

CHAPTER 112

AN ACT expanding the mechanisms available to finance local development projects and amending P.L.2001, c.310.

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

1. Section 2 of P.L.2001, c.310 (C.40A:12A-65) is amended to read as follows:

C.40A:12A-65 Definitions relative to "Redevelopment Area Bond Financing Law."

2. As used in sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.):

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), the New Jersey Redevelopment Authority established pursuant to section 4 of P.L.1996, c.62 (C.55:19-23) or other instrumentality created by law by the State with the power to incur debt and issue bonds and other obligations.

"Board" means the Local Finance Board established in the Division of Local Government Services in the Department of Community Affairs.

"Bonds" mean bonds, notes or other obligations issued by the authority, including any State entity, or a municipality to finance or refinance redevelopment projects, and in connection therewith, to finance or refinance any other cost or expense of an authority, a State entity or a municipality pursuant to the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), the "Local Redevelopment and Housing Law", P.L.1992, c.79 (C.40A:12A-1 et seq.), or other applicable law.

"Financial agreement" means an agreement that meets the requirements of a financial agreement under P.L.1991, c.431 (C.40A:20-1 et seq.) or, in the event that real property within a redevelopment area is exempt from taxation or has been or will be abated pursuant to applicable law, an agreement among a State entity, a municipality and a State entity redeveloper providing for payment of payments in lieu of taxes or special assessments by the State entity redeveloper with respect to a redevelopment project, or part thereof, to be carried out pursuant to a State entity redevelopment agreement.

"Municipality" means the municipal governing body or an entity acting on behalf of the municipality if permitted by the federal Internal Revenue Code of 1986, or, if a redevelopment agency or redevelopment entity is established in the municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so provides, the redevelopment agency or entity so established.

"Redeveloper" means any person, firm, corporation or public body, including the New Jersey Economic Development Authority or the New Jersey Redevelopment Authority to the extent permitted by law, that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, and any other related costs and expenses including preliminary planning and development costs and any financing costs and expenses in accordance with a redevelopment plan.

"Redevelopment bond financing agreement" means a contract between a municipality and a redeveloper for any work or undertaking for the redevelopment of a redevelopment area, or part thereof, under the provisions of the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.) or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), as the case may be.

"Redevelopment area" means an area which has been delineated a "redevelopment area" or "area in need of redevelopment" pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or an area in need of redevelopment delineated by a

resolution of a State entity in accordance with the provisions of the enabling statute governing that State entity.

"Redevelopment plan" means a plan for the redevelopment or rehabilitation of all or any part of a redevelopment area as described in the redevelopment plan adopted pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7) or as described in the resolution adopted by a State entity determining the location, type and character of a redevelopment project.

"Redevelopment project" means any work or undertaking pursuant to a redevelopment plan; such undertaking 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 and any other related costs and expenses including preliminary planning and development costs and any financing costs and expenses.

"Special assessment" means an assessment upon the lands or improvements on such lands, or both, in the redevelopment area benefitted by improvements undertaken pursuant to the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and assessed pursuant to chapter 56 of Title 40 of the Revised Statutes, R.S. 40:56-1 et seq., except as otherwise provided in subsection c. of section 3 of P.L.2001, c.310 (C.40A:12A-66).

"State entity" means the New Jersey Meadowlands Commission established pursuant to P.L.1968, c.404 (C.13:17-1 et seq.) or any other entity created by State law with the power to undertake a redevelopment project directly or through a State entity redeveloper and with the power to determine the location, type and character of a redevelopment project or part of a redevelopment project on land owned or controlled by it.

"State entity redeveloper" means any person, firm or corporation that shall enter into or propose to enter into a State entity redevelopment agreement with a State entity for the redevelopment or rehabilitation of a redevelopment area under the enabling legislation governing the actions of the State entity or for any construction or other work forming a part of a redevelopment project.

"State entity redevelopment agreement" means an agreement between a State entity and a State entity redeveloper for any work or undertaking in a redevelopment area.

2. 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 or a municipality in which a redevelopment project is undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement 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. A municipality in which a redevelopment project is undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement regarding real property that is or may be abated by applicable law may provide for a tax abatement within the redevelopment area and for payments in lieu of taxes pursuant to a financial agreement between the municipality and the State entity redeveloper receiving the benefits of P.L.2004, c.112 without regard to the limitations and other provisions of P.L.1991, c.431 (C.40A:20-1 et seq.).

c. In addition to, or in lieu of, the tax abatement provided for in subsection a. or b. 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.

d. 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.

3. Section 4 of P.L.2001, c.310 (C.40A:12A-67) is amended to read as follows:

C.40A:12A-67 Issuance of bonds by municipality.

4. a. The municipality may issue bonds itself in the manner provided for herein or pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or may apply to the authority to issue bonds, regardless of whether the redevelopment project is undertaken under municipal authority pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity redeveloper pursuant to a State entity redevelopment agreement, which in any case may be secured by payments in lieu of taxes or special assessments or both or a portion thereof, by the adoption of a resolution or ordinance, as applicable, of the governing body of the municipality, authority or State entity to that effect.

b. A municipality that has designated a redevelopment area or in which a redevelopment project is undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement may, by resolution of its governing body, if it determines to issue bonds through the authority, enter into contracts with the authority relating to that redevelopment project, or to act as a redeveloper or to finance or refinance a redevelopment project undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement within a redevelopment area. A resolution so adopted shall contain findings and determinations of the governing body: (1) that all or a portion of the redevelopment project undertaken within the municipality will result in the redevelopment of the municipality; and, (2) that the contract with the authority or, to the extent applicable, the financial agreement with the State entity redeveloper, is a necessary or important inducement to the undertaking of the project or the redevelopment project undertaken by the State entity redeveloper in that it makes the financing thereof feasible. The

contract or contracts, or the terms of any bonds issued directly by a municipality may provide for the assignment, for the benefit of bondholders, of all or any portion of payments in lieu of taxes, or special assessments, or both. A contract may be made and entered into for a term beginning currently or at some future or contingent date, and with or without consideration, and for a specified or unlimited time, and on any terms and conditions which may be requested by the municipality and, to the extent applicable, the State entity redeveloper, and, if applicable, as may be agreed to by the authority and, to the extent applicable, the State entity redeveloper, in conformity with its contracts with the holders of bonds, and shall be valid and binding on the municipality. The municipality is hereby authorized and directed to do and perform any contract so entered into by it and to provide for the discharge of any obligation thereunder in the same manner as other obligations of the municipality.

Any contract, and any instrument making or evidencing the same, may be pledged or assigned by the authority, with the consent of the municipality executing the contract, and, to the extent applicable, the consent of the State entity redeveloper, to secure its bonds and thereafter may not be modified except as provided by the terms of the instrument or by the terms of the pledge or assignment.

The municipality may include in the terms of a bond or contract, including a financial agreement, a provision that the payments in lieu of taxes or special assessments shall constitute a municipal charge for the purposes of R.S.54:4-66.

c. The payments in lieu of taxes or special assessments, or both, may be assigned directly by the municipality or the authority or the trustee for the bonds as payment or security for the bonds. Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all the municipality's right, title, and interest in the payment in lieu of taxes or special assessments, or both, or portion thereof, along with the rights and remedies provided to the municipality under the agreement including, but not limited to, the right of collection of payments due. Payments in lieu of taxes and special assessments assigned as provided hereunder shall not be included in the general funds of the municipality, nor shall they be subject to any laws regarding the receipt, deposit, investment or appropriation of public funds and shall retain such status notwithstanding enforcement of the payment or assessment by the municipality or assignee as provided herein. The municipality shall be a "person" within the meaning of that term as defined in section 3 of P.L.1974, c.80 (C.34:1B-3); and the purpose described in this section shall be a "project" within the meaning of that term as defined in section 3 of P.L.1974, c.80 (C.34:1B-3).

d. Notwithstanding the provisions of subsection g. of section 37 of P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this section may be issued as non-recourse obligations, and unless otherwise provided for by a separate action of the municipality to guarantee such bonds or otherwise provide for a pledge of the municipality's full faith and credit shall not, except for such action, be considered to be direct and general obligations of the municipality, and, absent such action, the municipality shall not be obligated to levy and collect a tax sufficient in an amount to pay the principal and interest on the bonds when the same become due and payable. The provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds issued or authorized pursuant to this section and those bonds shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of chapter 27 of Title 52 of the Revised Statutes shall not apply to such bonds.

e. The proceeds from the sale of bonds and any funds provided by any department of the State, authority created by the State or bi-state authority for the purposes described in the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.) or for the purpose of financing or refinancing a redevelopment project pursuant to a State entity redevelopment agreement, shall not require compliance with public bidding laws, including the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other statute where the redeveloper or State entity redeveloper, as the case may be, shall undertake the redevelopment project. The use of these funds shall be subject to public accountability and oversight by the issuer of those bonds, regardless of whether the municipality,

agency or authority provides the funds.

f. In order to provide additional security for any loan to a redeveloper or a State entity redeveloper, as the case may be, or to bonds issued to finance a redevelopment project, regardless of whether that redevelopment project is undertaken under municipal authority pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity redeveloper pursuant to a State entity redevelopment agreement, the municipality may utilize powers otherwise provided by law, including the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), to provide for any extension of the municipality's credit to any redeveloper or State entity redeveloper, as the case may be, or its full faith and credit which may include a full faith and credit lease as security for the bonds or any loan to a redeveloper or State entity redeveloper, as the case may be. To the extent that the municipality provides for a full faith and credit guarantee of any loan to a redeveloper or State entity redeveloper, as the case may be, or any bonds, but determines not to authorize the issuance of bonds or notes to provide for the funding source thereof, or otherwise determines to enter into a full faith and credit lease, it may do so by resolution approved by a majority of the full governing body. To the extent that bonds or notes are authorized as provided above, such bonds or notes shall be authorized pursuant to the provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall be deductible from the gross debt of the municipality until such time as such bonds or notes are actually issued, and only up to the amount actually issued, to fund such guarantee.

g. A financial instrument, whether issued by a municipality or an authority, that is secured in whole or in part by payments in lieu of taxes or by special assessments, or both, as provided herein shall be subject to the review and approval of the board. That review and approval shall be made prior to approval of, in the case of a municipality, an introduced ordinance or, in the case of an authority, a resolution. The board shall be entitled to receive from the applicant an amount sufficient to provide for all reasonable professional and other fees and expenses incurred by it for the review, analysis and determination with respect thereto. As part of its review, the board shall specifically solicit comments from the Office of State Planning and the New Jersey Economic Development Authority in addition to comments from the public. As part of the board's review and approval, it shall consider where appropriate one or more of the following: whether the redevelopment project or plan promotes approaches and concepts to reduce congestion; enhance mobility; assist in the redevelopment of our municipalities; and otherwise improve the quality of life of our citizens.

h. A municipality that has assigned any portion of the payments in lieu of taxes it receives pursuant to a financial agreement, as payment or security for bonds, may also pledge a portion of those payments in lieu of taxes as payment or security for bonds in order to finance or refinance any cost or expense of the municipality, State entity or authority.

i. In the case of a municipality which is otherwise subject to tax or revenue sharing pursuant to law and which assigns a portion of the payments in lieu of taxes or special assessments pursuant to a financial agreement to secure bonds issued by the municipality or the authority, the assigned portion of those payments in lieu of taxes or special assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether that municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool.

4. Section 5 of P.L.2001, c.310 (C.40A:12A-68) is amended to read as follows:

C.40A:12A-68 Payments in lieu of taxes constitute municipal lien.

5. a. Payments required to be made in accordance with an agreement for payments in lieu of taxes entered into under section 3 of P.L.2001, c.310 (C.40A:12A-66) shall be a continuous lien on the land against which the ordinance is recorded on and after the date of recordation of both the ordinance and the agreement, whether simultaneously or not, or the date of confirmation of the special assessments, whichever is earlier. All subsequent payments in lieu of taxes thereunder, interest, penalties and costs of collection which thereafter fall due or accrue shall be added and relate back to and be a part of the initial lien. Upon recordation of the ordinance and agreement, payments in lieu of taxes shall constitute a municipal lien within the meaning, and for all

purposes, of law.

b. If bonds are issued, the municipality, the redeveloper or the State entity redeveloper, as the case may be, may record, either simultaneously or at different times, any ordinance enacted by the municipality relating to the payment in lieu of taxes agreement or special assessments and, either simultaneously with the ordinance or at different times, a copy of the agreement or agreements. The ordinance, when recorded, shall contain a legend at the top of the front page substantially as follows:

"THIS ORDINANCE SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE 'REDEVELOPMENT AREA BOND FINANCING LAW' AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED."

c. Notwithstanding any law to the contrary, upon recordation of both the ordinance and any accompanying agreement, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall thereafter be superior to all non-municipal liens thereafter recorded or otherwise arising, without any additional notice, recording, filing, continuation filing or action, until the payment in full of the bonds. The lien thereby established shall apply not only to the bonds initially issued, but also to any refinancing or refunding thereof, as well as to any additional bonds thereafter issued on a parity therewith in accordance with the provisions of the original documents securing the initial bonds; provided, however, that in the event any ordinance or agreement is amended or supplemented in a way which increases the amount of payment in lieu of taxes or special assessments, the lien as to that increase shall be perfected and apply upon the recordation of the amended or supplemented ordinance and agreement (including the above-recited legend). Except as set forth in this section, no amendment or supplement to the ordinance or agreement thereafter recorded shall affect the perfection or priority of the lien established upon original recordation thereof.

d. Upon the final payment in full of any bonds secured as provided in this section and section 4 of P.L.2001, c.310 (C.40A:12A-67), the lien established hereby shall terminate, and the municipality shall record a notice to that effect.

5. This act shall take effect immediately.

Approved August 4, 2004.