

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

ANN M. CANNON
NJAC President
Mercer County Freeholder

JOHN G. DONNADIO
Executive Director

STATE HOUSE NEWS

June 12, 2015

NJ SUPREME COURT PENSION RULING

On June 9th, the New Jersey Supreme Court invalidated the provision of Chapter 78 signed into law in 2011 that required the State to make increased payments as an employer to the *State* pension systems. In general, the Court held that this specific provision of Chapter 78 violated the Debt Limitation Clause of the State's Constitution and that no enforceable contract was created by the 2011 law as a result. You may review the decision in its entirety at www.judiciary.state.nj.us. Importantly note that the Court's ruling does not impact employee obligations under Chapter 78 nor does it affect the local Public Employees Retirement System (PERS) and the local Police and Fire Retirement Systems (PFRS).

As has been well documented, the local pension systems funded by counties and municipalities through the collection of local property taxpayer dollars are actuarially sound as counties and municipalities have made full employer contributions as required under the law for over a decade. In fact, the local PERS is currently funded at 73.9% and the local PFRS is currently funded at 76.9% according to the latest valuation reports. Moreover, the local pension systems are well funded and solvent. Based again on the latest valuation reports, local PERS currently holds actuarial valued assets of approximately \$20.0 billion with estimated retirement allowances due of \$1.5 billion, while PFRS currently holds actuarial valued assets of approximately \$22.0 billion with estimated retirement allowances due of \$1.5 billion.

Although NJAC recognizes that the State must take meaningful steps to make the State government funded pension systems more affordable for taxpayers and sustainable for members, NJAC objects to any initiative that would affect, alter, integrate, or commingle the local pension systems as counties and municipalities have met their obligations as employers and the local pension systems are fiscally sound as a result. NJAC remains concerned with the New Jersey Pension and Health Benefits Study Commission's recommendation to adopt a unified State/local approach to benefits funding, and is encouraging all twenty-one counties adopt the Association's model resolution urging State leaders to protect local property taxpayers and governing bodies by preserving the structure and integrity of the fiscally solvent local pension systems.

OPEN PUBLIC MEETINGS ACT (OPMA) & OPEN PUBLIC RECORDS ACT (OPRA)

On June 8th, the Senate Budget and Appropriation Committee took testimony, but did not release legislation that would expand the “Open Public Meetings Act” and “Open Public Records Act.” The sponsors of the two bills, Senator Loretta Weinberg (D-37) and Senator Joe Pennacchio (R-26), plan to meet with various stakeholders on June 15th to address lingering concerns and have requested the Committee to reconsider the bills at one of its upcoming meetings. Special thanks to Monmouth County Special County Counsel Steven Kleinman and Monmouth County Counsel Andrea Bazer for making the trip to Trenton on Monday and for patiently waiting for nearly 4 hours to testify. As opposed to providing summaries of the original legislation, the proposed amendments, or any potential changes, the outline below summarizes NJAC’s general talking points for Monday’s meeting. Please note that this outline is not an exhaustive list of our concerns, but highlights some of the major ones.

S-781 OPMA Positives

1. The proposed amendments concerning meeting notice requirements would remove language contained in the original bill that would have excluded weekends and State holidays from the 48 hour notice requirement.
2. The proposed amendments would remove the requirement for subcommittees to prepare comprehensive meeting minutes as required under the original version. The proposed amendments would instead require subcommittees to prepare at least one report each year with the public body.
3. The proposed amendments would authorize public bodies to develop and adopt written policies concerning the public comment period. The original version of the bill would have required public bodies to dedicate at least one hour per meeting and three minutes per speaker for public comment.

S-781 OPMA items that will use public body time and resources or need clarification

1. The legislation would expand the definition of “agenda” to mean the list of all items of business to be discussed or voted on at a public meeting; and, include each individual item to be discussed or acted upon, a brief description, and must identify the names of the parties to and approximate dollar amounts of any contracts, including employment contracts, to be discussed or acted upon.
2. Despite the fact that the proposed amendments would relax the meeting minute and reporting requirements of subcommittees, the bill would nonetheless establish subcommittees as a category subject to OPMA.

3. The legislation would require public bodies to keep comprehensive meeting minutes that would include, in part, “the actions taken, including all motions made, the identifies of the moving and seconding members, the vote of each member and each members stated reasons, if any, of his or her action or vote, the identify of each member of the public who spoke and summary of what was said, and any other information as required under the law.” I have writer’s cramp just thinking about it.
4. The legislation would revise certain requirements for closed sessions by excluding, in part, “consultation with legal counsel concerning the legal rights and duties of the public body with regard to current litigation or litigation likely to be filed in connection with any executed contract which the public body is, or is likely to become, a party or concerning current or anticipated contract negotiations.”
5. The legislation would permit courts to award attorneys’ fees to any party, other than a public body, who prevails in an OPMA action. The public body would be required to pay attorneys’ fees. Current law authorizes any person to apply for injunctive orders or other remedies to insure compliance with OPMA, but does not authorize attorneys’ fees.

S-782 OPRA Positives

1. The proposed amendments would authorize public bodies to charge a special service charge to commercial entities seeking to use the law for commercial purposes. The proposed amendments would also require commercial entities to certify that they are using the information for commercial purposes.
2. The legislation would streamline and modernize the government records request process by authorizing the use of emails and websites under certain circumstance.
3. The legislation would enhance privacy protections under OPRA by prohibiting the disclosure of certain email addresses, cell phone numbers, bank account information, and other personal data.

S-781 OPMA items that will use public body time and resources or need clarification

1. The legislation would make significant changes to redacting information exempt from public access. The changes would require a custodian of records to specifically provide the requestor with a redacted version of the document and one affidavit for the entire request that states the date of the record, the originator or author of the record, the subject matter or title of the record, the number of pages with redactions, and the specific statutory provisions or other lawful basis for each such redactions. Current law authorizes public bodies to generally provide the lawful basis for redacting information exempt from public access.

2. The legislation would authorize public bodies to impose a special service charge on non-commercial entities after 4 hours.
3. The legislation would eviscerate the “criminal investigatory record” exemption by prohibiting public bodies from limiting access to a record that was open for public inspection, examination, or copying, before any criminal investigation or related civil enforcement proceeding.
4. The legislation would lower the standard for violations of the Act from “knowingly and willfully” to “grossly negligent by having denied access or is found to have willfully denied access.”

Additionally, the OPMA legislation would exempt the Legislature from the majority of its provisions including the one that would prohibit members of a public body from communicating by email, text messaging, or by other means during public meetings. The OPRA legislation would exempt the Legislature from the Act in its entirety. As noted above, S-781 and S-782 are currently in the Senate Budget and Appropriations Committee awaiting reconsideration; and, the companion versions in the General Assembly A-2900 (*Johnson D-37/Lagana D-38*) and A-2763 (*Johnson D-37*) are currently in the Assembly State Government and Local Government and Assembly Judiciary committees respectively.

UPCOMING NJAC EVENTS

Don't miss NJAC's next board of directors meeting scheduled for 9:30 a.m. on June 26th in Committee Room 4 of the State House Annex in Trenton. We kick off each meeting with a networking session and then conduct business before the county administrators hold a meeting of their own at Noon. And, make sure to mark your calendars for July 23rd for NJAC's 5th annual “Night at the Ballpark,” where you'll have the opportunity to see the Binghamton Mets take on the Trenton Thunder at the beautiful Arm and Hammer Waterfront Park in Trenton. First pitch is at 7:00 p.m. and please visit our website at www.njac.org for additional details.

STATE HOUSE TRIVIA

Did you know that the month of May in New Jersey is designated as “Kindness Awareness Month,” so give someone from the other side of the aisle a hug.

“Lead me, follow me, or get out of my way.” General George Patton

