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CHAPTER 74

An Act authorizing local units to issue coronavirus relief bonds and amending various parts of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.40A:4-26 is amended to read as follows:

Miscellaneous, anticipated revenues.

a. No miscellaneous revenues from any source shall be included as an anticipated revenue in the budget in an amount in excess of the amount actually realized in cash from the same source during the next preceding fiscal year, unless the director shall determine upon application by the governing body that the facts clearly warrant the expectation that such excess amount will actually be realized in cash during the fiscal year and shall certify such determination, in writing, to the local unit.

b. Notwithstanding the provisions of subsection a. to the contrary, when a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, has been declared by the Governor in response to COVID-19, the Director of the Division of Local Government Services may promulgate general guidance modifying the standard for anticipated revenues when the amount realized in cash from the same source during the next preceding fiscal year experienced reductions due to COVID-19.

As used in this subsection, "COVID-19" means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

2. N.J.S.40A:4-53 is amended to read as follows:

Special emergency appropriations.

40A:4-53. A local unit may adopt an ordinance authorizing special emergency appropriations for the carrying out of any of the following purposes:

a. Preparation of an approved tax map.

b. Preparation and execution of a complete program of revaluation of real property for the use of the local assessor, or of any program to update and make current any previous revaluation program when such is ordered by the county board of taxation.

c. Preparation of a revision and codification of its ordinances.

d. Engagement of special consultants for the preparation, and the preparation of a master plan or plans, when required to conform to the planning laws of the State.

e. Preparation of drainage maps for flood control purposes.

f. Preliminary engineering studies and planning necessary for the installation and construction of a sanitary sewer system.

g. Authorized expenses of a consolidation commission established pursuant to the "Municipal Consolidation Act," P.L.1977, c.435 (C.40:43-66.35 et seq.) or sections 25 through 29 of the "Uniform Shared Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-25 through C.40A:65-29).

h. Contractually required severance liabilities resulting from the layoff or retirement of employees. Such liabilities shall be paid without interest and, at the sole discretion of the local unit, may be paid in equal annual installments over a period not to exceed five years.

i. Preparation of a sanitary or storm system map.

j. Liabilities incurred to the Department of Labor and Workforce Development for the reimbursement of unemployment benefits paid to former employees.

k. Subject to approval by the Director of the Division of Local Government Services, non-recurring expenses incurred by a municipality to implement a consolidation with another municipality, or municipalities, pursuant to the "Municipal Consolidation Act," P.L.1977, c.435 (C.40:43-66.35 et seq.); the sparsely populated municipalities law, P.L.1995, c.376 (C.40:43-66.78 et seq.); sections 25 through 29 of the "Uniform Shared Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-25 through C.40A:65-29); or N.J.S.40A:7-1 et seq., in the case of a consolidation effectuated through the annexation of land comprising an entire municipality or entire municipalities, to another municipality. The director shall approve the ordinance if he or she determines that the non-recurring expenses are reasonable and permissible by law and that the consolidation will result in long-term savings for the municipality.

A copy of all ordinances or resolutions as adopted relating to special emergency appropriations shall be filed with the director.

l. The immediate preparation, response, recovery, and restoration of public services during such time as a public health emergency, pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), declared in response to COVID-19 remains in effect.

m. Notwithstanding the provisions of any law or regulation to the contrary, a deficit in prior year operations experienced by any municipality, utility, or enterprise during, or in the fiscal year immediately following, a fiscal year in which a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, has been declared by the Governor in response to COVID 19, the adoption of which shall be subject to approval of the Director. The deficit in operations shall be certified by the chief financial officer of the local unit to be directly attributable to COVID-19. The local unit shall apply for any financial assistance that may be available to the local unit from the federal government, the State, and other sources to offset any operating deficit directly attributable to COVID-19, and any such financial assistance obtained by the local unit shall be utilized to offset any operating deficit. The chief financial officer of a local unit seeking approval pursuant to this subsection shall submit a certification approved by a majority vote of the full governing body. The director shall provide a form, application, schedule and process for review, approval or denial, and reconsideration of the application.

The director shall approve or deny, in writing, any application submitted pursuant to this subsection within 45 days, or the next business day following the 45th day if the 45th day falls on a Saturday, Sunday, or holiday. If a written decision is not rendered within this time period, the application shall be deemed to be approved, and the local unit may proceed to adopt the appropriate resolution or ordinance. If an application is denied, the local unit may resubmit the application with such changes as the local unit deems appropriate, with submission and review subject to the same procedures set forth in this subsection.

As used in this subsection, "Deficit in operations" means a deficit balance reported on a local unit's "Results of Operation" schedule of the annual financial statement.

As used in subsections l. and m., "COVID-19" means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

3. N.J.S.40A:4-55 is amended to read as follows:

Special emergency notes.

After the adoption of an ordinance or resolution for special emergency appropriations, the local unit shall by 2/3 vote of the full governing body adopt a resolution setting forth:

a. The amount appropriated.

b. (1) Provision for the borrowing of money and the issuance of "Special Emergency Notes" which may be renewed from time to time, but at least 1/5 of all such notes, and the renewals thereof, shall mature and be paid in each year, so that all notes and renewals shall have matured and have been paid not later than the last day of the fifth year following the date of the emergency resolution.

(2) In the case of special emergency appropriations authorized pursuant to subsection m. of N.J.S.40A:4-53, a local unit shall appropriate one-fifth (1/5) of the portion of the special emergency directly attributable to COVID-19 in each year beginning in the year after the year in which the resulting deferred charge appears in the local unit's unaudited annual financial statement, such that, for example, a deferred charge included in the 2021 unaudited annual financial statement would have its first one-fifth (1/5) appropriation in the 2022 budget, with the final one-fifth (1/5) portion of the special emergency fully appropriated by no later than the last day of the sixth fiscal year following the end of the fiscal year that is the subject of the application. If a local unit's application for certification of the special emergency under subsection m. of N.J.S.40A:4-53 demonstrates that full appropriation of the COVID-19 related special emergency appropriation by the last day of the sixth fiscal year will cause significant fiscal distress, including, but not limited to, if it would directly cause an increase in the tax levy greater than 2%, an increase of greater than $50 per average assessed home in each year deferred charges appear in the local unit's budget, or in the case of a utility, at least a 5% increase in user fees or charges, the Local Finance Board may permit the local unit to extend the repayment period up to a total of ten years on a schedule determined by the Board.

(3) A local unit shall not borrow moneys under this section that may be considered duplicative of financial assistance provided to the local unit from the federal government, the State, or other sources, to address the COVID-19 deficit in operations or COVID-19 emergency appropriations. As used in this section, "COVID 19" means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

The provisions of this chapter relating to tax anticipation notes shall apply to special emergency notes.

c. A local unit may finance such appropriation from surplus funds available or borrow money in the manner prescribed above. Where any appropriation is financed from surplus funds available, at least 1/5 of the amount thereof shall be included in each annual budget until the appropriation has been fully provided for. In the case of special emergency appropriations authorized pursuant to subsection m. of N.J.S.40A:4-53, a local unit shall appropriate one-fifth (1/5) of the portion of the special emergency directly attributable to COVID-19 in each year beginning in the year after the year in which the resulting deferred charge appears in the local unit's unaudited annual financial statement, such that, for example, a deferred charge included in the 2021 unaudited annual financial statement would have its first one-fifth (1/5) appropriation in the 2022 budget, with the final one-fifth (1/5) portion of the special emergency fully appropriated by no later than the last day of the sixth fiscal year following the end of the fiscal year that is the subject of the application. If a local unit's application for certification of the special emergency under subsection m. of N.J.S.40A:4-53 demonstrates that full appropriation of the COVID-19 related special emergency appropriation by the last day of the sixth fiscal year will cause significant fiscal distress, including, but not limited to, if it would directly cause an increase in the tax levy greater than 2%, an increase of greater than $50 per average assessed home in each year deferred charges appear in the local unit's budget, or in the case of a utility, at least a 5% increase in user fees or charges, the Local Finance Board may permit the local unit to extend the repayment period up to a total of ten years on a schedule determined by the Board.

4. N.J.S.40A:4-78 is amended to read as follows:

Approval of budget, exemptions.

40A:4-78. a. If the director finds that all requirements of law and of the regulations of the local government board have been met, he shall approve the budget, otherwise he shall refuse to approve it.

The director, in refusing to approve a budget, shall not substitute his discretion with respect to the amount of an appropriation when such amount is not made mandatory because of the requirements of law.

b. Notwithstanding the provisions of N.J.S.40A:4-10 and N.J.S.40A:4-76 through 40A:4-79, the Local Finance Board is authorized to adopt rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to exempt certain municipalities from the requirement that the director approve their annual budgets and to provide instead for a system of local examination and approval of such budgets by municipal officials, provided that:

(1) the director finds that such municipalities are fiscally sound and that their fiscal practices are conducted in accordance with law and sound administrative practice;

(2) the director shall examine the budgets of such municipalities in accordance with the provisions of N.J.S.40A:4-10 and N.J.S.40A:4-76 through 40A:4-79, at least every third year;

(3) the governing body and chief financial officer of each such municipality shall each file a certification with the director stating that, with reference to the adopted budget of the municipality, they have:

(a) examined the budget in the manner prescribed under N.J.S.40A:4-76;

(b) determined that the budget complies with the requirements set forth in N.J.S.40A:4-77; and

(c) determined that the budget complies with all other provisions of law, including, but not limited to, the "Local Budget Law," N.J.S.40A:4-1 et seq., P.L.1976, c.68 (C.40A:4-45.1 et seq.), and the regulations of the Local Finance Board;

(4) all budget documents required by law or the regulations adopted by the Local Finance Board shall be filed with the director on a timely basis;

(5) other criteria and responsibilities as established by the regulations adopted by the Local Finance Board are met.

c. The director shall act to require immediate compliance with the "Local Budget Law," N.J.S.40A:4-1 et seq., if the director finds that any such exemption impairs the fiscal integrity or solvency of any such municipality. Any appeal of a governing body's action in adopting an annual budget shall be made to the director.

d. If a municipality has received approval for a special emergency appropriation pursuant to subsection m. of N.J.S.40A:4-53, that municipality shall not be eligible for local examination and approval pursuant to subsection b. of this section until the fiscal year after the final appropriation is made.

5. Notwithstanding the provisions of N.J.S.40A:2-51 to the contrary, a local unit may incur indebtedness, borrow money, and authorize and issue negotiable refunding bonds, in any amount determined to be necessary by the local unit and approved by the Local Finance Board to effect a refunding for the purpose of repaying a Federal Emergency Management Agency Community Disaster Loan for which the local unit executed a promissory note in 2013 under the authority of section 5 of P.L.1951, c.72 (C.App.A:9-62), in addition to the other purposes for which it may do the same under N.J.S.40A:2-51.

6. Section 2 of P.L.1969, c.130 (C.18A:24-61.2) is amended to read as follows:

C.18A:24-61.2 Purpose for which refunding bonds may be authorized; exclusions from net school debt.

2. Notwithstanding the provisions of any other law or any debt limitation or requirement for down payment or for referendum or other action by legal voters, refunding bonds may be authorized and issued for the purpose of paying, funding or refunding: any refunded bonds; the cost of retiring the present value of the unfunded accrued liability due and owing by a board of education, as calculated by the

system actuary for a date certain upon the request of a board of education, for early retirement incentive benefits granted by the board of education pursuant to P.L.1991, c.231, P.L.1993, c.163 and P.L.2003, c.129; the repayment of a Federal Emergency Management Agency Community Disaster Loan for which the board of education executed a promissory note in 2013 under the authority of section 5 of P.L.1951, c.72 (C.App.A:9-62); the cost of COVID-19 expenditures incurred for immediate preparation, response, recovery, and restoration of public services, for a period not to exceed five years; and the cost or expense of issuing refunding bonds including printing, advertising, accounting, financial, legal or other expense in connection therewith. Obligations to be paid, funded or refunded with respect to which an ordinance authorizing the issuance of refunding bonds has been adopted pursuant to this act and not otherwise deductible shall be excluded in calculating the net school debt of a municipality or a district. Refunding bonds shall be authorized (a) in the case of any county or municipality by a refunding bond ordinance enacted in the manner or mode of procedure provided for adoption of a refunding bond ordinance pursuant to the Local Bond Law, constituting chapter 2 of Title 40A, Municipalities and Counties, of the New Jersey Statutes, and (b) in the case of a Type II school district by an ordinance (herein called the "refunding bond ordinance") adopted by the board of education of such school district as provided in this chapter. As used in this section, "COVID-19" means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

7. Section 6 of P.L.1983, c.313 (C.40A:5A-6) is amended to read as follows:

C.40A:5A-6 Review of financing.

6. Prior to the adoption of a bond resolution by an authority, or the adoption of an ordinance or resolution of a local unit or units authorizing a service contract that is part of a project financing, the proposed project financing shall be submitted to the Local Finance Board for its review. The Local Finance Board may adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to permit project financing to proceed without such application and review if the project financing is a refunding that will result in debt service savings on outstanding bond debt. The Local Finance Board shall, in the course of its review, give consideration to:

a. The nature, purpose, and scope of the proposed project financing;

b. The engineering and feasibility studies prepared in connection therewith;

c. The terms and provisions of the proposed service contracts, bond resolutions and, in the instance of a negotiated offering, the proposed or maximum terms and conditions of sale;

d. An estimate of the proposed or maximum schedule of debt service payments required, and the impact thereof on the budget and financial condition of the authority and of the local unit;

e. The estimate of the annual cost of operating and maintaining the project as set forth in the engineering report or feasibility studies; and

f. The initial rate, rent, fee, or charge schedule proposed by the authority, or any other proposed method of raising the amounts required to finance the operations and payments of debt service on the obligations of the authority.

Notwithstanding any other provision of law to the contrary, an authority may, upon application to, and review and approval by, the Local Finance Board, incur indebtedness, borrow money, and authorize and issue negotiable refunding bonds to cover the cost of COVID-19 expenditures incurred for immediate preparation, response, recovery, and restoration of public services for a period not to exceed five years. As used herein, "COVID-19" means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

The Local Finance Board may examine the estimates, computations or calculations made in connection with the submission, may require the production of papers, documents, witnesses or information, may make or cause to be made an audit or investigation and may take any other action which it may deem necessary to its review of the submission.

8. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

C.40:37A-54 Purposes.

11. a. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50% of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the

acquired lands and premises in accordance with the provisions and for the purposes stated in this act, including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of this act, as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) as amended. A county improvement authority shall also have as its purpose the pooling of loans for any local governmental units within the county or any beneficiary county that are refunding bonds in order to achieve more favorable interest rates and terms for those local governmental units.

b. In a fiscal year in which a public health emergency, pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both has been declared by the Governor in response to COVID-19 and during the next following fiscal year, a county improvement authority shall also have as its purpose the pooling of special emergency notes issued by the county or any beneficiary county, or by any local governmental unit within the county or any beneficiary county, pursuant to N.J.S.40A:4-55 for purposes of financing a special emergency appropriation authorized for the purpose set forth in subsections l. and m. of N.J.S.40A:4-53.

9. Section 37 of P.L.1960, c.183 (C.40:37A-80) is amended to read as follows:

C.40:37A-80 Guaranty of bonds.

37. a. For the purpose of aiding an authority in the planning, undertaking, acquisition, construction, financing or operation of any facility which the authority is authorized to undertake pursuant to section 11 of P.L.1960, c.183 (C.40:37A-54), the county or any beneficiary county may, pursuant to resolution duly adopted by its governing body, or any municipality in the county or beneficiary county may, by ordinance of its governing body, in the manner provided for adoption of a bond ordinance as provided in the local bond law and with or without consideration and upon such terms and conditions as may be agreed to by and between the county or beneficiary county or the municipality and the authority, unconditionally guarantee the punctual payment of the principal of and interest on any bonds of the authority. Any guaranty of bonds of an authority made pursuant to this section shall be evidenced by endorsement thereof on such bonds, executed in the name of the county or beneficiary county or the municipality and on its behalf by such officer thereof as may be designated in the resolution or ordinance authorizing such guaranty, and such county or municipality shall thereupon and thereafter be obligated to pay the principal of and interest on said bonds in the same manner and to the same extent as in the case of bonds issued by it. Any such guaranty of bonds of an authority may be made, and any resolution authorizing such guaranty may be adopted, notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the local bond law, but the principal amount of bonds so guaranteed, shall, after their issuance, be included in the gross debt of such county or municipality for the purpose of determining the indebtedness of such county or municipality under or pursuant to the local bond law. The principal amount of said bonds so guaranteed and included in gross debt shall be deducted and is hereby declared to be and to constitute a deduction from such gross debt under and for all the purposes of said local bond law (a) from and after the time of issuance of said bonds until the end of the fiscal year beginning next after the completion of acquisition or construction of the facility to be financed from the proceeds of such bonds and (b) in any annual debt statement filed pursuant to said local bond law as of the end of said fiscal year or any subsequent fiscal year if the revenues or other receipts or moneys of the authority in such year are sufficient to pay its expenses of operation and maintenance in such year and all amounts payable in such year on account of the principal and interest on all such guaranteed bonds, all bonds of any such county or any municipality issued as provided in section 36 of P.L.1960, c.183 (C.40:37A-79), and all bonds of the authority issued under this act.

b. For the purpose of aiding an authority in the issuance of bonds pursuant to subsection b. of section 11 of P.L.1960, c.183 (C.40:37A-54), the county or any beneficiary county may, pursuant to a resolution duly adopted by its governing body, unconditionally guarantee the punctual payment of the principal of and interest on any bonds of the authority issued for purposes of the pooling of notes issued pursuant to subsection b. of N.J.S.40A:4-55. Any guaranty of bonds of an authority made pursuant to this subsection shall be evidenced by endorsement thereof on such bonds, executed in the name of the county or beneficiary county and on its behalf by such officer thereof as may be designated in the resolution or ordinance authorizing such guaranty, and such county shall thereupon and thereafter be obligated to pay the principal of and interest on said bonds in the same manner and to the same extent as in the case of bonds issued by it. Any such guaranty of bonds of an authority may be made, and any resolution authorizing such guaranty may be adopted, notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the local bond law, but the principal amount of bonds so guaranteed, shall, after their issuance, be included in the gross debt of such county for the purpose of determining the indebtedness of such county under or pursuant to the local bond law. The principal amount of the notes guaranteed and included in gross debt pursuant to this subsection shall be deducted and is hereby declared to be and to constitute a deduction from such gross debt under and for all the purposes of the local bond law.

10. This act shall take effect immediately.

Approved August 31, 2020.

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