

SENATE, No. 2581

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 29, 2003

Sponsored by:

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

Senators Bark and Kenny

SYNOPSIS

Establishes the Tax Lien Financing Corporation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/17/2003)

1 AN ACT concerning tax lien financing and supplementing P.L.2002,
2 c.43 (C.52:27BBB-1 et al.).

3

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

6

7 1. This act shall be known and may be cited as the "Tax Lien
8 Financing Corporation Act."

9

10 2. One of the purposes of this act is to authorize, create and
11 establish a corporation empowered to acquire from a qualified
12 municipality all or a portion of the qualified municipality's tax liens.
13 Additional purposes of this act are: to authorize the sale by a qualified
14 municipality of all or a portion of the tax liens to the corporation; to
15 authorize the transfer to and the receipt by the corporation of the tax
16 liens; to authorize the corporation to issue securities of the
17 corporation for the purposes authorized in this act, payable solely from
18 and secured solely by such portion of the tax liens as the corporation
19 may designate and pledge to secure the securities, together with the
20 investment income thereon and any reserve funds created by the
21 corporation from any portion of the proceeds of the securities; to
22 authorize the corporation to hold and invest the portion of the net
23 proceeds of the sale of the securities pending direction by a qualified
24 municipality and the portion of a qualified municipality's tax liens sold
25 to the corporation which are not pledged to secure securities of the
26 corporation; to authorize the corporation to acquire, hold, operate,
27 maintain, improve and dispose of real and personal property; and to
28 authorize the corporation to manage the portion of the net proceeds
29 of the sale of the securities pending direction by a qualified
30 municipality and all or a portion of a qualified municipality's tax liens
31 sold to the corporation for the purposes and in the manner authorized
32 in this act.

33

34 3. a. There is hereby established in, but not of, the Department of
35 the Treasury, a public body corporate and politic, with corporate
36 succession, to be known as the "Tax Lien Financing Corporation."
37 The corporation is hereby constituted as an instrumentality of the State
38 exercising public and essential governmental functions, and the
39 exercise by the corporation of the powers conferred by this act shall
40 be deemed and held to be an essential governmental function of the
41 State. The corporation shall be treated and accounted for as a
42 separate legal entity with its separate corporate purposes as set forth
43 in this act. The assets, liabilities and funds of the corporation shall be
44 neither consolidated nor commingled with those of a qualified
45 municipality or of any entity capable of being a debtor in a case
46 commenced under the federal bankruptcy code.

1 b. The corporation shall have and be governed by five members,
2 including one seat reserved for the State Treasurer, who shall be a
3 member ex officio, a second seat reserved for the Commissioner of
4 Community Affairs, who shall be a member ex-officio, a third seat
5 reserved for a Chief Operating Officer to be selected by the Governor,
6 a fourth seat reserved for a public member appointed by the Governor
7 and who shall serve at the pleasure of the Governor, and a fifth seat
8 reserved for a public member to be appointed by the Governor and
9 selected from three persons nominated by any mayor of any qualified
10 municipality. The State Treasurer shall serve as the chairperson of the
11 corporation. The corporation shall elect from among its members a
12 vice chairperson. The powers of the corporation shall be vested in the
13 members thereof in office from time to time and a majority of the total
14 authorized membership of the corporation shall constitute a quorum
15 at any meeting thereof. Action may be taken and motions and
16 resolutions adopted by the corporation at any meeting thereof by the
17 affirmative vote of a majority of the members present. No vacancy in
18 the membership of the corporation shall impair the right of a quorum
19 of the members to exercise all the powers and perform all the duties
20 of the corporation.

21 c. Each member before entering upon his or her duties shall take
22 and subscribe an oath to perform the duties of his or her office
23 faithfully, impartially and justly to the best of his or her ability. A
24 record of the oaths shall be filed in the office of the Secretary of State.

25 d. The State Treasurer shall be the president of the corporation.
26 The president of the corporation shall appoint the vice president,
27 treasurer and secretary of the corporation. The staff of the office of
28 the State Treasurer shall also serve as staff of the corporation.
29 Officers, agencies, and departments of the State and of a qualified
30 municipality may render services to the corporation within their
31 respective functions, as requested by the corporation.

32 e. Each member and the treasurer of the corporation shall execute
33 a bond to be conditioned upon the faithful performance of the duties
34 of the member or treasurer in the form and amount as may be
35 prescribed by the State Comptroller. The bonds shall be filed in the
36 office of the Secretary of State. At all times thereafter the members
37 and treasurer of the corporation shall maintain the bonds in full force
38 and effect. All costs of the bonds shall be borne by the corporation.

39 f. The members of the corporation shall serve without
40 compensation, but the corporation shall reimburse its members for
41 actual expenses necessarily incurred in the discharge of their duties.
42 Notwithstanding the provisions of any other laws, no officer or
43 employee of a qualified municipality or of the State shall be deemed to
44 have forfeited or shall forfeit office or employment or any benefits or
45 emoluments thereof by reason of that person's acceptance of the office
46 of ex officio member or officer of the corporation.

1 g. Each ex officio member of the corporation may designate an
2 officer or employee of the member's department to represent the
3 member at meetings of the corporation. A designee may lawfully vote
4 and otherwise act on behalf of the member designating the designee.
5 Any designation shall be in writing delivered to the secretary of the
6 corporation and shall continue in effect until revoked or amended by
7 writing delivered to the secretary of the corporation.

8 h. The corporation may be dissolved by act of the Legislature on
9 condition that the corporation has no debts, obligations or residual
10 interests outstanding or that provision has been made for the payment
11 or retirement of the debts, obligations or residual interests. Upon any
12 dissolution of the corporation, all property, funds and assets thereof
13 shall be vested in the State.

14 i. The corporation shall cause an audit of its books and accounts
15 to be made at least once in each year by certified public accountants
16 and cause a copy thereof to be filed with the Secretary of State.

17 j. No member, officer or employee of the corporation shall have an
18 interest, either directly or indirectly, in any business organization
19 engaged in any business, contract or transaction with the corporation
20 or in any contract of any other person engaged in any business with the
21 corporation, or in the purchase, sale, lease or transfer of any property
22 to or from the corporation.

23
24 4. As used in this act, unless the context clearly requires a different
25 meaning:

26 "Ancillary facility" means any revolving credit agreement,
27 agreement establishing a line of credit or letter of credit,
28 reimbursement agreement, interest rate exchange or similar agreement,
29 currency exchange agreement, interest rate floor or cap options, puts
30 or calls to hedge payment, currency, rate, spread or similar exposure
31 or similar agreements, float agreements, forward agreements,
32 insurance contract, surety bond, commitment to purchase or sell
33 securities, purchase or sale agreement, or commitments or other
34 contracts or agreements and other security agreements approved by
35 the corporation, including without limitation any arrangement referred
36 to in section 6 of this act.

37 "Benefitted parties" means person, firms, corporations or
38 organizations that enter into ancillary facilities with the corporation
39 according to the provisions of this act.

40 "Code" means the United States Internal Revenue Code of 1986, as
41 amended, and any successor provision of law.

42 "Costs of issuance" means any item of expense directly or indirectly
43 payable or reimbursable by the corporation and related to the
44 authorization, sale or issuance of securities, including without
45 limitation underwriting fees, and fees and expenses of servicers,
46 auditors, consultants and fiduciaries.

1 "Corporation" means the Tax Lien Financing Corporation
2 established by section 3 of this act.

3 "Encumbered tax lien" means those tax liens that are pledged by the
4 corporation for the repayment of any securities pursuant to the terms
5 of the applicable corporation resolution, trust agreement or indenture.

6 "Financing costs" means all capitalized interest, operating and debt
7 service reserves, costs of issuance, fees for credit and liquidity
8 enhancements, and other costs as the corporation determines to be
9 desirable in issuing, securing and marketing the securities.

10 "Net proceeds" means the amount of proceeds remaining following
11 each sale of securities which are not required by the corporation to
12 establish and fund reserve or escrow funds, or termination or
13 settlement payments under ancillary facilities or to provide the
14 financing costs and other expenses and fees directly related to the
15 authorization and issuance of securities.

16 "Operating expenses" means the reasonable operating expenses of
17 the corporation, including but not limited to the fees and expenses
18 (including legal fees and expenses) incurred in the pursuit of any
19 collections or the foreclosure of, or other realization upon, the tax
20 liens, the fees and costs related to the foreclosure process, the
21 expenses relating to appraisals and property inspections and
22 valuations, the expenses relating to property operation, maintenance,
23 improvement and sale, the fees and disbursements incurred in
24 connection with landlord-tenant proceedings, the expenses related to
25 the sale of properties acquired through foreclosure or other liquidation
26 of tax liens such as advertising, brokerage fees, transfer taxes, legal
27 fees and the cost of setting up reserves for tenant security, the cost of
28 preparation of accounting and other reports, costs of maintenance of
29 the ratings on any securities, insurance premiums and costs of annual
30 meetings or other required activities of the corporation, and fees and
31 expenses incurred for servicers, auditors, consultants and fiduciaries.

32 "Outstanding" means, when used with respect to securities, all
33 securities other than securities that shall have been paid in full at
34 maturity or that may be deemed not outstanding pursuant to the
35 applicable corporation resolution, indenture or trust agreement
36 authorizing the issuance of the securities and when used with respect
37 to ancillary facilities, all ancillary facilities other than ancillary facilities
38 that have been paid in full or that may be deemed not outstanding
39 under the ancillary facilities.

40 "Qualified municipality" means a municipality: (1) that has been
41 subject to the supervision of a financial review board pursuant to the
42 "Special Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et
43 seq.) for at least one year; (2) that has been subject to the supervision
44 of the Local Finance Board pursuant to the "Local Government
45 Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.) for
46 at least one year; and (3) which, according to its most recently

1 adopted municipal budget, is dependent upon State aid and other State
2 revenues for not less than 55 percent of its total budget.

3 "Residual interests" means the interests in the corporation
4 consisting of the ownership by the corporation of the unencumbered
5 tax liens; the net proceeds not previously distributed to a qualified
6 municipality; the income of the corporation that is in excess of the
7 corporation's requirements to pay its operating expenses, debt service,
8 sinking fund requirements, reserve fund or escrow fund requirements
9 and any other contractual obligations to the owners of the securities
10 or benefitted parties, or that may be incurred in connection with the
11 issuance of the securities or the execution of ancillary facilities; such
12 contractual rights, if any, as shall be provided to the corporation in
13 accordance with the terms of any sale agreements; and any and all
14 other remaining undistributed assets of the corporation from time to
15 time after the corporation has paid or made provision for any
16 expenses, obligations or other commitments due to persons other than
17 such qualified municipality.

18 "Sale agreement" means any agreement authorized pursuant to
19 section 5 of this act in which a qualified municipality provides for the
20 sale of tax liens to the corporation.

21 "Securities" means any securities, including without limitation any
22 bonds, notes and other evidence of indebtedness, issued by the
23 corporation pursuant to section 7 of this act.

24 "Tax liens" means those tax liens which are held by a qualified
25 municipality securing delinquent real property taxes, assessments,
26 water, sewer, utilities or other municipal charges by a qualified
27 municipality or certified to a qualified municipality that become a lien
28 on real property and are held by a qualified municipality pursuant to
29 R.S.54:5-34.

30 "Unencumbered tax liens" means that portion of the tax liens that
31 are not subject to the pledge of the applicable corporation resolution,
32 trust agreement or indenture by the corporation to the repayment of
33 any securities issued pursuant to the terms of such applicable
34 corporation resolution, trust agreement or indenture.

35

36 5. a. Authority to Enter into Sale Agreements. A qualified
37 municipality may sell to the corporation, and the corporation may
38 purchase, for cash or other consideration and in one or more
39 installments, all or a portion of the tax liens pursuant to the terms of
40 one or more sale agreements. Any sale agreement shall provide,
41 among other matters, the purchase price payable by the corporation to
42 a qualified municipality for the tax liens, which amount may be more
43 or less than the face amount of the tax liens purchased by the
44 corporation, and may include the residual interests, if any. The sale
45 agreement may require a qualified municipality to repurchase a tax
46 lien, or to substitute another tax lien of equivalent value, under

1 conditions to be specified in the sale agreement. The sale agreement
2 may provide that a qualified municipality shall be obligated to sell to
3 the corporation subsequent tax liens encumbering the property
4 encumbered by the tax liens originally sold and remaining unpaid on
5 such terms as the corporation deems desirable. Any sale shall be
6 conducted pursuant to one or more sale agreements that may contain
7 such terms and conditions deemed appropriate by a qualified
8 municipality to carry out and effectuate the purposes of this section,
9 including, without limitation, covenants binding the qualified
10 municipality in favor of the corporation and its assignees, including,
11 without limitation, the owners of its securities and benefitted parties;
12 a provision authorizing inclusion of the State's pledge and agreement,
13 as set forth in section 10 of this act, in any agreement with owners of
14 the securities or any benefitted parties; and covenants with respect to
15 the application and use of the proceeds of the sale of the qualified
16 municipality's tax liens to preserve the tax exemption of the interest on
17 any securities, if issued as tax exempt. A qualified municipality in any
18 sale agreement may agree to, and the corporation may provide for, the
19 assignment of the corporation's right, title and interest under the sale
20 agreement for the benefit and security of the owners of securities and
21 benefitted parties. The residual interest shall be uncertificated.

22 b. True Sale. Any sale of tax liens to the corporation pursuant to
23 a sale agreement shall constitute a true sale and absolute transfer of
24 the property so transferred and not a pledge or a grant of a security
25 interest for any borrowing. The characterization of a sale as an
26 absolute transfer by the participants shall not be negated or adversely
27 affected by the fact that only a portion of a qualified municipality's tax
28 liens is transferred, nor by the acquisition or retention by a qualified
29 municipality of a residual interest, nor by the characterization of the
30 corporation or its obligations for purposes of accounting, taxation or
31 securities regulation, nor by any actual pledge, assignment or grant of
32 a security interest in the tax liens and any proceeds of the tax liens, nor
33 by any other factor whatsoever.

34 c. Qualified Municipality to Notify Collector. On and after the
35 effective date of each sale of tax liens, a qualified municipality shall
36 have no right, title or interest in or to the tax liens sold, and the tax
37 liens so sold shall be property of the corporation and not of the
38 qualified municipality, and shall be owned and held by the corporation
39 and not the qualified municipality. On or before the effective date of
40 any sale, the qualified municipality shall notify the collector that the
41 tax liens have been sold to the corporation and irrevocably instruct the
42 collector that, subsequent to the effective date of the sale, it shall pay
43 over to the corporation or its designee within two days of its receipt
44 any payments made on the transferred tax liens for the benefit of the
45 owners of the securities and benefitted parties.

1 d. No Right to Cancel, Reduce or Compromise. Notwithstanding
2 any other law to the contrary, a qualified municipality shall not have
3 any right to cancel, reduce or compromise any taxes, penalties or
4 interest secured by a tax lien sold pursuant to this act or extend the
5 time for payment thereof. A qualified municipality may not waive any
6 penalties and interest on a tax lien that has been sold pursuant to this
7 act.

8 e. Sale by Assignment. A qualified municipality's sale of tax liens
9 to the corporation shall be made by assignment. The certificates of
10 sale may be assigned separately or in bulk with other such certificates.
11 Upon such assignment, the qualified municipality shall promptly
12 deliver such certificates to the corporation or its designee.

13 f. Recording. Any and all further or additional assignments of the
14 tax sale certificates shall promptly be recorded in the office of the
15 county clerk or the register of deeds and mortgages, as the case may
16 be, of the county where the real property is located, and a photocopy
17 of the recorded assignment shall be served upon the collector by
18 certified mail, return receipt requested. When assignments have not
19 been recorded and served upon the collector, the collector shall be
20 held harmless for the payment of any redemption amounts to the
21 holder of the certificate of sale as appears on the records of the
22 collector. All assignments must be submitted to the office of the
23 county clerk or register of deeds and mortgages for recording within
24 90 days of the sale by assignment.

25 g. Presumptive Evidence. The certificate of sale shall be
26 presumptive evidence in all courts in all proceedings by and against the
27 corporation of the truth of the statements therein, of the title of the
28 corporation in the transferred tax liens, and the regularity and validity
29 of all proceedings had in reference to the sale. After six months from
30 the recording of the certificate of sale, no evidence shall be admitted
31 in any court to rebut the presumption that the lien purported to be
32 transferred by the certificate of sale is a valid and enforceable lien,
33 unless the corporation shall have procured it by fraud, or had previous
34 knowledge that it was fraudulently made or procured.

35 h. Destruction or Loss of a Certificate. In case of the destruction
36 or loss of a certificate of sale issued by a qualified municipality, the
37 corporation shall present an affidavit of destroyed or lost certificate to
38 the collector, and the collector shall then issue and execute a new
39 certificate of sale in place of the one destroyed or lost. There shall
40 appear on the new certificate a statement that it is a duplicate of the
41 original certificate of sale that was destroyed or lost, the date of the
42 original certificate, the date of the tax sale of the original certificate,
43 the date the original certificate was issued and the name and title of the
44 officer who issued the original certificate.

45 i. Duplicate Certificate and Time Limit to Redeem. The time limit
46 within which the right to redeem from any tax sale in which a duplicate

1 certificate has been issued shall be the same as though the original
2 certificate had not been destroyed or lost.

3 j. Amount Required for Redemption. Any person having a legal
4 and beneficial interest in the property affected by a certificate of sale
5 acquired by the corporation may satisfy the outstanding lien on the
6 property at any time upon payment to the collector of all sums due
7 with respect to such certificate and for subsequent taxes, municipal
8 liens and charges, and interest and costs thereon, together with interest
9 on the amounts so paid at the rate or rates chargeable by the qualified
10 municipality.

11 k. Cancellation of Certificate Upon Redemption. Upon satisfaction
12 of a tax lien, the redeeming party shall be entitled to have, upon
13 demand, the certificate of sale, duly receipted for cancellation, or a
14 certificate of redemption thereof, duly executed, stating that said
15 certificate of sale may be canceled of record in the manner prescribed
16 by law.

17 l. Duties Upon Redemption. The collector, on receiving payment
18 as set forth in subsection j. of this section from a redeeming party,
19 shall confirm with the corporation that such payment constitutes a
20 payment in full. Upon such confirmation, the collector shall execute
21 and deliver to the redeeming party a certificate of redemption which
22 may be recorded with the county clerk or register of deeds and
23 mortgages, as appropriate. The county clerk or register of deeds and
24 mortgages, as appropriate, shall, on request, note on the record of the
25 original certificate of sale a reference to the record of the certificate
26 of redemption, and shall be entitled to the same fees as provided for
27 the cancellation of a mortgage, or, at the option of the redeeming
28 party, the collector shall request the corporation to deliver to it the
29 certificate of sale and in turn, the collector shall deliver to the
30 redeeming party the certificate of sale receipted for cancellation by
31 endorsement in the same manner required by the law of the State to
32 satisfy or cancel a mortgage, whereupon the record of the certificate
33 of sale shall be canceled by the county clerk or register of deeds and
34 mortgages in the same manner and for the same fees as in the case of
35 a mortgage.

36 m. Installment Agreements. If the corporation holds a certificate
37 of sale, it shall be entitled in its own name or in the name of its duly
38 authorized representative to enter into installment agreements with the
39 related taxpayers as if it were a municipality acting pursuant to Title
40 54 of the Revised Statutes and on such terms as the corporation deems
41 desirable; provided, however, that the payment of the total sum due
42 the corporation on any one parcel shall be made in substantially equal
43 monthly installments, over a period not exceeding five years.

44 n. Filing of Installment Agreements. The installment agreement
45 must be in writing and filed with the collector where the property is
46 located. Upon due execution of the installment agreement the

1 corporation shall forward a true copy of the agreement to the
2 collector's office.

3 o. Foreclosure. When the corporation is the purchaser or assignee
4 of a certificate of sale, the corporation, or its assignee or transferee,
5 may, in its own name or in the name of its duly authorized
6 representative, at any time after the expiration of the term of six
7 months from the issuance of the certificate of sale, institute a
8 procedure to foreclose the right of redemption. The corporation shall
9 be entitled to foreclose the tax lien or liens evidenced thereby in the
10 manner provided by the law for the foreclosure of tax liens as if it were
11 a municipality. In connection with the enforcement of a tax lien, all
12 statutory references to a municipality acting pursuant to the provision
13 of Title 54 of the Revised Statutes shall be deemed to refer to the
14 corporation, and all references to actions to be taken by an officer of
15 the municipality shall be deemed to refer to an appropriate officer or
16 duly authorized representative of the corporation.

17 p. Jurisdiction of Court. The Superior Court, in a procedure to
18 foreclose the right of redemption, may give full and complete relief
19 under this act, in accordance with other statutory authority of the
20 court, to bar the right of redemption and to foreclose all prior or
21 subsequent alienations and descents of the lands and encumbrances
22 thereon, except subsequent municipal liens, and to adjudge an absolute
23 and indefeasible estate of inheritance in fee simple, to be vested in the
24 purchaser or assignee. The judgment shall be final upon the
25 defendants, their heirs, devisees and personal representatives, and any
26 of their heirs, devisees, executors, administrators, grantees, assigns or
27 successors in right, title or interest and no application shall be
28 entertained to reopen the judgment after the date thereof, and then
29 only upon the grounds of lack of jurisdiction or fraud in the conduct
30 of the suit. The judgment and recording thereof shall not be deemed
31 a sale, transfer, or conveyance of title or interest to the subject
32 property under the provisions of the "Uniform Fraudulent Transfer
33 Act," R.S.25:2-20 et seq.

34 In the event that any federal statute or regulation requires a judicial
35 sale of the property in order to debar and foreclose a mortgage interest
36 or any other lien held by the United States or any agency or
37 instrumentality thereof, then the tax lien may be foreclosed in the same
38 manner as a mortgage, and the final judgment shall provide for the
39 issuance of a writ of execution to the sheriff of the county wherein the
40 property is situated and the holding of a judicial sale as in the manner
41 of the foreclosure of a mortgage.

42 q. Conflict. In connection with the foreclosure of the right of
43 redemption, in the event of any conflict between this act and any other
44 law relating to the foreclosure of the right of redemption, this act shall
45 be given precedence over the other law or laws.

1 r. Recovery of Fees and Expenses. To the extent permitted by law,
2 in connection with the foreclosure of tax liens, the corporation or its
3 designee shall have the right to recover attorneys' fees and
4 disbursements incurred relating to the foreclosure at the time such fees
5 and disbursements are incurred, together with the expenses of the sale.

6 s. Evidence of Payments of Subsequent Tax Liens at Foreclosure.
7 Notwithstanding R.S.54:5-99, in connection with the foreclosure of
8 tax liens, the corporation or its designee shall produce evidence that
9 all subsequent tax liens on the related land have been paid in full at the
10 time a foreclosure judgment shall be entered. The evidence shall not
11 be required to be produced at the commencement of a foreclosure
12 procedure.

13

14 6. The corporation also shall have the power to and be authorized
15 to:

16 a. sue and be sued;

17 b. have a seal and alter the same at its pleasure;

18 c. make and alter by laws for its organization and internal
19 management and make rules and regulations governing the use of its
20 property and facilities;

21 d. make and execute contracts including, without limitation, sale
22 agreements, trust agreements, indentures, bond purchase agreements,
23 tax regulatory agreements, continuing disclosure agreements, servicing
24 agreements, ancillary facilities, and all other instruments necessary or
25 convenient for the exercise of its powers and functions, and commence
26 any action to protect or enforce any right conferred upon it by any
27 law, contract or other agreement;

28 e. engage, in such manner as the corporation may determine, the
29 services of financial advisors and experts, servicers, contractors, real
30 estate agents, property maintenance contractors, custodians, placement
31 agents, underwriters, appraisers and such other advisors, auditors,
32 consultants, and fiduciaries as may be necessary to effectuate the
33 purposes of this act;

34 f. pay its operating expenses and financing costs;

35 g. borrow money in its name and issue negotiable securities and
36 provide for the rights of the owners thereof;

37 h. procure insurance against any loss in connection with its
38 activities, properties and assets in such amount and from insurers as it
39 deems desirable;

40 i. invest any funds or other moneys under its custody and control
41 in investments and securities that are legal investments under the laws
42 of the State for funds of the State and, notwithstanding any law to the
43 contrary, in any ancillary facility, in obligations the interest on which
44 is exempt from federal income taxation under the code and in shares
45 or participation interests in funds or trusts that invest solely in such
46 obligations;

- 1 j. as security for the payment of the principal of and interest on any
2 securities and for its obligations under any ancillary facility, transfer,
3 assign or pledge all or any part of the tax liens or other assets;
- 4 k. procure insurance, letters of credit or other credit enhancement
5 with respect to any securities for the payment of tenders of securities,
6 or for the payment upon maturity of securities;
- 7 l. (1) enter into any ancillary facility with any person under such
8 terms and conditions as the corporation may determine;
- 9 (2) procure insurance, letters of credit or other credit enhancement
10 with respect to any ancillary facility;
- 11 (3) provide security for the payment or performance of its
12 obligations with respect to any ancillary facility from such sources and
13 with the same effect as is authorized by this act with respect to
14 security for securities; and
- 15 (4) modify, amend or replace any existing, or enter into a new,
16 ancillary facility; and
- 17 m. establish, create or otherwise form and control one or more
18 trusts or other single purpose entities to facilitate the purchase of tax
19 liens and the issuance of tax lien collateralized securities;
- 20 n. acquire, hold and dispose of real and personal property for its
21 corporate purposes;
- 22 o. cancel, reduce or compromise any taxes, penalties or interest
23 secured by tax liens sold pursuant to this act or extend the time for
24 payment thereof; provided, however, that in the event such reduction
25 causes the principal sum of any taxes secured by the tax liens to fall
26 below the fair market value of the underlying property, the corporation
27 shall obtain the approval of the board prior to such reduction; and
- 28 p. do any and all things necessary or convenient to carry out its
29 purposes and exercise the powers expressly given and granted in this
30 act.
- 31
- 32 7. a. The corporation shall have the power and is hereby
33 authorized from time to time to issue securities in principal amount or
34 amounts as the corporation shall determine to be necessary to provide
35 sufficient funds for achieving its authorized purposes, consisting of the
36 purchase of all or a portion of a qualified municipality's tax liens
37 pursuant to section 5 of this act and the payment of or provision for
38 financing costs.
- 39 (1) The issuance of securities shall be authorized by a corporation
40 resolution. Other than the express written consent of the State
41 Treasurer, securities (including securities issued to refund securities)
42 may be issued without obtaining the consent of any department,
43 division, commission, board, bureau or agency of a qualified
44 municipality and without any other proceedings or the occurrence of
45 any other conditions or other things other than those proceedings,
46 conditions or things which are specifically required by this act. Every

1 issue of securities shall be special revenue obligations payable from,
2 and secured, in whole or in part, by a pledge of encumbered tax liens
3 or other assets, or both, including, without limitation, those proceeds
4 of the securities deposited in a reserve fund for the benefit of the
5 owners of the securities, earnings on funds of the corporation and
6 other funds as may become available, as specified by the corporation
7 in the corporation resolution pursuant to which the securities are
8 issued or in a related trust agreement, indenture or sale agreement.

9 (2) The corporation may issue securities to refund any securities by
10 the issuance of new securities, whenever it deems refunding expedient,
11 whether the securities to be refunded have or have not matured, and
12 may issue securities partly to refund securities then outstanding and
13 partly for any of its other authorized purposes. The refunding
14 securities may be exchanged for the securities to be refunded or sold
15 and the proceeds applied to the purchase, redemption or payment of
16 the securities.

17 b. Each issue of securities shall be dated, shall bear interest (which
18 under the code may be includable in or excludable from the gross
19 income tax of the owners for federal income tax purposes) at such
20 fixed or variable rates, payable at or prior to maturity, and shall mature
21 at such time or times, as may be determined by the corporation and
22 may be made redeemable before maturity, at the option of the
23 corporation, at such price or prices and under such terms and
24 conditions as may be fixed by the corporation. The principal and
25 interest of the securities may be made payable in any lawful medium.
26 The corporation shall determine the form of the securities, either
27 coupon, registered or book entry form, and the manner of execution
28 of the securities and shall fix the denomination or denominations of the
29 securities and the place or places of payment of principal and interest
30 thereof, which may be at any bank or trust company within or without
31 a qualified municipality. If any officer whose signature or a facsimile
32 thereof appears on any securities shall cease to be the officer before
33 the delivery of the securities, the signature or facsimile shall
34 nevertheless be valid and sufficient for all purposes as if he or she had
35 remained in office until delivery. The securities may be issued in
36 coupon or in registered form or both, as the corporation may
37 determine, and provisions may be made for the registration of any
38 coupon securities as to principal alone, interest alone and as to both
39 principal and interest and for the reconversion of any securities
40 registered as to both principal and interest into coupon securities. The
41 corporation may also provide for temporary securities and for the
42 replacement of any security that shall become mutilated or shall be
43 destroyed or lost.

44 c. The corporation may sell the securities in any manner, either at
45 public or private sale and on either a competitive or negotiated basis.
46 The proceeds of the securities shall be disbursed for the purposes for

1 which the securities were issued as the act, the sale agreement and the
2 corporation resolution authorizing the issuance of the securities or the
3 related trust agreement or indenture may provide.

4 d. Any pledge made by the corporation shall be valid and binding
5 at the time the pledge is made. The revenues, reserves or earnings so
6 pledged, or earnings on the investment thereof, shall immediately be
7 subject to the lien of the pledge without any physical delivery thereof
8 or further act, and the lien of the pledge shall be valid and binding as
9 against all parties having claims of any kind in tort, contract or
10 otherwise against the corporation, irrespective of whether the parties
11 have notice thereof. Notwithstanding any other provision of law to
12 the contrary, neither the corporation resolution nor any trust
13 agreement or indenture or other instrument by which a pledge is
14 created, or by which the corporation's interest in the encumbered tax
15 liens, reserves or earnings thereon or in properties acquired by the
16 corporation as a result of the foreclosure or other liquidation of tax
17 liens is assigned, need be filed or recorded in any public records in
18 order to protect the pledge thereof, or perfect the lien thereof, as
19 against third parties, except that a copy thereof shall be filed in the
20 records of the corporation.

21 e. Notwithstanding the provisions of any other law to the contrary,
22 any securities issued pursuant to this act shall be fully negotiable
23 within the meaning and for all purposes of Title 12A of the New Jersey
24 Statutes, and each owner of such a security or other obligation, by
25 accepting the security shall be conclusively deemed to have agreed that
26 the security is and shall be fully negotiable within the meaning and for
27 all purposes of Title 12A.

28 f. In the discretion of the corporation, any securities and any
29 ancillary facilities may be secured by a trust agreement or indenture by
30 and between the corporation and the trustee thereunder, which may be
31 any trust company or bank having the powers of a trust company,
32 whether located within or without the State. A trust agreement or
33 indenture or corporation resolution providing for the issuance of
34 securities may provide for the creation and maintenance of such
35 reserves as the corporation shall determine to be proper and may
36 include covenants setting forth the duties of the corporation in relation
37 to the securities, the ancillary facilities, the income to the corporation,
38 the sale agreement, the encumbered tax liens and residual interests.
39 The trust agreement, indenture or corporation resolution may contain
40 provisions respecting the servicing of the tax liens, the custody,
41 safeguarding and application of all moneys and securities, and may
42 contain such provisions for protecting and enforcing the rights and
43 remedies (pursuant thereto and to the sale agreement) of the owners
44 of the securities and benefitted parties as may be reasonable and
45 proper and not in violation of law. It shall be lawful for any bank or
46 trust company incorporated under the laws of the State which may act

1 as depository of the proceeds of securities or of any other funds or
2 obligations received on behalf of the corporation to furnish such
3 indemnifying bonds or to pledge such obligations as may be required
4 by the corporation. Any trust agreement or indenture or corporation
5 resolution may contain such other provisions as the corporation may
6 deem reasonable and proper for priorities and subordination among the
7 owners of the securities and benefitted parties.

8 g. The corporation may enter into, amend or terminate, as it
9 determines to be necessary or appropriate, any ancillary facilities to
10 facilitate the issuance, sale, resale, purchase, repurchase or payment
11 of securities. The determination of the corporation that an ancillary
12 facility or the amendment or termination thereof is necessary or
13 appropriate as aforesaid shall be conclusive. The ancillary facility shall
14 be made upon the terms and conditions established by the corporation,
15 including, without limitation, provisions as to security, default,
16 termination, payment, remedy and consent to service of process.

17 h. The corporation may enter into, amend or terminate any
18 ancillary facility as it determines to be necessary or appropriate to
19 place the obligations or investments of the corporation, as represented
20 by the securities or the investment of their proceeds, in whole or in
21 part, on the interest rate, cash flow or other basis desired by the
22 corporation. These contracts or arrangements may be entered into by
23 the corporation in connection with, or incidental to, entering into, or
24 maintaining any (1) agreement which secures securities of the
25 corporation or (2) investment, or contract providing for investments,
26 of reserves or similar facility guaranteeing an investment rate for a
27 period of years. The determination by the corporation that an ancillary
28 facility or the amendment or termination thereof is necessary or
29 appropriate as aforesaid shall be conclusive. Any ancillary facility may
30 contain such payment, security, default, remedy, termination
31 provisions and payments, and other terms and conditions as
32 determined by the corporation, after giving due consideration to the
33 creditworthiness of the counterparty or other obligated party,
34 including, without limitation, any rating by any nationally recognized
35 rating agency, and any other criteria as may be appropriate.

36 i. Securities and ancillary facilities may contain a recital that they
37 are issued pursuant to this act, which recital shall be conclusive
38 evidence of their validity, the validity of any ancillary facility and the
39 regularity of the proceedings relating thereto.

40 j. Neither the members of the corporation nor any other person
41 executing the securities or an ancillary facility shall be subject to any
42 personal liability or accountability by reason of the issuance or
43 execution and delivery thereof.

44

45 8. The securities and any ancillary facility shall not be a debt or
46 liability of the State, a qualified municipality or any agency or

1 instrumentality of either thereof (other than the corporation as set
2 forth in this act), either legal, moral or otherwise, and nothing
3 contained in this act shall be construed to authorize the corporation to
4 incur any indebtedness on behalf of or in any way to obligate the State
5 or a qualified municipality (excluding a qualified municipality's
6 obligation, if any, to repurchase or substitute for a tax lien pursuant to
7 the terms set forth in the sale agreement), and the securities and any
8 ancillary facility shall contain on the face thereof, or other prominent
9 place thereon, in bold typeface, a statement to the foregoing effect.
10

11 9. a. It is hereby determined that the creation of the corporation
12 and the carrying out of its authorized purposes is in all respects a
13 public and governmental purpose for the benefit of the people of a
14 qualified municipality and for the improvement of financial security of
15 a qualified municipality, and that said purposes are public purposes
16 and that the corporation will be performing an essential governmental
17 function in the exercise of the powers conferred upon it by this act.

18 b. The property of the corporation and its income and operations
19 shall be exempt from all State taxation.

20 c. The securities and the interest thereon and the income derived
21 from all funds, revenues, incomes and other moneys received for or to
22 be received by the corporation and the properties and income thereon
23 acquired and held by the corporation or its designee as a result of the
24 foreclosure or other liquidation of tax liens shall be exempt from all
25 taxes levied pursuant to the provisions of Title 54 of the Revised
26 Statutes or Title 54A of the New Jersey Statutes, except for transfer
27 inheritance and estate taxes levied pursuant to Subtitle 5 of Title 54 of
28 the Revised Statutes.

29 d. In the case of any securities, the interest on which is exempt
30 from federal and State (personal and corporate) income tax, the
31 corporation may prescribe restrictions on the use of the proceeds
32 thereof and related matters as may be necessary to assure such
33 exemption, if any, and the recipients of such proceeds shall then be
34 bound thereby to the extent such restrictions shall be made applicable
35 to them. Any such recipient, including without limitation, a qualified
36 municipality, is authorized to execute a tax regulatory agreement with
37 the corporation and the execution of such an agreement may be treated
38 as a condition to receiving any such proceeds.
39

40 10. a. The State hereby pledges and agrees with the corporation,
41 the owners of the securities and benefitted parties, that until all
42 securities and ancillary facilities, together with the interest thereon and
43 all costs and expenses in connection with any action or proceedings by
44 or on behalf of owners of securities or benefitted parties, are fully paid
45 and discharged the State will (1) not limit or alter the rights of the
46 corporation to fulfill the terms of its agreements with the owners or

1 benefitted parties and (2) not in any way impair the rights and
2 remedies of the owners or benefitted parties or the security for the
3 securities or ancillary facilities. The State is authorized and directed
4 to include this pledge and agreement in sale agreements and the
5 corporation is authorized and directed to include this pledge and
6 agreement in any contract with the owners of the securities and
7 benefitted parties.

8 b. Prior to the date that is one year and one day after the
9 corporation no longer has any securities or ancillary facilities
10 outstanding, the corporation shall have no authority to file a voluntary
11 petition under chapter 9 of the federal bankruptcy code or the
12 corresponding chapter or sections as may, from time to time, be in
13 effect, and neither any public officer nor any organization, entity or
14 other person shall authorize the corporation to be or become a debtor
15 under chapter 9, or any successor or corresponding chapter or
16 sections, during this period. The State hereby covenants with the
17 owners of the securities and benefitted parties that the State will not
18 limit or alter the denial of the corporation under this subsection during
19 the period referred to in the preceding sentence. The corporation is
20 authorized and directed to include this covenant as an agreement of
21 the state in any contract with the owners of the securities and
22 benefitted parties.

23

24 11. Neither any member of the corporation nor any officer,
25 employee or agent of the corporation, while acting within the scope of
26 his or her authority, shall be subject to any personal liability resulting
27 from exercising or carrying out of any of the corporation's purposes
28 or powers.

29

30 12. The corporation may adopt any rule and regulation to
31 effectuate the purposes of this act and, if it does so, shall apply the
32 procedures of the "Administrative Procedure Act," P.L.1968, c.410
33 (C.52:14B-1 et seq.), with respect thereto.

34

35 13. This act and all powers granted hereby shall be liberally
36 construed to effectuate its intent and their purposes, without implied
37 limitations thereon. This act shall constitute full and complete
38 authority for all things herein contemplated to be done. All rights and
39 powers herein granted shall be cumulative with those derived from
40 other sources and shall not, except as expressly stated herein, be
41 construed in limitation thereof. Insofar as the provisions of this act are
42 inconsistent with the provisions of any other act, general or special,
43 the provisions of this act shall be controlling. If any clause, sentence,
44 paragraph, section or part of this act be adjudged by any court of
45 competent jurisdiction to be invalid, the judgment shall not affect,
46 impair or invalidate the remainder hereof, but shall be applied in its

1 operation to the clause, sentence, paragraph, section or part hereof
2 directly involved in the controversy in which the judgment shall have
3 been rendered.

4

5 14. Title 54 of the Revised Statutes shall remain in full force and
6 effect. In the event of any conflict between this act and Title 54 of the
7 Revised Statutes, this act shall be given precedence over such other
8 law.

9

10 15. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill would authorize and establish a corporation empowered to
16 acquire from a qualified municipality all or a portion of the qualified
17 municipality's tax liens. The bill would authorize a qualified
18 municipality to sell all or a portion of its tax liens to the corporation
19 and authorize the transfer to and the receipt by the corporation of the
20 tax lien. The bill would authorize the corporation to issue securities,
21 payable solely from, and secured solely by, a portion of the tax liens,
22 together with the investment income thereon and any reserve funds
23 created by the corporation from any portion of the proceeds of the
24 securities. The bill would authorize the corporation to hold and invest
25 the portion of the net proceeds of the sale of the securities pending
26 direction by a qualified municipality, and the portion of a qualified
27 municipality's tax liens sold to the corporation which are not pledged
28 to secure securities of the corporation. Further, the bill would
29 authorize the corporation to acquire, hold, operate, maintain, improve
30 and dispose of real and personal property, and to manage the portion
31 of the net proceeds of the sale of the securities, pending direction by
32 a qualified municipality and all or a portion of a qualified municipality's
33 tax liens sold to the corporation for the purposes and in the manner
34 authorized in the bill.