Sponsored by:
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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)
AN ACT concerning liens for local improvements and amending various sections of statutory law.

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

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

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

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

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

40:56-33. Except as provided in article 4 of this chapter (s. 40:56-58 et seq.) as to cities of the first class, every assessment for local improvements together with interest thereon and all costs and charges connected therewith, shall upon [confirmation by the governing body, or by the court.] the effective date of the ordinance or resolution authorizing the assessment be a continuous first lien upon the real estate described in the assessment, paramount to all prior or subsequent alienations and descents of such real estate or encumbrances thereon, except subsequent taxes or assessments, notwithstanding any mistake in the name or names of any owner or owners, or any omission to name any owner or owners who are unknown, and notwithstanding any lack of form therein, or in any 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.
owner or owners or other person or persons having a lien upon or
interest in any such real estate. Confirmation of the amount of the
assessment by the governing body or by the court shall be considered
as determining the amount of the existing lien and not as establishing
the lien. All assessments for local improvements shall be presumed to
have been regularly assessed and confirmed and every assessment or
proceeding preliminary thereto shall be presumed to have been
regularly made or conducted until the contrary be shown.

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

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

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

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

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

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

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

The court shall determine whether or not the assessment or award
of damages appealed from is a just and fair assessment or award, and
if not shall make an order correcting the same or if the assessment or
award is sustained shall so order.
The determination of the court as to all such appeals in the case of
any one improvement shall be embodied in the same order or
judgment, and a certified copy thereof shall be served upon the tax
collector and the clerk of the municipality.
The appeal procedure set forth in this section shall not affect the
validity and commencement of a lien against land that has been
assessed for benefits, but shall be considered to affect only the amount
of the lien.
(cf: P.L.1953, c.37, s.191)
5. R.S.40:56-55 is amended to read as follows:
40:56-55. Except as provided in article four of this chapter (s.
40:56-58 et seq.) as to cities of the first class the tax collector shall,
upon receiving the certified copy of such order or judgment, note in
his books any corrections or changes made thereby and report the
same to the chief financial officer of the municipality. The governing
body even after confirming any assessment may upon due proof by
affidavit of any manifest error order by resolution the correction of
such error in any assessment for benefits from which no appeal has
been taken, and upon the adoption of such resolution the tax collector
shall note and report such correction in the same manner.
The correction procedure set forth in this section shall not affect the
validity and commencement of a lien against land that has been
assessed for benefits, but shall be considered to affect only the amount
of the lien.
(cf: P.L.1953, c.37, s.192)
6. R.S.40:56-56 is amended to read as follows:
40:56-56. Except as provided in article four of this chapter (s.
40:56-58 et seq.) as to cities of the first class, the owner of any real
estate or interest therein taken for any improvement mentioned in this
chapter may appeal to the Superior Court from the award of damages
made for the taking of such property as distinguished from the award
for damages incidental to this improvement. The appeal shall be taken
within thirty days after confirmation of the assessment or award
appealed from by serving a written notice thereof within said thirty
days upon the clerk or the chief executive officer of the municipality,
either personally, or by leaving the same at his office or place of
abode.
An appeal taken pursuant to this section shall not affect the validity
and commencement of a lien against land that has been assessed for
benefits, but shall be considered to affect only the amount of the lien.
(cf: P.L.1953, c.37, s.193)
7. R.S.40:56-62 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

c. Upon adoption, a copy of the ordinance shall be filed for public inspection in the office of the municipal clerk, and there shall be
published in a newspaper, published or circulating in the municipality,
a notice stating the fact and the date of adoption and the place where
the ordinance is filed and a summary of the contents of the ordinance.
The notice shall state that any action or proceeding of any kind or
nature in any court questioning the validity or proper authorization of
the ordinance or the actions authorized to be taken as set forth in the
ordinance shall be commenced within 20 days after the publication of
the notice. If no action or proceeding questioning the validity of the
ordinance providing for tax abatement, special assessments or other
actions authorized by the ordinance shall be commenced or instituted
within 20 days after the publication of the notice, the county and the
school district and all other municipalities within the county and all
residents and taxpayers and owners of property therein shall be forever
barred and foreclosed from instituting or commencing any action or
proceeding in any court questioning the validity or enforceability of
the ordinance or the validity or enforceability of acts authorized under
the ordinance, and the ordinance and acts authorized by the ordinance
shall be conclusively deemed to be valid and enforceable in accordance
with their terms and tenor.
(cf: P.L.1996, c.73, s.8)

10. Section 3 of P.L.2001, c.310 (C.40A:12A-66) is amended to
read as follows:
3. a. A municipality that has designated a redevelopment area may
provide for tax abatement within that redevelopment area and for
payments in lieu of taxes in accordance with the provisions of
(C.40A:21-1 et seq.); provided, however, that the provisions of
section 12 of P.L.1991, c.431 (C.40A:20-12) establishing a minimum
or maximum annual service charge and requiring staged increases in
annual service charges over the term of the exemption period, and of
section 13 of P.L.1991, c.431 (C.40A:20-13) permitting the
relinquishment of status under that act, shall not apply to
redevelopment projects financed with bonds.
b. In addition to, or in lieu of, the tax abatement provided for in
subsection a. of this section, the municipality may provide by
ordinance for one or more special assessments within the
redevelopment area in accordance with chapter 56 of Title 40 of the
Revised Statutes, R.S.40:56-1 et seq., provided, however, that the
provisions of R.S.40:56-35 shall be applied so that if any installment
of a special assessment shall remain unpaid for 30 days after the time
at which it shall become due, the municipality may provide, by
ordinance, either that: (1) the whole assessment or balance due
thereon shall become and be immediately due; or, (2) any subsequent
installments which would not yet have become due except for the
default shall be considered as not in default and that the lien for the
installments not yet due shall continue; and provided, further, that the
ordinance may require that the assessments be payable in quarterly,
semi-annual or yearly installments, with legal interest thereon, over a
period of years up to but in no event exceeding the period of years for
which the bonds were issued, or for 30 years, whichever shall be less.
In levying a special assessment on the lands or improvements, or both,
located in the redevelopment area, the municipality may provide that
the amount of the special assessment shall be a specific amount, not to
exceed the cost of the improvements, paid with respect to property
located in the redevelopment area. That specific amount shall, to the
extent accepted by the owner of the property benefitted, be deemed
the conferred benefit, in lieu of the amount being determined by the
procedures otherwise applicable to determining the actual benefit
conferred on the property. Special assessments levied pursuant to an
ordinance adopted under this subsection shall constitute a municipal
lien [ upon confirmation by the municipal governing body or by the
court,] under R.S.40:56-33[ , except that such amount shall constitute
a municipal lien effective upon the date accepted in writing by the
owner of the property benefitted if prior to the actual confirmation].
c. Upon adoption, a copy of the ordinance shall be filed for public
inspection in the office of the municipal clerk, and there shall be
published in a newspaper, published or circulating in the municipality,
a notice stating the fact and the date of adoption and the place where
the ordinance is filed and a summary of the contents of the ordinance.
The notice shall state that any action or proceeding of any kind or
nature in any court questioning the validity or proper authorization of
the ordinance or the actions authorized to be taken as set forth in the
ordinance shall be commenced within 20 days after the publication of
the notice. If no action or proceeding questioning the validity of the
ordinance providing for tax abatement, special assessments or other
actions authorized by the ordinance shall be commenced or instituted
within 20 days after the publication of the notice, the county and the
school district and all other municipalities within the county and all
residents and taxpayers and owners of property therein shall be forever
barred and foreclosed from instituting or commencing any action or
proceeding in any court questioning the validity or enforceability of
the ordinance or the validity or enforceability of acts authorized under
the ordinance, and the ordinance and acts authorized by the ordinance
shall be conclusively deemed to be valid and enforceable in accordance
with their terms and tenor.
(cf: P.L.2001, c.310, s.3)
11. R.S.54:5-7 is amended to read as follows:
54:5-7. All assessments for benefits for municipal improvements,
including, but not limited to local improvements pursuant to
R.S.40:56-21, shall be a continuous lien on the land on which they are
assessed on and after the date fixed in the laws, or the effective date
of the ordinance or resolution, as the case may be, authorizing the
assessment, or if no date is so fixed, then on and after the date on
which they are payable. The lien shall be considered a statutory lien
for all purposes, including the federal bankruptcy code, regardless of
whether or not the amount of the assessment has been determined at
the time that the lien attaches to the land. A confirmation hearing
process to determine the amount of an assessment, such as is set forth
in R.S.40:56-21, shall not affect the commencement or validity of a
lien under this section. All subsequent interest, penalties and costs of
collection which thereafter accrue shall be added to and be a part of
the initial lien.
(cf: R.S.54:5-7)

12. Section 5 of P.L.1933, c.428 (C.App.A:3-5) is amended to
read as follows:
5. Any municipality may authorize and issue to the federal
government its negotiable bonds for the financing of a public works
project, part of the cost of which is to be specially assessed on
property specially benefited, before such project has been completed
or such special assessment has been confirmed; in such case, the
governing body shall estimate by resolution the part of the cost which
will be specially assessed and the bonds issued to finance such part
shall mature in annual installments, the first of which shall become due
not more than three years and the last of which shall become due not
more than fifteen years from the date of the bonds. Special
assessments levied pursuant to an ordinance or resolution adopted
under this subsection shall constitute a continuing municipal lien under
R.S.40:56-33.
(cf: P.L.1933, c.428, s.5)

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

STATEMENT

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