

NJAC LEGISLATIVE UPDATE

November 16, 2010

New Jersey State League of Municipalities Annual Conference

1. INTEREST ARBITRATION REFORM

On October 14th NJAC President Peter Palmer did an outstanding job at our joint press conference with the League of Municipalities to support interest arbitration reform. He highlighted the fact that NJAC supported the recent reduction to the property tax cap levy, provided it was supported by civil service reform; pension and health benefits reform; and interest arbitration reform. He also noted that if the Legislature fails to act on these critical initiatives, the 2.0% property tax cap levy restriction will force county governments throughout the State to eliminate essential services and personnel, and drastically reduce improvements to county facilities, roads, and bridges. We then delivered the same message to the Senate State Government Committee, which held S-2310 (*Doherty R-23*) for discussion purposes only. This legislation implements the Governor's toolkit recommendation for collective bargaining and interest arbitration reform.

The following week, Democrats introduced A-3393 (*Greenwald D-6*), which does not include a hard cap on interest arbitration awards, but instead: establishes the "Fair and Final" offer process for awarding settlements; enhances the education and professional responsibility requirements for arbitrators; and forces arbitrators to consider the recent reduction to the property tax cap levy as a factor in determining a local government's ability to pay. After three days of deliberation, the Assembly Budget Committee favorably reported A-3393 along partisan lines. The General Assembly was then set to vote on the measure on October 25th, but Democrats failed to produce enough votes in caucus, so Speaker Oliver tabled the measure. The General Assembly and Senate are set to hold voting sessions on November 22nd, but it's unclear at this time if they plan to reconsider the proposal or one that imposes a hard cap.

2. CIVIL SERVICE REFORM - WORK GROUP DISCUSSIONS AND ACTION

As you know, we have been working for several months with Assemblywoman Linda Stender on advocating for legislation to streamline the current civil service bureaucracy. As you may recall, our recommendations include: extending temporary seasonal employee appointments to ten months; expanding the working test period to six months; extending the time frame for disciplinary review appeals to 15 days; authorizing reconciliation plans; modifying special reemployment lists; modifying individual transfers; eliminating bumping rights, and altering the open competitive process. With this in mind, the Assemblywoman plans on introducing and considering legislation that addresses many of our recommendations at Monday's Assembly State Government Committee. Please note that Senate President Steve Sweeney plans on moving similar legislation in the Senate as well.

In summary, this bill allows local public employers in the civil service to negotiate with the majority representative of its employees in areas such as disciplinary review, ways to avoid or reduce layoffs, and terms and conditions of employment. When a public employer and a

majority representative are unable to reach agreement with respect to a particular issue, the provisions of the civil service statutes in Title 11A and regulations will remain in full force and effect.

In addition, the bill makes certain changes to civil service procedures with regard to the establishment, consolidation and abolition of titles, requires public notice of such proposed actions, and provides for the negotiation of compensation or wage rates for new titles and the public posting of a proposed layoff plan. The bill increases the length of seasonal appointments to no more than nine months from the current limit of no more than six months, extends the working test period for State and local employees to a uniform six months, and requires that local employers adopt an employee performance evaluation system. The bill instructs the Civil Service Commission to provide for the completion and submission of an application for an examination on its website and, when appropriate, to arrange for the online-administration of examinations.

The bill also establishes a temporary Civil Service Modernization Task Force to take recommendations, within 90 days of its formation, to the Civil Service Commission on how to achieve the goal of a 30 percent reduction in the number of titles in State and local government service that were in effect at the beginning of State fiscal year 2011 and how to expedite and streamline the examination process. The task force will have seven members: one from the New Jersey State League of Municipalities, one from the New Jersey Association of Counties, one appointed by the Governor, and four from unions that represent State and local government employees in New Jersey, two appointed by the Senate President and two appointed by the Speaker of the General Assembly in consultation with the New Jersey State AFL-CIO.

3. COUNTY PROSECUTORS' OFFICE TASK FORCE

On behalf of Governor Chris Christie's task force to study the costs associated with the county prosecutors' offices and task force member Morris County Administrator John Bonanni, NJAC developed and then distributed four tables designed to capture the significant costs associated with operating and maintaining twenty-one county prosecutors' offices. These tables include operating expenses, capital expenses, litigation costs, and miscellaneous data. Please find below a synopsis of some of the findings.

SUMMARY OF 2009 ACTUAL OPERATING EXPENSES

- Statewide total amount of prosecutors' budgets = \$377,307,231.00
- Statewide total amount of county budgets = \$5,983,989,398.00
- Statewide total amount raised by county taxes = \$3,390,419,191.00
- % of amount raised by county taxes dedicated to prosecutors' offices = 10.05%

SUMMARY OF 2010 BUDGETED OPERATING EXPENSES

- Statewide total amount of prosecutors' budgets = \$425,203,358.00
- Statewide total amount of county budgets = \$5,857,855,483.00
- Statewide total amount raised by county taxes = \$3,656,225,449.00

- % of amount raised by county taxes dedicated to prosecutors' offices = 10.49%

OTHER INFORMATION

- County budgets decreased by approximately 2.1% from 2009 to 2010.
- County prosecutors' budgets increased by approximately 12.7% from 2009 to 2010.

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 Task Force to study the costs associated with the prosecutors' offices is prepared to recommend that the State assume these substantial costs at this time. With this mind and based on the recommendations of several county administrators, NJAC and several county administrators plan to make the following recommendations to the Task Force.

If the Governor's Task Force to study the costs associated with the operation and maintenance of the county prosecutors' offices concludes that the State should not assume such a burden at this time, then the Task Force should recommend implementation of the following cost controls:

- 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.
- Require county prosecutors' offices to comply with State mandated property tax cap levy restrictions.
- 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.
- 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 arising out of such matters.
- Require the Attorney General's Office to provide a defense and indemnification for all legal matters arising out of the county prosecutors' offices. *As you know, current case law permits 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, but not for administrative or personnel matters. The Wright (2001) decision should be codified into law and expanded to require the Attorney General to provide a defense and indemnification for county prosecutors in all matters committed during the course of employment.*
- Authorize the use of forfeiture funds to offset county operating expenses in excess of State mandated property tax cap levy restrictions.

4. ADDITIONAL LEGISLATION

SENATE, NO. 2220/ASSEMBLY, NO. 3211 (*Sarlo D-36*)(*Casagrande R-12*), which limits unused sick leave pay and vacation leave carry-forward for school and local employees. NJAC has not taken a position on this bill at this time, but its board of directors will consider the matter at its next regularly scheduled meeting.

In summary, this bill amends current law to make applicable for all current and future officers and employees of boards of education and local governments the limit of \$15,000 for the payment of supplemental compensation at retirement for accumulated unused sick leave, and the limit on the carrying forward of vacation leave for one year only. Current officers and employees will be permitted to retain any supplemental compensation for unused sick leave, or to carry forward any vacation leave, already accrued as of the bill's effective date. In addition, the bill amends a section of law that permits local units to adopt an ordinance authorizing special emergency appropriations for contractually required severance liabilities resulting from the layoff or retirement of employees by removing the condition that this occur only when the total liability is in excess of 10 per cent of the amount to be raised by taxes for municipal purposes in the fiscal year in which the layoffs or retirements take place. The bill goes on to provide that such liabilities are to be paid without interest and, at the sole discretion of the local unit, may be paid in equal annual installments over a period not to exceed 10 years. Finally, the bill imposes limits on the use of sick leave by a State, local, or board of education employee in the twelve months before retirement. This provision applies to employees who commence employment with an individual employer on or after the bill's effective date. Specifically, the bill prohibits the use of six or more consecutive days of accumulated sick leave, without medical necessity verified in writing by a physician, by an officer or employee in the twelve months prior to retirement in anticipation of that retirement. The bill would not be deemed to impair the obligation of a collective negotiations agreement or individual contract of employment with relevant provisions in effect on the bill's effective date.

S-2220/A-3211 passed both houses on September 25th and is on the Governor's Desk awaiting his signature.

SENATE, NO. 1/ASSEMBLY, NO. 3447 (*Lesniak D-20/Green D -22*), which reforms the procedures concerning affordable housing and abolishes the Council on Affordable Housing. The Assembly Housing and Local Government Committee considered this legislation on November 8th and made several changes to the version passed by the Senate on June 10th. Most notably for counties, the Committee added the following language.

“Prior to filing a plan with the Department of Community Affairs, the county planning board by resolution shall adopt the housing element. In adopting the housing element or any amendment there to the board shall hold at least one public hearing for presentation and review of the housing element. Notice The Department shall provide any technical assistance required by the county planning board.”

We are working to clarify some potential issues that stem from the fact that county planning boards do not currently review or approve any elements of a municipality's master plan; and that this change may not consider the use of county resources or potential exposure to litigation. In addition to the above-noted substantive issues, several technical issues exist as well as this language amends the "Fair Housing Act," but not the "County Planning Act." Additionally, it seems to require county planning boards to adopt resolutions supporting a municipality's housing element as a mere formality. Although we don't believe this is the sponsors' intent, the language seems to create an unnecessary level of bureaucracy at the county level.

The bill has been second referenced to the Assembly Appropriations Committee, which may not meet again until December 9th. Although the provision concerning county planning boards may not work for a number of reasons, it may be in county governments' best interest to provide the sponsors with some constructive feedback instead of opposing the legislation as an unfunded mandate. As such, instead of requiring county planning boards to adopt a municipality's housing element by resolution, NJAC recommends offered language that would authorize a municipality to prepare its affordable housing plan in consultation with the county planning board. This language would seem to insulate counties from incurring potential liability and mitigate the use of depleted resources.