S T A T E O F N E W Y O R K

5683

2013-2014 Regular Sessions

I N S E N A T E

June 4, 2013

Introduced by Sens. MARTINS, VALESKY -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the state finance law, the local finance law and the civil service law, in relation to the financial restructuring board for local governments and providing for the expiration of certain provisions of the civil service law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph t of subdivision 10 of section 54 of the state finance law, as added by section 3 of part K of chapter 57 of the laws of 2011 and as relettered by section 3 of part K of chapter 55 of the laws of 2013, and subparagraph (vii) as added and subparagraph (viii) as renumbered by section 3-a of part K of chapter 55 of the laws of 2013, is amended to read as follows:

t. Local government performance and efficiency program. (i) (1) Definitions. For the purposes of this [paragraph] SUBPARAGRAPH, "municipality" shall mean a county, city, town, or village, but shall not include the individual counties contained in the city of New York.

[(ii)] (2) Purpose. [There is hereby established a local government performance and efficiency program.] The purpose of [this program] AWARDS MADE PURSUANT TO THIS SUBPARAGRAPH is to recognize municipalities that have undertaken significant and innovative actions to improve the overall efficiency of governmental operations and produce quantifiable recurring financial savings that reduce the municipal tax burden on residents.

[(iii)] (3) Eligibility. All municipalities in New York state are eligible to apply individually or jointly, provided however that if an action was undertaken jointly, municipalities must apply jointly for such an action. The actions for which they apply must already have been implemented.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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[(iv)] (4) Use of awards. Awards received [pursuant to the program] shall be used by municipalities for general municipal purposes.

[(v)] (5) Application. The secretary of state shall develop an application for municipalities seeking to receive awards and a process by which the applications will be evaluated. Such application shall require municipalities to demonstrate how the action for which they have applied has resulted in quantifiable recurring savings, efficiencies, and permanent improvements to municipal services. The secretary of state may focus the [program] AWARDS in specific functional service areas, in which case such areas of focus shall be detailed in a request for applications. No application shall be considered for actions that commenced prior to January first, two thousand ten.

[(vi)] (6) Awards. The secretary of state may make awards to applicants based on factors including, but not limited to, the amount of current and future savings, the impact of such action upon the municipal property tax levy, the size and complexity of the action, and the ability for the action to be replicated by other municipalities. Awards shall only be made to municipalities for actions that have been fully implemented, that clearly resulted in quantifiable savings and efficiencies, and that produced permanent and quantifiable improvements to municipal efficiency or services. The maximum amount awarded per application shall not exceed the lesser of five million dollars or twenty-five dollars per resident of the applying municipalities as of the most recent federal decennial census, provided, however, that if the boundaries of municipalities jointly applying for such funding overlap, the residents in overlapping areas shall only be counted once, and provided, further, that if a county jointly applies with some but not all of the other municipalities therein, only the residents in such other municipalities shall be counted.

[(vii)] (7) Written notice shall be provided to an applicant of a decision regarding the grant or denial of an award under this paragraph, within thirty days after such decision.

[(viii)] (8) Regulation. The secretary of state shall, prior to the establishment of applications, promulgate rules and regulations on the [program] AWARDS, including but not limited to award eligibility criteria and application, review and approval procedures.

(II)(1) DEFINITIONS. FOR THE PURPOSES OF THIS SUBPARAGRAPH, "FISCALLY DISTRESSED MUNICIPALITY" SHALL HAVE THE SAME MEANING AS "FISCALLY DISTRESSED MUNICIPALITY" AS DEFINED BY SECTION 160.05 OF THE LOCAL FINANCE LAW. FOR THE PURPOSES OF THIS SUBPARAGRAPH, "FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS" OR "BOARD" SHALL MEAN THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS AS AUTHORIZED BY SECTION 160.05 OF THE LOCAL FINANCE LAW.

(2) IN ADDITION TO AWARDS MADE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD MAY AWARD FUNDING TO FISCALLY DISTRESSED MUNICIPALITIES FOR FINANCIAL RESTRUCTURING AND RELATED PURPOSES, AS DETERMINED BY THE BOARD. THIS FUNDING MAY BE STRUCTURED AS A LOAN, A GRANT, OR COMBINATION THEREOF. THE AMOUNT OF SUCH FUNDING TO BE PROVIDED TO A FISCALLY DISTRESSED MUNICIPALITY, THE STRUCTURE OF SUCH FUNDING, ANY CONDITIONS TO BE PLACED ON A FISCALLY DISTRESSED MUNICIPALITY THAT ACCEPTS SUCH FUNDING, AND ANY OTHER ASPECTS OF FUNDING AWARDED PURSUANT TO THIS SUBPARAGRAPH SHALL BE DETERMINED BY AN AFFIRMATIVE VOTE OF A MAJORITY OF THE TOTAL NUMBER OF MEMBERS OF THE BOARD AND MAY DIFFER FOR EACH AWARD OF FUNDING. SUCH LOANS SHALL NOT BE BOUND BY THE LOCAL FINANCE LAW WITH RESPECT TO TERMS AND REPAYMENT LIMITATIONS. FURTHER, ANY SUCH LOANS SHALL NOT BE CONSIDERED DEBT FOR PURPOSES OF CALCULATING

CONSTITUTIONAL LIMIT PROVISIONS. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, THE DIRECTOR OF THE BUDGET MAY DIRECT THE STATE COMPTROLLER TO WITHHOLD ANY STATE AID PAYMENTS DUE TO A FISCALLY DISTRESSED MUNICIPALITY IN ORDER TO SATISFY THE REPAYMENT CONDITIONS OF THE FUNDING AWARDED PURSUANT TO THIS SUBPARAGRAPH.

S 2. The local finance law is amended by adding a new section 160.05 to read as follows:

S 160.05. FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS. 1. THERE SHALL BE A FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS WHICH SHALL CONSIST OF FIVE MEMBERS: THE DIRECTOR OF THE BUDGET WHO SHALL BE CHAIR OF THE BOARD, THE ATTORNEY GENERAL, THE STATE COMPTROLLER, AND THE SECRETARY OF STATE, EACH OF WHOM MAY DESIGNATE A REPRESENTATIVE TO ATTEND SESSIONS OF THE BOARD ON HIS OR HER BEHALF, AND ONE DESIGNEE WITH SIGNIFICANT EXPERIENCE IN MUNICIPAL FINANCIAL AND RESTRUCTURING MATTERS APPOINTED BY THE GOVERNOR. THE DESIGNEE OF THE GOVERNOR SHALL SERVE AT HIS OR HER PLEASURE AND SHALL RECEIVE FAIR COMPENSATION FOR HIS OR HER SERVICES PERFORMED PURSUANT TO THIS SECTION IN AN AMOUNT TO BE DETERMINED BY THE DIRECTOR OF THE BUDGET AND BE REIMBURSED FOR ALL REASONABLE EXPENSES ACTUALLY AND NECESSARILY INCURRED BY HIM OR HER IN THE PERFORMANCE OF HIS OR HER DUTIES. THE BOARD SHALL HAVE THE POWER TO ACT BY AN AFFIRMATIVE VOTE OF A MAJORITY OF THE TOTAL NUMBER OF MEMBERS AND SHALL RENDER ITS FINDINGS AND RECOMMENDATIONS WITHIN NINE MONTHS OF BEING REQUESTED TO ACT BY A FISCALLY DISTRESSED MUNICIPALITY. THE PROVISIONS OF SECTION SEVENTEEN OF THE PUBLIC OFFICERS LAW SHALL APPLY TO MEMBERS OF THE BOARD. NO MEMBER OF THE BOARD SHALL BE HELD LIABLE FOR THE PERFORMANCE OF ANY FUNCTION OR DUTY AUTHORIZED BY THIS SECTION. THE BOARD MAY CONTRACT WITH SUCH STAFF AND ENTITIES AS NEEDED TO CARRY OUT ITS FUNCTIONS PURSUANT TO THIS SECTION. ALL PROCEEDINGS, MEETINGS AND HEARINGS CONDUCTED BY THE BOARD SHALL BE HELD IN THE CITY OF ALBANY.

2. A "FISCALLY DISTRESSED MUNICIPALITY" SHALL MEAN ANY COUNTY, CITY, EXCLUDING A CITY WITH A POPULATION GREATER THAN ONE MILLION, TOWN, OR VILLAGE THAT THE DIRECTOR OF THE BUDGET DETERMINES IS FISCALLY DISTRESSED. IN CONSIDERING WHETHER A COUNTY, CITY, TOWN OR VILLAGE IS FISCALLY DISTRESSED, THE DIRECTOR OF THE BUDGET MAY CONSIDER, FUND BALANCE, FULL VALUE PROPERTY TAX RATE, OPERATING DEFICIT, POPULATION, AND CONSTITUTIONAL TAX LIMIT EXHAUSTION, AND ANY OTHER FACTORS IN HIS OR HER DISCRETION CONSISTENT WITH THE PURPOSES OF THIS SECTION.

3. UPON THE REQUEST OF A FISCALLY DISTRESSED MUNICIPALITY, BY RESOLUTION OF THE GOVERNING BODY OF THE FISCALLY DISTRESSED MUNICIPALITY, THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS SHALL UNDERTAKE A COMPREHENSIVE REVIEW OF THE OPERATIONS, FINANCES, MANAGEMENT PRACTICES, ECONOMIC BASE AND ANY OTHER FACTORS THAT IN ITS SOLE DISCRETION IT DEEMS RELEVANT TO BE ABLE TO MAKE FINDINGS AND RECOMMENDATIONS ON REFORMING AND RESTRUCTURING THE OPERATIONS OF THE FISCALLY DISTRESSED MUNICIPALITY. THE BOARD MAY REQUIRE THE FISCALLY DISTRESSED MUNICIPALITY TO AGREE TO FISCAL ACCOUNTABILITY MEASURES, AS DETERMINED BY THE BOARD, INCLUDING, BUT NOT LIMITED TO, MULTI-YEAR FINANCIAL PLANNING. IT MAY ALSO IDENTIFY COST-SAVING MEASURES, RECOMMEND CONSOLIDATION OF FUNCTIONS OR AGENCIES WITHIN THE FINANCIALLY DISTRESSED MUNICIPALITY OR BETWEEN THE FINANCIALLY DISTRESSED MUNICIPALITY AND OTHER MUNICIPALITIES, IDENTIFY AND MAKE AVAILABLE, TO THE EXTENT OTHERWISE PERMITTED BY LAW, GRANTS AND LOANS ON SUCH TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE, AND MAKE SUCH OTHER RECOMMENDATIONS AS THE BOARD MAY DEEM JUST AND PROPER. SUCH RECOMMENDATIONS SHALL NOT BE FINAL AND BINDING ON A FISCALLY DISTRESSED MUNICIPALITY UNLESS IT FORMALLY AGREES TO ABIDE BY AND IMPLEMENT SUCH RECOMMENDATIONS IN WHICH EVENT SUCH RECOMMENDATIONS AND THE

TERMS PROVIDED THEREUNDER SHALL BE FINAL AND BINDING ON THE FISCALLY DISTRESSED MUNICIPALITY.

4. THE BOARD MAY HOLD HEARINGS AND SHALL HAVE AUTHORITY TO REQUIRE THE PRODUCTION OF ANY INFORMATION THAT IT DEEMS NECESSARY TO UNDERTAKE ITS COMPREHENSIVE REVIEW.

5. THE BOARD SHALL ALSO BE AUTHORIZED TO RESOLVE AN IMPASSE PURSUANT TO SUBDIVISION FOUR-A OF SECTION TWO HUNDRED NINE OF THE CIVIL SERVICE LAW.

S 3. Section 209 of the civil service law is amended by adding a new subdivision 4-a to read as follows:

4-A. (A) NOTWITHSTANDING ANYTHING IN SUBDIVISION FOUR OF THIS SECTION TO THE CONTRARY, A PUBLIC EMPLOYER THAT IS ALSO A FISCALLY DISTRESSED MUNICIPALITY, AS DEFINED IN SECTION 160.05 OF THE LOCAL FINANCE LAW, AND IS OTHERWISE SUBJECT TO SUBDIVISION FOUR OF THIS SECTION MAY, AND A PUBLIC EMPLOYEE ORGANIZATION SUBJECT TO SUBDIVISION FOUR OF THIS SECTION MAY, JOINTLY STIPULATE AND AGREE THAT AN IMPASSE EXISTS, AT ANY TIME, WITH RESPECT TO COLLECTIVE NEGOTIATIONS BETWEEN THE PARTIES FOR A COLLECTIVE BARGAINING AGREEMENT AND, IN LIEU OF COMMENCING A PROCEEDING UNDER SUBDIVISION FOUR OF THIS SECTION, JOINTLY REQUEST THAT THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS, ESTABLISHED IN SECTION 160.05 OF THE LOCAL FINANCE LAW, RESOLVE SUCH IMPASSE. A JOINT AGREEMENT PURSUANT TO THIS SUBDIVISION SHALL BE IRREVOCABLE.

(B) THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS SHALL RENDER A JUST AND REASONABLE DETERMINATION OF THE MATTERS IN DISPUTE BY AN AFFIRMATIVE VOTE OF A MAJORITY OF THE TOTAL NUMBER OF ITS MEMBERS. IN ARRIVING AT SUCH DETERMINATION, IT SHALL SPECIFY THE BASIS FOR ITS FINDINGS, TAKING INTO CONSIDERATION, IN ADDITION TO ANY OTHER RELEVANT FACTORS, THOSE FACTORS SET FORTH IN SUBPARAGRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS SECTION. IN ALL MATTERS REGARDING PUBLIC DISCLOSURE OF ITS PROCEEDINGS AND FINDINGS, IT SHALL BE TREATED THE SAME AS THE PANEL CONVENED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION. IT SHALL RENDER A DETERMINATION WITHIN NINE MONTHS OF BEING FORMALLY REQUESTED BY THE PARTIES TO CONVENE.

(C) EACH PARTY BEFORE THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS MAY BE HEARD EITHER IN PERSON, BY COUNSEL, OR BY OTHER REPRESENTATIVES, AS THEY MAY RESPECTIVELY DESIGNATE AND MAY PRESENT, EITHER ORALLY OR IN WRITING, OR BOTH, STATEMENTS OF FACT, SUPPORTING WITNESSES AND OTHER EVIDENCE, AND ARGUMENT OF THEIR RESPECTIVE POSITIONS WITH RESPECT TO EACH CASE. THE BOARD SHALL HAVE AUTHORITY TO REQUIRE THE PRODUCTION OF ADDITIONAL EVIDENCE, EITHER ORAL OR WRITTEN, AS IT MAY DESIRE FROM THE PARTIES. ALL PROCEEDINGS, MEETINGS AND HEARINGS CONDUCTED BY THE BOARD SHALL BE HELD IN THE CITY OF ALBANY.

(D) THE DETERMINATION OF THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS WITH RESPECT TO THE CONDITIONS OF EMPLOYMENT PRESENTED TO IT PURSUANT TO THIS SECTION SHALL BE FINAL AND BINDING UPON THE PARTIES FOR THE PERIOD PRESCRIBED BY SUCH BOARD, BUT IN NO EVENT SHALL SUCH PERIOD EXCEED FOUR YEARS FROM THE TERMINATION DATE OF ANY PREVIOUS COLLECTIVE BARGAINING AGREEMENT OR IF THERE IS NO PREVIOUS COLLECTIVE BARGAINING AGREEMENT THEN FOR A PERIOD NOT TO EXCEED FOUR YEARS FROM THE DATE OF DETERMINATION BY THE BOARD. SUCH DETERMINATION SHALL NOT BE SUBJECT TO THE APPROVAL OF ANY LOCAL LEGISLATIVE BODY OR OTHER MUNICIPAL AUTHORITY, AND SHALL ONLY BE SUBJECT TO REVIEW BY A COURT OF COMPETENT JURISDICTION IN THE MANNER PRESCRIBED BY LAW.

(E) A REQUEST BY A PUBLIC EMPLOYER TO PROCEED PURSUANT TO THIS SUBDIVISION, SHALL CONSTITUTE A REQUEST BY SUCH PUBLIC EMPLOYER, AS A FISCALLY DISTRESSED MUNICIPALITY, TO THE FINANCIAL RESTRUCTURING BOARD FOR

LOCAL GOVERNMENTS TO UNDERTAKE A COMPREHENSIVE REVIEW OF THE OPERATIONS OF THE FISCALLY DISTRESSED MUNICIPALITY PURSUANT TO SECTION 160.05 OF THE LOCAL FINANCE LAW. THE FINANCIAL RESTRUCTURING BOARD FOR LOCAL GOVERNMENTS SHALL PROCEED PURSUANT TO SUCH REQUEST IN ACCORDANCE WITH THAT SECTION. FINDINGS AND RECOMMENDATIONS RENDERED PURSUANT TO THIS PARAGRAPH AND SECTION 160.05 OF THE LOCAL FINANCE LAW SHALL BE STATED SEPARATELY FROM THOSE DETERMINATIONS OTHERWISE RENDERED PURSUANT TO THIS SUBDIVISION.

S 4. Severability. If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 5. This act shall take effect on the sixtieth day after it shall have become a law, provided, that the provisions of subdivision 4-a of section 209 of the civil service law, as added by section three of this act, shall apply to any public employment dispute which shall be at an impasse on or after the date this act shall have become a law and shall expire on the same date as the provisions of subdivision 4 of section 209 of the civil service law expire pursuant to paragraph (d) of subdivision 4 of section 209 of the civil service law, as amended.