CHAPTER 125

AN ACT concerning long-term property tax exemptions, amending R.S.54:3-21, and amending and supplementing P.L.1991, c. 431 and P.L.1992, c.79.

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

C.40A:12A-4.1 Affordable housing units required for tax abatement, certain.

1. Any municipality that has designated a redevelopment area, provides for a tax abatement within that redevelopment area and has adopted a housing element pursuant to subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28) may, by ordinance, require, as a condition for granting a tax abatement, that the redeveloper set aside affordable residential units or contribute to an affordable housing trust fund established by the municipality. The requirement may be imposed upon developers of market rate residential or non-residential construction or both, at the discretion of the municipality. For the purposes of this section, "affordable" shall mean affordable to persons of low or moderate income as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

C.40A:12A-4.2 Guidelines for tax abatement relative to affordable housing.

2. Any municipality that makes the receipt of a tax abatement conditional upon the contribution to an affordable housing trust fund shall include within the ordinance detailed guidelines establishing the parameters of this requirement including, but not limited to, the following:

a. standards governing the extent of the contribution based on the value of construction for market rate residential or non-residential construction, as the case may be; provided, however, that this contribution shall not exceed $1,500 per unit for market rate residential construction, $1.50 per square foot for commercial construction, and 10 cents per square foot for industrial construction;

b. a schedule of payments based upon phase of construction; and

c. parameters governing the expenditure of those funds, legitimate purposes for which those funds may be used, and the extent to which funds may be used by the municipality for administration.

3. Section 5 of P.L.1992, c.79 (C.40A:12A-5) is amended to read as follows:

C.40A:12A-5 Determination of need for redevelopment.

5. A delineated area may be determined to be in need of redevelopment if, after investigation, notice and hearing as provided in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of the municipality by resolution concludes that within the delineated area any of the following conditions is found:

a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.

b. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings; or the same being allowed to fall into so great a state of disrepair as to be untenantable.

c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

e. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other conditions, resulting in a stagnant or not fully productive condition of land potentially useful and valuable for contributing to and

serving the public health, safety and welfare.

f. Areas, in excess of five contiguous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by the action of storm, fire, cyclone, tornado, earthquake or other casualty in such a way that the aggregate assessed value of the area has been materially depreciated.

g. In any municipality in which an enterprise zone has been designated pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions prescribed in that act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et al.) for determining that the area is in need of redevelopment or an area in need of rehabilitation and the municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone.

h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

4. Section 6 of P.L.1992, c.79 (C.40A:12A-6) is amended to read as follows:

C.40A:12A-6 Investigation for determination as redevelopment area, public hearing.

6. a. No area of a municipality shall be determined a redevelopment area unless the governing body of the municipality shall, by resolution, authorize the planning board to undertake a preliminary investigation to determine whether the proposed area is a redevelopment area according to the criteria set forth in section 5 of P.L.1992, c.79 (C.40A:12A-5). Such determination shall be made after public notice and public hearing as provided in subsection b. of this section. The governing body of a municipality shall assign the conduct of the investigation and hearing to the planning board of the municipality.

b. (1) Before proceeding to a public hearing on the matter, the planning board shall prepare a map showing the boundaries of the proposed redevelopment area and the location of the various parcels of property included therein. There shall be appended to the map a statement setting forth the basis for the investigation.

(2) The planning board shall specify a date for and give notice of a hearing for the purpose of hearing persons who are interested in or would be affected by a determination that the delineated area is a redevelopment area.

(3) The hearing notice shall set forth the general boundaries of the area to be investigated and state that a map has been prepared and can be inspected at the office of the municipal clerk. A copy of the notice shall be published in a newspaper of general circulation in the municipality once each week for two consecutive weeks, and the last publication shall be not less than ten days prior to the date set for the hearing. A copy of the notice shall be mailed at least ten days prior to the date set for the hearing to the last owner, if any, of each parcel of property within the area according to the assessment records of the municipality. A notice shall also be sent to all persons at their last known address, if any, whose names are noted on the assessment records as claimants of an interest in any such parcel. The assessor of the municipality shall make a notation upon the records when requested to do so by any person claiming to have an interest in any parcel of property in the municipality. The notice shall be published and mailed by the municipal clerk, or by such clerk or official as the planning board shall otherwise designate. Failure to mail any such notice shall not invalidate the investigation or determination thereon.

(4) At the hearing, which may be adjourned from time to time, the planning board shall hear all persons who are interested in or would be affected by a determination that the delineated area is a redevelopment area. All objections to such a determination and evidence in support of those

objections, given orally or in writing, shall be received and considered and made part of the public record.

(5) After completing its hearing on this matter, the planning board shall recommend that the delineated area, or any part thereof, be determined, or not be determined, by the municipal governing body to be a redevelopment area. After receiving the recommendation of the planning board, the municipal governing body may adopt a resolution determining that the delineated area, or any part thereof, is a redevelopment area. Upon the adoption of a resolution, the clerk of the municipality shall, forthwith, transmit a copy of the resolution to the Commissioner of Community Affairs for review. If the area in need of redevelopment is not situated in an area in which development or redevelopment is to be encouraged pursuant to any State law or regulation promulgated pursuant thereto, the determination shall not take effect without first receiving the review and the approval of the commissioner. If the commissioner does not issue an approval or disapproval within 30 calendar days of transmittal by the clerk, the determination shall be deemed to be approved. If the area in need of redevelopment is situated in an area in which development or redevelopment is to be encouraged pursuant to any State law or regulation promulgated pursuant thereto, then the determination shall take effect after the clerk has transmitted a copy of the resolution to the commissioner. The determination, if supported by substantial evidence and, if required, approved by the commissioner, shall be binding and conclusive upon all persons affected by the determination. Notice of the determination shall be served, within 10 days after the determination, upon each person who filed a written objection thereto and stated, in or upon the written submission, an address to which notice of determination may be sent.

(6) If written objections were filed in connection with the hearing, the municipality shall, for 45 days next following its determination to which the objections were filed, take no further action to acquire any property by condemnation within the redevelopment area.

(7) If a person who filed a written objection to a determination by the municipality pursuant to this subsection shall, within 45 days after the adoption by the municipality of the determination to which the person objected, apply to the Superior Court, the court may grant further review of the determination by procedure in lieu of prerogative writ; and in any such action the court may make any incidental order that it deems proper.

c. An area determined to be in need of redevelopment pursuant to this section shall be deemed to be a "blighted area" for the purposes of Article VIII, Section III, paragraph 1 of the Constitution. If an area is determined to be a redevelopment area and a redevelopment plan is adopted for that area in accordance with the provisions of this act, the municipality is authorized to utilize all those powers provided in section 8 of P.L.1992, c.79 (C.40A:12A-8).

5. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to read as follows:

C.40A:12A-14 Conditions for determination of need for rehabilitation.

14. a. A delineated area may be determined to be in need of rehabilitation if the governing body of the municipality determines by resolution that there exist in that area conditions such that (1) a significant portion of structures therein are in a deteriorated or substandard condition and there is a continuing pattern of vacancy, abandonment or underutilization of properties in the area, with a persistent arrearage of property tax payments thereon or (2) more than half of the housing stock in the delineated area is at least 50 years old, or a majority of the water and sewer infrastructure in the delineated area is at least 50 years old and is in need of repair or substantial maintenance; and (3) a program of rehabilitation, as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent further deterioration and promote the overall development of the community. Where warranted by consideration of the overall conditions and requirements of the community, a finding of need for rehabilitation may extend to the entire area of a municipality. Prior to adoption of the resolution, the governing body shall submit it to the municipal planning board for its review. Within 45 days of its receipt of the proposed resolution, the municipal planning board shall submit its recommendations regarding the proposed resolution, including any modifications which it may recommend, to the governing body for its consideration. Thereafter, or after the expiration of the 45 days if the municipal planning board

does not submit recommendations, the governing body may adopt the resolution, with or without modification. The resolution shall not become effective without the approval of the commissioner pursuant to section 6 of P.L.1992, c.79 (C.40A:12A-6), if otherwise required pursuant to that section.

b. A delineated area shall be deemed to have been determined to be an area in need of rehabilitation in accordance with the provisions of this act if it has heretofore been determined to be an area in need of rehabilitation pursuant to P.L.1975, c.104 (C.54:4-3.72 et seq.), P.L.1977, c.12 (C.54:4-3.95 et seq.) or P.L.1979, c.233 (C.54:4-3.121 et seq.).

6. Section 2 of P.L.1991, c.431 (C.40A:20-2) is amended to read as follows:

C.40A:20-2 Findings, declarations.

2. The Legislature finds that in the past a number of laws have been enacted to provide for the clearance, replanning, development, and redevelopment of blighted areas pursuant to Article VIII, Section III, paragraph 1 of the New Jersey Constitution. These laws had as their public purpose the restoration of deteriorated or neglected properties to a use resulting in the elimination of the blighted condition, and sought to encourage private capital and participation by private enterprise to contribute toward this purpose through the use of special financial arrangements, including the granting of property tax exemptions with respect to land and the buildings, structures, infrastructure and other valuable additions to and amelioration of land, provided that the construction or rehabilitation of buildings, structures, infrastructure and other valuable additions to and amelioration of land constitute improvements to blighted conditions.

The Legislature finds that these laws, separately enacted, contain redundant and unnecessary provisions, or provisions which have outlived their usefulness, and that it is necessary to revise, consolidate and clarify the law in this area in order to preserve and improve the usefulness of the law in promoting the original public purpose.

The Legislature declares that the provisions of this act are one means of accomplishing the redevelopment and rehabilitation purposes of the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.) through the use of private entities and financial arrangements pertaining thereto, and that this act should be construed in conjunction with that act.

7. Section 3 of P.L.1991, c.431 (C.40A:20-3) is amended to read as follows:

C.40A:20-3 Definitions.

3. As used in P.L.1991, c.431 (C.40A:20-1 et seq.):

a. "Gross revenue" means annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income, for each urban renewal entity designated pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.). The financial agreement shall establish the method of computing gross revenue for the entity, and the method of determining insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, which shall be included in the gross revenue; provided, however, that any federal funds received, whether directly or in the form of rental subsidies paid to tenants, by a nonprofit corporation that is the sponsor of a qualified subsidized housing project, shall not be included in the gross revenue of the project for purposes of computing the annual services charge for municipal services supplied to the project; and provided further that any gain realized by the urban renewal entity on the sale of any unit in fee simple, whether or not taxable under federal or State law, shall not be included in computing gross revenue.

b. "Limited-dividend entity" means an urban renewal entity incorporated pursuant to Title 14A of the New Jersey Statutes, or established pursuant to Title 42 of the Revised Statutes, for which the profits and the entity are limited as follows. The allowable net profits of the entity shall be determined by applying the allowable profit rate to each total project unit cost, if the project is undertaken in units, or the total project cost, if the project is not undertaken in units, and all capital costs, determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits, for the period

commencing on the date on which the construction of the unit or project is completed, and terminating at the close of the fiscal year of the entity preceding the date on which the computation is made, where:

"Allowable profit rate" means the greater of 12% or the percentage per annum arrived at by adding 1 1/4% to the annual interest percentage rate payable on the entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing the allowable profit rate shall be the greater of 12% or the percentage per annum arrived at by adding 1 1/4% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in the county.

c. "Net profit" means the gross revenues of the urban renewal entity less all operating and non-operating expenses of the entity, all determined in accordance with generally accepted accounting principles, but:

(1) there shall be included in expenses: (a) all annual service charges paid pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12); (b) all payments to the municipality of excess profits pursuant to section 15 or 16 of P.L.1991, c.431 (C.40A:20-15 or 40A:20-16); (c) an annual amount sufficient to amortize the total project cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits, over the term of the abatement as set forth in the financial agreement; (d) all reasonable annual operating expenses of the urban renewal entity and any other entity whose revenue is included in the computation of excess profits, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts; (e) all payments of rent including, but not limited to, ground rent by the urban renewal entity; (f) all debt service;

(2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding any proprietary ownership interest in the entity.

The urban renewal entity shall provide to the municipality an annual audited statement which clearly identifies the calculation of net profit for the urban renewal entity during the previous year. The annual audited statement shall be prepared by a certified public accountant and shall be submitted to the municipality within 90 days of the close of the fiscal year.

d. "Nonprofit entity" means an urban renewal entity incorporated pursuant to Title 15A of the New Jersey Statutes for which no part of its net profits inures to the benefit of its members.

e. "Project" means any work or undertaking pursuant to a redevelopment plan adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.), which has as its purpose the redevelopment of all or any part of a redevelopment area including any industrial, commercial, residential or other use, and may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and administrative, community, health, recreational, educational and welfare facilities.

f. "Redevelopment area" means an area determined to be in need of redevelopment and for which a redevelopment plan has been adopted by a municipality pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.).

g. "Urban renewal entity" means a limited-dividend entity, the New Jersey Economic Development Authority or a nonprofit entity which enters into a financial agreement pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) with a municipality to undertake a project pursuant to a redevelopment plan for the redevelopment of all or any part of a redevelopment area, or a project necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or any part of one or more redevelopment areas, or a low

and moderate income housing project.

h. "Total project unit cost" or "total project cost" means the aggregate of the following items as related to a unit of a project, if the project is undertaken in units, or to the total project, if the project is not undertaken in units, all of which as limited by, and approved as part of the financial agreement: (1) cost of the land and improvements to the entity, whether acquired from a private or a public owner, with cost in the case of leasehold interests to be computed by capitalizing the aggregate rental at a rate provided in the financial agreement; (2) architect, engineer and attorney fees, paid or payable by the entity in connection with the planning, construction and financing of the project; (3) surveying and testing charges in connection therewith; (4) actual construction costs which the entity shall cause to be certified and verified to the municipality and the municipal governing body by an independent and qualified architect, including the cost of any preparation of the site undertaken at the entity's expense; (5) insurance, interest and finance costs during construction; (6) costs of obtaining initial permanent financing; (7) commissions and other expenses paid or payable in connection with initial leasing; (8) real estate taxes and assessments during the construction period; (9) a developer's overhead based on a percentage of actual construction costs, to be computed at not more than the following schedule:

$500,000 or less - 10%

$500,000 through $1,000,000 - $50,000 plus 8% on excess above $500,000

$1,000,001 through $2,000,000 - $90,000 plus 7% on excess above $1,000,000

$2,000,001 through $3,500,000 - $160,000 plus 5.6667% on excess above $2,000,000

$3,500,001 through $5,500,000 - $245,000 plus 4.25% on excess above $3,500,000

$5,500,001 through $10,000,000 - $330,000 plus 3.7778% on excess above $5,500,000

over $10,000,000 - 5%

If the project includes units in fee simple, with respect to those units, "total project cost" shall mean the sales price of the individual housing unit which shall be the most recent true consideration paid for a deed to the unit in fee simple in a bona fide arm's length sales transaction, but not less than the assessed valuation of the unit in fee simple assessed at 100 percent of true value.

If the financial agreement so provides, there shall be excluded from the total project cost: (1) actual costs incurred by the entity and certified to the municipality by an independent and qualified architect or engineer which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or federal law; and (2) any extraordinary costs incurred by the entity and certified to the chief financial officer of the municipality by an independent certified public accountant in order to alleviate blight conditions within the area in need of redevelopment including, but not limited to, the cost of demolishing structures considered by the entity to be an impediment to the proposed redevelopment of the property, costs associated with the relocation or removal of public utility facilities as defined pursuant to section 10 of P.L.1992, c.79 (C.40A:12A-10) considered necessary in order to implement the redevelopment plan, costs associated with the relocation of residents or businesses displaced or to be displaced by the proposed redevelopment, and the clearing of title to properties within the area in need of redevelopment in order to facilitate redevelopment.

i. "Housing project" means any work or undertaking to provide decent, safe, and sanitary dwellings for families in need of housing; the undertaking may include any buildings, land (including demolition, clearance or removal of buildings from land), equipment, facilities, or

other real or personal properties or interests therein which are necessary, convenient or desirable appurtenances of the undertaking, such as, but not limited to, streets, sewers, water, utilities, parks; site preparation; landscaping, and administrative, community, health, recreational, educational, welfare, commercial, or other facilities, or to provide any part or combination of the foregoing.

j. "Redevelopment relocation housing project" means a housing project which is necessary, useful or convenient for the relocation of residents displaced by redevelopment of all or any part of one or more redevelopment areas.

k. "Low and moderate income housing project" means a housing project which is occupied, or is to be occupied, exclusively by households whose incomes do not exceed income limitations established pursuant to any State or federal housing program.

l. "Qualified subsidized housing project" means a low and moderate income housing project owned by a nonprofit corporation organized under the provisions of Title 15A of the New Jersey Statutes for the purpose of developing, constructing and operating rental housing for senior citizens under section 202 of Pub.L. 86-372 (12 U.S.C. s.1701q) or rental housing for persons with disabilities under section 811 of Pub.L. 101-625 (42 U.S.C. s.8013), or under any other federal program that the Commissioner of Community Affairs by rule may determine to be of a similar nature and purpose.

m. "Debt service" means the amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by a financial agreement.

8. Section 5 of P.L.1991, c.431 (C.40A:20-5) is amended to read as follows:

C.40A:20-5 Urban renewal entities, qualification; provisions.

5. Any duly formed corporation, partnership, limited partnership, limited partnership association, or other unincorporated entity may qualify as an urban renewal entity under P.L.1991, c.431 (C.40A:20-1 et seq.), if its certificate of incorporation, or other similar certificate or statement as may be required by law, shall contain the following provisions:

a. The name of the entity shall include the words "Urban Renewal."

b. The purpose for which it is formed shall be to operate under P.L.1991, c.431 (C.40A:20-1 et seq.) and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or projects necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the municipality, to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvement in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.).

c. A provision that so long as the entity is obligated under financial agreement with a municipality made pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), it shall engage in no business other than the ownership, operation and management of the project.

d. A declaration that the entity has been organized to serve a public purpose, that its operations shall be directed toward: (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L.1991, c.431 (C.40A:20-1 et seq.); and (3) that it shall be subject to regulation by the municipality in which its project is situated, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L.1991, c.431 (C.40A:20-1 et seq.).

e. A provision that the entity shall not voluntarily transfer more than 10% of the ownership of the project or any portion thereof undertaken by it under P.L.1991, c.431 (C.40A:20-1 et seq.), until it has first removed both itself and the project from all restrictions of P.L.1991, c.431 (C.40A:20-1 et seq.) in the manner required by P.L.1991, c.431 (C.40A:20-1 et seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of Community Affairs to such transfer; with the exception of transfer to another urban renewal entity, as approved by the municipality in which the project is situated, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the financial agreement with the municipality. The entity shall file annually with the municipal governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each. Nothing herein shall prohibit any transfer of the ownership interest in the urban renewal entity itself provided that the transfer, if greater than 10 percent, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement referred to above.

f. A provision stating that the entity is subject to the provisions of section 18 of P.L.1991, c.431 (C.40A:20-18) respecting the powers of the municipality to alleviate financial difficulties of the urban renewal entity or to perform actions on behalf of the entity upon a determination of financial emergency.

g. A provision stating that any housing units constructed or acquired by the entity shall be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.

If the entity shall not by reason of any other law be required to file a statement or certificate with the Secretary of State, then the entity shall file a certificate in the office of the clerk of the county in which its principal place of business is located setting forth, in addition to the matters listed above, its full name, the name under which it shall do business, its duration, the location of its principal offices, the name of a person or persons upon whom service may be effected, and the name and address and extent of each person having any ownership or proprietary interest therein.

A certificate of incorporation, or similar certificate or statement, shall not be accepted for filing with the Secretary of State or office of the county clerk until the certificate or statement has been reviewed and approved by the Commissioner of the Department of Community Affairs.

9. Section 9 of P.L.1991, c.431 (C.40A:20-9) is amended to read as follows:

C.40A:20-9 Financial agreement for approved projects, form and contents of contract.

9. Every approved project shall be evidenced by a financial agreement between the municipality and the urban renewal entity. The agreement shall be prepared by the entity and submitted as a separate part of its application for project approval. The agreement shall not take effect until approved by ordinance of the municipality. Any amendments or modifications of the agreement made thereafter shall be by mutual consent of the municipality and the urban renewal entity, and shall be subject to approval by ordinance of the municipal governing body upon recommendation of the mayor or other chief executive officer of the municipality prior to taking effect.

The financial agreement shall be in the form of a contract requiring full performance within 30 years from the date of completion of the project, and shall include the following:

a. That the profits of or dividends payable by the urban renewal entity shall be limited according to terms appropriate for the type of entity in conformance with the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.).

b. That all improvements and land, to the extent authorized pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12), in the project to be constructed or acquired by the urban renewal entity shall be exempt from taxation as provided in P.L.1991, c.431 (C.40A:20-1 et seq.).

c. That the urban renewal entity shall make payments for municipal services as provided in P.L.1991, c.431 (C.40A:20-1 et seq.).

d. That the urban renewal entity shall submit annually, within 90 days after the close of its

fiscal year, its auditor's reports to the mayor and governing body of the municipality and to the Director of the Division of Local Government Services in the Department of Community Affairs.

e. That the urban renewal entity shall, upon request, permit inspection of property, equipment, buildings and other facilities of the entity, and also permit examination and audit of its books, contracts, records, documents and papers by authorized representatives of the municipality or the State.

f. That in the event of any dispute between the parties matters in controversy shall be resolved by arbitration in the manner provided in the financial agreement.

g. That operation under the financial agreement shall be terminable by the urban renewal entity in the manner provided by P.L.1991, c.431 (C.40A:20-1 et seq.).

h. That the urban renewal entity shall at all times prior to the expiration or other termination of the financial agreement remain bound by the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.).

The financial agreement shall contain detailed representations and covenants by the urban renewal entity as to the manner in which it proposes to use, manage or operate the project. The financial agreement shall further set forth the method for computing gross revenue for the urban renewal entity, the method of determining insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, the plans for financing the project, including the estimated total project cost, the amortization rate on the total project cost, the source of funds, the interest rates to be paid on the construction financing, the source and amount of paid-in capital, the terms of mortgage amortization or payment of principal on any mortgage, a good faith projection of initial sales prices of any condominium units and expenses to be incurred in promoting and consummating such sales, and the rental schedules and lease terms to be used in the project. Any financial agreement may allow the municipality to levy an annual administrative fee, not to exceed two percent of the annual service charge.

10. Section 10 of P.L.1991, c.431 (C.40A:20-10) is amended to read as follows:

C.40A:20-10 Provisions for transfer or sale.

10. The financial agreement may provide:

a. That the municipality will consent to a sale of the project by the urban renewal entity to another urban renewal entity organized under P.L.1991, c.431 (C.40A:20-1 et seq.), their successors, assigns, all owning no other project at the time of the transfer and that, upon assumption by the transferee urban renewal entity of the transferor's obligations under the financial agreement, the tax exemption of the improvements thereto and, to the extent authorized pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12), land shall continue and inure to the transferee urban renewal entity, its respective successors or assigns.

b. That the municipality will consent to a sale of the project to purchasers of units in the condominium if the project or any portion thereof has been devoted to condominium ownership, and to their successors, assigns, all owning (in the case of housing) no other condominium unit of a project at the time of the transfer, and that, upon assumption by the condominium unit purchaser of the transferor's obligations under the financial agreement, the tax exemption of the project buildings and improvements and, to the extent authorized pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12), land shall continue and inure to the unit purchaser, his respective successors or assigns.

c. That the municipality will consent to a sale of the project to purchasers of units in fee simple, if the project or any portion thereof has been devoted to fee simple ownership, and to their successors, assigns, all owning (in the case of housing) no other fee simple unit of a project at the time of the transfer, and that, upon assumption by the fee simple unit purchaser of the transferor's obligations under the financial agreement, the tax exemption of the project buildings and improvements and, to the extent authorized pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12), land shall continue and inure to the fee simple unit purchaser, his respective successors or assigns. The provisions of this subsection shall not be construed to authorize the sale of a project between an urban renewal entity and a for-profit developer.

d. Any financial agreement which provides for consent pursuant to subsection a., b. or c. of this section may allow the municipality to levy an administrative fee, not to exceed two percent of the annual service charge, for the processing of any such request for the continuation

of a tax exemption.

11. Section 12 of P.L.1991, c.431 (C.40A:20-12) is amended to read as follows:

C.40A:20-12 Tax exemption, duration; annual service charges.

12. The rehabilitation or improvements made in the development or redevelopment of a redevelopment area or area appurtenant thereto or for a redevelopment relocation housing project, pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), shall be exempt from taxation for a limited period as hereinafter provided. When housing is to be constructed, acquired or rehabilitated by an urban renewal entity, the land upon which that housing is situated shall be exempt from taxation for a limited period as hereinafter provided. The exemption shall be allowed when the clerk of the municipality wherein the property is situated shall certify to the municipal tax assessor that a financial agreement with an urban renewal entity for the development or the redevelopment of the property, or the provision of a redevelopment relocation housing project, or the provision of a low and moderate income housing project has been entered into and is in effect as required by P.L.1991, c.431 (C.40A:20-1 et seq.).

Delivery by the municipal clerk to the municipal tax assessor of a certified copy of the ordinance of the governing body approving the tax exemption and financial agreement with the urban renewal entity shall constitute the required certification. For each exemption granted pursuant to P.L.2003, c.125 (C.40A:12A-4.1 et al.), upon certification as required hereunder, the tax assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of the financial agreement or until the tax assessor has been duly notified by the clerk that the exemption has been terminated.

Upon the adoption of a financial agreement pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), a certified copy of the ordinance of the governing body approving the tax exemption and the financial agreement with the urban renewal entity shall forthwith be transmitted to the Director of the Division of Local Government Services.

Whenever an exemption status changes during a tax year, the procedure for the apportionment of the taxes for the year shall be the same as in the case of other changes in tax exemption status during the tax year. Tax exemptions granted pursuant to P.L.2003, c.125 (C.40A:12A-4.1 et al.) represent long term financial agreements between the municipality and the urban renewal entity and as such constitute a single continuing exemption from local property taxation for the duration of the financial agreement. The validity of a financial agreement or any exemption granted pursuant thereto may be challenged only by filing an action in lieu of prerogative writ within 20 days from the publication of a notice of the adoption of an ordinance by the governing body granting the exemption and approving the financial agreement. Such notice shall be published in a newspaper of general circulation in the municipality and in a newspaper of general circulation in the county if different from the municipal newspaper.

a. The duration of the exemption for urban renewal entities shall be as follows: for all projects, a term of not more than 30 years from the completion of the entire project, or unit of the project if the project is undertaken in units, or not more than 35 years from the execution of the financial agreement between the municipality and the urban renewal entity.

b. During the term of any exemption, in lieu of any taxes to be paid on the buildings and improvements of the project and, to the extent authorized pursuant to this section, on the land, the urban renewal entity shall make payment to the municipality of an annual service charge, which shall remit a portion of that revenue to the county as provided hereinafter. In addition, the municipality may assess an administrative fee, not to exceed two percent of the annual service charge, for the processing of the application. The annual service charge for municipal services supplied to the project to be paid by the urban renewal entity for any period of exemption, shall be determined as follows:

(1) An annual amount equal to a percentage determined pursuant to this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11), of the annual gross revenue from each unit of the project, if the project is undertaken in units, or from the total project, if the project is not undertaken in units. The percentage of the annual gross revenue shall not be more than 15% in the case of a low and moderate income housing project, nor less than 10% in the case of all other projects.

At the option of the municipality, or where because of the nature of the development, ownership, use or occupancy of the project or any unit thereof, if the project is to be undertaken in units, the total annual gross rental or gross shelter rent or annual gross revenue cannot be reasonably ascertained, the governing body shall provide in the financial agreement that the annual service charge shall be a sum equal to a percentage determined pursuant to this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11), of the total project cost or total project unit cost determined pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) calculated from the first day of the month following the substantial completion of the project or any unit thereof, if the project is undertaken in units. The percentage of the total project cost or total project unit cost shall not be more than 2% in the case of a low and moderate income housing project, and shall not be less than 2% in the case of all other projects.

(2) In either case, the financial agreement shall establish a schedule of annual service charges to be paid over the term of the exemption period, which shall be in stages as follows:

(a) For the first stage of the exemption period, which shall commence with the date of completion of the unit or of the project, as the case may be, and continue for a time of not less than six years nor more than 15 years, as specified in the financial agreement, the urban renewal entity shall pay the municipality an annual service charge for municipal services supplied to the project in an annual amount equal to the amount determined pursuant to paragraph (1) of this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11). For the remainder of the period of the exemption, if any, the annual service charge shall be determined as follows:

(b) For the second stage of the exemption period, which shall not be less than one year nor more than six years, as specified in the financial agreement, an amount equal to either the amount determined pursuant to paragraph (1) of this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11), or 20% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(c) For the third stage of the exemption period, which shall not be less than one year nor more than six years, as specified in the financial agreement, an amount equal to either the amount determined pursuant to paragraph (1) of this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11), or 40% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(d) For the fourth stage of the exemption period, which shall not be less than one year nor more than six years, as specified in the financial agreement, an amount equal to either the amount determined pursuant to paragraph (1) of this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11), or 60% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater; and

(e) For the final stage of the exemption period, the duration of which shall not be less than one year and shall be specified in the financial agreement, an amount equal to either the amount determined pursuant to paragraph (1) of this subsection and section 11 of P.L.1991, c.431 (C.40A:20-11), or 80% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater.

If the financial agreement provides for an exemption period of less than 30 years from the completion of the entire project, or less than 35 years from the execution of the financial agreement, the financial agreement shall set forth a schedule of annual service charges for the exemption period which shall be based upon the minimum service charges and staged adjustments set forth in this section.

The annual service charge shall be paid to the municipality on a quarterly basis in a manner consistent with the municipality's tax collection schedule.

Each municipality which enters into a financial agreement on or after the effective date of P.L.2003, c.125 (C.40A:12A-4.1 et al.) shall remit 5 percent of the annual service charge to the county upon receipt of that charge in accordance with the provisions of this section.

Against the annual service charge the urban renewal entity shall be entitled to credit for the amount, without interest, of the real estate taxes on land paid by it in the last four preceding quarterly installments.

Notwithstanding the provisions of this section or of the financial agreement, the minimum annual service charge shall be the amount of the total taxes levied against all real property in the area covered by the project in the last full tax year in which the area was subject to taxation, and the minimum annual service charge shall be paid in each year in which the annual service charge

calculated pursuant to this section or the financial agreement would be less than the minimum annual service charge.

c. All exemptions granted pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) shall terminate at the time prescribed in the financial agreement.

Upon the termination of the exemption granted pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.), the project, all affected parcels, land and all improvements made thereto shall be assessed and subject to taxation as are other taxable properties in the municipality. After the date of termination, all restrictions and limitations upon the urban renewal entity shall terminate and be at an end upon the entity's rendering its final accounting to and with the municipality.

12. Section 15 of P.L.1991, c.431 (C.40A:20-15) is amended to read as follows:

C.40A:20-15 Excess profits of a limited dividend entity.

15. An urban renewal entity which is a limited dividend entity under P.L.1991, c.431 (C.40A:20-1 et seq.) shall be subject, during the period of the financial agreement and tax exemption under P.L.1991, c.431 (C.40A:20-1 et seq.), to a limitation of its profits and in addition, in the case of a corporation, of the dividends payable by it. Whenever the net profits of the entity for the period, taken as one accounting period, commencing on the date on which the construction of the first unit of the project is completed, or on which the project is completed if the project is not undertaken in units, and terminating at the end of the last full fiscal year, shall exceed the allowable net profits for the period, the entity shall, within 120 days of the close of that fiscal year, pay the excess net profits to the municipality as an additional service charge. The entity may maintain during the term of the financial agreement a reserve against vacancies, unpaid rentals and contingencies in an amount established in the financial agreement not to exceed 10% of the gross revenues of the entity for the last full fiscal year, and may retain such part of those excess net profits as is necessary to eliminate a deficiency in that reserve. Upon the termination of the financial agreement, the amount of reserve, if any, shall be paid to the municipality.

No entity shall make any distribution of profits, or pay or declare any dividend or other distribution on any shares of any class of its stock, unless, after giving effect thereto, the allowable net profit for the period as determined above and preceding the date of the proposed dividend or distribution would equal or exceed the aggregate amount of all dividends and other distributions paid or declared on any shares of its stock since its incorporation or establishment.

If an entity purchases an existing project from another urban renewal entity, the purchasing entity shall compute its allowable net profits, and, for the purpose of dividend payments, shall commence with the date of acquisition of the project. The date of transfer of title of the project to the purchasing entity shall be considered to be the close of the fiscal year of the selling entity. Within 90 days after that date of the transfer of title, the selling entity shall pay to the municipality the amount of reserve, if any, maintained by it pursuant to this section, as well as the excess net profit, if any, payable pursuant to this section.

For the purposes of this section, the calculation of an entity's "excess net profits" shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the financial agreement as provided for in subsection h. of section 3 of P.L.1991, c.431 (C.40A:20-3), even though those costs may have been deducted from the project cost for the purpose of calculating the in lieu of tax payment.

13. R.S.54:3-21 is amended to read as follows:

Appeal by taxpayer or taxing district; petition; complaint; exception.

54:3-21. a. Except as provided in subsection b. of this section a taxpayer feeling aggrieved by the assessed valuation of the taxpayer's property, or feeling discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, appeal to the county board of taxation by filing with it a

petition of appeal; provided, however, that any such taxpayer or taxing district may on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later, file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds $750,000.00. Within ten days of the completion of the bulk mailing of notification of assessment, the assessor of the taxing district shall file with the county board of taxation a certification setting forth the date on which the bulk mailing was completed. If a county board of taxation completes the bulk mailing of notification of assessment, the tax administrator of the county board of taxation shall within ten days of the completion of the bulk mailing prepare and keep on file a certification setting forth the date on which the bulk mailing was completed. A taxpayer shall have 45 days to file an appeal upon the issuance of a notification of a change in assessment. An appeal to the Tax Court by one party in a case in which the Tax Court has jurisdiction shall establish jurisdiction over the entire matter in the Tax Court. All appeals to the Tax Court hereunder shall be in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

If a petition of appeal or a complaint is filed on April 1 or during the 19 days next preceding April 1, a taxpayer or a taxing district shall have 20 days from the date of service of the petition or complaint to file a cross-petition of appeal with a county board of taxation or a counterclaim with the Tax Court, as appropriate.

b. No taxpayer or taxing district shall be entitled to appeal either an assessment or an exemption or both that is based on a financial agreement subject to the provisions of the "Long Term Tax Exemption Law" under the appeals process set forth in subsection a. of this section.

C.40A:20-21 Severability.

14. The provisions of P.L.2003, c.125 (C.40A:12A-4.1 et al.) shall be deemed to be severable, and if any phrase, clause, sentence, word or provision of P.L.2003, c.125 (C.40A:12A-4.1 et al.) is declared to be unconstitutional, invalid or inoperative in whole or in part, or the applicability thereof to any person is held invalid, by a court of competent jurisdiction, the remainder of this act shall not thereby be deemed to be unconstitutional, invalid or inoperative and, to the extent it is not declared unconstitutional, invalid or inoperative, shall be effectuated and enforced.

C.40A:20-22 Tax exemptions approved pursuant to C.40A:20-1 et seq. ratified and validated.

15. The terms and conditions of any tax exemption approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or its predecessor statutes, as the case may be, including any financial agreement, separate agreement or amendment implementing that exemption, are hereby ratified and validated. This ratification and validation shall include, without limitation, the structure and methods used to calculate excess profits and annual service charges, including the limitation of revenue, expenses and total project costs, to those of the urban renewal entity, regardless of any other entity, whether affiliated or unaffiliated, with the urban renewal entity.

16. This act shall take effect immediately and shall govern tax appeals filed for the 2003 tax year and thereafter.

Approved July 9, 2003.