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New Tools for Financing Redevelopment Projects

Governor Murphy recently signed legislation that assists in the financing of redevelopment projects (P.L. 2018, c. 97; the Act). In addition to creating the Economic Redevelopment and Growth Grant Bond Financing Act (ERGG Bond Act), the Act amends the Redevelopment Area Bond Financing Law (the RAB Law), N.J.S.A. 40A:12A-64 *et seq.,* and the Long Term Tax Exemption Law (the LTTE Law), N.J.S.A. 40A:20-1 *et seq.*

Under the Act, a municipality may issue bonds or apply to an authority[1] to issue bonds to finance an Economic Redevelopment and Growth Grant project. These are projects for which a portion or all of the project financing gap is reimbursed through either the state or a local Economic Redevelopment and Growth Grant program. The bonds can be secured by an incentive grant pledge, which pledges a developer's right to collect the incremental revenues from an incentive grant as repayment for the bonds, and may also be secured by a municipal lien and/or special assessments. When the bonds are secured by an incentive grant pledge, the term of the bond is limited to the eligibility period for the incentive grant agreement that establishes the incentive grant that is being pledged as security for the bonds. In addition, if authorized by ordinance, the incentive grant payments also constitute a lien on the land or improvements for all purposes including bankruptcy, if the incentive grant pledge and the ordinance are recorded.

A municipality may also enact special assessments on the project, and the local improvements for which such special assessments may be made may include any improvement in the project and not just those listed as local improvements under the Municipal and Counties Law, R.S. 40:56-1. Other than under the Act, assessments may be imposed only on those improvements specifically enumerated in R.S. 40:56-1, and include certain improvements to streets, highways and alleys; bridges and viaducts; or sewers and drains, for example. Any special assessment under the Act would constitute a municipal lien, which would provide additional security for the bondholders. Issuance of the bonds is subject to the review and approval of the Local Finance Board and subject to comments from the New Jersey Economic Development Authority, as well as public comment.

The ERGG Bond Act also authorizes a municipality to undertake the remediation of environmental contamination as a local improvement. This will help encourage the remediation of such sites.

In addition to creating the ERGG Bond Act, the new law amends the RAB Law. The legislation specifically includes county improvement authorities among the entities authorized to issue redevelopment area bonds. In addition, the definition of "redevelopment" has been revised to include environmental remediation and the construction, enhancement or mitigation of wetlands impacted by a redevelopment project. The law also amended the provisions of the RAB Law relating to financial agreements providing for payments in lieu of taxes (PILOTs) when the property requires environmental remediation. Previously, such agreements were limited in duration to the lesser of 30 years from completion of the project or 35 years from the execution of the financial agreement. The amendment, however, provides that where the proceeds of a bond are used to conduct environmental remediation, the term of any agreement securing the bond, whether a financial agreement providing for a PILOT or a special assessment agreement providing for the payment of a special assessment, or both, may be 35 years plus the anticipated duration of conducting the environmental remediation, subject to the approval of the Local Finance Board. The 30-year term limit from the time of completion still applies, however.

The amendment of the RAB Law also provides that a municipal lien, for all purposes including bankruptcy, is perfected upon the municipality's adoption of an ordinance authorizing execution of the PILOT agreement and the agreement being recorded.

With respect to the amendments to the LTTE Law, the financial agreement was previously limited to the lesser of 30 years from completion of the entire project, or unit if the project is undertaken in units, or 35 years from execution of the agreement. This has been amended to provide for an alternative term of 50 years from execution of the first financial agreement implementing a project where the redevelopment agreement permits the redeveloper to undertake two or more projects sequentially. The financial agreement is required to specify which term will be used. The 50-year term is not required. The term may still be 35 years (or less).

The Act, then, provides alternative financing options and additional incentives for redevelopment projects. In particular, projects undertaken in multiple phases and those with environmental constraints are most likely to benefit.

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[1] An "authority" is defined as the New Jersey Economic Development Authority, the New Jersey Redevelopment Authority, a county improvement authority or another entity empowered by the state to incur debt and issue bonds and other obligations.

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