

# PROGRAM BILL #21

## GOVERNOR'S PROGRAM BILL 2013

### MEMORANDUM

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 to amend the civil service law, in relation to public arbitration panels determinations of whether public employers are fiscally eligible

#### Purpose:

This bill would establish a permanent Financial Restructuring Board for Local Governments that would provide a meaningful, substantive avenue for fiscally eligible municipalities to reform and restructure and provide public services in a cost-effective manner. It would also extend current provisions of the binding interest arbitration law and reform that arbitration process by setting forth new parameters for arbitration awards.

#### Summary of Provisions:

Section 1 of the bill would amend the State Finance Law to empower the newly created Financial Restructuring Board for Local Governments ("the Board") to award currently authorized Local Government Performance and Efficiency grants, in its discretion, for financial restructuring and related purposes.

Section 2 of the bill would amend the Local Finance Law to create a permanent Financial Restructuring Board for Local Governments composed of ten members: the Director of the Budget (who would serve as chair), the State Comptroller, the Attorney General and the Secretary of State (each of whom could designate an individual to serve on their behalf) and six members appointed by the Governor, one of whom upon recommendation of the Speaker of the Assembly, one of whom upon the recommendation of the Temporary President of the Senate, one with experience in municipal financial and restructuring matters and three other members.

The Board, at the request of a "fiscally eligible municipality" (to be determined by the Director of the Budget and not including New York City), would be empowered to seek information and make necessary queries in order to comprehensively review government operations, finances, management practices, a municipality's economic base and any other factors it deemed relevant to make findings and recommendations on reforming and restructuring the operations of such municipality. It would have the discretion to, among other things, award grants, and prescribe loans (as provided in section one of the bill), the terms of which it would

formulate, as well as make other recommendations. The Board's recommendations would not bind a municipality, but if the municipality agrees to the Board's proposals, it would be contractually bound to fulfill those terms. The Board would be mandated to complete its work and issue recommendations within six months of receiving a request to convene.

Section 3 of the bill would amend Civil Service L. § 209 to provide an alternative "for fiscally eligible municipalities" to the current binding arbitration law. The municipality, with the consent of an impacted union (subject to Civil Service L. § 209, subd. 4), would have the opportunity to present an impasse in collective bargaining for a final determination to the Board. In such case, the Board would operate in the same manner as an arbitration panel under subdivision 4 and issue a binding ruling, although such ruling would have to be rendered within six months of convening.

Section 4 of the bill would extend the current statute for binding interest arbitration Civil Service L. § 209 from July 1, 2013 to July 1, 2015.

Section 5 of the bill would establish criteria by which a local government (a county, city, town, or village) subject to the "Property Tax Cap" in General Municipal L. § 3-c could be deemed a fiscally eligible municipality for which its "ability to pay" would be the lead factor in an arbitrator's award under Civil Service L. § 209.

In section 5, for any such local government entering interest arbitration, the arbitration panel, in considering all relevant factors in formulating a determination, must first and foremost, give 70% of its weight and consideration to the local government's "ability to pay". All other factors and consideration would receive the remaining 30% weight. In addition, for these local governments, arbitrators would have to factor in the constraints and limitations imposed by the "Property Tax Cap".

For purposes of this bill, a local government would be deemed a fiscally eligible municipality eligible to receive the services of the Board in the arbitration context if one of the following two fiscal tests are met: (1) if the local government's average full value property tax rate is above the 75th percentile for all municipalities statewide, as averaged over the most recent five fiscal years, or, (2) if the local government's five year average general fund balance equals less than five percent of its budget, and the government has received certification from the State comptroller verifying total fund balance availability. If a local government failed to report any of the data necessary to compute these two tests, it would not be considered fiscally eligible and could not avail itself of the associated provisions.

Section 5 of the bill is a severability clause.

Section 6 of the bill provides the effective date.

**Existing Law:**

There is no permanent body empowered by law to inquire into and make recommendations called for in this legislation with respect to municipalities. In addition, Civil

Service Law § 209, subd. 4 provides the only avenue for resolving impasses between municipalities and certain uniformed employee organizations.

**Justification:**

Municipalities, when faced with a fiscal crisis, often have nowhere to turn except for the extraordinary remedies of bankruptcy or the appointment of a financial control board – or do nothing. There is no standing body under State or federal law to which they can turn for help. This proposal fills that void. Provided that such municipalities are prepared to make the often hard choices required to maintain solvency and fiscal viability while still providing the services to which their residents are entitled, the newly constituted Financial Restructuring Board for Local Governments would provide those municipalities with a resource so that their restructuring efforts can be coordinated and effective. The Board would be available all year and not tied to a legislative session. Moreover, it would have to make recommendations within nine months of being asked, a significantly shorter time than proceeding in court.

One incentive available for participating municipalities is the existing Local Government Performance Efficiency Program which would be amended to allow financial assistance as approved by the Board. Under this program, up to \$80 million would be available this year. The primary purpose for assistance would be to help fund the restructuring initiatives and recommendations provided by the Board. The Board would have discretion to determine what other form of assistance to provide (grant, loan, or combination). Specific loan terms and conditions would be determined by the Board – including allowable uses for loan proceeds.

In instances when public employers and their represented police and fire employees are at an impasse in their contractual negotiations, current law provides the terms by which an interest arbitration panel can make awards and settle the dispute. While current law requires an arbitrator to consider a local government's "ability to pay", this concept is neither defined nor emphasized. The amendments to New York State's Taylor Law proposed in this legislation will remedy that shortcoming by letting those eligible municipalities have their ability to pay given a specific, leading weight in determining an arbitration award.

Finally, a fiscally eligible municipality and its labor unions subject to the Taylor Law's provisions authorizing interest arbitration can jointly ask the Board to act as the arbitration panel to decide contract disputes at any point that the parties agree that they are at impasse. The Board, when so acting as an arbitration panel, must render its decision within six months of being so requested, a substantially shorter time period than the length of most interest arbitrations.

**Legislative History:**

This is a new bill. Civil Service L. § 209, subd. 4 was last extended in 2009.

**Budget Implications:**

There will be minimal fiscal impacts associated with this bill. Costs associated with the operation of the Financial Restructuring Board for Local Governments would be borne by existing appropriations, and funding for any new financial assistance to localities would come from appropriations contained in the enacted 2013-14 State Budget.

**Effective Date:**

The bill would take effect immediately, but sections one, two and three would take effect on the ninetieth day after it the bill would become a law and sections four and five would be deemed to have been in full force and effect on and after April 1, 2013; and sections three, four and five would apply to all agreements and interest arbitration determinations that expire before, on or after April 1, 2013 except those where the public employment relations board received a petition to refer the dispute to a public arbitration panel pursuant to subdivision 4 of Civil Service L. § 209 before June 14, 2013.