

# NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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## STATE HOUSE NEWS

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### SPECIAL ELECTIONS

Special thanks to NJAC's board of directors, county administrators, finance officers, and county clerks for their patience and hard work in advocating for the July 17<sup>th</sup> memorandum from the State Division of Elections concerning reimbursement for specified expenses for the 2013 special primary and general elections for the United States Senates. In summary, the Division confirmed that the State will reimburse counties for all reasonable and necessary expenses incurred for the elections, which include: ballot printing, board worker salaries, mailings, overtime, polling place rentals, publication of election notices, voting machine transportation, and mileage. Importantly, the Division of Local Government Services in the Department of Community Affairs also provided significant guidance by authorizing counties to use the Division's letter as a formal award letter for the purpose of approving a "Chapter 159" budget amendment as opposed to issuing an emergency appropriation. The budget amendment must include a cost estimate with fully documented supporting detail and a resolution from the freeholder board approving the amendment.

### PROJECTED COST ESTIMATES

NJAC's Legislative Affairs Committee is in the process of review **ASSEMBLY, NO. 4147** (*Greenwald D-Camden/Rible R-Monmouth & Ocean*), which would require certain contract bid advertisements to contain certified cost estimate ranges, would specify the grounds for the rejection of all bids, and would require a 50% guaranty on bids. Assemblymen Greenwald and Rible introduced A-4147 on June 6<sup>th</sup> and the bill is currently in the Assembly Housing and Local Government Committee awaiting consideration.

#### *Provisions*

1. A-4147 would require a contracting unit to reject all bids for *publicly stated bona fide* reasons, which would include that the lowest bid substantially

- exceeds the *published and attested* cost estimates or *estimate ranges* for the goods or services.
2. This bill would increase the guarantee required by a person bidding on a contract for the erection, alteration, or repair of a public building, structure, facility or other improvement to real property, the total price of which exceeds \$100,000.00, in the amount of 50% of the bid, but not in excess of \$100,000.00.
  3. The bill would also require that the advertisement for bids for construction projects projected to cost in excess of \$500,000.00 shall include the contracting unit's or its purchasing agent's projected cost estimate ranges for the base bid contract and any specified alternate proposal, such estimate ranges having been attested to as reasonable by the individual or firm preparing the cost estimate ranges. The highest amount of a cost estimate range shall not be greater than five percent more than the lowest amount. The projected cost estimate ranges shall be attested no more than 30 days prior to the bid advertisement date.
  4. If the published specifications provide for receipt of bids by mail or hand delivery, only one copy of the bid documents shall be required.
  5. This bill would take effect immediately and apply to bids advertised on or after the first day of the eighth month next following the date of enactment.

#### *Comments*

1. Although the provisions above summarize the legislation's impact on counties, this legislation would apply to municipalities and school districts as well. The New Jersey State League of Municipalities and the New Jersey School Boards Association are also in the process of reviewing this bill.
2. NJAC has previously opposed similar legislation that would have required certain public contract bid advertisements to contain certified costs estimates and specified grounds for the rejection of all bids.
3. This legislation would appear to defeat the intended purpose and cost benefits of competitive bidding as the measure would provide contractors with little incentive to submit proposals below projected cost estimates.
4. This legislation would likely increase the cost of doing business with local governments as preparing bid specifications would become more complex. Depending on the size and scope of a construction project, counties may be required to hire professional consultants to prepare comprehensive cost estimates.
5. County employees may not be qualified to "attest" to the accuracy of such cost estimates further driving up project expenses; and, face potential litigation if the reasonableness of the estimate is challenged in court.

6. This legislation would appear to eliminate the important flexibility local governments exercise under current law when making decisions concerning the acceptance or rejection of all bid proposals - including those that deal with the purchase of goods and services.
7. The Utility Contractors Association of New Jersey (UTCA) will likely support this legislation as one of its top lame-duck legislative priorities.

### *Recommendation*

Although we're open to suggestions that would make this legislation more palatable for local governments already struggling to make ends meet, NJAC recommends opposing the measure at this time as it would impose an undue burden and create unnecessary expenses for counties throughout the State.

### **BAIL REFORM**

NJAC is also in the process of reviewing **SENATE, NO. 2885** (*Norcross D-Camden*), which would establish judicial criteria for determining pretrial detention of persons charged with first degree crimes and would establish statutory bail alternatives for non-violent offenders. Senator Norcross introduced S-2885 on June 24<sup>th</sup> and the bill is currently in the Senate Law and Public Safety Committee awaiting consideration.

### *Provisions*

1. S-2885 would authorize the court to order the detention of a defendant before trial if that defendant is charged with a crime of the first degree.
2. More specifically, a court may order pretrial detention if the court determines that no amount of bail, non-monetary conditions of pretrial release or a combination of bail and conditions would assure that the defendant charged with a crime of the first degree would appear for trial.
3. A court could also deny pretrial release in order to protect the safety of any person or the community, or to prevent the defendant from obstructing or attempting to obstruct the criminal justice process.
4. S-2885 would also provide a court with alternatives to setting bail for defendants charged with non-violent offenses to ensure the defendant appears for trial.
5. A court may release a defendant who fulfills pretrial conditions as an alternative to bail by ordering one or a combination of conditions that would require a defendant to: remain in the custody of a designated person; maintain employment; commence an educational program; abide by travel restrictions; avoid contact with the victim; comply with a specified curfew; report to a law enforcement agency; refrain from

- possessing a firearm; refrain from the excessive use of alcohol or other narcotics; undergo available medical, psychological, or psychiatric treatment; and, satisfy any other conditions imposed by the court.
6. This bill would take effect immediately, but section 1 would remain inoperative until the enactment of an amendment to State's Constitution authorizing the courts to deny pretrial release to defendants charged with certain first degree crimes.

### *Comments*

1. In general, supporters of the pretrial services outlined in this bill contend that these initiatives represent a fairer and more effective method for determining who remains in prison than the use of traditional bail bonds.
2. On the other hand, the commercial bail bond industry submits that commercial bail bonds provide for the most effective release of arrestees in terms of court costs associated with failing to appear and recidivism.
3. Although this legislation presents an appealing policy debate, NJAC is interested in learning more about how the measure could impact the county jails and the bail bond forfeiture process.

### *Recommendation*

NJAC has no recommendation on S-2885 at this time and will wait for feedback from our county jail wardens and county counsels before taking a formal position.

### **PRIVATIZATION CONTRACTS**

On June 28<sup>th</sup>, Governor Christie vetoed **SENATE, NO. 968/ASSEMBLY, NO. 998** (*Weinberg D-Bergen*)(*Vainieri- Huttle D- Bergen*), which would establish procedures and standards concerning public services privatization contracts. NJAC strongly opposed this legislation as it would have effectively prohibited the use of privatization contracts by requiring counties to pay new employees, wages and benefits at a rate not less than the wages and benefits paid to displaced employees. As has been well documented, counties execute privatization contracts to recognize substantial cost savings by typically reducing wage and benefit costs that comprise 50% of operating budgets. We were also concerned with the fact that this legislation would have required the Office of the State Ombudsman to review and approve privatization contracts creating an unnecessary level of bureaucracy. Moreover, elected county officials should retain the autonomy to enter into such agreements that they believe are in the best interest of their constituents.

## STATE HEALTH BENEFITS PROGRAM

On July 11<sup>th</sup>, Cigna invited NJAC, the New Jersey State League of Municipalities, and the New Jersey School Boards Association to meet with representatives from the Governor's Counsel to discuss our support of **ASSEMBLY, NO. 1273** (*Coughlin D-19/O'Donnell D-31*), which would require the State Health Benefits Program (SHBP) to provide certain information to participating public employers. Counties that currently participate in the SHBP have long objected to the fact that claims experience and loss report data are not made readily available by the SHBP. Moreover, the SHBP forces counties to pay for this critical information typically provided at no charge and in a timely manner by private health insurance plans. Despite a productive meeting, it's unclear at this point if Governor Christie plans to sign the measure into law.

## OPEN SPACE PRESERVATION

On July 18<sup>th</sup>, the Senate Environment and Energy Committee held a public hearing to discuss **SCR 160** (*Smith D-Middlesex/Bateman*). In summary, this proposed amendment to the State Constitution would provide a dedicated, stable source of funding to continue the State's current programs for open space, including flood prone lands, farmland, and historic preservation.

Specifically, this constitutional amendment would dedicate \$200 million annually for the next 30 years, from fiscal year 2015 through fiscal year 2044, of State sales and use tax revenue to finance the State's programs for open space preservation, farmland preservation, and historic preservation. The specific allocation for each of these purposes would be established by law. The amendment also allows for the dedicated monies to be used for stewardship activities and administrative costs associated with the programs. The constitutional amendment would also recognize a special funding category under open space preservation referred to as the "Blue Acres" program.

NJAC supports this legislation as county governments have benefitted a great deal from State preservation initiatives. Importantly, this legislation would establish a long-term and dedicated source of funding necessary to sustain open space, farmland, and historic preservation programs without raising taxes or creating new debt. Moreover, this legislation would provide voters with the opportunity to decide by referendum whether it's in the State's collective best interest to continue funding for the preservation and stewardship of New Jersey's open spaces, parks, waterways, farmland, and historic sites.

*"The will to succeed is important, but what's more important is the will to prepare." Bobby Knight.*