

NEW JERSEY ASSOCIATION OF COUNTIES

County Recommendations to County Prosecutor Study Commission

1. INTRODUCTION

The Governor appoints all county prosecutors with the advice and consent of the Senate; the State's Attorney General may supersede any actions taken by a county prosecutor in all law enforcement matters; and county governments exercise little control over the fiscal or administrative functions of its county prosecutor. Nonetheless, current State law mandates that county governments bear the full responsibility to pay for the operation and maintenance of the county prosecutorial offices and facilities at a conservative estimate of \$450,000,000.00 per year, which equals approximately 10.5% of the statewide amount raised by county taxes. Even more alarming is the fact that although statewide county budgets decreased by 2.1% from 2009 to 2010, statewide county prosecutor budgets increased by nearly 13.0%.

With this in mind, county governments strongly supported Governor Chris Christie's Executive Order No. 33, which established a Study Commission to review the costs associated with the operation, maintenance, and capital expenses of this inequitable funding mechanism. In light of the fact that the State faces a \$10.5 billion structural deficit in fiscal year 2012 with seemingly no end in sight, it does not appear as if the Study Commission is prepared to recommend that the State assume a substantial portion of these costs at this time. As such and based on the recommendations of the five county executives, the County Administrators' Association of New Jersey, and the New Jersey Association of Counties, the Study Commission should recommend implementation of the following cost containment measures:

1. Require county prosecutors to comply with State mandated property tax cap levy restrictions. *See 2 below.*
2. Require the Attorney General's Office to provide a defense and indemnification for all legal matters arising out of the county prosecutors' offices relating to law enforcement activities. *See 3 below.*
3. Require county prosecutors to adopt, implement, and enforce the personnel policies and procedures of their respective county; and until such time, require the Attorney General's Office to assume all litigation expenses and any claims or judgments resulting from such matters. *Please note that if the prosecutor follows the county's personnel policies and procedures, and acts upon county counsel's advice on said matters, then the county would agree to pay for any litigation, claims, or judgments rendered in said matter. See 3 below.*
4. Prohibit county prosecutors from filing In re Bigley applications; and until such time, require the Attorney General's Office to assume all litigation expenses incurred as a result of defending all applications. *See 4 below.*

5. In the event that interest arbitration awards are in excess of the 2.0% property tax cap levy restriction, the State shall be responsible for the excess portion. *See 5 below.*
6. Authorize the use of forfeiture funds to offset county operating expenses in excess of State mandated property tax cap levy restrictions. *See 6 below.*

2. PROPERTY TAX CAP LEVY RESTRICTIONS

On July 14 2010, Governor Chris Christie signed into law **SENATE, NO. 29** (*Sweeney*) as P.L. 2010, c.44, which reduced the statutory property tax cap levy to 2.0% and took effect immediately. County governments generally supported this initiative, but cautioned that it should have included meaningful interest arbitration reform, civil service reform, and pension and health benefits reform. Unfortunately, the Legislature has failed to act on these critical initiatives, which will ultimately force county governments throughout the State to eliminate essential services and personnel, and drastically reduce improvements to county facilities, roads, and bridges. In light of this recently enacted law and inaction of the Legislature to provide necessary relief, county prosecutor budgets should be restricted in the same manner as well.

3. LITIGATION EXPENSES

The New Jersey Supreme Court in Wright v. State, 169 N.J. 422 (2001) held that the State may be found vicariously liable under the “New Jersey Tort Claims Act” N.J.S.A. 59:1-1 et. Seq. for the conduct of a county prosecutor or the prosecutor’s investigative subordinates. Importantly, this decision required the State to provide a defense and indemnification in actions brought against a county prosecutor when the prosecutor commits negligent acts or omissions during the investigation of criminal activity or enforcement of the law. The Supreme Court’s decision in Wright recognized the inequitable burden imposed upon county governments and shifted liability and relevant costs accordingly.

As previously noted, the Attorney General is charged with supervising county prosecutors in all law enforcement matters and supersedes county prosecutors in all criminal actions or proceedings. The Court in Wright also pointed out that both the Attorney General and county prosecutors are constitutional officers pursuant to N.J. Const. (1947) Art. V, Sec. IV, par 3. In light of this compelling relationship, county governments concurred with the Court that county prosecutors are in fact agents of the State for the purposes of determining vicarious liability. However, county governments submit that this groundbreaking decision should be codified into law through recently introduced legislation **ASSEMBLY NO. 3269** (*McKeon*); and, given the lack of appointive authority or fiscal and administrative control at the county level, be taken a step further to require that the Attorney General provide a defense and indemnification for county prosecutors in all matters committed during the course of employment.

4. BIGLEY APPLICATIONS

County prosecutors may file with the court an In re Bigley, 55 N.J. 53 (1969) application to challenge a county government's decision on its budget. In fact, prosecutors may file such a lawsuit in which an assignment judge is called upon to identify expenses that were not approved in the prosecutor's budget, but that are reasonably necessary for the prosecutor to carry out the statutory obligation to "use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the law." Although prosecutors seldom file Bigley applications, the threat of such a costly, divisive, and protracted lawsuit carries significant weight throughout the governing body's budgetary process. With this in mind, county prosecutors should be prohibited from the use of this antiquated and unfair resource that has long burdened county governments with an unlevel playing field.

5. INTEREST ARBITRATION AWARDS

As has been well documented, county governments dedicate approximately 50% of their budgets to salaries, wages, and health benefits; and have actively advocated for vital resources necessary to control these costs in a more effective and efficient manner. Most significantly, county governments support meaningful interest arbitration reform to address the fact that binding interest arbitration awards often exceed property tax cap levy restrictions by ignoring step, guide, and longevity pay increases and using surplus funds as a factor when considering a local government's ability to pay. Although Senator Michael Doherty has introduced legislation to prohibit arbitrators from awarding contracts that exceed property tax levy restrictions **SENATE, NO. 2310**, the measure has stalled in the Legislature and its future is uncertain at best at this point. In light of the fact that the Legislature has failed to act on interest arbitration reform, but found the will to impose significant restrictions on a county's ability to raise revenues to fund often mandated services, the State should be held accountable for its inaction and pay for arbitration award amounts that exceed property tax cap levy restrictions.

6. FORFEITURE FUNDS

Although the Appellate Division in State v. One 1990 Thunderbird, 371 N.J. Super. 228, 243 (App. Div. 2004) and Institute for Justice advise against the use of forfeiture funds to pay prosecutorial salaries and budgets, case law seems silent on whether forfeited revenues could be used to offset a governing body's operating expenses in excess of State mandated property tax cap levy restrictions. Despite the fact that the collection of these revenues varies from county to county and fluctuates each year, county governments should have the ability to offset operating expenses with the nearly \$15.0 million collected in forfeiture funds in 2009.

Please note that the figures provided in this document were collected from four comprehensive worksheets completed by all twenty-one counties, and were designed to capture the significant costs associated with the county prosecutors' offices.