

40A:12A-65

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 112

NJSA: 40A:12A-65 (Expands power and scope of Meadowlands)

BILL NO: A2791 (Substituted for S1564)

SPONSOR(S): Impeveduto and Scalera

DATE INTRODUCED: May 10, 2004

COMMITTEE: **ASSEMBLY:** Housing and Local Government
SENATE:

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 21, 2004

SENATE: June 24, 2004

DATE OF APPROVAL: August 4, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) Original version of bill enacted

A2791

[SPONSOR'S STATEMENT:](#) (Begins on page 11 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S1564

[SPONSOR'S STATEMENT:](#) (Begins on 11 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

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No

P.L. 2004, CHAPTER 112, *approved August 4, 2004*
Assembly, No. 2791

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

3

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

6

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

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

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

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

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

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

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

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 provides, the redevelopment agency or entity so established.

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

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

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

29 "Redevelopment area" means an area which has been delineated a
30 "redevelopment area" or "area in need of redevelopment" pursuant to
31 the "Local Redevelopment and Housing Law," P.L.1992, c.79
32 (C.40A:12A-1 et seq.) or an area in need of redevelopment delineated
33 by a resolution of a State entity in accordance with the provisions of
34 the enabling statute governing that State entity.

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

41 "Redevelopment project" means any work or undertaking pursuant
42 to a redevelopment plan; such undertaking may include any buildings,
43 land, including demolition, clearance or removal of buildings from
44 land, equipment, facilities, or other real or personal properties which
45 are necessary, convenient, or desirable appurtenances, such as but not
46 limited to streets, sewers, utilities, parks, site preparation, landscaping,

1 and administrative, community, health, recreational, educational, and
2 welfare facilities and any other related costs and expenses including
3 preliminary planning and development costs and any financing costs
4 and expenses.

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

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

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

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

30 (cf: P.L.2001, c.310, s.2)

31

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

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

1 b. A municipality in which a redevelopment project is undertaken
2 by a State entity redeveloper pursuant to a State entity redevelopment
3 agreement regarding real property that is or may be abated by
4 applicable law may provide for a tax abatement within the
5 redevelopment area and for payments in lieu of taxes pursuant to a
6 financial agreement between the municipality and the State entity
7 redeveloper receiving the benefits of P.L. _____, c. _____ (C. _____)
8 (pending before the Legislature as this bill) without regard to the
9 limitations and other provisions of P.L.1991, c.431 (C.40A:20-1 et
10 seq.).

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

39 [c.] d. Upon adoption, a copy of the ordinance shall be filed for
40 public inspection in the office of the municipal clerk, and there shall be
41 published in a newspaper, published or circulating in the municipality,
42 a notice stating the fact and the date of adoption and the place where
43 the ordinance is filed and a summary of the contents of the ordinance.
44 The notice shall state that any action or proceeding of any kind or
45 nature in any court questioning the validity or proper authorization of
46 the ordinance or the actions authorized to be taken as set forth in the

1 ordinance shall be commenced within 20 days after the publication of
2 the notice. If no action or proceeding questioning the validity of the
3 ordinance providing for tax abatement, special assessments or other
4 actions authorized by the ordinance shall be commenced or instituted
5 within 20 days after the publication of the notice, the county and the
6 school district and all other municipalities within the county and all
7 residents and taxpayers and owners of property therein shall be forever
8 barred and foreclosed from instituting or commencing any action or
9 proceeding in any court questioning the validity or enforceability of
10 the ordinance or the validity or enforceability of acts authorized under
11 the ordinance, and the ordinance and acts authorized by the ordinance
12 shall be conclusively deemed to be valid and enforceable in accordance
13 with their terms and tenor.

14 (cf: P.L.2002, c.15, s.10)

15

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

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

29 b. A municipality that has designated a redevelopment area or in
30 which a redevelopment project is undertaken by a State entity
31 redeveloper pursuant to a State entity redevelopment agreement may,
32 by resolution of its governing body, if it determines to issue bonds
33 through the authority, enter into contracts with the authority relating
34 to [any project or projects for the purpose of financing or refinancing
35 redevelopment] that redevelopment project, or to act as a
36 redeveloper[.] or to finance or refinance a redevelopment project
37 undertaken by a State entity redeveloper pursuant to a State entity
38 redevelopment agreement within a redevelopment area. A resolution
39 so adopted shall contain findings and determinations of the governing
40 body: (1) that all or a portion of the redevelopment project undertaken
41 within the municipality will result in the redevelopment of the
42 municipality; and, (2) that the contract with the authority or, to the
43 extent applicable, the financial agreement with the State entity
44 redeveloper, is a necessary or important inducement to the undertaking
45 of the project or the redevelopment project undertaken by the State
46 entity redeveloper in that [the contract] it makes the financing thereof

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

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

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

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

45 d. Notwithstanding the provisions of subsection g. of section 37 of
46 P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this

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

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

30 f. In order to provide additional security for any loan to a
31 redeveloper or a State entity redeveloper, as the case may be, or to
32 bonds issued to finance a redevelopment project, regardless of whether
33 that redevelopment project is undertaken under municipal authority
34 pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity
35 redeveloper pursuant to a State entity redevelopment agreement, the
36 municipality may utilize powers otherwise provided by law, including
37 the "Local Redevelopment and Housing Law," P.L.1992, c.79
38 (C.40A:12A-1 et seq.), to provide for any extension of the
39 municipality's credit to any redeveloper or State entity redeveloper, as
40 the case may be, or its full faith and credit which may include a full
41 faith and credit lease as security for the bonds or any loan to a
42 redeveloper or State entity redeveloper, as the case may be. To the
43 extent that the municipality provides for a full faith and credit
44 guarantee of any loan to a redeveloper or State entity redeveloper, as
45 the case may be, or any bonds, but determines not to authorize the
46 issuance of bonds or notes to provide for the funding source thereof,

1 or otherwise determines to enter into a full faith and credit lease, it
2 may do so by resolution approved by a majority of the full governing
3 body. To the extent that bonds or notes are authorized as provided
4 above, such bonds or notes shall be authorized pursuant to the
5 provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall
6 be deductible from the gross debt of the municipality until such time
7 as such bonds or notes are actually issued, and only up to the amount
8 actually issued, to fund such guarantee.

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

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

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

42 (cf: P.L.2001, c.310, s.4)

43

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

46 5. a. Payments required to be made in accordance with an

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

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

20
21 "THIS ORDINANCE SECURES BONDS OR OTHER
22 OBLIGATIONS ISSUED IN ACCORDANCE WITH THE
23 PROVISIONS OF THE 'REDEVELOPMENT AREA BOND
24 FINANCING LAW' AND THE LIEN HEREOF IN FAVOR OF THE
25 OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A
26 MUNICIPAL LIEN SUPERIOR TO ALL OTHER
27 NON-MUNICIPAL LIENS HEREAFTER RECORDED."
28

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

1 the lien established upon original recordation thereof.

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

6 (cf: P.L.2001, c.310, s.5)

7

8 5. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 This bill would extend a municipality's leeway to use payments in
14 lieu of taxes paid under long term redevelopment agreements and
15 special assessments to securitize bonds issued by the municipality. In
16 addition, the bill would expand the scope of the "Redevelopment Area
17 Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) to
18 cover projects undertaken by the New Jersey Meadowlands
19 Commission (NJMC) in the 14 constituent meadowlands municipalities
20 and other analogous entities.

21 The "Redevelopment Area Bond Financing Law" expanded the
22 powers of municipalities with respect to financing certain upfront costs
23 of local development projects. Among other things, the law
24 authorized any municipality that has designated a "redevelopment
25 area" pursuant to the "Local Redevelopment and Housing Law,"
26 P.L.1992, c.79 (C.40A:12A-1 et seq.) to issue bonds, secured by
27 payments in lieu of taxes under a tax abatement agreement, special
28 assessments on property benefitting from the improvements provided,
29 or both.

30 In enacting the "Redevelopment Area Bond Financing Law," the
31 Legislature intended to provide municipalities with additional financing
32 options to raise funds to pay for extraordinary costs associated with
33 the redevelopment project; however, in adopting the law, the
34 Legislature did not address redevelopment projects undertaken within
35 a municipality but implemented through the exercise of the
36 redevelopment powers of the NJMC or other similar State entity, or
37 redevelopment projects that are constructed on real property that is
38 exempt from real property taxation.

39 With regard to the existing authorization first adopted in 2001, the
40 bill extends the definition of the bonds which may be issued to allow
41 for the financing or refinancing of any cost or expense of an authority,
42 a State entity or a municipality. This means that under the bill, a
43 municipality would have the power to issue bonds, securitized by
44 payments in lieu of taxes paid under a long term tax exemption
45 pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431
46 (C.40A:20-1 et seq.) to cover any cost or expense of a municipality,

1 authority or a State entity, regardless of whether the cost or expense
2 was incurred in connection with the redevelopment project.

3 In addition, the bill changes the findings and determinations that a
4 governing body seeking to issue bonds through a State authority must
5 make by providing that all *or a portion of* the project shall be found to
6 result in the redevelopment of the municipality rather than the project,
7 without limitation.

8 In addition, the bill extends the provisions of the "Redevelopment
9 Area Bond Financing Law" to municipalities in which redevelopment
10 projects are implemented within their borders by the NJMC or other
11 such entity, instead of directly by the municipality. Accordingly, the
12 NJMC, for example, would continue to possess the power to designate
13 a redevelopment area in accordance with P.L.1968, c.404 (C.13:17-1
14 et seq.), but would now be able to enter into financial agreements with
15 the designated "State entity redeveloper," as defined in the bill,
16 providing for payments in lieu of taxes to be paid to the constituent
17 NJMC municipality and the issuance of bonds by that municipality to
18 be secured by those PILOT payments.

19 The bill defines the State entity redeveloper as any person, firm or
20 corporation that enters into or proposes to enter into a State entity
21 redevelopment agreement with a State entity for the redevelopment or
22 rehabilitation of a redevelopment area under the enabling legislation
23 governing the State entity. The State entity, under a new definition
24 created in the bill, is the NJMC or like organization that has
25 redevelopment powers and the power to determine the location, type
26 and character of a redevelopment project on land owned or controlled
27 by it.

28 The bill clarifies that these bonds may be securitized by those
29 PILOT's or a portion thereof. In addition, the bill grants the
30 constituent municipalities the power to securitize bonds using the
31 assigned portion of the payments in lieu of taxes or special
32 assessments, or both, received from a State entity redeveloper under
33 a financial agreement. Those PILOT's or special assessments which
34 are used to securitize these bonds shall not be considered in any
35 calculation made pursuant to intermunicipal tax sharing otherwise
36 provided by law.

37

38

39

40

41 Expands bonding power authorized under P.L.2001, c.310 and extends
42 scope of power to include projects undertaken under auspices of the
43 New Jersey Meadowlands Commission.

ASSEMBLY, No. 2791

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 10, 2004

Sponsored by:

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

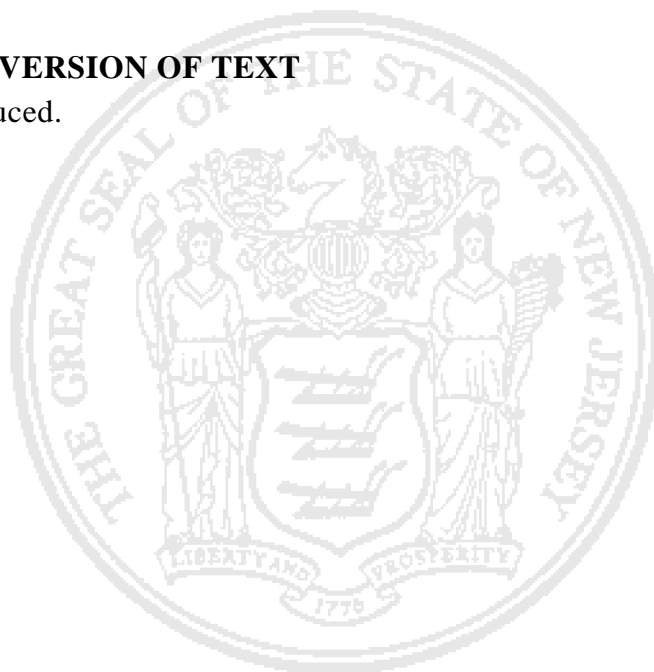
Senator Sarlo

SYNOPSIS

Expands bonding power authorized under P.L.2001, c.310 and extends scope of power to include projects undertaken under auspices of the New Jersey Meadowlands Commission.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/25/2004)

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2

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.2001, c.310 (C.40A:12A-65) is amended to
8 read as follows:

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

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

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

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

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

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

43 "Redeveloper" means any person, firm, corporation or public body,

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

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

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

27 "Redevelopment area" means an area which has been delineated a
28 "redevelopment area" or "area in need of redevelopment" pursuant to
29 the "Local Redevelopment and Housing Law," P.L.1992, c.79
30 (C.40A:12A-1 et seq.) or an area in need of redevelopment delineated
31 by a resolution of a State entity in accordance with the provisions of
32 the enabling statute governing that State entity.

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

39 "Redevelopment project" means any work or undertaking pursuant
40 to a redevelopment plan; such undertaking may include any buildings,
41 land, including demolition, clearance or removal of buildings from
42 land, equipment, facilities, or other real or personal properties which
43 are necessary, convenient, or desirable appurtenances, such as but not
44 limited to streets, sewers, utilities, parks, site preparation, landscaping,
45 and administrative, community, health, recreational, educational, and
46 welfare facilities and any other related costs and expenses including

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1 preliminary planning and development costs and any financing costs
2 and expenses.

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

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

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

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

28 (cf: P.L.2001, c.310, s.2)

29

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

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

45 b. A municipality in which a redevelopment project is undertaken
46 by a State entity redeveloper pursuant to a State entity redevelopment

1 agreement regarding real property that is or may be abated by
2 applicable law may provide for a tax abatement within the
3 redevelopment area and for payments in lieu of taxes pursuant to a
4 financial agreement between the municipality and the State entity
5 redeveloper receiving the benefits of P.L. _____, c. _____ (C. _____)
6 (pending before the Legislature as this bill) without regard to the
7 limitations and other provisions of P.L.1991, c.431 (C.40A:20-1 et
8 seq.).

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

37 [c.] d. Upon adoption, a copy of the ordinance shall be filed for
38 public inspection in the office of the municipal clerk, and there shall be
39 published in a newspaper, published or circulating in the municipality,
40 a notice stating the fact and the date of adoption and the place where
41 the ordinance is filed and a summary of the contents of the ordinance.
42 The notice shall state that any action or proceeding of any kind or
43 nature in any court questioning the validity or proper authorization of
44 the ordinance or the actions authorized to be taken as set forth in the
45 ordinance shall be commenced within 20 days after the publication of
46 the notice. If no action or proceeding questioning the validity of the

1 ordinance providing for tax abatement, special assessments or other
2 actions authorized by the ordinance shall be commenced or instituted
3 within 20 days after the publication of the notice, the county and the
4 school district and all other municipalities within the county and all
5 residents and taxpayers and owners of property therein shall be forever
6 barred and foreclosed from instituting or commencing any action or
7 proceeding in any court questioning the validity or enforceability of
8 the ordinance or the validity or enforceability of acts authorized under
9 the ordinance, and the ordinance and acts authorized by the ordinance
10 shall be conclusively deemed to be valid and enforceable in accordance
11 with their terms and tenor.

12 (cf: P.L.2002, c.15, s.10)

13

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

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

27 b. A municipality that has designated a redevelopment area or in
28 which a redevelopment project is undertaken by a State entity
29 redeveloper pursuant to a State entity redevelopment agreement may,
30 by resolution of its governing body, if it determines to issue bonds
31 through the authority, enter into contracts with the authority relating
32 to [any project or projects for the purpose of financing or refinancing
33 redevelopment] that redevelopment project, or to act as a
34 redeveloper[,] or to finance or refinance a redevelopment project
35 undertaken by a State entity redeveloper pursuant to a State entity
36 redevelopment agreement within a redevelopment area. A resolution
37 so adopted shall contain findings and determinations of the governing
38 body: (1) that all or a portion of the redevelopment project undertaken
39 within the municipality will result in the redevelopment of the
40 municipality; and, (2) that the contract with the authority or, to the
41 extent applicable, the financial agreement with the State entity
42 redeveloper, is a necessary or important inducement to the undertaking
43 of the project or the redevelopment project undertaken by the State
44 entity redeveloper in that [the contract] it makes the financing thereof
45 feasible. The contract or contracts, or the terms of any bonds issued
46 directly by a municipality may provide for the assignment, for the

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

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

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

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

43 d. Notwithstanding the provisions of subsection g. of section 37 of
44 P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this
45 section may be issued as non-recourse obligations, and unless
46 otherwise provided for by a separate action of the municipality to

1 guarantee such bonds or otherwise provide for a pledge of the
2 municipality's full faith and credit shall not, except for such action, be
3 considered to be direct and general obligations of the municipality,
4 and, absent such action, the municipality shall not be obligated to levy
5 and collect a tax sufficient in an amount to pay the principal and
6 interest on the bonds when the same become due and payable. The
7 provisions of the "Local Government Supervision Act (1947),"
8 P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds
9 issued or authorized pursuant to this section and those bonds shall not
10 be considered gross debt of the municipality on any debt statement
11 filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq.,
12 and the provisions of chapter 27 of Title 52 of the Revised Statutes
13 shall not apply to such bonds.

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

28 f. In order to provide additional security for any loan to a
29 redeveloper or a State entity redeveloper, as the case may be, or to
30 bonds issued to finance a redevelopment project, regardless of whether
31 that redevelopment project is undertaken under municipal authority
32 pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity
33 redeveloper pursuant to a State entity redevelopment agreement, the
34 municipality may utilize powers otherwise provided by law, including
35 the "Local Redevelopment and Housing Law," P.L.1992, c.79
36 (C.40A:12A-1 et seq.), to provide for any extension of the
37 municipality's credit to any redeveloper or State entity redeveloper, as
38 the case may be, or its full faith and credit which may include a full
39 faith and credit lease as security for the bonds or any loan to a
40 redeveloper or State entity redeveloper, as the case may be. To the
41 extent that the municipality provides for a full faith and credit
42 guarantee of any loan to a redeveloper or State entity redeveloper, as
43 the case may be, or any bonds, but determines not to authorize the
44 issuance of bonds or notes to provide for the funding source thereof,
45 or otherwise determines to enter into a full faith and credit lease, it
46 may do so by resolution approved by a majority of the full governing

1 body. To the extent that bonds or notes are authorized as provided
2 above, such bonds or notes shall be authorized pursuant to the
3 provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall
4 be deductible from the gross debt of the municipality until such time
5 as such bonds or notes are actually issued, and only up to the amount
6 actually issued, to fund such guarantee.

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

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

31 i. In the case of a municipality which is otherwise subject to tax or
32 revenue sharing pursuant to law and which assigns a portion of the
33 payments in lieu of taxes or special assessments pursuant to a financial
34 agreement to secure bonds issued by the municipality or the authority,
35 the assigned portion of those payments in lieu of taxes or special
36 assessments shall not be considered part of the tax or revenue sharing
37 formula or calculation of municipal revenues for the purpose of
38 determining whether that municipality is obligated to make payment
39 to, or receive a credit from, any tax sharing or revenue sharing pool.
40 (cf: P.L.2001, c.310, s.4)

41

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

44 5. a. Payments required to be made in accordance with an
45 agreement for payments in lieu of taxes entered into under section 3
46 of P.L.2001, c.310 (C.40A:12A-66) shall be a continuous lien on the

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1 land against which the ordinance is recorded on and after the date of
2 recordation of both the ordinance and the agreement, whether
3 simultaneously or not, or the date of confirmation of the special
4 assessments, whichever is earlier. All subsequent payments in lieu of
5 taxes thereunder, interest, penalties and costs of collection which
6 thereafter fall due or accrue shall be added and relate back to and be
7 a part of the initial lien. Upon recordation of the ordinance and
8 agreement, payments in lieu of taxes shall constitute a municipal lien
9 within the meaning, and for all purposes, of law.

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

18

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

26

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

46 d. Upon the final payment in full of any bonds secured as provided

1 in this section and section 4 of P.L.2001, c.310 (C.40A:12A-67) , the
2 lien established hereby shall terminate, and the municipality shall
3 record a notice to that effect.

4 (cf: P.L.2001, c.310, s.5)

5
6 5. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill would extend a municipality's leeway to use payments in
12 lieu of taxes paid under long term redevelopment agreements and
13 special assessments to securitize bonds issued by the municipality. In
14 addition, the bill would expand the scope of the "Redevelopment Area
15 Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) to
16 cover projects undertaken by the New Jersey Meadowlands
17 Commission (NJMC) in the 14 constituent meadowlands municipalities
18 and other analogous entities.

19 The "Redevelopment Area Bond Financing Law" expanded the
20 powers of municipalities with respect to financing certain upfront costs
21 of local development projects. Among other things, the law
22 authorized any municipality that has designated a "redevelopment
23 area" pursuant to the "Local Redevelopment and Housing Law,"
24 P.L.1992, c.79 (C.40A:12A-1 et seq.) to issue bonds, secured by
25 payments in lieu of taxes under a tax abatement agreement, special
26 assessments on property benefitting from the improvements provided,
27 or both.

28 In enacting the "Redevelopment Area Bond Financing Law," the
29 Legislature intended to provide municipalities with additional financing
30 options to raise funds to pay for extraordinary costs associated with
31 the redevelopment project; however, in adopting the law, the
32 Legislature did not address redevelopment projects undertaken within
33 a municipality but implemented through the exercise of the
34 redevelopment powers of the NJMC or other similar State entity, or
35 redevelopment projects that are constructed on real property that is
36 exempt from real property taxation.

37 With regard to the existing authorization first adopted in 2001, the
38 bill extends the definition of the bonds which may be issued to allow
39 for the financing or refinancing of any cost or expense of an authority,
40 a State entity or a municipality. This means that under the bill, a
41 municipality would have the power to issue bonds, securitized by
42 payments in lieu of taxes paid under a long term tax exemption
43 pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431
44 (C.40A:20-1 et seq.) to cover any cost or expense of a municipality,
45 authority or a State entity, regardless of whether the cost or expense
46 was incurred in connection with the redevelopment project.

1 In addition, the bill changes the findings and determinations that a
2 governing body seeking to issue bonds through a State authority must
3 make by providing that all *or a portion of* the project shall be found to
4 result in the redevelopment of the municipality rather than the project,
5 without limitation.

6 In addition, the bill extends the provisions of the "Redevelopment
7 Area Bond Financing Law" to municipalities in which redevelopment
8 projects are implemented within their borders by the NJMC or other
9 such entity, instead of directly by the municipality. Accordingly, the
10 NJMC, for example, would continue to possess the power to designate
11 a redevelopment area in accordance with P.L.1968, c.404 (C.13:17-1
12 et seq.), but would now be able to enter into financial agreements with
13 the designated "State entity redeveloper," as defined in the bill,
14 providing for payments in lieu of taxes to be paid to the constituent
15 NJMC municipality and the issuance of bonds by that municipality to
16 be secured by those PILOT payments.

17 The bill defines the State entity redeveloper as any person, firm or
18 corporation that enters into or proposes to enter into a State entity
19 redevelopment agreement with a State entity for the redevelopment or
20 rehabilitation of a redevelopment area under the enabling legislation
21 governing the State entity. The State entity, under a new definition
22 created in the bill, is the NJMC or like organization that has
23 redevelopment powers and the power to determine the location, type
24 and character of a redevelopment project on land owned or controlled
25 by it.

26 The bill clarifies that these bonds may be securitized by those
27 PILOT's or a portion thereof. In addition, the bill grants the
28 constituent municipalities the power to securitize bonds using the
29 assigned portion of the payments in lieu of taxes or special
30 assessments, or both, received from a State entity redeveloper under
31 a financial agreement. Those PILOT's or special assessments which
32 are used to securitize these bonds shall not be considered in any
33 calculation made pursuant to intermunicipal tax sharing otherwise
34 provided by law.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2791

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Assembly Housing and Local Government Committee reports favorably Assembly Bill No. 2791.

This bill would extend a municipality's leeway to use payments in lieu of taxes paid under long term redevelopment agreements and special assessments to securitize bonds issued by the municipality. In addition, the bill would expand the scope of the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) to cover projects undertaken by the New Jersey Meadowlands Commission (NJMC) in the 14 constituent meadowlands municipalities and other analogous entities.

The "Redevelopment Area Bond Financing Law" expanded the powers of municipalities with respect to financing certain upfront costs of local development projects. Among other things, the law authorized any municipality that has designated a "redevelopment area" pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) to issue bonds, secured by payments in lieu of taxes under a tax abatement agreement, special assessments on property benefitting from the improvements provided, or both.

In enacting the "Redevelopment Area Bond Financing Law," the Legislature intended to provide municipalities with additional financing options to raise funds to pay for extraordinary costs associated with the redevelopment project; however, in adopting the law, the Legislature did not address redevelopment projects undertaken within a municipality but implemented through the exercise of the redevelopment powers of the NJMC or other similar State entity, or redevelopment projects that are constructed on real property that is exempt from real property taxation.

With regard to the existing authorization first adopted in 2001, the bill extends the definition of the bonds which may be issued to allow for the financing or refinancing of any cost or expense of an authority, a State entity or a municipality. This means that under the bill, a municipality would have the power to issue bonds, securitized by payments in lieu of taxes paid under a long term tax exemption pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431

(C.40A:20-1 et seq.) to cover any cost or expense of a municipality, authority or a State entity, regardless of whether the cost or expense was incurred in connection with the redevelopment project.

In addition, the bill changes the findings and determinations that a governing body seeking to issue bonds through a State authority must make by providing that all *or a portion of* the project shall be found to result in the redevelopment of the municipality rather than the project, without limitation.

In addition, the bill extends the provisions of the "Redevelopment Area Bond Financing Law" to municipalities in which redevelopment projects are implemented within their borders by the NJMC or other such entity, instead of directly by the municipality. Accordingly, the NJMC, for example, would continue to possess the power to designate a redevelopment area in accordance with P.L.1968, c.404 (C.13:17-1 et seq.), but would now be able to enter into financial agreements with the designated "State entity redeveloper," as defined in the bill, providing for payments in lieu of taxes to be paid to the constituent NJMC municipality and the issuance of bonds by that municipality to be secured by those PILOT payments.

The bill defines the State entity redeveloper as any person, firm or corporation that enters into or proposes 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 State entity. The State entity, under a new definition created in the bill, is the NJMC or like organization that has redevelopment powers and the power to determine the location, type and character of a redevelopment project on land owned or controlled by it.

The bill clarifies that these bonds may be securitized by those PILOTs or a portion thereof. In addition, the bill grants the constituent municipalities the power to securitize bonds using the assigned portion of the payments in lieu of taxes or special assessments, or both, received from a State entity redeveloper under a financial agreement. Those PILOTs or special assessments which are used to securitize these bonds shall not be considered in any calculation made pursuant to intermunicipal tax sharing otherwise provided by law.

SENATE, No. 1564

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MAY 10, 2004

Sponsored by:

Senator PAUL SARLO

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Expands bonding power authorized under P.L.2001, c.310 and extends scope of power to include projects undertaken under auspices of the New Jersey Meadowlands Commission.

CURRENT VERSION OF TEXT

As introduced.



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2

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.2001, c.310 (C.40A:12A-65) is amended to
8 read as follows:

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

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

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

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

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

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

43 "Redeveloper" means any person, firm, corporation or public body,

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

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

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

27 "Redevelopment area" means an area which has been delineated a
28 "redevelopment area" or "area in need of redevelopment" pursuant to
29 the "Local Redevelopment and Housing Law," P.L.1992, c.79
30 (C.40A:12A-1 et seq.) or an area in need of redevelopment delineated
31 by a resolution of a State entity in accordance with the provisions of
32 the enabling statute governing that State entity.

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

39 "Redevelopment project" means any work or undertaking pursuant
40 to a redevelopment plan; such undertaking may include any buildings,
41 land, including demolition, clearance or removal of buildings from
42 land, equipment, facilities, or other real or personal properties which
43 are necessary, convenient, or desirable appurtenances, such as but not
44 limited to streets, sewers, utilities, parks, site preparation, landscaping,
45 and administrative, community, health, recreational, educational, and
46 welfare facilities and any other related costs and expenses including

1 preliminary planning and development costs and any financing costs
2 and expenses.

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

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

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

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

28 (cf: P.L.2001, c.310, s.2)

29

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

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

45 b. A municipality in which a redevelopment project is undertaken
46 by a State entity redeveloper pursuant to a State entity redevelopment

1 agreement regarding real property that is or may be abated by
2 applicable law may provide for a tax abatement within the
3 redevelopment area and for payments in lieu of taxes pursuant to a
4 financial agreement between the municipality and the State entity
5 redeveloper receiving the benefits of P.L. _____, c. _____ (C. _____)
6 (pending before the Legislature as this bill) without regard to the
7 limitations and other provisions of P.L.1991, c.431 (C.40A:20-1 et
8 seq.).

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

37 [c.] d. Upon adoption, a copy of the ordinance shall be filed for
38 public inspection in the office of the municipal clerk, and there shall be
39 published in a newspaper, published or circulating in the municipality,
40 a notice stating the fact and the date of adoption and the place where
41 the ordinance is filed and a summary of the contents of the ordinance.
42 The notice shall state that any action or proceeding of any kind or
43 nature in any court questioning the validity or proper authorization of
44 the ordinance or the actions authorized to be taken as set forth in the
45 ordinance shall be commenced within 20 days after the publication of
46 the notice. If no action or proceeding questioning the validity of the

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1 ordinance providing for tax abatement, special assessments or other
2 actions authorized by the ordinance shall be commenced or instituted
3 within 20 days after the publication of the notice, the county and the
4 school district and all other municipalities within the county and all
5 residents and taxpayers and owners of property therein shall be forever
6 barred and foreclosed from instituting or commencing any action or
7 proceeding in any court questioning the validity or enforceability of
8 the ordinance or the validity or enforceability of acts authorized under
9 the ordinance, and the ordinance and acts authorized by the ordinance
10 shall be conclusively deemed to be valid and enforceable in accordance
11 with their terms and tenor.

12 (cf: P.L.2002, c.15, s.10)

13

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

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

27 b. A municipality that has designated a redevelopment area or in
28 which a redevelopment project is undertaken by a State entity
29 redeveloper pursuant to a State entity redevelopment agreement may,
30 by resolution of its governing body, if it determines to issue bonds
31 through the authority, enter into contracts with the authority relating
32 to [any project or projects for the purpose of financing or refinancing
33 redevelopment] that redevelopment project, or to act as a
34 redeveloper[,] or to finance or refinance a redevelopment project
35 undertaken by a State entity redeveloper pursuant to a State entity
36 redevelopment agreement within a redevelopment area. A resolution
37 so adopted shall contain findings and determinations of the governing
38 body: (1) that all or a portion of the redevelopment project undertaken
39 within the municipality will result in the redevelopment of the
40 municipality; and, (2) that the contract with the authority or, to the
41 extent applicable, the financial agreement with the State entity
42 redeveloper, is a necessary or important inducement to the undertaking
43 of the project or the redevelopment project undertaken by the State
44 entity redeveloper in that [the contract] it makes the financing thereof
45 feasible. The contract or contracts, or the terms of any bonds issued
46 directly by a municipality may provide for the assignment, for the

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

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

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

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

43 d. Notwithstanding the provisions of subsection g. of section 37 of
44 P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this
45 section may be issued as non-recourse obligations, and unless
46 otherwise provided for by a separate action of the municipality to

1 guarantee such bonds or otherwise provide for a pledge of the
2 municipality's full faith and credit shall not, except for such action, be
3 considered to be direct and general obligations of the municipality,
4 and, absent such action, the municipality shall not be obligated to levy
5 and collect a tax sufficient in an amount to pay the principal and
6 interest on the bonds when the same become due and payable. The
7 provisions of the "Local Government Supervision Act (1947),"
8 P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds
9 issued or authorized pursuant to this section and those bonds shall not
10 be considered gross debt of the municipality on any debt statement
11 filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq.,
12 and the provisions of chapter 27 of Title 52 of the Revised Statutes
13 shall not apply to such bonds.

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

28 f. In order to provide additional security for any loan to a
29 redeveloper or a State entity redeveloper, as the case may be, or to
30 bonds issued to finance a redevelopment project, regardless of whether
31 that redevelopment project is undertaken under municipal authority
32 pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity
33 redeveloper pursuant to a State entity redevelopment agreement, the
34 municipality may utilize powers otherwise provided by law, including
35 the "Local Redevelopment and Housing Law," P.L.1992, c.79
36 (C.40A:12A-1 et seq.), to provide for any extension of the
37 municipality's credit to any redeveloper or State entity redeveloper, as
38 the case may be, or its full faith and credit which may include a full
39 faith and credit lease as security for the bonds or any loan to a
40 redeveloper or State entity redeveloper, as the case may be. To the
41 extent that the municipality provides for a full faith and credit
42 guarantee of any loan to a redeveloper or State entity redeveloper, as
43 the case may be, or any bonds, but determines not to authorize the
44 issuance of bonds or notes to provide for the funding source thereof,
45 or otherwise determines to enter into a full faith and credit lease, it
46 may do so by resolution approved by a majority of the full governing

1 body. To the extent that bonds or notes are authorized as provided
2 above, such bonds or notes shall be authorized pursuant to the
3 provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall
4 be deductible from the gross debt of the municipality until such time
5 as such bonds or notes are actually issued, and only up to the amount
6 actually issued, to fund such guarantee.

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

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

31 i. In the case of a municipality which is otherwise subject to tax or
32 revenue sharing pursuant to law and which assigns a portion of the
33 payments in lieu of taxes or special assessments pursuant to a financial
34 agreement to secure bonds issued by the municipality or the authority,
35 the assigned portion of those payments in lieu of taxes or special
36 assessments shall not be considered part of the tax or revenue sharing
37 formula or calculation of municipal revenues for the purpose of
38 determining whether that municipality is obligated to make payment
39 to, or receive a credit from, any tax sharing or revenue sharing pool.
40 (cf: P.L.2001, c.310, s.4)

41

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

44 5. a. Payments required to be made in accordance with an
45 agreement for payments in lieu of taxes entered into under section 3
46 of P.L.2001, c.310 (C.40A:12A-66) shall be a continuous lien on the

1 land against which the ordinance is recorded on and after the date of
2 recordation of both the ordinance and the agreement, whether
3 simultaneously or not, or the date of confirmation of the special
4 assessments, whichever is earlier. All subsequent payments in lieu of
5 taxes thereunder, interest, penalties and costs of collection which
6 thereafter fall due or accrue shall be added and relate back to and be
7 a part of the initial lien. Upon recordation of the ordinance and
8 agreement, payments in lieu of taxes shall constitute a municipal lien
9 within the meaning, and for all purposes, of law.

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

18

19 "THIS ORDINANCE SECURES BONDS OR OTHER
20 OBLIGATIONS ISSUED IN ACCORDANCE WITH THE
21 PROVISIONS OF THE 'REDEVELOPMENT AREA BOND
22 FINANCING LAW' AND THE LIEN HEREOF IN FAVOR OF THE
23 OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A
24 MUNICIPAL LIEN SUPERIOR TO ALL OTHER
25 NON-MUNICIPAL LIENS HEREAFTER RECORDED."
26

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

46 d. Upon the final payment in full of any bonds secured as provided

1 in this section and section 4 of P.L.2001, c.310 (C.40A:12A-67) , the
2 lien established hereby shall terminate, and the municipality shall
3 record a notice to that effect.

4 (cf: P.L.2001, c.310, s.5)

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6 5. This act shall take effect immediately.

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9 STATEMENT

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11 This bill would extend a municipality's leeway to use payments in
12 lieu of taxes paid under long term redevelopment agreements and
13 special assessments to securitize bonds issued by the municipality. In
14 addition, the bill would expand the scope of the "Redevelopment Area
15 Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) to
16 cover projects undertaken by the New Jersey Meadowlands
17 Commission (NJMC) in the 14 constituent meadowlands municipalities
18 and other analogous entities.

19 The "Redevelopment Area Bond Financing Law" expanded the
20 powers of municipalities with respect to financing certain upfront costs
21 of local development projects. Among other things, the law
22 authorized any municipality that has designated a "redevelopment
23 area" pursuant to the "Local Redevelopment and Housing Law,"
24 P.L.1992, c.79 (C.40A:12A-1 et seq.) to issue bonds, secured by
25 payments in lieu of taxes under a tax abatement agreement, special
26 assessments on property benefitting from the improvements provided,
27 or both.

28 In enacting the "Redevelopment Area Bond Financing Law," the
29 Legislature intended to provide municipalities with additional financing
30 options to raise funds to pay for extraordinary costs associated with
31 the redevelopment project; however, in adopting the law, the
32 Legislature did not address redevelopment projects undertaken within
33 a municipality but implemented through the exercise of the
34 redevelopment powers of the NJMC or other similar State entity, or
35 redevelopment projects that are constructed on real property that is
36 exempt from real property taxation.

37 With regard to the existing authorization first adopted in 2001, the
38 bill extends the definition of the bonds which may be issued to allow
39 for the financing or refinancing of any cost or expense of an authority,
40 a State entity or a municipality. This means that under the bill, a
41 municipality would have the power to issue bonds, securitized by
42 payments in lieu of taxes paid under a long term tax exemption
43 pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431
44 (C.40A:20-1 et seq.) to cover any cost or expense of a municipality,
45 authority or a State entity, regardless of whether the cost or expense
46 was incurred in connection with the redevelopment project.

1 In addition, the bill changes the findings and determinations that a
2 governing body seeking to issue bonds through a State authority must
3 make by providing that all *or a portion of* the project shall be found to
4 result in the redevelopment of the municipality rather than the project,
5 without limitation.

6 In addition, the bill extends the provisions of the "Redevelopment
7 Area Bond Financing Law" to municipalities in which redevelopment
8 projects are implemented within their borders by the NJMC or other
9 such entity, instead of directly by the municipality. Accordingly, the
10 NJMC, for example, would continue to possess the power to designate
11 a redevelopment area in accordance with P.L.1968, c.404 (C.13:17-1
12 et seq.), but would now be able to enter into financial agreements with
13 the designated "State entity redeveloper," as defined in the bill,
14 providing for payments in lieu of taxes to be paid to the constituent
15 NJMC municipality and the issuance of bonds by that municipality to
16 be secured by those PILOT payments.

17 The bill defines the State entity redeveloper as any person, firm or
18 corporation that enters into or proposes to enter into a State entity
19 redevelopment agreement with a State entity for the redevelopment or
20 rehabilitation of a redevelopment area under the enabling legislation
21 governing the State entity. The State entity, under a new definition
22 created in the bill, is the NJMC or like organization that has
23 redevelopment powers and the power to determine the location, type
24 and character of a redevelopment project on land owned or controlled
25 by it.

26 The bill clarifies that these bonds may be securitized by those
27 PILOT's or a portion thereof. In addition, the bill grants the
28 constituent municipalities the power to securitize bonds using the
29 assigned portion of the payments in lieu of taxes or special
30 assessments, or both, received from a State entity redeveloper under
31 a financial agreement. Those PILOT's or special assessments which
32 are used to securitize these bonds shall not be considered in any
33 calculation made pursuant to intermunicipal tax sharing otherwise
34 provided by law.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1564

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Senate Economic Growth Committee reports favorably Senate Bill No. 1564.

This bill would extend a municipality's leeway to use payments in lieu of taxes paid under long term redevelopment agreements and special assessments to securitize bonds issued by the municipality. In addition, the bill would expand the scope of the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) to cover projects undertaken by the New Jersey Meadowlands Commission (NJMC) in the 14 constituent meadowlands municipalities and other analogous entities.

The "Redevelopment Area Bond Financing Law" expanded the powers of municipalities with respect to financing certain upfront costs of local development projects. Among other things, the law authorized any municipality that has designated a "redevelopment area" pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) to issue bonds, secured by payments in lieu of taxes (PILOTs) under a tax abatement agreement, special assessments on property benefitting from the improvements provided, or both.

In enacting the "Redevelopment Area Bond Financing Law," the Legislature intended to provide municipalities with additional financing options to raise funds to pay for extraordinary costs associated with the redevelopment project; however, in adopting the law, the Legislature did not address redevelopment projects undertaken within a municipality but implemented through the exercise of the redevelopment powers of the NJMC or other similar State entity, or redevelopment projects that are constructed on real property that is exempt from real property taxation.

With regard to the existing authorization first adopted in 2001, the bill extends the definition of the bonds which may be issued to allow for the financing or refinancing of any cost or expense of an authority, a State entity or a municipality. This means that under the bill, a municipality would have the power to issue bonds, securitized by PILOTs paid under a long term tax exemption pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et seq.) to cover any cost or expense of a municipality, authority or a State entity, regardless of whether the cost or expense was incurred in connection

with the redevelopment project.

In addition, the bill changes the findings and determinations that a governing body seeking to issue bonds through a State authority must make by providing that all or a portion of the project shall be found to result in the redevelopment of the municipality rather than the project, without limitation.

In addition, the bill extends the provisions of the "Redevelopment Area Bond Financing Law" to municipalities in which redevelopment projects are implemented within their borders by the NJMC or other such entity, instead of directly by the municipality. Accordingly, the NJMC, for example, would continue to possess the power to designate a redevelopment area in accordance with P.L.1968, c.404 (C.13:17-1 et seq.), but would now be able to enter into financial agreements with the designated "State entity redeveloper," as defined in the bill, providing for PILOTs to be paid to the constituent NJMC municipality and the issuance of bonds by that municipality to be secured by those PILOT payments.

The bill defines the State entity redeveloper as any person, firm or corporation that enters into or proposes 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 State entity. The State entity, under a new definition created in the bill, is the NJMC or like organization that has redevelopment powers and the power to determine the location, type and character of a redevelopment project on land owned or controlled by it.

The bill clarifies that these bonds may be securitized by those PILOTs or a portion thereof. In addition, the bill grants the constituent municipalities the power to securitize bonds using the assigned portion of the PILOTs or special assessments, or both, received from a State entity redeveloper under a financial agreement. Those PILOTs or special assessments which are used to securitize these bonds shall not be considered in any calculation made pursuant to intermunicipal tax sharing otherwise provided by law.