

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*March 21, 2014*

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### INTEREST ARBITRATION

On Thursday morning, NJAC and the New Jersey State League of Municipalities (NJSLOM) held a joint press conference on the steps of the State House to urge Governor Chris Christie and the State Legislature to extend the 2% cap on interest arbitration awards set to expire on April 1<sup>st</sup>.

Special thanks to NJAC President Claire French and Passaic County Freeholder Director Pat Lepore for speaking at the press event; and, the following county and municipal officials for their support: Bergen County Administrator Ed Trawinski, Elmwood Park Mayor Richard Mola, Mercer County Freeholder Sam Frisbee, Monmouth County Freeholder Gary J. Rich, Monmouth County Administrator Teri O'Connor, Morris County Freeholder William "Hank" Lyon, Morris County Administrator John B. Bonanni, Passaic County Administrator Anthony J. DeNova, and Woodland Park Mayor Keith Kazmark. NJAC would also like to thank NJSLOM Executive Director Bill Dressel for partnering with us on this important and timely matter that impacts counties and municipalities throughout the State.

*NJAC President Claire French provided the following remarks:*

- The New Jersey Association of Counties recognizes the unprecedented economic times our State, local governments, and taxpayers are struggling through; and, as an organization that advocates on behalf of a true regional form of government and long-time supporter of shared services and consolidation where feasible, chooses to be part of the solution.
- With this in mind, the New Jersey Association of Counties supported the 2010 reduction to the property tax cap levy, provided it was accompanied by civil service reform, pension and health benefits reform; and, perhaps most importantly, a 2% cap on binding interest arbitration awards - as county governments dedicate up to 60% of their overall operating budgets for employee salaries, wages, and health benefits. In addition to these

- substantial personnel costs, county governments face a restrictive 2% property tax cap levy where they must prepare budgets pursuant to two comprehensive cap calculations and then use the more restrictive one.
- To make matters more difficult for local governing bodies, the struggling real estate market caused a dramatic decrease in the State's ratable tax base and corresponding decline in taxable revenue.
  - Counties also face significant regulatory and statutory State mandates, which include operating county judicial and prosecutorial facilities, providing courthouse security, housing inmates in county jails, delivering health and human service programs, maintaining county roads and bridges, funding county colleges and vocational-technical schools, conducting primary and general elections, and much more.
  - In light of these very complex and demanding factors, local governing bodies are finding it difficult to make ends meet while providing often mandated services in a cost effective manner. As such, failure to permanently extend the 2% cap on interest arbitration awards set to expire in two short weeks, will force county governments throughout the State to further reduce or even eliminate essential services, critical personnel, and long-overdue infrastructure improvement projects.
  - For these reasons, and on behalf of the Board of Directors of the New Jersey Association of Counties, we urge Governor Chris Christie and State Legislature to act swiftly on permanently extending the 2% cap on interest arbitration awards as time is of the essence.

*Passaic County Freeholder Director Pat Lepore provided the following remarks:*

- I would like to take a moment to preface my remarks by saying that we have the utmost respect and admiration for the police, firefighters, corrections officers, and sheriffs' officers that put their lives on the line every day to protect the communities in which they serve. We are also not interested in taking food off the table from our hard working and dedicated public servants.
- Unfortunately however, if the Governor and Legislature fail to extend the 2% cap on binding interest arbitration awards we're concerned that arbitrators will once again award generous contracts that will undoubtedly jeopardize funding for other vital county services and functions as previously mentioned by Monmouth County Clerk Claire French.
- Although we have not had the opportunity to fully review the final report of the "Police and Fire Public Interest Arbitration Impact Task Force" issued yesterday, I can tell you that the 2% cap on binding interest arbitration awards has leveled the playing field in negotiations between collective bargaining units and local governing bodies. Prior to the 2%

- cap, arbitrators routinely awarded contracts with increases that ranged from 15% to as high as 40% in some counties. These awards took into consideration base salary, step increments, and longevity pay all of which are now included under the cap.
- In addition to effectively controlling personnel costs, the cap on interest arbitration awards has been a critical tool for negotiating reasonable successor contracts as parties are closer to reaching an agreement from the onset of negotiations avoiding further legal and administrative costs.
  - With this in mind, we respectfully request that Governor Chris Christie and the State Legislature enact legislation that will permanently extend the 2% cap on binding interest arbitration awards.

NJAC's Board of Directors also voted unanimously to join the NJSLOM and New Jersey Council of County Colleges in filing an *Amicus Brief* in support of Atlantic County's defense of an appeal of a recent Public Employment Relation Commission's (PERC) decision to overturn the "Dynamic Status Quo Doctrine." In summary, the Dynamic Status Quo Doctrine historically required public employers to pay employee increments for moving vertically along a salary guide once a collective negotiations agreement expired, but before an agreement on a successor contract had been reached. PERC concurred with Atlantic County Counsel Jim Ferguson that the Doctrine "is no longer practical in light of the severe restrictions imposed upon local governments by the property tax levy cap;" and, further held that the Doctrine "no longer fulfills the needs of the parties in that it serves as a disincentive to the prompt settlement of labor disputes, and disserves rather than promotes the prompt resolution of labor disputes.

## **BED BUGS BITE**

On Monday, NJAC testified before the Assembly Housing and Community Development Committee in opposition to **ASSEMBLY, NO. A-1578** (*Spence D-Essex/Tucker D-Essex*), which would establish procedures to prevent and eradicate bedbug infestations in certain residential properties.

Although NJAC commended the sponsors for their intent to require owners of multiple dwellings to maintain safe and clean living environments free from the presence of bedbugs, we're concerned that A-1578 would create a statutory framework in which county health departments would become the lead government agencies responsible for the remediation of bedbugs when landlords are unresponsive for the clean-up and maintenance of infested properties. At a time when county governments are struggling to make ends, we're concerned with the increased workload and expense this legislation would impose on

county health departments, most of which provide local public health services on behalf of constituent municipalities.

NJAC testified that county health departments are charged with protecting and enhancing the general health and welfare of county residents throughout the State. However, county health departments typically inspect and fine violators under certain circumstances, but do not engage in remediation or mitigation as it is often costly and time consuming. Although A-1578 would authorize local boards of health to impose fines or place liens on the properties of unresponsive landlords, we're concerned that these mechanisms would not adequately compensate county health departments for the significant amount of work and substantial expense necessary to remediate properties infested with bedbugs. Despite opposition from NJAC, NJSLOM, and the New Jersey Association of City and County Health Officials, the Committee favorably reported the measure, which is now on Second Reading in the General Assembly.

#### **COUNTY MOSQUITO CONTROL RESERVES**

NJAC is pleased to report that Senator Jeff Van Drew has agreed to introduce legislation that would authorize a county, by resolution, to establish a mosquito control reserve. NJAC's Board of Directors unanimously adopted this initiative as one of our top legislative priorities as it will help county governments throughout the State deliver services more effectively and efficiently while enhancing the level of service provided.

Current law requires counties to conduct comprehensive mosquito control activities that may include source control, trap setting, water management, surveillance, brush cleaning, public education, and the use of other critical vector control techniques. As the State continues to endure extended periods of heat, humidity, and rainfall, it's becoming increasingly more difficult for mosquito control officials to accurately predict mosquito populations. In fact, several counties recently issued emergency bonds as prescribed by N.J.S.A. 26:9-28 as they did not anticipate the surging mosquito population and substantial costs associated with eradicating mosquitoes and the potential diseases they carry and transmit.

With this mind, authorizing a county to establish a mosquito control reserve, similar to a snow removal reserve N.J.S.A. 40A:4-62.1, would stabilize the mosquito control budgeting process and enhance fiscal planning for mosquito control activities. Moreover, a mosquito control reserve would streamline the process for using emergency monies by eliminating the need to issue an overly burdensome bond that a county must provide in full as a deferred change in the next budget year N.J.S.A. 40A:4-47. NJAC recommends using the language

contained on the following page to amend or supplement various sections of statutory law, so that all twenty-one counties may benefit from the use of a mosquito control reserve. These sections may include, but are not limited to the “Local Budget law” at N.J.S.A. 40A:4-62.1, which may capture all twenty-one counties; the “Optional County Charter Law” N.J.S.A. 40:41A-1 et seq., which would capture Atlantic, Bergen, Essex, Hudson, Mercer, and Union counties; and, the “County Extermination Law” N.J.S.A. 26:9-13 et seq., which would capture those counties with independent mosquito control commissions and include Middlesex, Morris, Ocean, and Warren counties.

NJAC recommends using the following language: “A local unit may, by resolution, establish a mosquito control reserve. Unexpended balances budgeted annually for mosquito control activities may be lapsed into the reserve. Upon passage of a resolution of the governing body, funds in the reserve may be used for any purpose related to mosquito control by a county after current budget appropriations for that purpose have been expended. The Local Finance Board is authorized to adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L. 1968, c.410 (C.52:14B-1 et seq.) in order to effectuate the purposes of this section.”

## **BAIL REFORM**

NJAC’s Legislative Affairs Committee is currently reviewing **ASSEMBLY, NO. 1910** (*Burzichelli D-Cumberland, Gloucester, Salem/Watson-Coleman D- Mercer*), which would implement a constitutional amendment providing for pretrial detention of certain criminal defendants; would establish non-monetary bail alternatives for release; and, would authorize the judiciary to revise fees for certain legal programs and services.

## BILL HISTORY

Assemblyman John Burzichelli and Assemblywoman Bonnie Watson-Coleman introduced A-1910 on January 14, 2014; and Senator Donald Norcross (*D-Camden*) introduced the Senate companion bill S-946 on January 27, 2014. The Assembly Judiciary Committee recently held the bill for discussion purposes only, but neither house has considered the measure for vote as of this writing.

## PROVISIONS

### *Pre-Trial Detention of Violent Offenders*

1. This bill would reform the manner in which bail determinations in criminal cases are made in this State, and authorizes the Supreme Court to

- adopt Rules of Court to revise or supplement filing fees and other statutory fees in order to fund certain legal programs and services.
2. The bill would implement an amendment to the New Jersey State Constitution which would modify the constitutional right to bail and authorize courts to deny pretrial release of certain offenders. The sections of the bill pertaining to pretrial detention are to remain inoperative until the enactment of an amendment to Article I, paragraph 11 of the New Jersey State Constitution authorizing the courts to deny pretrial release to certain defendants.
  3. The criteria and procedure to be followed by a court in denying pretrial release would include a motion by the prosecutor for the court to hold a hearing on whether it should order the detention of the defendant if that defendant is charged with: 1) a crime under the No Early Release Act; 2) an offense for which the maximum sentence is life imprisonment; 3) an indictable offense if the defendant has been convicted of two or more crimes under the No Early Release Act or for which the maximum sentence is life imprisonment; 4) an indictable offense for which the victim is a minor; or, 5) a crime that imposes a mandatory minimum term of imprisonment and parole ineligibility under the "Graves Act."
  4. The bill would provide that a court may hold a detention hearing upon a motion of the prosecutor or the court in any case that involves a serious risk the defendant will flee, obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror. The bill sets forth a presumption that a defendant will not be detained prior to trial unless that defendant meets the above criteria necessary for a detention hearing. The bill would require that a detention hearing be held immediately upon the defendant's first appearance before the court unless the court orders a continuance. During a continuance, a defendant may, by motion of the court or the prosecution, receive an assessment to determine whether the defendant is a drug dependent person. During the hearing, a defendant is afforded the right to be represented by counsel, have an opportunity to testify, to present witnesses, and to cross-examine witnesses who appear at the hearing.
  5. In determining whether to deny pretrial release, the bill would require a court to take into account the nature and circumstances of the offense charged, the weight of the evidence against the defendant, and certain criteria regarding the history and characteristics of the defendant which are enumerated under the bill. The bill further requires that a defendant who is subject to detention receive a written detention order that sets forth the reasons for the detention, and directs that the defendant be afforded a reasonable opportunity to privately consult with an attorney. The bill would also afford a defendant the right to appeal an order of detention before trial to the Appellate Division of the Superior Court. An appeal

filed by the defendant is required to be heard and decided no later than 30 days following the initial order of detention.

### *Non-Monetary Release Alternatives*

6. A-1910 would provide a court with non-monetary release alternatives to setting bail for defendants charged with a crime to ensure that a defendant appears for trial. If a court determines that a defendant should not be released on his or her own recognizance, but does not pose a threat to any person or the community, the court may impose one or a combination of non-monetary release conditions set forth in the bill in place of setting bail.
7. The bill would require that a defendant who is released on personal recognizance or released with conditions receive a written notice advising the defendant of the release conditions and the consequences of violating those conditions. A defendant released from custody may have his or her release revoked and be subject to pretrial detention if that defendant was charged with a crime for which he or she is eligible for pretrial detention, and the defendant while on release has violated a restraining order, a condition of release, or the court has probable cause to believe that the defendant has committed a new crime. In addition, a defendant who violates pretrial release conditions may be subject to civil contempt, criminal contempt, forfeiture of bail, or any combination of those sanctions imposed by the court.
8. In order to assist with pretrial determinations, the bill would establish a Pretrial Services Unit within each county to assess criminal defendants prior to a bail hearing or first appearance for the purpose of making recommendations to the court concerning the appropriate disposition. The bill would require that the pretrial assessment be conducted using a validated risk assessment instrument and include an examination that weighs the factors used to determine whether a defendant should be detained prior to trial. The Pretrial Services Unit would monitor defendants who are released on conditions to ensure that they adhere to the condition, or conditions, of release ordered by the court.

### *Funding Mechanisms*

9. In addition, the bill would provide that the Supreme Court may, subject to limitations provided in the bill, adopt Rules of Court to revise or supplement filing fees and other statutory fees payable to the court for the sole purpose of funding: 1) the development, maintenance, and administration of a "Statewide digital e-court information system," that incorporates electronic filing, service of process, document and case

- management, financial management, and public access to digital court records; 2) the development, maintenance, and administration of a Pretrial Services Unit in each county; and, 3) the provision of legal assistance to the poor in civil matters by Legal Services of New Jersey.
10. The bill would establish in the General Fund a dedicated, non-lapsing fund to be known as the "21<sup>st</sup> Century Justice Improvement Fund." This fund would be annually credited with a sum equal to the revenue to be derived annually from the incremental amounts of any fees payable to the court that are revised or supplemented pursuant to the bill and the related fee revisions as provided by operation of N.J.S.22A:2-5 (*fees payable in the Appellate Division, designated to be the same as those payable in the Supreme Court*) and section 2 of P.L.1993, c.74 (C.22A:5-1) (*fees payable in the Tax Court, designated to be the same as those payable in the Superior Court*). The fund would be administered by the State Treasurer.
  11. To the extent that sufficient funds are available, monies annually credited in the "21<sup>st</sup> Century Justice Improvement Fund" would be allocated as follows: 1) the first \$15 million would be appropriated annually to the Judiciary to be used to fund the development, maintenance and administration of a Pretrial Services Unit in each county; 2) from any amounts remaining thereafter, up to \$17 million would be appropriated annually to the Judiciary for the development, maintenance, and administration of the Statewide digital e-court information system; 3) from any amounts remaining thereafter, up to \$10.1 million would be appropriated annually to the Department of the Treasury for distribution to Legal Services of New Jersey and its affiliates to facilitate the provision to the poor of legal assistance in civil matters. Additionally, this amount, as well as all other State funds distributed to Legal Services of New Jersey, would be required to be used exclusively for the provision of legal assistance to the poor in civil matters; and, 4) any remaining amounts would be retained by the Judiciary for the sole purpose of developing, maintaining, and administering court information technology.
  12. As part of its development of the Statewide digital e-court information system, the Administrative Office of the Courts would be authorized to establish systems to accept the payment of filing fees, administrative charges, fines and penalties imposed for motor vehicle violations under Title 39 of the Revised Statutes, civil and criminal penalties, other judicially imposed financial obligations, and related charges by card based payment, electronic funds transfer, or other methods the office deems feasible. The various municipal and joint municipal courts, when permitted by resolution of the appropriate municipal governing bodies, also would be authorized to establish such systems.



## COMMENTS

1. With respect to non-monetary release alternatives, proponents contend that these initiatives represent a more equitable method for determining who remains in prison than the use of traditional bail bonds.
2. Proponents submit that the State's bail system is broken and that nearly three-quarters of the 15,000 people incarcerated throughout the State are awaiting trial instead of serving a sentence.
3. Proponents further submit that decisions about who is released pending trial are based on the ability to pay bail and not on the risk to the community. As such, nonviolent, low-risk offenders are often warehoused in jails for long periods of time at a great financial cost to taxpayers simply because they cannot afford to pay bail.
4. In fact, pursuant to data collected from the Luminosity and Drug Policy Alliance analysis on the State's jail population:
  - 13,000 inmates housed in county jails on any given day.
  - 12% of this population are non-violent offenders who cannot make bail of \$2,500.00 or less.
  - \$100.00 per day cost to house an inmate in a county correctional facility.
  - 314 days is the average length of stay for an inmate who cannot make bail and is pending trial.

*Using these numbers:*

- $(13,000 \text{ inmates} * .12) = 1,560 \text{ inmates} * \$100.00 \text{ cost per day} * 314 \text{ average stay} = \$48,984,000.00 \text{ cost to county taxpayers}$
  - $(\$2,500.00 \text{ bail} * 1,560 \text{ inmates}) = \$3,900,000.00 \text{ unmet bail}$
5. According to this calculation, it costs taxpayers approximately \$48.9 million to house 1,560 non-violent offenders who don't have the means to post an estimated \$3.9 million in bail.
  6. On the other hand, the commercial bail bond industry and some county counsels submit that commercial bail bonds provide for the most effective release of arrestees in terms of court costs associated with failing to appear and recidivism. Some county counsels also contend that the proposal would impose a significant burden on the court system.
  7. With respect to the pre-trial detention of violent offenders, the measure would require a State constitutional amendment that appears to have precedent in other states and the federal government.

8. This Legislation has support from legislative leaders on both sides of the aisle, the Administrative Office of the Courts, the Attorney General's Office, and the Administration in general.

#### NJAC RECOMMENDATION

Although NJAC will solicit additional input from its Legislative Affairs Committee, the New Jersey Association of County Jail Wardens, and county counsels, NJAC recommends supporting the non-monetary release of non-violent offenders as a fair and equitable method for determining who remains in prison and as an effective mechanism for saving valuable taxpayer dollars. NJAC also recommends that the sponsors request a fiscal analysis of the measure to determine, in part, the potential costs associated with holding violent offenders in county jails without bail.

#### **NJAC'S ANNUAL CELEBRATION OF COUNTY GOVERNMENT**

NJAC conference registration, hosting opportunities, and the action packed schedule of events are now available online at [www.njac.org](http://www.njac.org). Don't miss the opportunity to be a part of our 64<sup>th</sup> annual celebration of county government scheduled to take place from May 7<sup>th</sup> through May 9<sup>th</sup> at Caesar's in Atlantic City and includes: the nation's only county vocational-technical school cook-off challenge; all major events and workshops hosted in the main exhibit hall; informative workshops approved for continuing education credits; a timely legislative leadership panel discussion and county awards presentation; and, unique networking opportunities to share resources and ideas.

#### **STATE HOUSE TRIVIA**

*Did you know* that Bell Telephone Laboratories in Union County developed the first transistor in 1948?

*"What you do speaks so loudly that I cannot hear what you say." Ralph Waldo Emerson.*

