

ASSEMBLY, No. 1958

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 4, 2002

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman PAUL SARLO

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

Senator Lesniak

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

A1958 COHEN, SARLO

2

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

3

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

6

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

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

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

29

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

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

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

Matter underlined thus is new matter.

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

10

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

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

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

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

32

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

34 40:56-54. Except as provided in article four of this chapter (s.
35 40:56-58 et seq.) as to cities of the first class, the owner of any
36 property assessed for benefits or awarded damages incidental to the
37 improvements as distinguished from damages for real estate to be
38 taken under this chapter, may within thirty days after confirmation of
39 such assessment or award appeal from the same to the Superior Court
40 by serving written notice of such appeal within such thirty days upon
41 the tax collector and a duplicate upon the clerk of the governing
42 body, either personally or by leaving the same at his office or place of
43 abode. The appeal shall be determined by a trial and, upon the demand
44 of any party thereto, with a jury. The determination shall be by order
45 or judgment subject to the provisions of section 40:56-57 of this Title.

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

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

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

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

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

13

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

15 40:56-55. Except as provided in article four of this chapter (s.
16 40:56-58 et seq.) as to cities of the first class the tax collector shall,
17 upon receiving the certified copy of such order or judgment, note in
18 his books any corrections or changes made thereby and report the
19 same to the chief financial officer of the municipality. The governing
20 body even after confirming any assessment may upon due proof by
21 affidavit of any manifest error order by resolution the correction of
22 such error in any assessment for benefits from which no appeal has
23 been taken, and upon the adoption of such resolution the tax collector
24 shall note and report such correction in the same manner.

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

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

30

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

32 40:56-56. Except as provided in article four of this chapter (s.
33 40:56-58 et seq.) as to cities of the first class, the owner of any real
34 estate or interest therein taken for any improvement mentioned in this
35 chapter may appeal to the Superior Court from the award of damages
36 made for the taking of such property as distinguished from the award
37 for damages incidental to this improvement. The appeal shall be taken
38 within thirty days after confirmation of the assessment or award
39 appealed from by serving a written notice thereof within said thirty
40 days upon the clerk or the chief executive officer of the municipality,
41 either personally, or by leaving the same at his office or place of
42 abode.

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

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

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

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

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

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

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

27

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

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

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

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

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

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

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

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

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

21

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

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

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

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

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

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

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

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

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

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

14

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

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

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

31

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

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36

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STATEMENT

38

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

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