

NEW JERSEY ASSOCIATION OF COUNTIES

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STATE HOUSE NEWS

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COUNTY OPERATED NURSING HOMES

Thank you to Monmouth County Administrator Teri O'Connor and Morris County Deputy County Administrator Mary Jo Buchanan for making the trip to Trenton on May 17th to meet with Governor Chris Christie's Deputy Chief of Staff Louis C. Goetting.

The somewhat positive news that we took from this meeting is that despite State revenue projections that fell approximately \$250.0 million short, the Administration does not plan to cut the \$5.0 million it originally proposed for Medicaid reimbursement in the fiscal year 2013 State budget. Additionally, the Administration intends keep the "Stop Loss Provision" language in this year's budget, which it implemented to cap the variance of reimbursement rates from one year to the next, and to protect county operated nursing homes from incurring additional losses. Without this provision and without an additional appropriation over the current proposal, counties would stand to lose an additional \$7.9 to \$9.5 million. Conversely, organizations that represent private pay nursing homes are working overtime to eliminate the "Stop Loss Provision" language in this year's budget as they would stand to gain \$129.0 million worth of increases to their current payment rates. We still have several meetings scheduled with legislators over the next couple of weeks, which we'll at a minimum utilize to protect our current position. Finally, the not so good news, is that because State revenues fell short of expectations, an increased appropriation for Medicaid reimbursement is unrealistic at this point.

During our meeting with Mr. Goetting, we also raised the long-term concern about each county negotiating separately with providers once managed care begins in July of 2013. Although the State does not appear to be interested in serving as the lead agency on behalf of the counties, the counties that still operate nursing homes should consider forming a committee, designating one county to serve as the agency, or working through NJAC in some capacity to negotiate with providers as a single entity. We should discuss this long-term strategy in more detail once the Legislature breaks for its summer recess. We'll make sure to keep you posted on any new developments and please keep reaching out to your legislators.

SOLAR LEGISLATION

Thank you to Morris County Administrator John Bonanni and Somerset County Administrator Mike Amorosa, who on May 17th testified before the Senate Environment and Energy Committee in support of **SENATE NO. 1925** (*Sweeney D-3/Smith D-17*).

NJAC supports this important and timely initiative as it will substantially accelerate RPS requirements and strengthen the Solar Renewable Energy Certificate (SREC) market. As you know, several counties have implemented or are pursuing cutting edge solar energy projects that will significantly lower electricity costs and stabilize property taxes. Through their county improvement authorities and as means to lower capital costs, many of these counties issued bonds to finance solar projects that have saved taxpayers approximately \$72.0 million. For each of these projects, a solar developer, selected through a competitive procurement process, is responsible for selling SRECs generated by the solar energy system; managing the SREC market risk; and importantly, repaying the project's debt service guaranteed by the respective county.

As a result of the significant oversupply of the SREC market, SREC values have declined sharply over the past several years from a high of \$600.00 for every SREC generated by the solar energy system to its current price of \$85.00. Although solar developers are in fact responsible for managing the SREC market risk and repaying a county's debt service as noted above, the continued instability and decline of the SREC market may force solar developers to default on repaying project debt service. That being the case, counties would be responsible for approximately \$205.0 million in debt service obligations. To remedy this impending scenario, NJAC supports S-1925 as a means to accelerate RPS requirements, which will in turn stabilize the volatile SREC market, protect an investment mechanism that has saved taxpayers approximately \$72 million, and insulate local governments from potential risk. Moreover, a steady and secure SREC market will ultimately facilitate the development of new solar projects that will save valuable taxpayer dollars moving forward. S-1925 is on Second Reading in the Senate and the General Assembly is in the process of working on their version of the legislation.

DEP WAIVER RULE AND SUSSEX COUNTY

On May 17th, NJAC noted its opposition in the Senate Environment and Energy Committee to **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. If this concurrent resolution were to pass the Senate and **ASSEMBLY CONCURRENT RESOLUTION, NO. 37** (*Barnes III D-18/McKeon D-27*) were to pass the General Assembly by majority votes in both houses, the action would invalidate the waiver rule. The Committee favorably reported SCR-239 and it's

now on Second Reading in the Senate; and, the Assembly Environment and Solid Waste Committee plans to consider ACR-37 at its meeting on May 21st.

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.

Separate, but related, Sussex County and NJAC are urging DEP for relief in the wake of the devastation caused by Hurricane Irene and Tropical Storm Lee in 2011. As you know, these two powerful storms hit Sussex County particularly hard and caused widespread damage to over 160 County roads and bridges at cost of \$11.0 million. In addition to this staggering price tag, the Department is requiring Sussex County to secure approximately 205 permits to remediate damaged sites at a cost of \$4.3 million; and of which, will likely take the Department up to three years to approve. To make matters worse, FEMA will not release the \$4.5 million in federal disaster relief monies it approved for the County until the Department issues the necessary permits. With this in mind, Sussex County is requesting that the Department issue a "Disaster Permitting Waiver" similar to the one granted by the Department following Hurricane Floyd in 1999. Such a waiver would save critical and limited County resources, expedite the remediation of flood damaged sites, guarantee the much needed FEMA disaster relief monies, and save valuable taxpayer dollars.

TRANSITION CENTERS FOR DEVELOPMENTALLY DISABLED ADULTS

Thank you to Senate President Steve Sweeney for second referencing **SENATE, NO. 611** to the Senate Budget and Appropriations Committee for further consideration. On May 17th the Senate Health and Senior Services Committee favorably reported the measure, which would require that each county establish a county-based center for the transition of young adults with developmental disabilities and is modeled after the Adult Center for Transition (ACT) in Gloucester County. The County recently established this initiative to serve adults in the mild-to-moderate range of disabilities by collaborating with its

county college, vocational-technical school, special services commission, and office of disability services.

NJAC testified before the Committee that although ACT effectively provides young disabled adults with specific guidance to assist them through a critical period in life, counties across the State may already provide the necessary services called for under this legislation. More specifically, many counties may already utilize a network of public and non-profit agencies such as a County ARC, the New Jersey Division of Vocational Rehabilitation Services (DVR), or a county Workforce Investment Board (WIB) to provide essential school transition-to-employment opportunities for young adults with disabilities. Although this legislation is certainly well intended, it may impose additional expenses on counties for outreach and orientation materials, program administration, and resources to assess project effectiveness through both process and outcome. There is no companion version of this bill in the General Assembly at this time.

COUNTY WELFARE AGENCY MONITORING

Thank you to Mercer County Welfare Director Frank Cirillo and Somerset County Welfare Director Joseph Kunzmann, who along with NJAC's Legislative Director Allen Weston testified on May 17th before the Senate Health and Senior Citizens Committee in opposition **SENATE, NO. 1401** (*Rice D-28/Vitale D19*). In summary this legislation would require county welfare agency monitoring of welfare emergency assistance motel placements, annual inspection of hotels used for emergency assistance recipients and notice of mobile health van services.

More specifically, the bill calls upon each county welfare director to provide regular reports to the State Department of Human Services regarding motels and hotels utilized by the county welfare agency for temporary emergency housing. In addition, the legislation requires county officials to visit recipients, at least every three months, at each such facility to determine whether emergency assistance recipients are receiving "needed" services, to coordinate the provision of other services to recipients and to identify potentially unsafe or unsanitary living conditions at temporary emergency housing units. Finally, the bill mandates every county welfare agency to provide information to emergency assistance recipients regarding the locations and times that mobile health vans will be administering services within the county. The counties must also provide notification of such information to providers of social services and shelter services within the county.

While the Association strongly supports the objective of this legislation, which is to improve the living conditions of welfare recipients who are placed in temporary housing, we are concerned that the significant additional burdens imposed upon county human services employees through this bill will jeopardize the ability of these individuals to perform other required functions

and deliver other essential welfare related services. For instance, requirement that county officials make physical visits to temporary emergency housing units on a regular basis will undoubtedly take employees of county welfare agencies away from other prescribed duties. Thus, in order to ensure that the mandates of S-1401 are met, counties will be required to hire additional personnel, cease the delivery of other welfare related services, or in some cases, do both. Moreover, the bill's requirement that employees of county welfare agencies identify "unsafe or unsanitary living conditions" at temporary emergency housing units imposes responsibilities upon county human services employees that they may be unqualified to perform. In many instances, the proper identification of such conditions will require technical expertise and training, which will further increase the cost of fulfilling the bill's mandates. Additionally, the bill currently fails to identify what constitutes "unsafe or unsanitary." As it stands, the vague nature of the term "unsafe or unsanitary" raises new and significant liability issues for county human services employees.

Finally, while the bill calls for reimbursement by the State for the administrative costs incurred by county welfare agencies in providing the services outlined in the bill on behalf of municipalities in a county who self administers their general assistance program, the vast majority of municipalities in New Jersey have consolidated their general assistance programs under the county umbrella, leaving very few cases to even be eligible for administrative reimbursement. The bill also fails to allocate any additional revenue to counties so that they may hire the additional staff needed and train their human services employees in order to provide the significant additional services mandated by this bill. The Committee second referenced S-1401 to the Senate Budget and Appropriations Committee for further consideration; and, a companion version of the bill does not exist in the General Assembly at this time.

INTERNET WAGERING

On May 10th, the Assembly Regulatory Oversight and Gaming Committee amended and favorably reported **ASSEMBLY, NO. 2578** (*Burzichelli D-3/Prieto D-32*), which would authorize Internet wagering at Atlantic City casinos under certain circumstances.

The Committee amended the bill to increase the tax imposed on Internet wagering gross revenues from 10% to 20% dedicated to the Casino Revenue Fund. NJAC supports this important and timely initiative as making New Jersey the first State in the nation to authorize Internet gaming is expected to increase annual casino revenues by more than \$200.0 million with now \$40.0 million dedicated to the Casino Revenue Fund. As the Committee is well aware, New Jersey casinos currently pay the State an 8% tax on gross revenues, which are appropriated to the Casino Revenue Fund and constitutionally dedicated for the benefit of the aged and disabled. A-2578 would impose a similar tax on Internet wagering gross revenues.

Importantly, Casino Revenue Fund monies provide much needed financial support for county based programs and initiatives such as Para-transit services, Meals on Wheels, and Pharmaceutical Assistance to the Aged and Disabled (PAAD). As the State's gaming industry has struggled, the Casino Revenue Fund has lost more than \$2.0 billion in revenues since 2007, where the Fund earned approximately \$5.0 billion that year. Various projections for 2012 put that number at \$3.0 billion. Consequently, counties across the State have been forced to cut essential services at a time in which demand is drastically increasing. The Committee second referenced A-2578 to the Assembly Appropriations Committee for consideration; and, the Senate version **SENATE, NO. 1565** (*Lesniak D-20/Whelan D-2*) is on Second Reading in the Senate.

COUNTYWIDE PURCHASING SYSTEMS

On May 10th, **ASSEMBLY, NO. 2202** (*O'Donnell D-31/Cryan D-20*) was withdrawn from consideration. In summary, this legislation would've permitted the establishment of a county-wide purchasing system by a county that employs a qualified purchasing agent; and, would've mandated participation by all school districts located within the county. Our county purchasing officials and several counties strongly opposed this legislation because of the unintended consequences it would've imposed on county procurement operations.

"The task of a leader is to get his people from where they are to where they have not been." Henry Kissinger.

