

SENATE, No. 3819

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 20, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

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

7
8 1. Section 4 of P.L.2016, c.4 (C.52:27BBBB-4) is amended to
9 read as follows:

10 4. a. The director may ascertain whether a municipality should
11 be deemed a municipality in need of stabilization and recovery. If
12 the director ascertains that a municipality should be deemed a
13 municipality in need of stabilization and recovery, the director shall
14 recommend that the commissioner make that determination. Within
15 7 days of receipt of the director's recommendation, the
16 commissioner shall make the final determination of whether to
17 deem the municipality a municipality in need of stabilization and
18 recovery and subject to the provisions of P.L.2016, c.4
19 (C.52:27BBBB-1 et al.). The commissioner shall notify the
20 Governor, the State Treasurer, and the director when a
21 determination has been made and a municipality is subject to the
22 provisions of P.L.2016, c.4 (C.52:27BBBB-1 et al.). The director
23 shall then notify the municipal clerk, or other appropriate municipal
24 official of the municipality, in writing, of the determination. A
25 municipality in need of stabilization and recovery shall be subject to
26 the provisions of P.L.2016, c.4 (C.52:27BBBB-1 et al.) until the
27 end of the recovery plan adopted pursuant to subsection b. of this
28 section and approved by the commissioner pursuant to subsection c.
29 of this section, or until the first day of the **【61st】** 109th month next
30 following the date on which the municipality becomes subject to the
31 requirements and provisions of sections 5 through 11, 14, 16, and
32 17 of P.L.2016, c.4 (C.52:27BBBB-5 et al.), as applicable.

33 b. Not later than 150 days next following the commissioner's
34 final determination that a municipality is in need of stabilization
35 and recovery, the governing body of the municipality in need of
36 stabilization and recovery shall prepare and adopt a resolution
37 containing a **【five-year】** nine-year recovery plan, commencing on
38 the first day of the first fiscal year of the municipality next
39 following the enactment of P.L.2016, c.4 (C.52:27BBBB-1 et al.),
40 that is sufficient to effectuate the financial stability of the
41 municipality. The recovery plan shall establish processes and
42 identify specific actions undertaken by the municipality following
43 the determination that it is a municipality in need of stabilization
44 and recovery pursuant to subsection a. of this section, and actions to
45 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 thus is new matter.

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

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

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

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

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

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

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

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

7 (7) ensure the repayment of the loan in accordance with section
8 18 of P.L.2016, c.4 (C.52:27BBBB-16), including accrued interest;
9 and

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

13 c. The recovery plan shall be submitted by the governing body
14 to the commissioner. The commissioner, within five business days
15 next following the day of receipt of the plan, shall determine, in the
16 commissioner's sole and exclusive discretion, whether the recovery
17 plan is likely or is not likely to achieve financial stability for the
18 municipality. If the commissioner determines that the recovery
19 plan is likely to achieve financial stability for the municipality, the
20 plan shall be effective and the provisions of sections 5 through 11,
21 14, 16, and 17 of P.L.2016, c.4 (C.52:27BBBB-5 through
22 C.52:27BBBB-9, C.52:27BBBB-12, C.52:27BBBB-14, and
23 C.52:27BBBB-15) shall not be applicable with respect to the
24 municipality in need of stabilization and recovery. If the
25 commissioner determines that the recovery plan is likely to achieve
26 financial stability for the municipality, the plan shall be
27 implemented beginning on the first day of the first fiscal year of the
28 municipality next following the enactment of P.L.2016, c.4
29 (C.52:27BBBB-1 et al.) and the municipality in need of
30 stabilization and recovery shall strictly comply with the recovery
31 plan. If the commissioner determines that the plan is not likely to
32 achieve financial stability for the municipality, if the municipality
33 fails to submit a plan, if the commissioner determines that the
34 municipality is not strictly complying with a recovery plan
35 approved by the commissioner pursuant to this subsection, or if the
36 commissioner determines that a recovery plan approved by the
37 commissioner pursuant to this subsection is no longer likely to
38 achieve financial stability, the municipality shall be immediately
39 subject to the requirements and provisions of sections 5 through 11,
40 14, 16, and 17 of P.L.2016, c.4 (C.52:27BBBB-5 et al.) for as long
41 as the municipality is deemed a municipality in need of stabilization
42 and recovery.

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

44

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

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

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

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

37 (3) The authorities granted to the director by the Local Finance
38 Board pursuant to this section shall extend to any and all actions
39 that, in the exclusive discretion of the director, may help stabilize
40 the finances, restructure the debts, or assist in the financial
41 rehabilitation and recovery of the municipality in need of
42 stabilization and recovery. Notwithstanding the provisions of any
43 other law, rule, regulation, or contract to the contrary, except for the
44 provisions of Title 11A, Civil Service, the director shall have the
45 authority to take any steps to stabilize the finances, restructure the
46 debts, or assist in the financial rehabilitation and recovery of the
47 municipality in need of stabilization and recovery, including, but
48 not limited to:

- 1 (a) implementing governmental, administrative, and operational
2 efficiency and oversight measures;
- 3 (b) dissolving, terminating, transferring, abolishing, or
4 otherwise disposing of any municipal authority, board, commission,
5 or department, or any function thereof; provided, however, that no
6 such action shall be taken until adequate provision has been made
7 for the payment of the creditors or obligees of the entity to be
8 impacted unless otherwise permitted by law. This shall include the
9 power to take any steps required of the governing body under
10 applicable laws, including but not limited to the "municipal and
11 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
12 seq.), the "Local Authorities Fiscal Control Law," P.L.1983, c.313
13 (C.40A:5A-1 et seq.), the "Water Infrastructure Protection Act,"
14 P.L.2015, c.18 (C.58:30-1 et seq.), the "Local Redevelopment and
15 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), and the
16 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
17 To the extent that the Local Finance Board or the director exercise
18 any powers under the "Local Authorities Fiscal Control Law,"
19 P.L.1983, c.313 (C.40A:5A-1 et seq.) with respect to any municipal
20 authority or municipal public utility in the municipality in need of
21 stabilization and recovery;
- 22 (c) vetoing the minutes of the governing body of the
23 municipality in need of stabilization and recovery, any board,
24 commission, or department of the municipality in need of
25 stabilization and recovery, and any independent board or authority
26 in the municipality in need of stabilization and recovery, including,
27 but not limited to, the housing authority, parking authority,
28 redevelopment authority, planning board, and zoning board of
29 adjustment. A true copy of the minutes of every meeting of the
30 governing body and any board, commission, department, or
31 independent board, or authority shall be delivered forthwith, by and
32 under the certification of the secretary thereof, to the director. No
33 action taken at the meeting shall have force or effect until 15
34 business days after a copy of the minutes have been so delivered to
35 the director, unless during this 15-day period the director shall
36 approve in writing the minutes or any part thereof, in which case
37 the action shall become effective upon approval. If, within that 15-
38 day period, the director returns a copy of the minutes with a veto of
39 any action taken by the governing body, board, commission,
40 department, or independent board or authority, or any member
41 thereof at the meeting, the action shall be null and void and of no
42 effect. The director may approve all or part of the action taken at a
43 meeting;
- 44 (d) controlling litigation and the municipality's legal affairs,
45 including, but not limited to, suing in the municipality's corporate
46 name; prosecuting, defending, and resolving litigation, arbitration,
47 disputes, and controversies; and retaining and directing municipal

1 corporation counsel and other special counsel as the director may
2 deem appropriate;

3 (e) selling, conveying, leasing, monetizing, or otherwise
4 disposing of any interest in any municipally-owned assets,
5 including but not limited to, any water, sewer, wastewater, and
6 storm water infrastructure, equipment or facilities, services, and in
7 any real property, including any improvements thereon; provided
8 that the director shall not sell, convey, lease, monetize, or otherwise
9 dispose of any municipally-owned water asset pursuant to an
10 agreement with a private entity until one year after the effective
11 date of P.L.2016, c.4 (C.52:27BBBB-1 et al.) to allow the
12 municipality in need of stabilization and recovery to maximize the
13 value of that asset;

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

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

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

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

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

47 (k) unilaterally appointing, transferring, or removing employees
48 of the municipality in need of stabilization and recovery, including,

1 but not limited to, department heads and division heads, as the case
2 may be, but excluding appointed officials who have obtained tenure
3 in office; **【**provided, however, that the provisions of Title 11A,
4 Civil Service, shall not apply to any employment action under this
5 paragraph, and that the director shall not remove employees from a
6 public safety department unless the employees of the department
7 have been offered a retirement incentive plan, in writing, pursuant
8 to section 13 of P.L.2016, c.4 (C.52:27BBBB-11);**】**

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

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

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

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

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

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

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

1 the debts, or assist with the financial rehabilitation and recovery of
2 the municipality in need of stabilization and recovery;

3 (s) exercising on behalf of the municipality in need of
4 stabilization and recovery any authority granted to a municipality
5 pursuant to the "Long Term Tax Exemption Law," P.L.1991, c.431
6 (C.40A:20-1 et seq.) when the director deems it necessary or
7 appropriate to help stabilize the finances, restructure the debts, or
8 assist the financial rehabilitation and recovery of the municipality in
9 need of stabilization and recovery;

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

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

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

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

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

47 b. (1) Notwithstanding the provisions of any law, rule, or
48 regulation to the contrary, including any requirements set forth in

1 R.S.40:49-1 et seq., the "Senator Byron M. Baer Open Public
2 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), or R.S.52:27-41,
3 the director shall have the exclusive authority to pass, adopt, repeal,
4 or amend any ordinance or resolution of the municipality in need of
5 stabilization and recovery, modify any meeting agenda of the
6 governing body of the municipality in need of stabilization and
7 recovery, and negotiate, enter into, amend, or terminate any contract
8 or agreement, on behalf of the municipality in need of stabilization
9 and recovery, provided that the director deems the action necessary
10 or appropriate to help stabilize the finances, restructure the debts, or
11 assist with the financial rehabilitation and recovery of the
12 municipality in need of stabilization and recovery.

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

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

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

33

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

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

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

45

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

- 1 1. a. Public employers, their representatives or agents are
2 prohibited from:
 - 3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.
 - 5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.
 - 7 (3) Discriminating in regard to hire or tenure of employment or
8 any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by this
10 act.
 - 11 (4) Discharging or otherwise discriminating against any
12 employee because he has signed or filed an affidavit, petition or
13 complaint or given any information or testimony under this act.
 - 14 (5) Refusing to negotiate in good faith with a majority
15 representative of employees in an appropriate unit concerning terms
16 and conditions of employment of employees in that unit, or refusing
17 to process grievances presented by the majority representative.
 - 18 (6) Refusing to reduce a negotiated agreement to writing and to
19 sign such agreement.
 - 20 (7) Violating any of the rules and regulations established by the
21 commission.
- 22 b. Employee organizations, their representatives or agents are
23 prohibited from:
 - 24 (1) Interfering with, restraining or coercing employees in the
25 exercise of the rights guaranteed to them by this act.
 - 26 (2) Interfering with, restraining or coercing a public employer in
27 the selection of his representative for the purposes of negotiations
28 or the adjustment of grievances.
 - 29 (3) Refusing to negotiate in good faith with a public employer,
30 if they are the majority representative of employees in an
31 appropriate unit concerning terms and conditions of employment of
32 employees in that unit.
 - 33 (4) Refusing to reduce a negotiated agreement to writing and to
34 sign such agreement.
 - 35 (5) Violating any of the rules and regulations established by the
36 commission.
- 37 c. The commission shall have exclusive power as hereinafter
38 provided to prevent anyone from engaging in any unfair practice
39 listed in subsections a. and b. above. Whenever it is charged that
40 anyone has engaged or is engaging in any such unfair practice, the
41 commission, or any designated agent thereof, shall have authority to
42 issue and cause to be served upon such party a complaint stating the
43 specific unfair practice charged and including a notice of hearing
44 containing the date and place of hearing before the commission or
45 any designated agent thereof; provided that no complaint shall issue
46 based upon any unfair practice occurring more than 6 months prior
47 to the filing of the charge unless the person aggrieved thereby was
48 prevented from filing such charge in which event the 6-month

1 period shall be computed from the day he was no longer so
2 prevented.

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

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

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

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

38 g. The Director of the Division of Local Government Services
39 in the Department of Community Affairs may notify the
40 commission that a municipality deemed a "municipality in need of
41 stabilization and recovery" pursuant to section 4 of P.L.2016, c.4
42 (C.52:27BBB-4) shall not be subject to the commission's authority
43 to prevent an unfair practice pursuant to subsection a. of this
44 section. Upon such notice, neither the commission, nor any
45 designee, shall have the authority to issue or cause to be served
46 upon such municipality in need of stabilization and recovery any
47 complaint alleging an unfair practice under subsection a. of this
48 section or to hold any hearings with respect thereto. Nothing in this

1 subsection shall be construed to limit the scope of any general or
2 specific powers of the Local Finance Board or the Director set forth
3 in P.L.2016, c.4 (C.52:27BBBB-1 et al.).

4 The provisions of this subsection shall no longer be applicable
5 on and after the first day of the sixth year next following the
6 determination by the Commissioner of Community Affairs that the
7 municipality shall be deemed “a municipality in need of
8 stabilization and recovery” pursuant to section 4 of P.L.2016, c.4
9 (C.52:27BBBB-4).

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

11
12 5. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to read
13 as follows:

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

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

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

46 b. (1) In the event of a failure to resolve the impasse by
47 mediation, the Division of Public Employment Relations, at the
48 request of either party, shall invoke factfinding with

1 recommendation for settlement of all issues in dispute unless the
2 parties reach a voluntary settlement prior to the issuance of the
3 factfinder's report and recommended terms of settlement.
4 Factfinding shall be limited to those issues that are within the
5 required scope of negotiations unless the parties to the factfinding
6 agree to factfinding on permissive subjects of negotiation.

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

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

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

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

25 d. The resolution of issues in dispute shall be binding
26 arbitration under which the award on the unsettled issues is
27 determined by conventional arbitration. The arbitrator shall
28 determine whether the total net annual economic changes for each
29 year of the agreement are reasonable under the nine statutory
30 criteria set forth in subsection g. of this section and shall adhere to
31 the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-
32 16.7). The non-petitioning party, within five days of receipt of the
33 petition, shall separately notify the commission in writing of all
34 issues in dispute. The filing of the written response shall not delay,
35 in any manner, the interest arbitration process.

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

44 (2) Applicants for initial appointment to the commission's
45 special panel of arbitrators shall be chosen based on their
46 professional qualifications, knowledge, and experience, in
47 accordance with the criteria and rules adopted by the commission.
48 Such rules shall include relevant knowledge of local government

1 operations and budgeting. Appointment to the commission's special
2 panel of arbitrators shall be for a three-year term, with
3 reappointment contingent upon a screening process similar to that
4 used for determining initial appointments. Arbitrators currently
5 serving on the panel shall demonstrate to the commission their
6 professional qualification, knowledge and experience, in accordance
7 with the criteria and rules adopted by the commission, within one
8 year of the effective date of this act. Any arbitrator who does not
9 satisfactorily demonstrate such to the commission within the
10 specified time shall be disqualified.

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

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

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

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

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

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

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

46 (4) Arbitration shall be limited to those subjects that are within
47 the required scope of collective negotiations, except that the parties

1 may agree to submit to arbitration one or more permissive subjects
2 of negotiation.

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

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

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

15 (a) Within 14 calendar days of receiving an award, an aggrieved
16 party may file notice of an appeal of an award to the commission on
17 the grounds that the arbitrator failed to apply the criteria specified
18 in subsection g. of this section or violated the standards set forth in
19 N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal shall be filed in a form
20 and manner prescribed by the commission. In deciding an appeal,
21 the commission, pursuant to rule and regulation and upon petition,
22 may afford the parties the opportunity to present oral arguments.
23 The commission may affirm, modify, correct or vacate the award or
24 may, at its discretion, remand the award to the same arbitrator or to
25 another arbitrator, selected by lot, for reconsideration. The
26 commission's decision shall be rendered no later than 60 calendar
27 days after the filing of the appeal with the commission.

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

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

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

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

46 g. The arbitrator shall decide the dispute based on a reasonable
47 determination of the issues, giving due weight to those factors listed
48 below that are judged relevant for the resolution of the specific

1 dispute. In the award, the arbitrator or panel of arbitrators shall
2 indicate which of the factors are deemed relevant, satisfactorily
3 explain why the others are not relevant, and provide an analysis of
4 the evidence on each relevant factor; provided, however, that in
5 every interest arbitration proceeding, the parties shall introduce
6 evidence regarding the factor set forth in paragraph (6) of this
7 subsection and the arbitrator shall analyze and consider the factor
8 set forth in paragraph (6) of this subsection in any award:

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

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

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

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

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

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

33 (4) Stipulations of the parties.

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

38 (6) The financial impact on the governing unit, its residents, the
39 limitations imposed upon the local unit's property tax levy pursuant
40 to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers.
41 When considering this factor in a dispute in which the public
42 employer is a county or a municipality, the arbitrator or panel of
43 arbitrators shall take into account, to the extent that evidence is
44 introduced, how the award will affect the municipal or county
45 purposes element, as the case may be, of the local property tax; a
46 comparison of the percentage of the municipal purposes element or,
47 in the case of a county, the county purposes element, required to
48 fund the employees' contract in the preceding local budget year with

1 that required under the award for the current local budget year; the
2 impact of the award for each income sector of the property
3 taxpayers of the local unit; the impact of the award on the ability of
4 the governing body to (a) maintain existing local programs and
5 services, (b) expand existing local programs and services for which
6 public moneys have been designated by the governing body in a
7 proposed local budget, or (c) initiate any new programs and services
8 for which public moneys have been designated by the governing
9 body in a proposed local budget.

10 (7) The cost of living.

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

17 (9) Statutory restrictions imposed on the employer. Among the
18 items the arbitrator or panel of arbitrators shall assess when
19 considering this factor are the limitations imposed upon the
20 employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

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

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

41 The provisions of this subsection shall no longer be applicable
42 on and after the first day of the sixth year next following the
43 determination by the Commissioner of Community Affairs that the
44 municipality shall be deemed "a municipality in need of
45 stabilization and recovery" pursuant to section 4 of P.L.2016, c.4
46 (C.52:27BBBB-4).

47 j. The Local Finance Board may provide that any arbitration
48 award, including but not limited to an interest arbitration award,

1 involving a municipality deemed a "municipality in need of
2 stabilization and recovery" pursuant to section 4 of P.L.2016, c.4
3 (C.52:27BBBB-4) shall be subject to the review and approval of the
4 Director of the Division of Local Government Services in the
5 Department of Community Affairs, including those on a collective
6 negotiations agreement where the matter has been submitted to an
7 arbitrator pursuant to law, and no such award shall be binding
8 without the approval of the director. Nothing in this subsection
9 shall be construed to limit the scope of any general or specific
10 powers of the Local Finance Board or the director set forth in
11 P.L.2016, c.4 (C.52:27BBBB-4).

12 The provisions of this subsection shall no longer be applicable
13 on and after the first day of the sixth year next following the
14 determination by the Commissioner of Community Affairs that the
15 municipality shall be deemed "a municipality in need of
16 stabilization and recovery" pursuant to section 4 of P.L.2016, c.4
17 (C.52:27BBBB-4).

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

19

20 6. Section 13 of P.L.2016, c.4 (C.52:27BBBB-11) is repealed.

21

22 7. This act shall take effect immediately.

23

24

25 STATEMENT

26

27 This bill would amend the "Municipal Stabilization and
28 Recovery Act," P.L.2016, c.4 (C.52:27BBBB-1 et al.) to extend to
29 nine years the length of the period of State monitoring to which a
30 municipality determined by the Commissioner of Community
31 Affairs to be in need of stabilization and recovery is to be subject.

32 The bill also provides that certain provisions of chapter 13A of
33 Title 34 of the Revised Statutes pertaining to unfair labor practices
34 (N.J.S.A.34:13A-5.4) and impasse procedures and arbitration
35 awards (N.J.S.A.34:13A-16) enacted as part of the "Municipal
36 Stabilization and Recovery Act" shall not be applicable after the
37 original five-year period of stabilization and recovery established in
38 that law.

39 The bill also restores Civil Service protections removed by the
40 "Municipal Stabilization and Recovery Act," P.L.2016, c.4
41 (C.52:27BBBB-1 et al.).

42 The bill also repeals a section of the "Municipal Stabilization
43 and Recovery Act," P.L.2016, c.4 (C.52:27BBBB-11), which
44 permits a municipality in need of stabilization and recovery to use
45 early retirement incentives as a mechanism to stabilize its finances,
46 restructure its debts, or assist its financial rehabilitation and
47 recovery