

# Emergency Services Volunteer Length of Service Award Program Act

P.L. 1997, c. 388, as amended by P.L. 2001, c. 272

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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.

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.

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.

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.

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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.

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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.

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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;

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(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. (Deleted by amendment, P.L. 2001, c. 272)

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.

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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.

12. 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:

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- 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.

14. 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

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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.

## **C.40A:14-194.1** Additional penalties, fines

17. a. In addition to any penalties provided by law, any person who knowingly violates any provision of P.L. 1997, c.388 (C.40A:14-183 et al.) shall:

- (1) be subject to a fine no less than \$100 and no more than \$1150;
- (2) forfeit all benefits to which he may be entitled under P.L. 1997, c. 388 (C.40A:14-183 et al.); and
- (3) be prohibited from serving in a volunteer or paid position with any emergency service organization in this State.

b. In addition to the penalties provided for in subsection a. of this section, any person who knowingly misrepresents the credit earned by a volunteer as provided for in section 6 of P.L. 1997, c. 388 (C.40A:140188) or knowingly includes an individual on an annual certification list, as provided for in section 9 of P.L. 1997, c.388 (C.40A:14-191), who is not a qualified member of an emergency service organization, shall be subject to a fine of no less than \$100 and no more than \$1,150 for each individual whose credit or status was misrepresented.

18. This act shall take effect immediately.