of less than twenty thousand dollars each at private sale to any owner of adjacent lands. Consideration for such sales shall be for a price not less than the appraised value and such additional terms and conditions as the commissioner may deem necessary.

[~~3.~~] **4.** The commissioner of general services is authorized in his **or her** discretion to sell and convey at private sale upon such terms and conditions as he **or she** may deem proper, and to remise and quitclaim all the right, title and interest of the state in and to any unappropriated state lands acquired by or through tax sale where it shall appear that such lands are and have been privately occupied under color of title continuously for ten years or where the applicant has, in good faith, a continuous chain of title going back more than ten years from the date of application. Any such sale, if made, shall be to the person or persons claiming title because of such occupation or under such chain of title, and shall be for a consideration not less than the fair market value of the state's interest as determined by the commissioner.

[~~4.~~] **5.** Where a petition is presented to a surrogate's court of this state for an order directing the sale of a decedent's real property for any of the purposes provided for in section one thousand nine hundred two of the surrogate's court procedure act or otherwise, and there is reason to believe that such real property may have escheated to the people of the state of New York, and a final judgment in an action by reason of such escheat, as provided for in section two hundred [~~and~~] one of the abandoned property law, has not been entered, the commissioner of general services may, if it is deemed to be in the best interests of the state, authorize the attorney general to consent to such order for the sale of such real property, either at public auction or by sealed bids or private sale. A deed thereupon executed and delivered pursuant to the terms and provisions of such order, upon such consent of the attorney general, shall be deemed a bar to any claim of title of the people of the state of New York, by virtue of such escheat, in the property so sold, but shall not be deemed to affect any rights that the people of the state of New York may have in or to the proceeds of such sale. Consent, however, to such an order shall not be given in the event the price offered on a proposed private sale of such real property is less than the appraised value thereof as determined by the commissioner of general services.

[~~5.~~] **6.** (a) The commissioner of general services may sell and convey improved, unappropriated state lands by competitive solicitation of offers through a request for proposals or similar method where in his or her judgment, a public auction is not in the best interests of the state. Such solicitation shall document the minimum qualitative and quantitative factors in addition to sale price to be used as criteria in the evaluation of offers and the general manner in which the evaluation process and selection of the most responsive and responsible offeror is to be conducted. Clarifications may be sought from offerors for purposes of assuring a full understanding of responsiveness to the solicitation requirements. Where provided for in the solicitation, revisions may be permitted from all offerors determined to be eligible for award. Disclosure of the content of competing offers, other than statistical tabulations of offers received or of any clarifications or revisions

thereto, shall be prohibited prior to award. All offers or separable parts thereof may be rejected.

(b) Establishment of the minimum sale price for the competitive solicitation shall be based upon a certified appraisal or certified appraisal report as defined in article six-E of the executive law.

(c) The commissioner of general services shall designate at least one newspaper in the county where the lands to be offered are situate, in which he or she shall cause a notice of the solicitation to be published at least once a week for four weeks successively before the date set forth for receipt of offers.

§ 2. This act shall take effect immediately.