NJAC LEGISLATIVE UPDATE

Board of Directors Meeting

June 15, 2010

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1. RECENT ACTIONS

SENATE, NO. 1248 *(Rice D-28),* which requires local governments to provide the Director of the Division of Local Government Services with a report concerning law suits to which it is a party before budget approval. NJAC testified before the Senate Community and Urban Affairs Committee on May 10th that it was concerned with the fact that this legislation imposes an undue burden on local governments at a time in which resources are limited and officials are struggling to provide essential services in a cost effective manner. NJAC also noted that it was concerned with the fact that this legislation conditions approval of a local government's budget on what could be a frivolous lawsuit or nominal legal action. As a result of this testimony and input from county counsels, Senator Rice agreed to amend S-1248 to establish a minimum threshold for reporting lawsuits similar to that already used in the annual audit reports submitted to the Division of Local Governments Services. S-1248 is on Second Reading in the Senate, but a version of the legislation does not exist in the General Assembly at this time.

ASSEMBLY, NO. 2270 *(Barnes D-1),* which requires county correctional facilities to provide inmates with prescription medication that was prescribed for chronic conditions prior to incarceration. Following the May 6th Assembly Law and Public Safety Committee meeting on the bill, NJAC met with Assemblyman Barnes to discuss some of its concerns. As a result of this meeting, the Assemblyman agreed to amend A-2270 to authorize county correctional facilities to administer generic prescription drugs at the time of incarceration instead of waiting 30 days as is the case under the bill; and to provide the facilities with the continued discretion to administer methadone as a drug detoxifier as is the case under current law. A-2270 is on Second Reading in the General Assembly, but a version of the legislation does not exist in the Senate at this time.

SENATE, NO. 1807 *(Sweeney D-3/Singer R-30),* which authorizes credit unions to serve as public depositories of governmental unit public funds. NJAC supported this legislation on May 26th before the Senate Commerce Committee, as it empowers local governing bodies with some much needed flexibility to manage valuable taxpayer dollars more effectively. The Committee favorably reported the legislation, which is now on Second Reading in the Senate. The companion version in the General Assembly is **ASSEMBLY, NO.1597** (*Scalera D-36/Chivikula D-17*) and is currently in the Assembly Financial Institutions and Insurance Committee awaiting consideration.

SENATE, NO. 1977 *(Smith D-17/Bateman R-16),* which revises the "Electronic Waste Management Act." In light of NJAC's concerns that the New Jersey Department of Environmental Protection (DEP) reduced funding for the County Environment Health Act (CEHA) by $500,000 in Fiscal Year 2010, the Senate Environment and Energy Committee amended this legislation on June 3rd to authorize counties, and other certified local health agencies, to enforce the provisions of the Act if they so choose. The bill as introduced would have required such enforcement and imposed an unfunded mandate. S-1977 has been second referenced to the Senate Budget and Appropriations Committee for consideration, but a version of this legislation does not exist in the General Assembly at this time.

SENATE, NO. 763 *(Sweeney D-3/Norcross D-5),* which authorizes directors of boards of chosen freeholders to exercise veto powers over the proposed actions of county authorities. NJAC supports this legislation as it provides non-optional charter counties with the same veto power granted to county executives. The Senate passed this legislation on May 20th by a vote of 38-0, and the Assembly Housing and Local Government Committee favorably reported the measure as **ASSEMBLY NO. 2078** *(Cryan D-20/Burzichelli D-3)* on June 10th. The General Assembly is expected to vote on the legislation before its summer recess and Governor Christie will likely sign it into law shortly thereafter.

ASSEMBLY, NO. 559 *(Cryan D-20/Chivukula D-17),* which decreases certain public document copy fees to $0.10 per letter size page and $0.15 per legal size page. The Association is working with the Constitutional Officers Association of New Jersey on securing amendments to this legislation, which the Association's Board of Directors opposed at its April 23rd.

In general, these amendments clarify the conflicting language contained in N.J.S.A. 47:1A-5(b), which led to costly litigation, and of which the court struggled to interpret in <u>Smith v. Hudson County Register</u>, 411 <u>N.J. Super</u>. 538 (App. Div. 2010). Nonetheless, the court held that beginning July 1, 2010, unless and until the Legislature amends OPRA to specify otherwise or some other statute or regulation applies, public agencies must charge requestors of government records no more than the reasonably approximated "actual costs" of copying such records. The court further concluded that because of the fiscal and administrative impacts on counties and other governmental agencies that are likely to result form this holding, its decision is prospective only. With this in mind, NJAC submits that these proposed amendments provide uniformity and predictability in the law, and should prevent further costly litigation against local governing bodies. A-559 is currently in the Assembly State Government Committee awaiting consideration; and the Senate version, SENATE, NO. 1212 (*Weinberg D-37),* is currently in the Senate State Government, Wagering, Tourism, and Historic Preservation Committee awaiting consideration as well.

2. GOVERNOR CHRISTIE'S PROPERTY TAX REFORM PACKAGE

Please take a moment to review the summary of results and recommendations for action compiled as a result of the "Hard Cap/Collective Bargaining Reform" survey collected last month. As you know, NJAC developed this survey as a strategy to formulate a comprehensive response to Governor Chris Christie's package of reform bills intended to provide local property tax relief.

A. SALARIES AND WAGES

Average percentage of county budget dedicated to Salaries and Wages in 2010 35.0%

Average percentage of budget increase in Salaries and Wages from 2009 2.0 %

B. HEALTH BENEFITS

Average percentage of county budget dedicated to Health Benefits in 2010 10.0%

Average percentage of budget increase in Health Benefits from 2009 13.0%

C. COUNTY PROSECUTORS' OFFICES

Average percentage of county budget dedicated to Prosecutor's Office in 2010 6.0 %

Average percentage of budget increase in Prosecutor's Office from 2009 2.0 %

D. COUNTY COURT FACILITIES

Average percentage of budget dedicated to Superior Court Facilities in 2010 1.0 %

Average percentage of budget increase in Superior Court Facilities from 2009 5.0 %

E. Please list increases in county operating expenses as a result of any shared services or consolidation initiatives on behalf of constituent municipalities, such as 9-1-1 or health department services.

- Police training centers
- Health departments
- Public libraries
- 9-1-1 emergency communication services
- Cooperative purchasing agreements
- Road maintenance
- Engineering projects

F. Please list other substantial operating expenses as a result of regulatory or statutory State mandates.

- Monies for patients housed in State institutions for mental diseases
- Aid to families with dependent children
- Courthouse security
- Requirements to publish bid notices in local papers, and to copy and mail bid specifications instead of through electronic means
- Utility expenses

G. Faced with a hard 2.5% cap and no collective bargaining reform, please list which services, positions, or other operating expenses you would eliminate or reduce from the budget.

- Sheriffs officers in civil courts
- Resources for Superior Court maintenance
- Juvenile detention officers
- Juvenile detention facilities
- Vehicles in county fleet
- Improvements to facilities and equipment
- Improvements to county roads and bridges
- Eliminating non-statutory/mandated services

H. Please circle what you believe may be the most effective method for reforming the collective bargaining process.

- All counties agreed that the following changes must take place in the collective bargaining process: prohibiting local governments from awarding contracts that exceed any statutory or constitutional cap levy; requiring the Executive Branch of State government to select arbitrators on behalf of local governments; and requiring arbitrators to take into account the impact on property taxes in reaching their decisions.

I. Additional Comments.

- Collective bargaining reform should require arbitrators to take into consideration salary guides that include increases in pay as a result of "steps" and "guides."
- A hard 2.5% cap will make it difficult for counties to respond to unforeseen situations such as legal settlements, utility and fuel expenses, and increases to the inmate population.
- A hard 2.5% may force counties to privatize certain essential services that may create liability and quality of service issues.

NJAC Recommendations For Action

As noted above, Governor Christie recently proposed a package of reform bills designed to provide local governments with the necessary tools to manage their budgets more effectively without raising property taxes. Some of these tools include: a 2.5% property tax cap levy restriction on local government spending, collective bargaining reform, civil service reform, and additional pension reform. Based on the data collected from this survey, NJAC recommends supporting the following concepts:

Hard Property Tax Cap Levy at 2.5%

- Support a 2.5% property tax cap levy restriction provided it includes significant collective bargaining reform, civil service reform, pension reform, and additional cap exceptions as outlined below;
- In addition to debt service payments already included in the Governor's proposal, NJAC should primarily advocate for a cap exception for increases in county operating expenses as a result of any shared services or consolidation initiatives on behalf of constituent municipalities;
- NJAC should also advocate for cap exceptions for expenses where the governing body exercises no administrative control, such as is the case with the costs associated with maintaining and operating the county prosecutors' offices and courthouse security;
- Support additional cap exceptions for health care costs and utility expenses; and
- Support the use of cap banking.

Collective Bargaining Reform

- Support collective bargaining reform to prohibit arbitrators from awarding contracts that exceed statutory or constitutionally mandated cap levies;
- Support collective bargaining reform to enforce arbitrators to take into consideration the impact on property taxes in reaching their decisions; and
- Support collective bargaining reform to require arbitrators to take into consideration salary guides that include increases in pay as a result of "steps" and "guides."

Pension Reform

- Support pension reform to cap supplemental compensation for accumulated sick leave for current employees; and
- Support pension reform to prohibit non-government groups from enrolling and participating in the State-retirement systems.

CIVIL SERVICE REFORM

- Support civil service reform to provide local governments with the option of opting out of civil service by ordinance or referendum.

3. LOCAL OPTION TAXES

At the Association's Board of Directors' meeting on April 23, 2010, the Board discussed the possibility of supporting "local option taxes" as a means to further reduce the State's reliance on the collection of property taxes. The purpose of this section is for the board to discuss as a matter of policy, whether it supports the use of such taxes. In summary, local option taxes authorize local governments to levy sales, income, payroll, tourism, or other similar taxes, and then dedicate the collection of such revenues for a specific purpose. Please note the following:

- Forty-three states authorize local option sales and income taxes
- Thirty-eight states permit local sales taxes
- Eighteen states permit local income and payroll taxes

ADVANTAGES OF LOCAL OPTION TAXES

Local governments gain flexibility with revenues when they have some control. Revenues that may become available with the addition of a local tax can help support existing or new programs and services without additional state money. There is the potential for local revenue base diversification—that is, levying taxes on portions of the tax base that may reflect a locality's economic strengths, such as tourism. This also can allow shifting of some of the tax burden off residents and on to visitors or other non-residents. Local taxes also place some of the taxing and spending decisions closer to residents, which may be of particular interest in geographically large states with regional diversity and varying political views. Greater accountability for taxing and spending decisions may result. Local autonomy also is supported with taxing and spending authority linked to local option taxes. Local option taxes allow voters, either directly or through their representatives, to choose whether to increase taxes to pay for services that state taxpayers may be unwilling to fund. Proponents of local option sales also argue that public opinion polls show that taxpayers prefer sales taxes over property and other taxes.

DISADVANTAGES OF LOCAL OPTION TAXES

On the other hand, there are some significant disadvantages to the use of local option taxes. Local option taxes will increase combined state-local tax rates. . Local taxes reduce state control of these tax sources and affect the extent to which state governments can tap these sources for their own purposes. And diversification alters the tax burden on residents and may lead to inter-local competition for revenues. If the local option tax is a sales tax, which opponents believe is a regressive form of taxation, the poor are likely to carry a disproportionate share of the sales tax burden. Local option sales taxes also may create disparities among localities, particularly in rural states where the retail base is not evenly distributed., possibly limiting a state's flexibility to raise tax rates in the future It is possible that local option tax structures will increase administrative and compliance costs for both taxpayers and government, especially local governments, and create confusion if separate tax bases, exemptions and collection activities are authorized. This situation may affect a state's economic competitiveness and business climate. Finally, there is no guarantee that the total tax burden will not increase. Once local option tax provisions are in place, removing or modifying them is difficult because of the revenue impact on local governments. Shifting the revenue burden from property to sales or income taxes also may worsen revenue fluctuations cased by economic cycles and worsen governmental fiscal problems.

LOCAL ACCOUNTABILITY AND FLEXIBILITY

These issues can include the importance of local accountability and flexibility. States differ on whether all local governments or only those that meet certain criteria may levy local option taxes. In some states, only the largest cities or counties may levy taxes, while other states grant statewide authority. States that grant authority broadly may help minimize the tendency for tax rates to be higher in larger cities.

VOTER APPROVAL REQUIREMENTS

States also vary considerably on voter approval requirements for local taxes. It is not uncommon for a state to require voter approval for some local taxes but not others. Voter approval requirements make it more difficult for local governments to levy or increase a tax and may delay imposition of a tax until the next election. Also, if voter approval is required for some local levies but not others, the local governing body may choose the path of least resistance and impose taxes that do not require voter approval. On the other hand, voter approval requirements force local governing bodies to carefully justify tax increases. Such requirements tend to minimize the number of times that local governments seek rate increases, creating a more stable tax climate.

LIMITS ON STATE REVENUE OPTIONS

It is possible that state decisions about the type of local option taxes authorized can alter the progressivity or regressivity of the entire state-local tax system. The federal government makes extensive use of the income tax but levies few consumption taxes. By default, state and local governments must rely primarily upon property and consumption-based levies that are viewed by many as regressive. Policymakers may want to consider whether a proposed local option tax alternative will increase or decrease the regressivity of their state-local system.

Administrative and Compliance Costs

Administrative and compliance costs may be an issue. Businesses that must file multiple tax returns will incur increased compliance costs, as will governments.

Uniformity

Assuming local option taxes are permitted by the legislature, uniformity among these taxes also may be a consideration. Uniformity can reduce the potential for competition among localities that want to attract new or expanding businesses, and a single set of tax rules can reduce the costs for all parties. Local option tax systems that are added to existing uniform, statewide tax bases also can help minimize compliance costs for taxpayers and preserve the state government's ability to maintain control over the state's economic competitiveness and business climate as a whole.

Balance

One principle of a high quality revenue system is balance. Balance means that states have a roughly equal mix of income, consumption and property taxes. Balance allows states to keep rates as low as possible in any one tax, minimizing the potential that the tax system will distort economic behavior. Balance also improves the stability of state-local revenue systems by distributing the tax burden to various types of economic activity. States will want to consider how granting local option taxation will affect the balance of the state-local tax system.

Fiscal Disparities

There will be disparities in the tax base available to finance services any time local rather than state taxes are used. The primary reason that states have expanded their role in funding education is to alleviate these disparities. Although property tax disparities receive a good deal of attention because of their school financing role, other tax sources actually may create larger fiscal disparities. When evaluating the use of local option taxes, state policymakers will want to consider whether a local option tax alternative will improve or exacerbate the fiscal disparities among local governments in the state.

Responsiveness to Economic Growth

Economists use the term elasticity to describe the responsiveness of a tax—or a tax system—to personal income growth. Elastic sources increase more quickly than personal income, while inelastic sources increase more slowly than personal income.

Income taxes are typically the most elastic state-local revenue source, while excise taxes typically are the most inelastic. State policymakers will want to consider whether the local option tax source will produce the long-term revenue growth necessary to finance the programs being funded by local governments. Authorizing an inelastic revenue source to pay for high-growth programs like jails or health care may lead to budget problems in the future.

STATEWIDE VS ENUMERATED LOCAL OPTION TAXES

As mentioned earlier, states differ on whether all local governments or only those that meet certain criteria may levy local option taxes. In some states, only the largest cities or counties may levy taxes, while other states grant statewide authority. States that grant authority broadly may help minimize the tendency for tax rates to be higher in larger cities.

INTER-LOCAL COMPETITION

Just as states compete with one another on the basis of tax policy, local option taxes may lead to competition among local governments. This competition may create an adversarial relationship among localities, as they try to use a competitive tax policy to lure businesses and residents. This has been the case in Colorado. Such competition does not improve the state's overall economic performance and possibly diverts resources from more productive uses.

FEDERAL DEDUCTIBILITY

State and local income and property taxes are deductible from federal adjusted gross income. Under current federal law, state sales and other consumption taxes also are, although a choice must be made to do one or the other. Federal deductibility can reduce the tax price of taxes, particularly for those taxpayers who face high federal income tax rates. Shifting from deductible to nondeductible local taxes may increase the amount of federal taxes paid by state residents.

**The information contained in this section was collected from a research paper on the subject published by the National Conference of State Legislatures.*