

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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

NJAC would like to thank Senators Weinberg and Pennacchio, and advocates of this legislation for taking the time to meet with us on several occasions to discuss possible solutions for making the bills more palatable for local governing bodies. NJAC is a proponent of transparency and openness in government; and, supports many of the important and timely provisions contained in this legislation including the ones that would authorize local governing bodies to charge fees to commercial entities under certain circumstances and modernize the government records request process by authorizing the use of emails and websites as mechanisms to convey public documents. Additionally, NJAC would not object the following amendments to the bills as introduced:

1. *Subcommittees* - Amend the definition of "meeting" under the Open Public Meetings Act (OPMA) to include subcommittees where the public body has determined that the meetings of that subcommittee are open to the public. Such meetings would require adequate meeting notice, but meeting minutes would be limited to written or oral reports to the public body each quarter that the subcommittee has held a meeting or has taken any action.
2. *Public Comment* - Authorize public bodies to develop and adopt written policies concerning the public comment period under OPMA.
3. *Meeting Minutes* - Remove language from the original OPMA legislation that would have required a public body to keep meeting minutes that contain "each member's stated reasons, if any, for his or her action or vote."
4. *Liability* - Raise the liability standard for violations of OPRA contained in the original legislation as "grossly negligent by having denied access or is found to have willfully denied access" to "knowingly and willfully having denied access or has been grossly negligent in denying access. In general, individuals who are found to have knowingly and willingly violated OPRA under the totality of the circumstances must pay the associated fines and penalties on their own. However, a public entity may pay the fines and penalties for individuals who are found to have been grossly negligent in denying access.

NJAC needs additional clarification on the following matters:

1. *Agenda* – The OPMA 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. *Closed Sessions* - The OPMA 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 to an action.

NJAC looks forward to working with the sponsors and advocates to address our remaining concerns, which include the awarding of attorneys’ fees under the OPMA legislation and the process for redacting information under the OPRA legislation. Additionally, NJAC submits that both measures in their entirety should apply to members of the State Legislature. The Senate Budget and Appropriations Committee was scheduled to consider the bills at its meeting on June 23rd, but did not and it’s unclear at this time if or when the Committee will reconsider the measures.

TRANSPORTATION SERVICES FOR THE AGED AND DISABLED

NJAC supports **SENATE, NO 3106/ASSEMBLY, NO. 4607** (*Ruiz D-29/Cunningham D-31*)(*Pintor-Marin D-29/Schaer D-36*), which would in part, make a \$6.0 million supplemental appropriation from the General Fund to the Senior Citizens and Disabled Residents Transportation Assistance Program (SCDRTAP) in State fiscal year 2016 to make the total support for the program \$24,264,000.00.

NJAC supports this vital initiative spearheaded by the New Jersey Council on Special Transportation (NJ-COST) as critical SCDRTAP funding once again stands to lose vital monies dedicated from the ailing Casino Revenue Fund. In fact, funding from the Casino Revenue Fund for SCDRTAP has decreased by nearly 51% or \$19.0 million since 2008 as gaming revenues that support the Fund have steadily declined since that time. As a result, the State’s most vulnerable residents, which include senior citizens, persons with disabilities, veterans, dialysis patients, and many others, have lost over 2.7 million rides provided primarily by the 21 county coordinated transportation systems. These community transportation and paratransit services include rides for medical appointments, hemodialysis, chemotherapy, radiation treatment, physical and mental therapies, employment and education opportunities, nutrition sites, veteran services, recreational activities, and a host of other needs.

As demand for these vital services has grown exponentially and county governments continue to struggle with making ends meet, NJAC joins NJ COST in urging State leaders to find new sources of revenue that will help counties provide essential transportation services for aged and disabled. Some potential long-term solutions may include: a mandatory fare policy for all rides provided by services subsidized with casino revenue funds, authorize the New Jersey Department of Health and Senior Services to permit fares, donations, or copays for transportation services, and encourage transportation agencies to use discounted rail and bus passes for public transportation systems. In the meantime, NJAC supports S-3106/A-4607 and is optimistic that the measures will pass both houses before the Legislature breaks for its summer recess.

EARNED SICK LEAVE

On June 22nd NJAC testified before the Senate Labor Committee seeking amendments to **SENATE, NO. 785** (*Weinberg D-38*), which would require each employer to provide earned sick leave to each employee it employs in the State. NJAC recognizes that the intent of the legislation is to provide earned sick leave to employees who are not covered by collective bargaining agreements or existing sick leave policies; however, NJAC is concerned that the measure would apply to public employees already covered by generous leave policies.

As has been well documented, 20 of the State's 21 counties currently participate in civil service, which requires employers to provide employees with a minimum of 15 paid sick leave days each year that accrue without limit. Additionally, paid sick leave is currently a negotiable item in labor negotiations; and, as a matter of general policy, sick leave provisions contained in collectively bargained agreements are extended to non-affiliated and at-will employees. As a result of these existing civil service requirements and collective bargaining agreements, county employees are already receive substantial sick leave compensation.

With this in mind, and, in order to avoid the potential for confusion and costly litigation resulting from the attempted reconciliation of multiple frameworks governing paid sick leave, NJAC has been seeking the following amendment that would exempt counties from this legislation: *"Employer" is as defined in N.J.S.A. 34:11-56a1(g) except that Employer does not include (a) the United States government; (b) the State or its political subdivisions or any office, department, agency, authority, institution, association, society, or any instrumentality of the State including the Legislature or Judiciary; or (c) the City of Newark.*" Although the Committee amended the legislation in an attempt to address our concerns, the adopted changes do not go far enough as they do not appear to include our friends in Somerset County and municipalities across the State that have not opted in to Civil Service, where you may enter but never leave like Hotel California. The Committee made the following changes:

With respect to employees covered by a collective bargaining agreement in effect at the time of the effective date of this act, no provision of this act shall apply until the expiration of the collective bargaining agreement.

A public employer shall not be subject of the provisions of this act with respect to its employees if the employer is subject to the provisions of any State statute or regulation regarding earned sick leave which are more favorable to those employees than the provisions of this act.

Underlined matter is material added by the Senate Labor Committee.

NJAC will continue to work with the sponsors until the legislation affects all 21 counties in a uniform manner. S-785 is on Second Reading in the Senate, and **ASSEMBLY NO. 2354** (*Lampitt D-6/Mukherji D-33*) is on Second Reading in the General Assembly.

911 DISPATCH FEES

On June 11th, the General Assembly passed by a vote of 52-21-1 **ASSEMBLY NO. 3461** (*Conaway D-7*), which would require Public Safety Answering Points (PSAPs) to be equipped with a “Next Generation” 911 service request processing system.

In summary, this legislation would require all PSAPs in the State to upgrade their technology to include the Next Generation 911 service request processing system within three years. The bill would also dedicate a temporary 10% increase to the State’s “911 System/Emergency Response Fee,” to cover costs incurred by the required upgrades. Although NJAC appreciates the fact that the legislation recognizes the potential costs associated with its implementation and prioritizes funding to county and regionalized PSAPs, we’re concerned with the temporary nature of the funding mechanism; and, have requested that the sponsors consider amending this legislation further to address the substantial lack of funding to the local PSAPs for system upgrades, maintenance, and operational costs.

NJAC has previously testified that the State currently collects approximately \$130.0 million annually via the aforementioned Fee. These surcharges are itemized on consumer bills and fund the 9-1-1 Trust Fund. During and prior to 2009, counties received grant funding through the 9-1-1 Trust Fund, which allowed counties to finance 911 system and equipment upgrades, countywide PSAP consolidation, and the State mandated county 911 coordinator position. Although the vast majority of 911 service requests in the State are handled by county and municipal PSAPs, the State has not allocated funding to local PSAP operators since 2009. As such, counties operating PSAPs have been responsible for improving, maintaining, and operating their 911 systems at a substantial cost to local property taxpayers.

NJAC will continue working with the sponsors to eliminate the legislation's sunset provision; and, to address the significant funding discrepancy highlighted above by making available 911 trust fund monies to local PSAP operators as originally intended. The Senate companion version **SENATE, NO. 2462** (*Beach D-6*) is currently in the Senate Law and Public Safety Committee awaiting consideration.

VOTING REGISTRATION AND PROCEDURES

NJAC is seeking amendments to legislation that would revise various voter registration and voting procedures; and, would require the availability of an in-person early voting period for certain elections.

As was the case with similar legislation considered during previous sessions, NJAC is concerned with both the reimbursement mechanism used in the bill as well as the overall cost of the proposal. Rather than a specific appropriation, the language contained in the measure would grant the State Treasurer the discretion to appropriate such sums "as he or she deems necessary" to reimburse county governing bodies for additional expenses incurred in complying with the new requirements. Last session, the Office of Legislative Services (OLS) estimated this cost at approximately \$12.5 million in the first year and \$10.0 million in subsequent years.

NJAC is concerned that discrepancies between the actual cost for counties to conduct reformed voting procedures and polling activities, and what the State recognizes or "deems necessary" during the reimbursement process, would result in an annual budget battle for limited State resources; and ultimately, in counties funding early voting operations. Although it does not appear as if the Legislature will consider the bills before it breaks for summer recess, NJAC has proposed the following amendments just in case:

There is appropriated from the General Fund to the Secretary of State such sums as the State Treasurer and the Director of the Division of Budget and Accounting in the Department of Treasury determine are necessary to reimburse counties and municipalities for [any] all additional costs incurred as a result of proving postage for voted ballots that are returned by mail pursuant to the provisions of this act....

There is appropriated from the General Fund as State aid to each county governing body and to each municipal governing body that approves conducting early voting such sums of which the county governing body and municipal governing body that approves conducting early voting certify to [as] the State Treasurer and the Director of the Division of Budget and Accounting in the Department of the Treasury as the actual expenses [deem] deemed necessary to effectuate the purpose of section 16....

*Matter in [brackets] is material NJAC proposes removing.
Underlined matter is material NJAC proposes adding.*

SENATE, NO. 3040 (*Sweeney D-3/Weinberg D-37*) is currently in the Senate Budget and Appropriations Committee awaiting consideration and the companion version **ASSEMBLY, NO. 4574** (*Prieto D-32/Greenwald D-6*) is currently on Second Reading in the General Assembly.

LONG TERM PROPERTY TAX EXEMPTIONS

NJAC is optimistic that the Senate Budget and Appropriations Committee will consider as one of its upcoming summer hearings **SENATE, NO. 3019** (*Sweeney D-3*), which would require the filing of financial agreements for long term tax exemptions with county finance officers and county counsels, and would require quarterly payments to counties for their share of payments in lieu of taxes (PILOT).

NJAC supports this legislation as it would require municipalities to notify counties of financial agreements for long term property tax abatements awarded to redevelopment entities under the "Long Term Tax Exemption Law." Such financial agreements are executed between a municipality and a redevelopment entity to promote economic growth and development under a designated redevelopment plan, and may include PILOT monies. Although current law requires municipalities to pay counties 5% of the negotiated PILOT amount, the law does not require municipalities to notify counties of these agreements.

Consequently, counties are unaware of most PILOT initiatives and have resorted to filing Open Public Records Act (OPRA) requests, relying on municipal audits and newspaper articles, or reviewing municipal budgets to obtain this critical information that should be made readily available. As county governments across the State continue to play a greater role in providing traditional municipal services, NJAC supports this important and timely measure as means to fairly and equitable allocate valuable taxpayer dollars.

ELECTRONIC WASTE RECYCLING

On June 15th, NJAC testified before the Senate Environment and Energy Committee in support of **SENATE, NO. 2973** (*Smith D-17/Bateman D-16*), which would make certain changes to the State's electronic waste recycling laws.

In summary, this legislation would require each manufacturer to provide for the collection, transportation, and recycling of its market share in weight of all covered electronics collected in a program year. This requirement would replace the current law's mandate that each manufacturer provide for the collection, transportation, and recycling of its "return share in weight" as estimated by the Department of Environmental Protection (DEP). The data required to perform the return share calculation is not widely available. Moreover, the DEP determinations of the

manufacturers' obligations under the law have underestimated the actual amount collected.

The bill would further would assure that manufacturers provide a free and convenient electronic waste recycling program that provides for all of the covered electronic devices that are collected. The measure would change the definition of "consumer" to include State entities, school districts, and local government units, and would include fax machines and printers in the definition of "covered electronic device." The legislation would also require each manufacturer to provide, in its plan submitted to the department, for their convenient collection of covered electronic devices, especially used televisions, in cities of the first class, and those cities of the second class having a population of more than 70,000. The bill would require that the operator of each collection site and each authorized recycler identified in a manufacturer's plan submitted to the department identify the total weight of covered electronic devices collected or recycled, as appropriate.

The bill would streamline the DEP's planning and reporting requirements by requiring an annual report with a complete listing of all collection locations for covered electronic devices including televisions, the parties that operate them, the amount of material by weight collected at each site, and a complete listing of all recyclers that recycle covered electronic devices, together with the amount of material by weight recycled annually. Finally, the calculation of a manufacturer's obligation would be performed in the same way for both television manufacturers and the manufacturers of other covered electronic devices. Thus, because the obligation would be the same for both television manufacturers and the manufacturers of other covered electronic devices to collect, transport, and recycle their representative market shares in weight, the committee substitute would repeal the sections of current law applicable only to television manufacturers.

NJAC previously testified before the Committee on the impact of electronic waste recycling on county recycling and Senator Smith introduced this legislation amid growing concerns about the issue. In general, electronics manufacturers are responsible for providing free and convenient recycling options for their goods in each county. Manufacturers typically meet this obligation by entering into contracts with the New Jersey Environment Protection (DEP) authorized recyclers, who in turn enter into agreements with local governments to provide E-Waste recycling services at no charge. An authorized recycler then reduces the E-Waste into component parts and sells them as the market demands. However, it appears that changes in the E-Waste market is making the business less profitable and forcing authorized recyclers to charge fees despite the requirements of the "Electronics Waste Management Act." As a result of these market conditions, which are also forcing authorized recyclers to consider leaving the State to conduct business elsewhere, counties must ultimately decide to either absorb E-Waste recycling costs or eliminate the programs entirely. Senator Smith plans to hold a meeting with stakeholders in July to discuss the matter in more detail.

COUNTY IMPROVEMENT AUTHORITY FINANCING

Later today the Senate will likely concur with Governor Chris Christie's Conditional Veto of **ASSEMBLY BILL NO. 3970** (*Prieto D-32*), which would allow a county vocational school district to request that a county improvement authority construct and finance a county vocational school district school facilities project that has been approved by the Commissioner of Education.

In summary, this legislation would authorize a county improvement authority to issue its bonds to finance either the local share of a project that will receive an up-front grant for the State share of the project under the Educational Facilities Construction & Financing Act (EFCFA) or the total costs of a project that is eligible to receive State debt service aid. The bill would provide that bonds issued by a county improvement authority to finance the total costs would be eligible for State debt service aid in accordance with the provisions of the Act. The bill would further provide that a county vocational school district may lease its lands or facilities to the county improvement authority which would construct the project through a design-build contract. The bill would stipulate that the provisions of the "Public School Contracts Law," and the "Local Public Contracts Law," would not be applicable to a county vocational school district school facilities project that is constructed by a county improvement authority.

Additionally, the county improvement authority would lease the county vocational school district school facilities project to the county which would then lease it for nominal consideration to the county vocational school district. The county lease payments made to the county improvement authority would not be subject to any cap on appropriations or spending or to any tax levy cap. The county lease payments must be sufficient to pay the debt service on the county improvement authority bonds that remains after the application of any State debt service aid paid on those bonds. When the bonds of the county improvement authority are no longer outstanding, the leases and liens of the county and the county improvement authority would expire and the school facilities project would be solely vested in the county vocational school district.

In summary, the Conditional Veto recommends that the bill would authorize, rather than require, the use of design-build contracts for school facilities projects. NJAC supports this change as it would provide county officials with the flexibility to select the most appropriate contracting method according to the scope of a given project. Additionally, the Conditional Veto recommends that a county improvement authority follow the Schools Development Authority design and building standards for design-build school construction projects. The Senate will likely consider the Conditional Veto at one of its upcoming voting session and the law would take effect immediately. In general, NJAC supports this legislation as it would provide county governments with an innovative financing mechanism that could streamline school facilities projects and save valuable taxpayer dollars. The General Assembly concurred with the Conditional Veto on May 18th.

UPCOMING NJAC EVENTS

Don't miss NJAC's next board of directors meeting scheduled for tomorrow morning at 9:30 a.m. on June 26th in Committee Room 4 of the State House Annex in Trenton featuring New Jersey Department of Community Affairs Commissioner Charles A. Richman. 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 on this date in 1870 Christmas was declared a federal holiday in the United States?

"A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken." - James Dent