

SENATE, No. 970

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JANUARY 12, 2016

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex, Morris and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

SYNOPSIS

The “Municipal Stabilization and Recovery Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain municipalities confronted by severe
2 fiscal distress and supplementing Title 52 of the Revised
3 Statutes.

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

7
8 1. This act shall be known and may be cited as the “Municipal
9 Stabilization and Recovery Act.”

10
11 2. The Legislature finds and declares that:

12 a. The short- and long-term fiscal stability of local government
13 units is essential to the interests of the citizens of this State to
14 assure the effective and efficient provision of necessary
15 governmental services vital to public health, safety, and welfare.

16 b. In certain extreme cases, local governments that experience
17 severe fiscal distress become incapable of addressing the
18 circumstances that led to that extraordinary distress or of
19 developing a comprehensive plan of rehabilitation.

20 c. It is necessary and appropriate for the State to take action to
21 assist such local governments experiencing severe budget
22 imbalances and other conditions of severe fiscal distress or
23 emergency by requiring prudent fiscal management and operational
24 efficiencies in the provision of public services.

25 d. As the State entity primarily responsible for the financial
26 integrity and stability of all local government units, the Local
27 Finance Board should be authorized, under certain limited
28 circumstances, to develop a comprehensive rehabilitation plan for
29 local governments that are experiencing severe fiscal distress, and
30 to act on behalf of such local government units to remedy the
31 distress.

32 e. In 1976, the voters of the State approved an amendment to
33 the New Jersey Constitution (Article IV, Section VII, paragraph 2,
34 subparagraph D), which authorized casino gaming in Atlantic City.

35 f. For over 30 years, casinos grew and profited in Atlantic
36 City, until competition from other states in our region, particularly
37 Pennsylvania, siphoned off much of the out-of-State and foreign
38 gamblers who had frequented Atlantic City casinos for many years.

39 g. The regional competition in casino gaming has had a
40 deleterious effect on Atlantic City in several ways, including: an
41 increase in unemployment due to the recent closing of four casino
42 properties, representing fully one-third of the number of casinos
43 operating in Atlantic City in 2013; a strain on Atlantic City’s
44 municipal budget due to property tax refunds required by successful
45 assessment appeals of casino gaming properties; and an increased
46 property tax burden on Atlantic City and Atlantic County residents
47 based on the decreasing value of casino gaming properties.

1 h. It is appropriate for the Legislature to address the
2 extraordinary financial distress in Atlantic City by devising a
3 program in Atlantic City to authorize and empower State officials to
4 act to restore the fiscal integrity of the municipality as expeditiously
5 as possible.

6 i. It is constitutional to classify Atlantic City, the only
7 municipality wherein casino gaming is authorized, as a special class
8 unto itself for economic purposes related to casino gaming, to
9 which the solvency of Atlantic City government is inextricably
10 linked. Courts have routinely concluded that the Legislature has
11 the ability to address the concerns of Atlantic City and the casino
12 industry separately from other local entities and industries due to
13 the unique role casino gambling plays in Atlantic City and the
14 State. The fact that, even though almost 40 years have passed since
15 the approval of casino gambling in New Jersey, Atlantic City
16 remains the only municipality wherein casino gaming is authorized,
17 proves that its unique classification continues to allow the
18 Legislature to treat it as a special case under State law, and permits
19 granting State officials extraordinary power to address unique fiscal
20 circumstances in Atlantic City.

21 j. In the interest of the economic stability and revitalization of
22 Atlantic City and its associated economic benefits to the State, it is
23 reasonable that the Legislature, in seeking to revitalize the city,
24 should choose to permit the State to take control of the city's fiscal
25 operations for a determinate period of time in order to ensure the
26 continued operation of government for the benefit of city residents
27 and the State economy.

28

29 3. As used in P.L. , c. (C.) (pending before the
30 Legislature as this bill):

31 "Commissioner" means the Commissioner of Community
32 Affairs.

33 "Director" means the Director of the Division of Local
34 Government Services in the Department of Community Affairs.

35 "Fiscal distress" means a fiscal condition based on an eligible
36 municipality's tax rate, cash deficit, insufficient percentage of tax
37 collections, insufficient collection of other revenues, over-
38 anticipation of the revenues of prior years, non-liquidation of
39 interfund transfers, reliance on emergency authorizations, continual
40 rollover of tax anticipation notes, or other factors indicating a
41 constrained ability to meets its budgetary requirements.

42 "Municipality in need of stabilization and recovery" means an
43 eligible municipality that on or after the effective date of P.L. ,
44 c. (C.) (pending before the Legislature as this bill): (1) has
45 experienced a decrease of more than 50 percent in its total assessed
46 property values during the immediately preceding five-year period,
47 as determined by the director, and, upon the recommendation of the
48 director finding that the eligible municipality is experiencing fiscal

1 distress, the commissioner determines it should appropriately be
2 subject to the provisions of P.L. , c. (C.) (pending before the
3 Legislature as this bill); or (2) has experienced an increase in
4 outstanding debt exceeding 50 percent during the immediately
5 preceding five-year period, as determined by the director, and upon
6 the recommendation of the director finding that the eligible
7 municipality is experiencing fiscal distress, the commissioner
8 determines it should appropriately be subject to the provisions of
9 P.L. , c. (C.) (pending before the Legislature as this bill).

10 “Governing body” means the municipal council, committee,
11 board, or other entity having control of the finances of an eligible
12 municipality, and shall include the mayor.

13 “Local Finance Board” means the Local Finance Board in the
14 Division of Local Government Services in the Department of
15 Community Affairs.

16 “Eligible municipality” means a municipality in which casino
17 gaming is authorized by the voters of the State on the effective date
18 of P.L. , c. (C.) (pending before the Legislature as this
19 bill).

20

21 4. Within 30 days of the effective date of P.L. , c. (C.)
22 (pending before the Legislature as this bill), or at such other time as
23 the director in his discretion deems appropriate, the director shall
24 ascertain whether an eligible municipality should be deemed a
25 “municipality in need of stabilization and recovery” as defined in
26 section 3 of P.L. , c. (C.) (pending before the Legislature as
27 this bill), and if so, shall recommend that the commissioner make
28 such a determination. The commissioner shall make the final
29 determination of whether to deem an eligible municipality a
30 “municipality in need of stabilization and recovery” and subject to
31 the provisions of P.L. , c. (C.) (pending before the
32 Legislature as this bill). The commissioner shall then notify the
33 Governor, the State Treasurer, and the director when an eligible
34 municipality has been deemed to be subject to the provisions of
35 P.L. , c. (C.) (pending before the Legislature as this bill).
36 The director shall then notify the municipal clerk, or other
37 appropriate municipal official of the eligible municipality, in
38 writing. An eligible municipality deemed to be a “municipality in
39 need of stabilization and recovery” pursuant to this section shall be
40 subject to the provisions of P.L. , c. (C.) (pending before the
41 Legislature as this bill) for a period of 15 consecutive years, which
42 period shall not be extended or renewed.

43 The Local Finance Board shall review the performance of a
44 municipality in need of stabilization and recovery at the end of
45 every fifth year following designation, and shall determine whether
46 its fiscal condition is improving or declining while subject to the
47 provisions of P.L. , c. (C.) (pending before the Legislature
48 as this bill). The Local Finance Board shall report its findings to

1 the Governor and the Legislature pursuant to section 2 of P.L.1991,
2 c.164 (C.52:14-19.1), which shall be available to the public. The
3 report may contain suggestions for recommended actions by the
4 director or recommend any changes that should be made to P.L. ,
5 c. (C.) (pending before the Legislature as this bill).

6
7 5. a. (1) Upon the determination by the commissioner that an
8 eligible municipality is a “municipality in need of stabilization and
9 recovery” for the purposes of P.L. , c. (C.) (pending before
10 the legislature as this bill), and notwithstanding the provisions of
11 any law, rule or regulation to the contrary, any of the functions,
12 powers, privileges, immunities, and duties of the governing body of
13 such an eligible municipality set forth in any statute, regulation,
14 ordinance, resolution, charter, or contract that are or may be
15 substantially related to the fiscal condition or financial recovery of
16 that eligible municipality may, at the discretion of the director, be
17 reallocated to, and vested exclusively in, the Local Finance Board
18 or its designee. The director shall include the rationale for the
19 reallocation of every particular function, power, privilege,
20 immunity, or duty pursuant to this section. The authorities of the
21 Local Finance Board, or its designee, in this regard shall extend to
22 any and all actions that, in the discretion of the director, may help
23 stabilize the finances of the eligible municipality, and shall include,
24 but not be limited to, the implementation of governmental,
25 administrative, and operational efficiency and oversight measures,
26 the authority to dissolve, terminate, transfer, or dispose of any
27 municipal authority, board, commission, or department, and the
28 authority to sell, convey, lease, or otherwise dispose of any interest
29 in any municipally-owned assets, including but not limited to, any
30 water, sewer, wastewater, and stormwater infrastructure, equipment
31 or facilities, and any real property, including any improvements
32 thereon.

33 (2) Any function, power, privilege, immunity, or duty of the
34 governing body not reallocated to and vested exclusively in the
35 Local Finance Board or its designee shall remain allocated to and
36 vested in that governing body.

37 b. (1) Notwithstanding the provisions of any law, rule, or
38 regulation to the contrary, including without limitation, any
39 requirements set forth in R.S.40:49-1 et seq. or R.S.10:4-6 et seq.,
40 the Local Finance Board, or its designee, shall have the exclusive
41 authority to pass, adopt, repeal, or amend, any ordinance or
42 resolution, or to enter into any contract or agreement, for the
43 purpose of carrying out any action authorized under subsection a. of
44 this section, for so long as the director determines is necessary,
45 within the 15-year period, to rectify the eligible municipality’s
46 fiscal distress.

47 (2) When exercising powers under paragraph (1) of this
48 subsection, the Local Finance Board or its designee shall, to the

1 extent practicable, comply with all notice, hearing, and public
2 bidding requirements to which the governing body of the eligible
3 municipality is generally subject.

4
5 6. a. The municipal portion of the equalized general tax rate
6 within a municipality in need of stabilization and recovery shall not
7 increase over the rate established for the year during which the
8 commissioner's recommendation took effect, notwithstanding the
9 spending limitations set forth in P.L.1976, c.68 (C.40A:4-45.1 et
10 seq.) and the limitations on increases to the tax levy pursuant to
11 sections 9 through 13 of P.L.2007, c.62 (C.40A:4-45.44 through
12 C.40A:4-45.47 and C.40A:4-45.3e), except upon application to the
13 Local Finance Board or its designee in the case of extraordinary
14 conditions.

15 b. The Local Finance Board, or its designee, shall, in
16 consultation with the mayor, annually prepare a budget pursuant to
17 the provisions of the "Local Budget Law," N.J.S.40A:4-1 et seq.
18 This budget shall conform in all respects with the requirements of
19 the "Local Budget Law," N.J.S.40A:4-1 et seq. and shall be subject
20 to the limitations on spending by municipalities set forth in
21 P.L.1976, c.68 (C.40A:4-45.1 et seq.). The Local Finance Board, or
22 its designee, may grant exceptions to the spending limitations set
23 forth in P.L.1976, c.68 (C.40A:4-45.1 et seq.) if the Local Finance
24 Board, or its designee, finds such exceptions to be necessary for the
25 stabilization and recovery of the municipality.

26 c. Upon the preparation of the budget, the Local Finance Board
27 or its designee, in consultation with the mayor, shall fix: a date,
28 place and time for the holding of a public hearing upon the budget;
29 the amounts of money necessary to be appropriated for the use of
30 the municipality for the ensuing year; and the various items and
31 purposes for which the same are to be appropriated. The hearing
32 shall be held in accordance with the provisions of the "Local
33 Budget Law," N.J.S.40A:4-1 et seq.; however, the hearing shall be
34 held at least 28 days after the date on which the budget is
35 advertised. Notice of hearing, contents of the notice and the format
36 and purpose of the hearing shall be as provided in that law. As part
37 of the budget request, the Local Finance Board, or its designee, may
38 include provision for anticipation of State aid if other revenues are
39 insufficient to meet the revenues needed to offset total
40 appropriations.

41 d. Following the hearing or hearings on the budget pursuant to
42 subsection c. of this section, the governing body shall vote upon the
43 proposed budget. Failure to adopt the budget shall be
44 communicated to the Local Finance Board or its designee along
45 with the reasons for each line item that is rejected. If the Local
46 Finance Board or its designee does not approve those alternatives
47 proposed by the governing body, any disputed line item shall be

1 considered an impasse and subject to determination by the
2 Commissioner of Community Affairs.

3 e. During the period that the municipality is in need of
4 stabilization and recovery, the Local Finance Board, or its designee,
5 shall ensure that those appropriations in the municipal budget
6 necessary for the improvement of internal audit mechanisms and
7 controls are present on an annual basis.

8
9 7. Notwithstanding the provisions of section 5 of P.L. ,
10 c. (C.) (pending before the Legislature as this bill), or of any
11 law, rule or regulation to the contrary, the authority to file a petition
12 with any United States court or federal bankruptcy court for the
13 purpose of effecting a plan of readjustment or composition of debts
14 as set forth in R.S.52:27-40, and the authority to adopt an ordinance
15 authorizing the filing of such a petition under R.S.52:27-41, shall
16 remain with the governing body of the municipality in need of
17 stabilization and recovery and shall not be reallocated to the Local
18 Finance Board or its designee.

19
20 8. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill, designated the “Municipal Stabilization and Recovery
26 Act,” would empower the Director of the Division of Local
27 Government Services and the Local Finance Board to assist certain
28 municipalities deemed to be in fiscal distress and in need of
29 stabilization and recovery.

30 Under the bill, the director would have the power to ascertain
31 whether an eligible municipality is experiencing fiscal distress and
32 therefore should be deemed a “municipality in need of stabilization
33 and recovery,” and if so, to recommend that the Commissioner of
34 Community Affairs make such a determination. The bill defines
35 “eligible municipality” as a municipality in which casino gaming is
36 authorized by the voters of the State.

37 Under the bill, “fiscal distress” means a fiscal condition based on
38 an eligible municipality’s tax rate, cash deficit, insufficient
39 percentage of tax collections, insufficient collection of other
40 revenues, over-anticipation of the revenues of prior years, non-
41 liquidation of interfund transfers, reliance on emergency
42 authorizations, continual rollover of tax anticipation notes, or other
43 factors indicating a constrained ability to meet its budgetary
44 requirements.

45 The bill defines a “municipality in need of stabilization and
46 recovery” as one that, on or after the bill’s effective date, has
47 experienced a decrease of more than 50 percent in its total assessed
48 property values during the immediately preceding five-year period,

1 as determined by the director, or has experienced an increase in
2 outstanding debt exceeding 50 percent during the immediately
3 preceding five-year period, as determined by the director.

4 The Commissioner of Community Affairs would make the final
5 determination of whether an eligible municipality should be deemed
6 to be a municipality in need of stabilization and recovery and
7 should be subject to the provisions of the bill. The commissioner
8 would then notify the Governor, the State Treasurer, and the
9 director that the eligible municipality is subject to the provisions of
10 the bill, and the director would notify the municipal clerk or other
11 appropriate municipal official of the eligible municipality in writing
12 of the determination. An eligible municipality deemed to be a
13 municipality in need of stabilization and recovery pursuant to the
14 bill would be subject to the provisions of the bill for a period of 15
15 consecutive years. This period could not be extended or renewed.

16 Under the bill, upon the determination by the commissioner that
17 an eligible municipality is a municipality in need of stabilization
18 and recovery for the purposes of the bill, and notwithstanding the
19 provisions of any law, rule, or regulation to the contrary, any of the
20 functions, powers, privileges, immunities, and duties of the
21 governing body of such an eligible municipality set forth in any
22 statute, regulation, ordinance, resolution, charter, or contract that
23 are or may be substantially related to the fiscal condition or
24 financial recovery may, at the discretion of the director, be
25 reallocated to, and vested exclusively in, the Local Finance Board,
26 or its designee. The bill requires the director to include his
27 rationale for the reallocation of every of every particular function,
28 power, privilege, immunity, or duty. The authority of the Local
29 Finance Board, or its designee, shall extend to any and all actions
30 that, in the discretion of the director, may help stabilize the finances
31 of the eligible municipality, and shall include, but not be limited to,
32 the implementation of governmental, administrative, and
33 operational efficiency and oversight measures, the authority to
34 dissolve, terminate, transfer, or dispose of any municipal authority,
35 board, commission, or department, and the authority to sell, convey,
36 lease, or otherwise dispose of any interest in any municipally-
37 owned assets of the eligible municipality, including but not limited
38 to, any water, sewer, wastewater, and stormwater infrastructure,
39 equipment or facilities, and any real property, including any
40 improvements thereon.

41 The bill requires that the municipal portion of the equalized
42 general tax rate within a municipality in need of stabilization and
43 recovery shall not increase over the rate established for the year
44 during which the commissioner's recommendation took effect,
45 except upon application to the Local Finance Board or its designee
46 in the case of extraordinary conditions.

47 The Local Finance Board, or its designee, shall, in consultation
48 with the mayor, annually prepare a budget and in consultation with

1 the mayor, shall fix a date, place and time for the holding of a
2 public hearing on the budget. Following the hearing or hearings on
3 the budget, the governing body shall vote upon the proposed
4 budget. Failure to adopt the budget shall be communicated to the
5 Local Finance Board or its designee along with the reasons for each
6 line item that is rejected; and if the Local Finance Board or its
7 designee does not approve those alternatives proposed by the
8 governing body, any disputed line item shall be considered an
9 impasse and subject to determination by the Commissioner of
10 Community Affairs.

11 The bill would require the Local Finance Board to review the
12 performance of a municipality in need of stabilization and recovery
13 at the end of every fifth year, and shall determine whether its fiscal
14 condition is improving or declining while subject to the provisions
15 of the bill. The Local Finance Board must report its findings to the
16 Governor and the Legislature, and the report may contain
17 suggestions for recommended actions by the director or recommend
18 any changes that should be made to the "Municipal Stabilization
19 and Recovery Act."