

# NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice

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## LEGISLATIVE UPDATE

May 9, 2011

### 1. HEALTH BENEFITS AND PENSION REFORM

We have nothing new to report on health benefits and pension reform at this time, but we'll make sure to keep you posted on any new developments as the Legislature is back in session.

### 2. COUNTY MEDICAL EXAMINER OFFICES

Both the Assembly and Senate health committees favorably reported and second referenced to the respective budget committees **SENATE, NO. 2395/ASSEMBLY, NO. 3480** (Vitale D-19/Bateman D-16)(Vainieri Huttie D-37/Rible R-11), which revises the "State Medical Examiner Act," and establishes the Office of State Medical Examiner in the Department of Health and Senior Services. Although NJAC appreciates the sponsors' intention to establish a uniform medical examiner system in this State, we're concerned with this legislation's far reaching impact on the fiscal, personnel, and practical operations of county government. With this in mind, we've submitted the recommendations and comments below to the sponsors, and plan to follow up with meetings over the next several weeks.

- *Matter in [brackets] below is material we propose deleting.*
- *Matter underlined below is material we propose adding.*
- *Matter enclosed in borders below our NJAC's comments.*

(2) [establish] provide advice concerning the standards of funding for the operations, staffing, capital equipment, laboratories, and facilities of the county and intercounty medical examiner offices;

Complying with new standards for funding operations, staffing, capital equipment, etc. create unfunded mandates similar to the one imposed by the "Court Securitization Act." Although the Act through regulations and directives attempted to create a uniform standard for security at county judicial and prosecutorial facilities, it significantly increased the costs associated with the operation and maintenance of such facilities.

(4) [oversee] provide advice concerning the operations of the county and intercounty medical examiner offices;

As counties are responsible for paying for the salaries, equipment, facilities, and other expenses incurred by the county medical examiner offices through the collection of the county general purpose tax, they should retain jurisdiction to oversee the operations of the county medical examiner offices accordingly.

(5) [make recommendations] provide advice for the use of funding by the county and intercounty medical examiner office;

This proposed amendment addresses the same concerns as noted in 7.(4) above and using the language “provide advice” is less onerous.

(3) provide advice [and consent] to the governing body of two or more counties seeking to maintain an intercounty medical examiner office, in accordance with the provisions of this act;

County governments have proven to be leaders in regionalization, shared services, and consolidation where feasible; and, should retain the autonomy to enter into such agreements without the imposition of an unnecessary level of bureaucracy.

(5) retain supervisory power over all personnel employed by the Office of the Chief State Medical Examiner [and all county or intercounty, and all assistant county or intercounty, medical examiners].

This proposed amendment addresses the same concerns as noted in 7.b.(4) above. Moreover, if the Chief State Medical Examiner retains supervisory power over the personnel employed by a county medical examiner’s office, then the Department of Health and Senior Services should assume the costs associated with the operation and maintenance of the county examiners offices accordingly.

(2) recommended minimum performance and operating standards for the Office of the Chief State Medical Examiner and each county or intercounty medical examiner office; and

e. [The Chief State Medical Examiner shall have direct supervision and oversight of any medical examiner facility operating under the jurisdiction of this State.]

This proposed amendment addresses the same concerns as noted c.(5) above. Please note that if the State does not have the financial resources to provide funding for the county medical examiner offices, then the State should be held responsible for assuming all litigation expenses arising out of the direct supervision and oversight of the county medical examiner offices and facilities.

9. (New section) a. The governing body of a county shall establish and maintain an office of the county medical examiner, except as otherwise provided in this section.

(1) The governing body of a county [shall] may seek the advice of the Chief State Medical Examiner concerning the appointment of a county medical examiner [by forwarding its nomination for county medical examiner to the Chief State Medical Examiner for review and approval].

Although county governments may seek the advice and counsel of the Chief State Medical Examiner concerning appointments, they should retain the discretion to hire qualified candidates as the governing body responsible for funding the operation and position.

(2) Two or more counties may jointly establish and maintain a medical examiner office[in a manner to be prescribed by the Chief State Medical Examiner, as provided in this subsection:

This proposed amendment addresses the same concerns as noted 7.c.(3) above. As the only true regional form of government in the State, county governments have led the way in creating innovative shared service initiatives that deliver essential services in a more cost effective manner while saving valuable taxpayer dollars.

(a) The governing bodies of two or more counties seeking to jointly maintain an intercounty medical examiner office on a cooperative or regional basis [shall] may seek the advice of the Chief State Medical Examiner concerning[, and shall obtain his written consent to enter into,] such an arrangement before doing so.

See 7.c.(3) and 9.a.(2) above. Moreover, requiring counties to obtain the written consent from the Chief State Medical Examiner before executing a shared services agreement imposes an additional impediment for counties to enter into such cost saving initiatives.

[(b) If the Chief State Medical Examiner does not consent to the arrangement, he shall give written notice to the county governing bodies that requested consent to do so and explain why the request was denied.

(c) If the Chief State Medical Examiner consents to the arrangement, the applicable county governing bodies shall forward their joint nomination for intercounty medical examiner to the Chief State Medical Examiner for his advice concerning the appointment.]

Counties should retain the autonomy to enter into shared services agreements; and in general, the decision making authority of an elected body should not be subject to the approval of an appointed state employee.

h. The salaries and expenses incurred by the office of the county or intercounty medical examiner shall be included in the annual budget of the county or counties served by that office, and the governing body of the county or counties shall fix the compensation to be paid to the county or intercounty medical examiner and assistant medical examiners and other personnel of the office. The governing body of the county or counties [shall] may consult standards adopted by the Chief State Medical Examiner with regard to funding for the staff, quarters, and equipment necessary for the performance of the duties of the office of the county or intercounty medical examiner. [The budget for, and spending by, the office of the county or intercounty medical examiner shall: be subject to review by the Chief State Medical Examiner; be published and available to the public as part of the budget approved by the governing body of the county or counties; and include all direct and indirect costs associated with the operation of the medical examiner office.]

Requiring the Chief State Medical Examiner to approve funding for county medical examiner offices will lead to costly litigation when disagreements arise on appropriate budget levels; and, do not take into consideration the fact that county governments face comprehensive property tax cap levy restrictions. And as noted above, an appointed state employee should not have the power to dictate how an elected body spends valuable taxpayer dollars.

j. The Chief State Medical Examiner may remove a county or intercounty medical examiner from office for cause, as set forth in this act, pending a hearing and final resolution, and in consultation with the governing body of the county or counties that appointed the county or intercounty medical examiner, as applicable. The Chief State Medical Examiner shall provide written notice of the removal to the governing body of the county or counties that appointed the county or intercounty medical examiner, as applicable, and to the county or intercounty medical examiner, immediately after making the removal official. A county or intercounty medical examiner removed under this provision shall be provided with notice of the charges against that person and afforded an opportunity for a hearing before an administrative law judge to contest the

removal, which shall conform with the provisions applicable to such contested cases in this State as set forth in statute and regulation.

In light of the fact that counties are responsible for hiring, paying, and maintaining the offices of the county medical examiners, they should be more engaged in any proceeding intended to remove them from office.

### 3. PRESIDENTIAL PRIMARY BACK TO JUNE

On May 5<sup>th</sup> the Assembly State Government favorably reported **ASSEMBLY, NO. 3777** (*Wisniewski D-19/Watson-Coleman D-15*), which eliminates the separate presidential primary election held in February of presidential elections years and should save the State and county governments approximately \$8.0 to 10.0 million in election costs every four years. Delegates and alternates to national conventions of political parties will be elected at the regular June primary election as was the case prior to the enactment of P.L.2005, c.136. NJAC noted our support of this legislation in committee on the 5<sup>th</sup>. Although a Senate companion version does not exist at this time, the General Assembly plans to vote on the measure on May 9<sup>th</sup>.

### 4. RESIDENCY REQUIREMENTS

On May 9<sup>th</sup> the General Assembly will likely concur with Governor Christie's conditional veto of **SENATE, NO. 1730/ASSEMBLY, NO. 2478** (*Norcross D-5/O'Toole R-40*)(*Moriarty D-4/Riley D-3*), which imposes residency requirements on certain public employees. The Governor conditionally vetoed the legislation to expand the proposed three-member hardship committee to five members; and to extend the bill's effective date until the first day after the fourth month of enactment. The Governor will have 10 days to sign this measure into law since the Senate concurred with the veto back in February.

In summary, this legislation requires public employees to obtain a principal residence in New Jersey within one year of beginning their public service. This residency requirement does not apply to public employees employed on the bill's effective date that do not maintain a principal residence in the State while holding employment without a break in public service of greater than seven days. The residency requirement does not apply to individuals whose position requires the employee to spend the majority of working hours outside of the State, or to certain faculty and administrative staff of State colleges, universities, and higher educational institutions. In addition, the bill provides that any person may request a residency exemption based on a critical need or hardship from a five-member committee established to such consider applications.

## 5. COUNTY PER DIEM RATES SET BY STATE HOUSE COMMISSION

Despite comprehensive property tax cap levy restrictions, the State of New Jersey charged counties 17.5% more in 2011 than the previous year for the care of county residents expected to be admitted to one of the State's psychiatric hospitals or developmental centers. Please note that from 2005 through 2011 the Department of Human Services increased, and the State House Commission approved, the "County Blended Rate" from \$253.17 per day to \$449.23 per day. Moreover, pursuant to N.J.S.A. 30:4-78, the State historically paid 90% of the "County Share," but has increased the counties' portion from 2009 through 2011 from the noted 10% to 15%.

Hudson, Sussex, Union, and Warren counties have recently submitted letters to the State House Commission urging the Commission to reconsider its rate adjustments in light of the recently enacted property tax cap levy law. As a result of their hard work and advocacy, the Commission discussed our concerns at its meeting on May 2<sup>nd</sup> where Warren County Human Services Director and County Adjuster Karen Kubert testified about the formulas impact on county governments. *Mrs. Kubert is also heading a panel on this complex and timely matter at our upcoming conference that should not be missed.*

## 6. STREAMING THE PERMITTING PROCESS - TASK FORCE

Thank you to our county officials (*Mercer County Counsel Arthur Sypek, Atlantic County Department Head of Regional Planning and Development Joe Maher, Atlantic County Deputy Director of Regional Planning and Development John Peterson, and Sussex County Director of Planning Eric Snyder*) that have agreed to serve on NJAC's Task Force charged with developing recommendations on how to streamline the permitting process by eliminating redundancies and facilitating economic development. It's not too late to let us know if you would be interested in serving on this Task Force as we plan to meet on an as needed basis with the Lt. Governor's staff. You may also provide us with any recommendations that may prove helpful.

## 7. CAP CALCULATIONS

*We're going to keep this issue in our legislative update until the law is repealed.* County governments *must* prepare their budgets pursuant to both the "1977 Cap Law" and the "2010 Cap Law," and then use the more restrictive one as its cap calculation for 2011.

The "2010 Cap Law" imposes a 2.0% cap on local government spending, with certain cap exceptions for capital expenditures; debt service; pension

contributions in excess of 2.0%; increases in health care costs in excess of 2.0%, but not greater than the percentage increase of the State Health Benefits Program (SHBP); and extraordinary costs incurred by a local unit directly related to a declared emergency. The new law also eliminates waivers; provides that local governments may only exceed the 2.0% cap levy restriction by a local cap override approved by a majority of the voters; and authorizes the use of cap banking for three years.

The "1977 Cap Law" imposes a cap of either 2.5% or the Cost of Living Adjustment (COLA), whichever is less, of the previous year's county tax levy. Please note that the Cost of Living Adjustment (COLA) rate for FY 2011 is 2.0%; and as such, counties must use this figure in their calculations. Although this cap restriction contains certain cap exceptions for capital expenditures; debt service; emergency appropriations; and several others, it does not contain an exception for pension contributions and limits the exception for health expenses for such expenses incurred over 4.0%. Additionally, the use of cap banking is restricted to two years.

- The formulation of two complex; yet significantly different cap calculations, imposes an undue burden on county governments that other local governments do not endure.
- County governments exercise little control over pension expenditures as such employer contributions are dictated by the Division of Pension and Benefits.
- Pension expenditures are becoming increasingly more difficult to manage at the local level; and, both the Administration and Legislature recognized this challenge by including pension contributions in excess of 2.0% as an exception under the "2010 Cap Law."
- Salary, wages, and health benefits make up to 50% of a county government's overall operating budget with seemingly no end in sight to annual double digit increases in health care costs.

*All twenty-one counties* and the New Jersey Association of Counties (NJAC) urge the Administration and Legislature to repeal the "1977 Cap Law" as it's contrary to leaderships' intent to limit cap exceptions and streamline the cap calculation process; imposes an undue burden on county governments to formulate two separate and distinct cap calculations; does not contain a necessary exception for pension contributions; and limits the exception for ever increasing health care costs. Although a repeal of the "1977 Cap Law" is the most effective method for providing some much-needed clarity under the "Local Budget Law," the Administration and Legislature may also consider amending the law to provide uniformity with the "2010 Cap Law" with respect to pension and health benefits as cap exceptions.

As an organization that represents the only true regional form of government in the State of New Jersey, NJAC is proud of the innovative programs and initiatives taken by our county governments to save valuable taxpayer dollars. As has been well documented, county governments provide cooperative purchasing, 9-1-1 communications and emergency dispatch, public health, animal control, and juvenile detention services on behalf of constituent municipalities and neighboring communities. Moreover, county governments have taken the lead on holding the line on salary increases and have implemented successful health care cost containment measures. In light of these progressive reforms, statewide county budgets actually decreased by 2.1% from \$5,983,989,398.00 in 2009 to \$5,857,855,483.00 in 2010.

Despite our commitment to delivering often mandated services in a cost effective and efficient manner, failure to repeal or amend the “1977 Cap Law” will force county governments to eliminate essential services and personnel, and drastically reduce improvements to county facilities, roads, and bridges.

#### 8. OTHER MATTERS

**SENATE, NO. 2729** (*Norcross D-5/ Connors R-9*), which authorizes a local public contract set-aside program for business enterprises that are owned by or employ veterans. The Senate passed this legislation by a vote of 35-0 on April 28<sup>th</sup> and the Assembly companion version **ASSEMBLY, NO. 3933** (*Connors D-7/Fuentes D-5*) is currently in the Assembly Military and Veterans Affairs Committee awaiting consideration.

**SENATE, NO 516** (*Weinberg D-37 Stack D-33*), which authorizes a central municipal court to hear cases brought by the county division of consumer affairs. The Senate passed this legislation by a vote of 35-0 on April 28<sup>th</sup> and the Assembly companion version **Assembly, No. 3170** (*Vainieri-Huttle D-37*) is currently in the Assembly Judiciary Committee awaiting consideration. Please note that only Bergen County maintains a central municipal court, which adjudicates cases filed by agents of the county health department and members of the county police or county park police system. In summary, this legislation addresses the Appellate Division’s concerns the central municipal court of Bergen County having jurisdiction to hear consumer fraud cases brought by the County’s Division of Consumer Affairs.