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ASSEMBLY, No. 3898

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 26, 2013

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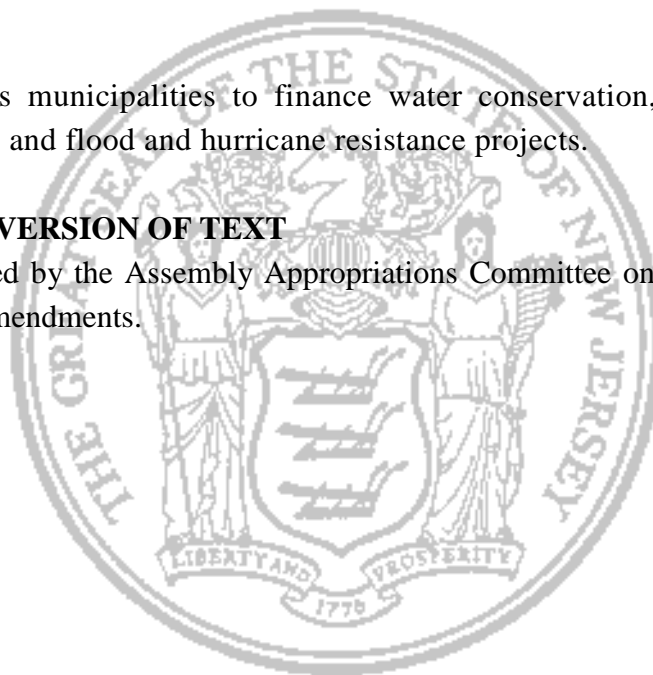
Assemblymen McKeon and Gusciora

SYNOPSIS

Authorizes municipalities to finance water conservation, storm shelter construction, and flood and hurricane resistance projects.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on November 18, 2013, with amendments.



(Sponsorship Updated As Of: 1/7/2014)

1 AN ACT concerning the financing of water conservation, storm
 2 shelter construction, and flood and hurricane resistance projects,
 3 and amending P.L.1960, c.183 and P.L.2011, c.187.

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

7
 8 1. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to
 9 read as follows:

10 1. Upon application to and approval by the Director of the
 11 Division of Local Government Services in the Department of
 12 Community Affairs, the governing body of a municipality, or a
 13 qualified private¹ or¹ non-profit entity serving as its administrator,
 14 may undertake the financing of the purchase and installation of
 15 water conservation projects, flood resistant construction projects,
 16 hurricane resistant construction projects, ¹**[residential]**¹ storm
 17 shelter projects, safe room projects, renewable energy systems ^{1,1}
 18 and energy efficiency improvements by property owners as a local
 19 improvement and may provide by ordinance for a "clean energy and
 20 storm resistance special assessment" to be imposed on **[a property]**
 21 properties within the municipality, if the owner of **[the]** a property
 22 requests the assessment in order to install such systems or
 23 improvements. Each improvement on an individual property shall
 24 constitute a separate local improvement and shall be assessed
 25 separately to the property owner benefitted thereby. ¹**[The clean**
 26 **energy and storm resistance** special assessment shall be payable in
 27 quarterly installments.**]**¹ The terms of the clean energy and storm
 28 resistance special assessment shall be in accordance with the terms
 29 of the financing provided by the municipality pursuant to section 2
 30 of P.L.2011, c.187 (C.40:56-13.1).

31 (cf: P.L.2011, c.187, s.1)

32
 33 2. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to
 34 read as follows:

35 2. a. Upon application to and approval by the Director of the
 36 Division of Local Government Services in the Department of
 37 Community Affairs, a qualified private ¹**[.]** or¹ non-profit entity
 38 may establish a program to finance the purchase and installation of
 39 water conservation projects, flood resistant construction projects,
 40 hurricane resistant construction projects, ¹**[residential]**¹ storm
 41 shelter projects, safe room projects, renewable energy systems ^{1,1}
 42 and energy efficiency improvements by property owners within
 43 municipalities contracting with the ¹**[non-profit]**¹ entity that have

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted June 10, 2013.

²Assembly AAP committee amendments adopted November 18, 2013.

1 also obtained the director's approval. Repayment shall be
2 completed through the clean energy and storm resistance special
3 assessment. Upon application approval, the ¹["non-profit"]¹ entity
4 may administer: lending agreements between the ¹["non-profit"]¹
5 entity itself and ¹["homeowners"] property owners¹ ; lending
6 agreements between municipalities and ¹["homeowners"] property
7 owners¹ pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2);
8 lending agreements involving county improvement authorities
9 pursuant to paragraph (2) of subsection (j) of section 12 of
10 P.L.1960, c.183 (C.40:37A-55); lending agreements involving other
11 private entities that participate in the program; the sale of solar
12 renewable energy certificates from participating ¹["homeowners"]
13 property owners¹ ; and any other appropriate responsibilities. Any
14 contract between the ¹["non-profit"]¹ entity and a municipality or
15 county improvement authority shall be subject to the "Local Public
16 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

17 Upon application to and approval by the Director of the Division
18 of Local Government Services in the Department of Community
19 Affairs, a municipality may adopt an ordinance to establish a
20 program to finance the purchase and installation of water
21 conservation projects, flood resistant construction projects,
22 hurricane resistant construction projects, ¹["residential"]¹ storm
23 shelter projects, safe room projects, renewable energy systems ^{1,1}
24 and energy efficiency improvements by property owners. Pursuant
25 to this section, the establishment of this program may merely
26 involve contracting with a qualified private ¹[" "] or¹ non-profit
27 entity, subject to the "Local Public Contracts Law," P.L.1971, c.198
28 (C.40A:11-1 et seq.), upon the director's approval, to administer the
29 program on the municipality's behalf. The governing body may
30 apply to a county improvement authority that issues bonds pursuant
31 to paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183
32 (C.40:37A-55), or may issue bonds to finance the program pursuant
33 to section 3 of P.L.2011, c.187 (C.40:56-13.2).

34 In addition, the governing body, or the ¹["non-profit"]¹ entity
35 -serving as its administrator, may use funding through private
36 entities to finance the program. Funds for the purchase and
37 installation of water conservation projects, flood resistant
38 construction projects, hurricane resistant construction projects,
39 ¹["residential"]¹ storm shelter projects, safe room projects, renewable
40 energy systems ^{1,1} and energy efficiency improvements shall be
41 loaned to property owners in exchange for a clean energy and storm
42 resistance special assessment on the property pursuant to section 1
43 of P.L.2011, c.187 (C.40:56-1.4) ¹[" , to be paid quarterly"]¹ . In the
44 case of financing provided by bonds issued by a county
45 improvement authority, or by the municipality through the issuance
46 of municipal bonds, the clean energy and storm resistance special

1 assessment shall be used to repay the bonds. **【**In the case of
 2 financing provided by the municipality through the issuance of
 3 municipal bonds, the clean energy special assessment shall be used
 4 to repay the bonds.**】** In the case of financing through private
 5 entities, repayment shall also be completed through the clean
 6 energy and storm resistance special assessment.

7 A property owner who purchases and installs a renewable energy
 8 system under the program may also assign any solar renewable
 9 energy certificates or other renewable energy credits that accrue to
 10 the property owner from the operation of the system to the
 11 municipality **【or】** , the county improvement authority , or the
 12 private entity to repay the loan for the system. The Director of the
 13 Division of Local Government Services in the Department of
 14 Community Affairs shall coordinate efforts with the Board of
 15 Public Utilities to ensure that the amount of financing made
 16 available by local programs authorized pursuant to **【this act】**
 17 P.L.2011, c.187 (C.40:56-1.4 et al.), is in accordance with limits set
 18 from time to time by the Board of Public Utilities in order to ensure
 19 that local programs to fund projects categorized as renewable
 20 energy systems and energy efficiency improvements further the
 21 goals of the Office of Clean Energy in the Board of Public Utilities.

22 b. As used in **【this section,】** P.L.2011, c.187 (C.40:56-1.4 et
 23 al.):

24 “Director” means the Director of the Division of Local
 25 Government Services in the Department of Community Affairs.¹

26 “Flood resistant construction project” means a project that
 27 mitigates the likelihood of substantial flood damage, including but
 28 not limited to the installation of break-away walls and building
 29 elevation alterations, following standards that the director deems
 30 appropriate **【;】** .¹

31 “Hurricane resistant construction project” means an
 32 improvement that brings a component of a ¹**【residence】** structure¹
 33 into compliance with the standards for a “wind-borne debris region”
 34 under the State Uniform Construction Code, or another standard
 35 that the director deems appropriate **【;】** .¹

36 “Safe room project” or ¹**【“ residential storm】** “storm¹ shelter
 37 project” means an improvement that creates a hardened structure
 38 specifically designed to meet ¹criteria set forth by¹ the Federal
 39 Emergency Management Agency ¹**【(FEMA) criteria】**¹ and provide
 40 “near-absolute protection” in extreme weather events, including
 41 tornadoes and hurricanes, or another standard that the director
 42 deems appropriate **【;】** .¹

43 “ **【solar】** Solar renewable energy certificate” shall have the same
 44 meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51)
 45 **【;】** .¹

1 “Water conservation project” means an alteration or upgrade of a
2 facility or equipment that reduces water consumption, maximizes
3 the efficiency of water use, or reduces water loss, following
4 standards that the director deems appropriate.

5 ²c. The Director of the Division of Local Government Services
6 in the Department of Community Affairs, in consultation with the
7 Director of the Division of Codes and Standards in the Department
8 of Community Affairs shall establish standards for flood resistant
9 construction projects, hurricane resistant construction projects, safe
10 room projects, storm shelter projects, and water conservation
11 projects.²

12 (cf: P.L.2011, c.187, s.2)

13
14 3. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to
15 read as follows:

16 3. a. Upon application to and approval by the Director of the
17 Division of Local Government Services in the Department of
18 Community Affairs, the governing body of a municipality may
19 establish the amounts of money to be expended by the municipality
20 for the improvements authorized in sections 1 and 2 of P.L.2011,
21 c.187 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated
22 may be raised by the issuance of clean energy and storm resistance
23 special assessment bonds by the municipality. In making the
24 appropriation, the governing body may designate the particular
25 projects to be financed to which the moneys shall be applied.

26 b. Clean energy and storm resistance special assessments and
27 bonds issued to finance them shall be issued and shall be generally
28 subject to R.S.40:56-21 et seq., as the director shall determine to be
29 applicable.

30 c. The director is authorized and empowered to take such
31 action as deemed necessary and consistent with the intent of ¹**[**this
32 act,**]**¹ P.L.2011, c.187 (C.40:56-1.4 et al.) ¹**[,**¹**]** to implement its
33 provisions.

34 (cf: P.L.2011, c.187, s.3)

35
36 4. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to
37 read as follows:

38 12. Every authority shall be a public body politic and corporate
39 constituting a political subdivision of the State established as an
40 instrumentality exercising public and essential governmental
41 functions to provide for the public convenience, benefit and welfare
42 and shall have perpetual succession and, for the effectuation of its
43 purposes, have the following additional powers:

44 (a) To adopt and have a common seal and to alter the same at
45 pleasure;

46 (b) To sue and be sued;

47 (c) To acquire, hold, use and dispose of its facility charges and
48 other revenues and other moneys;

- 1 (d) To acquire, rent, hold, use and dispose of other personal
2 property for the purposes of the authority;
- 3 (e) Subject to the provisions of section 26 of **[this act]**
4 P.L.1960, c.183 (C.40:37A-69) , to acquire by purchase, gift,
5 condemnation or otherwise, or lease as lessee, real property and
6 easements or interests therein necessary or useful and convenient
7 for the purposes of the authority, whether subject to mortgages,
8 deeds of trust or other liens or otherwise, and to hold and to use the
9 same, and to dispose of property so acquired no longer necessary
10 for the purposes of the authority; provided that the authority may
11 dispose of such property at any time to any governmental unit or
12 person if the authority shall receive a leasehold interest in the
13 property for such term as the authority deems appropriate to fulfill
14 its purposes;
- 15 (f) Subject to the provisions of section 13 of **[this act]**
16 P.L.1960, c.183 (C.40:37A-56) , to lease to any governmental unit
17 or person, all or any part of any public facility for such
18 consideration and for such period or periods of time and upon such
19 other terms and conditions as it may fix and agree upon;
- 20 (g) To enter into agreements to lease, as lessee, public facilities
21 for such term and under such conditions as the authority may deem
22 necessary and desirable to fulfill its purposes, and to agree,
23 pursuant thereto, to be unconditionally obligated to make payments
24 for the term of the lease, without set-off or counterclaim, whether or
25 not the public facility is completed, operating or operable, and
26 notwithstanding the destruction of, damage to, or suspension,
27 interruption, interference, reduction or curtailment of the
28 availability or output of the public facility to which the agreement
29 applies;
- 30 (h) To extend credit or make loans to any governmental unit or
31 person for the planning, design, acquisition, construction, equipping
32 and furnishing of a public facility, upon the terms and conditions
33 that the loans be secured by loan and security agreements,
34 mortgages, leases and other instruments, the payments on which
35 shall be sufficient to pay the principal of and interest on any bonds
36 issued for the purpose by the authority, and upon such other terms
37 and conditions as the authority shall deem reasonable;
- 38 (i) Subject to the provisions of section 13 of **[this act]**
39 P.L.1960, c.183 (C.40:37A-56) , to make agreements of any kind
40 with any governmental unit or person for the use or operation of all
41 or any part of any public facility for such consideration and for such
42 period or periods of time and upon such other terms and conditions
43 as it may fix and agree upon;
- 44 (j) (1) To borrow money and issue negotiable bonds or notes or
45 other obligations and provide for and secure the payment of any
46 bonds and the rights of the holders thereof, and to purchase, hold
47 and dispose of any bonds;

- 1 (2) To issue bonds, notes or other obligations to provide funding
2 to a municipality , or to ¹["a non-profit"] an¹ entity serving as the
3 municipality's administrator, that finances the purchase and
4 installation of water conservation projects, flood resistant
5 construction projects, hurricane resistant construction projects,
6 ¹["residential"]¹ storm shelter projects, safe room projects, renewable
7 energy systems ^{1,1} and energy efficiency improvements by property
8 owners as provided in section 2 of P.L.2011, c.187 (C.40:56-13.1);
- 9 (k) To apply for and to accept gifts or grants of real or personal
10 property, money, material, labor or supplies for the purposes of the
11 authority from any governmental unit or person, and to make and
12 perform agreements and contracts and to do any and all things
13 necessary or useful and convenient in connection with the
14 procuring, acceptance or disposition of such gifts or grants;
- 15 (l) To determine the location, type and character of any public
16 facility and all other matters in connection with all or any part of
17 any public facility which it is authorized to own, construct,
18 establish, effectuate or control;
- 19 (m) To make and enforce bylaws or rules and regulations for the
20 management and regulation of its business and affairs and for the
21 use, maintenance and operation of any public facility, and to amend
22 the same;
- 23 (n) To do and perform any acts and things authorized by this act
24 under, through or by means of its own officers, agents and
25 employees, or by contract with any governmental unit or person;
- 26 (o) To acquire, purchase, construct, lease, operate, maintain and
27 undertake any project and to fix and collect facility charges for the
28 use thereof;
- 29 (p) To mortgage, pledge or assign or otherwise encumber all or
30 any portion of its revenues and other income, real and personal
31 property, projects and facilities for the purpose of securing its
32 bonds, notes and other obligations or otherwise in furtherance of the
33 purpose of this act;
- 34 (q) To extend credit or make loans to redevelopers for the
35 planning, designing, acquiring, constructing, reconstructing,
36 improving, equipping and furnishing any redevelopment project or
37 redevelopment work;
- 38 (r) To conduct examinations and investigations, hear testimony
39 and take proof, under oath at public or private hearings of any
40 material matter, require the attendance of witnesses and the
41 production of books and papers and issue commissions for the
42 examination of witnesses who are out of the State, unable to attend,
43 or excused from attendance;
- 44 (s) To authorize a committee designated by it consisting of one
45 or more members, or counsel, or any officer or employee to conduct
46 any such investigation or examination, in which case such
47 committee, counsel, officer or employee shall have power to

1 administer oaths, take affidavits and issue subpoenas or
2 commissions;

3 (t) To enter into any and all agreements or contracts, execute
4 any and all instruments, and do and perform any and all acts or
5 things necessary, convenient or desirable for the purposes of the
6 authority or to carry out any power expressly given in this act
7 subject to the "Local Public Contracts Law," P.L.1971, c.198
8 (C.40A:11-1 et seq.); and

9 (u) To pool loans for any local governmental units within the
10 county or any beneficiary county that are refunding bonds and do
11 and perform any and all acts or things necessary, convenient or
12 desirable for the purpose of the authority to achieve more favorable
13 interest rates and terms for those local governmental units.

14 (cf: P.L.2011, c.187, s.4)

15

16 5. This act shall take effect on the first day of the fourth month
17 next following enactment, but the Director of the Division of Local
18 Government Services in the Department of Community Affairs may
19 take such anticipatory action in advance thereof as shall be
20 necessary for the implementation of this act.