



# State of New Jersey

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*Lt. Governor*

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**KEVIN D. WALSH**  
*Acting State Comptroller*

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*Director*

July 23, 2025

## **BY ELECTRONIC MAIL**

Hon. John Pallone, Mayor  
City of Long Branch  
344 Broadway  
Long Branch, NJ 07740

### **Re: Application of the Lifeguard Pension Law**

Dear Mayor Pallone:

Pursuant to N.J.S.A. 52:15C-5(a), the Office of the State Comptroller (OSC) is charged with conducting "routine, periodic, and random audits" of government agencies. Pursuant to that authority and consistent with N.J.S.A. 52:15C-8c(3), OSC has established objective criteria and developed a risk assessment for undertaking performance audits of government entities and programs.

OSC issued a September 22, 2023 engagement letter to the City of Long Branch (City or Long Branch) to initiate a performance audit of the administration of its lifeguard pension plan. In response, the City's chief financial officer informed OSC that the City does not have a lifeguard pension plan. At that time, OSC recommended that the City review the Lifeguard Pension Law<sup>1</sup> with its legal professionals to determine its applicability to Long Branch.

In January 2025, OSC requested a written update on the status of the City's review of the Lifeguard Pension Law's applicability. The City's attorney provided the update in February 2025, indicating that the Lifeguard Pension Law did not and has never applied to Long Branch. The City's attorney asserts that Long Branch, "is not a 'city' as organized by statute, but rather is an optional municipal charter law municipality." The City maintains that the Lifeguard Pension Law is only applicable to those municipalities using the city form of government as authorized in N.J.S.A. 40A:61-1 to -8.

N.J.S.A. 43:13-23 to -29 requires a city of the fourth-class to create and administer a pension plan for its lifeguard employees. A city of the fourth-class, defined by N.J.S.A. 40A:6-4, is a city bordering the Atlantic Ocean and is a seaside or summer resort. The City's response contends

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<sup>1</sup> N.J.S.A. 43:13-23 to -29.

that the selection of a governance structure under the Faulkner Act<sup>2</sup> and classification as a city under N.J.S.A. 40A:6-4 are mutually exclusive statuses. This exclusivity is not supported by the Faulkner Act, case law, or the operations in similarly situated seaside or summer resort cities. OSC considers Long Branch to be a fourth-class city based on the facts and circumstances detailed herein.\*

## **History**

The Long Branch Commission was formed from Ocean Township in 1867. In 1882, the Legislature developed a classification system creating four classes of cities for legislative purposes.<sup>3</sup> In an 1885 opinion,<sup>4</sup> the New Jersey Supreme Court found that at the time, “[t]he classification of cities of the fourth class ‘shall consist of cities of this state bounding upon the Atlantic Ocean and being seaside or summer resorts.’ Long Branch is not a city within this description. There are such cities, but Long Branch is not a city.” The New Jersey Legislature incorporated the Long Branch Commission as a city to be known as Long Branch on April 8, 1903.<sup>5</sup>

The City of Long Branch adopted a commission form of government in 1916 as permitted by the Walsh Act.<sup>6</sup> In a 1918 matter involving the term of mayor, the New Jersey Supreme Court wrote, “[t]he city of Long Branch is now and since May 16th, 1916, has been governed by the Walsh Act and its amendments.”<sup>7</sup> The court found that the Walsh Act limits “the compensation of the mayor and commissioners **in cities of the fourth class, to which Long Branch belongs.**”<sup>8</sup> (Emphasis added.) The court’s declaration that Long Branch is a city of the fourth-class makes it clear that a municipality’s classification as a city is not contingent upon using the city form of government. Long Branch was not a city prior to its incorporation, but after its incorporation the court found it to be a city of the fourth-class. The Legislature passed the first Lifeguard Pension Law in 1928,<sup>9</sup> followed by amendments in 1929<sup>10</sup> and 1936,<sup>11</sup> requiring lifeguard pensions for lifeguards in cities of the fourth-class. The Lifeguard Pension Laws applied to Long Branch when enacted.

The Legislature approved the Faulkner Act<sup>12</sup> in 1950. The Faulkner Act, and its amendments, permits a municipality to select alternative governance structures from those permitted through earlier legislation. Long Branch adopted a Council-Manager Form D form of government effective

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<sup>2</sup> The Optional Municipal Charter Law, also referred to as the Faulkner Act, is codified as N.J.S.A. 40:69A-1 to -210.

<sup>3</sup> P.L. 1882, c. 46.

<sup>4</sup> State v. Britton, 47 N.J.L. 251, (1885).

<sup>5</sup> P.L.1903, c. 190.

<sup>6</sup> P. L.1911, c. 221.

<sup>7</sup> Woolley V. Flock, 92 N.J.L. 65 at 65 (1918).

<sup>8</sup> Woolley V. Flock, 92 N.J.L. 65 at 68 (1918).

<sup>9</sup> P. L. 1928, c. 272.

<sup>10</sup> P. L. 1929, c. 59.

<sup>11</sup> P. L. 1936, c. 108.

<sup>12</sup> N.J.S.A. 40:69A-1 to -210.

in 1961.<sup>13</sup> The City adopted its current form of government, Mayor-Council Form A, effective July 1966.<sup>14</sup>

### **Application of Statutes in Municipalities Using Faulkner Act Forms of Government**

The Faulkner Act, specifically N.J.S.A. 40:69A-26, establishes the legal framework of how municipalities govern themselves after the adoption of a form of government under the act. The municipality is governed by the plan adopted, by the provisions of the Faulkner Act common to optional plans, and by all applicable provisions of general law, subject to the transitional provisions within the Faulkner Act. N.J.S.A. 40:69A-28 defines a general law as follows:

For the purposes of this act, a "general law" shall be deemed to be any law or provision of law, not inconsistent with this act, heretofore or hereafter enacted which is by its terms applicable or available to all municipalities, and the following additional laws whether or not such additional laws are so applicable or available to all municipalities: legislation relating to taxation, local courts, education, health, public authorities serving more than one municipality, and municipalities in unsound financial condition.

In Bucino v Malone,<sup>15</sup> the New Jersey Supreme Court reviewed the constitutionality of N.J.S.A. 40:69A-26 and 28. The Court wrote:

Section 28 merely provides that two kinds of general laws shall still be applicable to municipalities that adopt a charter under the Faulkner Act, notwithstanding such action. First are those general laws applicable to all municipalities no matter what their class may be. Second are those laws which, although they **cover the class in which the particular municipality falls**, do not refer to all municipalities generally. (Emphasis added.)

The Court found in Bucino that laws governing classes of cities fall into "general law" as defined in N.J.S.A. 40:69A-28.<sup>16</sup> The Court further found that "general law," as defined by N.J.S.A. 40:69A-28, would continue to govern municipalities that have opted for the Optional Municipal Charter Law, pursuant to N.J.S.A. 40:69A-26.<sup>17</sup>

The language within the Faulkner Act relies on the statutory classification system for cities for its implementation. This indicates that the Legislature intended for the statutes to be used in conjunction with one another. The Faulkner Act explicitly requires or permits actions in various classes of cities. Specifically, the Faulkner Act requires a board of alcoholic beverage control in

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<sup>13</sup> CENTER FOR GOVERNMENT SERVICES RUTGERS UNIVERSITY, MUNICIPAL CHARTER REVISIONS IN NEW JERSEY: AN INVENTORY OF CHANGE 1950 – 2015, (Nov. 2015), ("Municipal Charter Revisions in New Jersey"), 27 [https://celg.rutgers.edu/sites/celg.rutgers.edu/files/documents/muni\\_charter\\_reock\\_82720.pdf](https://celg.rutgers.edu/sites/celg.rutgers.edu/files/documents/muni_charter_reock_82720.pdf).

<sup>14</sup> Ibid.

<sup>15</sup> Bucino v Malone, 12 N.J. 330, (1953).

<sup>16</sup> Id. at 348.

<sup>17</sup> Ibid.

first class cities,<sup>18</sup> permits the appointment of a deputy director in cities of the second class operating under the “Mayor-Council Plan D” form of government,<sup>19</sup> and allows the mayor to appoint the police chief in cities of the first class under the “Mayor-Council Plan C” form of government when permitted by ordinance.<sup>20</sup> The Faulkner Act’s reliance on the classification system of cities established in N.J.S.A. 40A:6-4 suggests that it was not the Legislature’s intent to create a new type of municipality through the Faulkner Act. A city that selects a form of government under Faulkner Act remains a city of the first, second, third, or fourth-class as defined in N.J.S.A. 40A:6-4.


### **Seaside or Summer Resort Cities**

There are nine cities boarding the Atlantic Ocean with lifeguard pension programs. A 2011 Inventory of Municipal Government Forms<sup>21</sup> reports that only one fourth-class city continues to use the city form of government. According to the Inventory, three cities use a commission form of government<sup>22</sup> and five cities use a form of government available through the Faulkner Act.<sup>23</sup> Of those five cities, three use the Mayor-Council form of government like Long Branch.<sup>24</sup> In a number of these cities, the courts have required the creation of pension programs for lifeguards regardless of the form of government selected by the city.<sup>25</sup> It thus appears that Long Branch is required to comply with the requirements of the Lifeguard Pension Law.

Only a court can conclusively determine the legal rights and duties involved, but OSC notes that the failure to create and administer a lifeguard pension plan is contrary to the requirements of N.J.S.A. 43:13-23 to -29. The City’s noncompliance with the statutory requirements may create significant liabilities for the City. OSC urges the City to address this issue further with legal counsel.

Sincerely,

KEVIN D. WALSH  
ACTING STATE COMPTROLLER

By:   
Christopher Jensen, CPA  
Director, Audit Division

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<sup>18</sup> N.J.S.A. 40:69A-43(e).

<sup>19</sup> N.J.S.A. 40:69A-43.1.

<sup>20</sup> N.J.S.A. 40:69A-60.7.

<sup>21</sup> CENTER FOR GOVERNMENT SERVICES RUTGERS UNIVERSITY, INVENTORY OF MUNICIPAL FORMS OF GOVERNMENT IN NEW JERSEY, (Sept. 2011), (“Inventory of Municipal Forms of Government in New Jersey”), 21.

<sup>22</sup> Inventory of Municipal Forms of Government in New Jersey at 22.

<sup>23</sup> Inventory of Municipal Forms of Government in New Jersey at 23-25.

<sup>24</sup> Inventory of Municipal Forms of Government in New Jersey at 24-25.

<sup>25</sup> See Paludi v. Ventnor City, 194 N.J. Super. 565, (Law Div.1984). See also City of Cape May v. Colosi, 325 N.J. Super. 288, (App. Div. 1999).

c: Jacquelyn Suarez, Commissioner, Department of Community Affairs  
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Charles F. Shirley, Jr., Business Administrator, City of Long Branch  
Michael Martin, Chief Financial Officer, City Long Branch  
Bill Dangler, City Council, City of Long Branch

*\* Prior to the release of this letter, Long Branch was given a draft and provided the opportunity to respond. The City's response is attached as Appendix A. In its response, the City questions the enforceability of the law and contends that funding a lifeguard pension plan "appears to run counter to the stated purpose of the Office of the State Comptroller." In addition to evaluating compliance with the Lifeguard Pension Law at the municipal level, we reviewed the impact of the law collectively in our New Jersey's Lifeguard Pension Programs report and make recommendations to the Legislature to address the arbitrariness and unequal application of the law.*



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June 26, 2025

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RE: Application of the Lifeguard Pension Law – Discussion Draft

Dear Mr. Walsh:

As you are aware, this firm represents the City of Long Branch as their municipal counsel. We are in receipt of the draft report submitted by your office concerning the status of Long Branch's lifeguard pension plan and offer the following response as requested.

The distinction between a City "type" of government, and the "form" of municipal government that the municipality operates under has become meaningless in the broader context of municipal operations. With the exception of the Small Municipality plan (requiring a population of under 12,000) and the Borough form of government (available only to borough type municipalities), any municipality can choose from any other form of municipal government to establish and administrate their governing powers and responsibilities. While the initial impetus behind incorporating a municipality as a city appears to have greater autonomy over their own affairs, the 1917 Home Rule Act and subsequent legislative amendments have largely erased the distinctions between Boroughs, Townships, Villages, Towns and Cities in all but name. While a greater degree of executive power may be a hallmark of the original City type of government, the

current statutory structure allows for a Township like Edison to operate under the same form of government as the City of Long Branch, regardless of incorporation status.

Further compounding this issue are the historical anomalies in place whereby school funding laws, liquor laws affecting Townships but not Boroughs, and government funding predicated on municipal status which have resulted in the creation of hundreds of municipal entities within the state which operate identically to the Atlantic shoreline cities affected by these statutes. In this manner, the State has variously been home to the Borough of Neptune City, the Township of Glen Ridge Borough, the City of Orange Township, and South Orange Village Township among many others. Red Bank alone has been, at various times, Red Bank Town, Shrewsbury City, and ultimately the Borough of Red Bank. While many of these municipalities have since reamended their corporate documents and status in a return to historical form, the fact remains that of the more than 40 municipalities bordering the Atlantic Ocean, fewer than a dozen fall into the category affected by this legislation. In Monmouth County alone, the municipalities of Manasquan, Sea Girt, Spring Lake, Lake Como, Belmar, Bradley Beach, Neptune (Ocean Grove), Allenhurst, Deal and Monmouth Beach all directly border the Atlantic Ocean yet are under no obligation to fund lifeguard pension programs for their seasonal employees. Under the current logic, if the City of Long Branch were to officially change its name to the Town of Long Branch – even while maintaining the same form of government - any such pension obligations would immediately cease.

Moreover, these distinctions seem to have no regard for population, nor can they be rationally related to the longevity of service of these guards. The City of Cape May and its roughly 2,700 residents employ approximately 80 lifeguards/staff each year, while Atlantic City and its 38,000 residents' staff approximately 160 lifeguards during the peak bathing season. Of the approximately 140 lifeguards staffed by the City of Long Branch each year, most will be employed in fewer than 5 seasons (between the ages of 17-22) with oversight provided by full-time employees of the City who would not qualify for the pension program themselves. These employees would, in effect, never vest in the program and would simply represent a revolving door of contributions and refunds paid out upon their departure from employment.

Finally, there exists the problematic aspect of this statute in that it may well constitute special legislation as prohibited by the State Constitution. A law is regarded as special legislation “when by force of an inherent limitation, it arbitrarily separates some persons, places or things from others upon which, but for such limitation, it would operate.” Town of Morristown v. Woman’s Club, 124 N.J. 605, 622 (1991). In Vreeland v. Byrne, 72 N.J. 292 (1977), the Court established a three-part test to determine whether a statute constituted special legislation. Under that test, the purpose and object of the enactment must first be discerned, then applied to the actual situation presented, and finally it must be decided whether, as applied, the resulting classification can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act. See Vreeland at 300-301. For all practical purposes, the statute itself, in singling out a highly selective subsection of municipalities without a conceivable rational basis for their inclusion while others are specifically excluded, seems to violate these principles.

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June 26, 2025

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If the goal is to encourage the return of suitable lifeguards for the protection of Jersey Shore beachgoers, then it fails to do so along the vast majority of the Jersey Shore. By excluding Boroughs, Townships, Villages and Towns from the requirement, miles and of miles of shoreline are excluded from the supposed purpose, most frequently in municipalities that are contiguous with each other. While it is true that a statute is not unconstitutional as special legislation merely because its effect is limited to a particular municipality (or municipalities), the classification by which a statute limits its effects must be grounded on a rational basis. Town of Seacaucus v. Hudson County Board of Taxation, 133 N.J. 482, 500 (1993). While the Court has indicated that one of the factors to look to would be whether “other municipalities could, and from time to time have, come within its scope” (Ibid.), the fact of the matter is that no Atlantic Shore municipality in New Jersey would currently adopt City classification if it included these additional mandates. In fact, of the nine cities boarding the Atlantic Ocean with lifeguard pension programs, only one continues to use the city form of government at all regardless of the type of incorporation they have.

Accordingly, the continued enforcement of this statute despite the lack of a rational basis for the distinctions that it draws between similarly situated municipalities, and despite the limited applicability it has to the employees affected is both archaic and wasteful. The diversion of municipal tax dollars for the funding of these programs – much of which would remain unutilized due to the reality of seasonal employment – is an unnecessary cost which appears to be counter to the stated purpose of the Office of the State Comptroller.

Very truly yours,

**RAINONE COUGHLIN MINCHELLO, LLC**

By: \_\_\_\_\_

Michael R. Burns, Esq.

MRB/arg

cc: Christopher Jensen, CPA, Director, Audit Division

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