

(CORRECTED COPY)
CHAPTER 232

AN ACT concerning early retirement incentives in municipalities in need of stabilization and recovery and amending P.L.2016, c.4.

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

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

C.52:27BBBB-5 Power of Local Finance Board under certain circumstances.

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, 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-1et 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.

2. Section 13 of P.L.2016, c.4 (C.52:27BBBB-11) is amended to read as follows:

C.52:27BBBB-11 Incentive program for retirement, termination of employment.

13. a. In order to achieve financial stability, a municipality in need of stabilization and recovery, as determined by the commissioner pursuant to subsection a. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4), may offer and implement an incentive program for retirement or termination of employment after approval of such incentive program by the director. The program shall be limited to full-time employees in any department, office, section, or other organizational component of the municipality in need of stabilization and recovery to achieve financial stability. The incentive program may include one or more of the following:

(1) cash payments or the purchase of annuities;

(2) employer contributions to an approved employee deferred compensation program to the extent permitted by federal law;

(3) payment by the municipality for continuation of health benefits coverage after retirement for not more than five years or until the employee attains the age of eligibility for Medicare, whichever occurs first;

(4) payment by the municipality for health benefits coverage after retirement under the "New Jersey State Health Benefits Program Act," P.L.1961, c.49 (C.52:14-17.25 et seq.), or under group insurance contracts pursuant to N.J.S.40A:10-23, for employees and dependents in accordance with the law and rules governing the State Health Benefits Program or the law governing such group insurance contracts, as the case may be, for employees who fail to meet the service requirement for payment for such coverage after retirement by no more than five years, but who are otherwise eligible for employer payment for health benefits coverage after retirement; or

(5) additional service credit for employees who are members of the Public Employees' Retirement System of New Jersey, pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.) or the Police and Firemen's Retirement System of New Jersey, pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.), or a municipal retirement system created under P.L.1954, c.218 (C.43:13-22.3 et seq.) or P.L.1964, c.275 (C.43:13-22.50 et seq.), as provided in this section.

b. No later than six months prior to the date on which a proposed incentive program is to begin, the municipality shall submit detailed information concerning the incentive program

to the director, in a form and manner prescribed by the director, which shall include the following:

(1) the governmental services affected by the plan adopted by the municipality pursuant to subsection b. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4);

(2) the departments, offices, sections, and other organizational components of the municipality to be affected, and a list of the employees thereof;

(3) the incentives to be offered;

(4) the estimated number of employees who will retire or terminate employment under the incentive program;

(5) fiscal information sufficient to demonstrate that the incentive program in conjunction with the plan adopted by the municipality pursuant to subsection b. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will result in a reduction for the municipality in the number of employees providing the affected governmental services, including information on the number of employees by which the municipality will reduce employment for a period of at least five years;

(6) fiscal information sufficient to demonstrate that, taking into consideration the costs of the incentive program, the plan adopted by the municipality pursuant to subsection b. of section 4 of P.L.2016, c.4 (C.52:27BBBB-4) will result in a reduction in the cost of providing the affected governmental services for the municipality;

(7) information on the fiscal stability of the municipality sufficient to demonstrate that the municipality will be able to pay the costs for the incentive program which will result in net savings and shall not necessitate any increase in property taxes for the municipality;

(8) information sufficient to demonstrate that the municipality will continue to provide the affected governmental services without the number of employees that are expected to take the incentive; and

(9) any other information which the director may require.

c. The director may, for good cause, permit a municipality to submit information without complying with the time period for submission of information or which does not conform to the specific informational requirements of this section.

d. The director shall provide to the Director of the Division of Pensions and Benefits in the Department of the Treasury sufficient information relating to the incentive program so that the Director of the Division of Pensions and Benefits may provide to the director:

(1) an estimate of the anticipated liability of the affected retirement systems;

(2) a determination of whether the incentive program is reasonably calculated to produce a reduction in the number of employees of the municipality; and

(3) taking into consideration the liability for the incentive program, an estimate of the net savings in the employment costs to provide the affected governmental services.

e. In order to make the calculation required by paragraph (2) of subsection d. of this section, the Director of the Division of Pensions and Benefits in the Department of the Treasury shall submit the proposed incentive program to the actuary of each retirement system which would be affected by the incentive program. Each actuary shall estimate the additional liability to the retirement system for the incentive program, including the liability for the additional service credit and the earlier retirement of employees under the incentive program. Each actuary shall provide the Director of the Division of Pensions and Benefits with an opinion on whether the incentive program is reasonably calculated to produce a reduction in the number of employees of the municipality providing the affected governmental services, and a net savings, taking into consideration the liability for the incentive program, in the employment costs to provide the affected governmental services.

The State shall conduct the actuarial work required by this subsection at no charge to the municipality.

f. If the incentive program includes the provision of additional service credit under State retirement systems for eligible employees, the beginning and ending dates for the incentive program and the time period during which the eligible employees will have to elect to participate in the incentive program shall be subject to approval by the Director of the Division of Pensions and Benefits in the Department of the Treasury.

g. If the director determines that the incentive program will result in the municipality continuing to provide the affected governmental services with fewer employees and at a lower cost, and that the incentive program will result in net savings and will not necessitate any increase in local property taxes for the municipality, the director shall approve the incentive program for implementation.

h. For employees who are members of the Police and Firemen's Retirement System of New Jersey, pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.), an incentive program for retirement may provide additional months of service credit for an employee who has 20 or more years of service credit on the last day for retirement under the incentive program, so that the employee shall have an aggregate amount of service credit under the retirement system of no more than 30 years on the effective date of retirement. In no case shall more than 60 months of additional service credit be provided under the incentive program.

i. For employees who are members of the Public Employees' Retirement System of New Jersey, pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), or a municipal retirement system, an incentive program for retirement may provide not more than 60 additional months of service credit for an employee who has 20 or more years of service credit on the last day for retirement under the incentive program.

j. An incentive program may require one or more of the following criteria: a minimum number of years of service credit in a retirement system, a minimum number of years of service with the municipality, or a minimum age for eligibility to participate in the program.

k. An employee who receives an incentive benefit for retirement or termination of employment under this section shall forfeit any tenure, civil service, or other employment right for continued employment or for return to employment based upon the employment for which the employee receives the incentive benefit.

l. When the needs of the municipality require the continuation in service of an employee who elects to retire and receive an incentive benefit under this section, the effective retirement date of the employee may be delayed, with the approval of the governing body of the municipality and the agreement of the employee, until the first day of any month not later than the twelfth month after the last date for retirement under the incentive program. If an employee whose retirement is delayed under this subsection dies before the retirement becomes effective, the retirement shall be effective on the first day of the month after the date of death of the employee, unless the employee's beneficiary for retirement benefits requests in writing to the board of trustees of the retirement system that benefits payable for death in active service be paid on behalf of the employee.

m. An employee retiring with an incentive benefit under this section who has not paid the full amount of a loan from the retirement system by the effective date of retirement may repay the loan through deductions from the monthly retirement benefits in the same monthly amount which was deducted from the member's compensation immediately preceding retirement, until the balance of the amount borrowed with interest at the statutory rate is repaid. If the retiree dies before the outstanding balance of the loan and interest is repaid, the

remaining balance shall be repaid as provided in the laws governing the retirement system for repayment of loans.

n. Notwithstanding the provisions of the laws governing the retirement system, an employee purchasing service credit to qualify for a benefit under this section may, for each affected retirement system, purchase a portion of the service credit which the employee is eligible to purchase.

o. If the incentive program is approved and implemented, the actuary to the affected retirement system shall determine the full amount of the liability of the retirement system for the incentive program including the liability for the additional service credit and the earlier retirement of employees under the incentive program in accordance with the assumptions used by the retirement system to determine the full liabilities of the system. The municipality shall pay the amount of the liability determined by the actuary to the retirement system in a lump sum or through annual installment payments without interest, for a period approved by the Director of the Division of Pensions and Benefits in the Department of the Treasury which shall not exceed 10 years. The municipality shall pay the cost for the actuarial work to determine the full liability of the retirement system if the incentive program is approved and implemented. If the municipality does not make payments for the liability, the cost of the actuarial work, and administrative expenses in a timely manner, the municipality shall be subject to interest and penalties on the payments on the same basis provided for late payment of employer contributions to the retirement system under the laws and rules governing the retirement system.

p. The Director of the Division of Pensions and Benefits in the Department of the Treasury shall provide the municipality with information on the estimated liability for the proposed incentive program, and actual liability if the program is approved and implemented. If the program provides additional service credit to employees under the Public Employees' Retirement System of New Jersey, pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), or the Police and Firemen's Retirement System of New Jersey, pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.), the director shall provide the eligible employees of the municipality with information on the benefits they would receive under the incentive program, and other appropriate assistance, to enable employees to decide whether to accept the incentive benefit and retire from the retirement systems if they accept the incentive benefit.

q. The powers, duties, and responsibilities related to retirement systems under this section for municipal retirement systems shall be exercised and performed by the governing bodies of the retirement systems.

r. Prior to the beginning date of the incentive program, appropriate representatives of the governing body of the municipality which implements an incentive program pursuant to this section shall meet and consult with the majority representative of the bargaining unit or units which include the employees of the municipality who would be eligible for the incentive program.

s. For a period of five years after the last date for retirement or termination of employment under an incentive program implemented pursuant to this section, the employment level of the municipality for the provision of governmental services previously performed by employees that participated in the incentive program shall not, without the approval of the director, exceed the employment level specified in the incentive program approved by the director. The director may approve an increase in the employment level to provide the affected governmental services if the director determines that:

(1) changes in local conditions such as increased residential or commercial development, increased population, or other changes, have created an increased need or demand for the affected governmental services; and

(2) an increase in the employment level for the affected governmental services is warranted and will provide for the delivery of governmental services in an effective and cost efficient manner. The municipality shall submit annual reports to the director for five years after the last date for retirement or termination of employment under an incentive program implemented pursuant to this section, in the form and manner required by the director, concerning the number of employees and the employment costs to provide the affected governmental services.

t. If the municipality exceeds the employment levels under subsection s. of this section, it shall be required by the director to reimburse the Division of Pensions and Benefits in the Department of the Treasury for the costs of the actuarial work performed for the municipality pursuant to subsection e. of this section, as determined by the director of that division.

3. This act shall take effect immediately.

Approved August 25, 2017.