

CHAPTER 15

AN ACT concerning liens for local improvements and amending various sections of statutory law.

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

1. Section 53 of P.L.1968, c.404 (C.13:17-53) is amended to read as follows:

C.13:17-53 Lien of assessment; confirmation of amount.

53. Every assessment for any improvement together with interest thereon and all costs and charges connected therewith shall be upon authorization of the assessment by ordinance or resolution a first lien on the land described in the assessment, paramount to all prior or subsequent alienations and descents of such land or encumbrances thereon, shall constitute a lien in the same manner as taxes and assessments for State purposes notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any proceeding which does not impair the substantial rights of the owner or owners or person or persons having a lien upon or interest in any such land. Confirmation of the amount of the assessment by the commission or by the court shall be considered as determining the amount of the existing lien and not as establishing the lien. All assessments for improvements shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

2. R.S.40:56-33 is amended to read as follows:

Assessment as continuous lien; informalities not to invalidate proceedings.

40:56-33. Except as provided in article 4 of this chapter (s. 40:56-58 et seq.) as to cities of the first class, every assessment for local improvements together with interest thereon and all costs and charges connected therewith, shall upon the effective date of the ordinance or resolution authorizing the assessment be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any other proceeding which does not impair the substantial rights of the owner or owners or other person or persons having a lien upon or interest in any such real estate. Confirmation of the amount of the assessment by the governing body or by the court shall be considered as determining the amount of the existing lien and not as establishing the lien. All assessments for local improvements shall be presumed to have been regularly assessed and confirmed and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

3. R.S.40:56-44 is amended to read as follows:

Benefits exceeding award and vice versa; excess a lien.

40:56-44. Whenever, by the report and map of the officer or board charged with the duty of making assessments for benefits for local improvements in the municipality as confirmed by the governing body, it shall appear that an award has been made to any person for property taken or damages sustained and that such person is also assessed for benefits received on account of the same improvement, then if the assessment equal or exceed the award, no payment shall be made on account of such award. If the award exceed the assessment only so much of the award as is in excess shall be paid, and the resolution of the governing body confirming the award shall be framed accordingly.

When the amount to be assessed shall be finally determined, as provided in section 40:56-43 of this title such amount shall be set off against the amount of the award unpaid and if the amount of the award unpaid be in excess, the assessment shall be canceled and such excess only shall be paid to the person to whom the award is made; and if the amount of the assessment be in excess, the award unpaid shall be canceled and such excess only shall remain a lien upon the property assessed. The rest of the award or assessment, as the case may be, shall be canceled.

4. R.S.40:56-54 is amended to read as follows:

Appeals from assessments and awards of incidental damages; procedure.

40:56-54. Except as provided in article four of this chapter (s. 40:56-58 et seq.) as to cities of the first class, the owner of any property assessed for benefits or awarded damages incidental to the improvements as distinguished from damages for real estate to be taken under this chapter, may within thirty days after confirmation of such assessment or award appeal from the same to the Superior Court by serving written notice of such appeal within such thirty days upon the tax collector and a duplicate upon the clerk of the governing body, either personally or by leaving the same at his office or place of abode. The appeal shall be determined by a trial and, upon the demand of any party thereto, with a jury. The determination shall be by order or judgment subject to the provisions of section 40:56-57 of this Title.

The court shall determine whether or not the assessment or award of damages appealed from is a just and fair assessment or award, and if not shall make an order correcting the same or if the assessment or award is sustained shall so order.

The determination of the court as to all such appeals in the case of any one improvement shall be embodied in the same order or judgment, and a certified copy thereof shall be served upon the tax collector and the clerk of the municipality.

The appeal procedure set forth in this section shall not affect the validity and commencement of a lien against land that has been assessed for benefits, but shall be considered to affect only the amount of the lien.

5. R.S.40:56-55 is amended to read as follows:

Correction without appeal.

40:56-55. Except as provided in article four of this chapter (s. 40:56-58 et seq.) as to cities of the first class the tax collector shall, upon receiving the certified copy of such order or judgment, note in his books any corrections or changes made thereby and report the same to the chief financial officer of the municipality. The governing body even after confirming any assessment may upon due proof by affidavit of any manifest error order by resolution the correction of such error in any assessment for benefits from which no appeal has been taken, and upon the adoption of such resolution the tax collector shall note and report such correction in the same manner.

The correction procedure set forth in this section shall not affect the validity and commencement of a lien against land that has been assessed for benefits, but shall be considered to affect only the amount of the lien.

6. R.S.40:56-56 is amended to read as follows:

Appeal from award in condemnation proceedings; notice.

40:56-56. Except as provided in article four of this chapter (s. 40:56-58 et seq.) as to cities of the first class, the owner of any real estate or interest therein taken for any improvement mentioned in this chapter may appeal to the Superior Court from the award of damages made for the taking of such property as distinguished from the award for damages incidental to this improvement. The appeal shall be taken within thirty days after confirmation of the assessment or award appealed from by serving a written notice thereof within said thirty days upon the clerk or the chief executive officer of the municipality, either personally, or by leaving the same at his office or place of abode.

An appeal taken pursuant to this section shall not affect the validity and commencement of a lien against land that has been assessed for benefits, but shall be considered to affect only the amount of the lien.

7. R.S.40:56-62 is amended to read as follows:

Assessments and awards certified to Superior Court; confirmation of report.

40:56-62. Upon the making of any assessments for benefits and awards for incidental damages, the officer or board charged with the duty of making the same, shall apply to the Superior Court for confirmation. The application shall be accompanied by a report in writing signed by said officer or, if made by a board, by at least a majority of their number, and also accompanied by a map showing the real estate taken, damaged or benefited by the improvement, and for which damages or benefits have been assessed.

The court shall either confirm the report, or refer it to the officer or board for revision or correction, and the officer or board shall return to the court the same corrected and revised, or a new report, without unnecessary delay. On being returned it shall be confirmed or again referred by the court in manner aforesaid, as right and justice shall require and so, from time to time, until report shall be made or returned which the court shall confirm. The same report, when so confirmed, shall be final and conclusive, upon the city of the first class and upon the owners of the real estate affected thereby. The court shall thereupon cause a certified copy of the final report and the order or judgment confirming it, to be transmitted to and filed with the tax collecting officer of the city.

The confirmation procedure set forth in this section shall not affect the validity and commencement of a lien against land that has been assessed for benefits, but shall be considered to affect only the amount of the lien.

8. R.S.40:56-64 is amended to read as follows:

Assessments a lien.

40:56-64. Every assessment for local improvements of any kind, together with interest thereon and all costs and charges connected therewith, shall upon the effective date of the ordinance or resolution authorizing the assessment be a first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents thereof or encumbrances thereon, except subsequent taxes or assessments, notwithstanding any mistake in the name of the owner or any omission to name any owner who is unknown, and notwithstanding any lack of form therein or in any other proceeding which does not impair the substantial rights of the owner or other person having a lien upon or interest in any such real estate. Confirmation of the assessment by the Superior Court shall not affect the validity and commencement of a lien against land that has been assessed for benefits, but shall be considered to affect only the amount of the lien. All assessments for local improvements shall be presumed to have been regularly assessed and confirmed, and every assessment or proceeding preliminary thereto shall be presumed to have been regularly made or conducted until the contrary be shown.

9. Section 8 of P.L.1996, c.73 (C.40A:12A-56) is amended to read as follows:

C.40A:12A-56 Provision for tax abatement, payments in lieu of taxes; special assessments.

8. a. A municipality that has created a landfill reclamation improvement district pursuant to section 3 of P.L.1995, c.173 (C.40A:12A-52) may provide for tax abatement within that district and for payments in lieu of taxes in accordance with the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.); provided, however, that the provisions of section 12 of P.L.1991, c.431 (C.40A:20-12) establishing a minimum or maximum annual service charge and requiring staged increases in annual service charges over the term of the exemption period, and of section 13 of P.L.1991, c.431 (C.40A:20-13) permitting the relinquishment of status under that act, shall not apply to landfill reclamation improvement district projects.

b. In addition to, or in lieu of, the tax abatement provided for in subsection a. of this section, the municipality may provide by ordinance for one or more special assessments within the landfill reclamation improvement district in accordance with chapter 56 of title 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however, that the provisions of R.S.40:56-35 shall be applied so that if any installment of a special assessment shall remain unpaid for 30 days after the time at which it shall become due, the municipality may provide, by ordinance, either that: (1) the whole assessment or balance due thereon shall become and be immediately due; or, (2) any subsequent installments which would not yet have become due except for the default

shall be considered as not in default and that the lien for the installments not yet due shall continue; and provided, further, that the ordinance may require that the assessments be payable in yearly installments, with legal interest thereon, over a period of years up to but in no event exceeding the period of years for which the bonds were issued, or for 30 years, whichever shall be less. In levying a special assessment on the lands or improvements, or both, located in the district, the municipality may provide that the amount of the special assessment shall be a specific amount, not to exceed the cost of the improvements, paid with respect to property located in the district. That specific amount shall, to the extent accepted by the owner of the property benefitted, be deemed the conferred benefit, in lieu of the amount being determined by the procedures otherwise applicable to determining the actual benefit conferred on the property. Special assessments levied pursuant to an ordinance adopted under this subsection shall constitute a municipal lien under R.S.40:56-33.

c. Upon adoption, a copy of the ordinance shall be filed for public inspection in the office of the municipal clerk, and there shall be published in a newspaper, published or circulating in the municipality, a notice stating the fact and the date of adoption and the place where the ordinance is filed and a summary of the contents of the ordinance. The notice shall state that any action or proceeding of any kind or nature in any court questioning the validity or proper authorization of the ordinance or the actions authorized to be taken as set forth in the ordinance shall be commenced within 20 days after the publication of the notice. If no action or proceeding questioning the validity of the ordinance providing for tax abatement, special assessments or other actions authorized by the ordinance shall be commenced or instituted within 20 days after the publication of the notice, the county and the school district and all other municipalities within the county and all residents and taxpayers and owners of property therein shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court questioning the validity or enforceability of the ordinance or the validity or enforceability of acts authorized under the ordinance, and the ordinance and acts authorized by the ordinance shall be conclusively deemed to be valid and enforceable in accordance with their terms and tenor.

10. Section 3 of P.L.2001, c.310 (C.40A:12A-66) is amended to read as follows:

C.40A:12A-66 Tax abatement within redevelopment area; special assessments.

3. a. A municipality that has designated a redevelopment area may provide for tax abatement within that redevelopment area and for payments in lieu of taxes in accordance with the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) and P.L.1991, c.441 (C.40A:21-1 et seq.); provided, however, that the provisions of section 12 of P.L.1991, c.431 (C.40A:20-12) establishing a minimum or maximum annual service charge and requiring staged increases in annual service charges over the term of the exemption period, and of section 13 of P.L.1991, c.431 (C.40A:20-13) permitting the relinquishment of status under that act, shall not apply to redevelopment projects financed with bonds.

b. In addition to, or in lieu of, the tax abatement provided for in subsection a. of this section, the municipality may provide by ordinance for one or more special assessments within the redevelopment area in accordance with chapter 56 of Title 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however, that the provisions of R.S.40:56-35 shall be applied so that if any installment of a special assessment shall remain unpaid for 30 days after the time at which it shall become due, the municipality may provide, by ordinance, either that: (1) the whole assessment or balance due thereon shall become and be immediately due; or, (2) any subsequent installments which would not yet have become due except for the default shall be considered as not in default and that the lien for the installments not yet due shall continue; and provided, further, that the ordinance may require that the assessments be payable in quarterly, semi-annual or yearly installments, with legal interest thereon, over a period of years up to but in no event exceeding the period of years for which the bonds were issued, or for 30 years, whichever shall be less. In levying a special assessment on the lands or improvements, or both, located in the redevelopment area, the municipality may provide that the amount of the special assessment shall be a specific amount, not to exceed the cost of the improvements, paid with respect to property located in the redevelopment area. That specific amount shall, to the extent accepted by the

owner of the property benefitted, be deemed the conferred benefit, in lieu of the amount being determined by the procedures otherwise applicable to determining the actual benefit conferred on the property. Special assessments levied pursuant to an ordinance adopted under this subsection shall constitute a municipal lien under R.S.40:56-33.

c. Upon adoption, a copy of the ordinance shall be filed for public inspection in the office of the municipal clerk, and there shall be published in a newspaper, published or circulating in the municipality, a notice stating the fact and the date of adoption and the place where the ordinance is filed and a summary of the contents of the ordinance. The notice shall state that any action or proceeding of any kind or nature in any court questioning the validity or proper authorization of the ordinance or the actions authorized to be taken as set forth in the ordinance shall be commenced within 20 days after the publication of the notice. If no action or proceeding questioning the validity of the ordinance providing for tax abatement, special assessments or other actions authorized by the ordinance shall be commenced or instituted within 20 days after the publication of the notice, the county and the school district and all other municipalities within the county and all residents and taxpayers and owners of property therein shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court questioning the validity or enforceability of the ordinance or the validity or enforceability of acts authorized under the ordinance, and the ordinance and acts authorized by the ordinance shall be conclusively deemed to be valid and enforceable in accordance with their terms and tenor.

11. R.S.54:5-7 is amended to read as follows:

Assessments for municipal improvements, continuous liens.

54:5-7. All assessments for benefits for municipal improvements, including, but not limited to local improvements pursuant to R.S.40:56-21, shall be a continuous lien on the land on which they are assessed on and after the date fixed in the laws, or the effective date of the ordinance or resolution, as the case may be, authorizing the assessment, or if no date is so fixed, then on and after the date on which they are payable. The lien shall be considered a statutory lien for all purposes, including the federal bankruptcy code, regardless of whether or not the amount of the assessment has been determined at the time that the lien attaches to the land. A confirmation hearing process to determine the amount of an assessment, such as is set forth in R.S.40:56-21, shall not affect the commencement or validity of a lien under this section. All subsequent interest, penalties and costs of collection which thereafter accrue shall be added to and be a part of the initial lien.

12. Section 5 of P.L.1933, c.428 (C.App.A:3-5) is amended to read as follows:

C.App.A:3-5 Financing projects; municipal bonds authorized; special assessments as liens.

5. Any municipality may authorize and issue to the federal government its negotiable bonds for the financing of a public works project, part of the cost of which is to be specially assessed on property specially benefitted, before such project has been completed or such special assessment has been confirmed; in such case, the governing body shall estimate by resolution the part of the cost which will be specially assessed and the bonds issued to finance such part shall mature in annual installments, the first of which shall become due not more than three years and the last of which shall become due not more than fifteen years from the date of the bonds. Special assessments levied pursuant to an ordinance or resolution adopted under this subsection shall constitute a continuing municipal lien under R.S.40:56-33.

13. This act shall take effect immediately and shall be retroactive in its application to all assessments for local improvements authorized after January 1, 1996.

Approved April 9, 2002.