

40A:12-4.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2003 **CHAPTER:** 125

NJSA: 40A:12-4.1 ("Long term tax exemption law" - Amendments)

BILL NO: S2402 (Substituted for A3404)

SPONSOR(S): Kenny and others

DATE INTRODUCED: March 10, 2003

COMMITTEE: **ASSEMBLY:** Commerce

SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** May 22, 2003; Re-enacted June 30, 2003

SENATE: March 20, 2003; Re-enacted June 23, 2003

DATE OF APPROVAL: July 9, 2003

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (4th reprint enacted)
 (Amendments during passage denoted by superscript numbers)

S2402

SPONSORS STATEMENT: (Begins on page 22 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

A3404

SPONSORS STATEMENT: (Begins on page 22 of original bill) Yes
 Bill and Sponsors Statement identical to S2402

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

§§1,2 -
C.40A:12A-4.1 &
40A:12A-4.2
§§14,15 -
C.40A:20-21 &
40A:20-22
§16 - Note

P.L. 2003, CHAPTER 125, *approved July 9, 2003*
Senate, No. 2402 (*Fourth Reprint*)

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

4

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

7

8 1. (New section) ¹[a.]¹ Any municipality that has designated a
9 redevelopment area, provides for a tax abatement within that
10 redevelopment area and has adopted a housing element pursuant to
11 subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28) may, by
12 ordinance, require, as a condition for granting a tax abatement, that
13 the redeveloper ¹set aside affordable residential units or¹ contribute to
14 an affordable housing trust fund established by the municipality. The
15 requirement may be imposed upon developers of market rate
16 residential or non-residential construction or both, at the discretion of
17 the municipality. For the purposes of this section, "affordable" shall
18 mean affordable to persons of low or moderate income as defined
19 pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301
20 et al.).

21 ¹[b. Any such ordinance imposing this requirement shall be based
22 upon and consistent with the housing element and spending plan
23 adopted by the municipality pursuant to P.L.1985, c.222 (C.52:27D-
24 301 et al.), and shall be subject to those limitations on contributions
25 established by the Council on Affordable Housing by rule or
26 regulation.]¹

27

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEG committee amendments adopted March 17, 2003.

² Assembly ACE committee amendments adopted May 19, 2003.

³ Assembly floor amendments adopted May 22, 2003.

⁴ Senate amendments adopted in accordance with Governor's recommendations June 23, 2003.

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

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

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

11

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

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

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

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

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

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

40 e. A growing lack or total lack of proper utilization of areas caused
41 by the condition of the title, diverse ownership of the real property
42 therein or other conditions, resulting in a stagnant or not fully
43 productive condition of land potentially useful and valuable for
44 contributing to and serving the public health, safety and welfare.

45 f. Areas, in excess of five contiguous acres, whereon buildings or
46 improvements have been destroyed, consumed by fire, demolished or

1 altered by the action of storm, fire, cyclone, tornado, earthquake or
2 other casualty in such a way that the aggregate assessed value of the
3 area has been materially depreciated.

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

24 h. The designation of the delineated area is consistent with smart
25 growth planning principles adopted pursuant to law or regulation.
26 (cf: P.L.1992, c.79, s.5)
27

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

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

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

45 (2) The planning board shall specify a date for and give notice of
46 a hearing for the purpose of hearing persons who are interested in or

1 would be affected by a determination that the delineated area is a
2 redevelopment area.

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

21 (4) At the hearing, which may be adjourned from time to time, the
22 planning board shall hear all persons who are interested in or would be
23 affected by a determination that the delineated area is a redevelopment
24 area. All objections to such a determination and evidence in support
25 of those objections, given orally or in writing, shall be received and
26 considered and made part of the public record.

27 (5) After completing its hearing on this matter, the planning board
28 shall recommend that the delineated area, or any part thereof, be
29 determined, or not be determined, by the municipal governing body to
30 be a redevelopment area. After receiving the recommendation of the
31 planning board, the municipal governing body may adopt a resolution
32 determining that the delineated area, or any part thereof, is a
33 redevelopment area. Upon the adoption of a resolution, the clerk of
34 the municipality shall, forthwith, transmit a copy of the resolution to
35 the Commissioner of Community Affairs for review. If the area in
36 need of redevelopment is not situated in an area in which development
37 or redevelopment is to be encouraged pursuant to any State law or
38 regulation promulgated pursuant thereto, the determination shall not
39 take effect without first receiving the review and the approval of the
40 commissioner. If the commissioner does not issue an approval or
41 disapproval within 30 calendar days of transmittal by the clerk, the
42 determination shall be deemed to be approved. If the area in need of
43 redevelopment is situated in an area in which development or
44 redevelopment is to be encouraged pursuant to any State law or
45 regulation promulgated pursuant thereto, then the determination shall
46 take effect after the clerk has transmitted a copy of the resolution to

1 the commissioner. The determination, if supported by substantial
2 evidence and, if required, approved by the commissioner, shall be
3 binding and conclusive upon all persons affected by the determination.
4 Notice of the determination shall be served, within 10 days after the
5 determination, upon each person who filed a written objection thereto
6 and stated, in or upon the written submission, an address to which
7 notice of determination may be sent.

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

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

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

26 (cf: P.L.1992, c.79, s.6)

27
28 5. Section 14 of P.L.1992, c.79 (C.40A:12A-14) is amended to
29 read as follows:

30 14. a. A delineated area may be determined to be in need of
31 rehabilitation if the governing body of the municipality determines by
32 resolution that there exist in that area conditions such that (1) a
33 significant portion of structures therein are in a deteriorated or
34 substandard condition and there is a continuing pattern of vacancy,
35 abandonment or underutilization of properties in the area, with a
36 persistent arrearage of property tax payments thereon or (2) more than
37 half of the housing stock in the delineated area is at least 50 years old,
38 or a majority of the water and sewer infrastructure in the delineated
39 area is at least 50 years old and is in need of repair or substantial
40 maintenance; and (3) a program of rehabilitation, as defined in section
41 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent
42 further deterioration and promote the overall development of the
43 community. Where warranted by consideration of the overall
44 conditions and requirements of the community, a finding of need for
45 rehabilitation may extend to the entire area of a municipality. Prior to
46 adoption of the resolution, the governing body shall submit it to the

1 municipal planning board for its review. Within 45 days of its receipt
2 of the proposed resolution, the municipal planning board shall submit
3 its recommendations regarding the proposed resolution, including any
4 modifications which it may recommend, to the governing body for its
5 consideration. Thereafter, or after the expiration of the 45 days if the
6 municipal planning board does not submit recommendations, the
7 governing body may adopt the resolution, with or without
8 modification. The resolution shall not become effective without the
9 approval of the commissioner pursuant to section 6 of P.L.1992, c.79
10 (C.40A:12A-6), if otherwise required pursuant to that section.

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

17 (cf: P.L.2001, c.155, s.1)

18

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

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

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

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

46 (cf: P.L.1992, c.79, s.53)

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

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

4 a. "Gross revenue" means annual gross revenue or gross shelter
5 rent or annual gross rents, as appropriate, and other income, for each
6 urban renewal entity designated pursuant to [this act] P.L.1991, c.431
7 (C.40A:20-1 et seq.). The financial agreement shall establish the
8 method of computing gross revenue for the entity, and the method of
9 determining insurance, operating and maintenance expenses paid by a
10 tenant which are ordinarily paid by a landlord, which shall be included
11 in the gross revenue; provided, however, that any federal funds
12 received, whether directly or in the form of rental subsidies paid to
13 tenants, by a nonprofit corporation that is the sponsor of a qualified
14 subsidized housing project, shall not be included in the gross revenue
15 of the project for purposes of computing the annual services charge for
16 municipal services supplied to the project ¹; and provided further that
17 any gain realized by the urban renewal entity on the sale of any unit in
18 fee simple, whether or not taxable under federal or State law, shall not
19 be included in computing gross revenue¹.

20 b. "Limited-dividend entity" means an urban renewal entity
21 incorporated pursuant to Title 14A of the New Jersey Statutes, or
22 established pursuant to Title 42 of the Revised Statutes, for which the
23 profits and the entity are limited as follows. The allowable net profits
24 of the entity shall be determined by applying the allowable profit rate
25 to each total project unit cost, if the project is undertaken in units, or
26 the total project cost, if the project is not undertaken in units, and all
27 capital costs, determined in accordance with generally accepted
28 accounting principles, of any other entity whose revenue is included in
29 the computation of excess profits, for the period commencing on the
30 date on which the construction of the unit or project is completed, and
31 terminating at the close of the fiscal year of the entity preceding the
32 date on which the computation is made, where:

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

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

1 principles, but:

2 (1) there shall be included in expenses: (a) all annual service
3 charges paid pursuant to section 12 of P.L.1991, c.431
4 (C.40A:20-12); (b) all payments to the municipality of excess profits
5 pursuant to section 15 or 16 of P.L.1991, c.431 (C.40A:20-15 or
6 40A:20-16); (c) an annual amount sufficient to amortize the total
7 project cost and all capital costs determined in accordance with
8 generally accepted accounting principles, of any other entity whose
9 revenue is included in the computation of excess profits, over the [life
10 of the improvements,] term of the abatement as set forth in the
11 financial agreement[, which shall not be less than the terms of the
12 financial agreement; and]; (d) all reasonable annual operating expenses
13 of the urban renewal entity and any other entity whose revenue is
14 included in the computation of excess profits, including the cost of all
15 management fees, brokerage commissions, insurance premiums, all
16 taxes or service charges paid, legal, accounting, or other professional
17 service fees, utilities, building maintenance costs, building and office
18 supplies, and payments into repair or maintenance reserve accounts;
19 (e) all payments of rent including, but not limited to, ground rent by
20 the urban renewal entity; (f) all debt service;

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

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

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

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

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

5 g. "Urban renewal entity" means a limited-dividend entity, the New
 6 Jersey Economic Development Authority or a nonprofit entity which
 7 enters into a financial agreement pursuant to [this act] P.L.1991,
 8 c.431 (C.40A:20-1 et seq.) with a municipality to undertake a project
 9 pursuant to a redevelopment plan for the redevelopment of all or any
 10 part of a redevelopment area, or a project necessary, useful, or
 11 convenient for the relocation of residents displaced or to be displaced
 12 by the redevelopment of all or any part of one or more redevelopment
 13 areas, or a low and moderate income housing project.

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

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

1 excess above \$3,500,000

2

3 \$5,500,001 through \$10,000,000 - \$330,000 plus 3.7778% on
4 excess above \$5,500,000

5

6 over \$10,000,000 - 5%

7

8 ¹If the project includes units in fee simple, with respect to those
9 units, "total project cost" shall mean the sales price of the individual
10 housing unit which shall be the most recent true consideration paid for
11 a deed to the unit in fee simple in a bona fide arm's length sales
12 transaction, but not less than the assessed valuation of the unit in fee
13 simple assessed at 100 percent of true value.¹

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

32 i. "Housing project" means any work or undertaking to provide
33 decent, safe, and sanitary dwellings for families in need of housing; the
34 undertaking may include any buildings, land (including demolition,
35 clearance or removal of buildings from land), equipment, facilities, or
36 other real or personal properties or interests therein which are
37 necessary, convenient or desirable appurtenances of the undertaking,
38 such as, but not limited to, streets, sewers, water, utilities, parks; site
39 preparation; landscaping, and administrative, community, health,
40 recreational, educational, welfare, commercial, or other facilities, or
41 to provide any part or combination of the foregoing.

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

46 k. "Low and moderate income housing project" means a housing
47 project which is occupied, or is to be occupied, exclusively by

1 households whose incomes do not exceed income limitations
2 established pursuant to any State or federal housing program ³[²or
3 those standards established by the Council on Affordable Housing
4 pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301
5 et al)²]³.

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

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

21 (cf: P.L.2002, c.43, s.70)

22

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

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

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

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

47 c. A provision that so long as the entity is obligated under financial

1 agreement with a municipality made pursuant to [this act] P.L.1991,
2 c.431 (C.40A:20-1 et seq.), it shall engage in no business other than
3 the ownership, operation and management of the project.

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

16 e. A provision that the entity shall not voluntarily transfer more
17 than 10% of the ownership of the project or any portion thereof
18 undertaken by it under [this act] P.L.1991, c.431 (C.40A:20-1 et
19 seq.), until it has first removed both itself and the project from all
20 restrictions of [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) in the
21 manner required by [this act] P.L.1991, c.431 (C.40A:20-1 et seq.)
22 and, if the project includes housing units, has obtained the consent of
23 the Commissioner of Community Affairs to such transfer; with the
24 exception of transfer to another urban renewal entity, as approved by
25 the municipality in which the project is situated, which other urban
26 renewal entity shall assume all contractual obligations of the transferor
27 entity under the financial agreement with the municipality. The entity
28 shall file annually with the municipal governing body a disclosure of
29 the persons having an ownership interest in the project, and of the
30 extent of the ownership interest of each. Nothing herein shall prohibit
31 any transfer of the ownership interest in the urban renewal entity itself
32 provided that the transfer, if greater than 10 percent, is ²[disclosed to]
33 ³[approved by²] disclosed to³ the municipal governing body in the
34 ²[annual disclosure statement or in correspondence sent to the
35 municipality in advance of the annual disclosure statement referred to
36 above] ³[same manner as the financial agreement was approved
37 pursuant to section 9 of P.L.1991, c.431 (C.40A:20-9)²] annual
38 disclosure statement or in correspondence sent to the municipality in
39 advance of the annual disclosure statement referred to above³.

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

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

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

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

15 (cf: P.L.1991, c.431, s.5)

16
17 9. Section 9 of P.L.1991, c.431 (C.40A:20-9) is amended to read
18 as follows:

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

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

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

36 b. That all improvements and ³land,³ to the extent authorized
37 pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12), ³[and]³ in
38 the project to be constructed or acquired by the urban renewal entity
39 shall be exempt from taxation as provided in [this act] P.L.1991,
40 c.431 (C.40A:20-1 et seq.).

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

44 d. That the urban renewal entity shall submit annually, within 90
45 days after the close of its fiscal year, its auditor's reports to the mayor
46 and governing body of the municipality and to the Director of the
47 Division of Local Government Services in the Department of

1 Community Affairs.

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

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

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

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

17 The financial agreement shall contain detailed representations and
18 covenants by the urban renewal entity as to the manner in which it
19 proposes to use, manage or operate the project. The financial
20 agreement shall further set forth the method for computing gross
21 revenue for the urban renewal entity, the method of determining
22 insurance, operating and maintenance expenses paid by a tenant which
23 are ordinarily paid by a landlord, the plans for financing the project,
24 including the estimated total project cost, the amortization rate on the
25 total project cost, the source of funds, the interest rates to be paid on
26 the construction financing, the source and amount of paid-in capital,
27 the terms of mortgage amortization or payment of principal on any
28 mortgage, a good faith projection of initial sales prices of any
29 condominium units and expenses to be incurred in promoting and
30 consummating such sales, and the rental schedules and lease terms to
31 be used in the project ³[²: provided that the rental schedules and lease
32 terms be certified through the annual audit to be equal to or greater
33 than market value rents²]³. Any financial agreement may allow the
34 municipality to levy an annual administrative fee, not to exceed two
35 percent of the annual service charge.

36 (cf: P.L.1991, c.431, s.9)

37

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

40 10. The financial agreement may provide:

41 a. That the municipality will consent to a sale of the project by the
42 urban renewal entity to another urban renewal entity organized under
43 [this act] P.L.1991, c.431 (C.40A:20-1 et seq.), their successors,
44 assigns, all owning no other project at the time of the transfer and that,
45 upon assumption by the transferee urban renewal entity of the
46 transferor's obligations under the financial agreement, the tax
47 exemption of the [improvement] improvements thereto and, to the

1 extent authorized pursuant to section 12 of P.L.1991, c.431
 2 (C.40A:20-12), land shall continue and inure to the transferee urban
 3 renewal entity, its respective successors or assigns.

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

15 c. That the municipality will consent to a sale of the project to
 16 purchasers of units in fee simple, if the project or any portion thereof
 17 has been devoted to fee simple ownership, and to their successors,
 18 assigns, all owning (in the case of housing) no other fee simple unit of
 19 a project at the time of the transfer, and that, upon assumption by the
 20 fee simple unit purchaser of the transferor's obligations under the
 21 financial agreement, the tax exemption of the **[improvement] project**
 22 buildings and improvements and, to the extent authorized pursuant to
 23 section 12 of P.L.1991, c.431 (C.40A:20-12), land ¹**[improvements]**¹
 24 shall continue and inure to the fee simple unit purchaser, his respective
 25 successors or assigns. The provisions of this subsection shall not be
 26 construed to authorize the sale of a project between an urban renewal
 27 entity and a for-profit developer.

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

33 (cf: P.L.1999, c.210, s.1)

34
 35 11. Section 12 of P.L.1991, c.431 (C.40A:20-12) is amended to
 36 read as follows:

37 12. The rehabilitation or improvements made in the development
 38 or redevelopment of a redevelopment area or area appurtenant thereto
 39 or for a redevelopment relocation housing project, pursuant to **[this**
 40 **act]** P.L.1991, c.431 (C.40A:20-1 et seq.), shall be exempt from
 41 taxation for a limited period as hereinafter provided. ³**When** ³**[²a low**
 42 and moderate income²]³ housing ³**[²project²]³ is to be constructed,**
 43 acquired or rehabilitated by an urban renewal entity, the land upon
 44 which that housing ³**[²project²]³ is situated shall be exempt from**
 45 taxation for a limited period as hereinafter provided. The exemption
 46 shall be **[claimed and]** allowed **[in the same or a similar manner as in**
 47 the case of other real property exemptions, and no such claim shall be

1 allowed unless] when the clerk of the municipality wherein the
 2 property is situated shall certify to the municipal tax assessor that a
 3 financial agreement with an urban renewal entity for the development
 4 or the redevelopment of the property, or the provision of a
 5 redevelopment relocation housing project, or the provision of a low
 6 and moderate income housing project has been entered into and is in
 7 effect as required by [this act] P.L.1991, c.431 (C.40A:20-1 et seq.)
 8 ³[²; provided, however, that the exemption or abatement shall
 9 commence, or shall be retroactive to, the date that the certificate of
 10 occupancy is issued²]³.

11 Delivery by the municipal clerk to the municipal tax assessor of a
 12 certified copy of the ordinance of the governing body approving the
 13 tax exemption and financial agreement with the urban renewal entity
 14 shall constitute the required certification. For each exemption granted
 15 pursuant to P.L. , c. (C.) (pending before the Legislature
 16 as this bill), upon certification as required hereunder, the tax assessor
 17 shall implement the exemption and continue to enforce that exemption
 18 without further certification by the clerk until the expiration of the
 19 entitlement to exemption by the terms of the financial agreement or
 20 until the tax assessor has been duly notified by the clerk that the
 21 exemption has been terminated.

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

27 Whenever an exemption status changes during a tax year, the
 28 procedure for the apportionment of the taxes for the year shall be the
 29 same as in the case of other changes in tax exemption status during the
 30 tax year. Tax exemptions granted pursuant to P.L. , c. (C.)
 31 (pending before the Legislature as this bill) represent long term
 32 financial agreements between the municipality and the urban renewal
 33 entity and as such constitute a single continuing exemption from local
 34 property taxation for the duration of the financial agreement. The
 35 validity of a financial agreement or any exemption granted pursuant
 36 thereto may be challenged only by filing an action in lieu of
 37 prerogative writ within ²[20] ³[45²] 20³ days from the publication of
 38 a notice of the adoption of an ordinance by the governing body
 39 granting the exemption and approving the financial agreement. Such
 40 notice shall be published in a newspaper of general circulation in the
 41 municipality and in a newspaper of general circulation in the county if
 42 different from the municipal newspaper.

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

1 renewal entity.

2 b. During the term of any exemption, in lieu of any taxes to be paid
3 on the buildings and improvements of the project and, to the extent
4 authorized ¹~~[puruant]~~ ¹pursuant ¹to this section, on the land, the urban
5 renewal entity shall make payment to the municipality of an annual
6 service charge, which shall remit a portion of that revenue to the
7 county as provided hereinafter. In addition, the municipality may
8 assess an administrative fee, not to exceed two percent of the annual
9 service charge, for the processing of the application. The annual
10 service charge for municipal services supplied to the project to be paid
11 by the urban renewal entity for any period of exemption, shall be
12 determined as follows:

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

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

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

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

1 charge shall be determined as follows:

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

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

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

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

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

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

39 Each municipality which enters into a financial agreement on or
40 after the effective date of P.L. _____, c. _____ (C. _____) (pending before
41 the Legislature as this bill) shall remit ⁴[10] ⁵4 percent of the annual
42 service charge to the county upon receipt of that charge in accordance
43 with the provisions of this section.

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

1 Notwithstanding the provisions of this section or of the financial
2 agreement, the minimum annual service charge shall be the amount of
3 the total taxes levied against all real property in the area covered by
4 the project in the last full tax year in which the area was subject to
5 taxation, and the minimum annual service charge shall be paid in each
6 year in which the annual service charge calculated pursuant to this
7 section or the financial agreement would be less than the minimum
8 annual service charge.

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

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

20 (cf: P.L.1991, c.431, s.12)

21

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

24 15. An urban renewal entity which is a limited dividend entity
25 under [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) shall be subject,
26 during the period of the financial agreement and tax exemption under
27 [this act] P.L.1991, c.431 (C.40A:20-1 et seq.), to a limitation of its
28 profits and in addition, in the case of a corporation, of the dividends
29 payable by it. Whenever the net profits of the entity for the period,
30 taken as one accounting period, commencing on the date on which the
31 construction of the first unit of the project is completed, or on which
32 the project is completed if the project is not undertaken in units, and
33 terminating at the end of the last full fiscal year, shall exceed the
34 allowable net profits for the period, the entity shall, within [90] 120
35 days of the close of that fiscal year, pay the excess net profits to the
36 municipality as an additional service charge. The entity may maintain
37 during the term of the financial agreement a reserve against vacancies,
38 unpaid rentals and contingencies in an amount established in the
39 financial agreement not to exceed 10% of the gross revenues of the
40 entity for the last full fiscal year, and may retain such part of those
41 excess net profits as is necessary to eliminate a deficiency in that
42 reserve. Upon the termination of the financial agreement, the amount
43 of reserve, if any, shall be paid to the municipality.

44 No entity shall make any distribution of profits, or pay or declare
45 any dividend or other distribution on any shares of any class of its
46 stock, unless, after giving effect thereto, the allowable net profit for
47 the period as determined above and preceding the date of the proposed

1 dividend or distribution would equal or exceed the aggregate amount
2 of all dividends and other distributions paid or declared on any shares
3 of its stock since its incorporation or establishment.

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

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

21 (cf: P.L.1991, c.431, s.15)

22
23 13. R.S.54:3-21 is amended to read as follows:

24 54:3-21. **[A]** a. Except as provided in subsection b. of this section
25 a taxpayer feeling aggrieved by the assessed valuation of the taxpayer's
26 property, or feeling discriminated against by the assessed valuation of
27 other property in the county, or a taxing district which may feel
28 discriminated against by the assessed valuation of property in the
29 taxing district, or by the assessed valuation of property in another
30 taxing district in the county, may on or before April 1, or 45 days from
31 the date the bulk mailing of notification of assessment is completed in
32 the taxing district, whichever is later, appeal to the county board of
33 taxation by filing with it a petition of appeal; provided, however, that
34 any such taxpayer or taxing district may on or before April 1, or 45
35 days from the date the bulk mailing of notification of assessment is
36 completed in the taxing district, whichever is later, file a complaint
37 directly with the Tax Court, if the assessed valuation of the property
38 subject to the appeal exceeds \$750,000.00. Within ten days of the
39 completion of the bulk mailing of notification of assessment, the
40 assessor of the taxing district shall file with the county board of
41 taxation a certification setting forth the date on which the bulk mailing
42 was completed. If a county board of taxation completes the bulk
43 mailing of notification of assessment, the tax administrator of the
44 county board of taxation shall within ten days of the completion of the
45 bulk mailing prepare and keep on file a certification setting forth the
46 date on which the bulk mailing was completed. A taxpayer shall have
47 45 days to file an appeal upon the issuance of a notification of a

1 change in assessment. An appeal to the Tax Court by one party in a
 2 case in which the Tax Court has jurisdiction shall establish jurisdiction
 3 over the entire matter in the Tax Court. All appeals to the Tax Court
 4 hereunder shall be in accordance with the provisions of the State
 5 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

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

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

16 (cf: P.L.1999, c.208, s.2)

17

18 14. (New section) The provisions of P.L. , c. (C.)
 19 (pending before the Legislature as this bill) shall be deemed to be
 20 severable, and if any phrase, clause, sentence, word or provision of
 21 P.L. , c. (C.) (pending before the Legislature as this bill) is
 22 declared to be unconstitutional, invalid or inoperative in whole or in
 23 part, or the applicability thereof to any person is held invalid, by a
 24 court of competent jurisdiction, the remainder of this act shall not
 25 thereby be deemed to be unconstitutional, invalid or inoperative and,
 26 to the extent it is not declared unconstitutional, invalid or inoperative,
 27 shall be effectuated and enforced.

28

29 15. (New section) The terms and conditions of any tax exemption
 30 approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) ¹or its
 31 predecessor statutes, as the case may be¹, including any financial
 32 agreement, separate agreement or amendment implementing that
 33 exemption, are hereby ratified and validated ²[, except for any such
 34 exemption which is subject to litigation filed on or before December
 35 5, 2002]². ¹This ratification and validation shall include, without
 36 limitation, the structure and methods used to calculate excess profits
 37 and annual service charges, including the limitation of revenue,
 38 expenses and total project costs, to those of the urban renewal entity,
 39 regardless of any other entity, whether affiliated or unaffiliated, with
 40 the urban renewal entity.¹

41

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

44

45

46

47 _____
 Makes various changes to "Long Term Tax Exemption Law."

SENATE, No. 2402

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 10, 2003

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

Co-Sponsored by:

Senator Codey

SYNOPSIS

Makes various changes to "Long Term Tax Exemption Law."

CURRENT VERSION OF TEXT

As introduced.



S2402 KENNY, KYRILLOS

2

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

4

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

7

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

20 b. Any such ordinance imposing this requirement shall be based
21 upon and consistent with the housing element and spending plan
22 adopted by the municipality pursuant to P.L.1985, c.222 (C.52:27D-
23 301 et al.), and shall be subject to those limitations on contributions
24 established by the Council on Affordable Housing by rule or
25 regulation.

26

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

32 a. standards governing the extent of the contribution based on the
33 value of construction for market rate residential or non-residential
34 construction, as the case may be;

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

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

39

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

42 5. A delineated area may be determined to be in need of
43 redevelopment if, after investigation, notice and hearing as provided

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 in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of
2 the municipality by resolution concludes that within the delineated area
3 any of the following conditions is found:

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

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

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

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

25 e. A growing lack or total lack of proper utilization of areas caused
26 by the condition of the title, diverse ownership of the real property
27 therein or other conditions, resulting in a stagnant or not fully
28 productive condition of land potentially useful and valuable for
29 contributing to and serving the public health, safety and welfare.

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

35 g. In any municipality in which an enterprise zone has been
36 designated pursuant to the "New Jersey Urban Enterprise Zones Act,"
37 P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions
38 prescribed in that act for the adoption by the municipality and approval
39 by the New Jersey Urban Enterprise Zone Authority of the zone
40 development plan for the area of the enterprise zone shall be
41 considered sufficient for the determination that the area is in need of
42 redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
43 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
44 exemptions within the enterprise zone district pursuant to the
45 provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of
46 a tax abatement and exemption ordinance pursuant to the provisions

1 of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not
2 utilize any other redevelopment powers within the urban enterprise
3 zone unless the municipal governing body and planning board have
4 also taken the actions and fulfilled the requirements prescribed in
5 P.L.1992, c.79 (C.40A:12A-1 et al.) for determining that the area is
6 in need of redevelopment or an area in need of rehabilitation and the
7 municipal governing body has adopted a redevelopment plan ordinance
8 including the area of the enterprise zone.

9 h. The designation of the delineated area is consistent with smart
10 growth planning principles adopted pursuant to law or regulation.
11 (cf: P.L.1992, c.79, s.5)

12

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

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

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

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

34 (3) The hearing notice shall set forth the general boundaries of the
35 area to be investigated and state that a map has been prepared and can
36 be inspected at the office of the municipal clerk. A copy of the notice
37 shall be published in a newspaper of general circulation in the
38 municipality once each week for two consecutive weeks, and the last
39 publication shall be not less than ten days prior to the date set for the
40 hearing. A copy of the notice shall be mailed at least ten days prior to
41 the date set for the hearing to the last owner, if any, of each parcel of
42 property within the area according to the assessment records of the
43 municipality. A notice shall also be sent to all persons at their last
44 known address, if any, whose names are noted on the assessment
45 records as claimants of an interest in any such parcel. The assessor of
46 the municipality shall make a notation upon the records when

1 requested to do so by any person claiming to have an interest in any
2 parcel of property in the municipality. The notice shall be published
3 and mailed by the municipal clerk, or by such clerk or official as the
4 planning board shall otherwise designate. Failure to mail any such
5 notice shall not invalidate the investigation or determination thereon.

6 (4) At the hearing, which may be adjourned from time to time, the
7 planning board shall hear all persons who are interested in or would be
8 affected by a determination that the delineated area is a redevelopment
9 area. All objections to such a determination and evidence in support
10 of those objections, given orally or in writing, shall be received and
11 considered and made part of the public record.

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

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

43 (7) If a person who filed a written objection to a determination by
44 the municipality pursuant to this subsection shall, within 45 days after
45 the adoption by the municipality of the determination to which the
46 person objected, apply to the Superior Court, the court may grant

1 further review of the determination by procedure in lieu of prerogative
2 writ; and in any such action the court may make any incidental order
3 that it deems proper.

4 c. An area determined to be in need of redevelopment pursuant to
5 this section shall be deemed to be a "blighted area" for the purposes of
6 Article VIII, Section III, paragraph 1 of the Constitution. If an area
7 is determined to be a redevelopment area and a redevelopment plan is
8 adopted for that area in accordance with the provisions of this act, the
9 municipality is authorized to utilize all those powers provided in
10 section 8 of P.L.1992, c.79 (C.40A:12A-8).
11 (cf: P.L.1992, c.79, s.6)

12

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

15 14. a. A delineated area may be determined to be in need of
16 rehabilitation if the governing body of the municipality determines by
17 resolution that there exist in that area conditions such that (1) a
18 significant portion of structures therein are in a deteriorated or
19 substandard condition and there is a continuing pattern of vacancy,
20 abandonment or underutilization of properties in the area, with a
21 persistent arrearage of property tax payments thereon or (2) more than
22 half of the housing stock in the delineated area is at least 50 years old,
23 or a majority of the water and sewer infrastructure in the delineated
24 area is at least 50 years old and is in need of repair or substantial
25 maintenance; and (3) a program of rehabilitation, as defined in section
26 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent
27 further deterioration and promote the overall development of the
28 community. Where warranted by consideration of the overall
29 conditions and requirements of the community, a finding of need for
30 rehabilitation may extend to the entire area of a municipality. Prior to
31 adoption of the resolution, the governing body shall submit it to the
32 municipal planning board for its review. Within 45 days of its receipt
33 of the proposed resolution, the municipal planning board shall submit
34 its recommendations regarding the proposed resolution, including any
35 modifications which it may recommend, to the governing body for its
36 consideration. Thereafter, or after the expiration of the 45 days if the
37 municipal planning board does not submit recommendations, the
38 governing body may adopt the resolution, with or without
39 modification. The resolution shall not become effective without the
40 approval of the commissioner pursuant to section 6 of P.L.1992, c.79
41 (C.40A:12A-6), if otherwise required pursuant to that section.

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

48 (cf: P.L.2001, c.155, s.1)

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

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

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

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

28 (cf: P.L.1992, c.79, s.53)

29

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

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

33 a. "Gross revenue" means annual gross revenue or gross shelter
34 rent or annual gross rents, as appropriate, and other income, for each
35 urban renewal entity designated pursuant to [this act] P.L.1991, c.431
36 (C.40A:20-1 et seq.). The financial agreement shall establish the
37 method of computing gross revenue for the entity, and the method of
38 determining insurance, operating and maintenance expenses paid by a
39 tenant which are ordinarily paid by a landlord, which shall be included
40 in the gross revenue; provided, however, that any federal funds
41 received, whether directly or in the form of rental subsidies paid to
42 tenants, by a nonprofit corporation that is the sponsor of a qualified
43 subsidized housing project, shall not be included in the gross revenue
44 of the project for purposes of computing the annual services charge for
45 municipal services supplied to the project.

46 b. "Limited-dividend entity" means an urban renewal entity

1 incorporated pursuant to Title 14A of the New Jersey Statutes, or
2 established pursuant to Title 42 of the Revised Statutes, for which the
3 profits and the entity are limited as follows. The allowable net profits
4 of the entity shall be determined by applying the allowable profit rate
5 to each total project unit cost, if the project is undertaken in units, or
6 the total project cost, if the project is not undertaken in units, and all
7 capital costs, determined in accordance with generally accepted
8 accounting principles, of any other entity whose revenue is included in
9 the computation of excess profits, for the period commencing on the
10 date on which the construction of the unit or project is completed, and
11 terminating at the close of the fiscal year of the entity preceding the
12 date on which the computation is made, where:

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

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

28 (1) there shall be included in expenses: (a) all annual service
29 charges paid pursuant to section 12 of P.L.1991, c.431
30 (C.40A:20-12); (b) all payments to the municipality of excess profits
31 pursuant to section 15 or 16 of P.L.1991, c.431 (C.40A:20-15 or
32 40A:20-16); (c) an annual amount sufficient to amortize the total
33 project cost and all capital costs determined in accordance with
34 generally accepted accounting principles, of any other entity whose
35 revenue is included in the computation of excess profits, over the [life
36 of the improvements,] term of the abatement as set forth in the
37 financial agreement[, which shall not be less than the terms of the
38 financial agreement; and]; (d) all reasonable annual operating expenses
39 of the urban renewal entity and any other entity whose revenue is
40 included in the computation of excess profits, including the cost of all
41 management fees, brokerage commissions, insurance premiums, all
42 taxes or service charges paid, legal, accounting, or other professional
43 service fees, utilities, building maintenance costs, building and office
44 supplies, and payments into repair or maintenance reserve accounts;
45 (e) all payments of rent including, but not limited to, ground rent by
46 the urban renewal entity; and (f) all debt service;

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

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

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

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

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

31 g. "Urban renewal entity" means a limited-dividend entity, the New
32 Jersey Economic Development Authority or a nonprofit entity which
33 enters into a financial agreement pursuant to [this act] P.L.1991,
34 c.431 (C.40A:20-1 et seq.) with a municipality to undertake a project
35 pursuant to a redevelopment plan for the redevelopment of all or any
36 part of a redevelopment area, or a project necessary, useful, or
37 convenient for the relocation of residents displaced or to be displaced
38 by the redevelopment of all or any part of one or more redevelopment
39 areas, or a low and moderate income housing project. h.

40 "Total project unit cost" or "total project cost" means the aggregate
41 of the following items as related to a unit of a project, if the project is
42 undertaken in units, or to the total project, if the project is not
43 undertaken in units, all of which as limited by, and approved as part of
44 the financial agreement: (1) cost of the land and improvements to the
45 entity, whether acquired from a private or a public owner, with cost in
46 the case of leasehold interests to be computed by capitalizing the

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10

1 aggregate rental at a rate provided in the financial agreement; (2)
2 architect, engineer and attorney fees, paid or payable by the entity in
3 connection with the planning, construction and financing of the
4 project; (3) surveying and testing charges in connection therewith; (4)
5 actual construction costs which the entity shall cause to be certified
6 and verified to the municipality and the municipal governing body by
7 an independent and qualified architect, including the cost of any
8 preparation of the site undertaken at the entity's expense; (5)
9 insurance, interest and finance costs during construction; (6) costs of
10 obtaining initial permanent financing; (7) commissions and other
11 expenses paid or payable in connection with initial leasing; (8) real
12 estate taxes and assessments during the construction period; (9) a
13 developer's overhead based on a percentage of actual construction
14 costs, to be computed at not more than the following schedule:

15		
16	\$500,000 or less -	10%
17		
18	\$500,000 through \$1,000,000 -	\$50,000 plus 8% on excess
19	above \$500,000	
20		
21	\$1,000,001 through \$2,000,000 -	\$90,000 plus 7% on excess
22	above \$1,000,000	
23		
24	\$2,000,001 through \$3,500,000 -	\$160,000 plus
25	5.6667% on excess above \$2,000,000	
26		
27	\$3,500,001 through \$5,500,000 -	\$245,000 plus 4.25% on
28	excess above \$3,500,000	
29		
30	\$5,500,001 through \$10,000,000 -	\$330,000 plus 3.7778% on
31	excess above \$5,500,000	
32		
33	over \$10,000,000 -	5%
34		

35 If the financial agreement so provides, there shall be excluded from
36 the total project cost: (1) actual costs incurred by the entity and
37 certified to the municipality by an independent and qualified architect
38 or engineer which are associated with site remediation and cleanup of
39 environmentally hazardous materials or contaminants in accordance
40 with State or federal law; and (2) any extraordinary costs incurred by
41 the entity and certified to the chief financial officer of the municipality
42 by an independent certified public accountant in order to alleviate
43 blight conditions within the area in need of redevelopment including,
44 but not limited to, the cost of demolishing structures considered by the
45 entity to be an impediment to the proposed redevelopment of the
46 property, costs associated with the relocation or removal of public

1 utility facilities as defined pursuant to section 10 of P.L.1992, c.79
2 (C.40A:12A-10) considered necessary in order to implement the
3 redevelopment plan, costs associated with the relocation of residents
4 or businesses displaced or to be displaced by the proposed
5 redevelopment, and the clearing of title to properties within the area
6 in need of redevelopment in order to facilitate redevelopment.

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

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

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

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

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

40 (cf: P.L.2002, c.43, s.70)

41
42 8. Section 5 of P.L.1991, c.431 (C.40A:20-5) is amended to read
43 as follows:

44 5. Any duly formed corporation, partnership, limited partnership,
45 limited partnership association, or other unincorporated entity may
46 qualify as an urban renewal entity under [this act] P.L.1991, c.431

1 (C.40A:20-1 et seq.), if its certificate of incorporation, or other similar
2 certificate or statement as may be required by law, shall contain the
3 following provisions:

4 a. The name of the entity shall include the words "Urban Renewal."
5 b. The purpose for which it is formed shall be to operate under
6 [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) and to initiate and
7 conduct projects for the redevelopment of a redevelopment area
8 pursuant to a redevelopment plan, or projects necessary, useful, or
9 convenient for the relocation of residents displaced or to be displaced
10 by the redevelopment of all or part of one or more redevelopment
11 areas, or low and moderate income housing projects, and, when
12 authorized by financial agreement with the municipality, to acquire,
13 plan, develop, construct, alter, maintain or operate housing, senior
14 citizen housing, business, industrial, commercial, administrative,
15 community, health, recreational, educational or welfare projects, or
16 any combination of two or more of these types of improvement in a
17 single project, under such conditions as to use, ownership,
18 management and control as regulated pursuant to [this act] P.L.1991,
19 c.431 (C.40A:20-1 et seq.).

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

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

36 e. A provision that the entity shall not voluntarily transfer more
37 than 10% of the ownership of the project or any portion thereof
38 undertaken by it under [this act] P.L.1991, c.431 (C.40A:20-1 et
39 seq.), until it has first removed both itself and the project from all
40 restrictions of [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) in the
41 manner required by [this act] P.L.1991, c.431 (C.40A:20-1 et seq.)
42 and, if the project includes housing units, has obtained the consent of
43 the Commissioner of Community Affairs to such transfer; with the
44 exception of transfer to another urban renewal entity, as approved by
45 the municipality in which the project is situated, which other urban
46 renewal entity shall assume all contractual obligations of the transferor

1 entity under the financial agreement with the municipality. The entity
2 shall file annually with the municipal governing body a disclosure of
3 the persons having an ownership interest in the project, and of the
4 extent of the ownership interest of each. Nothing herein shall prohibit
5 any transfer of the ownership interest in the urban renewal entity itself
6 provided that the transfer, if greater than 10 percent, is disclosed to
7 the municipal governing body in the annual disclosure statement or in
8 correspondence sent to the municipality in advance of the annual
9 disclosure statement referred to above.

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

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

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

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

32 (cf: P.L.1991, c.431, s.5)

33
34 9. Section 9 of P.L.1991, c.431 (C.40A:20-9) is amended to read
35 as follows:

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

46 The financial agreement shall be in the form of a contract requiring

- 1 full performance within 30 years from the date of completion of the
2 project, and shall include the following:
- 3 a. That the profits of or dividends payable by the urban renewal
4 entity shall be limited according to terms appropriate for the type of
5 entity in conformance with the provisions of [this act] P.L.1991,
6 c.431 (C.40A:20-1 et seq.).
- 7 b. That all improvements and to the extent authorized pursuant to
8 section 12 of P.L.1991, c.431 (C.40A:20-12), and in the project to be
9 constructed or acquired by the urban renewal entity shall be exempt
10 from taxation as provided in [this act] P.L.1991, c.431 (C.40A:20-1
11 et seq.).
- 12 c. That the urban renewal entity shall make payments for municipal
13 services as provided in [this act] P.L.1991, c.431 (C.40A:20-1 et
14 seq.).
- 15 d. That the urban renewal entity shall submit annually, within 90
16 days after the close of its fiscal year, its auditor's reports to the mayor
17 and governing body of the municipality and to the Director of the
18 Division of Local Government Services in the Department of
19 Community Affairs.
- 20 e. That the urban renewal entity shall, upon request, permit
21 inspection of property, equipment, buildings and other facilities of the
22 entity, and also permit examination and audit of its books, contracts,
23 records, documents and papers by authorized representatives of the
24 municipality or the State.
- 25 f. That in the event of any dispute between the parties matters in
26 controversy shall be resolved by arbitration in the manner provided in
27 the financial agreement.
- 28 g. That operation under the financial agreement shall be terminable
29 by the urban renewal entity in the manner provided by [this act]
30 P.L.1991, c.431 (C.40A:20-1 et seq.).
- 31 h. That the urban renewal entity shall at all times prior to the
32 expiration or other termination of the financial agreement remain
33 bound by the provisions of [this act] P.L.1991, c.431 (C.40A:20-1 et
34 seq.).
- 35 The financial agreement shall contain detailed representations and
36 covenants by the urban renewal entity as to the manner in which it
37 proposes to use, manage or operate the project. The financial
38 agreement shall further set forth the method for computing gross
39 revenue for the urban renewal entity, the method of determining
40 insurance, operating and maintenance expenses paid by a tenant which
41 are ordinarily paid by a landlord, the plans for financing the project,
42 including the estimated total project cost, the amortization rate on the
43 total project cost, the source of funds, the interest rates to be paid on
44 the construction financing, the source and amount of paid-in capital,
45 the terms of mortgage amortization or payment of principal on any
46 mortgage, a good faith projection of initial sales prices of any

1 condominium units and expenses to be incurred in promoting and
2 consummating such sales, and the rental schedules and lease terms to
3 be used in the project. Any financial agreement may allow the
4 municipality to levy an annual administrative fee, not to exceed two
5 percent of the annual service charge.

6 (cf: P.L.1991, c.431, s.9)

7

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

10 10. The financial agreement may provide:

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

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

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

45 d. Any financial agreement which provides for consent pursuant to
46 subsection a., b. or c. of this section may allow the municipality to levy

1 an administrative fee, not to exceed two percent of the annual service
2 charge, for the processing of any such request for the continuation of
3 a tax exemption.

4 (cf: P.L.1999, c.210, s.1)

5
6 11. Section 12 of P.L.1991, c.431 (C.40A:20-12) is amended to
7 read as follows:

8 12. The rehabilitation or improvements made in the development
9 or redevelopment of a redevelopment area or area appurtenant thereto
10 or for a redevelopment relocation housing project, pursuant to [this
11 act] P.L.1991, c.431 (C.40A:20-1 et seq.), shall be exempt from
12 taxation for a limited period as hereinafter provided. When housing
13 is to be constructed, acquired or rehabilitated by an urban renewal
14 entity, the land upon which that housing is situated shall be exempt
15 from taxation for a limited period as hereinafter provided. The
16 exemption shall be [claimed and] allowed [in the same or a similar
17 manner as in the case of other real property exemptions, and no such
18 claim shall be allowed unless] when the clerk of the municipality
19 wherein the property is situated shall certify to the municipal tax
20 assessor that a financial agreement with an urban renewal entity for the
21 development or the redevelopment of the property, or the provision of
22 a redevelopment relocation housing project, or the provision of a low
23 and moderate income housing project has been entered into and is in
24 effect as required by [this act] P.L.1991, c.431 (C.40A:20-1 et seq.).

25 Delivery by the municipal clerk to the municipal tax assessor of a
26 certified copy of the ordinance of the governing body approving the
27 tax exemption and financial agreement with the urban renewal entity
28 shall constitute the required certification. For each exemption granted
29 pursuant to P.L. , c. (C.) (pending before the Legislature
30 as this bill), upon certification as required hereunder, the tax assessor
31 shall implement the exemption and continue to enforce that exemption
32 without further certification by the clerk until the expiration of the
33 entitlement to exemption by the terms of the financial agreement or
34 until the tax assessor has been duly notified by the clerk that the
35 exemption has been terminated.

36 Whenever an exemption status changes during a tax year, the
37 procedure for the apportionment of the taxes for the year shall be the
38 same as in the case of other changes in tax exemption status during the
39 tax year. Tax exemptions granted pursuant to P.L. , c. (C.)
40 (pending before the Legislature as this bill) represent long term
41 financial agreements between the municipality and the urban renewal
42 entity and as such constitute a single continuing exemption from local
43 property taxation for the duration of the financial agreement. The
44 validity of a financial agreement or any exemption granted pursuant
45 thereto may be challenged only by filing an action in lieu of
46 prerogative writ within 20 days from the publication of a notice of the

1 adoption of an ordinance by the governing body granting the
2 exemption and approving the financial agreement. Such notice shall
3 be published in a newspaper of general circulation in the municipality
4 and in a newspaper of general circulation in the county if different
5 from the municipal newspaper.

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

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

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

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

46 (2) In either case, the financial agreement shall establish a schedule

1 of annual service charges to be paid over the term of the exemption
2 period, which shall be in stages as follow:

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

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

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

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

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

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

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

4 Each municipality which enters into a financial agreement on or
5 after the effective date of P.L. , c. (C.) (pending before
6 the Legislature as this bill) shall remit 10 percent of the annual service
7 charge to the county upon receipt of that charge in accordance with
8 the provisions of this section.

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

13 Notwithstanding the provisions of this section or of the financial
14 agreement, the minimum annual service charge shall be the amount of
15 the total taxes levied against all real property in the area covered by
16 the project in the last full tax year in which the area was subject to
17 taxation, and the minimum annual service charge shall be paid in each
18 year in which the annual service charge calculated pursuant to this
19 section or the financial agreement would be less than the minimum
20 annual service charge.

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

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

32 (cf: P.L.1991, c.431, s.12)

33

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

36 15. An urban renewal entity which is a limited dividend entity
37 under [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) shall be subject,
38 during the period of the financial agreement and tax exemption under
39 [this act] P.L.1991, c.431 (C.40A:20-1 et seq.), to a limitation of its
40 profits and in addition, in the case of a corporation, of the dividends
41 payable by it. Whenever the net profits of the entity for the period,
42 taken as one accounting period, commencing on the date on which the
43 construction of the first unit of the project is completed, or on which
44 the project is completed if the project is not undertaken in units, and
45 terminating at the end of the last full fiscal year, shall exceed the
46 allowable net profits for the period, the entity shall, within [90] 120

1 days of the close of that fiscal year, pay the excess net profits to the
2 municipality as an additional service charge. The entity may maintain
3 during the term of the financial agreement a reserve against vacancies,
4 unpaid rentals and contingencies in an amount established in the
5 financial agreement not to exceed 10% of the gross revenues of the
6 entity for the last full fiscal year, and may retain such part of those
7 excess net profits as is necessary to eliminate a deficiency in that
8 reserve. Upon the termination of the financial agreement, the amount
9 of reserve, if any, shall be paid to the municipality.

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

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

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

34 (cf: P.L.1991, c.431, s.15)

35

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

37 54:3-21. [A] a. Except as provided in subsection b. of this section
38 a taxpayer feeling aggrieved by the assessed valuation of the taxpayer's
39 property, or feeling discriminated against by the assessed valuation of
40 other property in the county, or a taxing district which may feel
41 discriminated against by the assessed valuation of property in the
42 taxing district, or by the assessed valuation of property in another
43 taxing district in the county, may on or before April 1, or 45 days from
44 the date the bulk mailing of notification of assessment is completed in
45 the taxing district, whichever is later, appeal to the county board of
46 taxation by filing with it a petition of appeal; provided, however, that

1 any such taxpayer or taxing district may on or before April 1, or 45
2 days from the date the bulk mailing of notification of assessment is
3 completed in the taxing district, whichever is later, file a complaint
4 directly with the Tax Court, if the assessed valuation of the property
5 subject to the appeal exceeds \$750,000.00. Within ten days of the
6 completion of the bulk mailing of notification of assessment, the
7 assessor of the taxing district shall file with the county board of
8 taxation a certification setting forth the date on which the bulk mailing
9 was completed. If a county board of taxation completes the bulk
10 mailing of notification of assessment, the tax administrator of the
11 county board of taxation shall within ten days of the completion of the
12 bulk mailing prepare and keep on file a certification setting forth the
13 date on which the bulk mailing was completed. A taxpayer shall have
14 45 days to file an appeal upon the issuance of a notification of a
15 change in assessment. An appeal to the Tax Court by one party in a
16 case in which the Tax Court has jurisdiction shall establish jurisdiction
17 over the entire matter in the Tax Court. All appeals to the Tax Court
18 hereunder shall be in accordance with the provisions of the State
19 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

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

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

30 (cf: P.L.1999, c.208, s.2)

31

32 14. (New section) The provisions of P.L. , c. (C.)
33 (pending before the Legislature as this bill) shall be deemed to be
34 severable, and if any phrase, clause, sentence, word or provision of
35 P.L. , c. (C.) (pending before the Legislature as this bill) is
36 declared to be unconstitutional, invalid or inoperative in whole or in
37 part, or the applicability thereof to any person is held invalid, by a
38 court of competent jurisdiction, the remainder of this act shall not
39 thereby be deemed to be unconstitutional, invalid or inoperative and,
40 to the extent it is not declared unconstitutional, invalid or inoperative,
41 shall be effectuated and enforced.

42

43 15. (New section) The terms and conditions of any tax exemption
44 approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), including
45 any financial agreement, separate agreement or amendment
46 implementing that exemption, are hereby ratified and validated, except

1 for any such exemption which is subject to litigation filed on or before
2 December 5, 2002.

3

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

6

7

8

STATEMENT

9

10 This bill makes a series of procedural and substantive amendments
11 to the "Long Term Tax Exemption Law" and the "Local
12 Redevelopment and Housing Law." These changes respond to
13 technical problems which have arisen in the implementation of these
14 laws and substantive issues raised in a series of recent court decisions.
15 These decisions threaten to undo the longstanding practices of
16 municipalities in negotiating and granting long term tax exemptions
17 and seriously undermine the vital public purpose served by these
18 redevelopment laws. Recognizing that substantial improvements have
19 been undertaken in redevelopment areas relying upon existing financial
20 agreements, it is the sponsor's intent in introducing this legislation to
21 support the original intent of the Legislature in enacting these laws and
22 facilitate their continued viability.

23 The bill authorizes any municipality that has designated a
24 redevelopment area, provides for a tax abatement within the
25 redevelopment area and which adopts a housing element to require, by
26 ordinance, that a redeveloper contribute to a housing trust fund
27 established by the municipality as a condition of granting a long term
28 tax abatement. Any such ordinance shall be based upon and consistent
29 with the housing element and spending plan adopted by the
30 municipality under the "Fair Housing Act" and shall be subject to any
31 limitations imposed upon those contributions by the Council on
32 Affordable Housing. The bill requires that the ordinance include
33 detailed guidelines establishing the parameters of this housing
34 contribution.

35 The bill introduces a new criterion which should be considered by
36 municipalities in designating redevelopment areas. Specifically, the bill
37 encourages the designation of redevelopment areas that are consistent
38 with smart growth planning principles adopted pursuant to law or
39 regulation. Those redevelopment areas which are situated in areas in
40 which growth is to be encouraged shall require simple notification of
41 the Commissioner of Community Affairs of the designation of the
42 redevelopment area. Designation of a redevelopment area in an area
43 in which the State seeks to discourage growth, however, shall require
44 the approval of the commissioner.

45 The bill introduces a limited tax abatement for the value of land in
46 the case of developments which are exclusively housing developments

1 in order to promote the appropriate development of affordable housing
2 in the State.

3 The bill requires that municipalities remit to their respective
4 counties 10 percent of annual service charges received pursuant to any
5 financial agreement entered into on or after the effective date of the
6 bill.

7 The bill clarifies the definition of "excess profits" which are
8 allowable under the law and redefines "allowable profit rate" to mean
9 the greater of 12 percent or 1-1/4 percent over and above the annual
10 interest percentage rate payable on the entity's initial permanent
11 mortgage financing.

12 The bill adds to the expenses which may be factored into the
13 calculation of "net profit" all capital costs determined in accordance
14 with generally accepted accounting principles of any other entity
15 whose revenue is included in the computation of excess profits over
16 the term of the abatement. The bill extends those expenses to include
17 all payments of rent and all debt service and removes from the
18 calculation interest which is part of debt service.

19 If the financial agreement so provides, the bill authorizes an
20 exclusion from the total project cost of any extraordinary costs
21 incurred by the entity and certified to the chief financial officer of the
22 municipality in order to alleviate blight conditions within the area in
23 need of redevelopment including, but not limited to, demolition costs,
24 costs associated with the relocation or removal of public utility
25 facilities, relocations costs, and the clearing of title to properties
26 within the area in need of redevelopment in order to facilitate
27 redevelopment.

28 The bill explicitly provides that nothing shall prohibit the transfer
29 of the ownership interest in the urban renewal entity itself, provided
30 that the transfer, if greater than 10 percent, is disclosed to the
31 municipal governing body in the annual disclosure statement or in
32 correspondence sent to the municipality in advance of the annual
33 disclosure statement.

34 The bill provides that a financial agreement shall not take effect
35 until it is approved by municipal ordinance. Currently such
36 agreements are approved by resolution. The bill authorizes
37 municipalities to levy an annual administrative fee, not to exceed two
38 percent of the annual service charge and a fee for the processing of a
39 request for the continuation of a tax exemption.

40 The bill establishes that delivery by the municipal clerk to the
41 municipal tax assessor of a certified copy of the ordinance of the
42 governing body approving the tax exemption and financial agreement
43 with the urban renewal entity shall constitute the required certification.
44 The tax assessor shall implement an exemption and continue to enforce
45 it upon such certification. These tax exemptions are declared to
46 represent long term financial agreements between the municipality and

1 the urban renewal entity and thereby constitute a single continuing
2 exemption from local property taxation for the duration of the financial
3 agreement, under the bill. The validity of a financial agreement or any
4 exemption granted pursuant thereto may be challenged only by filing
5 an action in lieu of prerogative writ within 20 days from the
6 publication of a notice of the adoption of an ordinance by the
7 governing body granting the exemption and approving the financial
8 agreement.

9 The bill ratifies and validates the terms and conditions of any tax
10 exemption approved pursuant to P.L.1991, c.431 (C.40A:20-1 et
11 seq.), including any financial agreement or separate agreement
12 implementing that exemption, except for any such exemption which is
13 subject to litigation filed on or before December 5, 2002. The bill
14 applies to those tax appeals filed beginning with the 2003 tax year.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 2402

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 2003

The Assembly Commerce and Economic Development Committee reports favorably with committee amendments, Senate Bill No. 2402 (1R).

Senate Bill 2402 (1R), with the committee amendments, makes a series of procedural and substantive amendments to the "Long Term Tax Exemption Law" and the "Local Redevelopment and Housing Law." These changes respond to technical problems which have arisen in the implementation of these laws and substantive issues raised in a series of recent court decisions.

The bill authorizes any municipality that has designated a redevelopment area, provides for a tax abatement within the redevelopment area and which adopts a housing element to require, by ordinance, that a redeveloper either set aside affordable residential units or contribute to a housing trust fund established by the municipality as a condition of granting a long term tax abatement. The bill requires that the ordinance include detailed guidelines establishing the parameters of this housing contribution and establishes upper limits on the amount that can be assessed for construction of market rate residential, commercial, and industrial development.

The bill introduces a new criterion which should be considered by municipalities in designating redevelopment areas. Specifically, the bill encourages the designation of redevelopment areas that are consistent with smart growth planning principles adopted pursuant to law or regulation. Those redevelopment areas which are situated in areas in which growth is to be encouraged shall require simple notification of the Commissioner of Community Affairs of the designation of the redevelopment area. Designation of a redevelopment area in an area in which the State seeks to discourage growth, however, shall require the approval of the commissioner.

The bill introduces a limited tax exemption for the value of land in the case of developments which are exclusively housing developments

in order to promote the appropriate development of affordable housing in the State.

The bill requires that municipalities remit to their respective counties 10 percent of annual service charges received pursuant to any financial agreement entered into on or after the effective date of the bill.

The bill clarifies the definition of "excess profits" which are allowable under the law and redefines "allowable profit rate" to mean the greater of 12 percent or 1-1/4 percent over and above the annual interest percentage rate payable on the entity's initial permanent mortgage financing.

The bill adds to the expenses which may be factored into the calculation of "net profit" all capital costs determined in accordance with generally accepted accounting principles of any other entity whose revenue is included in the computation of excess profits over the term of the abatement. The bill extends those expenses to include all payments of rent and all debt service and removes from the calculation interest which is part of debt service.

If the financial agreement so provides, the bill authorizes an exclusion from the total project cost of any extraordinary costs incurred by the entity and certified to the chief financial officer of the municipality in order to alleviate blight conditions within the area in need of redevelopment including, but not limited to, demolition costs, costs associated with the relocation or removal of public utility facilities, relocations costs, and the clearing of title to properties within the area in need of redevelopment in order to facilitate redevelopment.

The bill, as amended, explicitly provides that nothing shall prohibit the transfer of the ownership interest in the urban renewal entity itself, provided that the transfer, if greater than 10 percent, is approved in the same manner as the financial agreement was approved pursuant to section 9 of P.L.1991, c.431 (C.40A:20-9).

The bill provides that a financial agreement shall not take effect until it is approved by municipal ordinance. Currently such agreements are approved by resolution. The bill newly requires that both the ordinance and financial agreement shall be transmitted to the Director of the Division of Local Government Services immediately upon adoption. The bill authorizes municipalities to levy an annual administrative fee, not to exceed two percent of the annual service charge and a fee for the processing of a request for the continuation of a tax exemption.

The bill, as amended, establishes that delivery by the municipal clerk to the municipal tax assessor of a certified copy of the ordinance of the governing body approving the tax exemption and financial agreement with the urban renewal entity shall constitute the required certification. The tax assessor shall implement an exemption or abatement as of, or retroactive to, the date that the certificate of occupancy is issued and continue to enforce it upon such certification.

These tax exemptions are declared to represent long term financial agreements between the municipality and the urban renewal entity and thereby constitute a single continuing exemption from local property taxation for the duration of the financial agreement, under the bill.

The committee amended the bill to provide that the validity of a financial agreement or any exemption granted pursuant thereto may be challenged only by filing an action in lieu of prerogative writ within 45 days from the publication of a notice of the adoption of an ordinance by the governing body granting the exemption and approving the financial agreement.

The bill ratifies and validates the terms and conditions of any tax exemption approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), including any financial agreement or separate agreement implementing that exemption. This ratification and validation shall also include the structure and methods used to calculate excess profits and annual service charges, including the limitation of revenue, expenses and total project costs, to those of the urban renewal entity, regardless of any other entity, whether affiliated or unaffiliated with the urban renewal entity. The bill applies to those tax appeals filed beginning with the 2003 tax year.

The committee amendment removes the exception from the ratification of existing contracts for any exemption subject to litigation filed on or before December 5, 2002.

Finally, the committee amendments provide that rent schedules and leases by the urban renewal entity to another entity shall be certified through the annual audit to be at market value rents in order to eliminate "sweetheart" arrangements that might affect the calculation of excess profits.

With these committee amendments, Senate Bill 2402 (1R) is identical to Assembly Bill 3404, with committee amendments, also released from committee this day.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 2402

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 17, 2003

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably and with committee amendments Senate Bill No. 2402.

Senate Bill 2402, as amended by the committee, makes a series of procedural and substantive amendments to the "Long Term Tax Exemption Law" and the "Local Redevelopment and Housing Law." These changes respond to technical problems which have arisen in the implementation of these laws and substantive issues raised in a series of recent court decisions.

The bill authorizes any municipality that has designated a redevelopment area, provides for a tax abatement within the redevelopment area and which adopts a housing element to require, by ordinance, that a redeveloper either set aside affordable residential units or contribute to a housing trust fund established by the municipality as a condition of granting a long term tax abatement. The bill requires that the ordinance include detailed guidelines establishing the parameters of this housing contribution and establishes upper limits on the amount that can be assessed for construction of market rate residential, commercial, and industrial development.

The bill introduces a new criterion which should be considered by municipalities in designating redevelopment areas. Specifically, the bill encourages the designation of redevelopment areas that are consistent with smart growth planning principles adopted pursuant to law or regulation. Those redevelopment areas which are situated in areas in which growth is to be encouraged shall require simple notification of the Commissioner of Community Affairs of the designation of the redevelopment area. Designation of a redevelopment area in an area in which the State seeks to discourage growth, however, shall require the approval of the commissioner.

The bill introduces a limited tax exemption for the value of land in the case of developments which are exclusively housing developments in order to promote the appropriate development of affordable housing in the State.

The bill requires that municipalities remit to their respective counties 10 percent of annual service charges received pursuant to any financial agreement entered into on or after the effective date of the bill.

The bill clarifies the definition of "excess profits" which are allowable under the law and redefines "allowable profit rate" to mean the greater of 12 percent or 1-1/4 percent over and above the annual interest percentage rate payable on the entity's initial permanent mortgage financing.

The bill adds to the expenses which may be factored into the calculation of "net profit" all capital costs determined in accordance with generally accepted accounting principles of any other entity whose revenue is included in the computation of excess profits over the term of the abatement. The bill extends those expenses to include all payments of rent and all debt service and removes from the calculation interest which is part of debt service.

If the financial agreement so provides, the bill authorizes an exclusion from the total project cost of any extraordinary costs incurred by the entity and certified to the chief financial officer of the municipality in order to alleviate blight conditions within the area in need of redevelopment including, but not limited to, demolition costs, costs associated with the relocation or removal of public utility facilities, relocations costs, and the clearing of title to properties within the area in need of redevelopment in order to facilitate redevelopment.

The bill explicitly provides that nothing shall prohibit the transfer of the ownership interest in the urban renewal entity itself, provided that the transfer, if greater than 10 percent, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement.

The bill provides that a financial agreement shall not take effect until it is approved by municipal ordinance. Currently such agreements are approved by resolution. The bill newly requires that both the ordinance and financial agreement shall be transmitted to the Director of the Division of Local Government Services immediately upon adoption. The bill authorizes municipalities to levy an annual administrative fee, not to exceed two percent of the annual service charge and a fee for the processing of a request for the continuation of a tax exemption.

The bill establishes that delivery by the municipal clerk to the municipal tax assessor of a certified copy of the ordinance of the governing body approving the tax exemption and financial agreement with the urban renewal entity shall constitute the required certification. The tax assessor shall implement an exemption and continue to enforce it upon such certification. These tax exemptions are declared to represent long term financial agreements between the municipality and the urban renewal entity and thereby constitute a single continuing

exemption from local property taxation for the duration of the financial agreement, under the bill. The validity of a financial agreement or any exemption granted pursuant thereto may be challenged only by filing an action in lieu of prerogative writ within 20 days from the publication of a notice of the adoption of an ordinance by the governing body granting the exemption and approving the financial agreement.

The bill ratifies and validates the terms and conditions of any tax exemption approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), including any financial agreement or separate agreement implementing that exemption, except for any such exemption which is subject to litigation filed on or before December 5, 2002. This ratification and validation shall also include the structure and methods used to calculate excess profits and annual service charges, including the limitation of revenue, expenses and total project costs, to those of the urban renewal entity, regardless of any other entity, whether affiliated or unaffiliated with the urban renewal entity. The bill applies to those tax appeals filed beginning with the 2003 tax year.

The committee amended the bill to remove the requirement that the ordinance requiring a contribution to an affordable housing trust fund as a condition of receiving a tax abatement be consistent with the housing element and spending plan adopted by the municipality under the "Fair Housing Act." Additionally, the original bill made such contributions subject to limits established by the Council on Affordable Housing.

Instead, the committee amended the bill to establish contribution limits as follows: \$1500 per unit for market rate residential construction; \$1.50 per square foot for commercial construction; and 10 cents per square foot for industrial construction. Additionally, the amendments provide, as an alternative to such a financial contribution the set aside of affordable residential units by a redeveloper seeking a tax abatement.

The committee amendments clarify the way in which the annual service charge is calculated with regard to purchasers of units in fee simple. Specifically, when determining the annual service charge with respect to units in fee simple, "total project cost" shall mean the sales price of the individual housing unit which is defined as the most recent true consideration paid for a deed to the unit in fee simple in a bona fide arm's length sales transaction, but not less than the assessed valuation of the unit in fee simple assessed at 100 percent of true value.

The committee amendments exclude from calculation of gross revenue any gain realized by the urban renewal entity on the sale of any unit in fee simple, whether or not taxable under federal or State law.

The committee amended the bill to require that the municipal clerk forward a copy of the ordinance and financial agreement to the Director of the Division of Local Government Services immediately

upon adoption.

The amendments clarify the parameters of the ratification and validation of existing agreements to ensure that the structure and methods used to calculate excess profits and annual service charges are included in their entirety.

Finally, the amendments correct a typographical error contained in section 10 of the original bill.

STATEMENT TO
[Second Reprint]
SENATE, No. 2402

with Assembly Floor Amendments
(Proposed By Assemblymen SIRES and ROBERTS)

ADOPTED: MAY 22, 2003

These floor amendments remove certain Assembly committee amendments that were hastily adopted, so that those issues can be subject to public debate in a more deliberate manner. The floor amendments also make a technical correction to section 9 of the bill.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3404

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 2003

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments, Assembly Bill No. 3404.

Assembly Bill 3404, with the committee amendments, makes a series of procedural and substantive amendments to the "Long Term Tax Exemption Law" and the "Local Redevelopment and Housing Law." These changes respond to technical problems which have arisen in the implementation of these laws and substantive issues raised in a series of recent court decisions. These decisions threaten to undo the longstanding practices of municipalities in negotiating and granting long term tax exemptions and seriously undermine the vital public purpose served by these redevelopment laws. Recognizing that substantial improvements have been undertaken in redevelopment areas relying upon existing financial agreements, it is the sponsor's intent in introducing this legislation to support the original intent of the Legislature in enacting these laws and facilitate their continued viability.

The bill, with the committee amendments, authorizes any municipality that has designated a redevelopment area, provides for a tax abatement within the redevelopment area, and which adopts a housing element to require, by ordinance, that a redeveloper contribute to a housing trust fund established by the municipality as a condition of granting a long term tax abatement. Any such ordinance shall be based upon and consistent with the housing element and spending plan adopted by the municipality under the "Fair Housing Act" and shall be subject to any limitations imposed upon those contributions by the Council on Affordable Housing. The bill, with the committee amendments, requires that the ordinance include detailed guidelines establishing the parameters of this housing contribution.

The bill, with the committee amendments, introduces a new criterion which should be considered by municipalities in designating redevelopment areas. Specifically, the bill encourages the designation

of redevelopment areas that are consistent with smart growth planning principles adopted pursuant to law or regulation. Those redevelopment areas which are situated in areas in which growth is to be encouraged shall require simple notification of the Commissioner of Community Affairs of the designation of the redevelopment area. Designation of a redevelopment area in an area in which the State seeks to discourage growth, however, shall require the approval of the commissioner.

The bill, with the committee amendments, introduces a limited tax abatement for the value of land in the case of developments which are low and moderate income housing projects in order to promote the appropriate development of affordable housing in the State.

The bill, with the committee amendments, requires that municipalities remit to their respective counties 10 percent of annual service charges received pursuant to any financial agreement entered into on or after the effective date of the bill.

The bill, with the committee amendments, clarifies the definition of "excess profits" which are allowable under the law and redefines "allowable profit rate" to mean the greater of 12 percent or 1-1/4 percent over and above the annual interest percentage rate payable on the entity's initial permanent mortgage financing.

The bill adds to the expenses which may be factored into the calculation of "net profit" all capital costs determined in accordance with generally accepted accounting principles of any other entity whose revenue is included in the computation of excess profits over the term of the abatement. The bill extends those expenses to include all payments of rent and all debt service and removes from the calculation interest which is part of debt service.

If the financial agreement so provides, the bill authorizes an exclusion from the total project cost of any extraordinary costs incurred by the entity and certified to the chief financial officer of the municipality in order to alleviate blight conditions within the area in need of redevelopment including, but not limited to, demolition costs, costs associated with the relocation or removal of public utility facilities, relocations costs, and the clearing of title to properties within the area in need of redevelopment in order to facilitate redevelopment.

The bill, with the committee amendments, explicitly provides that nothing shall prohibit the transfer of the ownership interest in the urban renewal entity itself, provided that the transfer, if greater than 10 percent, is approved in the same manner as the financial agreement was approved pursuant to section 9 of P.L.1991, c.431 (C.40A:20-9).

The bill, with the committee amendments, provides that a financial agreement shall not take effect until it is approved by municipal ordinance. Currently such agreements are approved by resolution. The bill authorizes municipalities to levy an annual administrative fee, not to exceed two percent of the annual service charge and a fee for the processing of a request for the continuation of a tax exemption.

The bill, with the committee amendments, establishes that delivery by the municipal clerk to the municipal tax assessor of a certified copy of the ordinance of the governing body approving the tax exemption and financial agreement with the urban renewal entity shall constitute the required certification. The tax assessor shall implement an exemption or abatement as of, or retroactive to, the date that the certificate of occupancy is issued and continue to enforce it upon such certification. These tax exemptions are declared to represent long term financial agreements between the municipality and the urban renewal entity and thereby constitute a single continuing exemption from local property taxation for the duration of the financial agreement, under the bill.

The committee amended the bill to provide that the validity of a financial agreement or any exemption granted pursuant thereto may be challenged only by filing an action in lieu of prerogative writ within 45 days from the publication of a notice of the adoption of an ordinance by the governing body granting the exemption and approving the financial agreement.

The bill, with the committee amendments, ratifies and validates the terms and conditions of any tax exemption approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), including any financial agreement or separate agreement implementing that exemption. The bill applies to those tax appeals filed beginning with the 2003 tax year.

The amendments remove the requirement that the ordinance requiring a contribution to an affordable housing trust fund as a condition of receiving a tax abatement be consistent with the housing element and spending plan adopted by the municipality under the "Fair Housing Act." Additionally, the original bill made such contributions subject to limits established by the Council on Affordable Housing.

Instead, the committee amendments establish contribution limits as follows: \$1500 per unit for market rate residential construction; \$1.50 per square foot for commercial construction; and 10 cents per square foot for industrial construction. Additionally, the amendments provide, as an alternative to such a financial contribution the set aside of affordable residential units by a redeveloper seeking a tax abatement.

The committee amendments clarify the way in which the annual service charge is calculated with regard to purchasers of units in fee simple. Specifically, when determining the annual service charge with respect to units in fee simple, "total project cost" shall mean the sales price of the individual housing unit which is defined as the most recent true consideration paid for a deed to the unit in fee simple in a bona fide arm's length sales transaction, but not less than the assessed valuation of the unit in fee simple assessed at 100 percent of true value.

The committee amendments exclude from calculation of gross revenue any gain realized by the urban renewal entity on the sale of any unit in fee simple, whether or not taxable under federal or State

law.

The committee amendments require that the municipal clerk forward a copy of the ordinance and financial agreement to the Director of the Division of Local Government Services immediately upon adoption.

The committee amendments clarify the parameters of the ratification and validation of existing agreements to ensure that the structure and methods used to calculate excess profits and annual service charges are included in their entirety. Additionally, the amendments remove the exception from that ratification for any exemption subject to litigation filed on or before December 5, 2002.

The committee amendments also provide that rent schedules and leases by the urban renewal entity to another entity shall be certified through the annual audit to be at market value rents in order to eliminate "sweetheart" arrangements that might affect the calculation of excess profits.

Finally, the committee amendments correct a typographical error contained in section 10 of the original bill.

With these committee amendments, Assembly Bill 3404 is identical to Senate Bill 2402 (1R), with committee amendments, also released from committee this day.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3404

with Assembly Floor Amendments
(Proposed By Assemblymen SIRES and ROBERTS)

ADOPTED: MAY 22, 2003

These floor amendments remove certain Assembly committee amendments that were hastily adopted, so that those issues can be subject to public debate in a more deliberate manner. The floor amendments also make a technical correction to section 9 of the bill.

ASSEMBLY, No. 3404

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 3, 2003

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

SYNOPSIS

Makes various changes to "Long Term Tax Exemption Law."

CURRENT VERSION OF TEXT

As introduced.



A3404 SIRES, ROBERTS

2

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

4

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

7

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

20 b. Any such ordinance imposing this requirement shall be based
21 upon and consistent with the housing element and spending plan
22 adopted by the municipality pursuant to P.L.1985, c.222 (C.52:27D-
23 301 et al.), and shall be subject to those limitations on contributions
24 established by the Council on Affordable Housing by rule or
25 regulation.

26

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

32 a. standards governing the extent of the contribution based on the
33 value of construction for market rate residential or non-residential
34 construction, as the case may be;

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

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

39

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

42 5. A delineated area may be determined to be in need of
43 redevelopment if, after investigation, notice and hearing as provided

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 in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of
2 the municipality by resolution concludes that within the delineated area
3 any of the following conditions is found:

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

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

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

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

25 e. A growing lack or total lack of proper utilization of areas caused
26 by the condition of the title, diverse ownership of the real property
27 therein or other conditions, resulting in a stagnant or not fully
28 productive condition of land potentially useful and valuable for
29 contributing to and serving the public health, safety and welfare.

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

35 g. In any municipality in which an enterprise zone has been
36 designated pursuant to the "New Jersey Urban Enterprise Zones Act,"
37 P.L.1983, c.303 (C.52:27H-60 et seq.) the execution of the actions
38 prescribed in that act for the adoption by the municipality and approval
39 by the New Jersey Urban Enterprise Zone Authority of the zone
40 development plan for the area of the enterprise zone shall be
41 considered sufficient for the determination that the area is in need of
42 redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79
43 (C.40A:12A-5 and 40A:12A-6) for the purpose of granting tax
44 exemptions within the enterprise zone district pursuant to the
45 provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of
46 a tax abatement and exemption ordinance pursuant to the provisions

1 of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not
2 utilize any other redevelopment powers within the urban enterprise
3 zone unless the municipal governing body and planning board have
4 also taken the actions and fulfilled the requirements prescribed in
5 P.L.1992, c.79 (C.40A:12A-1 et al.) for determining that the area is
6 in need of redevelopment or an area in need of rehabilitation and the
7 municipal governing body has adopted a redevelopment plan ordinance
8 including the area of the enterprise zone.

9 h. The designation of the delineated area is consistent with smart
10 growth planning principles adopted pursuant to law or regulation.
11 (cf: P.L.1992, c.79, s.5)

12

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

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

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

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

34 (3) The hearing notice shall set forth the general boundaries of the
35 area to be investigated and state that a map has been prepared and can
36 be inspected at the office of the municipal clerk. A copy of the notice
37 shall be published in a newspaper of general circulation in the
38 municipality once each week for two consecutive weeks, and the last
39 publication shall be not less than ten days prior to the date set for the
40 hearing. A copy of the notice shall be mailed at least ten days prior to
41 the date set for the hearing to the last owner, if any, of each parcel of
42 property within the area according to the assessment records of the
43 municipality. A notice shall also be sent to all persons at their last
44 known address, if any, whose names are noted on the assessment
45 records as claimants of an interest in any such parcel. The assessor of
46 the municipality shall make a notation upon the records when

1 requested to do so by any person claiming to have an interest in any
2 parcel of property in the municipality. The notice shall be published
3 and mailed by the municipal clerk, or by such clerk or official as the
4 planning board shall otherwise designate. Failure to mail any such
5 notice shall not invalidate the investigation or determination thereon.

6 (4) At the hearing, which may be adjourned from time to time, the
7 planning board shall hear all persons who are interested in or would be
8 affected by a determination that the delineated area is a redevelopment
9 area. All objections to such a determination and evidence in support
10 of those objections, given orally or in writing, shall be received and
11 considered and made part of the public record.

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

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

43 (7) If a person who filed a written objection to a determination by
44 the municipality pursuant to this subsection shall, within 45 days after
45 the adoption by the municipality of the determination to which the
46 person objected, apply to the Superior Court, the court may grant

1 further review of the determination by procedure in lieu of prerogative
2 writ; and in any such action the court may make any incidental order
3 that it deems proper.

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

11 (cf: P.L.1992, c.79, s.6)

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

15 14. a. A delineated area may be determined to be in need of
16 rehabilitation if the governing body of the municipality determines by
17 resolution that there exist in that area conditions such that (1) a
18 significant portion of structures therein are in a deteriorated or
19 substandard condition and there is a continuing pattern of vacancy,
20 abandonment or underutilization of properties in the area, with a
21 persistent arrearage of property tax payments thereon or (2) more than
22 half of the housing stock in the delineated area is at least 50 years old,
23 or a majority of the water and sewer infrastructure in the delineated
24 area is at least 50 years old and is in need of repair or substantial
25 maintenance; and (3) a program of rehabilitation, as defined in section
26 3 of P.L.1992, c.79 (C.40A:12A-3), may be expected to prevent
27 further deterioration and promote the overall development of the
28 community. Where warranted by consideration of the overall
29 conditions and requirements of the community, a finding of need for
30 rehabilitation may extend to the entire area of a municipality. Prior to
31 adoption of the resolution, the governing body shall submit it to the
32 municipal planning board for its review. Within 45 days of its receipt
33 of the proposed resolution, the municipal planning board shall submit
34 its recommendations regarding the proposed resolution, including any
35 modifications which it may recommend, to the governing body for its
36 consideration. Thereafter, or after the expiration of the 45 days if the
37 municipal planning board does not submit recommendations, the
38 governing body may adopt the resolution, with or without
39 modification. The resolution shall not become effective without the
40 approval of the commissioner pursuant to section 6 of P.L.1992, c.79
41 (C.40A:12A-6), if otherwise required pursuant to that section.

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

1 et seq.).

2 (cf: P.L.2001, c.155, s.1)

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

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

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

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

30 (cf: P.L.1992, c.79, s.53)

31

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

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

35 a. "Gross revenue" means annual gross revenue or gross shelter
36 rent or annual gross rents, as appropriate, and other income, for each
37 urban renewal entity designated pursuant to [this act] P.L.1991, c.431
38 (C.40A:20-1 et seq.). The financial agreement shall establish the
39 method of computing gross revenue for the entity, and the method of
40 determining insurance, operating and maintenance expenses paid by a
41 tenant which are ordinarily paid by a landlord, which shall be included
42 in the gross revenue; provided, however, that any federal funds
43 received, whether directly or in the form of rental subsidies paid to
44 tenants, by a nonprofit corporation that is the sponsor of a qualified
45 subsidized housing project, shall not be included in the gross revenue
46 of the project for purposes of computing the annual services charge for

1 municipal services supplied to the project.

2 b. "Limited-dividend entity" means an urban renewal entity
3 incorporated pursuant to Title 14A of the New Jersey Statutes, or
4 established pursuant to Title 42 of the Revised Statutes, for which the
5 profits and the entity are limited as follows. The allowable net profits
6 of the entity shall be determined by applying the allowable profit rate
7 to each total project unit cost, if the project is undertaken in units, or
8 the total project cost, if the project is not undertaken in units, and all
9 capital costs, determined in accordance with generally accepted
10 accounting principles, of any other entity whose revenue is included in
11 the computation of excess profits, for the period commencing on the
12 date on which the construction of the unit or project is completed, and
13 terminating at the close of the fiscal year of the entity preceding the
14 date on which the computation is made, where:

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

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

30 (1) there shall be included in expenses: (a) all annual service
31 charges paid pursuant to section 12 of P.L.1991, c.431
32 (C.40A:20-12); (b) all payments to the municipality of excess profits
33 pursuant to section 15 or 16 of P.L.1991, c.431 (C.40A:20-15 or
34 40A:20-16); (c) an annual amount sufficient to amortize the total
35 project cost and all capital costs determined in accordance with
36 generally accepted accounting principles, of any other entity whose
37 revenue is included in the computation of excess profits, over the [life
38 of the improvements,] term of the abatement as set forth in the
39 financial agreement[, which shall not be less than the terms of the
40 financial agreement; and] ; (d) all reasonable annual operating
41 expenses of the urban renewal entity and any other entity whose
42 revenue is included in the computation of excess profits, including the
43 cost of all management fees, brokerage commissions, insurance
44 premiums, all taxes or service charges paid, legal, accounting, or other
45 professional service fees, utilities, building maintenance costs, building
46 and office supplies, and payments into repair or maintenance reserve

1 accounts; (e) all payments of rent including, but not limited to, ground
2 rent by the urban renewal entity; and (f) all debt service;

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

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

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

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

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

33 g. "Urban renewal entity" means a limited-dividend entity, the New
34 Jersey Economic Development Authority or a nonprofit entity which
35 enters into a financial agreement pursuant to **[this act]** P.L.1991,
36 c.431 (C.40A:20-1 et seq.) with a municipality to undertake a project
37 pursuant to a redevelopment plan for the redevelopment of all or any
38 part of a redevelopment area, or a project necessary, useful, or
39 convenient for the relocation of residents displaced or to be displaced
40 by the redevelopment of all or any part of one or more redevelopment
41 areas, or a low and moderate income housing project.

42 h. "Total project unit cost" or "total project cost" means the
43 aggregate of the following items as related to a unit of a project, if the
44 project is undertaken in units, or to the total project, if the project is
45 not undertaken in units, all of which as limited by, and approved as
46 part of the financial agreement: (1) cost of the land and improvements

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

17		
18	\$500,000 or less -	10%
19		
20	\$500,000 through \$1,000,000 -	\$50,000 plus 8% on excess
21	above \$500,000	
22		
23	\$1,000,001 through \$2,000,000 -	\$90,000 plus 7% on excess
24	above \$1,000,000	
25		
26	\$2,000,001 through \$3,500,000 -	\$160,000 plus
27	5.6667% on excess above \$2,000,000	
28		
29	\$3,500,001 through \$5,500,000 -	\$245,000 plus 4.25% on
30	excess above \$3,500,000	
31		
32	\$5,500,001 through \$10,000,000 -	\$330,000 plus 3.7778% on
33	excess above \$5,500,000	
34		
35	over \$10,000,000 -	5%
36		

37 If the financial agreement so provides, there shall be excluded from
38 the total project cost: (1) actual costs incurred by the entity and
39 certified to the municipality by an independent and qualified architect
40 or engineer which are associated with site remediation and cleanup of
41 environmentally hazardous materials or contaminants in accordance
42 with State or federal law; and (2) any extraordinary costs incurred by
43 the entity and certified to the chief financial officer of the municipality
44 by an independent certified public accountant in order to alleviate
45 blight conditions within the area in need of redevelopment including,
46 but not limited to, the cost of demolishing structures considered by the

1 entity to be an impediment to the proposed redevelopment of the
2 property, costs associated with the relocation or removal of public
3 utility facilities as defined pursuant to section 10 of P.L.1992, c.79
4 (C.40A:12A-10) considered necessary in order to implement the
5 redevelopment plan, costs associated with the relocation of residents
6 or businesses displaced or to be displaced by the proposed
7 redevelopment, and the clearing of title to properties within the area
8 in need of redevelopment in order to facilitate redevelopment.

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

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

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

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

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

42 (cf: P.L.2002, c.43, s.70)

43
44 8. Section 5 of P.L.1991, c.431 (C.40A:20-5) is amended to read
45 as follows:

46 5. Any duly formed corporation, partnership, limited partnership,

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

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

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

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

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

38 e. A provision that the entity shall not voluntarily transfer more
39 than 10% of the ownership of the project or any portion thereof
40 undertaken by it under [this act] P.L.1991, c.431 (C.40A:20-1 et
41 seq.), until it has first removed both itself and the project from all
42 restrictions of [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) in the
43 manner required by [this act] P.L.1991, c.431 (C.40A:20-1 et seq.)
44 and, if the project includes housing units, has obtained the consent of
45 the Commissioner of Community Affairs to such transfer; with the

1 exception of transfer to another urban renewal entity, as approved by
2 the municipality in which the project is situated, which other urban
3 renewal entity shall assume all contractual obligations of the transferor
4 entity under the financial agreement with the municipality. The entity
5 shall file annually with the municipal governing body a disclosure of
6 the persons having an ownership interest in the project, and of the
7 extent of the ownership interest of each. Nothing herein shall prohibit
8 any transfer of the ownership interest in the urban renewal entity itself
9 provided that the transfer, if greater than 10 percent, is disclosed to
10 the municipal governing body in the annual disclosure statement or in
11 correspondence sent to the municipality in advance of the annual
12 disclosure statement referred to above.

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

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

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

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

35 (cf: P.L.1991, c.431, s.5)

36

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

39 9. Every approved project shall be evidenced by a financial
40 agreement between the municipality and the urban renewal entity. The
41 agreement shall be prepared by the entity and submitted as a separate
42 part of its application for project approval. The agreement shall not
43 take effect until approved by ordinance of the municipality. Any
44 amendments or modifications of the agreement made thereafter shall
45 be by mutual consent of the municipality and the urban renewal entity,
46 and shall be subject to approval by [resolution] ordinance of the

1 municipal governing body upon recommendation of the mayor or other
2 chief executive officer of the municipality prior to taking effect.

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

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

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

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

18 d. That the urban renewal entity shall submit annually, within 90
19 days after the close of its fiscal year, its auditor's reports to the mayor
20 and governing body of the municipality and to the Director of the
21 Division of Local Government Services in the Department of
22 Community Affairs.

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

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

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

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

38 The financial agreement shall contain detailed representations and
39 covenants by the urban renewal entity as to the manner in which it
40 proposes to use, manage or operate the project. The financial
41 agreement shall further set forth the method for computing gross
42 revenue for the urban renewal entity, the method of determining
43 insurance, operating and maintenance expenses paid by a tenant which
44 are ordinarily paid by a landlord, the plans for financing the project,
45 including the estimated total project cost, the amortization rate on the
46 total project cost, the source of funds, the interest rates to be paid on

1 the construction financing, the source and amount of paid-in capital,
2 the terms of mortgage amortization or payment of principal on any
3 mortgage, a good faith projection of initial sales prices of any
4 condominium units and expenses to be incurred in promoting and
5 consummating such sales, and the rental schedules and lease terms to
6 be used in the project. Any financial agreement may allow the
7 municipality to levy an annual administrative fee, not to exceed two
8 percent of the annual service charge.

9 (cf: P.L.1991, c.431, s.9)

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

13 10. The financial agreement may provide:

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

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

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

1 for-profit developer.

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

7 (cf: P.L.1999, c.210, s.1)

8

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

11 12. The rehabilitation or improvements made in the development
12 or redevelopment of a redevelopment area or area appurtenant thereto
13 or for a redevelopment relocation housing project, pursuant to [this
14 act] P.L.1991, c.431(C.40A:20-1 et seq.), shall be exempt from
15 taxation for a limited period as hereinafter provided. When housing
16 is to be constructed, acquired or rehabilitated by an urban renewal
17 entity, the land upon which that housing is situated shall be exempt
18 from taxation for a limited period as hereinafter provided. The
19 exemption shall be [claimed and] allowed [in the same or a similar
20 manner as in the case of other real property exemptions, and no such
21 claim shall be allowed unless] when the clerk of the municipality
22 wherein the property is situated shall certify to the municipal tax
23 assessor that a financial agreement with an urban renewal entity for the
24 development or the redevelopment of the property, or the provision of
25 a redevelopment relocation housing project, or the provision of a low
26 and moderate income housing project has been entered into and is in
27 effect as required by [this act] P.L.1991, c.431 (C.40A:20-1 et seq.).

28 Delivery by the municipal clerk to the municipal tax assessor of a
29 certified copy of the ordinance of the governing body approving the
30 tax exemption and financial agreement with the urban renewal entity
31 shall constitute the required certification. For each exemption granted
32 pursuant to P.L. , c. (C.) (pending before the Legislature
33 as this bill), upon certification as required hereunder, the tax assessor
34 shall implement the exemption and continue to enforce that exemption
35 without further certification by the clerk until the expiration of the
36 entitlement to exemption by the terms of the financial agreement or
37 until the tax assessor has been duly notified by the clerk that the
38 exemption has been terminated.

39 Whenever an exemption status changes during a tax year, the
40 procedure for the apportionment of the taxes for the year shall be the
41 same as in the case of other changes in tax exemption status during the
42 tax year. Tax exemptions granted pursuant to P.L. , c. (C.)
43 (pending before the Legislature as this bill) represent long term
44 financial agreements between the municipality and the urban renewal
45 entity and as such constitute a single continuing exemption from local
46 property taxation for the duration of the financial agreement. The

1 validity of a financial agreement or any exemption granted pursuant
2 thereto may be challenged only by filing an action in lieu of
3 prerogative writ within 20 days from the publication of a notice of the
4 adoption of an ordinance by the governing body granting the
5 exemption and approving the financial agreement. Such notice shall
6 be published in a newspaper of general circulation in the municipality
7 and in a newspaper of general circulation in the county if different
8 from the municipal newspaper.

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

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

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

34 At the option of the municipality, or where because of the nature of
35 the development, ownership, use or occupancy of the project or any
36 unit thereof, if the project is to be undertaken in units, the total annual
37 gross rental or gross shelter rent or annual gross revenue cannot be
38 reasonably ascertained, the governing body shall provide in the
39 financial agreement that the annual service charge shall be a sum equal
40 to a percentage determined pursuant to this subsection and section 11
41 of [this act] P.L.1991, c.431 (C.40A:20-11), of the total project cost
42 or total project unit cost determined pursuant to [this act] P.L.1991,
43 c.431 (C.40A:20-1 et seq.) calculated from the first day of the month
44 following the substantial completion of the project or any unit thereof,
45 if the project is undertaken in units. The percentage of the total
46 project cost or total project unit cost shall not be more than 2% in the

1 case of a low and moderate income housing project, and shall not be
2 less than 2% in the case of all other projects.

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

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

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

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

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

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

44 If the financial agreement provides for an exemption period of less
45 than 30 years from the completion of the entire project, or less than 35
46 years from the execution of the financial agreement, the financial

1 agreement shall set forth a schedule of annual service charges for the
2 exemption period which shall be based upon the minimum service
3 charges and staged adjustments set forth in this section.

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

7 Each municipality which enters into a financial agreement on or
8 after the effective date of P.L. _____, c. _____ (C. _____) (pending before
9 the Legislature as this bill) shall remit 10 percent of the annual service
10 charge to the county upon receipt of that charge in accordance with
11 the provisions of this section.

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

16 Notwithstanding the provisions of this section or of the financial
17 agreement, the minimum annual service charge shall be the amount of
18 the total taxes levied against all real property in the area covered by
19 the project in the last full tax year in which the area was subject to
20 taxation, and the minimum annual service charge shall be paid in each
21 year in which the annual service charge calculated pursuant to this
22 section or the financial agreement would be less than the minimum
23 annual service charge.

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

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

35 (cf: P.L.1991, c.431, s.12)

36

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

39 15. An urban renewal entity which is a limited dividend entity
40 under [this act] P.L.1991, c.431 (C.40A:20-1 et seq.) shall be subject,
41 during the period of the financial agreement and tax exemption under
42 [this act] P.L.1991, c.431 (C.40A:20-1 et seq.), to a limitation of its
43 profits and in addition, in the case of a corporation, of the dividends
44 payable by it. Whenever the net profits of the entity for the period,
45 taken as one accounting period, commencing on the date on which the
46 construction of the first unit of the project is completed, or on which

1 the project is completed if the project is not undertaken in units, and
2 terminating at the end of the last full fiscal year, shall exceed the
3 allowable net profits for the period, the entity shall, within [90] 120
4 days of the close of that fiscal year, pay the excess net profits to the
5 municipality as an additional service charge. The entity may maintain
6 during the term of the financial agreement a reserve against vacancies,
7 unpaid rentals and contingencies in an amount established in the
8 financial agreement not to exceed 10% of the gross revenues of the
9 entity for the last full fiscal year, and may retain such part of those
10 excess net profits as is necessary to eliminate a deficiency in that
11 reserve. Upon the termination of the financial agreement, the amount
12 of reserve, if any, shall be paid to the municipality.

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

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

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

37 (cf: P.L.1991, c.431, s.15)

38

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

40 54:3-21. [A] a. Except as provided in subsection b. of this section
41 a taxpayer feeling aggrieved by the assessed valuation of the taxpayer's
42 property, or feeling discriminated against by the assessed valuation of
43 other property in the county, or a taxing district which may feel
44 discriminated against by the assessed valuation of property in the
45 taxing district, or by the assessed valuation of property in another
46 taxing district in the county, may on or before April 1, or 45 days from

1 the date the bulk mailing of notification of assessment is completed in
2 the taxing district, whichever is later, appeal to the county board of
3 taxation by filing with it a petition of appeal; provided, however, that
4 any such taxpayer or taxing district may on or before April 1, or 45
5 days from the date the bulk mailing of notification of assessment is
6 completed in the taxing district, whichever is later, file a complaint
7 directly with the Tax Court, if the assessed valuation of the property
8 subject to the appeal exceeds \$750,000.00. Within ten days of the
9 completion of the bulk mailing of notification of assessment, the
10 assessor of the taxing district shall file with the county board of
11 taxation a certification setting forth the date on which the bulk mailing
12 was completed. If a county board of taxation completes the bulk
13 mailing of notification of assessment, the tax administrator of the
14 county board of taxation shall within ten days of the completion of the
15 bulk mailing prepare and keep on file a certification setting forth the
16 date on which the bulk mailing was completed. A taxpayer shall have
17 45 days to file an appeal upon the issuance of a notification of a
18 change in assessment. An appeal to the Tax Court by one party in a
19 case in which the Tax Court has jurisdiction shall establish jurisdiction
20 over the entire matter in the Tax Court. All appeals to the Tax Court
21 hereunder shall be in accordance with the provisions of the State
22 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

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

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

33 (cf: P.L.1999, c.208, s.2)

34

35 14. (New section) The provisions of P.L. , c. (C.)
36 (pending before the Legislature as this bill) shall be deemed to be
37 severable, and if any phrase, clause, sentence, word or provision of
38 P.L. , c. (C.) (pending before the Legislature as this bill) is
39 declared to be unconstitutional, invalid or inoperative in whole or in
40 part, or the applicability thereof to any person is held invalid, by a
41 court of competent jurisdiction, the remainder of this act shall not
42 thereby be deemed to be unconstitutional, invalid or inoperative and,
43 to the extent it is not declared unconstitutional, invalid or inoperative,
44 shall be effectuated and enforced.

1 15. (New section) The terms and conditions of any tax exemption
2 approved pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), including
3 any financial agreement, separate agreement or amendment
4 implementing that exemption, are hereby ratified and validated, except
5 for any such exemption which is subject to litigation filed on or before
6 December 5, 2002.

7
8 16. This act shall take effect immediately and shall govern tax
9 appeals filed for the 2003 tax year and thereafter.

10
11
12 STATEMENT
13

14 This bill makes a series of procedural and substantive amendments
15 to the "Long Term Tax Exemption Law" and the "Local
16 Redevelopment and Housing Law." These changes respond to
17 technical problems which have arisen in the implementation of these
18 laws and substantive issues raised in a series of recent court decisions.
19 These decisions threaten to undo the longstanding practices of
20 municipalities in negotiating and granting long term tax exemptions
21 and seriously undermine the vital public purpose served by these
22 redevelopment laws. Recognizing that substantial improvements have
23 been undertaken in redevelopment areas relying upon existing financial
24 agreements, it is the sponsor's intent in introducing this legislation to
25 support the original intent of the Legislature in enacting these laws and
26 facilitate their continued viability.

27 The bill authorizes any municipality that has designated a
28 redevelopment area, provides for a tax abatement within the
29 redevelopment area, and which adopts a housing element to require,
30 by ordinance, that a redeveloper contribute to a housing trust fund
31 established by the municipality as a condition of granting a long term
32 tax abatement. Any such ordinance shall be based upon and consistent
33 with the housing element and spending plan adopted by the
34 municipality under the "Fair Housing Act" and shall be subject to any
35 limitations imposed upon those contributions by the Council on
36 Affordable Housing. The bill requires that the ordinance include
37 detailed guidelines establishing the parameters of this housing
38 contribution.

39 The bill introduces a new criterion which should be considered by
40 municipalities in designating redevelopment areas. Specifically, the bill
41 encourages the designation of redevelopment areas that are consistent
42 with smart growth planning principles adopted pursuant to law or
43 regulation. Those redevelopment areas which are situated in areas in
44 which growth is to be encouraged shall require simple notification of
45 the Commissioner of Community Affairs of the designation of the
46 redevelopment area. Designation of a redevelopment area in an area

1 in which the State seeks to discourage growth, however, shall require
2 the approval of the commissioner.

3 The bill introduces a limited tax abatement for the value of land in
4 the case of developments which are exclusively housing developments
5 in order to promote the appropriate development of affordable housing
6 in the State.

7 The bill requires that municipalities remit to their respective
8 counties 10 percent of annual service charges received pursuant to any
9 financial agreement entered into on or after the effective date of the
10 bill.

11 The bill clarifies the definition of "excess profits" which are
12 allowable under the law and redefines "allowable profit rate" to mean
13 the greater of 12 percent or 1-1/4 percent over and above the annual
14 interest percentage rate payable on the entity's initial permanent
15 mortgage financing.

16 The bill adds to the expenses which may be factored into the
17 calculation of "net profit" all capital costs determined in accordance
18 with generally accepted accounting principles of any other entity
19 whose revenue is included in the computation of excess profits over
20 the term of the abatement. The bill extends those expenses to include
21 all payments of rent and all debt service and removes from the
22 calculation interest which is part of debt service.

23 If the financial agreement so provides, the bill authorizes an
24 exclusion from the total project cost of any extraordinary costs
25 incurred by the entity and certified to the chief financial officer of the
26 municipality in order to alleviate blight conditions within the area in
27 need of redevelopment including, but not limited to, demolition costs,
28 costs associated with the relocation or removal of public utility
29 facilities, relocations costs, and the clearing of title to properties
30 within the area in need of redevelopment in order to facilitate
31 redevelopment.

32 The bill explicitly provides that nothing shall prohibit the transfer
33 of the ownership interest in the urban renewal entity itself, provided
34 that the transfer, if greater than 10 percent, is disclosed to the
35 municipal governing body in the annual disclosure statement or in
36 correspondence sent to the municipality in advance of the annual
37 disclosure statement.

38 The bill provides that a financial agreement shall not take effect
39 until it is approved by municipal ordinance. Currently such
40 agreements are approved by resolution. The bill authorizes
41 municipalities to levy an annual administrative fee, not to exceed two
42 percent of the annual service charge and a fee for the processing of a
43 request for the continuation of a tax exemption.

44 The bill establishes that delivery by the municipal clerk to the
45 municipal tax assessor of a certified copy of the ordinance of the
46 governing body approving the tax exemption and financial agreement

1 with the urban renewal entity shall constitute the required certification.
2 The tax assessor shall implement an exemption and continue to enforce
3 it upon such certification. These tax exemptions are declared to
4 represent long term financial agreements between the municipality and
5 the urban renewal entity and thereby constitute a single continuing
6 exemption from local property taxation for the duration of the financial
7 agreement, under the bill. The validity of a financial agreement or any
8 exemption granted pursuant thereto may be challenged only by filing
9 an action in lieu of prerogative writ within 20 days from the
10 publication of a notice of the adoption of an ordinance by the
11 governing body granting the exemption and approving the financial
12 agreement.

13 The bill ratifies and validates the terms and conditions of any tax
14 exemption approved pursuant to P.L.1991, c.431 (C.40A:20-1 et
15 seq.), including any financial agreement or separate agreement
16 implementing that exemption, except for any such exemption which is
17 subject to litigation filed on or before December 5, 2002. The bill
18 applies to those tax appeals filed beginning with the 2003 tax year.

SENATE BILL NO. 2402
(Third Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2402 (Third Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill would make a series of procedural and substantive amendments to the Long Term Tax Exemption Law and the Local Redevelopment and Housing Law. These changes respond to technical problems that have arisen in the implementation of these laws as well as substantive issues that have been raised in recent court decisions construing these laws.

This bill provides, among other things, for the ratification and validation of the terms and conditions of tax exemptions approved pursuant to the Long Term Tax Exemption Law, or its predecessor statutes, including any financial agreement or separate agreement implementing that exemption. This ratification and validation also includes the structure and methods used to calculate excess profits and annual service charges, including the limitation of revenue, expenses and total project costs to those of the urban renewal entity, regardless of any other entity, whether affiliated or unaffiliated with the urban renewal entity. The bill incorporates provisions to encourage the designation of redevelopment areas that are consistent with smart growth planning principles, and introduces a limited tax exemption for the value of land in the case of developments that are exclusively housing developments in order to promote the appropriate development of affordable housing in the State. The bill also makes changes to the definition of "excess profits" that are allowable under the law and redefines "allowable profit rate" to mean the greater of 12 percent or 1-1/4 percent over the annual interest percentage rate payable on the entity's initial permanent mortgage financing. Additionally,

this bill requires that municipalities remit to their respective counties 10 percent of annual service charges received pursuant to any financial agreements entered into on or after the effective date of the bill.

B. Recommended Action

I commend the sponsors of this bill and the Legislature for their efforts intended to update and enhance the laws governing long-term tax abatements. When prudently utilized, abatements such as those authorized under this bill can be invaluable tools for assisting in the redevelopment of the State's urban resources, consistent with smart growth principles. I am concerned, however, about the provision of this bill mandating that municipalities remit to their respective counties 10 percent of annual service charges received pursuant to financial agreements entered into on or after the effective date of the bill. While I do not disagree that counties may be entitled to receive some measure of the benefits derived from annual service charges received by municipalities, I believe that a lower percentage is appropriate under the circumstances.

As a result of the above considerations, I recommend that the bill be amended to reduce from 10 percent to 5 percent the amount of the annual service charge required to be remitted by a municipality to its respective county. Accordingly, I herewith return Senate Bill No. 2402 (Third Reprint) and recommend that it be amended as follows:

Page 19, Section 11, Line 44: After "remit" delete "10" and insert "5"

Respectfully,

/s/ James E. McGreevey

Governor

[seal]

Attest:

/s/ Michael R. DeCotiis

Chief Counsel to the Governor