

**EMERGENCY SERVICES  
VOLUNTEER LENGTH OF SERVICE  
AWARD PROGRAM RULES  
(LOSAP)**

**ADOPTED 16 JANUARY 2001**

**DIVISION OF LOCAL GOVERNMENT SERVICES  
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS  
PO BOX 803  
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**5:30-14.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Accounting date" means the annual date at the close of the fiscal year when the sponsoring agency provides an accounting of its length of service award agreement and appraises all participants of the value of their accounts.

"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.

"Beneficiary" means the person, persons or legal entity designated by a participant to receive any undistributed compensation which becomes payable in the event of a participant's death.

"Complete application package" means the documentation to be submitted to the Director by a contractor for approval of a prototypical length of service award plan agreement which may include other supporting documentation as required.

"Contractor" means any person or entity, other than the sponsoring agency, authorized to do business in New Jersey, that provides investments or services or both regarding the sponsoring agency's length of service award plan agreement.

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

"Division" means the Division of Local Government Services within 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 emergency service squad.

"Emergency service squad" means a duly incorporated volunteer first aid, emergency or volunteer ambulance or rescue squad association.

"Independent auditor" means a registered municipal accountant for a municipality or county pursuant to N.J.S.A. 40A:5-4, or a certified public accountant for a fire district pursuant to N.J.S.A. 40A:5A-15.

"Joinder agreement" means the document signed by a participant to authorize participation in a length of service award program.

"Length of service award program" or "LOSAP" means a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization.

"Local plan administrator" means the person or group of local public officials or employees, including the local governing body, appointed by the sponsoring agency to act as the agreement representative with respect to the contractor and to perform the agreement duties, if any, that are not to be performed by the contractor under the terms of a length of service award plan agreement.

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

"Prototypical length of service award plan," "LOSAP plan" or "plan" means a length of service award plan prepared by a contractor and approved by the Director.

"Sponsoring agency" means the governing body of a municipality or fire district.

"Vesting" means the length of time a bona fide volunteer must serve in order to secure the right to receive the benefits of participation in a length of service award program.

"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.

**5:30-14.2 Creating LOSAPs: Determining the sponsoring agency for volunteer fire organizations**

(a) LOSAPs shall be created by voluntary action of a sponsoring agency, which shall be a municipality or fire district. If the sponsoring agency is a municipality, the LOSAP shall be created by ordinance. If the sponsoring agency is a fire district, the LOSAP shall be created by resolution.

(b) In determining the sponsoring agency and creation process for volunteer fire organizations, the following shall apply:

1. A LOSAP shall be created by municipal ordinance for volunteer fire organization(s) in a municipality that is not served by a fire district.

2. A LOSAP shall be created by resolution of a Fire District Board of Fire Commissioners in a municipality that is served by one or more fire districts.

3. Where there is more than one fire district in a municipality, each district may have its own LOSAP for its fire companies.

4. The municipality or fire district may have only one LOSAP for each emergency service, regardless of how many fire companies or first aid organizations operate within their jurisdiction.

5. If a volunteer fire organization serves more than one municipality, the sponsoring agency shall be the municipality where the fire company is located, unless otherwise agreed to, as per the terms of an interlocal services agreement.

#### 5:30-14.3 Creating LOSAPs: Determining the sponsoring agency for emergency service squads.

(a) If there is no fire district, and one or more emergency service squads serve a single municipality, the LOSAP shall be created by the municipality. The provisions at N.J.A.C. 5:30-14.15 shall apply if the squad(s) serve(s) multiple municipalities.

(b) If an emergency service squad serves an entire municipality that is served by multiple fire districts, the municipality shall serve as sponsoring agency.

(c) A fire district shall serve as sponsoring agency for an emergency service squad whose jurisdiction is limited to, or is within the boundaries of a fire district, provided that the squad is organizationally affiliated with, or receives permitted financial support from the district.

(d) If an independent emergency service squad serves an entire municipality which is served by a single fire district, the sponsoring agency shall be the jurisdiction that provides the greater amount of financial support or has an organizational or operational support relationship.

(e) In a municipality that has multiple fire districts, if there are several emergency service squads that are independent of fire district organizations, or whose coverage areas overlap district boundaries, the municipality shall serve as sponsor.

(f) If an emergency service squad serves more than one municipality, the sponsoring agency shall be the municipality where emergency service squad is located, unless otherwise agreed to, as per the terms of an interlocal services agreement.

(g) If an emergency service squad serves more than one sponsoring agency, the rules at N.J.A.C. 5:30-14.15 shall apply.

(h) Where an emergency service squad has unique operating relationships (other than those enumerated in (a) through (g) above), the Director shall be contacted for a determination on whether a fire district or municipality would be considered the sponsoring agency.

#### 5:30-14.4 LOSAP ordinances/resolutions: public disclosure sites and filing requirements

(a) The enabling ordinance or resolution and a copy of the LOSAP law (N.J.S.A. 40A:14-183 et seq.) shall be made available to the public in a public library that serves the jurisdiction (if there is one), 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, the resolution creating the LOSAP shall be placed in that office.

(b) Copies of all approved LOSAP ordinances/resolutions shall be filed with the Division within 30 days of the date of the referendum.

#### 5:30-14.5 Ballot questions

(a) All ballot questions that are required pursuant to N.J.S.A. 40A:14-185(c) shall be accompanied by an explanatory statement which shall include the following:

1. A general description of the program, including the point system to be utilized in determining eligibility for benefits;
2. The name of the sponsoring agency;
3. The name of the emergency service organization receiving the LOSAP;
4. The amount of the contribution;
5. The allowance of crediting for prior year service, if applicable; and,
6. The location where the program documents are available for public view.

(b) Fire districts shall be responsible for preparing and scheduling their own LOSAP referendum as part of their annual election.

(c) In the case of municipalities, the municipal clerk shall coordinate the printing of the question on the ballot with the County Board of Elections.

(d) All election results shall be certified by either the County Board of Elections or the fire district and copy of such certification shall be filed with the Division within 30 days of the date of certification.

#### 5:30-14.6 LOSAP budget provisions

(a) Once approved by the voters, appropriations for a LOSAP shall be included in the budget of the sponsoring agency as a separate line item. Municipal budget appropriations shall be treated as exceptions to the budget cap (N.J.S.A. 40A:4-45.3).

(b) Fire districts anticipating the creation of a LOSAP at their annual election shall provide for the first year's cost of the program in the district's annual budget.

(c) If a fire district referendum on the public question to create a LOSAP is defeated, the appropriation provided in the district's annual budget shall be removed from the budget, along with an equivalent decrease adjustment to the tax levy that is certified by the Municipal Tax Assessor.

#### 5:30-14.7 Restrictions on the number of LOSAPs

(a) No municipality or fire district shall have more than one program that provides cash payments for volunteers based on length of service.

(b) Other authorized compensation programs for emergency service volunteers, such as stipends and uniform allowances, shall not be affected by the restriction set forth in (a) above.

#### 5:30-14.8 Abolishing or amending LOSAPs

Pursuant to N.J.S.A. 40A:14-187, a LOSAP may be abolished or amended in the same way by which it was created, except in the case of minor amendments. Minor amendments include those that do not materially affect the elements of the LOSAP that was originally approved by the voters. Such amendments shall be approved by a majority vote of the governing body (in the case of municipal sponsors), or by a majority vote of the Board of Fire Commissioners (in the case of fire districts). In either case, the requirements for a referendum shall not apply.

#### 5:30-14.9 LOSAP benefits

In October of each year, the Director shall adjust the maximum contribution for each LOSAP member in accordance with changes in the consumer price index (CPI). Sponsoring agencies shall be informed of the adjusted amount through the issuance of a Local Finance

Notice and publication of a public notice in the New Jersey Register.

#### 5:30-14.10 LOSAP award process

(a) Pursuant to N.J.S.A. 40A:14-191, emergency service organizations participating in a LOSAP shall annually certify to the sponsoring agency a list of all volunteer members who have qualified for credit under the LOSAP program for the previous year. The certification shall be based on records maintained by the emergency service organization in accordance with the sponsoring agency's adopted point system. The required certification shall be presented to the sponsor within 30 days of the plan anniversary date.

(b) Upon receiving the certified list from an emergency service organization, the sponsoring agency shall, within 30 days, review it and, if necessary, request any records or other such back-up that it deems necessary in order to substantiate the information provided. Upon finding that the list is accurate, approval by the sponsoring agency shall then be conveyed by resolution of its governing body. Upon approval, the list shall be returned to the emergency service organization for posting.

(c) The emergency service organization shall post the certified list for a period of 30 days to allow sufficient time for membership review. The list shall be posted at the office of the municipal clerk, and at the emergency service squad facility. In the case of fire districts, the list shall be posted in the firehouses of the sponsoring agency.

#### 5:30-14.11 Appeals

(a) Appeals filed pursuant to N.J.S.A. 40A:188(f) shall be investigated by the sponsoring agency.

(b) Appeals shall be mailed to the municipal clerk, in the case of municipal sponsors, or to the secretary of the Board of Fire Commissioners, in the case of fire district sponsors.

(c) Appeals must be received by the sponsoring agency within 30 days of the posting date of the certification list, or within 30 days of the date of denial of past service credit, as determined pursuant to the certification list required at N.J.A.C. 5:30-14.10(a).

(d) In conducting its investigation, the sponsoring agency shall give due consideration to evidence submitted by the active volunteer member in support of the appeal, and evidence submitted by the emergency service organization in support of its decision. All such evidence shall be in the form of records or other written materials which clearly substantiate the reasons for filing

an appeal by the active volunteer member, and the reasons for denying certification or credit for prior service, as determined by the emergency service organization.

(e) Upon receiving an appeal, and prior to conducting its own investigation, the sponsoring agency may, at its discretion, and within 10 days, refer the matter back to the emergency service organization in an effort to settle the dispute internally.

(f) If the appeal and all written documentation is referred back to the emergency service organization, and the emergency service organization fails to settle or take action on the issue within 30 days, the sponsoring agency shall then investigate the appeal, as set forth in section (d) above.

(g) If an appeal is not referred back to the emergency service organization, or within 30 days of receiving an unresolved appeal from the emergency service organization, the sponsoring agency shall conduct its own investigation, as set forth in (d) above, and shall submit a non-binding recommendation to the emergency service organization with respect to the matter. The emergency service organization shall either accept, modify or deny the sponsoring agency's recommendation, and thereby, decide the matter.

(h) The final decision by the emergency service organization shall be subject to appropriate judicial review.

#### 5:30-14.12 Depositing LOSAP contributions

Following the 30-day period for filing an appeal, and subject to holding the payment of any members being appealed, payment shall be made by the sponsoring agency to the approved contractor for deposit into the LOSAP account in the deferred income program.

#### 5:30-14.13 Pre-existing LOSAP programs

(a) Benefit programs, such as annuities, which are similar to LOSAPs and which were offered to members of volunteer emergency service organizations prior to enactment of N.J.S.A. 40A:14-183 et seq. (January 19, 1998), may be continued subject to the following requirements:

1. Participants of pre-existing benefits programs who were vested at a level in excess of \$750.00 per month as of January 19, 1998, may continue to receive benefits at that level.

2. Participants of pre-existing benefit programs who vest after January 19, 1998, shall not receive a

benefit in excess of \$750.00 per month, except that the level may be adjusted annually pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

#### 5:30-14.14 Prior service credit

(a) If a sponsoring agency allows credit for prior service, such credit shall only be granted to active volunteer members.

(b) If a sponsoring agency allows credit for prior service, such credit shall be limited to not more than 10 years of active emergency service periods preceding the creation of the program by the sponsoring agency.

(c) Calculations of prior year service credit shall be based on the point schedule adopted by the sponsoring agency, and the 12-month time frame that is used to define a year of active emergency service.

(d) The combined amount of the LOSAP award, including the current year benefit and payment for prior years service, cannot exceed \$1,150 annually, except that this amount shall be adjusted annually, pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

(e) The executive board of the respective emergency service organization shall provide the sponsoring agency with a certified list of volunteers that are eligible for prior year service credit. The list shall be appropriately documented to support eligibility, and shall be subject to appeal pursuant to N.J.S.A. 40A:14-188(f) and N.J.A.C. 5:30-14.11.

(f) Credit for prior year service shall be awarded at the discretion of the current sponsoring agency.

#### 5:30-14.15 Special circumstances governing multiple sponsors

In instances where there is more than one sponsoring agency of an emergency service organization:

(a) No individual shall receive more than the maximum annual benefit amount established in N.J.S.A. 40A:14-189(b), regardless of the number of sponsoring agencies served, except that the amount may be adjusted annually pursuant to N.J.S.A. 40A:14-185(f) and N.J.A.C. 5:30-14.9.

(b) Each agency shall adopt an enabling LOSAP ordinance or resolution, as appropriate, and the point system that each agency establishes shall be identical. The number of points awarded for services provided by the volunteer shall be accounted for in the aggregate, and shall not be based on services provided to individual municipalities or fire districts. The amount of benefit

that a volunteer receives from each sponsoring agency may differ, and it may be prorated among the agencies served, but it shall not be greater than the maximum annual benefit established pursuant to N.J.S.A. 40A:14-189(b) and N.J.A.C. 5:30-14.9.

(c) Each agency shall adopt identical LOSAP plans and shall have a common contractor.

(d) If the agencies opt to coordinate the LOSAP program through an interlocal services agreement, such agreement shall be approved in a separate resolution following adoption of the LOSAP.

(e) If the LOSAP is managed individually rather than through an interlocal services agreement, the annual certification list that is required pursuant to N.J.S.A. 40A:14-191 shall be reviewed and approved by each individual sponsoring agency.

**N.J.A.C. 5:30-14.16 Length of service award programs: multiple sponsors**

(a) When more than one local governmental unit sponsors a single emergency service organization that implements a length of service award program, the sponsoring agencies shall adopt similar length of service award plan agreements which have the same contractor and local plan administrator. The contractor shall be selected pursuant to N.J.A.C. 5:30-14.37.

(b) Two or more sponsoring agencies of a single length of service awards program, established in accordance with (a) above, may agree to delegate the administration of program activities to a single sponsoring agency acting as the lead agency. Such delegation shall be conveyed through an interlocal services agreement.

(c) An interlocal services agreement entered into pursuant to (b) above shall be sent to the Director for review and approval pursuant to (d) below.

(d) The Director shall review and approve an interlocal services agreement provided:

1. The agreement complies with the requirements set forth at N.J.S.A. 40:8A-1 et seq.;

2. The agreement is approved by the sponsoring agency's governing body, either by ordinance or resolution, as the case may be, as prescribed by N.J.S.A. 40:8A-3 and 4;

3. The services being provided, in accordance with the Interlocal services agreement, are eligible services as prescribed in N.J.S.A. 40:8A-5; and

4. The agreement contains the appropriate provisions for addressing the contractual requirements set forth in N.J.S.A. 40:8A-6.

**N.J.A.C. 5:30-14.17 Approving length of service award plan**

(a) A sponsoring agency shall not implement a LOSAP plan until it is first approved by the Director pursuant to (b) below.

(b) The Director shall approve a LOSAP plan provided that the plan contains the following:

1. A statement of sponsoring agency and contractor duties and responsibilities;

2. A statement of the policies and procedures to be used in operating and maintaining a length of service award plan;

3. The identification of the types of investment options that will be offered pursuant to N.J.S.A. 43:15B-3c and N.J.A.C. 5:30-14.19;

4. Documentation of compliance as provided for in N.J.A.C. 5:30-14.55.

5. Evidence that the contractor has posted a bond to protect the plan and the employees from any loss resulting from fraud or dishonesty by the contractor pursuant to N.J.A.C. 5:30-14.45, and has provided evidence of appropriate liability insurance and errors and omissions insurance;

6. A copy of all promotional material that is provided to prospective sponsoring agencies and volunteers, and a statement of any applicable fees and charges;

7. A copy of the agreement to be executed by the employee in order to participate in the Length of Service Award Plan; and

8. Contractor's certification that the investment opportunities offered by the contractor comply with the investment requirements established pursuant to N.J.S.A. 43:15B-3c.

(c) The Director shall approve or reject a prototypical length of service award plan or any amendment thereto within 45 working days of receipt of a complete application package. The Director shall explain in writing, any reasons for rejection. Any modifications required by the Director shall be made within 60 days from the time of notification. Failure to submit the

modifications within the time provided shall result in the plan being disapproved.

#### **N.J.A.C. 5:30-14.18 Participant agreement**

- (a) An eligible active volunteer member may enroll in the plan by executing a participant agreement.
- (b) The amount to be awarded shall be specified in the participant agreement.
- (c) Once a participant agreement is signed, the participant and beneficiary waive all claims and rights to commute, sell, assign, or otherwise use or transfer rights to receive any payments under the plan, which payments and rights are expressly declared to be nonassignable and nontransferable.
- (d) The sponsoring agency and a participant may execute only one participant agreement for purposes of enrolling in a plan during any one calendar year. The participant agreement expires upon termination of service or a revocation of awards.

#### **N.J.A.C. 5:30-14.19 Eligible investments**

(a) The funds awarded shall be invested in one or more of the following types of investments to the exclusion of all others:

1. Interest bearing accounts or securities, in which savings banks of New Jersey are authorized to invest their funds;
2. State of New Jersey Cash Management Fund;
3. Individual or group annuity contracts, whether fixed or variable;
4. Mutual fund shares; or
5. Life insurance contracts, whether fixed or variable.

#### **N.J.A.C. 5:30-14.20 Choice of investments**

It shall be at the option of the sponsoring agency to include in the length of service award plan as many of the investment choices identified in N.J.A.C. 5:30-14.19 as deemed prudent.

#### **N.J.A.C. 5:30-14.21 Investment certification**

(a) As part of the application package, each contractor shall certify on a form provided by the Director that the investments being offered comply with N.J.S.A. 43:15B-3c.

(b) When a new investment option is offered, the contractor shall certify in writing to the Director that the new investment complies with N.J.S.A. 43:15B-3c.

#### **N.J.A.C. 5:30-14.22 Timing of investments**

All funds awarded shall be invested by the contractor within 72 hours, exclusive of Sundays and holidays, from the time the contractor receives the funds or is notified that the funds are available for investment.

#### **N.J.A.C. 5:30-14.23 Prototypical length of service award plan**

(a) A contractor shall submit a prototypical LOSAP plan to the Director for approval pursuant to N.J.A.C. 5:30-14.17. The plan shall serve as the contract between the local government unit and a third party for the administration and investment of the funds awarded to participating active volunteers.

(b) The Director shall assign a separate identifier to each contractor's approved prototypical length of service award plan. The contractor shall ensure that the identifier shall appear in a prominent position on each plan offered to a sponsoring agency.

(c) The approval of a prototypical length of service award plan by the Director shall not constitute an endorsement thereof.

#### **N.J.A.C. 5:30-14.24 Uniform system of accounting**

The plan shall provide for a uniform system of accounting for each participant and for the investment of the funds.

#### **N.J.A.C. 5:30-14.25 Adoption of a length of service award plan**

(a) The sponsoring agency shall adopt a prototypical length of service award plan by resolution of the governing body. The resolution shall include, but not be limited to:

1. A formal adoption of the length of service award plan;
2. A description of the method used to solicit proposals pursuant to N.J.A.C. 5:30-14.37;
3. Identification of a local plan administrator pursuant to N.J.A.C. 5:30-14.35;
4. An authorization to execute a length of service award plan with the contractor;

5. A statement of non-collusion pursuant to N.J.A.C. 5:30-14.29;

6. The identification of the contractor and the prototypical length of service award plan identifier; and

7. A statement that the plan being adopted complies with the requirements set forth in N.J.A.C. 5:30-14.55.

(b) A single certified copy of the resolution shall be forwarded to the Director.

**N.J.A.C. 5:30-14.26 Sponsoring agency retaining assets**

All amounts awarded under a length of service award plan shall remain the asset of the sponsoring agency; the obligation of the sponsoring agency to participating volunteers shall be contractual only; and no preferred or special interest in the awards made shall accrue to such participants. Such money shall be subject to the claims of the sponsoring agency's general creditors until distributed to any or all participants.

**N.J.A.C. 5:30-14.27 Responsibility for administration**

The sponsoring agency shall by resolution appoint a local plan administrator to ensure the sound and proper administration of the length of service award program, which shall include, but not be limited to, the proper, accurate and adequate accounting and reporting of all funds.

**N.J.A.C. 5:30-14.28 Conflict of interest**

In undertaking any activities related to the establishment or administration of a length of service award plan, including, but not limited to, any activities related to contracting for the administration of such plan, local government officers and employees shall be governed by and subject to the requirements of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and any county or municipal code of ethics promulgated pursuant thereto.

**N.J.A.C. 5:30-14.29 Non-collusion**

There shall be no collusion, or evidence or appearance of collusion, between any official or participant of the sponsoring agency and any official or participant or representative of the contractor, vendor, insurance company, bank, consultant, brokerage firm, or any other profit making or nonprofit firm in solicitation or award of a length of service award plan with the sponsoring agency. The sponsoring agency shall so certify to the Director in the resolution implementing each length of service award plan.

**N.J.A.C. 5:30-14.30 No personal liability**

Neither the sponsoring agency nor local plan administrator shall be held personally liable for any returns on investment of plan funds which are less than any participant or group of participants expected. The sponsoring agency shall require a hold harmless provision in the plan with contractors which includes an indemnification of the sponsoring agency from any cause of action, together with the reasonable costs of litigation from acts or omissions by the contractor.

**N.J.A.C. 5:30-14.31 Termination of LOSAP a plan**

When a sponsoring agency terminates a length of service award plan with a contractor, such action shall be by resolution. The resolution shall include the name of the contractor and the plan identifiers. A single certified copy of the resolution shall be filed with the Director.

**N.J.A.C. 5:30-14.32 Reasons for amendment**

The sponsoring agency may amend the length of service award plan to accommodate changes in the Internal Revenue Code, Federal statutes, state laws or rules.

**N.J.A.C. 5:30-14.33 Notification of amendment**

The sponsoring agency shall notify all participants in writing prior to making any amendment to the plan. The notice shall state that an amendment will be made, what the amendment will be, why the plan is being amended, and what the impact, if any, will be on the participants. The participants shall have the right to modify the participant agreement to reduce or eliminate any adverse impact on their accounts.

**N.J.A.C. 5:30-14.34 Plan amendment**

(a) Any amendment to a length of service award plan shall be submitted for review and approval by the Director pursuant to (d) below prior to implementation.

(b) The documentation submitted to the Director shall identify the regulatory authority for the amendment and the specific language of the change.

(c) The sponsoring agency shall adopt the amendment by resolution of the governing body. A certified copy of the resolution shall be forwarded to the Director.

(d) The Director shall approve a proposed amendment provided:

1. The information required in (b) and (c) above is satisfactorily provided;



2. The amendment complies with the notification requirements of N.J.A.C. 5:30-14.33; and

3. The amendment does not cause any adverse impact on the plan participants.

**N.J.A.C. 5:30-14.35 Responsibilities of the local plan administrator**

The sponsoring agency shall appoint a local plan administrator for a prototypical length of service award plan who shall have responsibility for the transfer of awarded funds to the contractor for investment.

**N.J.A.C. 5:30-14.36 Document retention**

The local plan administrator shall retain in a safe place the original policies, contracts or other legal documents executed by the sponsoring agency and the contractor. Such documents shall be retained in accordance with the State of New Jersey record retention requirements as found in N.J.A.C. 15:3.

**N.J.A.C. 5:30-14.37 Award of length of service award plan**

(a) In seeking a contractor, the sponsoring agency shall solicit written proposals from two or more contractors offering prototypical length of service award plans. After reviewing the proposals, an award shall be made by resolution of the governing body of the sponsoring agency. The resolution shall include a written description of the method used to solicit proposals, identify the responding vendors and state the rationale for selecting a specific contractor

(b) The term of the length of service award plan shall be determined by the sponsoring agency and the contractor.

(c) Until more than one contractor has been approved by the Director, a sponsoring agency shall submit a written request to the Director for a waiver from the requirement for soliciting proposals from two or more contractors offering prototypical length of service award plans as set forth in (a) above.

**N.J.A.C. 5:30-14.38 Ban on solicitation prior to award of contract**

A contractor seeking to implement a contract with a local government unit shall not solicit an active volunteer member for participation in any length of service award plan or solicit an active volunteer member to support the efforts of the contractor to secure such a contract. A representative of a contractor under contract shall not communicate with any prospective participant without

the expressed consent and knowledge of the sponsoring agency.

**N.J.A.C. 5:30-14.39 Insurance companies**

An insurance company offering a length of service award plan to local units shall be authorized by the Commissioner of Banking and Insurance to do business in the State of New Jersey. Documentation of the authorization to do business in New Jersey shall be submitted as part of the application process.

**N.J.A.C. 5:30-14.40 Mutual fund companies**

An entity offering a mutual fund or other type of security as part of a length of service award plan shall be registered with the Security and Exchange Commission and shall submit to the Director a copy of a "Certificate of Good Standing" from the Treasurer, State of New Jersey.

**N.J.A.C. 5:30-14.41 Nonprofit corporations**

A nonprofit, tax-exempt corporation offering length of service award plans to local units shall provide to the Director a copy of their Internal Revenue Service tax exemption certification.

**N.J.A.C. 5:30-14.42 Banking institutions**

A banking institution serving as a depository for a local unit's controlled program funds or offering a length of service award plan to local units shall be a New Jersey State-chartered bank, savings bank, or savings and loan or Federally-chartered bank, savings bank, or savings and loan located in New Jersey; hereinafter referred to as "banking institution." Such banking institution shall be in compliance with capital requirements for state-chartered banking institutions as set forth in N.J.A.C. 3:4, or capital requirements for Federally-chartered banking institutions as set forth in 12 CFR Part 325. Further, the bank must participate in the New Jersey Governmental Unit Depository Protection Act.

**N.J.A.C. 5:30-14.43 Nondiscrimination**

An organization, person, company, corporation, partnership, or other entity offering length of service award plans to local governments shall be in full compliance with all Federal and State laws regarding discrimination in its employment or investment policies and practices and shall so certify to the Director.

**N.J.A.C. 5:30-14.44 Contractor disclosure**

(a) A potential contractor shall disclose to the sponsoring agency and to the participants the fees

charged, the fee and commission structure, the investment plan offered, and any other pertinent information which the sponsoring agency may need in evaluating the contractor's fee and service.

(b) All length of service award plans shall contain termination clauses with respect to transfers of assets or responsibility under the plan.

**N.J.A.C. 5:30-14.45 Bonding and evidence of insurance**

(a) A contractor who provides a prototypical length of service award plan shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the sponsoring agency from any loss resulting from fraud or dishonesty by such contractor. Evidence of such bond or ability to obtain such bond if the plan is awarded shall be provided to the sponsoring agency and to the Director.

(b) The amount of bond shall not be less than 100 percent of the amount of funds managed by such contractor.

(c) A contractor providing services in accordance with this subchapter shall provide the sponsoring agency and Director with evidence of appropriate liability insurance and errors and omissions insurance. A contractor who is self-insured for errors and omissions insurance shall submit documentation from their auditors attesting to the validity of the coverage.

**N.J.A.C. 5:30-14.46 Provisions for rule to be part of plan**

A length of service award plan entered into by a sponsoring agency shall provide that the plan is subject to the rules set forth in this subchapter and that said rules are made a part thereof.

**N.J.A.C. 5:30-14.47 Annual report**

The contractor shall make available annually a report to each participant which shall indicate the value or balance of each participant's account. The report shall indicate for each participant the balance of the participant's account as of the last accounting date, and any return on investment credited to the participant's account since the last report or accounting date. Information regarding the value or balance of the entire plan shall be provided to the local plan administrator.

**N.J.A.C. 5:30-14.48 Pooling of funds**

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

**N.J.A.C. 5:30-14.49 Review**

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

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

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

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

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

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

(g) The independent auditor of the sponsoring agency shall then evaluate the sponsoring agency's records of the funds awarded to the volunteers and the joinder agreements against the information transmitted by the contractor.

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

**N.J.A.C. 5:30-14.50 Return to participants**

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

**N.J.A.C. 5:30-14.51 Participant records confidential**

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

**N.J.A.C. 5:30-14.52 Plan records**

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

**N.J.A.C. 5:30-14.53 Status of funds**

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

**N.J.A.C. 5:30-14.54 Plan list**

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

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

**N.J.A.C. 5:30-14.55 Compliance**

(a) A contractor shall provide to the Director appropriate documentation as more specifically described in this section that, under its proposed prototypical length of service award plan, funds contributed for the benefit of volunteers participating in the plan shall not be taxable for the purposes of the Internal Revenue Code until actual receipt of such funds by the volunteer due to retirement, termination after vesting, death or disability. The appropriate documentation to be submitted by the contractor shall consist of either a written opinion of legal counsel for the contractor or a Private Letter Ruling to this effect from the Internal Revenue Service pursuant to N.J.A.C. 5:30-14.56.

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

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

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

**N.J.A.C. 5:30-14.56 Private letter ruling**

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

**N.J.A.C. 5:30-14.57 Private letter ruling alternative**

As an alternative to seeking a separate private letter ruling from the Internal Revenue Service pursuant to N.J.A.C. 5:30-14.56, a sponsoring agency may adopt a contractor's prototypical length of service award plan which has already received a private letter ruling from the Internal Revenue Service. The private letter ruling shall be based upon the contractor's prototypical length of service award plan adopted by a New Jersey sponsoring agency. The resolution of a sponsoring agency shall certify that the sponsoring agency is

adopting a plan identical to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. The certification shall also indicate the use of the ruling is for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another sponsoring agency is not to be considered precedent.

**N.J.A.C. 5:30-14.58 Regulatory compliance**

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

**N.J.A.C. 5:30-14.59 Director determination**

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

**N.J.A.C. 5:30-14.60 Grace period**

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

**N.J.A.C. 5:30-14.61 Penalties**

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

**N.J.A.C. 5:30-14.62 Vesting and awards**

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

(b) Should a volunteer fail to vest or terminate association with a sponsoring agency prior to the completion of the vesting period, the funds placed in the

LOSAP Account on behalf of the volunteer shall revert to the sponsoring agency, not to the volunteer.

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LOSAP RULES ADOPTED 011601  
NJR Version  
21-12-00 text changes  
04-01-01 cite change  
05-02-01 OAL Recod

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THE COMMISSIONERS OF FIRE DISTRICT NO. \_\_\_\_\_  
IN THE BOROUGH OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

Resolution #

Authorizing Enactment of Length of Service Award Program (LOSAP)

WHEREAS, the Fire District deems it appropriate and necessary to enact a LOSAP program for retention and recruitment of volunteer firefighters; and

WHEREAS, the Fire District has determined that the creation of said program will enhance the ability of the Fire District to provide fire protection to the residents and taxpayers of the Fire District and;

WHEREAS, the enactment of such a program is in the best interest of the Fire District and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE Commissioners of Fire District No. \_\_\_\_\_, in the Borough of \_\_\_\_\_, County of \_\_\_\_\_, as follows:

1. A LOSAP program is hereby established in accordance with New Jersey statute.
2. The LOSAP program shall provide for a fixed annual contribution to a tax- deferred income account for each eligible volunteer member that satisfies the criteria set forth below.
3. The LOSAP program shall provide for an annual contribution for each eligible volunteer member that accumulates \_\_\_\_\_ points during a calendar year pursuant to the point system attached hereto and made a part hereof.
4. The annual contribution amount for each year of future service for each eligible volunteer member shall be \_\_\_\_\_. The estimated annual cost of this provision of the LOSAP program shall be based on \_\_\_\_\_ members for a total cost of \$\_\_\_\_\_.

S 5. The LOSAP program shall also provide for contributions for \_\_\_\_\_ years of prior service for each eligible volunteer member. The contribution amount for each year of past service shall be \$\_\_\_\_\_. The estimated cost of this provision of the LOSAP program shall be based on \_\_\_\_\_ members for a total cost of \$\_\_\_\_\_.

6. A The LOSAP program shall be deemed approved after placement on the ballot at the annual election and approval of same by the voters.

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BALLOT QUESTION

Shall the Commissioners of Fire District No. \_\_\_\_\_, in the Borough of \_\_\_\_\_, County of \_\_\_\_\_, be authorized to establish a Length of Service Award Program (LOSAP) for the benefit of the volunteer firefighters pursuant to the following terms and conditions:

1. The LOSAP program shall provide for a fixed annual contribution to a tax deferred income account for each eligible volunteer member that satisfies the criteria set forth below.
2. The LOSAP program shall provide for an annual contribution for each eligible volunteer member who accumulates \_\_\_\_\_ points during a calendar year pursuant to the point system adopted by the fire district.
3. The annual contribution amount for each year of future service for each eligible volunteer member shall be \$ \_\_\_\_\_. The estimated annual cost of this provision of the LOSAP program shall be based on \_\_\_\_\_ members for a total cost of \$ \_\_\_\_\_.
4. The LOSAP program shall also provide for contributions for \_\_\_\_\_ years of prior service for each eligible volunteer member. The contribution amount for each year of past service shall be \$ \_\_\_\_\_. The estimated cost of this provision of the LOSAP program shall be based on \_\_\_\_\_ members for a total cost of \$ \_\_\_\_\_.

YES \_\_\_\_\_  
 NO \_\_\_\_\_

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EXPLANATORY STATEMENT

The fire district seeks to establish a LOSAP program for the volunteer firefighters in order to enhance the providing of firefighting service by the retention and recruitment of volunteers. The specific details of the program are set forth on the ballot and more explicitly set forth in the Resolution adopted by the Fire District establishing the LOSAP program. The Resolution and New Jersey Statute establishing the LOSAP are available for public inspection and may be examined by contacting the fire district.

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# S AGREEMENT

This agreement is made on this First Day of January, 1998, by and between

THE COMMISSIONERS OF FIRE DISTRICTS NO. 1, NO. 2, NO. 4, NO. 5, NO. 7,  
NO. 8, NO. 9, NO. 11, NO. 12, IN THE TOWNSHIP OF WOODBRIDGE, COUNTY  
OF MIDDLESEX, hereinafter referred to as the "FIRE DISTRICTS";

WITNESSETH:

In consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

1. This agreement shall be known as the Woodbridge Township Mutual Fire Services Agreement.
2. The parties hereto are the nine autonomous fire Districts of the Township of Woodbridge organized in accordance with Title 40A of the New Jersey Statutes and Statutes antecedent thereto.
3. This agreement is authorized by N.J.S.A. 40A: 11-10 and shall expire December 31, 1998, provided, however that this agreement shall renew itself upon the same terms and conditions for an additional one year period unless notification is given by any party to the others by the third Wednesday of September next succeeding the date hereof that this agreement shall be terminated at the expiration date aforesaid.
4. This agreement shall become effective when authorized by appropriate resolutions adopted by each autonomous district pursuant to N.J.S.A. Title 40A.
5. The parties acting jointly to all matters included within the purview of this agreement shall operate under the title Joint Board of Fire Commissioners of the Township of Woodbridge. They may also be referred to as "the Joint Boards".
6. A set of by-laws may be adopted in order to govern the operation of the Joint Board and all such by-laws must be approved and adopted by each autonomous district. The Secretary of each fire district shall maintain a current set of by-laws.
7. Any approvals or authorizations or required by the Joint Boards regarding the specifically enumerated items set forth in paragraph 10 of this agreement shall become effective only upon a majority vote of all fire districts voting separately by each fire district.
8. Meetings of the Joint Boards shall be held on the third Wednesday of every other odd



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month unless otherwise set forth by the by-laws. Provided that any meeting may be cancelled by a majority vote as aforesaid or by concurrent resolutions adopted by all parties. Special meetings may be called either by the same method or by a majority call of the Presidents of each fire district.

9. A quorum of any meeting shall consist of a minimum of four districts with a single representative from each fire district. The majority of those districts present and voting shall constitute a majority approval by the joint board.

10. The Joint Boards shall have authority to undertake the following activities as allowed by New Jersey Statutes: Hazmat, Woodbridge Township Fire Officers Association, Woodbridge Township Fire Officials Association, Mutual Aid coordinators and a Township wide Fire Radio System. Nothing herein shall be construed to give the Joint Boards the authority to override, interfere with or assume control over the activities, duties or functions peculiar to each fire district. The affirmative approval of all nine autonomous fire districts shall be required prior to expending any sums for items not included in this paragraph.

11. The Joint Boards shall prepare a budget by September of each year for the operation of the Joint Boards. These costs must be approved affirmatively by each of the autonomous member districts pursuant to New Jersey law. The Joint Boards shall not have the authority to commit individual districts to pay sums in excess of the estimated costs set forth without the affirmative approval of each autonomous fire district. The fiscal year of the Joint Boards shall commence on January of each year and shall run to December 31.

12. Unless otherwise provided by statute or in the bylaws, the Joint Boards shall act by resolution or motion.

13. The Joint Boards shall be authorized to retain an independent attorney and auditor as well as other professional staff which may be reasonably be required providing the positions are approved by an affirmative vote of all of the nine autonomous fire districts.

14. The parties to this agreement shall each contribute a prorata share based upon the percentage of tax ratables for each fire district to the budget of the Joint Boards.

15. Each fire district shall provide its contribution or assessment as aforesaid immediately following receipt of each payment of tax revenues as received from the Township or as set forth in the bylaws.

IN WITNESS WHEREOF, the parties hereto have set their hands and Seals, or caused their corporate presents to be affixed on the day and year first written above.

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Attest:

THE COMMISSIONERS OF FIRE DISTRICT 1

SECRETARY

PRESIDENT

Attest:

THE COMMISSIONERS OF FIRE DISTRICT 2

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SECRETARY

PRESIDENT

Attest:

THE COMMISSIONERS OF FIRE DISTRICT 4

M

SECRETARY

PRESIDENT

Attest:

THE COMMISSIONERS OF FIRE DISTRICT 5

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SECRETARY

PRESIDENT

Attest:

THE COMMISSIONERS OF FIRE DISTRICT 7

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SECRETARY

PRESIDENT

Attest:

THE COMMISSIONERS OF FIRE DISTRICT 8

E

SECRETARY

PRESIDENT

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Attest:

THE COMMISSIONERS OF FIRE DISTRICT 9

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SECRETARY

\_\_\_\_\_  
PRESIDENT

Attest:

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THE COMMISSIONERS OF FIRE DISTRICT 11

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SECRETARY

\_\_\_\_\_  
PRESIDENT

Attest:

M

THE COMMISSIONERS OF FIRE DISTRICT 12

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SECRETARY

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PRESIDENT

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AGREEMENT

This agreement is made on this                    day of

by and between                    THE COMMISSIONERS OF FIRE DISTRICT NO.

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hereinafter referred to as COMMISSIONERS; and

hereinafter referred to as FIRE COMPANY.

WHEREAS, N.J.S.A. 40A:14-70.1(b) authorizes the Commissioners of a fire district to contract with a volunteer fire company or companies for the purpose of extinguishing fires, upon those terms and conditions as shall be deemed proper; and

WHEREAS, the Commissioners have negotiated agreement(s) with the fire company or companies within their jurisdiction upon terms that are fair and proper for the providing of fire protection services to the fire district; and

WHEREAS, the term "FIRE COMPANY" shall reflect either plural or singular as applicable to this particular agreement.

NOW, THEREFORE, it is agreed, in consideration of the payment to be made as herein described and the exchange of mutual promises, as follows:

(1) The FIRE COMPANY will extinguish fires within the fire district or within such other areas or territories as may be contracted for by the COMMISSIONERS, or pursuant to mutual aid agreements which have been approved by the COMMISSIONERS. For the purposes hereof, the term "extinguishing fires" shall be used in its broadest and most universal sense.

(2) Nothing herein shall be construed to increase any liability on the part of the FIRE COMPANY to the public for errors or omissions in the performance or non performance of its duties hereunder, or pursuant to any other requirement.

(3) The members of the FIRE COMPANY, in performing fire duty, shall be deemed to be exercising a governmental function.

(4) The members of the FIRE COMPANY shall be under the supervision and control of the COMMISSIONERS, and the FIRE COMPANY may not take any action which is contrary to law or to the by-laws or official actions of the COMMISSIONERS.

(5) The FIRE COMPANY shall perform such other duties, directly or indirectly related to the extinguishment of fires, as may be directed from time to time by the COMMISSIONERS.

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(6) In addition to the payment to be made annually by the COMMISSIONERS to the FIRE COMPANY pursuant to this agreement, the COMMISSIONERS shall provide worker's compensation insurance coverage for all volunteer firemen of the FIRE COMPANY and liability insurance coverage for the FIRE COMPANY and its apparatus, vehicles and equipment as approved by the COMMISSIONERS, but not for the firehouse or other structures owned by the COMMISSIONERS.

(7) The COMMISSIONERS shall reimburse the volunteer firemen for any losses incurred covering items contained in insurance policies while engaging in fire duty, subject to reasonable proof of the value of such losses.

(8) The COMMISSIONERS shall provide payment to the FIRE COMPANY in the amount of \$ This payment shall be made in four installments, one quarter following the receipt of each quarter payment to be made to the COMMISSIONERS. The COMMISSIONERS may require submission of a voucher as a prerequisite to payment.

(9) Notwithstanding anything to the contrary herein contained, the COMMISSIONERS will exercise jurisdiction over the FIRE COMPANY in firematic matters only and will not interfere or seek to regulate the internal administration of the FIRE COMPANY.

(10) The COMMISSIONERS may, but shall not be required to, provide life and health insurance for the members of the FIRE COMPANY. Any insurance, once in force, may not be terminated by the COMMISSIONERS without furnishing 30 days notice to the FIRE COMPANY.

(11) The FIRE COMPANY will house, if applicable, any apparatus, vehicles or equipment furnished by the COMMISSIONERS in a safe and secure manner, will observe any rules or regulations promulgated by the COMMISSIONERS for the maintenance, storage and use of said apparatus, vehicles and equipment and shall utilize same only in accordance with procedures established by the COMMISSIONERS and to effectuate the purposes of this agreement.

(12) This agreement is contingent upon adequate funding being provided in the annual budget and by appropriation of the COMMISSIONERS.

(13) Unless either party furnishes 60 days notice of non renewal of this agreement prior to its expiration, this agreement shall continue on a monthly basis following the expiration date herein, provided same shall be subject to termination by either party upon 30 days notice.

(14) The FIRE COMPANY may not hire or employ any person to perform any function of the FIRE COMPANY, but the COMMISSIONERS may provide paid employees for use by the FIRE COMPANY provided that the requirements of L. 1979, c. 453 and subsequent amendments, if any, are observed.

(15) If any article, section, paragraph, sentence or clause of this agreement is determined to be invalid, same shall be deemed severable and the remainder of the agreement shall survive unless such invalidated language is material to the purposes and intentions of the parties.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals or caused their corporate presents to be affixed on the date and year first written above.

Attested by:

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THE COMMISSIONERS OF FIRE DISTRICT

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BY: \_\_\_\_\_

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BY: \_\_\_\_\_

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THE COMMISSIONERS OF FIRE DISTRICT NO. 5

BY-LAWS

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ARTICLE 1: SEAL

(1) The official seal of the Fire Commissioners of Fire District No. 5 in the Township of Howell (hereinafter referred to as the Commissioners) shall consist of an embossed impression of a circular metallic disc containing, in the outer rim, the words "The Commissioners of Fire District No. 5, in the Township of Howell.

ARTICLE 11: GENERAL POWERS

(1) The Commissioners are created pursuant to N.J.S.A. 40A:14-70. The general powers of the Commissioners are, specifically set forth in N.J.S.A., 40A:14-81 and supplemented by various statutory sections N.J.S.A. 40A:14, et seq.

ARTICLE 111: MEMBERS

(1) N.J.S.A. 40A:14-70 states that the Commissioners shall divide themselves into three classes of members. The first class of members shall consist of two members to be elected for terms of one year each. The second class of members shall consist of two members to be elected for terms of two years each. The third class of members shall consist of one member to be elected for a term of three years. Upon the expiration of said terms, said successors to the Commissioners shall be elected for terms of three years.

(2) If a vacancy shall occur in the membership of said Commissione said vacancy shall be filled by the remaining members until the next succeeding annual election, at which time, a resident of the fire district shall be elected for the unexpired term.

(3) Elections to membership to the Commissioners are regulated by N.J.S.A. 40A:14-70 through N.J.S.A. 40A:14-78, inclusive. All election for membership to the Commissioners are to be held in compliance with

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said statutory sections.

ARTICLE IV; OFFICERS

(1) The officers of the Commissioners shall be a Chairman, Vice Chairman, Secretary, Treasurer. These officers shall be elected by the Commissioners from its members at the annual organizational meeting each year, which meeting shall be held on the first regular meeting after the election regarding Commissioners membership, which is held each year. The said officers shall be elected to and hold office pursuant to Article 111 referenced above.

(2) In the absence of any officer, the Commissioners may, by a majority vote of the members present, delegate the powers and duties of each officer to any other officer or member during the period of such absence.

(3) In the event of the absence of both the Chairman and the Vice Chairman from any meeting, the Commissioners may, by a majority vote of those present, delegate the parliamentary powers of such officer to any other officer or member present for the purpose of conducting Commissioner business at such meeting. If said Chairman and Vice Chairman are absent from said meeting, the senior member present (said seniority to be determined by the terms of continuous service) shall preside at said meeting.

ARTICLE V: CHAIRMAN AND VICE CHAIRMAN

(1) The Chairman shall preside at all meeting of the Commissioners and shall have general supervision, direction and control of the affair of the Commissioners and shall sign all contracts, drafts and checks relative to the Commissioners' general account. Said checks are also to be signed by the Treasurer and a thrid member of the Commissioners as designated.

(2) The Vice Chairman shall, in the absence or incapacity of the Chairman, assume all duties and powers of the Chairman.



S (3) The presiding officer at any meeting of the Commissioners, including the Chairman and Vice Chairman, shall have the right to vote.

ARTICLE VI: SECRETARY

(1) The Secretary shall keep the minutes and records of the Commissioners, prepare the agenda of all meetings in cooperation with the Chairman, provide notice of meetings to members, arrange proper and legal notice of hearings, attend to correspondence and perform such other duties as are necessary and incidental to the office of Secretary.

(2) In addition, the Secretary shall be the custodian of the official seal of the Commissioners and shall attest to all documents, resolutions, agreements and obligations.

ARTICLE VII: TREASURER

(1) The Treasurer shall have care and custody of and be responsible for all funds of the Commissioners and shall deposit the same in the name of the Commissioners in such bank or banks as the Commissioners may designate.

(2) The Treasurer may, subject to the direction of the Commissioners and in accordance with such requirements for counter-signature as the Commissioners may provide, sign, make and endorse in the name of the Commissioners, together with the Chairman, and/or the Vice Chairman and the Treasurer and any third member of the Commissioners as designated, all checks, drafts and orders for payment of money. Said general account checks of the Commissioners shall be executed by the Chairman and/or the Vice Chairman and the Treasurer and any third member of the Commissioners as designated, and the bond account checks shall be executed by the Chairman and or the Vice Chairman and the Treasurer and any third member of the Commissioners as designated.

(3) The Treasurer may, after approval by the Commissioners, pay all vouchers and approve such requisitions and purchase orders

as **S** may be authorized by the Commissioners.

(4) **A** The Treasurer shall render a report of the finances of the Commissioners at each regular meeting and at such other times as may be requested.

(5) **A** The Treasurer shall keep accurate and correct books of account of all business transactions, requisitions, purchase orders, vouchers and invoices as are necessary and incidental to the operations of the business of the Commissioners. The Treasurer shall do and perform all duties incidental to said office.

(6) **M** When required by the Commissioners, the Treasurer shall give such security for the faithful discharge of his duties as the members may direct, including a corporate surety bond, premiums for which shall be paid by the Commissioners.

ARTICLE VIII: ATTORNEY, AUDITOR

(1) **P** The Commissioners shall appoint an attorney and an auditor, as appropriate, who shall be paid such compensation as the Commissioners may, from time to time, provide.

(2) **L** The attorney shall furnish the Commissioners all legal services outlined in the attorney's contract with the Commissioners and, additionally, such legal advice and counsel as shall be requested and shall represent the Commissioners in all legal matters.

(3) **E** The auditor shall be a registered municipal accountant or a certified public accountant and shall render such auditing or accounting services as may be required by the Commissioners and by law.

ARTICLE IX: MEETINGS AND QUORUM

(1) The annual organizational meeting of the Commissioners for the election of officers and for the transaction of such other business as may come before the Commissioners shall be held at 8 P.M. on the 2nd Tuesday of March following the regular election in each year.

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(2) The regular meetings of the Commissioners for the transaction of its business shall be held on the 2<sup>nd</sup> Tuesday of each month at 8:00 P.M.

(3) All regular or special meetings held by the Commissioners shall be held in compliance with the "Open Public Meetings Act" of the State of New Jersey, P.L. 1974, C-231. Notification of said meetings shall be in compliance with said "Open Public Meetings Act" of the State of New Jersey.

(4) A majority of the entire authorized membership of the Commissioners shall constitute a quorum. Action may be taken by the Commissioners by a vote of a majority of the authorized membership.

Article X. HEARINGS

(1) In addition to those required by law, the Commissioners may, at their discretion, hold public hearings which they deem to be in the public interest.

(2) Notice of such hearings shall be published once in a newspaper of general circulation in the district at least five days prior to the date thereof, and such notice shall be posted in a prominent place in the municipal building.

(3) A record of those appearing shall be kept. However, formal proofs will not be required without prior notice thereof to the parties in interest.

ARTICLE IX MEMBERS CONFLICTS OF INTEREST

(1) A member shall not have any direct pecuniary interest in a contract with the Fire District, nor shall he furnish directly any labor, equipment or supplies to the Fire District in exchange for any monetary compensation.

(2) In the event a member is employed by a corporation or business, or has a secondary interest in a corporation or business which furnishes goods or services to the Fire District, the member

shall declare his interest and refrain from bidding or voting upon the question of contracting with that company.

(3) It is not the intent of this policy to prevent this fire district from contracting with corporations or businesses where a member is an employee of same. This policy is designed to prevent placing a member in a position where his interest in the fire district and his interest in his place of employment or other indirect interest may conflict and to avoid appearances of conflicts of interest even though such conflict may not exist.

ARTICLE X11; VOTING METHOD

(1) Votes on all motions or resolutions shall be by "ayes" and "noes". No secret ballots shall be used.

ARTICLE X111: COMMITTEES

(1) It is the policy of the Commissioners to operate as a committee of the whole on matters of policy, decisions and expenditures. However, since the details of the Commissioners are sometimes voluminous in nature, it is the Commissioners' policy to have members assigned to one committee so concentrated efforts may be spent on a particular segment of Commissioner work.

(2) The Chairman, during this term in office, may appoint permanent and/or special committees at this discretion for determined periods of time. These appointments shall not exceed the term of office by any member.

(3) The function and formation of said committees shall be as so established by the Chairman

ARTICLE X1V: COMPENSATION FOR MEMBERS

(1) N.J.S.A.40A:14-88 provides for compensation for members in such amounts as the Commissioners shall fix pursuant to Public Law. Said members may receive compensation in accordance with said statutory section.

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ARTICLE XV: HIRING OF EMPLOYEES

(1) N.J.S.A.40A:81.1 et seq. authorizes the Commissioners to hire various employees in compliance with that procedure as set forth in said statutes. The Commissioners shall hire employees in compliance with said statute.

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ARTICLE XVI: ORDER OF BUSINESS

- (1) Call to order.
- (2) Roll Call.
- (3) Certification of Public Meeting Law.
- (4) Reading of minutes from previous meetings.
- (5) Correspondence
- (6) Committee report
- (7) Old Business.
- (8) New Business.
- (9) Treasurer's report
- (10) Public participation.
- (11) Adjournment

Order of business is subject to change at any time prior to said meeting by order of the Chairman or the Vice Chairman in the absence or incapacity of the Chairman.

ARTICLE XVII: AMENDMENTS

(1) These by-laws may be altered, amended or repealed at any regular meeting by four-fifths vote of the membership upon 14 days notice to all members of such desired alteration, amendment or repeal. Said alteration, amendment or repeal will not be effective until same has been voted upon at two consecutive meetings by the Commissioners and subsequently adopted by said Commissioners.

ARTICLE XVIII: APPOINTMENT AND/OR REVIEW OF APPOINTMENT AND/OR ELECTION OF VOLUNTEER FIRE COMPANY OFFICERS

(1) The Commissioners, pursuant to New Jersey statutory law,

S hereby retain the right to appoint and/or review the appointment and/or election by the volunteer fire companies within the fire district of line officers relative to said fire companies. These line officers are specifically defined as Chief, Assistant Chief, Captain, and Lieutenant. This right of review by the Commissioners shall include the right to reject an appointment and/or election of a line officer by the volunteer fire companies if same is deemed to be undesirable by the Commissioners.

ARTICLE XIX: REQUIRED ATTENDANCE AT MEETINGS OF THE COMMISSIONERS OF VOLUNTEER FIRE COMPANY FIRE CHIEF OR HIS DULY AUTHORIZED REPRESENTATIVE

(1) It is hereby required by the Commissioners that the Fire Chief of the volunteer fire company within the fire district, or his duly authorized representative, attend all Commissioners' meetings which are held on the 2nd Tuesday of each month at 8 P.M., unless otherwise specified by the Commissioners.

(2) It is further specifically determined by the Commissioners that the said Fire Chief, or his duly authorized representative, shall be required to attend all further meetings of the Commissioners when notified within a reasonable period of time at the discretion of the Commissioners.

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AMENDMENT TO BY-LAWS

ARTICLE IX is hereby amended by the addition of the following paragraph:

(5) <sup>A</sup>The reorganizational meeting of the Commissioners shall be held on the first Tuesday in March following the regular election at 8 p.m.

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State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS

CHRISTINE TODD WHITMAN  
Governor

HARRIET DERMAN  
Commissioner

A

LOCAL FINANCE BOARD

LOCAL GOVERNMENT ETHICS LAW

Board of Fire Commissioners  
Advisory Opinion # 92-004  
Advisory Opinion # 93-019

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QUESTION SUMMARY:

Can publicly elected Board of Fire Commission Members, who handle the budget and expenditures of fire tax dollars, also serve as elected officials of the fire companies in their own districts, when they handle company monies raised or contributed privately?

There are approximately 188 Fire Districts and 489 Fire Departments in the State of New Jersey. The impact of an advisory opinion on this matter will be far-reaching as there are potentially dozens of fire officials who stand to be affected by the Local Finance Board's decision. For these reasons, the Board is issuing this as a public Advisory Opinion and not a confidential Advisory Opinion as provided for in the Local Government Ethics Law, N.J.S.A. 40A:9-22.8.

DISCUSSION:

The Local Government Ethics Law, N.J.S.A. 40A:9-22.5(e), states:

No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

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The question at issue concerns compatibility of offices and the discussion to follow will address this issue.





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The statute pertaining to Fire Districts, N.J.S.A. 40A:14-70, provides that the governing body of a municipality, "shall designate a territorial location or locations for use as a fire district or districts and, by resolution, provide for the election of a board of fire commissioners for the district or each district, to consist of five persons, residents therein, and specify the date, time and place for the election of the first board." Furthermore it states that, "The said body corporate shall have the power to acquire, hold, lease, sell or otherwise convey in its corporate name such real and personal property as the purposes of the corporation shall require."

N.J.S.A. 40A:14-78.1, provides that, "The Fire Commissioners of any fire district shall introduce and approve the annual budget..."

N.J.S.A. 40A:14-70.1.a., states, "Any person desiring to form a volunteer fire company to be located within or otherwise servicing the area encompassing a fire district or other type of volunteer organization which has as its objective the prevention of fires or regulation of fire hazards to life and property therein shall first present to the board of fire commissioners a written application for the organization of such a company." It furthermore provides that, "The board of fire commissioners, after considering such application and approving the members of the proposed company, may by resolution grant the petition and constitute such applicants a volunteer fire company of the district."

N.J.S.A. 40A:14-70.1.b., states, "The members of the company shall be under the supervision and control of the board of fire commissioners and in performing fire duty shall be deemed to be exercising a governmental function;"

Michael A. Pane, in his work NEW JERSEY PRACTICE: Local Government Law, addresses the doctrine of incompatibility of offices. He states,

In one sense, incompatibility of office represents a special type of conflict. It is a situation in which the nature of two offices individually is such that they cannot be executed with care or ability by the same individual either because one is subordinate to the other or because one office in some other fashion interferes with the other. Mr. Pane furthermore states, "In one case the classic definition of incompatibility was restated as follows:

Offices are incompatible when there is a conflict or inconsistency in their functions. Therefore offices are not compatible when one is subordinate to or subject to the supervision or control of the other or the duties of the offices clash requiring the officer to prefer one obligation over the other."

S Mr. Pane cites *Hollander v. Watson*, 167 NJ Super. 588. at 592, 401 A.2d 560 at 562 (Law Div. 1979), affirmed 173 NJ Super. 300, 414 A.2d 275 (App. Div. 1980).

Mr. Pane continues, "Traditionally the doctrine of incompatibility has been applied with such thoroughness that a person, having accepted a second office incompatible with the first office held, was deemed to have vacated the first office. The doctrine has been made flexible to the extent of usually allowing an election between the two offices by the individual caught in the incompatibility." (*McCue v. Antisell*, 105 NJ Super. 128, 251 A.2d 308 (App Div. 1969).

To revisit N.J.S.A. 40A:14-70.1.b., the members of a fire company shall be under both the supervision and control of the board of fire commissioners."

This question surrounds the issue of dual office holding and whether holding the positions of Fire Commissioner and local fire company board member or officer would place an individual in a situation where their independence of judgement might reasonably be expected to be prejudiced as they exercise their official duties.

A second question is whether holding these positions would require the individual in question to act in an official capacity in a matter where he has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

N.J.S.A. 40A:9-22.5(d) states:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

The official duties and responsibilities of a Fire Commissioner affect the status of the members of the local fire company. See statutes previously mentioned, specifically N.J.S.A. 40A:14-70.1.b.: "The members of the company shall be under the supervision and control of the board of fire commissioners and in performing fire duty shall be deemed to be exercising a governmental function;"

**S** Using the standard cited in New Jersey Practice, section 358, Incompatibility of Office, by Michael Pane, these offices appear to be incompatible because "one is subordinate to or subject to the supervision or control of the other or the duties of the offices clash requiring the officer to prefer one obligation over the other."

**A** The matter of incompatibility, as expounded by Mr. Pane, has relevance to the Local Government Ethics Law in that objectivity is clouded to the extent that the individual's independence of judgment would reasonably be expected to be prejudiced in the exercise of his official duties.

**M** The appearance of a conflict is more than apparent in the situation where a Fire Commissioner may act preferentially or antagonistically toward the fire company where he is also an officer. Additionally, the information he gathers as a result of his position with the fire company can be used for or against that company when the Commissioners set their budget and policy priorities. One person should not be privy to both sides of this information. All budget decisions of the Fire Commission would impact on how the fire company is being run and would, in turn, affect the priorities of the individual companies.

**I** Additionally, fire company officials are voted for by the members of the individual fire company, not the public. It is likely that a Fire Commissioner is the supervisor of the fire company Chief in his capacity as Fire Commissioner while, at the same time, being subordinate to the same Chief as a fire fighter. Further, in fire districts with more than one fire company, the independence of judgment of the Fire Commissioner who is a member of one district is impaired by his lack of knowledge in the other fire companies that have no specific representation on the Board of Fire Commissioners.

SYNOPSIS OF PUBLIC HEARING:

**L** Having detailed the statutory support for a determination, it is now necessary to apply the premise to current organizational needs. Namely, will the public be served State-wide by a determination that the two positions are inherently incompatible?

**B** The Board held a public hearing on this subject on July 12, 1994. The State Association of Fire Districts presented a position that a majority of their 102 Fire District members believe that elected officials are in conflict by also serving as commissioners. They did not believe that volunteer members of the fire company are in conflict. There was additional support for their position from individual fire districts who have instituted policies whereby Fire Commissioners cannot hold an elected or appointed position in the fire department. It is not known if these districts are already included in the survey presented by the State Association of Fire Districts.

**S**In support of the Association's position, their testimony states as follows:

We (the association) feel that any elected officer of a fire company who is in a position to suggest, recommend or request services, supplies and or other financial encumbrances of the board would appear to be in conflict. Our consensus shows that the ranking fire officers, i.e. chief and assistant chief would be a definite conflict. We also feel in some cases the ranking executive officers, i.e. president and vice president may also have roles that could be considered in conflict.....

The State Association of Fire Districts is therefore requesting that the Board consider that there is a conflict of interest for fire company chiefs and assistant chiefs serving on boards of fire commissioners. Other fire company officers if serving on a board of fire commissioners may be in conflict. However, conflict does not extend to members and non officers of a fire company.

A review of the input reveals that there are numerous arrangements for fire services in New Jersey and that perhaps not all will be satisfied by the Board maintaining one position in this area. It is within the Board's jurisdiction, however, to respond to the request for an advisory opinion on this matter. It appears that an appropriate guideline then would be to endorse the limitation set forth by the Association.

**ADVISORY OPINION:**

The Board has determined that such a proposed activity, holding the positions of Commissioner of a fire district and elected or ranking officer of a fire company in that district, would, in its opinion, constitute a violation of the Local Government Ethics Law. The officials affected by this opinion include the chief, deputy chief, president and vice president. More specifically, such dual office holding violates N.J.S.A. 40A:9-22.5(d) and (e) as stated below.

(d) No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment;

(e) No local government officer or employee shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

**S** The community of interest to hold the position of Fire Commissioner is significantly small in most of the districts established in New Jersey. Determining that all of the fire company members would be in conflict with the Ethics Law if they serve as Fire Commissioners may not serve the community. Thus, the Board's position is that only those officials who are in a position to suggest, recommend or request services, supplies and or other financial encumbrances of the board would be in conflict for serving both positions simultaneously. This again is interpreted to include the chief, deputy chief, president and vice president of the fire company.

Additionally, if there are cases where fire fighters or officers are paid or receive some other sizable and tangible benefit, officers and fire fighters could be in violation of Sections (d) and (e) if they serve as Fire Commissioners. In these cases, they would be acting as employer and employee. This arrangement would appear to be incompatibility of offices.

Further, by limiting the dual office holding to the positions listed, the Board does not imply that the Ethics Law can not be violated by some specific action/activity of Fire Commissioners or fire company members. There is the potential for a person serving the district or fire company to act in their official capacity in a matter where they have a direct or indirect financial or personal involvement that might reasonably be expected to impair their objectivity or independence of judgment. Thus, individuals could be found to be in violation of the Ethics Law. Such specific actions or activities would be reviewed by the Board as separate ethics complaints.

The Board has also elected to make this opinion public, except for the names of the requesting agents, since it will effect numerous municipalities in the State.

The Board further advises that this opinion in no way questions the integrity of any individuals currently in this situation or their ability to maintain their independence of judgment. This opinion is limited to the question at issue and due to the fact sensitive nature of the circumstances, an advisory opinion may only be applied to the question at issue.

February 8, 1995

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DATE

**E**  
*Beth Gates*

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BETH GATES, CHAIR  
LOCAL FINANCE BOARD

0140S

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PETITION TO ESTABLISH A FIRE DISTRICT PURSUANT TO N.J.S.40A:14-70

WHEREAS, the undersigned are residents and legal voters in the

WHEREAS, N.J.S.A.40A:14-70 provides that any municipality not having a paid or part paid fire department or force, upon application of at least 5% of the legal voters, shall schedule a public hearing and may then designate by ordinance a territorial location or locations for use as a fire district or fire districts and, by resolution, provide for the election of a Board of Fire Commissioners for the district or for each district; and

WHEREAS, the best interests of the undersigned and the public would be served by the establishment of a fire district or fire districts as aforesaid.

NOW, THEREFORE, we, the undersigned, do hereby petition the

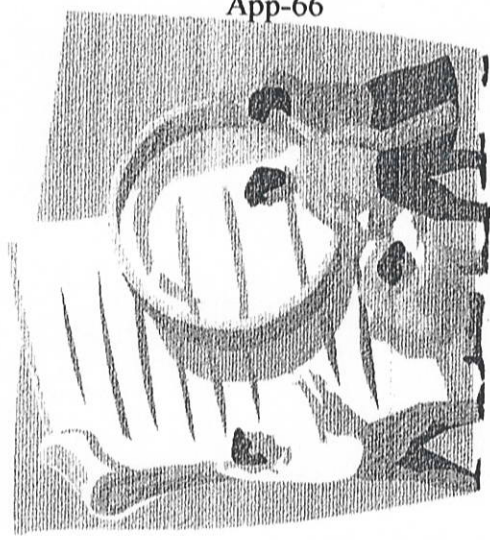
to adopt an ordinance in accordance with N.J.S.40A:14-70 designating a territorial location or locations for use as a fire district or fire districts in the aforesaid municipality, and further to adopt a resolution setting a time and place for an election of a Board of Fire Commissioners for the said district or districts.

<u>PRINTED NAME</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>
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Act

(N.J.S.A. 47:1A-1 et seq.)



finds that the custodian "fully and knowingly" unreasonably denied access under the full circumstances, the Records Custodian can be fined, and the requester may be entitled to a reasonable attorney's fee. The GRC's decision may be appealed to the Appellate Division of Superior Court.

**Do I have to use the Government Records Council?**

If a requester is denied access to public records, he or she has the option of seeking relief from the Superior Court in the county where the denial occurred. These court actions usually require a \$200 filing fee.

**How to get more information about the law?**

If you are interested in more information about OPRA or the Council, you should review the free publication "A Citizens Guide to the Open Public Records Act" and visit the Council's web site for more information about the law, exceptions to access, and the appeal process. The Council can be contacted at:

Mail: Government Records Council  
PO Box 819  
Trenton, NJ 08625

Toll-free help-line: 866-850-0511

Website: [www.nj.gov/grc](http://www.nj.gov/grc)

E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)

Fax: 609-633-6377

**denied?**  
Prior to filing a complaint, you may want to contact the Council to ask for their assistance or inquire about the denial. You can contact the Council on their toll free help line, 866-850-0511, or by e-mail ([grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)) or from their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The GRC may be able to help resolve a records access dispute through informal intervention.

To file an official complaint and make use of the formal mediation process (see below) the requester must to submit a written complaint, alleging that a custodian of a government record has improperly denied you access to that government record. Information on legal reasons for denial and the complaint form can be obtained from the GRC's toll-free number or the web site.

**What is mediation?**

When the GRC receives a written complaint, the parties will be offered an opportunity to resolve the dispute through mediation, with an impartial mediator. Mediation is an informal, non-adversarial process, which aims to help the parties reach an acceptable, voluntary agreement. If mediation fails to resolve the matter to the mutual satisfaction of the parties, the council will launch an investigation concerning the issues brought up in the complaint.

**How will the GRC conduct the investigation?**

The GRC will first ensure the complaint is a valid one, and if it is, will direct the public agency to produce the government record(s) in question and their reasoning for the denial. In both mediation and a formal investigation, the GRC will try to handle the complaint as expeditiously as possible. If the council cannot make a decision on the written submissions of the parties, both parties will be notified and a formal hearing will be held. Following that hearing, the council by a majority vote will reach a determination on whether the record should be made available to the requester. If

Prepared by the:  
**New Jersey Government Records Council**  
PO Box 803  
Trenton, New Jersey, 08625  
Toll free: 866-850-0511  
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E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
[www.nj.gov/grc](http://www.nj.gov/grc)

## What is OPRA?

The Open Public Records Act (OPRA) is a State law to increase the public's accessibility to view and copy government records maintained by public agencies in the State. Additionally it provides the public a procedure to register a complaint when a request for access to government records is denied. A "government record" is defined as a physical record that has been generated, maintained, or received by a public agency in the course of official business.

## What public agencies are covered under OPRA?

OPRA applies primarily to executive branch of State government, certain records of the State Legislature, state authorities, commissions, state colleges and universities, county governments, municipalities, fire districts, school boards, planning and zoning boards and other county and local boards, agencies and authorities. OPRA does not cover the judicial branch of government.

## Are all government records accessible to the public?

While most government records are accessible to public access, some are not. Information received by a State Senator or General Assembly member, from, or concerning, a constituent is not considered a government record. The same is true for communication prepared for State Senators or Assemblymen. Other records that are not disclosed to the public include: information that would threaten homeland security; personal information; interfere with competitive business practices. Information on other exceptions to disclosure can be obtained from the Government Records Council.

## Why are some records not disclosed?

While OPRA mandates that limitations on the public's right of access should be decided in the public's favor, a public agency is required to keep a citizen's personal information from public access when disclosure would violate the citizen's

reasonable expectation of privacy. Subsequently, it may be necessary for the public agencies to redact certain personal information (i.e. social security, credit card, drivers license or unlisted telephone numbers) from the record before releasing it to the public.

## How do I obtain government records from public agencies?

OPRA requires that all public agencies appoint a Records Custodian. It is the function of the Custodian to release government records to the public. People who want to obtain public records should contact the Custodian of the public agency that holds those records.

In addition, OPRA requires that all public agencies adopt a Records Request Form. This form must be filled out and hand-delivered, mailed, or transmitted electronically, but cannot be transmitted verbally. Contact the agency that you are requesting document from for specific instruction on how to file the form.

## Do I have to have a formal Records Request form for all government records that I request?

Many public agencies will continue to use non-OPRA forms for routine records requests that are usually filled promptly. In the event this type of informal request results in a denial, the Records Custodian is obligated to provide a formal denial that includes information about OPRA appeal rights.

## How long will it take the Custodian to respond to me?

The Records Custodian must comply with the request "as soon as possible," but no later than seven business days after the request is received. Requests for access to budgets, bills, vouchers, and contracts must be processed immediately. The seven-day "clock" starts the day after the request is received.

If a record is in storage or archived, the Custodian will advise the requester within seven business

days and tell the requester when it will be available.

## Are there fees involved?

The public agency can only charge the public for the cost of copies of printed government records. The fee structure will not exceed \$.75 per page for the first 10 pages, \$.50 per page for pages 11-20 and \$.25 per page for each page over 20.

If the requester asks for a record to be copied in a particular format, and the public agency is able to honor that request, the agency may charge an additional charge to cover the cost for any extensive use of information technology or for the labor cost of personnel providing the service. In such cases the custodian may require a deposit when you submit your request.

## Can my request be legitimately denied?

Yes, reasons for denial reside for the most part in OPRA's exceptions. Additionally a request may be denied if the requester fails to properly fill out the records request form or fails to provide proper identification.

## What happens if my request is denied?

If your request for a government record is denied, there are two avenues of redress. You may file a suit in Superior Court, or you may apply to the Government Records Council for intervention.

## What is the Government Records Council?

The Government Records Council (GRC), is part of the State's Department of Community Affairs, is charged with providing assistance to the public and records custodians, and with hearing complaints about denial of access to records. The GRC is composed of the Commissioners of Community Affairs and Education (or their designees); and three members of the public. An Executive Director, assisted by professional and clerical staff administer the work of the GRC.