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New Jersey Department of Community Affairs
Division of Local Government Services

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Date

LOCAL FINANCE NOTICE

CHRISTINE TODD WHITMAN

GOVERNOR

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COMMISSIONER

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ACTING DIRECTOR

Implementing the Emergency Services Volunteer Length of Service Award Program (P.L. 1997, c.388)

Recipient Municipal Clerks and Fire District Commission Secretaries are asked to provide copies of this Notice to all elected officials, the chief financial officer, and auditor of the organization.

On January 19, 1998, the "Emergency Services Volunteer Length of Service Award Program" (P.L. 1998, c388) was signed into law by Governor Whitman. This program is more commonly known by the acronym "LOSAP." Preliminary information on LOSAPs was provided to Fire Districts in Local Finance Notice FD-98-1. This Local Finance Notice goes into additional detail, reviews the requirements of the statute, and provides guidance to local officials who plan to implement a LOSAP. A copy of the law is also included with this Notice.

The law empowers the Local Finance Board to adopt rules in the New Jersey Administrative Code (N.J.A.C.) to assist with the implementation and operation of LOSAPs. These rules are currently being drafted and will elaborate on various provisions of the law to provide interpretations and guidance to municipalities and fire districts. In developing the rules, the Board, will continue consulting with DCA's Division of Fire Safety and the Department of Health and Senior Services' Office of Emergency Medical Services. As this Notice provides important interpretations and clarifications of the law, until formal rules are adopted, the provisions of this Notice shall be considered as a directive of the Director of the Division of Local Government Services.

If your organization is planning to adopt a LOSAP, please study this Notice carefully. It contains many important points and interpretations of the law critical for successful implementation of a program. Of great importance is the timing of adopting an enabling ordinance or resolution.

The balance of this Notice is divided into several sections and has several attachments:

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- B. Creation of LOSAPs
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- E. Pre-existing LOSAP Programs
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Attachments

- Model LOSAP Resolution/Ordinance
- Model Ballot Question
- Model LOSAP Point System
- Copy of P.L. 1997, c.388

A. LOSAPs Generally

Director's Office
(609) 292-6613

Local Government
Research
(609) 292-6110

Financial Regulation
and Assistance
(609) 292-4806

Local Finance
Board
(609) 292-4537

Local Management
Services
(609) 292-7842

Authority Regulation
(609) 984-0133

Fax
(609) 984-7388

The statute defines a LOSAP as “a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization.” An emergency service organization generally includes all forms of volunteer fire and first aid organizations. For the purposes of administering the law, this definition includes those volunteer first aid organizations that charge for their services.

The tax-deferred income benefits for emergency services volunteers come from contributions made solely by the governing body of the municipality or fire district, on behalf of those volunteers who meet the criteria of a plan created by that governing body. The contributions are deposited into a plan similar to the deferred compensation plans permitted for county and municipal employees (N.J.S.A. 43:15B-1 et seq.) These plans permit the governing body or the volunteer to direct the investment of funds in the different investment vehicles that may be permitted under the plan adopted by the governing body. The investment options may include different types of mutual funds or annuities.

The benefits are federally tax deferred to the volunteer until the volunteer withdraws them. Current IRS law permits up to \$3,000 of annual LOSAP benefits to be treated as income that is not subject to federal taxation. The rules to be adopted by Board will include provisions relating to the creation and operation of these programs and will be similar to existing rules for deferred compensation programs for local governments (N.J.A.C 5:37-1). Those rules may be used as a guide pending formal adoption of the LOSAP rules. The program documents that will be required under those rules will not have to be filed until after the referendum is approved. The rules and explanatory information will be distributed once they are adopted.

B. Creation of LOSAPs

LOSAPs are not required; they are strictly voluntary. The programs are established by *a sponsoring agency*, which is the governing body of a municipality or fire district. While the law permits a county government to create them, virtually all volunteer emergency service organizations are municipally-based entities. The law applies equally to fire districts where they exist. It is important to note that LOSAPs, other than those permitted and created pursuant to this law, are not permitted.

Who Creates LOSAPS?

The law provides that LOSAPs are created for emergency service organizations by the jurisdiction under which they operate. This jurisdiction for volunteer fire organizations LOSAPs is as follows:

1. By municipal ordinance for volunteer fire organization(s) in a municipality which is not served by fire districts; or,
2. By resolution of a Fire District Board of Fire Commissioners in a municipality where they operate.
3. Where there is more than one fire district within a municipality, each district may have its own LOSAP for its fire companies. If a fire company serves more than one district, the provisions of Section G of this Notice apply.
4. The municipality or fire district may only have one LOSAP for each emergency service, regardless of how many fire companies or first aid organizations operate within their jurisdiction.

Volunteer first aid, emergency or volunteer ambulance or rescue squad associations (squad), require additional explanation, as the concept of "operating under the jurisdiction" may not relate in all cases, as squads often work independently of, or concurrently with municipalities and fire districts. The following guidelines should be followed as general rules. Where a squad has unique operating relationships, the Division of Local Government Services should be contacted for a determination on whether a fire district or municipality would be considered the sponsoring agency.

1. If there is no fire district, and one or more squads serve a single municipality, the LOSAP is created by the municipality. Section G applies if the squad(s) serve multiple municipalities.
2. If a squad serves an entire municipality that is served by multiple fire districts, the municipality would serve as sponsoring agency.
3. A fire district would serve as sponsoring agency for a squad whose jurisdiction is limited to, or is within the boundaries of a fire district, and, 1) is organizationally affiliated with, or 2) receives permitted financial support from the district. This determination is made without consideration to any contractual relationships the district has with other jurisdictions.
4. If an independent squad serves an entire municipality which is served by a single fire district, the sponsoring agency would be the jurisdiction that provides the greater amount of financial support or has an organizational or operational support relationship.
5. In a municipality that has multiple fire districts, if there are several squads that are independent of fire district organizations, or whose coverage areas overlap district boundaries, the municipality shall serve as sponsor.

How Are LOSAPs Created?

The first step in creating a LOSAP is the adoption of the ordinance or resolution. However, the ordinance or resolution does not take effect until it is approved by the voters as a public question at the next general election (for a municipality), or the fire district's next annual election. Ordinances and resolutions creating a LOSAP must include the following items:

- A general description of the program, including the point system to be utilized in determining eligibility for benefits (see Section C below);
- A statement of the proposed estimated total amount to be budgeted for the program;
- A statement of the proposed maximum annual contribution for an active volunteer member; and,
- If the proposed LOSAP authorizes crediting for prior years service, a statement of the number of prior years of active emergency service that may be credited for each active volunteer member.

A majority vote of the sponsoring agency's governing body is required to approve the ordinance or resolution. Consent of the Director of the Division of Local Government Services is not necessary for ordinances, resolutions, or ballot questions regarding a LOSAP. However, at the request of the

sponsoring agency, DCA will review individual enabling ordinances/resolutions, ballot questions and explanatory statements.

In addition, the law permits the Director to require other items in the enabling ordinance or resolution. At this time, the additional requirements are that:

- The ballot questions shall be accompanied by an explanatory statement; and
- The enabling ordinance/resolution and a copy of the LOSAP law be made available to the public in, if there is one, a public library that serves the jurisdiction and at the office of the municipal clerk. In the case of a fire district, in lieu of the municipal clerk, if the fire district maintains an office that is accessible to the public during normal business hours, it may be placed in that office.

As the law does not set forth a form of ordinance or resolution, local units should consult with legal counsel to ensure that the ordinance or resolution meets the minimum criteria of the law. To assist with this, a sample ordinance/resolution, ballot question, and explanatory statement is included with this Notice. The form of ballot question includes those provisions that the Division has determined to meet the statutory criteria of "a general description of the program."

Sponsoring agencies planning to adopt a LOSAP should ensure that their ordinance or resolution is adopted 60 days prior to the referendum date. While fire districts are responsible for their ballots, municipal clerks must coordinate, with the County Board of Elections, the printing of the question on the ballot.

Once approved by the voters, appropriations for a LOSAP program are included in the budget of the sponsoring agency as a separate line item. Municipal budget appropriations for LOSAPs may be treated as exceptions to the budget cap and require no other special treatment.

Fire districts anticipating creation of a LOSAP at their annual election must provide for the first year's cost of the program in the district's annual budget. The Division of Local Government Services' 1999 Fire District budget forms will include a separate section and line-item for LOSAP appropriations. If a fire district referendum on the public question to create the LOSAP is defeated, that appropriation will be removed from the budget, along with an equivalent decrease adjustment to the tax levy that is certified to the Municipal Tax Assessor. Complete details on fire district budgeting procedures for LOSAPs will be included with budget forms and instructions soon to be sent to all fire districts.

Several other important matters related to the program are:

- For municipalities, the calendar year following the referendum date, is the first year of the LOSAP; for fire districts, it is the same calendar year as the referendum vote.
- No municipality or fire district can have more than one program that provides cash payments for volunteers based on length of service. However, other properly authorized current-year based programs, such as stipends for serving in official capacities or uniform allowances, are not affected by the LOSAP law.

Abolishing or amending a LOSAP requires the same ordinance or resolution and ratifying referendum. However, the ordinance or resolution abolishing or amending the LOSAP must be passed by a two-thirds majority of the full membership of the sponsoring agency. The rules will provide that minor, clarifying, or

administrative amendments that do not materially affect the elements of the plan approved by the voters may be amended by a majority vote of the governing body. If the LOSAP is dissolved, all accumulated funds shall remain in trust for subsequent distribution to the individual contributors.

C. LOSAP Benefits

There are two important definitions to consider when dealing with LOSAP benefits:

"Active volunteer member" means a person who has been so designated by the governing board of a duly created emergency service organization and who is faithfully and actually performing volunteer service in that organization.

"Year of active emergency service" means a 12-month period during which an active volunteer member participates in the fire or first aid service and satisfies the minimum requirements of participation established by the sponsoring agency on a consistent and uniform basis.

About the Monetary Benefits

LOSAP benefit levels are set in the law. If an active volunteer member meets the year of active service requirement, a LOSAP must provide a benefit between the minimum contribution of \$100 and maximum contribution of \$1,150 per year. While the maximum amount is set by statute, it is subject to periodic increases that are tied to the consumer price index (N.J.S.A. 40A:14-185f). The permitted maximum amount will be issued by the Division annually.

A volunteer in an emergency service organization is eligible to participate in a LOSAP immediately upon becoming an active volunteer member of the emergency service organization (section 6(a) of the law, N.J.S.A. 40A:14-188(a)). It also permits a volunteer to "vest" after five years. The concept of vesting is normally used in defined benefit programs, not defined contribution programs, which are the ones permitted in the law. Taken together, the concepts of "participate" and "vest" are in conflict for those with less than five years of service.

The Board, DCA, the Attorney General's office, and representatives of the emergency services have spent a good deal of time trying, but not succeeding, to develop a workable system to implement the law for those with less than five years of service. Instead of mandating what would be an administratively difficult and complicated process, the parties have agreed to work with legislative sponsors to clarify the issue through a technical amendment to the law when the State Legislature returns this fall. In the meantime, this provision does not affect the start-up of any LOSAPs, and full information will be provided when an amendment is made.

How is Eligibility for a LOSAP Award Determined?

Each sponsoring agency is required to establish, in its ordinance, a point system that reflects the range of volunteer services that may be provided to the emergency service organization. The law does not prohibit the sponsoring agency from adopting a sliding scale of benefits that combines the use of points and years of service. One year of active emergency service is awarded for each calendar year in which an active volunteer accumulates the minimum number of points that are required by the sponsoring agency. If a volunteer is also a paid employee of a local government, credit shall only be given for volunteer activities

outside of the volunteer's regularly scheduled work periods. No credit shall be given for services performed while on the paid job.

Remembering that LOSAPs are a reward for volunteer service, local units should consider the point system very carefully, as it will dictate policy on how much volunteer effort is needed for an award, and ultimately, the cost of the program to taxpayers. While the point system must be in the plan that is approved by the voters, minor amendments by ordinance/resolution that are required at a later date will be permitted without a subsequent referendum.

A model point system designed for the fire services is included with the Notice. As local circumstances and operation of volunteer emergency service organizations vary greatly, it should be carefully reviewed and crafted in light of local circumstances.

In order to provide credit for existing volunteers, the enabling ordinance or resolution may provide for up to ten years of prior service credit. A year of prior service is defined by each emergency service organization. The law also permits credit for prior service in more than one participating volunteer emergency service organization.

D. LOSAP Award Process

The following elements regulate the LOSAP award process:

- Every year, emergency service organizations participating in a LOSAP must certify to the sponsoring agency an annual list of all volunteer members who have qualified for credit under the LOSAP program for the previous year.
- A year may be any 12 month period, but the Division suggests a calendar year basis.
- Upon receipt of the certification, the sponsoring agency must review it and approve the final certification.
- If the governing body has questions concerning the eligibility of any individual, it may request supplemental documentation from the emergency service organization.
- The approved list of active certified volunteer members is returned to the emergency service organization and posted for at least 30 days for review by the membership.
- The emergency service organization must maintain all required records on forms prescribed by the requirements of the LOSAP program. Sample forms will be prepared as part of the rule.

An active volunteer member whose name does not appear on the approved certification list or who is denied credit for prior service may appeal within 30 days of the posting of the list or within 30 days of denial of past service credit. The appeal must be in writing and mailed to the clerk or secretary of the sponsoring agency. The agency must investigate the appeal, which is subject to judicial review. Once the 30 days have elapsed, and subject to holding any members being appealed, payment is then made by the sponsoring agency to the individual members' accounts in the deferred income program.

A volunteer may request, in writing, to have their name deleted from the list as a participant in the LOSAP program, and will remain as a non-participant until the request is similarly withdrawn.

E. Pre-existing LOSAP Programs

The law recognizes that a number of sponsoring agencies had previously adopted an annuity form of LOSAP. These programs may continue but, are subject to the following requirements:

- That the Director of the Division of Local Government Services was notified of the existence of the LOSAP and its benefits by March 16, 1998. If your organization has a LOSAP and did not comply with this provision, contact the Division immediately.
- That within 180 days of being notified by the Director to do so, the agency sponsoring the preexisting LOSAP shall file, with the Director, documentation demonstrating that the LOSAP has been brought into conformance with the law. A ratifying referendum is not necessary. That notification will take place shortly.
- Preexisting LOSAP participants who were vested at a level in excess of \$750 as of January 19, 1998, may continue to receive benefits at that level.
- Preexisting LOSAP participants who vest after January 19, 1998, shall not receive a benefit in excess of \$750 per month, though that level may be adjusted for the cost of living as permitted in the law.

F. Special Circumstances — Prior Service Credit

The Division has received a number of questions concerning the calculation of prior service credit, particularly at the beginning of the program. The following provisions set policy and respond to these questions:

- Prior service credit may only be granted to active volunteers.
- The point schedule adopted by the sponsoring agency, and the description of the time frame for use in defining a year of active service adopted by the emergency service organization at the time the program is created, must be used for calculating prior year credit.
- Any ten years preceding the creation of the program may be used in calculating prior service credit.
- A list, certifying the prior year's credit, must be provided to the sponsoring agency, posted by the organization, and is subject to the appeal process described above.
- Credit for time earned in other emergency service organizations must be documented by that organization. The credit is awarded at the discretion of the current sponsoring organization.
- In no event, however, shall a participant be credited for a year of active emergency service in more than one service award program of the same type of emergency service.

G. Special Circumstances — Multiple Jurisdictions

Another special circumstance is how emergency service organizations that serve more than one municipality or fire district are to be treated. The following provisions apply to them:

1. The LOSAP benefit amount is based on the individual's service to the emergency service organization. This means that no individual may receive more than the maximum benefit amount, regardless of the number of sponsoring agencies served.
2. Each sponsoring agency must adopt an enabling ordinance or resolution (as appropriate). The point system they adopt must be the same point system and the point system cannot be based on services to individual municipalities or fire districts. Service must be accounted for in the aggregate. The amount of benefit may be prorated and differ between sponsoring organizations, so long as an individual volunteer's aggregate benefit does not exceed the maximum.
3. The organizations must adopt identical deferred income plans and have a common plan administrator. To facilitate this process and the handling of contributions, the Division recommends that sponsoring agencies coordinate their efforts through the use of an interlocal services agreement for the LOSAP. That way, one sponsoring agency assumes responsibility for administering the plan.
4. An interlocal service agreement must be approved in a separate resolution following adoption of the LOSAP. The LOSAP may be conditioned upon the final approval of the interlocal agreement.
5. If managed individually, each sponsoring agency must approve the annual certification. Under the interlocal services agreement approach, the responsibility for annual certification is generally delegated to the lead sponsor. That authority, however, may be retained by the individual sponsoring agencies.

H. For Additional Information...

The DCA Divisions of Local Government Services and Fire Safety, and a number of fire and emergency medical service organizations have worked together on this Notice and the associated material. We believe the implementation of these procedures and the law will serve the sponsoring agencies, their citizens, and the many volunteers that dedicate their time and skills. Questions on LOSAPs or this Notice can be referred as follows:

- Enabling ordinance/resolution, fire service point systems, and ballot questions to the Division of Fire Safety at 609-633-6106. Questions on emergency medical service point systems to the Office of Emergency Medical Services at 609-292-6789.
- Determination of sponsoring agency, LOSAP benefit plans and their administration to the Division of Local Government Services at 609-292-7842.
- Budgeting for LOSAP questions, to the Division of Local Government Services: municipalities at 609-292-4806; fire districts at 609-984-0132.

- General information or other questions, to the Division of Local Government Services at 609-984-2105.

While copies of this Notice are being sent to individual fire companies and emergency medical organizations, sponsoring agencies receiving this Notice are asked to share it with the emergency service organizations that serve them.

William Cane
William Cane, Director
Division of Fire Safety

Stephen R. Sasala, II
Stephen R. Sasala, II, Acting Director
Division of Local Government Services

Gerard C. Muench, Jr.
Gerard C. Muench, Jr., Director
Office of Emergency Medical Services
Department of Health and Senior Services

Distribution: Municipal Clerks and Secretaries to Fire Districts

Model LOSAP Resolution/Ordinance

(Items in *italics* require the insertion of local information.)

(Text following "optional" means it is only to be included if the provision is chosen by the sponsor.)

Ordinance/Resolution # _____

Whereas, the (*sponsoring agency name*) deems it appropriate and necessary to act to ensure retention of existing members and to provide incentives for recruiting new *volunteer firefighters/ first aid organization members*; and,

Whereas, the (*sponsoring agency name*) has determined that the creation of a Length of Service Awards Program will enhance the ability of the (*municipality's/fire district's*) ability to retain and recruit *volunteer firefighters/ first aid organization members*;

Now, be it *resolved/ordained* by the (*sponsoring agency name*) that:

1. A Length of Service Awards Program (LOSAP) is herewith created in accordance with Chapter 388 of the Laws of 1997, to reward members of the volunteer *firefighting/first aid organization names* for their loyal, diligent, and devoted services to the residents of (*sponsoring agency name*).
2. The LOSAP shall provide for fixed annual contributions to a deferred income account for each volunteer member that meets the criteria set forth below; that such contributions shall be made in accordance with a plan that shall be established by the (*sponsoring agency name*) pursuant to P.L. 1997, c. 388; and that such plan shall be administered in accordance with the laws of the State of New Jersey, the U.S. Internal Revenue Code, and this *ordinance/resolution*.
3. The LOSAP shall provide for annual contributions to each eligible member that meets the criteria as follows:

(*insert schedules for: number of points required, years of service required, and amounts of award*)

4. (optional) The LOSAP shall provide for contributions as credit for no more than ____ years of prior years services for each eligible volunteer in accordance with the following schedule:

(*Insert schedule of number of years of prior service and contribution amount*)

5. The estimated cost of the program has been calculated as follows:
 - a. For regular annual services: \$_____ per year
 - b. (*optional*) For contributions for prior years service: \$_____ per year for an estimated ____ years.

6. Each active volunteer member shall be credited with points for volunteer services provided to the volunteer *fire company/first aid organization* in accordance with the following schedule:

(*insert point schedule*)

7. That this *ordinance/resolution* shall not take effect unless it is approved by voters as a public questions at the next *general election/annual election*.
8. (optional) As the services provided by the (*name of emergency services organization*) are provided to several *municipalities/fire district*, this plan is being coordinated with similar efforts in the other *municipalities/fire districts* served by the (*name of emergency services organization*), and shall not take effect until approved by all other jurisdictions.

(*Adopting/closing language*)

Model LOSAP Ballot Question

(Items in italics require the insertion of local information.)

(Text following "optional" means it is only to be included if the provision is chosen by the sponsor.)

Shall the (*name of sponsoring organization*) be authorized to establish a Length of Service Awards Program for the *volunteer firefighters/first aid organization members* that serve the *municipality/fire district*, pursuant to the following terms and conditions:

1. The program shall provide for annual contributions to a deferred income account for each active volunteer member that meets the eligibility criteria and in accordance with the schedule adopted by the (*name of sponsoring organization*).
2. (optional) The program shall provide for contributions as credit for no more than ___ years of prior years services for each eligible volunteer.
3. The proposed minimum annual contribution for an active volunteer member is \$_____, and the maximum is \$_____.
4. The estimated cost of the program has been calculated as follows:
 - a. For regular annual services: \$_____ per year
 - b. (*optional*) For contributions for prior years service: \$_____ per year for an estimated ___ years.

YES •

NO •

Explanatory Statement

The (*name of sponsoring organization*) has decided to create a Length of Service Awards Program (LOSAP) for members of the *volunteer firefighting/first aid organizations* that serve the citizens of the (*name of sponsoring organization*). The general requirements for a LOSAP are set forth in State law (N.J.S.A. 40A:14-183 et seq.).

Each *volunteer firefighter/first aid squad member* that performs the minimum amount of service will have an amount between (*minimum and maximum*), depending on how many years the volunteer has served, deposited into a tax deferred income account that will earn interest for the volunteer.

The cost will be budgeted annually in the budget of the (*name of sponsor*) and is anticipated to be \$_____ per year. (*optional*) *The plan adopted by the (name of sponsor) provides a volunteer may earn up to ___ years of previous volunteer service. The estimated annual cost of prior year service is \$_____ for ___ years.*

Additional details on the program may be found in the *ordinance/resolution*, adopted by the (*name of sponsoring organization*), which is available for public inspection, along with a copy of the State enabling law at (*insert location(s) and time the ordinance/resolution can be viewed*).

Model LOSAP Point System

While designed for a volunteer fire organization, it may also work for first aid organizations, with little, if any modifications. A year of service shall be credited under a service award program for each calendar year after establishment of the program in which an active emergency service volunteer accumulates at least 50 points. Points shall be granted in accordance with a system adopted by the program sponsor. In considering the categories below, all or any portion of this list can be used with additional flexibility in the point maximums. Such system shall provide that points shall be granted for activities designated by the program sponsor, which activities shall be selected from the following:

I. Training Courses — 25 point maximum

1. Courses under 20 hours duration - one point per hour, with a maximum of five points.
2. Courses of 20 to 45 hours duration - one point per hour for each hour over initial twenty hours, with a maximum of ten points.
3. Courses over 45 hour duration - 15 points per course.

II. Drills — 20 Point Maximum

1. One point per drill, minimum two hour drill.

III. Sleep-In Or Stand-By — 20 point maximum

1. *Sleep-in*: one point each full night.
2. *Stand-by*: one point each — A stand-by is defined as line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories.

IV. Elected Or Appointed Positions — 25 point maximum

Elected or appointed position means line officers, department or company officers and president, vice president, treasurer, and secretary of a fire company or department.

1. Completion of one year term in an elected or appointed position — points vary by rank..
2. An active volunteer firefighter elected to serve as a delegate to a firefighters' convention shall also be eligible to receive one point per meeting.

V. Attendance At Meetings — 20 point maximum

1. Attendance at any official meetings of the volunteer fire company - one point per meeting.

VI. Participation in department responses — 25 points for responding on the minimum number of calls, as outlined below:

Fire Calls				
Total number of calls volunteer fire company responds to annually other than emergency rescue and first aid squad calls (ambulance calls)	0-500	500-1,000	1,000-1,500	1,500 and up
Minimum number of calls volunteer firefighters must respond to annually in order to receive 25 points credit.	10%	7.5%	5%	2.5%
First Aid Calls				
Total number of calls emergency rescue and first aid squad (ambulance)	0-500	500-1,000	1,000-1,500	1,500 and up
Minimum number calls volunteers must respond to annually in order to receive 25 points credit.	10%	7.5%	5%	2.5%

VII. Miscellaneous Activities - 15 point maximum

1. Participation in inspections and other activities not otherwise listed - one point per activity.

Emergency Services Volunteer Length of Service Award Program Act

P.L. 1997, c. 388

AN ACT concerning retirement benefits for certain municipal emergency services volunteers, supplementing Title 40 of the Revised Statutes and amending P.L.1976, c.68, P.L.1977, c.381, P.L.1979, c.453, and P.L.1985, c.288.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.40A:14-183 Short title.

1. Sections 1 through 11 of this act shall be known and may be cited as the "Emergency Services Volunteer Length of Service Award Program Act."

C.40A:14-184 Definitions relative to retirement benefits for certain municipal emergency services volunteers.

2. For the purposes of this act:

"Active volunteer member" means a person who has been so designated by the governing board of a duly created emergency service organization and who is faithfully and actually performing volunteer service in that organization.

"Certification list" means a list prepared annually by an emergency service organization certifying to a governing body the names of members who have qualified to receive a length of service award.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Emergency service organization" means a fire or first aid organization, whether organized as a volunteer fire company, volunteer fire department, fire district or duly incorporated volunteer first aid, emergency or volunteer ambulance or rescue squad association.

"Elected or appointed position" means a line officer, department or company officer, trustee of an emergency services organization, or a duly established position in a municipality as determined by the governing body of the municipality.

"Length of service award program" means a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization by means of investment in those products permitted pursuant to subsection a. of section 3 of P.L.1977, c.381 (C.43:15B-3).

"Local government unit" means any municipality, county, or fire district having control of, or which is serviced by, a volunteer fire department, duly incorporated fire or first aid company, or volunteer emergency, ambulance or rescue squad association or organization.

"Participant" means an active volunteer member who is eligible for a benefit under a service award program.

"Sponsoring agency" means any local government unit which duly adopts a length of service award program pursuant to the provisions of this act.

"Year of active emergency service" means a 12-month period during which an active volunteer member participates in the fire or first aid service and satisfies the

minimum requirements of participation established by the sponsoring agency on a consistent and uniform basis.

C.40A:14-185 Establishment, termination of length of service award program, referendum.

3. a. A local government unit that is a county or municipality in which a fire district does not exist may by ordinance establish or terminate a length of service award program for the active volunteer members of the emergency service organizations operating under the county's or municipality's jurisdiction.

b. The board of fire commissioners of any fire district may by resolution establish or terminate a length of service award program for the active volunteer members of the emergency service organizations operating under the district's jurisdiction.

c. No such ordinance or resolution shall take effect until it is presented as a public question, for a municipality or county at the next general election, and for a fire district at the next annual election, and ratified by the voters. Each such ordinance or resolution shall be adopted by the governing body or the board of fire commissioners no less than 60 days prior to the election at which such question is presented for ratification.

d. In addition to any other procedures provided by law, every ordinance or resolution creating a length of service awards program shall include:

- (1) A general description of the program;
- (2) A statement of the proposed estimated total amount to be budgeted for the program;
- (3) A statement of the proposed maximum annual contribution for an active volunteer member;
- (4) If the proposed program authorizes the crediting of prior year service, a statement of the number of prior years of service available for crediting for each active volunteer member; and
- (5) Any such other provisions as may be reasonably required by the director to carry out the purposes of this act.

e. No ordinance, resolution or public question related to a length of service award program shall require prior approval of the director.

f. Subsequent to the adoption of a length of service award program as provided in this section, the maximum annual contribution may be increased, from time to time, without public hearing or public question, provided such increased contribution does not exceed a number calculated by multiplying the original contribution as approved by public question by the consumer price index factor. As used in this section "consumer price index factor" means a fraction the denominator of which shall be the "Revised Consumers Price Index-All Items, Philadelphia Area (1967-100)" (the "CPI") published by the Bureau of Labor Statistics of the United States Department of Labor for the month in which the length of service award program passes public question and whose numerator shall be the CPI for the

most recent month available at the time the increased contribution or benefit takes effect. If the publication of the CPI is discontinued, the director shall issue regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), setting forth such revisions in the method of computation of the consumer price index factor as the circumstances require to carry out the purposes of this subsection. Except as otherwise provided in this act, all other material changes to a length of service award program subsequent to its adoption shall be effected without public question but by ordinance or by resolution subject to public hearing, as appropriate to the sponsoring agency.

g. Any amounts appropriated annually for a length of service award program shall be included in the budget of the local government unit as a separate line item. In the case of a fire district, the budget to be voted on at the time of the public question to establish a length of service award program shall include the first year's appropriation for funding such program, which appropriation, if the public question is defeated, shall be removed from the budget. In the case of a municipality or county, appropriations for length of service award programs shall commence with the budget immediately following enactment of such program.

h. No length of service award program shall be adopted by any local government unit other than pursuant to this act.

C.40A:14-186 Length of service award programs, defined contribution programs.

4. Length of service award programs shall be established as defined contribution programs and shall be subject to the provisions of this act. Length of service award programs shall be based on applicable features of deferred compensation plans adopted by local government units pursuant to P.L.1977, c.381 (C.43:15B-1 et seq.), in reference to which the local government unit shall be treated as an "employer" as defined in that law, length of service award contributions by a sponsoring agency shall be treated as "deferred salary" as defined in that law, and the active volunteer members shall be treated as "participants" as defined in that law. If applicable, a length of service award program shall also be administered in compliance with provisions of the federal Internal Revenue Code for such programs and the provisions of this act.

C.40A:14-187 Abolishment, amendment of length of service award program, special vote.

5. A length of service award program established by a local government unit pursuant to section 3 of P.L.1997, c.388 (C.40A:14-185) may be abolished or amended in the same manner as it was created. However, any such amendment or abolition shall be by a two-thirds vote of the full membership of the governing body of the local government unit. All accumulated proceeds shall remain in trust for the volunteer members.

C.40A:14-188 Provision of length of service award program not required; program requirements.

6. No emergency service organization shall be required to provide a length of service award for its active volunteer members pursuant to the provisions of this act. Any length of service award provided to an active volunteer member shall be governed by the provisions of this act. No length of service award program shall be provided under the provisions of this act unless the following requirements are met:

a. An active volunteer member shall be eligible to participate in a length of service award program immediately upon the commencement of the active volunteer member's performance of active emergency services in any emergency service organization, and shall be eligible to vest in any length of service award program provided under the provisions of this act if the active volunteer member has completed at least five years of emergency service in any emergency service organization in the State.

b. Under a length of service award program, a year of active emergency service commencing after the establishment of the program shall be credited for each calendar year in which an active volunteer member accumulates a number of points that are granted in accordance with a schedule adopted by the sponsoring agency. The program shall provide that points shall be granted for activities designated by the sponsoring agency, which activities may include the following:

- (1) Training courses;
- (2) Drills;
- (3) Sleep-in or standby. A "standby" means line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories;
- (4) Completion of a one-year elected or appointed position in the organization;
- (5) Election as a delegate to an emergency service convention;
- (6) Attendance at official meetings of the sponsoring agency;
- (7) Participation in emergency responses; or
- (8) Miscellaneous activities including participation in inspections and other non-emergency fire, first aid or rescue activities not otherwise listed.

c. If provided for in the enabling ordinance or resolution adopted pursuant to section 3 of P.L.1997, c.388 (C.40A:14-185), a length of service award program may provide for the crediting of not more than 10 years of active emergency service periods prior to the establishment of such a program. Such credit may be granted to the active volunteer over as many years as deemed appropriate by the sponsoring agency, except that the total amount contributed in any one year shall not exceed the maximum amount allowed by law to be contributed by a sponsoring agency.

d. To provide credit for service prior to the establishment of the service award program, pursuant to subsection c. of this section, each sponsoring agency shall review the prior membership rosters of the emergency service organizations subject to the program to determine the number of years' credit for each participant who is entitled to

credit. In making the analysis, the standards for active service set forth in subsection b. of this section and adopted by the sponsoring agency shall be used. The amount of the contribution provided to participants for past service may differ from the amount of the current contribution provided for under the plan. The definition of years of active emergency service shall be determined by the bylaws of the participating emergency service organization at the time service was earned. Approval for such prior service shall require certification by the duly designated persons, as determined and defined by the sponsoring agency of the participating emergency service organization. If an active volunteer member requests credit for service in more than one volunteer participating emergency service organization, each such emergency service organization shall provide a certification for the appropriate number of years. That credit may be awarded at the discretion of the sponsoring agency of the plan in which the volunteer member seeks to apply the credit. In no event, however, shall a participant be credited for the same year of active emergency service in more than one service award program.

e. In computing credit for those active volunteer members who also serve as paid employees within a local government unit of the State, credit shall not be given for activities performed during the individual's regularly assigned work periods.

f. An active volunteer member whose name does not appear on the approved certification list or who is denied credit for service prior to the establishment of the service award program may appeal within 30 days of posting of the list or within 30 days of denial of past service credit. The appeal shall be in writing and mailed to the clerk or secretary of the governing body of that local government unit, which shall investigate the appeal. The decision of a participating emergency service organization shall be subject to appropriate judicial review.

C.40A:14-189 Award subject to contribution requirements.

7. a. Each active volunteer member's service award shall be subject to contribution requirements set forth in this section. In determining whether contribution requirements have been satisfied, all benefits provided under all service award programs instituted by a sponsoring agency shall be considered as one program. A program adopted by a sponsoring agency shall set contributions within these requirements.

b. A program shall have minimum and maximum contribution requirements as follows: the minimum contribution for each participating active volunteer member shall be \$100 per year of active emergency service; and the maximum contribution for each active volunteer member shall be \$1,150 per year of active emergency service, subject, however, to periodic increases permitted pursuant to subsection f. of section 3 of P.L.1997, c.388 (C.40A:14-185).

C.40A:14-190 Maintenance of records.

8. Each participating emergency service organization shall maintain all required records on forms prescribed by the requirements of the service award program.

C.40A:14-191 Annual certification list.

9. Each participating emergency service organization shall furnish to the sponsoring agency an annual certification list, certified under oath, of all volunteer members, which shall identify those active volunteer members who have qualified for credit under the award program for the previous year. This list shall be submitted annually. Notwithstanding the provisions of this section, a volunteer member may request that the member's name be deleted from the list as a participant in the length of service award program. A request for deletion shall be in writing and shall remain effective until withdrawn in the same manner.

C.40A:14-192 Review of annual certification list.

10. The sponsoring agency shall review the annual certification list of each participating emergency service organization and approve the final annual certification. The approved list of active certified volunteer members shall then be returned to each participating emergency service organization and posted for at least 30 days for review by members. The emergency service organization shall provide any information concerning the annual certification list that the sponsoring agency shall require as part of its review.

C.40A:14-193 Existing programs deemed valid; conditions for continuation.

11. Any length of service award program that involves any form of insurance or annuity program in existence prior to the effective date of this act is deemed valid in all respects, and may continue to operate subject to the following conditions:

a. That the director be notified of the existence of the program and its benefits within 60 days of the effective date of this act;

b. That within 180 days of being notified by the director to do so, the sponsoring agency shall file with the director documentation that demonstrates its program has been brought into compliance with this act, provided, however that such sponsoring agency need not comply with subsection c. of section 3 of P.L.1997, c.388 (C.40A:14-185), and further provided, however, that any existing defined benefit annuity programs may be continued, but only with benefit levels whereby participants who vested prior to the effective date of P.L.1997, c.388 (C.40A:14-183 et al.) with benefits in excess of \$750 per month shall not receive or be entitled to benefits in excess of the benefits level in existence as of the effective date of P.L.1997, c.388 (C.40A:14-183 et al.), and participants who vest subsequent to the effective date of P.L.1997, c.388 (C.40A:14-183 et al.) shall not receive a benefit in excess of \$750 per month which level may be adjusted by the means provided in subsection f. of section 3 of P.L.1997, c.388 (C.40A:14-185); and

c. Any benefit vested in a participant of a length of service award program prior to the effective date of this act

shall be exempt from the contribution and benefit limitations of sections 4 and 7 of P.L.1997, c.388 (C.40A:14-186 and C.40A:14-189) and shall be deemed valid in all respects from program inception.

Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

C.40A:4-45.3 Municipalities; limitation exceptions.

3. In the preparation of its budget a municipality shall limit any increase in said budget to 5% or the index rate, whichever is less, over the previous year's final appropriations subject to the following exceptions:

- a. through ii. No change
- jj. Amounts expended for a length of service award program pursuant to P.L.1997, c.388 (C.40A:14-183 et al.).

13. Section 10 of P.L.1979, c.453 (C.40A:14-78.6) is amended to read as follows:

C.40A:14-78.6 Fire district budget to provide separate sections.

10. The fire district budget shall provide for separate sections for:

- a. Operating appropriations:
 - (1) Current operating expenses;
 - (2) Amounts necessary to fund any deficit from the preceding budget year; and
 - (3) Length of service award program.
- b. Capital appropriations: Amounts necessary in the current budget year to fund or meet obligations incurred for capital purposes pursuant to N.J.S.40A:14-84, N.J.S.40A:14-85 and N.J.S.40A:14-87, itemized according to purpose.
- c. Total appropriations: The sum of a. and b. above.

Section 5 of P.L.1985, c.288 (C.40A:14-78.9) is amended to read as follows:

C.40A:14-78.9 Transfer of appropriations between items.

5. a. Whenever it shall become necessary during the last two months of the fiscal year to expend amounts in excess of those appropriations specified in the various line items of the operating appropriations section of the annual budget and there shall be excess appropriations in other line items of the operating appropriations section, the board of fire commissioners of the fire district may, by resolution setting forth the facts, adopted by not less than 2/3 vote of the full membership thereof, transfer the amount of the excess to those appropriations deemed to be insufficient.

b. No transfers may be made under this section from appropriations for:

- (1) Contingent expenses,
- (2) Deferred charges,
- (3) Cash deficit of preceding year,
- (4) Down payments,
- (5) Capital improvements,
- (6) Interest and redemption charges,
- (7) Length of service award program.

15. Section 1 of P.L.1977, c.381 (C.43:15B-1) is amended to read as follows:

C.43:15B-1 Deferred compensation plan, length of service award program.

1. Any municipality, county, or an authority created by one or more counties or municipalities (hereinafter "employer") may establish a deferred compensation plan (hereinafter "plan"), and a sponsoring agency, pursuant to P.L.1997, c.388 (C.40A:14-183 et al.), may establish a length of service award program based on such plan, whereby the employer may enter into a written agreement with any of its employees (hereinafter "participants") constituting a contract for a voluntary deferral of salary. Such contract shall remain in effect until the employee's service is terminated or until a new contract is executed by the employee and employer. Not more than one contract shall be executed in any one fiscal year of the employer with any one employee. Pursuant to such contract the employer shall credit from time to time a specific amount per pay period, as deferred salary, to a participant's account. This account shall be known as the Employee's Deferred Salary Account, and shall be credited from time to time to reflect gains realized on the investment of the moneys in the deferred salary account. An accounting summary of the individual deferred salary accounts of all employee participants shall be maintained to reflect the employer's total deferred liability under the plan and the individual balances of all participants. Any employer which establishes such a plan shall designate one or a group of its public officials, or the county's or municipality's governing body, as defined in N.J.S.40A:4-2 of the Local Budget Law, or an authority's governing body, as the case may be, as the named fiduciary responsible for the administration of said plan and investment of and accounting for the funds maintained thereunder.

C.40A:14-194 Regulations.

16. The Local Finance Board in the Division of Local Government Services in the Department of Community Affairs shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to administer the provisions of this act.

17. This act shall take effect immediately.