



NEW JERSEY LAW REVISION COMMISSION

Final Report

Relating to

**OBSOLETE SPECIAL ELECTION LANGUAGE IN LOCAL BUDGET CAPS
STATUTE**

April 2, 2014

The work of the New Jersey Law Revision Commission is only a recommendation until enacted. Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries to:

NEW JERSEY LAW REVISION COMMISSION

153 Halsey Street, 7th Fl., Box 47016

Newark, New Jersey 07101

973-648-4575

(Fax) 973-648-3123

Email: njlrc@njlrc.org

Web site: <http://www.njlrc.org>

Elimination of Obsolete Language from Local Budget Caps Statute

Introduction

The Commission has approved a project to revise N.J.S. § 40A:4-45.14 to eliminate extraneous language characterized as having “no discernible meaning” by the Appellate Division in *Roseff et al. v. Byram Township et al.*, 432 N.J. Super. 8 (App. Div. July 10, 2013). This project is in line with the Commission’s mandate to “excise redundant provisions found in the law.” N.J.S. 1:12A-8(a)(3).

In *Roseff*, the Appellate Division was asked to determine whether a municipal budget ordinance enacted under N.J.S. 40A:4-45.14 is subject to the type of local referenda normally permissible under N.J.S. 40:69A-185. Such referenda are citizen-initiated and are permitted in many situations as a mechanism for seeking voter repeal or approval of ordinances passed by municipal governments. See Michael A. Panea, *Initiative, Referendum, and Recall in New Jersey*, 208 N. J. Lawyer 44 (April 2001). The Court concluded that municipal budgets are not subject to referenda, primarily because unlike all other ordinances, which are held in abeyance for twenty days to allow for referenda to be filed, municipal budgets take effect immediately. *Roseff*, 432 N.J. Super. at 17.

The Court’s opinion canvassed the entire scheme of the municipal budget laws, including the different statutes imposing caps on local budgets, permitting municipalities to raise their budgets above the cap in certain situations, and exempting certain types of expenditures from the cap entirely. *Id.* at 12-20. After analyzing the legislative intent behind the two statutes at issue in the case and parsing the relevant language of each statute, the Court concluded that the fact that municipal budgets enacted under N.J.S. 40A:45-14 take effect immediately meant that they are therefore insulated from citizen referenda. *Id.* at 17. However, the Court addressed some additional language in N.J.S. 40A:4-45.14, to ensure that it did not dictate another result. *Id.* at 20.

In any year for which an ordinance is adopted by a municipality pursuant to this section, no referendum shall be held in that municipality pursuant to subsection i. of section 3 of P.L.1976, c. 68 (C.40A:4-45.3); provided that a municipality may hold a special election if required by law pursuant to that subsection.

The Court ultimately concluded that this paragraph of the statute was not relevant to the question at issue in the case. *Roseff*, 432 N.J. Super. at 200. However, in the course of reviewing the legislative history behind this statute, the Court also determined that the last line of this subsection no longer has any meaning at all as a result of changes to the statute in 1990. *Id.* at 21. Those changes and the statutory history are explained below.

Statutory History

N.J.S. 40A:4-45.3, originally enacted in 1976, prohibits localities from increasing their

budgets more than 2.5 percent or the cost-of-living increase each year, whichever is less, but exempts certain types of expenditures from this statutory cap. N.J.S. 40A:4-45.3(i). Among the exemptions, N.J.S. 40A:4-45.3(i) permits municipalities to exempt from their budget caps any expenditures “approved by referendum.”

Between 1977 and 1983, the legislature created two commissions to study the budget cap law and make recommendations as to its improvement. Laws of 1983, ch.49, SENATE SPONSOR’S STATEMENT REGARDING SENATE BILL 2016. The Commissions made a number of recommendations, many of which were considered and incorporated into the statute by the legislature in 1983. Among many other changes, the legislature added a number of new exemptions to N.J.S. 40A:4-45.3, including a new exemption for “any amount expended to conduct a special election required by law to be held at a time other than the time of a general election or regular municipal election, as appropriate.” Laws of 1983, ch.49. This amendment was intended to include all types of special elections, including referendum elections on the budget cap as permitted by N.J.S. 40A:4-45.3(i) but also charter change elections, referendum on salary increases, recall elections and others. The amendment resulted from one of the Commission’s recommendations and reflected the Commission’s recognition that “[a]ll of these special elections share the common characteristic of being outside the local budget planning process, and of being in most instance voter initiated.” Laws of 1983, ch.49, SENATE SPONSOR’S STATEMENT REGARDING SENATE BILL 2016 at 15.

At the same time, the legislature enacted N.J.S. 40A:45.14, which allows municipal governing bodies to increase local budgets a small amount over the normally prescribed cap without voter approval as long as certain conditions are fulfilled. The statutory scheme gives municipalities an “either/or” choice: N.J.S. 40A:4-45.14 states that in any year in which the municipal government raised the budget above the cap, the municipality is barred from raising it further through the referendum process. N.J.S. 40A:4-45.14(c) (“In any year for which an ordinance is adopted by a municipality pursuant to this section, no referendum shall be held in that municipality pursuant to [N.J.S. 40A:4-45.3(i)].”). In *Roseff*, the Court interpreted the relationship between the two statutes as indicating that the Legislature has granted municipal governments the ability to increase their own budgets 1% above the cap without voter approval, but has required voter approval for any increase above 1%. *Roseff*, 432 N.J. Super. at 18-19; *see also City of Ocean City v. Somerville*, 403 N.J. Super. 345, 365 (App. Div. 2008) (“Other than allowing for exemptions, the Legislature also permits a municipality the option of exceeding the budget cap by 1% by enacting an ordinance that is ‘approved by a majority vote of the full membership of the governing body.’ N.J.S. 40A:4–45.14. Thereafter, a municipality may exceed the 3.5% spending cap only by way of referendum. N.J.S. 40A:4–45.3(i).”).

In 1987, the legislature amended both statutory sections. Some of the amendments to N.J.S. 40A:4-45.3 were intended to streamline the text, including one amendment that linked two of the existing exemptions, such that municipalities could then exempt from their budget caps, “[a]ny amount approved by any referendum or any amount expended to conduct a special election required by law to be held at a time other than the time of a general election or regular municipal election, as appropriate.” *See* Laws of 1983, ch.49; N.J.S. 40A:4-45.3. At the same time, the legislature amended N.J.S. 40A:4-45.14(c), adding that although municipalities were

still not permitted to hold an additional referendum in order to raise the municipal budget once an ordinance permitted under this subsection had been approved, the municipality could hold other kinds of special elections if one were required by law.

In 1990, the Legislature again amended N.J.S. 40A:4-45.3. The Assembly Committee statement related to the bill noted that “many exceptions to the local budget caps . . . have found their way into the statutes through the years” and stated its “intent . . . to reduce the rate of increase of local government property taxes” by removing all but necessary exemptions to the cap. NEW JERSEY ASSEMBLY COUNTY GOVERNMENT COMMITTEE STATEMENT REGARDING BILL NOS. 3601 AND 3298, 1990 NJ Sess. Law Serv. 89 (West). Among the amendments, the Legislature removed the exemption for special elections, so that municipal funds spent on special elections are no longer exempted from the budget cap. Municipal funds that are approved by referendum are still exempt, but the costs associated with the special elections held to approve or reject those appropriations are no longer exempt, nor are any other type of special election. However, the Legislature did not remove the linked special election language from N.J.S. 40A:4-45.14. However, as the Court noted in *Roseff*, “in light of this legislative history, the special election language left in N.J.S. 40A:4-45.14 . . . has no discernible meaning at all because subsection (i) of N.J.S. 40A:4-45.3 no longer addresses special elections.” *Roseff*, 432 N. J. Super. at 21.

Conclusion

As a result of amendments to the Local Budget Cap Law, N.J.S. 40A:4-45.3(i), in 1990, there is obsolete language in the related statute N.J.S. 40AA:4-45.14(c). This report recommends the elimination of that language.

Proposed Amendment

40A:4-45.14. Index rate exceeding or less than 5% for year; ordinance or resolution increasing final appropriation

a. Notwithstanding the provisions of section 2, 3 or 4 of P.L.1976, c. 68 (C.40A:4-45.2, 40A:4-45.3 or 40A:4-45.4) to the contrary, in any year for which the cost-of-living adjustment is equal to or less than 2.5%, a county may, by resolution approved by a majority vote of the full membership of the governing body, provide that in the local fiscal year to which the resolution applies, the tax levy of the county shall be increased by a percentage rate greater than the cost-of-living adjustment, but not to exceed 3.5% over the previous year's county tax levy .

b. Notwithstanding the provisions of section 2, 3 or 4 of P.L.1976, c. 68 (C.40A:4-45.2, 40A:4-45.3 or 40A:4-45.4) to the contrary, in any year in which the cost-of-living adjustment is equal to or less than 2.5% a municipality may, by ordinance approved by a majority vote of the full membership of the governing body, provide that in the local fiscal year to which the ordinance applies, the final appropriations of the municipality shall be increased by a percentage rate greater than the cost-of-living adjustment, but not to exceed 3.5% over the previous year's final appropriations.

c. The ordinance or resolution, as appropriate, shall be introduced after the beginning of the local fiscal year to which it applies and prior to the date provided by law for the introduction and approval of the annual budget of the municipality or county. The ordinance or resolution shall state the greater percentage rate to be adopted and the additional amount of increased final appropriations or tax levy which that greater percentage rate represents over that which the 2.5% rate or cost-of-living adjustment, as appropriate represents. The ordinance or resolution may, thereafter, be adopted, after publication and a public hearing separately afforded upon 10 days' notice duly published, by a majority vote of the authorized membership of the governing body. Any procedures provided in a form of local government for the exercise of veto powers by a mayor or county executive with respect to ordinances generally shall pertain. An ordinance or resolution so adopted shall, notwithstanding any other provision of law, take effect immediately upon adoption.

Upon adoption of the ordinance or resolution, the permissible final appropriations of the municipality, or permissible county tax levy of the county, shall be calculated for the year as provided in section 3 or 4 of P.L.1976, c. 68 (C.40A:4-45.3 or 40A:4-45.4), except that the percentage rate so adopted shall be used. The final appropriations or county tax levy so calculated shall be used in the immediately following year for the purposes of section 2 of P.L.1976, c. 68 (C.40A:4-45.2).

A copy of any ordinance or resolution introduced pursuant to this section shall be filed with the Director of the Division of Local Government Services within five days of introduction, and a copy of the ordinance or resolution adopted shall be filed with the director within five days of adoption.

In any year for which an ordinance is adopted by a municipality pursuant to this section, no referendum shall be held in that municipality pursuant to subsection i. of section 3 of P.L.1976, c. 68 (C.40A:4-45.3); ~~provided that a municipality may hold a special election if required by law pursuant to that subsection.~~

Comment

This language is being removed from N.J.S. 40A:4-45.14 because the cross-referenced statute, N.J.S. 40A:4-45.3, which governs exceptions to the municipal budget cap law, no longer relates to special elections. When first enacted in 1977, N.J.S. 40A:4-45.3 permitted municipalities to exempt from their budget caps amounts approved by referendum and “any amount expended to conduct a special election required by law to be held at a time other than the time of a general election or regular municipal election, as appropriate.” In 1987, the two exemptions were linked, such that municipalities could exempt from their budget caps, “[a]ny amount approved by any referendum or any amount expended to conduct a special election required by law to be held at a time other than the time of a general election or regular municipal election, as appropriate.” Notably, any referenda to be put to municipal voters must be held through a special election, so this provision would allow both the costs of the special election on the referenda and the amount approved in the referenda to be exempt from the budget cap.

However, in 1990, the legislature removed the language relating to special elections from that section, so that N.J.S. 40A:4-45.3 now exempts from the municipal budget cap only the amount approved by the referenda and not the amount spent on the special election on the referenda or any other special election. In *Roseff et al. v. Byram Township et al.*, 432 N.J. Super. 8, 71 A.3d 905 (App. Div. July 10, 2013), the Appellate Division examined the entire municipal budget cap framework, including N.J.S. 40A:4-45.14, and noted that “in light of this legislative

history, the special election language left in N.J.S. 40A:4-45.14 . . . has no discernible meaning at all because subsection (i) of N.J.S. 40A:4-45.3 no longer addresses special elections.” *Id.* at 21.

It should be noted that at no time did N.J.S. 40A:4-45.3 *require* any type of special election to be held; rather, the statute merely governed whether the costs associated with any such election would be included under the budgetary cap. Although the language of N.J.S. 40A:4-45.14 implies that N.J.S. 40A:4-45.3 requires some special elections, in fact another statute, N.J.S. 40:45.3, governs when a special election relating to a referenda must be held. Nonetheless, at this point, N.J.S. 40A:4-45.3 not only does not require any special elections but no longer includes any reference to them at all. Thus, this amendment removes the now meaningless language from N.J.S. 40A:4-45.14.