P.L. 2004, CHAPTER 112, approved August 4, 2004
Assembly, No. 2791

AN ACT expanding the mechanisms available to finance local

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

1. Section 2 of P.L.2001, c.310 (C.40A:12A-65) is amended to
read as follows:
2. As used in sections 1 through 10 of P.L.2001, c.310
(C.40A:12A-64 et seq.):
"Authority" means the New Jersey Economic Development
Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.),
the New Jersey Redevelopment Authority established pursuant to
section 4 of P.L.1996, c.62 (C.55:19-23) or other instrumentality
created by law by the State with the power to incur debt and issue
bonds and other obligations.
"Board" means the Local Finance Board established in the Division
of Local Government Services in the Department of Community
Affairs.
"Bonds" mean bonds, notes or other obligations issued by the
authority, including any State entity, or a municipality to finance or
refinance redevelopment projects, and in connection therewith, to
finance or refinance any other cost or expense of an authority, a State
entity or a municipality pursuant to the "Redevelopment Area Bond
Financing Law," sections 1 through 10 of P.L.2001, c.310
(C.40A:12A-64 et seq.), the "Local Redevelopment and Housing
Law", P.L.1992, c.79 (C.40A:12A-1 et seq.), or other applicable law.
"Financial agreement" means an agreement that meets the
requirements of a financial agreement under P.L.1991, c.431
(C.40A:20-1 et seq.) or, in the event that real property within a
redevelopment area is exempt from taxation or has been or will be
abated pursuant to applicable law, an agreement among a State entity,
a municipality and a State entity redeveloper providing for payment of
payments in lieu of taxes or special assessments by the State entity
redeveloper with respect to a redevelopment project, or part thereof,
to be carried out pursuant to a State entity redevelopment agreement.
"Municipality" means the municipal governing body or an entity
acting on behalf of the municipality if permitted by the federal Internal
Revenue Code of 1986, or, if a redevelopment agency or
redevelopment entity is established in the municipality pursuant to
P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so

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.
provides, the redevelopment agency or entity so established.

"Redeveloper" means any person, firm, corporation or public body, including the New Jersey Economic Development Authority or the New Jersey Redevelopment Authority to the extent permitted by law, that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, and any other related costs and expenses including preliminary planning and development costs and any financing costs and expenses in accordance with a redevelopment plan.

"Redevelopment bond financing agreement" means a contract between a municipality and a redeveloper for any work or undertaking for the redevelopment of a redevelopment area, or part thereof, under the provisions of the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.) or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), as the case may be.

"Redevelopment area" means an area which has been delineated a "redevelopment area" or "area in need of redevelopment" pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or an area in need of redevelopment delineated by a resolution of a State entity in accordance with the provisions of the enabling statute governing that State entity.

"Redevelopment plan" means a plan for the redevelopment or rehabilitation of all or any part of a redevelopment area as described in the redevelopment plan adopted pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7) or as described in the resolution adopted by a State entity determining the location, type and character of a redevelopment project.

"Redevelopment project" means any work or undertaking pursuant to a redevelopment plan; such undertaking may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping,
and administrative, community, health, recreational, educational, and
welfare facilities and any other related costs and expenses including
preliminary planning and development costs and any financing costs
and expenses.

"Special assessment" means an assessment upon the lands or
improvements on such lands, or both, in the redevelopment area
benefitted by improvements undertaken pursuant to the
"Redevelopment Area Bond Financing Law," sections 1 through 10 of
P.L.2001, c.310 (C.40A:12A-64 et seq.), or the "Local
seq.), and assessed pursuant to chapter 56 of Title 40 of the Revised
Statutes, R.S. 40:56-1 et seq., except as otherwise provided in

"State entity" means the New Jersey Meadowlands Commission
established pursuant to P.L.1968, c.404 (C.13:17-1 et seq.) or any
other entity created by State law with the power to undertake a
redevelopment project directly or through a State entity redeveloper
and with the power to determine the location, type and character of a
redevelopment project or part of a redevelopment project on land
owned or controlled by it.

"State entity redeveloper" means any person, firm or corporation
that shall enter into or propose to enter into a State entity
redevelopment agreement with a State entity for the redevelopment or
rehabilitation of a redevelopment area under the enabling legislation
governing the actions of the State entity or for any construction or
other work forming a part of a redevelopment project.

"State entity redevelopment agreement" means an agreement
between a State entity and a State entity redeveloper for any work or
undertaking in a redevelopment area.

(cf: P.L.2001, c.310, s.2)

2. 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 or
a municipality in which a redevelopment project is undertaken by a
State entity redeveloper pursuant to a State entity redevelopment
agreement may provide for tax abatement within that redevelopment
area and for payments in lieu of taxes in accordance with the
c.441 (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. A municipality in which a redevelopment project is undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement regarding real property that is or may be abated by applicable law may provide for a tax abatement within the redevelopment area and for payments in lieu of taxes pursuant to a financial agreement between the municipality and the State entity redeveloper receiving the benefits of P.L. c. (pending before the Legislature as this bill) without regard to the limitations and other provisions of P.L.1991, c.431 (C.40A:20-1 et seq.).

c. In addition to, or in lieu of, the tax abatement provided for in subsection a. or b. 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 under R.S.40:56-33;

d. 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.2002, c.15, s.10)

3. Section 4 of P.L.2001, c.310 (C.40A:12A-67) is amended to read as follows:

4. a. The municipality may issue bonds itself in the manner provided for herein or pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or may apply to the authority to issue bonds, regardless of whether the redevelopment project is undertaken under municipal authority pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity redeveloper pursuant to a State entity redevelopment agreement, which in [either] any case may be secured by payments in lieu of taxes or special assessments or both or a portion thereof, by the adoption of a resolution or ordinance, as applicable, of the governing body of the municipality, authority or State entity to that effect.

b. A municipality that has designated a redevelopment area or in which a redevelopment project is undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement may, by resolution of its governing body, if it determines to issue bonds through the authority, enter into contracts with the authority relating to [any project or projects for the purpose of financing or refinancing redevelopment] that redevelopment project, or to act as a redeveloper[.] or to finance or refinance a redevelopment project undertaken by a State entity redeveloper pursuant to a State entity redevelopment agreement within a redevelopment area. A resolution so adopted shall contain findings and determinations of the governing body: (1) that all or a portion of the redevelopment project undertaken within the municipality will result in the redevelopment of the municipality; and, (2) that the contract with the authority or, to the extent applicable, the financial agreement with the State entity redeveloper, is a necessary or important inducement to the undertaking of the project or the redevelopment project undertaken by the State entity redeveloper in that [the contract] it makes the financing thereof
feasible. The contract or contracts, or the terms of any bonds issued
directly by a municipality may provide for the assignment, for the
benefit of bondholders, of all or any portion of payments in lieu of
taxes, or special assessments, or both. A contract may be made and
entered into for a term beginning currently or at some future or
contingent date, and with or without consideration, and for a specified
or unlimited time, and on any terms and conditions which may be
requested by the municipality and, to the extent applicable, the State
tity redeveloper, and, if applicable, as may be agreed to by the
authority and, to the extent applicable, the State entity redeveloper, in
conformity with its contracts with the holders of bonds, and shall be
valid and binding on the municipality. The municipality is hereby
authorized and directed to do and perform any contract so entered into
by it and to provide for the discharge of any obligation thereunder in
the same manner as other obligations of the municipality.

Any contract, and any instrument making or evidencing the same,
may be pledged or assigned by the authority, with the consent of the
municipality executing the contract, and, to the extent applicable, the
consent of the State entity redeveloper, to secure its bonds and
thereafter may not be modified except as provided by the terms of the
instrument or by the terms of the pledge or assignment.

The municipality may include in the terms of a bond or contract,
including a financial agreement, a provision that the payments in lieu
of taxes or special assessments shall constitute a municipal charge for
the purposes of R.S.54:4-66.

c. The payments in lieu of taxes or special assessments, or both,
may be assigned directly by the municipality or the authority or the
trustee for the bonds as payment or security for the bonds.
Notwithstanding any law to the contrary, the assignment shall be an
absolute assignment of all the municipality's right, title, and interest in
the payment in lieu of taxes or special assessments, or both, or portion
thereof, along with the rights and remedies provided to the
municipality under the agreement including, but not limited to, the
right of collection of payments due. Payments in lieu of taxes and
special assessments assigned as provided hereunder shall not be
included in the general funds of the municipality, nor shall they be
subject to any laws regarding the receipt, deposit, investment or
appropriation of public funds and shall retain such status
notwithstanding enforcement of the payment or assessment by the
municipality or assignee as provided herein. The municipality shall be
a "person" within the meaning of that term as defined in section 3 of
P.L.1974, c.80 (C.34:1B-3); and the purpose described in this section
shall be a "project" within the meaning of that term as defined in
section 3 of P.L.1974, c.80 (C.34:1B-3).

d. Notwithstanding the provisions of subsection g. of section 37 of
P.L.1992, c.79 (C.40A:12A-37), the bonds issued pursuant to this
section may be issued as non-recourse obligations, and unless otherwise provided for by a separate action of the municipality to guarantee such bonds or otherwise provide for a pledge of the municipality's full faith and credit shall not, except for such action, be considered to be direct and general obligations of the municipality, and, absent such action, the municipality shall not be obligated to levy and collect a tax sufficient in an amount to pay the principal and interest on the bonds when the same become due and payable. The provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.) shall not apply to any bonds issued or authorized pursuant to this section and those bonds shall not be considered gross debt of the municipality on any debt statement filed in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq., and the provisions of chapter 27 of Title 52 of the Revised Statutes shall not apply to such bonds.

e. The proceeds from the sale of bonds and any funds provided by any department of the State, authority created by the State or bi-state authority for the purposes described in the "Redevelopment Area Bond Financing Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.) or for the purpose of financing or refinancing a redevelopment project pursuant to a State entity redevelopment agreement, shall not require compliance with public bidding laws, including the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other statute where the redeveloper or State entity redeveloper, as the case may be, shall undertake the redevelopment project. The use of these funds shall be subject to public accountability and oversight by the issuer of those bonds, regardless of whether the municipality [or], agency [providing] or authority provides the funds.

f. In order to provide additional security for any loan to a redeveloper or a State entity redeveloper, as the case may be, or to bonds issued to finance a redevelopment project, regardless of whether that redevelopment project is undertaken under municipal authority pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.) or by a State entity redeveloper pursuant to a State entity redevelopment agreement, the municipality may utilize powers otherwise provided by law, including the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), to provide for any extension of the municipality's credit to any redeveloper or State entity redeveloper, as the case may be, or its full faith and credit which may include a full faith and credit lease as security for the bonds or any loan to a redeveloper or State entity redeveloper, as the case may be. To the extent that the municipality provides for a full faith and credit guarantee of any loan to a redeveloper or State entity redeveloper, as the case may be, or any bonds, but determines not to authorize the issuance of bonds or notes to provide for the funding source thereof,
or otherwise determines to enter into a full faith and credit lease, it
may do so by resolution approved by a majority of the full governing
body. To the extent that bonds or notes are authorized as provided
above, such bonds or notes shall be authorized pursuant to the
provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., and shall
be deductible from the gross debt of the municipality until such time
as such bonds or notes are actually issued, and only up to the amount
actually issued, to fund such guarantee.

g. A financial instrument, whether issued by a municipality or an
authority, that is secured in whole or in part by payments in lieu of
taxes or by special assessments, or both, as provided herein shall be
subject to the review and approval of the board. That review and
approval shall be made prior to approval of, in the case of a
municipality, an introduce ordinance or, in the case of an authority, a
resolution. The board shall be entitled to receive from the applicant
an amount sufficient to provide for all reasonable professional and
other fees and expenses incurred by it for the review, analysis and
determination with respect thereto. As part of its review, the board
shall specifically solicit comments from the Office of State Planning
and the New Jersey Economic Development Authority in addition to
comments from the public. As part of the board's review and
approval, it shall consider where appropriate one or more of the
following: whether the redevelopment project or plan promotes
approaches and concepts to reduce congestion; enhance mobility;
assist in the redevelopment of our municipalities; and otherwise
improve the quality of life of our citizens.

h. A municipality that has assigned any portion of the payments in
lieu of taxes it receives pursuant to a financial agreement, as payment
or security for bonds, may also pledge a portion of those payments in
lieu of taxes as payment or security for bonds in order to finance or
refinance any cost or expense of the municipality, State entity or
authority.

i. In the case of a municipality which is otherwise subject to tax or
revenue sharing pursuant to law and which assigns a portion of the
payments in lieu of taxes or special assessments pursuant to a financial
agreement to secure bonds issued by the municipality or the authority,
the assigned portion of those payments in lieu of taxes or special
assessments shall not be considered part of the tax or revenue sharing
formula or calculation of municipal revenues for the purpose of
determining whether that municipality is obligated to make payment
to, or receive a credit from, any tax sharing or revenue sharing pool.
(cf: P.L.2001, c.310, s.4)

4. Section 5 of P.L.2001, c.310 (C.40A:12A-68) is amended to
read as follows:

5. a. Payments required to be made in accordance with an
agreement for payments in lieu of taxes entered into under section 3
of P.L.2001, c.310 (C.40A:12A-66) shall be a continuous lien on the
land against which the ordinance is recorded on and after the date of
recording of both the ordinance and the agreement, whether
simultaneously or not, or the date of confirmation of the special
assessments, whichever is earlier. All subsequent payments in lieu of
taxes thereunder, interest, penalties and costs of collection which
thereafter fall due or accrue shall be added and relate back to and be
a part of the initial lien. Upon recording of the ordinance and
agreement, payments in lieu of taxes shall constitute a municipal lien
within the meaning, and for all purposes, of law.

b. If bonds are issued, the municipality \[or\], the redeveloper or the
State entity redeveloper, as the case may be, may record, either
simultaneously or at different times, any ordinance enacted by the
municipality relating to the payment in lieu of taxes agreement or
special assessments and, either simultaneously with the ordinance or
at different times, a copy of the agreement or agreements. The
ordinance, when recorded, shall contain a legend at the top of the front
page substantially as follows:

"THIS ORDINANCE SECURES BONDS OR OTHER
OBLIGATIONS ISSUED IN ACCORDANCE WITH THE
PROVISIONS OF THE 'REDEVELOPMENT AREA BOND
FINANCING LAW' AND THE LIEN HEREOF IN FAVOR OF THE
OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A
MUNICIPAL LIEN SUPERIOR TO ALL OTHER
NON-MUNICIPAL LIENS HEREAFTER RECORDED."

c. Notwithstanding any law to the contrary, upon recordation of
both the ordinance and any accompanying agreement, the lien thereof
shall be perfected for all purposes in accordance with law and the lien
shall thereafter be superior to all non-municipal liens thereafter
recorded or otherwise arising, without any additional notice,:
recording, filing, continuation filing or action, until the payment in full
of the bonds. The lien thereby established shall apply not only to the
bonds initially issued, but also to any refinancing or refunding thereof,
as well as to any additional bonds thereafter issued on a parity
therewith in accordance with the provisions of the original documents
securing the initial bonds; provided, however, that in the event any
ordinance or agreement is amended or supplemented in a way which
increases the amount of payment in lieu of taxes or special
assessments, the lien as to that increase shall be perfected and apply
upon the recordation of the amended or supplemented ordinance and
agreement (including the above-recited legend). Except as set forth
in this section, no amendment or supplement to the ordinance or
agreement thereafter recorded shall affect the perfection or priority of
the lien established upon original recordation thereof.

d. Upon the final payment in full of any bonds secured as provided in this section and section 4 of P.L.2001, c.310 (C.40A:12A-67), the lien established hereby shall terminate, and the municipality shall record a notice to that effect.

(cf: P.L.2001, c.310, s.5)

5. This act shall take effect immediately.

STATEMENT

This bill would extend a municipality's leeway to use payments in lieu of taxes paid under long term redevelopment agreements and special assessments to securitize bonds issued by the municipality. In addition, the bill would expand the scope of the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) to cover projects undertaken by the New Jersey Meadowlands Commission (NJMC) in the 14 constituent meadowlands municipalities and other analogous entities.

The "Redevelopment Area Bond Financing Law" expanded the powers of municipalities with respect to financing certain upfront costs of local development projects. Among other things, the law authorized any municipality that has designated a "redevelopment area" pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) to issue bonds, secured by payments in lieu of taxes under a tax abatement agreement, special assessments on property benefitting from the improvements provided, or both.

In enacting the "Redevelopment Area Bond Financing Law," the Legislature intended to provide municipalities with additional financing options to raise funds to pay for extraordinary costs associated with the redevelopment project; however, in adopting the law, the Legislature did not address redevelopment projects undertaken within a municipality but implemented through the exercise of the redevelopment powers of the NJMC or other similar State entity, or redevelopment projects that are constructed on real property that is exempt from real property taxation.

With regard to the existing authorization first adopted in 2001, the bill extends the definition of the bonds which may be issued to allow for the financing or refinancing of any cost or expense of an authority, a State entity or a municipality. This means that under the bill, a municipality would have the power to issue bonds, securitized by payments in lieu of taxes paid under a long term tax exemption pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et seq.) to cover any cost or expense of a municipality,
authority or a State entity, regardless of whether the cost or expense
was incurred in connection with the redevelopment project.

In addition, the bill changes the findings and determinations that a
governing body seeking to issue bonds through a State authority must
make by providing that all or a portion of the project shall be found to
result in the redevelopment of the municipality rather than the project,
without limitation.

In addition, the bill extends the provisions of the "Redevelopment
Area Bond Financing Law” to municipalities in which redevelopment
projects are implemented within their borders by the NJMC or other
such entity, instead of directly by the municipality. Accordingly, the
NJMC, for example, would continue to possess the power to designate
a redevelopment area in accordance with P.L.1968, c.404 (C.13:17-1
et seq.), but would now be able to enter into financial agreements with
the designated "State entity redeveloper," as defined in the bill,
providing for payments in lieu of taxes to be paid to the constituent
NJMC municipality and the issuance of bonds by that municipality to
be secured by those PILOT payments.

The bill defines the State entity redeveloper as any person, firm or
corporation that enters into or proposes to enter into a State entity
redevelopment agreement with a State entity for the redevelopment or
rehabilitation of a redevelopment area under the enabling legislation
governing the State entity. The State entity, under a new definition
created in the bill, is the NJMC or like organization that has
redevelopment powers and the power to determine the location, type
and character of a redevelopment project on land owned or controlled
by it.

The bill clarifies that these bonds may be securitized by those
PILOT’s or a portion thereof. In addition, the bill grants the
constituent municipalities the power to securitize bonds using the
assigned portion of the payments in lieu of taxes or special
assessments, or both, received from a State entity redeveloper under
a financial agreement. Those PILOT’s or special assessments which
are used to securitize these bonds shall not be considered in any
calculation made pursuant to intermunicipal tax sharing otherwise
provided by law.

Expands bonding power authorized under P.L.2001, c.310 and extends
scope of power to include projects undertaken under auspices of the
New Jersey Meadowlands Commission.