

CHAPTER 30

LOCAL FINANCE BOARD

Authority

N.J.S.A. 40A:4-83, 40A:5-38, 40A:12-6, 52:27BB-10, 52:27BB-30, 52:27BB-32, 52:27D-18.

Source and Effective Date

R.1998 d.307, effective May 22, 1998.
See: 30 N.J.R. 1123(a), 30 N.J.R. 2204(b).

Executive Order No. 66(1978) Expiration Date

Chapter 30, Local Finance Board, expires on May 22, 2003.

Chapter Historical Note

Chapter 30, Local Finance Board, was enacted as R.1970 d.40, effective April 13, 1970. See: 1 N.J.R. 17(d), 2 N.J.R. 39(a).

Subchapter 14, Local Public Contracts, was adopted as R.1977 d.128, effective May 20, 1977. See: 8 N.J.R. 371(c), 9 N.J.R. 212(a).

Subchapter 16, Tenants Property Tax Rebate Program, was adopted as R.1977 d.241, effective July 8, 1977. See: 9 N.J.R. 257(c), 9 N.J.R. 357(b).

Former Subchapter 10 and N.J.A.C. 5:30-11.1 through 5:30-11.7 were repealed by R.1979 d.16, effective January 17, 1979. See: 10 N.J.R. 529(a), 11 N.J.R. 59(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Local Finance Board, was readopted as R.1983 d.277, effective June 21, 1983. See: 15 N.J.R. 463(b), 15 N.J.R. 1180(a).

Subchapter 10, Municipal Port Authorities, was adopted as R.1984 d.381, effective September 4, 1984. See: 15 N.J.R. 1204(a), 16 N.J.R. 2357(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Local Finance Board, was readopted as R.1988 d.350, effective June 29, 1988. See: 20 N.J.R. 1027(a), 20 N.J.R. 1879(a).

Former Subchapter 9, Financial Administration, Subchapter 11, School Bonds, Subchapter 13, Forms, Subchapter 15, Appropriation Caps, and Subchapter 16, Tenants Property Tax Rebate Program, were repealed by R.1990 d.383, effective August 6, 1990. See: 22 N.J.R. 706(b), 22 N.J.R. 2276(b).

Subchapter 14, Local Public Contracts, was repealed and Subchapter 17, Cooperative Pricing and Joint Purchasing Systems, was recodified to N.J.A.C. 5:34-7 by R.1990 d.595, effective December 3, 1990. See: 22 N.J.R. 724(a), 22 N.J.R. 3629(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Local Finance Board, was readopted as R.1993 d.297, effective May 27, 1993. See: 25 N.J.R. 1630(a), 25 N.J.R. 2688(a).

Subchapter 7, Municipal Budget Local Examination and Approval, was adopted as R.1997 d.146, effective March 17, 1997. See: 28 N.J.R. 5125(a), 29 N.J.R. 870(a).

Subchapter 9, Government Electronic Receipt Acceptance, was enacted as R.1997 d.147, effective March 17, 1997. See: 29 N.J.R. 4(a), 29 N.J.R. 872(a).

Pursuant to Executive Order No. 66(1978), Chapter 30, Local Finance Board, was readopted as R.1998 d.307, effective May 22, 1998. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

5:30-1.1 Rules and regulations

(a) All applications to the Board shall require a hearing before the Board, which shall include an appearance by the applicant at the time the application is heard. The chair or the Board may waive such appearance if it is found in the interest of the Board or the applicant to do so.

(b) The Local Finance Board shall meet on the second Wednesday of each month of the calendar year at its office, 101 South Broad Street, Trenton, New Jersey at the date and time specified in each notice of public meeting issued by the Board. Further, the business that would otherwise be handled at the regular meetings required pursuant to N.J.S.A. 52:27BB-13 shall be considered at the next following meeting scheduled pursuant to this subsection.

(c) The Board shall also meet at the call of the chair by notice in writing or via facsimile at such time and place as shall be specified in said notice. The Board, in its discretion, may agree to meet upon the receipt of a telephone request from the chair or any member thereof to transact any business which may properly come before it. The members of the Board may be considered in attendance at a meeting by using telecommunications equipment as permitted by the Open Public Meetings Act.

(d) The board shall meet as a municipal finance commission in those municipalities in which it functions and all other actions shall be taken as the Local Finance Board.

(e) Additional information on the Board and its practices can be obtained by contacting the Executive Secretary, Local Finance Board, 101 Broad Street, PO Box 803, Trenton, New Jersey 08625-0803, (609) 292-4537.

(f) References in this chapter to the Director or Division shall refer to the Director of the Division of Local Government Services, or to the Division of Local Government Services, as appropriate.

Amended by R.1990 d.383, effective August 6, 1990.
See: 22 N.J.R. 706(b), 22 N.J.R. 2276(b).

Time and place of meetings changed in (b).
Amended by R.1998 d.307, effective June 15, 1998.
See: 30 N.J.R. 1123(a), 30 N.J.R. 2204(b).
Rewrote the section.

Case Notes

Regulations valid as implementing legislative policy; definition of qualitative clarified by regulations. *Twp. of Burlington v. Middle Department Inspection Agency, Inc.*, 175 N.J.Super. 624, 421 A.2d 616 (Law Div.1980).

Advertising requirement valid and constitutional. *Apartment House Council of New Jersey v. Laezza*, 158 N.J.Super. 204, 385 A.2d 936 (App.Div.1978).

Tenants Property Tax Rebate Act constitutional; regulatory scheme adopted. *Cold Indian Springs Corp. v. Twp. of Ocean*, 154 N.J.Super. 75, 380 A.2d 1178 (Law Div.1977), affirmed 161 N.J.Super. 586, 392 A.2d 175 (App.Div.1978), affirmed 81 N.J. 502, 410 A.2d 652 (1980).

5:30-1.2 Duties

The Local Finance Board studies the entire field of local government in New Jersey, and promulgates reasonable rules and regulations for the interpretation and administration of State laws included within the jurisdiction of the division.

5:30-1.3 Hearings

(a) The Local Finance Board holds hearings when required by law, and also when it determines that interested persons should be given an opportunity to be heard.

(b) Hearings to appeal a determination or action of the Director pursuant to N.J.S.A. 52:27BB-15 shall be held upon receipt of a written request filed with the chair or executive secretary and which include an explanation of the determination or action of the Director which is being appealed, the nature of and reason for the appeal, and supporting documentation as may be requested by the Board.

Amended by R.1998 d.307, effective June 15, 1998.
See: 30 N.J.R. 1123(a), 30 N.J.R. 2204(b).
Rewrote (b).

5:30-14.48 Pooling of funds

Except for individual annuities and life insurance contracts, the plan shall provide for investments in authorized investment options by pooling the amounts awarded. The return on investments shall be apportioned on a prorated basis among all participants in the plan after deductions for reasonable administrative costs.

5:30-14.49 Review

(a) The sponsoring agency shall have a review of the contractor administered prototypical length of service award plan as part of the annual audit of its books, accounts and financial transactions.

(b) The initial review of the plan shall cover the period from plan initiation to the end of the fiscal year for the local unit and thereafter, the fiscal year of the plan shall conform to the fiscal year of sponsoring agency.

(c) The review of a plan shall be made in accordance with the American Institute of Certified Public Accountant's (AICPA's) Statements on Standards for Accounting and Review Services, (Codification of Statements on Standards for Accounting and Review Services as of January 1, 1999), incorporated herein by reference, as amended and supplemented, subject to such qualitative inquiry and analytical procedures selected and performed, causing attention to questionable items, procedures or practices of a material nature, constituting a need for balances to be adjusted or creating a need for further auditing.

(d) The contractor shall transmit to the sponsoring agency a compilation of financial data in statement form providing a full accounting of all plan transactions occurring during the sponsoring agency's fiscal year, including beginning transactions and ending fund balance. The accounting for the transactions must reflect each volunteer's award and the date the funds were received, the beginning fund balance by investment option, earnings or losses incurred, administrative charges and fees assessed, any transfers made among funds, all deposits and withdrawals, and the ending fund balance, including any and all adjustments made to such plan. The contractor must also submit to the sponsoring agency applicable plan statements together with the opinion from its latest firm audit report prepared by its independent public accountant.

(e) The contractor shall furnish a letter to the Director from its independent accountant attesting to the adequacy of the contractor's internal controls.

(f) The contractor shall certify to the Director that the annual accounting data supplied to the sponsoring agency is accurate and complete.

(g) The independent auditor of the sponsoring agency shall then evaluate the sponsoring agency's records of the

funds awarded to the volunteers and the joinder agreements against the information transmitted by the contractor.

(h) The independent auditor of the sponsoring agency shall make an appropriate statement and express limited assurances thereon. These assurances shall be made part of the sponsoring agency's annual audit, pursuant to N.J.S.A. 40A:5-4 or 40A:5A-15. The expense of the review shall be incurred by the sponsoring agency or contractor as agreed upon at the time the service agreement is drawn.

5:30-14.50 Return to participants

Funds invested, less administrative expenses, including all amounts awarded and any and all return on investments shall be credited to the participants' accounts. Such credit shall be made in a manner that is prorated in a nondiscriminatory manner.

5:30-14.51 Participant records confidential

All records regarding participation, amounts awarded, account balances, withdrawals, and any other information regarding a participant's account shall be held confidential by the local plan administrator and the contractor.

5:30-14.52 Plan records

The local plan administrator shall make available upon a written request from a participant or the Director, all records, reports or other information relating to the plan as a whole, including, but not limited to, investment reports, audits and annual reports.

5:30-14.53 Status of funds

The amount awarded shall not be treated as compensation subject to Federal income tax withholding or New Jersey Gross Income Tax withholding.

5:30-14.54 Plan list

(a) Each July the Director shall prepare and distribute to the appropriate contractor a list of its approved length of service award plans. The list shall clearly identify sponsoring agencies and the date of approval.

(b) The contractor shall have 30 days from date of mailing of the list by the Director to confirm in writing that the list is accurate.

5:30-14.55 Compliance

(a) A contractor shall provide to the Director appropriate documentation as more specifically described in this section that, under its proposed prototypical length of service award plan, funds contributed for the benefit of volunteers participating in the plan shall not be taxable for the purposes of the Internal Revenue Code until actual receipt of such funds by the volunteer due to retirement, termination after vesting, death or disability. The appropriate documentation to be submitted by the contractor shall consist of either a

written opinion of legal counsel for the contractor, or a private letter ruling to this effect from the Internal Revenue Service, pursuant to N.J.A.C. 5:30-14.56.

(b) The Director shall not assign a prototypical length of service award plan identifier to a contractor who fails to provide evidence of compliance as required in (a) above.

(c) The Director may, at his or her discretion, assign a prototypical identifier upon the receipt from the contractor of documentation consisting of a copy of the filing for a Private Letter Ruling and an acknowledgement of receipt of the filing from the Internal Revenue Service.

(d) The contractor shall provide the Director with a copy of the Private Letter Ruling when it has been issued by the Internal Revenue Service.

5:30-14.56 Private letter ruling

A sponsoring agency adopting a prototypical length of service award plan may with the cooperation of a contractor file an application with the Internal Revenue Service for a private letter ruling for a determination that the plan meets the requirements of the Internal Revenue Code. A copy of the ruling shall be forwarded to the Director when received.

5:30-14.57 Private letter ruling alternative

As an alternative to seeking a separate private letter ruling from the Internal Revenue Service pursuant to N.J.A.C. 5:30-14.56, a sponsoring agency may adopt a contractor's prototypical length of service award plan which has already received a private letter ruling from the Internal Revenue Service. The private letter ruling shall be based upon the contractor's prototypical length of service award plan adopted by a New Jersey sponsoring agency. The resolution of a sponsoring agency shall certify that the sponsoring agency is adopting a plan identical to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. The certification shall also indicate the use of the ruling is for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another sponsoring agency is not to be considered precedent.

5:30-14.58 Regulatory compliance

The sponsoring agency and contractor shall comply with the provisions of this subchapter. Any sponsoring agency or contractor deemed by the Director to be in noncompliance shall be notified by certified mail to appear before the Director, or designee. Notice shall be given at least 14 days prior to the date of the appearance and shall detail the nature of the alleged noncompliance. Failure to appear shall result in appropriate penalties pursuant to N.J.A.C. 5:30-14.61.

5:30-14.59 Director determination

No later than 10 days after an appearance required by N.J.A.C. 5:30-14.58, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the sponsoring agency or contractor, as appropriate.

5:30-14.60 Grace period

A Director determination of noncompliance shall result in the immediate commencement of a 60 day grace period. During this time, the sponsoring agency or contractor shall rectify all items of noncompliance to the satisfaction of the Director.

5:30-14.61 Penalties

Failure to satisfactorily address noncompliance during the grace period shall result in the immediate ineligibility of a contractor to qualify for Division approval of any additional LOSAP plans. In addition, the Director may take such other actions as provided for by law.

5:30-14.62 Vesting and awards

(a) Pursuant to N.J.S.A. 40A:14-188, a sponsoring agency may make a yearly contribution to the LOSAP Account in the deferred income program for an active volunteer who has satisfied the requirements for receipt of an award, but the volunteer shall not be able to receive a distribution of the funds until the completion of a five year vesting period.

(b) Should a volunteer fail to vest or terminate association with a sponsoring agency prior to the completion of the vesting period, the funds placed in the LOSAP Account on behalf of the volunteer shall revert to the sponsoring agency, not to the volunteer.