

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice

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STATE HOUSE NEWS

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NJ DEP WAIVER RULE

On Monday, NJAC and the New Jersey State League of Municipalities testified before the Senate Environment and Energy Committee to oppose **SENATE CONCURRENT RESOLUTION, NO. 239** (*Buono D-18/Gordon D-38*), which would determine that the proposed NJDEP waiver rule is inconsistent with legislative intent. Please note that if this concurrent resolution were to pass the Senate and an identical one were to pass the General Assembly by majority votes in both houses, the action would invalidate the waiver rule.

The primary intent of the proposed waiver rule is to remove unreasonable impediments to economic development while protecting the State's natural resources. In a nutshell, the rule would permit DEP to waive strict compliance with the regulations under certain limited circumstances. Please take a moment to review an overview of the proposed Waiver Rule provided to NJAC by DEP:

WHAT THE RULE WOULD DO

- The proposed waiver of Department rules would permit the DEP—under very limited and specific circumstances, using clear and transparent evaluation criteria, and on a case-by-case basis—to waive strict compliance with DEP rules in order to avoid unintended outcomes.
- The rule is a careful response to a real challenge that regulators face: how to craft rules that are specific enough to implement laws and lay down standards for the regulated community to follow, while at the same time providing regulators with enough discretion to ensure the originally intended outcomes.
- A waiver must be site-specific and could be considered only when one or more of the following situations exists:
 1. *Conflicting rules*: The requirement sought to be waived conflicts with another DEP or other State or Federal agency rule.

2. *Undue burden*: Strict application of a rule creates an exceptional and undue hardship—similar to criteria for local zoning variances—or where another method of compliance would have the same or better results but at a significantly lower cost.
 3. *Net environmental benefit*: The environment would be enhanced as a result of a waiver, such as by enabling remediation of contaminated wetlands.
 4. *Public emergency*: DEP must waive a rule to respond to an emergency.
- In evaluating any request for a waiver, the DEP would be required to ensure that:
 1. the public has been given notice of the waiver;
 2. there is sufficient information to support the granting of the waiver;
 3. the activity granted by the waiver would be consistent with any applicable statutory requirements; *and*
 4. the waiver is consistent with the Department’s mission to preserve our natural resources and protect public health and the environment.

WHAT THE RULE WOULD NOT DO

- No one would have an automatic right to a waiver, and any waiver would be granted only on a case-by-case basis, after careful review to ensure that the above criteria are met.
- No waiver would be automatically renewable.
- No waiver could be used to ignore the specific directions or requirements contained in State or Federal laws.
- Twelve categories of environmental rules would be ineligible for waivers, including federally delegated programs administered by the DEP; numeric or narrative standards that protect public health; and rules that protect endangered plants and animals.
- No polluter could get a waiver to evade responsibility for violations of environmental protection laws.

The Committee favorably reported the resolution by a vote of 3-2 and the measure is now on Second Reading in the Senate. A companion version of the resolution does not exist in the General Assembly at this time. Finally, the comment period for the proposed rule has closed and the matter is pending final approval.

COUNTY PROPERTY TAX CAP LEVY CALCULATIONS

NJAC has a meeting scheduled for September 30th with DCA Commissioner Lori Grifa, Deputy Commissioner Betty Lou DeCroce, and Director of Local Government Services Tom Neff to discuss the fact that 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. NJAC is advocating for legislation to repeal the “1977 Cap Law.”

VETERAN ID CARDS

On Monday, the Senate Military and Veterans Affairs Committee favorably reported **SENATE NO. 2991** (*Whelan D-2*), which authorizes county clerks to create an identification card for veterans under certain circumstances.

In summary, this legislation permits county clerk’s to create an identification card for veterans who are residents of that county and do not hold an identification card issued by the federal government that identifies the person as a veteran. The bill defines veteran to mean a person who has served in the Army, Navy, Air Force, Marines or Coast Guard of the United States or a Reserve component thereof or the State National Guard and who has been honorably discharged or released under conditions other than dishonorable. The cards will not serve as sufficient valid proof for official government business or to secure veterans’ benefits. The cards are designed to help veterans receive discounts or other courtesies extended to military veterans.

NJAC supports this measure as an opportunity to honor our veterans and because the legislation is permissive. Moreover, 19 of 21 counties already make available similar cards. The Senate plans to vote on S-2991 at its September 26th voting session.

COMPETITIVE CONTRACTING FOR HEALTH BENEFITS

Senators Tom Kean, Jr. and Joseph F. Vitale recently introduced **SENATE, NO. 2999**, which provides for the competitive contracting of health benefits plans by local governments.

As noted in the bill’s statement, this legislation provides that the competitive contracting process already permitted under the law with respect to certain goods and services shall be used by local units when purchasing health benefits plans for their employees, and for the purchase of related consulting services. We plan to review this measure in detail with our legislative affairs committee and purchasing officials as it may see some movement during the lame-duck

session. S-2999 is currently in the Senate Commerce Committee awaiting consideration.

PROJECTED COST ESTIMATES

If you haven't done so already, please join NJAC and several other counties in adopting a resolution opposing **ASSEMBLY, NO. 3285** (*Wisniewski D-19*), which requires certain public contract bid advertisements to contain certified cost estimates and specifies grounds for the rejection of all bids. Please let us know if you would like a copy of the model resolution and we'll make sure to forward it you accordingly.

SEPTEMBER 26TH GOLF OUTING AT MERCER OAKS

The NJAC Foundation is pleased to announce that it will donate \$12,000.00 to the National Guard State Family Readiness Council (NGSFRC) at its September 26th golf outing hosted by the Mercer Oaks West Golf Course.

NGSFRC is a 501 (C)(3) non-profit organization dedicated to providing financial assistance to members of the New Jersey Army and Air National Guard whose immediate family members experience financial hardships during the service member's deployment and up to eighteen months after demobilization.

The NJAC Foundation is also a 501 (C)(3) non-profit organization affiliated with the New Jersey Association of Counties (NJAC) and is committed to providing aid to educational and social institutions in the furtherance of their stated goals. Please visit our website at www.njac.org for additional details about this event and the Foundation.

*"If you do not look at things on a large scale, it will difficult to master strategy."
Miyamoto Murashi*

