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REPORTS:

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No

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No

P.L. 2002, CHAPTER 15, *approved April 9, 2002*
Assembly, No. 1958

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

3

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

6

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

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

28 (cf: P.L.1968, c.404, s.52)

29

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

31 40:56-33. Except as provided in article 4 of this chapter (s.
32 40:56-58 et seq.) as to cities of the first class, every assessment for
33 local improvements together with interest thereon and all costs and
34 charges connected therewith, shall upon **[confirmation by the**
35 **governing body, or by the court,]** the effective date of the ordinance
36 or resolution authorizing the assessment be a continuous first lien upon
37 the real estate described in the assessment, paramount to all prior or
38 subsequent alienations and descents of such real estate or
39 encumbrances thereon, except subsequent taxes or assessments,
40 notwithstanding any mistake in the name or names of any owner or
41 owners, or any omission to name any owner or owners who are

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 unknown, and notwithstanding any lack of form therein, or in any
2 other proceeding which does not impair the substantial rights of the
3 owner or owners or other person or persons having a lien upon or
4 interest in any such real estate. Confirmation of the amount of the
5 assessment by the governing body or by the court shall be considered
6 as determining the amount of the existing lien and not as establishing
7 the lien. All assessments for local improvements shall be presumed to
8 have been regularly assessed and confirmed and every assessment or
9 proceeding preliminary thereto shall be presumed to have been
10 regularly made or conducted until the contrary be shown.

11 (cf: R.S.40:56-33)

12

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

14 40:56-44. Whenever, by the report and map of the officer or board
15 charged with the duty of making assessments for benefits for local
16 improvements in the municipality as confirmed by the governing body,
17 it shall appear that an award has been made to any person for property
18 taken or damages sustained and that such person is also assessed for
19 benefits received on account of the same improvement, then if the
20 assessment equal or exceed the award, no payment shall be made on
21 account of such award. If the award exceed the assessment only so
22 much of the award as is in excess shall be paid, and the resolution of
23 the governing body confirming the award shall be framed accordingly.

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

33 (cf: R.S.40:56-44)

34

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

36 40:56-54. Except as provided in article four of this chapter (s.
37 40:56-58 et seq.) as to cities of the first class, the owner of any
38 property assessed for benefits or awarded damages incidental to the
39 improvements as distinguished from damages for real estate to be
40 taken under this chapter, may within thirty days after confirmation of
41 such assessment or award appeal from the same to the Superior Court
42 by serving written notice of such appeal within such thirty days upon
43 the tax collector and a duplicate upon the clerk of the governing
44 body, either personally or by leaving the same at his office or place of
45 abode. The appeal shall be determined by a trial and, upon the demand
46 of any party thereto, with a jury. The determination shall be by order

1 or judgment subject to the provisions of section 40:56-57 of this Title.

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

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

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

14 (cf: P.L.1953, c.37, s.191)

15

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

17 40:56-55. Except as provided in article four of this chapter (s.
18 40:56-58 et seq.) as to cities of the first class the tax collector shall,
19 upon receiving the certified copy of such order or judgment, note in
20 his books any corrections or changes made thereby and report the
21 same to the chief financial officer of the municipality. The governing
22 body even after confirming any assessment may upon due proof by
23 affidavit of any manifest error order by resolution the correction of
24 such error in any assessment for benefits from which no appeal has
25 been taken, and upon the adoption of such resolution the tax collector
26 shall note and report such correction in the same manner.

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

31 (cf: P.L.1953, c.37, s.192)

32

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

34 40:56-56. Except as provided in article four of this chapter (s.
35 40:56-58 et seq.) as to cities of the first class, the owner of any real
36 estate or interest therein taken for any improvement mentioned in this
37 chapter may appeal to the Superior Court from the award of damages
38 made for the taking of such property as distinguished from the award
39 for damages incidental to this improvement. The appeal shall be taken
40 within thirty days after confirmation of the assessment or award
41 appealed from by serving a written notice thereof within said thirty
42 days upon the clerk or the chief executive officer of the municipality,
43 either personally, or by leaving the same at his office or place of
44 abode.

45 An appeal taken pursuant to this section shall not affect the validity
46 and commencement of a lien against land that has been assessed for

1 benefits, but shall be considered to affect only the amount of the lien.
2 (cf: P.L.1953, c.37, s.193)

3

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

5 40:56-62. Upon the making of any assessments for benefits and
6 awards for incidental damages, the officer or board charged with the
7 duty of making the same, shall apply to the Superior Court for
8 confirmation. The application shall be accompanied by a report in
9 writing signed by said officer or, if made by a board, by at least a
10 majority of their number, and also accompanied by a map showing the
11 real estate taken, damaged or benefited by the improvement, and for
12 which damages or benefits have been assessed.

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

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

29 (cf: P.L.1953, c.37, s.199)

30

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

32 40:56-64. Every assessment for local improvements of any kind,
33 together with interest thereon and all costs and charges connected
34 therewith, shall upon [confirmation thereof by the Superior Court] the
35 effective date of the ordinance or resolution authorizing the
36 assessment be a first lien upon the real estate described in the
37 assessment, paramount to all prior or subsequent alienations and
38 descents thereof or encumbrances thereon, except subsequent taxes or
39 assessments, notwithstanding any mistake in the name of the owner or
40 any omission to name any owner who is unknown, and
41 notwithstanding any lack of form therein or in any other proceeding
42 which does not impair the substantial rights of the owner or other
43 person having a lien upon or interest in any such real estate.
44 Confirmation of the assessment by the Superior Court shall not affect
45 the validity and commencement of a lien against land that has been
46 assessed for benefits, but shall be considered to affect only the amount

1 of the lien. All assessments for local improvements shall be presumed
2 to have been regularly assessed and confirmed, and every assessment
3 or proceeding preliminary thereto shall be presumed to have been
4 regularly made or conducted until the contrary be shown.

5 (cf: P.L.1953, c.37, s.201)

6

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

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

20 b. In addition to, or in lieu of, the tax abatement provided for in
21 subsection a. of this section, the municipality may provide by
22 ordinance for one or more special assessments within the landfill
23 reclamation improvement district in accordance with chapter 56 of title
24 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however,
25 that the provisions of R.S.40:56-35 shall be applied so that if any
26 installment of a special assessment shall remain unpaid for 30 days
27 after the time at which it shall become due, the municipality may
28 provide, by ordinance, either that: (1) the whole assessment or
29 balance due thereon shall become and be immediately due; or, (2) any
30 subsequent installments which would not yet have become due except
31 for the default shall be considered as not in default and that the lien for
32 the installments not yet due shall continue; and provided, further, that
33 the ordinance may require that the assessments be payable in yearly
34 installments, with legal interest thereon, over a period of years up to
35 but in no event exceeding the period of years for which the bonds were
36 issued, or for 30 years, whichever shall be less. In levying a special
37 assessment on the lands or improvements, or both, located in the
38 district, the municipality may provide that the amount of the special
39 assessment shall be a specific amount, not to exceed the cost of the
40 improvements, paid with respect to property located in the district.
41 That specific amount shall, to the extent accepted by the owner of the
42 property benefitted, be deemed the conferred benefit, in lieu of the
43 amount being determined by the procedures otherwise applicable to
44 determining the actual benefit conferred on the property. Special
45 assessments levied pursuant to an ordinance adopted under this
46 subsection shall constitute a municipal lien [upon confirmation by the

1 municipal governing body or by the court,] under R.S.40:56-33.

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

23 (cf: P.L.1996, c.73, s.8)

24

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

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

38 b. In addition to, or in lieu of, the tax abatement provided for in
39 subsection a. of this section, the municipality may provide by
40 ordinance for one or more special assessments within the
41 redevelopment area in accordance with chapter 56 of Title 40 of the
42 Revised Statutes, R.S.40:56-1 et seq., provided, however, that the
43 provisions of R.S.40:56-35 shall be applied so that if any installment
44 of a special assessment shall remain unpaid for 30 days after the time
45 at which it shall become due, the municipality may provide, by
46 ordinance, either that: (1) the whole assessment or balance due

1 thereon shall become and be immediately due; or, (2) any subsequent
2 installments which would not yet have become due except for the
3 default shall be considered as not in default and that the lien for the
4 installments not yet due shall continue; and provided, further, that the
5 ordinance may require that the assessments be payable in quarterly,
6 semi-annual or yearly installments, with legal interest thereon, over a
7 period of years up to but in no event exceeding the period of years for
8 which the bonds were issued, or for 30 years, whichever shall be less.
9 In levying a special assessment on the lands or improvements, or both,
10 located in the redevelopment area, the municipality may provide that
11 the amount of the special assessment shall be a specific amount, not to
12 exceed the cost of the improvements, paid with respect to property
13 located in the redevelopment area. That specific amount shall, to the
14 extent accepted by the owner of the property benefitted, be deemed
15 the conferred benefit, in lieu of the amount being determined by the
16 procedures otherwise applicable to determining the actual benefit
17 conferred on the property. Special assessments levied pursuant to an
18 ordinance adopted under this subsection shall constitute a municipal
19 lien [upon confirmation by the municipal governing body or by the
20 court,] under R.S.40:56-33[, except that such amount shall constitute
21 a municipal lien effective upon the date accepted in writing by the
22 owner of the property benefitted if prior to the actual confirmation].

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

44 (cf: P.L.2001, c.310, s.3)

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

2 54:5-7. All assessments for benefits for municipal improvements,
3 including, but not limited to local improvements pursuant to
4 R.S.40:56-21, shall be a continuous lien on the land on which they are
5 assessed on and after the date fixed in the laws, or the effective date
6 of the ordinance or resolution, as the case may be, authorizing the
7 assessment, or if no date is so fixed, then on and after the date on
8 which they are payable. The lien shall be considered a statutory lien
9 for all purposes, including the federal bankruptcy code, regardless of
10 whether or not the amount of the assessment has been determined at
11 the time that the lien attaches to the land. A confirmation hearing
12 process to determine the amount of an assessment, such as is set forth
13 in R.S.40:56-21, shall not affect the commencement or validity of a
14 lien under this section. All subsequent interest, penalties and costs of
15 collection which thereafter accrue shall be added to and be a part of
16 the initial lien.

17 (cf: R.S.54:5-7)

18

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

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

34 (cf: P.L.1933, c.428, s.5)

35

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

39

40

41

STATEMENT

42

43 This bill establishes that the priority and dischargeability of an
44 assessment for local improvements lien during federal bankruptcy
45 proceedings are the same as for municipal tax liens. The changes
46 proposed by the bill make clear that assessments for municipal and

1 local improvements enjoy the status of continuous municipal liens from
2 the time that the assessments are authorized, which usually is the
3 effective date of the ordinance or resolution authorizing the
4 assessment. The bill is intended to make clear that the assessment
5 determination following any hearing or appeal affects only the amount
6 of the lien, not the existence of the lien, which attaches to the land on
7 the effective date of the ordinance or resolution authorizing the
8 assessment of benefits.

9

10

11

12

13 Clarifies that assessments for local improvements are continuous lien
14 on land from effective date of ordinance or resolution authorizing
15 assessment.

ASSEMBLY, No. 1958

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 4, 2002

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman PAUL SARLO

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

Senator Lesniak

SYNOPSIS

Clarifies that assessments for local improvements are continuous lien on land from effective date of ordinance or resolution authorizing assessment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/22/2002)

A1958 COHEN, SARLO

2

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2 various sections of statutory law.

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25 regularly assessed and confirmed and every assessment or proceeding
26 preliminary thereto shall be presumed to have been regularly made or
27 conducted until the contrary be shown.

28 (cf: P.L.1968, c.404, s.52)

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36 or resolution authorizing the assessment be a continuous first lien upon
37 the real estate described in the assessment, paramount to all prior or
38 subsequent alienations and descents of such real estate or
39 encumbrances thereon, except subsequent taxes or assessments,
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41 owners, or any omission to name any owner or owners who are
42 unknown, and notwithstanding any lack of form therein, or in any
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Matter underlined thus is new matter.

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16 taken or damages sustained and that such person is also assessed for
17 benefits received on account of the same improvement, then if the
18 assessment equal or exceed the award, no payment shall be made on
19 account of such award. If the award exceed the assessment only so
20 much of the award as is in excess shall be paid, and the resolution of
21 the governing body confirming the award shall be framed accordingly.

22 When the amount to be assessed shall be finally determined, as
23 provided in section 40:56-43 of this title such amount shall be set off
24 against the amount of the award unpaid and if the amount of the award
25 unpaid be in excess, the assessment shall be canceled and such excess
26 only shall be paid to the person to whom the award is made; and if the
27 amount of the assessment be in excess, the award unpaid shall be
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30 may be, shall be canceled.

31 (cf: R.S.40:56-44)

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38 taken under this chapter, may within thirty days after confirmation of
39 such assessment or award appeal from the same to the Superior Court
40 by serving written notice of such appeal within such thirty days upon
41 the tax collector and a duplicate upon the clerk of the governing
42 body, either personally or by leaving the same at his office or place of
43 abode. The appeal shall be determined by a trial and, upon the demand
44 of any party thereto, with a jury. The determination shall be by order
45 or judgment subject to the provisions of section 40:56-57 of this Title.

46 The court shall determine whether or not the assessment or award

1 of damages appealed from is a just and fair assessment or award, and
2 if not shall make an order correcting the same or if the assessment or
3 award is sustained shall so order.

4 The determination of the court as to all such appeals in the case of
5 any one improvement shall be embodied in the same order or
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24 shall note and report such correction in the same manner.

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36 made for the taking of such property as distinguished from the award
37 for damages incidental to this improvement. The appeal shall be taken
38 within thirty days after confirmation of the assessment or award
39 appealed from by serving a written notice thereof within said thirty
40 days upon the clerk or the chief executive officer of the municipality,
41 either personally, or by leaving the same at his office or place of
42 abode.

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44 and commencement of a lien against land that has been assessed for
45 benefits, but shall be considered to affect only the amount of the lien.

46 (cf: P.L.1953, c.37, s.193)

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

2 40:56-62. Upon the making of any assessments for benefits and
3 awards for incidental damages, the officer or board charged with the
4 duty of making the same, shall apply to the Superior Court for
5 confirmation. The application shall be accompanied by a report in
6 writing signed by said officer or, if made by a board, by at least a
7 majority of their number, and also accompanied by a map showing the
8 real estate taken, damaged or benefited by the improvement, and for
9 which damages or benefits have been assessed.

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

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

26 (cf: P.L.1953, c.37, s.199)

27

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

29 40:56-64. Every assessment for local improvements of any kind,
30 together with interest thereon and all costs and charges connected
31 therewith, shall upon [confirmation thereof by the Superior Court] the
32 effective date of the ordinance or resolution authorizing the
33 assessment be a first lien upon the real estate described in the
34 assessment, paramount to all prior or subsequent alienations and
35 descents thereof or encumbrances thereon, except subsequent taxes or
36 assessments, notwithstanding any mistake in the name of the owner or
37 any omission to name any owner who is unknown, and
38 notwithstanding any lack of form therein or in any other proceeding
39 which does not impair the substantial rights of the owner or other
40 person having a lien upon or interest in any such real estate.
41 Confirmation of the assessment by the Superior Court shall not affect
42 the validity and commencement of a lien against land that has been
43 assessed for benefits, but shall be considered to affect only the amount
44 of the lien. All assessments for local improvements shall be presumed
45 to have been regularly assessed and confirmed, and every assessment
46 or proceeding preliminary thereto shall be presumed to have been

1 regularly made or conducted until the contrary be shown.
2 (cf: P.L.1953, c.37, s.201)

3
4 9. Section 8 of P.L.1996, c.73 (C.40A:12A-56) is amended to read
5 as follows:

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

17 b. In addition to, or in lieu of, the tax abatement provided for in
18 subsection a. of this section, the municipality may provide by
19 ordinance for one or more special assessments within the landfill
20 reclamation improvement district in accordance with chapter 56 of title
21 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however,
22 that the provisions of R.S.40:56-35 shall be applied so that if any
23 installment of a special assessment shall remain unpaid for 30 days
24 after the time at which it shall become due, the municipality may
25 provide, by ordinance, either that: (1) the whole assessment or
26 balance due thereon shall become and be immediately due; or, (2) any
27 subsequent installments which would not yet have become due except
28 for the default shall be considered as not in default and that the lien for
29 the installments not yet due shall continue; and provided, further, that
30 the ordinance may require that the assessments be payable in yearly
31 installments, with legal interest thereon, over a period of years up to
32 but in no event exceeding the period of years for which the bonds were
33 issued, or for 30 years, whichever shall be less. In levying a special
34 assessment on the lands or improvements, or both, located in the
35 district, the municipality may provide that the amount of the special
36 assessment shall be a specific amount, not to exceed the cost of the
37 improvements, paid with respect to property located in the district.
38 That specific amount shall, to the extent accepted by the owner of the
39 property benefitted, be deemed the conferred benefit, in lieu of the
40 amount being determined by the procedures otherwise applicable to
41 determining the actual benefit conferred on the property. Special
42 assessments levied pursuant to an ordinance adopted under this
43 subsection shall constitute a municipal lien [upon confirmation by the
44 municipal governing body or by the court,] under R.S.40:56-33.

45 c. Upon adoption, a copy of the ordinance shall be filed for public
46 inspection in the office of the municipal clerk, and there shall be

1 published in a newspaper, published or circulating in the municipality,
2 a notice stating the fact and the date of adoption and the place where
3 the ordinance is filed and a summary of the contents of the ordinance.
4 The notice shall state that any action or proceeding of any kind or
5 nature in any court questioning the validity or proper authorization of
6 the ordinance or the actions authorized to be taken as set forth in the
7 ordinance shall be commenced within 20 days after the publication of
8 the notice. If no action or proceeding questioning the validity of the
9 ordinance providing for tax abatement, special assessments or other
10 actions authorized by the ordinance shall be commenced or instituted
11 within 20 days after the publication of the notice, the county and the
12 school district and all other municipalities within the county and all
13 residents and taxpayers and owners of property therein shall be forever
14 barred and foreclosed from instituting or commencing any action or
15 proceeding in any court questioning the validity or enforceability of
16 the ordinance or the validity or enforceability of acts authorized under
17 the ordinance, and the ordinance and acts authorized by the ordinance
18 shall be conclusively deemed to be valid and enforceable in accordance
19 with their terms and tenor.

20 (cf: P.L.1996, c.73, s.8)

21

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

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

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

1 installments not yet due shall continue; and provided, further, that the
2 ordinance may require that the assessments be payable in quarterly,
3 semi-annual or yearly installments, with legal interest thereon, over a
4 period of years up to but in no event exceeding the period of years for
5 which the bonds were issued, or for 30 years, whichever shall be less.
6 In levying a special assessment on the lands or improvements, or both,
7 located in the redevelopment area, the municipality may provide that
8 the amount of the special assessment shall be a specific amount, not to
9 exceed the cost of the improvements, paid with respect to property
10 located in the redevelopment area. That specific amount shall, to the
11 extent accepted by the owner of the property benefitted, be deemed
12 the conferred benefit, in lieu of the amount being determined by the
13 procedures otherwise applicable to determining the actual benefit
14 conferred on the property. Special assessments levied pursuant to an
15 ordinance adopted under this subsection shall constitute a municipal
16 lien [upon confirmation by the municipal governing body or by the
17 court,] under R.S.40:56-33[, except that such amount shall constitute
18 a municipal lien effective upon the date accepted in writing by the
19 owner of the property benefitted if prior to the actual confirmation].

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

41 (cf: P.L.2001, c.310, s.3)

42

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

44 54:5-7. All assessments for benefits for municipal improvements,
45 including, but not limited to local improvements pursuant to
46 R.S.40:56-21, shall be a continuous lien on the land on which they are

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

13 (cf: R.S.54:5-7)

14

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

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

30 (cf: P.L.1933, c.428, s.5)

31

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

35

36

37

STATEMENT

38

39 This bill establishes that the priority and dischargeability of an
40 assessment for local improvements lien during federal bankruptcy
41 proceedings are the same as for municipal tax liens. The changes
42 proposed by the bill make clear that assessments for municipal and
43 local improvements enjoy the status of continuous municipal liens from
44 the time that the assessments are authorized, which usually is the
45 effective date of the ordinance or resolution authorizing the
46 assessment. The bill is intended to make clear that the assessment

A1958 COHEN, SARLO

10

1 determination following any hearing or appeal affects only the amount
2 of the lien, not the existence of the lien, which attaches to the land on
3 the effective date of the ordinance or resolution authorizing the
4 assessment of benefits.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1958

STATE OF NEW JERSEY

DATED: MARCH 11, 2002

The Assembly State Government Committee reports favorably Assembly, No. 1958.

This bill establishes that the priority and dischargeability of an assessment for a local improvements lien during federal bankruptcy proceedings are the same as for municipal tax liens.

The bill provides that assessments for municipal and local improvements enjoy the status of continuous municipal liens from the time that the assessments are authorized, which usually is the effective date of the ordinance or resolution authorizing the assessment. The bill is intended to make clear that the assessment determination following any hearing or appeal affects only the amount of the lien, not the existence of the lien, which attaches to the land on the effective date of the ordinance or resolution authorizing the assessment of benefits.

The bill would apply to all assessments for local improvements authorized after January 1, 1996.

SENATE, No. 1246

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 4, 2002

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

Clarifies that assessments for local improvements are continuous lien on land from effective date of ordinance or resolution authorizing assessment.

CURRENT VERSION OF TEXT

As introduced.



S1246 LESNIAK

2

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

3

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

6

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

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

28 (cf: P.L.1968, c.404, s.52)

29

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

31 40:56-33. Except as provided in article 4 of this chapter
32 (s.40:56-58 et seq.) as to cities of the first class, every assessment for
33 local improvements together with interest thereon and all costs and
34 charges connected therewith, shall upon **[confirmation by the**
35 **governing body, or by the court,]** the effective date of the ordinance
36 or resolution authorizing the assessment be a continuous first lien upon
37 the real estate described in the assessment, paramount to all prior or
38 subsequent alienations and descents of such real estate or
39 encumbrances thereon, except subsequent taxes or assessments,
40 notwithstanding any mistake in the name or names of any owner or
41 owners, or any omission to name any owner or owners who are
42 unknown, and notwithstanding any lack of form therein, or in any
43 other proceeding which does not impair the substantial rights of the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 owner or owners or other person or persons having a lien upon or
2 interest in any such real estate. Confirmation of the amount of the
3 assessment by the governing body or by the court shall be considered
4 as determining the amount of the existing lien and not as establishing
5 the lien. All assessments for local improvements shall be presumed to
6 have been regularly assessed and confirmed and every assessment or
7 proceeding preliminary thereto shall be presumed to have been
8 regularly made or conducted until the contrary be shown.
9 (cf: R.S.40:56-33)

10

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

12 40:56-44. Whenever, by the report and map of the officer or board
13 charged with the duty of making assessments for benefits for local
14 improvements in the municipality as confirmed by the governing body,
15 it shall appear that an award has been made to any person for property
16 taken or damages sustained and that such person is also assessed for
17 benefits received on account of the same improvement, then if the
18 assessment equal or exceed the award, no payment shall be made on
19 account of such award. If the award exceed the assessment only so
20 much of the award as is in excess shall be paid, and the resolution of
21 the governing body confirming the award shall be framed accordingly.

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

31 (cf: R.S.40:56-44)

32

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

34 40:56-54. Except as provided in article four of this chapter
35 (s.40:56-58 et seq.) as to cities of the first class, the owner of any
36 property assessed for benefits or awarded damages incidental to the
37 improvements as distinguished from damages for real estate to be
38 taken under this chapter, may within thirty days after confirmation of
39 such assessment or award appeal from the same to the Superior Court
40 by serving written notice of such appeal within such thirty days upon
41 the tax collector and a duplicate upon the clerk of the governing
42 body, either personally or by leaving the same at his office or place of
43 abode. The appeal shall be determined by a trial and, upon the demand
44 of any party thereto, with a jury. The determination shall be

1 by order or judgment subject to the provisions of section 40:56-57 of
2 this Title.

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

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

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

15 (cf: P.L.1953, c.37, s.191)

16

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

18 40:56-55. Except as provided in article four of this chapter
19 (s.40:56-58 et seq.) as to cities of the first class the tax collector shall,
20 upon receiving the certified copy of such order or judgment, note in
21 his books any corrections or changes made thereby and report the
22 same to the chief financial officer of the municipality. The governing
23 body even after confirming any assessment may upon due proof by
24 affidavit of any manifest error order by resolution the correction of
25 such error in any assessment for benefits from which no appeal has
26 been taken, and upon the adoption of such resolution the tax collector
27 shall note and report such correction in the same manner.

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

32 (cf: P.L.1953, c.37, s.192)

33

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

35 40:56-56. Except as provided in article four of this chapter
36 (s.40:56-58 et seq.) as to cities of the first class, the owner of any real
37 estate or interest therein taken for any improvement mentioned in this
38 chapter may appeal to the Superior Court from the award of damages
39 made for the taking of such property as distinguished from the award
40 for damages incidental to this improvement. The appeal shall be taken
41 within thirty days after confirmation of the assessment or award
42 appealed from by serving a written notice thereof within said thirty
43 days upon the clerk or the chief executive officer of the municipality,
44 either personally, or by leaving the same at his office or place of
45 abode.

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

4 (cf: P.L.1953, c.37, s.193)

5
6 7. R.S.40:56-62 is amended to read as follows:

7 40:56-62. Upon the making of any assessments for benefits and
8 awards for incidental damages, the officer or board charged with the
9 duty of making the same, shall apply to the Superior Court for
10 confirmation. The application shall be accompanied by a report in
11 writing signed by said officer or, if made by a board, by at least a
12 majority of their number, and also accompanied by a map showing the
13 real estate taken, damaged or benefited by the improvement, and for
14 which damages or benefits have been assessed.

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

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

31 (cf: P.L.1953, c.37, s.199)

32
33 8. R.S.40:56-64 is amended to read as follows:

34 40:56-64. Every assessment for local improvements of any kind,
35 together with interest thereon and all costs and charges connected
36 therewith, shall upon **[confirmation thereof by the Superior Court]** the
37 effective date of the ordinance or resolution authorizing the
38 assessment be a first lien upon the real estate described in the
39 assessment, paramount to all prior or subsequent alienations and
40 descents thereof or encumbrances thereon, except subsequent taxes or
41 assessments, notwithstanding any mistake in the name of the owner or
42 any omission to name any owner who is unknown, and
43 notwithstanding any lack of form therein or in any other proceeding
44 which does not impair the substantial rights of the owner or other
45 person having a lien upon or interest in any such real estate.

1 Confirmation of the assessment by the Superior Court shall not affect
2 the validity and commencement of a lien against land that has been
3 assessed for benefits, but shall be considered to affect only the amount
4 of the lien. All assessments for local improvements shall be presumed
5 to have been regularly assessed and confirmed, and every assessment
6 or proceeding preliminary thereto shall be presumed to have been
7 regularly made or conducted until the contrary be shown.
8 (cf: P.L.1953, c.37, s.201)

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

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

23 b. In addition to, or in lieu of, the tax abatement provided for in
24 subsection a. of this section, the municipality may provide by
25 ordinance for one or more special assessments within the landfill
26 reclamation improvement district in accordance with chapter 56 of title
27 40 of the Revised Statutes, R.S.40:56-1 et seq., provided, however,
28 that the provisions of R.S.40:56-35 shall be applied so that if any
29 installment of a special assessment shall remain unpaid for 30 days
30 after the time at which it shall become due, the municipality may
31 provide, by ordinance, either that: (1) the whole assessment or
32 balance due thereon shall become and be immediately due; or, (2) any
33 subsequent installments which would not yet have become due except
34 for the default shall be considered as not in default and that the lien for
35 the installments not yet due shall continue; and provided, further, that
36 the ordinance may require that the assessments be payable in yearly
37 installments, with legal interest thereon, over a period of years up to
38 but in no event exceeding the period of years for which the bonds were
39 issued, or for 30 years, whichever shall be less. In levying a special
40 assessment on the lands or improvements, or both, located in the
41 district, the municipality may provide that the amount of the special
42 assessment shall be a specific amount, not to exceed the cost of the
43 improvements, paid with respect to property located in the district.
44 That specific amount shall, to the extent accepted by the owner of the
45 property benefitted, be deemed the conferred benefit, in

1 lieu of the amount being determined by the procedures otherwise
2 applicable to determining the actual benefit conferred on the property.
3 Special assessments levied pursuant to an ordinance adopted under this
4 subsection shall constitute a municipal lien [upon confirmation by the
5 municipal governing body or by the court,] under R.S.40:56-33.

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

27 (cf: P.L.1996, c.73, s.8)

28

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

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

42 b. In addition to, or in lieu of, the tax abatement provided for in
43 subsection a. of this section, the municipality may provide by
44 ordinance for one or more special assessments within the

1 redevelopment area in accordance with chapter 56 of Title 40 of the
2 Revised Statutes, R.S.40:56-1 et seq., provided, however, that the
3 provisions of R.S.40:56-35 shall be applied so that if any installment
4 of a special assessment shall remain unpaid for 30 days after the time
5 at which it shall become due, the municipality may provide, by
6 ordinance, either that: (1) the whole assessment or balance due
7 thereon shall become and be immediately due; or, (2) any subsequent
8 installments which would not yet have become due except for the
9 default shall be considered as not in default and that the lien for the
10 installments not yet due shall continue; and provided, further, that the
11 ordinance may require that the assessments be payable in quarterly,
12 semi-annual or yearly installments, with legal interest thereon, over a
13 period of years up to but in no event exceeding the period of years for
14 which the bonds were issued, or for 30 years, whichever shall be less.
15 In levying a special assessment on the lands or improvements, or both,
16 located in the redevelopment area, the municipality may provide that
17 the amount of the special assessment shall be a specific amount, not to
18 exceed the cost of the improvements, paid with respect to property
19 located in the redevelopment area. That specific amount shall, to the
20 extent accepted by the owner of the property benefitted, be deemed
21 the conferred benefit, in lieu of the amount being determined by the
22 procedures otherwise applicable to determining the actual benefit
23 conferred on the property. Special assessments levied pursuant to an
24 ordinance adopted under this subsection shall constitute a municipal
25 lien [upon confirmation by the municipal governing body or by the
26 court,] under R.S.40:56-33[, except that such amount shall constitute
27 a municipal lien effective upon the date accepted in writing by the
28 owner of the property benefitted if prior to the actual confirmation].

29 c. Upon adoption, a copy of the ordinance shall be filed for public
30 inspection in the office of the municipal clerk, and there shall be
31 published in a newspaper, published or circulating in the municipality,
32 a notice stating the fact and the date of adoption and the place where
33 the ordinance is filed and a summary of the contents of the ordinance.
34 The notice shall state that any action or proceeding of any kind or
35 nature in any court questioning the validity or proper authorization of
36 the ordinance or the actions authorized to be taken as set forth in the
37 ordinance shall be commenced within 20 days after the publication of
38 the notice. If no action or proceeding questioning the validity of the
39 ordinance providing for tax abatement, special assessments or other
40 actions authorized by the ordinance shall be commenced or instituted
41 within 20 days after the publication of the notice, the county and the
42 school district and all other municipalities within the county and all
43 residents and taxpayers and owners of property therein shall be forever
44 barred and foreclosed from instituting or commencing any

1 action or proceeding in any court questioning the validity or
2 enforceability of the ordinance or the validity or enforceability of acts
3 authorized under the ordinance, and the ordinance and acts authorized
4 by the ordinance shall be conclusively deemed to be valid and
5 enforceable in accordance with their terms and tenor.

6 (cf: P.L.2001, c.310, s.3)

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

9 54:5-7. All assessments for benefits for municipal improvements,
10 including, but not limited to local improvements pursuant to
11 R.S.40:56-21, shall be a continuous lien on the land on which they are
12 assessed on and after the date fixed in the laws, or the effective date
13 of the ordinance or resolution, as the case may be, authorizing the
14 assessment, or if no date is so fixed, then on and after the date on
15 which they are payable. The lien shall be considered a statutory lien
16 for all purposes, including the federal bankruptcy code, regardless of
17 whether or not the amount of the assessment has been determined at
18 the time that the lien attaches to the land. A confirmation hearing
19 process to determine the amount of an assessment, such as is set forth
20 in R.S.40:56-21, shall not affect the commencement or validity of a
21 lien under this section. All subsequent interest, penalties and costs of
22 collection which thereafter accrue shall be added to and be a part of
23 the initial lien.

24 (cf: R.S.54:5-7)

25

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

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

41 (cf: P.L.1933, c.428, s.5)

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

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STATEMENT

This bill establishes that the priority and dischargeability of an assessment for local improvements lien during federal bankruptcy proceedings are the same as for municipal tax liens. The changes proposed by the bill make clear that assessments for municipal and local improvements enjoy the status of continuous municipal liens from the time that the assessments are authorized, which usually is the effective date of the ordinance or resolution authorizing the assessment. The bill is intended to make clear that the assessment determination following any hearing or appeal affects only the amount of the lien, not the existence of the lien, which attaches to the land on the effective date of the ordinance or resolution authorizing the assessment of benefits.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1246

STATE OF NEW JERSEY

DATED: MARCH 14, 2002

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 1246.

This bill establishes that the priority and dischargeability of an assessment for local improvements lien during federal bankruptcy proceedings are the same as for municipal tax liens. The changes proposed by the bill make clear that assessments for municipal and local improvements enjoy the status of continuous municipal liens from the time that the assessments are authorized, which usually is the effective date of the ordinance or resolution authorizing the assessment. The bill is intended to make clear that the assessment determination following any hearing or appeal affects only the amount of the lien, not the existence of the lien, which attaches to the land on the effective date of the ordinance or resolution authorizing the assessment of benefits.