SENATE, No. 1249

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)
Senator PHILIP E. HAINES
District 8 (Burlington)

Co-Sponsored by:
Senators Beck and Oroho

SYNOPSIS
Requires municipalities eligible for Special Municipal Aid to submit budgets for special improvement districts and municipal public benefit corporation for DCA review, requires State Comptroller conduct audits of municipalities receiving aid.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 6/29/2010)
AN ACT modifying submission criteria under the “Special Municipal Aid Act,” and amending P.L.1987, c.75 and P.L.2007, c.52.

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

1. Section 3 of P.L.1987, c.75 (C.52:27D-118.26) is amended to read as follows:

3. As used in this act:
   "Board" means the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs.
   "Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.
   “District management corporation” means any entity created by municipal ordinance or incorporated pursuant to Title 15A of the New Jersey Statutes and designated by municipal ordinance to receive funds collected by a special assessment within a special improvement district, as authorized by law.
   "Eligible municipality” means a municipality that is qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.), a municipality that has issued qualified bonds pursuant to the provisions of the "Municipal Qualified Bond Act,” P.L.1976, c.38 (C.40A:3-1 et seq.), or a municipality identified by the director to be facing serious fiscal distress.
   “Housing authority” means a housing authority established or continued pursuant to the “Local Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et seq.).
   “Municipal public benefit corporation” means a corporation incorporated pursuant to the provisions of Title 15A of the New Jersey Statutes, which performs one or more public services for a municipality and is recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. s.501(c)(3), or which is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation and has, as members of its board, officers or employees of the municipality,
   (cf: P.L.1999, c.156, s.2)

2. Section 5 of P.L.1987, c.75 (C.52:27D-118.28) is amended to read as follows:

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.
5. Whenever the director, in consultation with the State Comptroller, during the exercise of the director's duty under the provisions of the "Local Budget Law," N.J.S.40A:4-1 et seq., to examine each local budget, or upon the basis of any other information and data available to the director, shall find that an eligible municipality is experiencing fiscal distress and may require assistance under P.L.1987, c.75 (C.52:27D-118.24 et seq.), the director shall notify the Local Finance Board of the director's finding. The director's finding of fiscal distress in an eligible municipality may be based on the municipality's tax rate, cash deficit, insufficient percentage of tax collections, insufficient collection of other revenues, over-anticipation of the revenues of prior years, non-liquidation of interfund transfers, reliance on emergency authorizations, continual rollover of tax anticipation notes, or other factors indicating a constrained ability to raise sufficient revenues to meet its budgetary requirements.

At a time and place determined by the director, the governing body of the eligible municipality, and any other interested parties the director may deem appropriate, shall meet to review the implementation of the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.). The review shall include, but not be limited to:

a. The director's assessment of the difference between the eligible municipality's revenue needs for the current local budget year and its revenue raising capacity for the current local budget year;

b. The actions the governing body of the eligible municipality intends to take in the current local budget year to meet the municipality's revenue needs; and

c. The actions the governing body intends to take to expand the eligible municipality's local revenue generating capacity for subsequent local budget years.

After the review has taken place, the director shall notify the board of the findings of the review and shall recommend to the board actions necessary to be taken by the municipality, which may include the provision of short-term financial aid.

As a condition of receipt of aid, an eligible municipality shall fully cooperate with the Office of State Comptroller in the conduct of annual audits and performance reviews. The audit and review shall include every housing authority, district management corporation, and public benefit corporation operating within the municipality.

(cf: P.L.1999, c.156, s.3)

3. Section 6 of P.L.1987, c.75 (C.52:27D-118.29) is amended to read as follows:

6. a. The board shall determine the total amounts of grants and loans, or any combination thereof, to be provided to each eligible municipality and the director shall certify that amount to the State
Treasurer and the governing body of the eligible municipality. In the case of loans to an eligible municipality, the board shall set forth the terms of the loan agreement, including whether or not any interest shall be paid and, if so, the rate of that interest. The term of a loan authorized under the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.) shall not exceed 10 years.

As a condition of receiving assistance under the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.), an eligible municipality shall implement any government, administrative and operational efficiency, and oversight measures necessary for the fiscal recovery of the municipality as recommended by the director and approved by the board, and be subject to management and fiscal audit by the director. The eligible municipality shall submit to the director the budget for every housing authority, district management corporation, and municipal public benefit corporation located or operating within its borders.

The determination of the board pursuant to P.L.1987, c.75 as to the amount of financial assistance to be paid to an eligible municipality shall be final and conclusive, and there shall be no appeal therefrom nor any review thereof.

b. The director may withhold from an eligible municipality any State aid payments that are disbursed by the Division of Local Government Services if the director finds the municipality has failed to implement fiscal recovery measures approved by the board. Upon withholding an aid payment, the director shall report to the board the circumstances surrounding the reasons for withholding aid. The board shall then hold a hearing to give the eligible municipality an opportunity to explain why such aid payments should not continue to be withheld, and what action the eligible municipality plans to take to implement the fiscal recovery measures. Upon completion of the hearing, the board shall determine if State aid payments should continue to be made to the municipality, establish a schedule for such payments when appropriate, and determine what other actions should be taken.

c. If an eligible municipality receives increased amounts of aid under P.L.1987, c.75 (C.52:27D-118.24 et seq.) after January 1, 1999 and continues to receive such aid for two continuous fiscal years, at the end of each second year, or at such other time the board deems appropriate, the board shall hold a hearing for the eligible municipality to demonstrate why the board should not create a financial review board to oversee the fiscal condition of the eligible municipality. If the board finds that the eligible municipality has successfully implemented fiscal recovery measures or has otherwise acted to improve sufficiently its fiscal condition, the board shall permit the eligible municipality to continue to receive aid without the creation of a financial review board and be subject to such other fiscal recovery conditions the board may place on it; otherwise, the board shall order, by resolution, the creation of
a financial review board to operate in accordance with the provisions of subsections b. through d. of section 5 of P.L.1999, c.156 (C.52:27D-118.30a).

(cred:  P.L.1999, c.156, s.4)

4. Section 5 of P.L.1999, c.56 (C.52:27D-118.30a) is amended to read as follows:

5. a. Upon a finding by the director that an eligible municipality possesses conditions that create extreme difficulty in adopting a budget in compliance with the "Local Budget Law," N.J.S.40A:4-1 et seq., in issuing indebtedness as permitted by law, or in funding capital improvements essential to the protection of the public health, safety, and welfare, the board may create, by resolution, a financial review board for that municipality.

b. A financial review board shall be authorized to approve, implement and enforce a financial plan for any municipality in which it has been created. A financial review board so created shall consist of five members, one of whom shall be the mayor of the municipality or the mayor's designee; one of whom shall be appointed by the Governor and shall be a resident of the municipality; one of whom shall be the Commissioner of the Department of Community Affairs or the commissioner's designee; one of whom shall be the State Treasurer or the Treasurer's designee; and one of whom shall be appointed by the Governor and shall be an officer of the Executive Branch of State government.

The financial review board shall exercise its powers and duties under rules and regulations adopted by the board. A municipality subject to a financial review board shall establish a financial plan, subject to the financial review board's approval, to address the budgetary, operational, capital and economic development needs of the municipality. The municipality shall submit to the financial review board the budget for any housing authority, district management corporation, and municipal public benefit corporation district located or operating within its borders. The financial review board shall also have the power to approve: the annual budget of the municipality, the issuance of debt, all contracts entered into during the time of supervision of the financial review board, [and] municipal expenditures, and the establishment of any municipal public benefit corporation if so directed by the board, to the extent that the financial review board shall specify. The financial review board may delegate to the municipality such of its powers, under such circumstances and subject to such conditions, as it may determine. A financial review board shall operate until such time that the board finds that the conditions that led to the creation of the financial review board have been substantially abated.

c. At the end of each year of its operation the financial review board shall report to the board on its activities. The report shall
include: a review of the financial review board's activities generally; the status of the municipality's finances; recommendations concerning the municipality's fiscal condition; the criteria for municipal performance which will lead the financial review board to recommend to the board that the financial review board be dissolved; a review of the municipality's economic development needs, and policy recommendations that would achieve those goals; comment on the municipality's compliance with the financial review board's directives; and any other information the financial review board deems necessary. After review, a copy of the financial review board's report and any comments of the board shall be forwarded to Governor, the Senate President, the Senate Minority Leader, the Speaker of the General Assembly, and the Assembly Minority Leader.

d. The board shall review the status of each municipality in which a financial review board has been created at least each two years, at which time the municipality shall be given the opportunity to demonstrate why the financial review board should be ended or its role modified. The board shall determine whether the municipality shall continue to be subject to the oversight of the financial review board and if the conditions that led to the creation of the financial review board have been substantially abated, and shall take such other actions as the board deems appropriate in light of the municipality's financial condition.

(cf: P.L.1999, c.156, s.5)

5. Section 25 of P.L.1992, c.79 (C.40A:12A-25) is amended to read as follows:

25. All expenditures by a redevelopment agency or housing authority, including its debt payments, shall be consistent with its annual budget, which shall be transmitted to the governing body and chief executive officer of the municipality or county which created the redevelopment agency or housing authority. A housing authority established by a municipality receiving aid pursuant to the “Special Municipal Aid Act,” P.L.1987, c.75 (C.52:27D-118.24 et seq.), shall, at the same time transmit its budget to the State Comptroller and Inspector General.

(cf: P.L.1992, c.79, c.25)

6. Section 5 of P.L.2007, c.52 (C.52:15C-5) is amended to read as follows:

5. a. (1) The Office of the State Comptroller shall be responsible for conducting, in accordance with section 8 of this act, routine, periodic and random audits of the Executive branch of State government, including all entities exercising executive branch authority, public institutions of higher education, independent State authorities, units of local government and boards of education and for conducting assessments of the performance and management of
programs of the Executive branch of State government, including all entities exercising executive branch authority, public institutions of higher education, independent State authorities, units of local government and boards of education and the extent to which they are achieving their goals and objectives. The Office of the State Comptroller shall also serve as the office in which the Office of the State Inspector General, which shall be responsible for all the duties assigned pursuant to P.L.2005, c.119 (C.52:15B-1 et seq.), is allocated within the Department of the Treasury.

(2) The Office of State Comptroller shall conduct annual audits and performance reviews of every municipality receiving aid pursuant to the “Special Municipal Aid Act,” P.L.1987, c.75 (C.52:27D-118.24 et seq.). Any audit and review conducted by the State Comptroller pursuant to this subsection shall include a financial review of any public housing authority, district management corporation, and municipal public benefit corporation situated within the municipality.

b. (1) The State Comptroller shall establish the internal organizational structure of the office and the bureaus therein in a manner appropriate to carrying out the duties and functions, and fulfilling the responsibilities, of the office. The State Comptroller shall have the power to appoint, employ, promote, and remove such assistants, employees, and personnel as the State Comptroller deems necessary for the efficient and effective administration of the office. All such assistants, employees and personnel shall be deemed confidential employees for purposes of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.) and shall serve in the unclassified service of the Civil Service.

(2) The Office of the State Inspector General shall be allocated within the Office of the State Comptroller, and the individual first appointed State Inspector General under P.L.2005, c.119, shall continue as State Inspector General for the first full term to which that individual was appointed pursuant to P.L.2005, c.119, and shall be eligible to serve in that position thereafter.

c. Within the limits of funds appropriated for such purposes, the State Comptroller may obtain the services of certified public accountants, qualified management consultants, and other professionals necessary to independently perform the duties and functions of the office.

(cf: P.L.2007, c.52, s.5)

7. This act shall take effect immediately.

STATEMENT

This bill would amend the “Special Municipal Aid Act,” P.L.1987, c.75 (C.52:27D-118.25 et seq.) to require any eligible
municipality to submit the budget of any housing authority, district
management corporation, and municipal public benefit corporation
within its borders for review by the Division of Local Government
Services in the Department of Community Affairs. These
documents would also have to be presented to a financial review
board appointed to oversee and evaluate an eligible municipality’s
finances during periods of severe distress. The bill also requires
any housing authority, district management corporation, and
municipal public benefit corporation established by a municipality
that is a recipient of Special Municipal Aid to transmit its budget to
the State Comptroller and Inspector General. The State Comptroller
would be required to conduct annual audits and performance
reviews of every municipality receiving aid under the “Special
Municipal Aid Act,” P.L.1987, c.75 (C.52:27D-118.25 et seq.). A
municipality receiving aid must cooperate with the State
Comptroller during the course of the Comptroller’s audits and
reviews.

A municipal public benefit corporation is defined as a
corporation incorporated pursuant to the provisions of Title 15A of
the New Jersey Statutes, which performs one or more public
services for a municipality and is recognized as exempt from
federal income taxation under section 501(c)(3) of the Internal
Revenue Code of 1986, 26 U.S.C. s.501(c)(3), or is organized for a
public or charitable purpose and that upon dissolution must
distribute its assets to a public benefit corporation and has, as
members of its board, officers or employees of the municipality.