[First Reprint]

ASSEMBLY, No. 5590

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 5, 2021

Sponsored by:
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)
Assemblyman JOHN ARMATO
District 2 (Atlantic)
Assemblyman LOUIS D. GREENWALD
District 6 (Burlington and Camden)
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator JAMES BEACH
District 6 (Burlington and Camden)

Co-Sponsored by:
Assemblymen Mukherji, Giblin, Assemblywomen Jimenez, Downey, Murphy and Assemblyman Houghtaling

SYNOPSIS

Extends period of municipal stabilization and recovery, with certain modifications, under "Municipal Stabilization and Recovery Act."

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on June 10, 2021, with amendments.

(Sponsorship Updated As Of: 6/21/2021)

AN ACT concerning certain municipalities confronted by severe fiscal distress and amending and repealing various parts of the statutory law.

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

1. Section 4 of P.L.2016, c.4 (C.52:27BBBB-4) is amended to read as follows:

4. a. The director may ascertain whether a municipality should be deemed a municipality in need of stabilization and recovery. If the director ascertains that a municipality should be deemed a municipality in need of stabilization and recovery, the director shall recommend that the commissioner make that determination. Within 7 days of receipt of the director's recommendation, the commissioner shall make the final determination of whether to deem the municipality a municipality in need of stabilization and recovery and subject to the provisions of P.L.2016, c.4 (C.52:27BBBB-1 et al.). The commissioner shall notify the Governor, the State Treasurer, and the director when a determination has been made and a municipality is subject to the provisions of P.L.2016, c.4 (C.52:27BBBB-1 et al.). The director shall then notify the municipal clerk, or other appropriate municipal official of the municipality, in writing, of the determination. A municipality in need of stabilization and recovery shall be subject to the provisions of P.L.2016, c.4 (C.52:27BBBB-1 et al.) until the end of the recovery plan adopted pursuant to subsection b. of this section and approved by the commissioner pursuant to subsection c. of this section, or until the first day of the **[**61st**]** <u>109th</u> month next following the date on which the municipality becomes subject to the requirements and provisions of sections 5 through 11, 14, 16, and 17 of P.L.2016, c.4 (C.52:27BBBB-5 et al.), as applicable.

b. Not later than 150 days next following the commissioner's final determination that a municipality is in need of stabilization and recovery, the governing body of the municipality in need of stabilization and recovery shall prepare and adopt a resolution containing a **[**five-year**]** <u>nine-year</u> recovery plan, commencing on the first day of the first fiscal year of the municipality next following the enactment of P.L.2016, c.4 (C.52:27BBBB-1 et al.), that is sufficient to effectuate the financial stability of the municipality. The recovery plan shall establish processes and identify specific actions undertaken by the municipality following the determination that it is a municipality in need of stabilization and recovery pursuant to subsection a. of this section, and actions to be undertaken by the municipality if the recovery plan is approved

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 <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SCU committee amendments adopted June 10, 2021.

pursuant to subsection c. of this section. The recovery plan shall include a proposed balanced budget for the first fiscal year of the municipality next following the enactment of P.L.2016, c.4 (C.52:27BBBB-1 et al.), which shall be consistent with the "Local Budget Law," N.J.S.40A:4-1 et seq., except as otherwise stated in this subsection. There shall be no requirement for the proposed balanced budget to identify amounts outstanding, including accrued interest, on any obligation to the State of New Jersey, including any office, department, division, bureau, board, commission, or agency of the State, for deferred pension and health benefit payments for the first fiscal year of the municipality prior to the enactment of P.L.2016, c.4 (C.52:27BBBB-1 et al.). For the purposes of the proposed budget prepared pursuant to this subsection, the municipality in need of stabilization and recovery is not required to appropriate the total amount necessary for the extinguishment of all outstanding property tax appeal debt. For the purposes of the proposed budget prepared pursuant to this subsection, the municipality in need of stabilization and recovery shall identify and account for the loss in revenue from any anticipated set-offs arising from all such property tax appeal debt or identify and appropriate for any amounts owed in the first fiscal year of the municipality next following the enactment of P.L.2016, c.4 (C.52:27BBBB-1 et al.) for the continued repayment of debts related to all property tax appeals settled by the municipality. To effectuate financial stability, in addition to the proposed balanced budget, the recovery plan shall include detailed processes to:

(1) achieve sustainable net reductions in the municipality's general appropriations to be commensurate with revenues anticipated in the proposed budget;

(2) ensure that the municipality remits to the county in which it is located the full amount of all property taxes or payments in lieu of property taxes owed by law to the county on the dates on which the payments are due;

(3) ensure that the municipality remits to the school district serving the municipality the full amount of all property taxes or payments in lieu of property taxes owed by law to the school district on the dates the payments are due;

(4) schedule for the repayment of debts, including any accrued interest, as of the date of the commissioner's determination pursuant to subsection a. of this section, including, without limitation, any money owed to the State of New Jersey, including any office, department, division, bureau, board, commission, or agency of the State, for deferred pension and health benefits payments;

(5) account for future payments on bonded debt and unbonded debt, including, without limitation, any general obligation bonds, refunding bonds, pension refunding bonds, tax appeal bonds, and unbonded tax appeal settlements, obligations, liens, or judgments

known to the municipality as of the date of the commissioner's determination pursuant to subsection a. of this section;

(6) account for future payments on any off balance sheet liabilities of the municipality known to the municipality as of the date of the commissioner's determination pursuant to subsection a. of this section;

(7) ensure the repayment of the loan in accordance with section 18 of P.L.2016, c.4 (C.52:27BBBB-16), including accrued interest; and

(8) increase the municipality's revenues, including, without limitation, through the establishment of long-term economic and land use development strategies.

c. The recovery plan shall be submitted by the governing body to the commissioner. The commissioner, within five business days next following the day of receipt of the plan, shall determine, in the commissioner's sole and exclusive discretion, whether the recovery plan is likely or is not likely to achieve financial stability for the municipality. If the commissioner determines that the recovery plan is likely to achieve financial stability for the municipality, the plan shall be effective and the provisions of sections 5 through 11, 14, 16, and 17 of P.L.2016, c.4 (C.52:27BBBB-5 through C.52:27BBBB-9, C.52:27BBBB-12, C.52:27BBBB-14, and C.52:27BBBB-15) shall not be applicable with respect to the municipality in need of stabilization and recovery. If the commissioner determines that the recovery plan is likely to achieve financial stability for the municipality, the plan shall be implemented beginning on the first day of the first fiscal year of the municipality next following the enactment of P.L.2016, c.4 (C.52:27BBBB-1 et al.) and the municipality in need of stabilization and recovery shall strictly comply with the recovery plan. If the commissioner determines that the plan is not likely to achieve financial stability for the municipality, if the municipality fails to submit a plan, if the commissioner determines that the municipality is not strictly complying with a recovery plan approved by the commissioner pursuant to this subsection, or if the commissioner determines that a recovery plan approved by the commissioner pursuant to this subsection is no longer likely to achieve financial stability, the municipality shall be immediately subject to the requirements and provisions of sections 5 through 11, 14, 16, and 17 of P.L.2016, c.4 (C.52:27BBBB-5 et al.) for as long as the municipality is deemed a municipality in need of stabilization and recovery.

(cf: P.L.2016, c.4, s.4)

2. Section 5 of P.L.2016, c.4 (C.52:27BBBB-5) is amended to read as follows:

5. a. (1) Notwithstanding the provisions of any law, rule, or regulation to the contrary, if the municipality in need of stabilization

and recovery fails to submit a plan, if the commissioner has determined pursuant to subsection c. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4) that the recovery plan is not likely to achieve financial stability for the municipality in need of stabilization and recovery, if the commissioner determines that the municipality is not strictly complying with a recovery plan approved by the commissioner pursuant to subsection c. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4), or if the commissioner determines that a recovery plan approved by the commissioner pursuant to subsection c. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4) is no longer likely to achieve financial stability, the Local Finance Board may, in its exclusive discretion at any time during which the municipality is deemed a municipality in need of stabilization and recovery, assume and reallocate to, and vest exclusively in the director any of the functions, powers, privileges, and immunities of the governing body of that municipality set forth in any statute, regulation, ordinance, resolution, charter, or contract to which the municipality is a party that are, or may be, substantially related to the fiscal condition or financial rehabilitation and recovery of that municipality. The duration of the transfer of the functions, powers, privileges, and immunities of the governing body shall not exceed the duration of the time the municipality is deemed a municipality in need of stabilization and recovery.

(2) In the event the Local Finance Board assumes and reallocates to the director any function, power, privilege, or immunity of the governing body of a municipality in need of stabilization and recovery set forth in a contract to which that municipality is a party, the municipality shall remain the party to the contract and neither the Local Finance Board nor the director shall assume any contractual obligations or liability arising out of that contract or be subject to any claim for breach of that contract or any other claim related to that contract. Any actions or steps taken by the director under P.L.2016, c.4 (C.52:27BBBB-1 et al.) shall be deemed to be by, and on behalf of, the municipality in need of stabilization.

(3) The authorities granted to the director by the Local Finance Board pursuant to this section shall extend to any and all actions that, in the exclusive discretion of the director, may help stabilize the finances, restructure the debts, or assist in the financial rehabilitation and recovery of the municipality in need of stabilization and recovery. Notwithstanding the provisions of any other law, rule, regulation, or contract to the contrary, except for the provisions of Title 11A, Civil Service [1]as may be applicable to actions taken after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill)[1], the director shall have the authority to take any steps to stabilize the finances, restructure the debts, or assist in the financial rehabilitation and recovery of the municipality in need of stabilization and recovery, including, but not limited to:

(a) implementing governmental, administrative, and operational efficiency and oversight measures;

(b) dissolving, terminating, transferring, abolishing, or otherwise disposing of any municipal authority, board, commission, or department, or any function thereof; provided, however, that no such action shall be taken until adequate provision has been made for the payment of the creditors or obligees of the entity to be impacted unless otherwise permitted by law. This shall include the power to take any steps required of the governing body under applicable laws, including but not limited to the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), the "Water Infrastructure Protection Act," P.L.2015, c.18 (C.58:30-1 et seq.), the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). To the extent that the Local Finance Board or the director exercise any powers under the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.) with respect to any municipal authority or municipal public utility in the municipality in need of stabilization and recovery;

(c) vetoing the minutes of the governing body of the municipality in need of stabilization and recovery, any board, commission, or department of the municipality in need of stabilization and recovery, and any independent board or authority in the municipality in need of stabilization and recovery, including, but not limited to, the housing authority, parking authority, redevelopment authority, planning board, and zoning board of adjustment. A true copy of the minutes of every meeting of the governing body and any board, commission, department, or independent board, or authority shall be delivered forthwith, by and under the certification of the secretary thereof, to the director. No action taken at the meeting shall have force or effect until 15 business days after a copy of the minutes have been so delivered to the director, unless during this 15-day period the director shall approve in writing the minutes or any part thereof, in which case the action shall become effective upon approval. If, within that 15-day period, the director returns a copy of the minutes with a veto of any action taken by the governing body, board, commission, department, or independent board or authority, or any member thereof at the meeting, the action shall be null and void and of no effect. The director may approve all or part of the action taken at a meeting;

(d) controlling litigation and the municipality's legal affairs, including, but not limited to, suing in the municipality's corporate name; prosecuting, defending, and resolving litigation, arbitration, disputes, and controversies; and retaining and directing municipal corporation counsel and other special counsel as the director may deem appropriate;

(e) selling, conveying, leasing, monetizing, or otherwise disposing of any interest in any municipally-owned assets, including but not limited to, any water, sewer, wastewater, and storm water infrastructure, equipment or facilities, services, and in any real

property, including any improvements thereon; provided that the director shall not sell, convey, lease, monetize, or otherwise dispose of any municipally-owned water asset pursuant to an agreement with a private entity until one year after the effective date of P.L.2016, c.4 (C.52:27BBBB-1 et al.) to allow the municipality in need of stabilization and recovery to maximize the value of that asset;

(f) amending or terminating any existing contracts or agreements, which shall not include bonds, notes, indentures, or other similar financing instruments and documents to which the municipality is a party, in accordance with the terms thereof; or unilaterally amending or terminating any contracts or agreements which shall not include bonds, notes, indentures, or other similar financing instruments and documents to which the municipality is a party, provided that the director determines that the unilateral termination or amendment is reasonable and directly related to stabilizing the finances or assisting with the fiscal rehabilitation and recovery of the municipality in need of stabilization and recovery;

(g) unilaterally modifying, amending, or terminating any collective negotiations agreements, except those related to school districts, to which the municipality is a party, or unilaterally modifying, amending, or terminating the terms and conditions of employment during the term of any applicable collective negotiations agreement, or both, provided that the director determines that the modifications, amendments, or terminations are reasonable and directly related to stabilizing the finances or assisting with the fiscal rehabilitation and recovery of the municipality in need of stabilization and recovery;

(h) acting as the sole agent in collective negotiations on behalf of the municipality in need of stabilization and recovery;

(i) with respect to any expired collective negotiations agreement to which the municipality in need of stabilization and recovery is a party, unilaterally modifying wages, hours, or any other terms and conditions of employment;

(j) unilaterally abolishing any non-elected positions in the municipality in need of stabilization and recovery at any time. All of the functions, powers, and duties of abolished positions shall be exercised or delegated by the director; **[**provided, however, that the provisions of Title 11A, Civil Service, shall not apply to any employment action under this paragraph;**]**

(k) unilaterally appointing, transferring, or removing employees of the municipality in need of stabilization and recovery, including, but not limited to, department heads and division heads, as the case may be, but excluding appointed officials who have obtained tenure in office; **[**provided, however, that the provisions of Title 11A, Civil Service, shall not apply to any employment action under this paragraph, and that the director shall not remove employees from a public safety department unless the employees of the department have

been offered a retirement incentive plan, in writing, pursuant to section 13 of P.L.2016, c.4 (C.52:27BBBB-11);]

(l) acting as the appropriate authority, including, without limitation, the appointing authority, for purposes of Title 40A of the New Jersey Statutes;

(m) entering into any agreement with the county in which the municipality in need of stabilization and recovery is located, any of the other municipalities located in that county, or any instrumentality of the State to share or consolidate municipal services pursuant to any law applicable to consolidation or sharing of services, including, without limitation, the "Uniform Shared Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-1 et al.) and P.L.2015, c.279 (C.40A:14-90.1 et al.);

(n) procuring any goods, services, commodities, information technology, software, hardware, or other items on behalf of the municipality in need of stabilization and recovery, in accordance with either the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or procurement laws applicable to the State, at the discretion of the director;

(o) retaining any professionals on behalf of the municipality in need of stabilization and recovery, and directing the work of professionals or any professionals previously retained by the municipality in need of stabilization and recovery, in accordance with either the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) or procurement laws applicable to the State, at the discretion of the director;

(p) retaining bond counsel, adopting bond ordinances to the extent necessary, making appropriate bond applications, and taking any other steps necessary to restructure and adjust debt, on behalf of the municipality in need of stabilization and recovery;

(q) exercising on behalf of the municipality in need of stabilization and recovery any authority granted to a municipality pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.) when the director deems it necessary or appropriate to help stabilize the finances, restructure the debts, or assist with the financial rehabilitation and recovery of the municipality in need of stabilization and recovery;

(r) exercising on behalf of the municipality in need of stabilization and recovery any authority granted to a municipality pursuant to the "Redevelopment Area Bond Financing Law," P.L.2001, c.310 (C.40A:12A-64 et seq.) when the director deems it necessary or appropriate to help stabilize the finances, restructure the debts, or assist with the financial rehabilitation and recovery of the municipality in need of stabilization and recovery;

(s) exercising on behalf of the municipality in need of stabilization and recovery any authority granted to a municipality pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et seq.) when the director deems it necessary or appropriate to help

stabilize the finances, restructure the debts, or assist the financial rehabilitation and recovery of the municipality in need of stabilization and recovery;

(t) authorizing and filing, on behalf of the municipality in need of stabilization and recovery, subject only to the written approval of the majority of the members of the legislative Joint Budget Oversight Committee, a petition and other pleadings and papers with any United States court or federal bankruptcy court for the purpose of effecting a plan of readjustment or composition of debts as set forth in R.S.52:27-40 et seq., and taking any other and further actions necessary or appropriate in connection with any case or proceeding; and

(u) negotiating and executing any contracts, agreements, or other documents on behalf of the municipality in need of stabilization and recovery as may be necessary or appropriate to effectuate any of the actions or steps specifically identified in P.L.2016, c.4 (C.52:27BBBB-1 et al.) or that may otherwise, as the director deems necessary or appropriate, help stabilize the finances, restructure the debts, or assist with the financial rehabilitation and recovery of the municipality in need of stabilization and recovery.

(4) Subject to subsection b. of section 11 of P.L.2016, c.4 (C.52:27BBBB-9), the Local Finance Board may authorize the director to take any action authorized to be taken under the "Local Bond Law," N.J.S.40A:2-1 et seq., and the "Municipal Qualified Bond Act," P.L.1976, c.38 (C.40A:3-1 et seq.) by a governing body of a local unit.

(5) The provisions of P.L.1941, c.100 (C.34:13A-1 et seq.), and regulations promulgated thereunder, shall in no way infringe on the authority of the Local Finance Board or the director set forth in this section or any actions taken by the director pursuant to this section.

(6) Any function, power, privilege, or immunity of the municipal governing body that is not assumed by the Local Finance Board and reallocated to and vested exclusively in the director pursuant to this section shall remain allocated to and vested in that governing body unless and until such time as the function, power, privilege, immunity, or duty may be allocated to and vested exclusively in the Local Finance Board or the director pursuant to this section. The Local Finance Board or the director may exercise any power implied or incidental to a power that has been specifically allocated.

b. (1) Notwithstanding the provisions of any law, rule, or regulation to the contrary, including any requirements set forth in R.S.40:49-1 et seq., the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), or R.S.52:27-41, the director shall have the exclusive authority to pass, adopt, repeal, or amend any ordinance or resolution of the municipality in need of stabilization and recovery, modify any meeting agenda of the governing body of the municipality in need of stabilization and recovery, and negotiate, enter into, amend, or terminate any contract or agreement, on behalf of the municipality in need of stabilization and recovery, provided that the director deems the action necessary or

appropriate to help stabilize the finances, restructure the debts, or assist with the financial rehabilitation and recovery of the municipality in need of stabilization and recovery.

(2) When exercising powers under this section, the director shall, to the extent practicable, comply with all notice, hearing, and other requirements to which the municipality in need of stabilization and recovery is generally subject, but in no instance shall the director be deemed a "public body" pursuant to the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

(3) The director may issue to the appropriate elected and appointed officials and employees, agents, and contractors of a municipality in need of stabilization and recovery the orders that the director deems appropriate to stabilize the finances, restructure the debts, or assist the financial rehabilitation and recovery of the municipality in need of stabilization and recovery pursuant to the authority granted by the Local Finance Board pursuant to this section. Any order by the director shall be binding on the appropriate elected and appointed officials and employees, agents, and contractors of a municipality in need of stabilization and recovery and may be enforced as other orders of the director are enforced under general law.

(cf: P.L.2017, c.232, s.1)

3. Section 17 of P.L.2016, c.4 (C.52:27BBBB-15) is amended to read as follows:

17. The director or the director's designee shall attend the regularly scheduled meetings of the municipal council in a municipality in need of stabilization and recovery. On or before the first day of the **[**sixth**]** tenth year next following the determination that a municipality is in need of stabilization and recovery pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4), the director shall provide a final report to the Governor and Legislature regarding the municipality in need of stabilization and recovery.

(cf: P.L.2016, c.4, s.17)

4. Section 1 of P.L.1974, c.123 (C.34:13A-5.4) is amended to read as follows:

1. a. Public employers, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(7) Violating any of the rules and regulations established by the commission.

b. Employee organizations, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(5) Violating any of the rules and regulations established by the commission.

c. The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof; provided that no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

In any such proceeding, the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall be applicable. Evidence shall be taken at the hearing and filed with the commission. If, upon all the evidence taken, the commission shall determine that any party charged has engaged or is engaging in any such unfair practice, the commission shall state its findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act. All cases in which a complaint and notice of hearing on a charge is actually issued by the commission, shall be prosecuted before the commission or its agent, or both, by the

representative of the employee organization or party filing the charge or his authorized representative.

d. The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

e. The commission shall adopt such rules as may be required to regulate the conduct of representation elections, and to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.

f. The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceeding.

g. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission that a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) shall not be subject to the commission's authority to prevent an unfair practice pursuant to subsection a. of this section. Upon such notice, neither the commission, nor any designee, shall have the authority to issue or cause to be served upon such municipality in need of stabilization and recovery any complaint alleging an unfair practice under subsection a. of this section or to hold any hearings with respect thereto. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the Director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

<u>The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed “a municipality in need of stabilization and recovery” pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4)</u> **[1]**<u>; however, actions taken pursuant to this subsection prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be final and shall not be subject to reconsideration</u>**[1]**<u>.</u>

(cf: P.L.2016, c.4, s.7)

5. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to read as follows:

3. a. (1) Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. The parties shall meet at least three times during that 120-day period. The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. By mutual consent, the parties may agree to extend the period during which the second and third meetings are required to take place beyond the day on which their collective negotiation agreement is to expire. A violation of this paragraph shall constitute an unfair practice and the violator shall be subject to the penalties prescribed by the commission pursuant to rule and regulation.

Prior to the expiration of their collective negotiation agreement, either party may file an unfair practice charge with the commission alleging that the other party is refusing to negotiate in good faith. The charge shall be filed in the manner, form and time specified by the commission in rule and regulation. If the charge is sustained, the commission shall order that the respondent be assessed for all legal and administrative costs associated with the filing and resolution of the charge; if the charge is dismissed, the commission shall order that the charging party be assessed for all legal and administrative costs associated with the filing and resolution of the charge. The filing and resolution of the unfair practice charge shall not delay or impair the impasse resolution process.

(2) Whenever those negotiations concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, or upon its own motion take such steps, including the assignment of a mediator, as it may deem expedient to effect a voluntary resolution of the impasse.

b. (1) In the event of a failure to resolve the impasse by mediation, the Division of Public Employment Relations, at the request of either party, shall invoke factfinding with recommendation for settlement of all issues in dispute unless the parties reach a voluntary settlement prior to the issuance of the factfinder's report and recommended terms of settlement. Factfinding shall be limited to those issues that are within the required scope of negotiations unless the parties to the factfinding agree to factfinding on permissive subjects of negotiation.

(2) Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

Any mediation or factfinding invoked pursuant to paragraph (2) of subsection a. of this section or paragraph (1) of subsection b. of this section shall terminate immediately upon the filing of a petition for arbitration.

(3) Upon the filing of a petition for arbitration pursuant to paragraph (2) of this subsection, an arbitrator selected pursuant to paragraph (1) of subsection e. of this section shall conduct an initial meeting as a mediation session to effect a voluntary resolution of the impasse.

c. (Deleted by amendment, P.L.2010, c.105)

d. The resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-16.7). The non-petitioning party, within five days of receipt of the petition, shall separately notify the commission in writing of all issues in dispute. The filing of the written response shall not delay, in any manner, the interest arbitration process.

e. (1) The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. On the first business day following receipt of an interest arbitration petition, the commission shall, independent of and without any participation by either of the parties, randomly select an arbitrator from its special panel of arbitrators. The selection by the commission shall be final and shall not be subject to review or appeal.

(2) Applicants for initial appointment to the commission's special panel of arbitrators shall be chosen based on their professional qualifications, knowledge, and experience, in accordance with the criteria and rules adopted by the commission. Such rules shall include relevant knowledge of local government operations and budgeting. Appointment to the commission's special panel of arbitrators shall be for a three-year term, with reappointment contingent upon a screening process similar to that used for determining initial appointments. Arbitrators currently serving on the panel shall demonstrate to the commission their professional qualification, knowledge and experience, in accordance with the criteria and rules adopted by the commission, within one year of the effective date of this act. Any arbitrator who does not satisfactorily demonstrate such to the commission within the specified time shall be disqualified.

(3) Arbitrators serving on the commission's special panel shall be guided by and subject to the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service.

(4) Arbitrators shall be required to complete annual training offered by the State Ethics Commission. Any arbitrator failing to satisfactorily complete the annual training shall be immediately removed from the special panel.

The commission may suspend, remove, or otherwise discipline an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.), section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause. An arbitrator who fails to render an award within the time requirements set forth in this section shall be fined $ 1,000 for each day that the award is late.

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to subsection d. of this section.

(2) In the event of a dispute, the commission shall have the power to decide which issues are economic issues. Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

(3) Throughout formal arbitration proceedings the chosen arbitrator may mediate or assist the parties in reaching a mutually agreeable settlement.

All parties to arbitration shall present, at the formal hearing before the issuance of the award, written estimates of the financial impact of their last offer on the taxpayers of the local unit to the arbitrator with the submission of their last offer.

(4) Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation.

(5) The decision of an arbitrator or panel of arbitrators shall include an opinion and an award, and shall be rendered within 90 calendar days of the commission's assignment of that arbitrator.

Each arbitrator's decision shall be accompanied by a written report explaining how each of the statutory criteria played into the arbitrator's determination of the final award. The report shall certify that the arbitrator took the statutory limitations imposed on the local levy cap into account in making the award.

Any arbitrator violating the provisions of this paragraph may be subject to the commission's powers under paragraph (3) of subsection e. of this section. The decision shall be final and binding upon the parties and shall be irreversible, except:

(a) Within 14 calendar days of receiving an award, an aggrieved party may file notice of an appeal of an award to the commission on the grounds that the arbitrator failed to apply the criteria specified in subsection g. of this section or violated the standards set forth in

N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form and manner prescribed by the commission. In deciding an appeal, the commission, pursuant to rule and regulation and upon petition, may afford the parties the opportunity to present oral arguments. The commission may affirm, modify, correct or vacate the award or may, at its discretion, remand the award to the same arbitrator or to another arbitrator, selected by lot, for reconsideration. The commission's decision shall be rendered no later than 60 calendar days after the filing of the appeal with the commission.

Arbitration appeal decisions shall be accompanied by a written report explaining how each of the statutory criteria played into their determination of the final award. The report shall certify that in deciding the appeal, the commission took the local levy cap into account in making the award.

An aggrieved party may appeal a decision of the commission to the Appellate Division of the Superior Court.

(b) An arbitrator's award shall be implemented immediately.

(6) The parties shall share equally the costs of arbitration subject to a fee schedule approved by the commission. The fee schedule shall provide that the cost of services provided by the arbitrator shall not exceed $ 1,000 per day. The total cost of services of an arbitrator shall not exceed $ 10,000. If the parties cancel an arbitration proceeding without good cause, the arbitrator may impose a fee of not more than $ 500. The parties shall share equally in paying that fee if the request to cancel or adjourn is a joint request. Otherwise, the party causing such cancellation shall be responsible for payment of the entire fee.

g. The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factor set forth in paragraph (6) of this subsection in any award:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when

considering this factor are the limitations imposed upon the employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

h. A mediator, factfinder, or arbitrator while functioning in a mediatory capacity shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential received or prepared by him or to testify with regard to mediation, conducted by him under this act on behalf of any party to any cause pending in any type of proceeding under this act. Nothing contained herein shall exempt such an individual from disclosing information relating to the commission of a crime.

i. The Director of the Division of Local Government Services in the Department of Community Affairs may notify the commission, through the Division of Public Employment Relations, that a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will not participate in any impasse procedures authorized by this section. Upon such notice, any pending impasse procedures authorized by this section shall immediately cease, and any pending petition for arbitration shall be vacated. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed “a municipality in need of stabilization and recovery” pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) [1]; however, actions taken pursuant to this subsection prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be final and shall not be subject to reconsideration[1].

j. The Local Finance Board may provide that any arbitration award, including but not limited to an interest arbitration award, involving a municipality deemed a "municipality in need of stabilization and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) shall be subject to the review and approval of the Director of the Division of Local Government Services in the Department of Community Affairs, including those on a collective negotiations agreement where the matter has been submitted to an arbitrator pursuant to law, and no such award shall be binding without the approval of the director. Nothing in this subsection shall be construed to limit the scope of any general or specific powers of the Local Finance Board or the director set forth in P.L.2016, c.4 (C.52:27BBBB-4).

The provisions of this subsection shall no longer be applicable on and after the first day of the sixth year next following the determination by the Commissioner of Community Affairs that the municipality shall be deemed “a municipality in need of stabilization

and recovery" pursuant to section 4 of P.L.2016, c.4 (C.52:27BBBB-4) [1]; however, actions taken pursuant to this subsection prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be final and shall not be subject to reconsideration[1].

(cf: P.L.2016, c.4, s.6)

6. Section 13 of P.L.2016, c.4 (C.52:27BBBB-11) is repealed [1]; however, actions taken pursuant to this subsection prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be final and shall not be subject to reconsideration[1].

7. This act shall take effect immediately.