

PROGRAM BILL #21

Legislative Bill Drafting Commission
12046-01-3

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

STATFILA
(Establishes the financial restructuring board for local governments and relates to public arbitration panels determinations of whether public employers are fiscally eligible)

St Fin. financial restructuring

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal:

s20 Adams	s17 Felder	s63 Kennedy	s25 Montgomery	s23 Savino
s15 Addabbo	s02 Flanagan	s34 Klein	s54 Nozzolio	s29 Serrano
s11 Avella	s08 Fuschillo	s28 Krueger	s55 O'Brien	s51 Seward
s40 Ball	s59 Gallivan	s24 Lanza	s58 O'Mara	s09 Skelos
s42 Bonacic	s12 Gianaris	s39 Larkin	s21 Parker	s14 Smith
s04 Boyle	s41 Gipson	s37 Latimer	s13 Peralta	s26 Squadron
s44 Breslin	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s38 Carlucci	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart-Cousins
s50 DeFrancisco	s60 Grisanti	s45 Little	s48 Ritchie	s46 Tkaczyk
s32 Diaz	s06 Hannon	s05 Marcellino	s33 Rivera	s53 Valesky
s18 Dilan	s36 Hassell-Thompson	s43 Marchione	s56 Robach	s57 Young
s31 Espaillat		s07 Martins	s19 Sampson	s03 Zeldin
s49 Farley	s27 Hoylman	s62 Maziarz	s10 Sanders	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a081 Dinowitz	a135 Johns	a133 Nojay	a140 Schimminger
a092 Abinanti	a147 DiPietro	a113 Jordan	a037 Nolan	a087 Sepulveda
a084 Arroyo	a115 Duprey	a094 Katz	a130 Oaks	a065 Silver
a035 Aubry	a004 Englebright	a074 Kavanagh	a069 O'Donnell	a027 Simanowitz
a120 Barclay	a054 Espinal	a142 Kearns	a051 Ortiz	a036 Simotas
a106 Barrett	a109 Fahy	a076 Kellner	a091 Otis	a104 Skartados
a060 Barron	a071 Farrell	a040 Kim	a132 Palmesano	a099 Skoufis
a082 Benedetto	a126 Finch	a131 Kolb	a088 Paulin	a022 Solages
a117 Blankenbush	a008 Fitzpatrick	a105 Lalor	a141 Peoples-Stokes	a114 Stec
a062 Borelli	a124 Friend	a013 Lavine	a058 Perry	a079 Stevenson
a055 Boyland	a143 Gabryszak	a050 Lentol	a089 Pretlow	a127 Stirpe
a026 Braunstein	a095 Galef	a125 Lifton	a073 Quart	a011 Sweeney
a044 Brennan	a137 Gantt	a102 Lopez, P.	a019 Ra	a112 Tedisco
a119 Brindisi	a007 Garbarino	a123 Lupardo	a098 Rabbitt	a101 Tenney
a138 Bronson	a077 Gibson	a010 Lupinacci	a098 Rabbitt	a001 Thiele
a046 Brook-Krasny	a148 Giglio	a121 Magee	a012 Raia	a061 Titone
a093 Buchwald	a080 Gjonaj	a129 Magnarelli	a006 Ramos	a031 Titus
a118 Butler	a066 Glick	a059 Maisel	a134 Reilich	a146 Walter
a103 Cahill	a023 Goldfeder	a064 Malliotakis	a078 Rivera	a041 Weinstein
a043 Camara	a150 Goodell	a030 Markey	a128 Roberts	a020 Weisenberg
a145 Ceretto	a075 Gottfried	a090 Mayer	a056 Robinson	a024 Weprin
a033 Clark	a005 Graf	a108 McDonald	a068 Rodriguez	a070 Wright
a047 Colton	a100 Gunther	a014 McDonough	a072 Rosa	a096 Zebrowski
a032 Cook	a139 Hawley	a017 McKeivitt	a067 Rosenthal	a002
a144 Corwin	a083 Heastie	a107 McLaughlin	a025 Rozic	a053
a085 Crespo	a003 Hennessey	a038 Miller	a116 Russell	a086
a122 Crouch	a028 Hevesi	a052 Millman	a149 Ryan	
a021 Curran	a048 Hikind	a015 Montesano	a009 Saladino	
a063 Cusick	a018 Hooper	a136 Morelle	a111 Santabarbara	
a045 Cymbrowitz	a042 Jacobs	a057 Mosley	a029 Scarborough	
a034 DenDekker	a097 Jaffee	a039 Moya	a016 Schimel	

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

7 t. Local government performance and efficiency program. (i) (1) Defi-
8 nitions. For the purposes of this [paragraph] subparagraph, "municipi-
9 pality" shall mean a county, city, town, or village, but shall not
10 include the individual counties contained in the city of New York.

11 ~~[(ii)]~~ (2) Purpose. [There is hereby established a local government
12 performance and efficiency program.] The purpose of [this program]
13 awards made pursuant to this subparagraph is to recognize municipalities
14 that have undertaken significant and innovative actions to improve the
15 overall efficiency of governmental operations and produce quantifiable
16 recurring financial savings that reduce the municipal tax burden on
17 residents.

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

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

25 ~~[(v)]~~ (5) Application. The secretary of state shall develop an appli-
26 cation for municipalities seeking to receive awards and a process by
27 which the applications will be evaluated. Such application shall require
28 municipalities to demonstrate how the action for which they have applied

1 has resulted in quantifiable recurring savings, efficiencies, and perma-
2 nent improvements to municipal services. The secretary of state may
3 focus the [program] awards in specific functional service areas, in
4 which case such areas of focus shall be detailed in a request for appli-
5 cations. No application shall be considered for actions that commenced
6 prior to January first, two thousand ten.

7 [(vi)] (6) Awards. The secretary of state may make awards to appli-
8 cants based on factors including, but not limited to, the amount of
9 current and future savings, the impact of such action upon the municipal
10 property tax levy, the size and complexity of the action, and the abili-
11 ty for the action to be replicated by other municipalities. Awards shall
12 only be made to municipalities for actions that have been fully imple-
13 mented, that clearly resulted in quantifiable savings and efficiencies,
14 and that produced permanent and quantifiable improvements to municipal
15 efficiency or services. The maximum amount awarded per application shall
16 not exceed the lesser of five million dollars or twenty-five dollars per
17 resident of the applying municipalities as of the most recent federal
18 decennial census, provided, however, that if the boundaries of munici-
19 palities jointly applying for such funding overlap, the residents in
20 overlapping areas shall only be counted once, and provided, further,
21 that if a county jointly applies with some but not all of the other
22 municipalities therein, only the residents in such other municipalities
23 shall be counted.

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

27 [(viii)] (8) Regulation. The secretary of state shall, prior to the
28 establishment of applications, promulgate rules and regulations on the

1 [program] awards, including but not limited to award eligibility crite-
2 ria and application, review and approval procedures.

3 (ii) (1) Definitions. For the purposes of this subparagraph, "fiscally
4 eligible municipality" shall have the same meaning as "fiscally eligible
5 municipality" as defined by section 160.05 of the local finance law. For
6 the purposes of this subparagraph, "financial restructuring board for
7 local governments" or "board" shall mean the financial restructuring
8 board for local governments as authorized by section 160.05 of the local
9 finance law.

10 (2) In addition to awards made pursuant to subparagraph (i) of this
11 paragraph, the board may award funding to fiscally eligible munici-
12 palities for financial restructuring and related purposes, as determined
13 by the board. This funding may be structured as a loan, a grant, or
14 combination thereof. The amount of such funding to be provided to a
15 fiscally eligible municipality, the structure of such funding, any
16 conditions to be placed on a fiscally eligible municipality that accepts
17 such funding, and any other aspects of funding awarded pursuant to this
18 subparagraph shall be determined by an affirmative vote of a majority of
19 the total number of members of the board and may differ for each award
20 of funding. Such loans shall not be bound by the local finance law with
21 respect to terms and repayment limitations but in no event may the sum
22 of all awards pursuant to this subparagraph be greater than five million
23 dollars for any single municipality nor may any loan be for a term long-
24 er than ten years. Further, any such loans shall not be considered debt
25 for purposes of calculating constitutional limit provisions. Notwith-
26 standing any other law to the contrary, the director of the budget may
27 direct the state comptroller to withhold any state aid payments due to a

1 fiscally eligible municipality in order to satisfy the repayment condi-
2 tions of the funding awarded pursuant to this subparagraph.

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

5 § 160.05. Financial restructuring board for local governments. 1.

6 There shall be a financial restructuring board for local governments
7 which shall consist of ten members: the director of the budget who shall
8 be chair of the board, the attorney general, the state comptroller, and
9 the secretary of state, each of whom may designate a representative to
10 attend sessions of the board on his or her behalf, and six members
11 appointed by the governor, one of whom upon the recommendation of the
12 temporary president of the senate, one of whom upon the recommendation
13 of the speaker of the assembly, and four other members appointed by the
14 governor, one of whom shall have significant experience in municipal
15 financial and restructuring matters. In making such appointments, the
16 governor shall consider regional diversity. Appointees shall serve at
17 the pleasure of his or her appointing authority. The appointee of the
18 governor who has been designated as having significant experience in
19 municipal financial and restructuring matters shall receive fair compen-
20 sation for his or her services performed pursuant to this section in an
21 amount to be determined by the director of the budget and all members
22 shall be reimbursed for all reasonable expenses actually and necessarily
23 incurred by him or her in the performance of his or her duties. The
24 board shall have the power to act by an affirmative vote of a majority
25 of the total number of members and shall render its findings and recom-
26 mendations within six months of being requested to act by a fiscally
27 eligible municipality. The provisions of section seventeen of the public
28 officers law shall apply to members of the board. No member of the board

1 shall be held liable for the performance of any function or duty author-
2 ized by this section. The work of the board shall be conducted with
3 such staff as the director of the budget, the secretary of state, the
4 attorney general and the state comptroller shall make available. All
5 proceedings, meetings and hearings conducted by the board shall be held
6 in the city of Albany.

7 2. A "fiscally eligible municipality" shall mean any county, city,
8 excluding a city with a population greater than one million, town, or
9 village that the board, on a case by case basis, determines would bene-
10 fit from the services and assistance which the board has legal authority
11 to offer. In evaluating whether a municipality is a fiscally eligible
12 municipality, the board shall consider the average full value property
13 tax rate of such public employer and the average fund balance percentage
14 of such public employer and such other criteria as the board deems rele-
15 vant. For purposes of this section, "full value property tax rate"
16 shall mean the amount to be raised by tax on real estate by a local
17 government in a given fiscal year divided by the full valuation of taxa-
18 ble real estate for that same fiscal year as reported to the office of
19 the state comptroller; "average full value property tax rate" shall mean
20 the sum of the full value property tax rates for the five most recent
21 fiscal years divided by five; "fund balance percentage" shall mean the
22 total fund balance in the general fund of a local government in a given
23 fiscal year divided by the total expenditures from the general fund for
24 that same fiscal year as reported to the office of the state comp-
25 troller; and "average fund balance percentage" shall mean the sum of the
26 fund balance percentages for the five most recently completed fiscal
27 years divided by five.

1 (a) If the average full value property tax rate of such municipality
2 is greater than the average full value property tax rate of seventy-five
3 percent of counties, cities, towns, and villages, with local fiscal
4 years ending in the same calendar year as of the most recently available
5 information, the board must find that such municipality is a fiscally
6 eligible municipality. The office of the state comptroller shall make
7 publicly available the list of counties, cities, towns, and villages
8 that have an average full value property tax rate that meets such crite-
9 ria in each local fiscal year. If a municipality has not reported to the
10 office of the state comptroller the information necessary to calculate
11 its average full value property tax rate, such municipality may not be
12 deemed a fiscally eligible municipality and the provisions of this
13 section shall not apply.

14 (b) If the average fund balance percentage of such municipality is
15 less than five percent, the board must find that such municipality is a
16 fiscally eligible municipality. The office of the state comptroller
17 shall make publicly available the list of counties, cities, towns, and
18 villages that have an average fund balance percentage that meets such
19 criteria in each local fiscal year. If a municipality has not reported
20 to the office of the state comptroller the information necessary to
21 calculate its average fund balance percentage, such municipality may not
22 be deemed a fiscally eligible municipality and the provisions of this
23 section shall not apply.

24 3. Upon the request of a fiscally eligible municipality, by resolution
25 of the governing body of such municipality with the concurrence of the
26 chief executive of such municipality, the financial restructuring board
27 for local governments may undertake a comprehensive review of the oper-
28 ations, finances, management practices, economic base and any other

1 factors that in its sole discretion it deems relevant to be able to make
2 findings and recommendations on reforming and restructuring the oper-
3 ations of the fiscally eligible municipality. As part of such recommen-
4 dations, the board may propose that such municipality agree to fiscal
5 accountability measures, as determined by the board, including, but not
6 limited to, multi-year financial planning. It may also identify cost-
7 saving measures, recommend consolidation of functions or agencies within
8 such municipality or between such municipality and other municipalities,
9 consistent with existing law, identify and make available, to the extent
10 otherwise permitted by law, grants and loans on such terms and condi-
11 tions as it deems appropriate, and make such other recommendations as
12 the board may deem just and proper but in no event shall the sum of all
13 awards made by the board to a single fiscally eligible municipality be
14 greater than five million dollars. If such award is a loan, it may not
15 be for a term longer than ten years. In the event a grant or loan is
16 made, the board may condition such award on the fiscally eligible muni-
17 cipality submitting a report or reports on such actions taken by the
18 fiscally eligible municipality pursuant to the board's recommendations,
19 and the board shall require that the eligible municipality must adopt
20 and implement all the board's recommendations as a condition to receiv-
21 ing an award or awards. Before making final recommendations, the board
22 shall consult with the fiscally eligible municipality. Such recommenda-
23 tions shall not be final and binding on a fiscally eligible municipality
24 unless it formally agrees to abide by and implement such recommendations
25 in which event such recommendations and the terms provided thereunder
26 shall be final and binding on such municipality.

27 4. The board may hold hearings and shall have authority to require the
28 production of any information that it deems necessary to undertake its

1 comprehensive review. The board shall post on a publicly available
2 website all recommendations and findings made pursuant to this section.

3 5. The board shall also be authorized to resolve an impasse pursuant
4 to subdivision four-a of section two hundred nine of the civil service
5 law.

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

8 4-a. (a) Notwithstanding anything in subdivision four of this section
9 to the contrary, a public employer that is a fiscally eligible munici-
10 pality, as defined in section 160.05 of the local finance law, and is
11 otherwise subject to subdivision four of this section, upon resolution
12 of its governing body with the concurrence of its chief executive offi-
13 cer, and a public employee organization subject to subdivision four of
14 this section may, jointly, stipulate and agree that an impasse exists,
15 at any time, with respect to collective negotiations between the parties
16 for a collective bargaining agreement and, in lieu of commencing a
17 proceeding under subdivision four of this section, may jointly request
18 that the financial restructuring board for local governments, estab-
19 lished in section 160.05 of the local finance law, resolve such impasse.
20 A joint request pursuant to this subdivision shall be irrevocable.

21 (b) The financial restructuring board for local governments shall
22 render a just and reasonable determination of the matters in dispute by
23 an affirmative vote of a majority of the total number of its members.
24 In arriving at such determination, it shall specify the basis for its
25 findings, taking into consideration, in addition to any other relevant
26 factors, those factors set forth in subdivision six of this section. In
27 all matters regarding public disclosure of its proceedings and findings,
28 it shall be treated the same as the panel convened pursuant to subdivi-

1 sion four of this section. It shall render a determination within six
2 months of being formally requested by the parties to convene.

3 (c) Each party before the financial restructuring board for local
4 governments may be heard either in person, by counsel, or by other
5 representatives, as they may respectively designate and may present,
6 either orally or in writing, or both, statements of fact, supporting
7 witnesses and other evidence, and argument of their respective positions
8 with respect to each case. The board shall have authority to require
9 the production of additional evidence, either oral or written, as it may
10 desire from the parties. All proceedings, meetings and hearings
11 conducted by the board shall be held in the city of Albany.

12 (d) The determination of the financial restructuring board for local
13 governments with respect to the conditions of employment presented to it
14 pursuant to this section shall be final and binding upon the parties for
15 the period prescribed by such board, but in no event shall such period
16 exceed four years from the termination date of any previous collective
17 bargaining agreement or if there is no previous collective bargaining
18 agreement then for a period not to exceed four years from the date of
19 determination by the board. Such determination shall not be subject to
20 the approval of any local legislative body or other municipal authority,
21 and shall only be subject to review by a court of competent jurisdiction
22 in the manner prescribed by law.

23 § 4. Paragraph (d) of subdivision 4 of section 209 of the civil
24 service law, as amended by section 9 of part A of chapter 504 of the
25 laws of 2009, is amended to read as follows:

26 (d) The provisions of this subdivision shall expire [thirty-six] thir-
27 ty-eight years from July first, nineteen hundred seventy-seven, and
28 hereafter may be renewed every four years.

1 § 5. Section 209 of the civil service law is amended by adding a new
2 subdivision 6 to read as follows:

3 6. (a) For disputes concerning an impasse pursuant to subdivision four
4 of this section that involve a county, city, town, or village subject to
5 section three-c of the general municipal law, a public arbitration panel
6 shall make a determination as to whether such county, city, town, or
7 village, is a public employer that is a fiscally eligible municipality
8 as part of its analysis of the financial ability of the public employer
9 to pay.

10 (b) In evaluating whether a public employer covered by this subdivi-
11 sion is a fiscally eligible municipality, such public arbitration panel
12 shall consider the average full value property tax rate of such public
13 employer and the average fund balance percentage of such public employ-
14 er.

15 (i) For purposes of this subdivision, "full value property tax rate"
16 shall mean the amount to be raised by tax on real estate by a local
17 government in a given fiscal year divided by the full valuation of taxa-
18 ble real estate for that same fiscal year as reported to the office of
19 the state comptroller.

20 (ii) For purposes of this subdivision, "average full value property
21 tax rate" shall mean the sum of the full value property tax rates for
22 the five most recent fiscal years divided by five.

23 (iii) For purposes of this subdivision, "fund balance percentage"
24 shall mean the total fund balance in the general fund of a local govern-
25 ment in a given fiscal year divided by the total expenditures from the
26 general fund for that same fiscal year as reported to the office of the
27 state comptroller.

1 (iv) For purposes of this subdivision, "average fund balance percent-
2 age" shall mean the sum of the fund balance percentages for the five
3 most recently completed fiscal years divided by five.

4 (c) If the average full value property tax rate of such public employ-
5 er is greater than the average full value property tax rate of seventy-
6 five percent of counties, cities, towns, and villages, with local fiscal
7 years ending in the same calendar year as of the most recently available
8 information, the public arbitration panel must find that such public
9 employer is a fiscally eligible municipality. The office of the state
10 comptroller shall make publicly available the list of counties, cities,
11 towns, and villages that have an average full value property tax rate
12 that meets such criteria in each local fiscal year. If a public employer
13 has not reported to the office of the state comptroller the information
14 necessary to calculate its average full value property tax rate, such
15 public employer may not be deemed a fiscally eligible municipality and
16 the provisions of this subdivision shall not apply.

17 (d) If the average fund balance percentage of such public employer is
18 less than five percent and the state comptroller has certified that any
19 additional fund balances in funds other than the general fund available
20 for payment of arbitration awards in each year, if added to the fund
21 balance of the general fund, would not cause the average fund balance
22 percentage of such public employer to exceed five percent, the public
23 arbitration panel must find that such public employer is a fiscally
24 eligible municipality. The office of the state comptroller shall make
25 publicly available the list of counties, cities, towns, and villages
26 that have an average fund balance percentage that is less than five
27 percent in each local fiscal year. If a public employer has not reported
28 to the office of the state comptroller the information necessary to

1 calculate its average fund balance percentage, such public employer may
2 not be deemed a fiscally eligible municipality and the provisions of
3 this subdivision shall not apply.

4 (e) When such public employer has been found to be a fiscally eligible
5 municipality, the public arbitration panel shall, first and foremost,
6 consider ability to pay by assigning a weight of seventy percent to that
7 portion of the criterion contained within clause b of subparagraph (v)
8 of paragraph (c) of subdivision four of this section that pertains only
9 to the public employer's ability to pay. All other criteria contained
10 in subparagraph (v) of paragraph (c) of subdivision four of this
11 section, including that portion of clause b of subparagraph (v) of para-
12 graph (c) of subdivision four of this section that pertains to the
13 interest and welfare of the public, shall constitute an aggregate weight
14 of thirty percent. Additionally, with respect to the total monetary
15 value of any determination, the panel must recognize and take into
16 account in its determination the constraints, obligations and require-
17 ments imposed by the real property tax cap pursuant to section three-c
18 of the general municipal law upon the public employer involved in the
19 dispute before the panel.

20 (f) The provisions of this subdivision shall expire two years from
21 July first, two thousand thirteen.

22 § 6. Severability. If any clause, sentence, paragraph, subdivision,
23 section or part of this article shall be adjudged by any court of compe-
24 tent jurisdiction to be invalid, such judgment shall not affect, impair,
25 or invalidate the remainder thereof, but shall be confined in its opera-
26 tion to the clause, sentence, paragraph, subdivision, section or part
27 thereof directly involved in the controversy in which such judgment
28 shall have been rendered.

1 § 7. This act shall take effect immediately, provided that sections
2 one, two and three of this act shall take effect on the ninetieth day
3 after it shall have become a law and sections four and five of this act
4 shall be deemed to have been in full force and effect on and after
5 April 1, 2013; and provided, further, that sections three, four and five
6 of this act shall apply to all agreements and interest arbitration
7 determinations that expire before, on or after April 1, 2013 except
8 those where the public employment relations board received a petition to
9 refer the dispute to a public arbitration panel pursuant to subdivision
10 4 of section 209 of the civil service law before June 14, 2013.