

40A:20-1

**LEGISLATIVE HISTORY CHECKLIST**  
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(Low income housing)

**NJSA:** 40A:20-1

**LAWS OF:** 1994 **CHAPTER:** 87

**BILL NO:** A1070

**SPONSOR(S):** Bagger

**DATE INTRODUCED:** January 24, 1994

**COMMITTEE:** **ASSEMBLY:** Housing

**SENATE:** Urban Policy

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** May 9, 1994

**SENATE:** June 20, 1994

**DATE OF APPROVAL:** August 3, 1994

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:** ~~Yes~~ No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** Yes

974.90 New Jersey. Legislature. Senate. Urban Policy and Planning  
H842 Committee  
1994 Committee meeting, held 6-6-94. Trenton, 1994.

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**ASSEMBLY, No. 1070**  
**STATE OF NEW JERSEY**

INTRODUCED JANUARY 24, 1994

By Assemblyman BAGGER

1 AN ACT concerning housing for low-income and disabled  
2 individuals, amending and supplementing P.L.1991, c.431  
3 (C.40A:20-3 et seq.).

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

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

9 3. As used in this act:

10 a. "Gross revenue" means annual gross revenue or gross  
11 shelter rent or annual gross rents, as appropriate, and other  
12 income, for each urban renewal entity designated pursuant to this  
13 act. The financial agreement shall establish the method of  
14 computing gross revenue for the entity, and the method of  
15 determining insurance, operating and maintenance expenses paid  
16 by a tenant which are ordinarily paid by a landlord, which shall be  
17 included in the gross revenue ; provided, however, that any  
18 federal funds received, whether directly or in the form of rental  
19 subsidies paid to tenants, by a nonprofit corporation that is the  
20 sponsor of a qualified subsidized housing project, shall not be  
21 included in the gross revenue of the project for purposes of  
22 computing the annual services charge for municipal services  
23 supplied to the project.

24 b. "Limited-dividend entity" means an urban renewal entity  
25 incorporated pursuant to Title 14A of the New Jersey Statutes, or  
26 established pursuant to Title 42 of the Revised Statutes, for  
27 which the profits and the entity are limited as follows. The  
28 allowable net profits of the entity shall be determined by  
29 applying the allowable profit rate to each total project unit cost,  
30 if the project is undertaken in units, or the total project cost, if  
31 the project is not undertaken in units, for the period commencing  
32 on the date on which the construction of the unit or project is  
33 completed, and terminating at the close of the fiscal year of the  
34 entity preceding the date on which the computation is made,  
35 where:

36 "Allowable profit rate" means the percentage per annum  
37 arrived at by adding 1 1/4% to the annual interest percentage  
38 rate payable on the entity's initial permanent mortgage  
39 financing. If the initial permanent mortgage is insured or  
40 guaranteed by a governmental agency, the mortgage insurance  
41 premium or similar charge, if payable on a per annum basis, shall  
42 be considered as interest for this purpose. If there is no  
43 permanent mortgage financing the allowable profit rate shall be  
44 arrived at by adding 1 1/4% per annum to the interest rate per

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 annum which the municipality determines to be the prevailing  
2 rate on mortgage financing on comparable improvements in the  
3 county.

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

8 (1) there shall be included in expenses: (a) all annual service  
9 charges paid pursuant to section 12 of P.L.1991, c.431  
10 (C.40A:20-12); (b) all payments to the municipality of excess  
11 profits pursuant to section 15 or 16 of P.L.1991, c.431  
12 (C.40A:20-15 or 40A:20-16); (c) an annual amount sufficient to  
13 amortize the total project cost over the life of the  
14 improvements, as set forth in the financial agreement, which  
15 shall not be less than the terms of the financial agreement; and  
16 (d) all reasonable annual operating expenses of the urban renewal  
17 entity, including the cost of all management fees, brokerage  
18 commissions, insurance premiums, all taxes or service charges  
19 paid, legal, accounting, or other professional service fees,  
20 utilities, building maintenance costs, building and office supplies,  
21 and payments into repair or maintenance reserve accounts;

22 (2) there shall not be included in expenses either depreciation  
23 or obsolescence, interest on debt, income taxes, or salaries,  
24 bonuses or other compensation paid, directly or indirectly to  
25 directors, officers and stockholders of the entity, or officers,  
26 partners or other persons holding any proprietary ownership  
27 interest in the entity.

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

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

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

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

1 et al.).

2 g. "Urban renewal entity" means a limited-dividend entity or  
3 a nonprofit entity which enters into a financial agreement  
4 pursuant to this act with a municipality to undertake a project  
5 pursuant to a redevelopment plan for the redevelopment of all or  
6 any part of a redevelopment area, or a project necessary, useful,  
7 or convenient for the relocation of residents displaced or to be  
8 displaced by the redevelopment of all or any part of one or more  
9 redevelopment areas, or a low and moderate income housing  
10 project.

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

34 \$500,000 or less - 10%  
35 \$500,000 through \$1,000,000 - \$50,000 plus 8%  
36 on excess above  
37 \$500,000  
38 \$1,000,001 through \$2,000,000 - \$90,000 plus 7%  
39 on excess above  
40 \$1,000,000  
41 \$2,000,001 through \$3,500,000 - \$160,000 plus  
42 5.6667% on  
43 excess above  
44 \$2,000,000  
45 \$3,500,001 through \$5,500,000 - \$245,000 plus  
46 4.25% on excess  
47 above \$3,500,000  
48 \$5,500,001 through \$10,000,000 - \$330,000 plus  
49 3.7778% on excess  
50 above \$5,500,000  
51 over \$10,000,000 - 5%

52 If the financial agreement so provides, there shall be excluded  
53 from the total project cost actual costs incurred by the entity  
54 and certified to the municipality by an independent and qualified

1 architect or engineer which are associated with site remediation  
2 and cleanup of environmentally hazardous materials or  
3 contaminants in accordance with State or federal law.

4 i. "Housing project" means any work or undertaking to provide  
5 decent, safe, and sanitary dwellings for families in need of  
6 housing; the undertaking may include any buildings, land  
7 (including demolition, clearance or removal of buildings from  
8 land), equipment, facilities, or other real or personal properties  
9 or interests therein which are necessary, convenient or desirable  
10 appurtenances of the undertaking, such as, but not limited to,  
11 streets, sewers, water, utilities, parks; site preparation;  
12 landscaping, and administrative, community, health, recreational,  
13 educational, welfare, commercial, or other facilities, or to  
14 provide any part or combination of the foregoing.

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

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

24 l. "Qualified subsidized housing project" means a low and  
25 moderate income housing project owned by a nonprofit  
26 corporation organized under the provisions of Title 15A of the  
27 New Jersey Statutes for the purpose of developing, constructing  
28 and operating rental housing for senior citizens under section 202  
29 of Pub.L. 86-372 (12 U.S.C. §1701g) or rental housing for persons  
30 with disabilities under section 811 of Pub.L. 101-625 (42 U.S.C.  
31 8013), or under any other federal program that the Commissioner  
32 of Community Affairs by rule may determine to be of a similar  
33 nature and purpose.

34 (cf: P.L.1992, c.79, s.54)

35 2. (New section) The provisions of section 5 of P.L.1991, c.431  
36 (C.40A:20-5) to the contrary notwithstanding, a nonprofit  
37 corporation organized for the purpose of developing, constructing  
38 and operating a qualified subsidized housing project may qualify  
39 as an urban renewal entity under P.L.1991, c.431 (C.40A:20-1 et  
40 seq.) if its certificate of incorporation is in conformity with the  
41 requirements of the federal agency subsidizing the project.

42 3. (New section) The provisions of section 12 of P.L.1991,  
43 c.431 (C.40A:20-12) requiring staged increases in annual service  
44 charges over the term of the financial agreement and establishing  
45 a minimum annual service charge shall not apply to qualified  
46 subsidized housing projects.

47 4. (New section) The provisions of sections 12 and 13 of  
48 P.L.1991, c.431 (C.40A:20-12 and C.40A:20-13) to the contrary  
49 notwithstanding, a qualified subsidized housing project may be  
50 exempted from taxation for such period of time as the federal  
51 agency subsidizing the project may require as a condition of the  
52 subsidy. The exemption from taxation may be extended for an  
53 additional period of time as may be required in order to secure a  
54 continuation of federal subsidies after the expiration of the

1 initial subsidy period.

2 5. (New section) The provisions of section 16 of P.L.1991,  
3 c.431 (C.40A:20-16) to the contrary notwithstanding, a nonprofit  
4 corporation that is the sponsor of a qualified subsidized housing  
5 project shall not be required to pay over to the municipality its  
6 net profits, if any, for any year in which it is subject to federal  
7 requirements concerning residual receipts.

8 6. This act shall take effect immediately and be retroactive to  
9 April 17, 1992.

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#### STATEMENT

14 P.L.1991, c.431, the Long Term Tax Exemption Law, was  
15 enacted for the purpose of consolidating and modernizing the  
16 laws concerning tax exemptions for improvements made for the  
17 purpose of restoring areas in need of redevelopment. It repealed  
18 several statutes, including P.L.1965, c.92, the Senior Citizens  
19 Nonprofit Rental Housing Tax Law. This law was enacted to  
20 allow nonprofit housing sponsors to secure funding under the  
21 Senior Citizens Housing Program authorized by section 202 of the  
22 Federal Housing Act, as amended.

23 An unintended consequence of this repeal was that P.L.1991,  
24 c.431 was at variance with rules adopted by the U.S. Department  
25 of Housing and Urban Development (HUD) under section 202 in  
26 several important respects. The federal rules require that a  
27 sponsor obtain a tax exemption for the life of the subsidy,  
28 generally 40 years, rather than the 30 years allowed by P.L.1991,  
29 c.431. Other differences involve the way in which project  
30 revenue is to be calculated, the staged increases in service  
31 charges and minimum service charges required by P.L.1991,  
32 c.431, the contents of the certificate of incorporation, and the  
33 treatment of any net profits received by the nonprofit  
34 corporation.

35 As a result of these differences, a housing sponsor cannot  
36 simultaneously comply with both sets of requirements; if a  
37 sponsor cannot meet the tax exemption requirements of the HUD  
38 rules, its project costs rise and it receives a lower priority than  
39 competing projects in other states. This corrective legislation is  
40 necessary so that New Jersey nonprofit sponsors of housing  
41 projects for low income senior citizens and persons with  
42 disabilities will be able to compete effectively for federal  
43 funding with housing sponsors in other states.

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48 Amends State requirements for tax exemption of certain low  
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ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1070

STATE OF NEW JERSEY

DATED: MARCH 7, 1994

The Assembly Housing Committee reports Assembly Bill No. 1070 favorably.

P.L.1991, c.431, the Long Term Tax Exemption Law, was enacted for the purpose of consolidating and modernizing the laws concerning tax exemptions for improvements made for the purpose of restoring areas in need of redevelopment. It repealed several statutes, including P.L.1965, c.92, the Senior Citizens Nonprofit Rental Housing Tax Law. This law was enacted to allow nonprofit housing sponsors to secure funding under the Senior Citizens Housing Program authorized by section 202 of the Federal Housing Act, as amended.

An unintended consequence of this repeal was that P.L.1991, c.431 was at variance with rules adopted by the U.S. Department of Housing and Urban Development (HUD) under section 202 in several important respects. The federal rules require that a sponsor obtain a tax exemption for the life of the subsidy, generally 40 years, rather than the 30 years allowed by P.L.1991, c.431. Other differences involve the way in which project revenue is to be calculated, the staged increases in service charges and minimum service charges required by P.L.1991, c.431, the contents of the certificate of incorporation, and the treatment of any net profits received by the nonprofit corporation.

As a result of these differences, a housing sponsor cannot simultaneously comply with both sets of requirements; if a sponsor cannot meet the tax exemption requirements of the HUD rules, its project costs rise and it receives a lower priority than competing projects in other states. This corrective legislation is necessary so that New Jersey nonprofit sponsors of housing projects for low income senior citizens and persons with disabilities will be able to compete effectively for federal funding with housing sponsors in other states.



SENATE URBAN POLICY AND  
PLANNING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1070

STATE OF NEW JERSEY

DATED: JUNE 6, 1994

The Senate Urban Policy and Planning Committee favorably reports Assembly Bill No. 1070.

P.L.1991, c.431, the Long Term Tax Exemption Law, was enacted for the purpose of consolidating and modernizing the laws concerning tax exemptions for improvements made for the purpose of restoring areas in need of redevelopment. It repealed several statutes, including P.L.1965, c.92, the Senior Citizens Nonprofit Rental Housing Tax Law. This law was enacted to allow nonprofit housing sponsors to secure funding under the Senior Citizens Housing Program authorized by section 202 of the Federal Housing Act, as amended.

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As a result of these differences, a housing sponsor cannot simultaneously comply with both sets of requirements; if a sponsor cannot meet the tax exemption requirements of the HUD rules, its project costs rise and it receives a lower priority than competing projects in other states. This corrective legislation is necessary so that New Jersey nonprofit sponsors of housing projects for low income senior citizens and persons with disabilities will be able to compete effectively for federal funding with housing sponsors in other states.

Assembly Bill No. 1070 is identical to Senate Bill No. 1120, which was also released from this committee on June 6, 1994.