

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

JOHN W. KING
NJAC President
Hunterdon County Freeholder

JOHN G. DONNADIO
Executive Director

STATE HOUSE NEWS

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TRANSPORTATION TRUST FUND

On October 14th, Governor Christie signed into law legislation that reauthorizes the Transportation Trust Fund (TTF) with an 8 year \$2.0 billion per year capital program. In summary, the measure generally increases the State's motor fuels tax by .23 cents per gallon, reduces the State's sales tax to 6.875% in 2017 and then 6.625% in 2018, increases the earned income tax credit from 30% to 35% of the federal benefit amount, increases the New Jersey gross income tax exclusion on pension and retirement income for seniors, provides a personal exemption on State income taxes for all New Jersey veterans honorably discharged from active military service, and phases out the estate tax by 2018. The Governor also rescinded the Executive Order, No. 210, which forced the shutdown of all TTF funded projects.

Importantly, the new law also increases Local Aid allocations for counties and municipalities from \$190.0 million to \$400.0 million year as a means to mitigate the reliance on the collection of local property taxes, promote economic growth and job development, and ensure a safe a reliable transportation network. NJAC would like to thank Senate President Steve Sweeney, Speaker of the General Assembly Vincent Prieto, Senator Steve Oroho, and Senator Paul Sarlo for recognizing the critical role counties and municipalities play throughout the legislative process. As county government continue to struggle with delivering essential services in a cost effective manner, a declining ratable base, and mounting unfunded State mandates, enhancing Local Aid will provide much needed relief for local property tax payers.

NEW LOCAL AID ALLOCATIONS

| ALLOCATION | % | AMOUNT | COMMENT |
|-------------------------------|-------|------------------|--|
| County Local Aid Program | 37.5% | \$150,000,00.000 | Available as traditional County Aid |
| Municipal Local Aid Program | 37.5% | \$150,000,000.00 | Available as traditional Municipal Aid |
| Local Bridges Fund | 11.0% | \$44,000,000.00 | Available as Local Bridges Future Needs program monies |
| Local Freight Impact Fund | 7.0% | \$28,000,000.00 | Available as DOT Commissioner discretionary funding for freight travel |
| Local Aid Infrastructure Fund | 7.0% | \$28,000,000.00 | Available as traditional DOT Commissioner discretionary funding |

The State's most recent Transportation Capital Program allocated a total of \$190.0 in Local Aid as following: \$78.75 million as County Aid, \$78.75 as Municipal Aid, \$25.0 million as Local Brides Future Needs funding, and \$7.5 million in DOT Commissioner discretionary funding. Finally, NJAC is working with ForwardNJ to educate voters on the importance of voting YES to Ballot Question #2 at the upcoming General Election on November 8th. Voting YES will constitutionally dedicate all revenues from the gas tax and petroleum products tax to the TTF and ensures that the revenue is only used for transportation purposes.

CRIMINAL JUSTICE REFORM

On October 13th, Attorney General Christopher S. Porrino issued a directive intended to provide detailed guidance for prosecutors and police in implementing Criminal Justice Reform. NJAC and county officials from across the State are with the Attorney General's office on November 4th to discuss the directive in more detail. You may review the document in its entirety by visiting our website at www.njac.org.

Pursuant to the Attorney General's press release announcing the directive, "the bail reform law creates a general presumption against preventive detention after arrest – meaning extended pretrial custody in jail – except where a defendant is charged with murder or is facing an ordinary or extended term of life imprisonment. While that specific exception encompasses only a very small number of the most serious crimes, the law permits prosecutors within their discretion to apply for pretrial detention and seek to rebut the presumption in other cases, including (1) cases involving certain other serious crimes, including primarily violent first- and second-degree offenses enumerated under the No Early Release Act, crimes involving a firearm under the Graves Act, and crimes involving domestic violence, and (2) more generally, any case where the prosecutor believes there is a serious risk that the defendant will flee, will pose a danger to specific persons or the community, or will attempt to obstruct justice or threaten, injure or intimidate a victim, witness or juror."

The directive also states that "the process begins with a decision by police and prosecutors regarding whether to charge by complaint-warrant or complaint-summons. If authorities want to seek pretrial detention of a defendant or, in the alternative, want the court to impose any conditions of release to mitigate risks posed by a defendant, they must charge the defendant by complaint-warrant. When a warrant is issued by the court, a defendant must be taken to a county jail, where he or she will be held for up to 48 hours. Within 48 hours, the defendant will have a first appearance in court, where, if the state has filed a motion to detain, the judge will decide whether to detain the defendant or release the defendant, and what conditions should be imposed if the defendant is released. In all of those cases where the prosecutor is permitted to apply for preventive detention, the law's presumption of pretrial release can be overcome only if the state can establish by clear and convincing evidence that no release conditions will reasonably assure the defendant's appearance in court, the protection of the safety of any other person or the community, or that the defendant will not attempt to obstruct the criminal justice process."

The Directive notes that “in order to assist law enforcement and judges in making decisions about a defendant, the Administrative Office of the Courts developed a computer-based automated risk assessment, known as the Public Safety Assessment (PSA), which accounts for the general nature and seriousness of the crime charged, as well as certain electronically stored criminal case and court history data documenting the defendant’s adult criminal and court-appearance history. The PSA provides three pretrial risk indicators: (1) a six-point “failure-to-appear” scale gauging the likelihood the defendant will fail to appear in court; (2) a six-point “new criminal activity” scale gauging the likelihood the defendant will engage in new crimes if released; and (3) a “new violent criminal activity” flag, which flags defendants who are likely to engage in violent crimes if released.”

Additionally, “police and prosecutors will be able to access the PSA at the time charges are filed and will use the PSA to inform their decision-making with regard to whether to charge by warrant or summons. A new violent criminal activity flag automatically triggers a presumption that law enforcement will apply for a warrant and the prosecutor will seek pretrial detention. The other scores become factors that are considered by law enforcement and judges in making decisions. If a warrant is issued so the defendant is jailed, the Judiciary’s pre-trial services program will produce a full pretrial risk assessment that incorporates the PSA but also accounts for other circumstances and factors. That report – which includes recommendations about whether to release and release conditions – will be completed by the courts before a defendant’s first appearance.” Highlights of the Attorney General’s Criminal Justice Reform Directive include”:

- The directive emphasizes that, in implementing the reforms, police and prosecutors must ensure that they safeguard the rights of victims, including their state constitutional and statutory right to participate in the criminal justice process and have meaningful input in prosecutorial decisions affecting their interests. The directive establishes special considerations, notifications and procedures to protect victims in domestic violence and sexual assault cases.
- All decisions regarding whether to charge by warrant or summons must be approved by an assistant prosecutor, deputy attorney general, or designated police supervisor. The directive sets up a system for such personnel to be available 24/7 to offer real-time legal advice and charging approvals. By allowing prosecutors to designate a supervisory police officer, rather than an assistant prosecutor, to make initial screening decisions after hours, the directive provides for cost savings.
- When a defendant is detained before trial, the new law requires generally that the case be indicted within 90 days and brought to trial within 180 days of indictment, subject to provisions for extension. However, those speedy trial rules do not apply in cases without pretrial detention. In cases where the defendant remains free, he or she may have little incentive to accept responsibility and plead guilty in a timely fashion. To address this concern, the Attorney General’s directive requires all prosecutors to adopt a graduated plea policy under which plea offers grow tougher over time, not more lenient, so as to encourage guilty offenders to plead guilty, thereby conserving law

enforcement and judicial resources and facilitating potential cooperation in ongoing cases.

- The Division of Criminal Justice, in cooperation with the County Prosecutors Association of New Jersey, the State Police and the New Jersey Association of Chiefs of Police, is directed to develop an online training program for police officers to explain the requirements of the new law and the directive. It also will prepare an instruction card for police summarizing key aspects of the directive. The Division will work with the Prosecutors Association and the Attorney General's Advocacy Institute to develop continuing legal education courses for prosecutors dealing with the new law.
- The directive calls for formation of a Criminal Justice Reform Advisory Group to meet regularly to review implementation of the new law and the directive, to address legal and practical issues that arise, and to develop uniform positions and legal materials to assist prosecutors handling pretrial detention hearings, motions and appeals under the new law. The directive contemplates an ongoing dialogue where best practices are developed locally, shared and replicated in other jurisdictions.
- The Division of Criminal Justice, in cooperation with the County Prosecutors Association of New Jersey and the Attorney General's Office of Law Enforcement Professional Standards, will study the implementation and impact of the new law and the directive and will prepare two reports for the Attorney General, one by June 30, 2017, and the second by June 30, 2018.

As previously reported, NJAC's Board of Directors authorized the Association to file an action with the New Jersey Council on Local Mandates that certain provisions of the "Criminal Justice Reform Act" constitute an unfunded State mandate with the New Jersey Council on Local Mandates. NJAC has also requested legislative leadership to hold a public hearing on the costs associated with implementing Criminal Justice Reform before the new law is set to take effect in January of 2017. County governments are growing increasingly concerned that Criminal Justice Reform will cost an estimated \$1.0 – \$2.0 million per county to implement as each county in some capacity must: hire new sheriff officers, correction officers, and assistant prosecutors; invest in new security equipment and information technology; and, make capital and other necessary improvements to court and ancillary court facilities. Counties also submit that the projected cost savings are unfounded, and more of a cost shifting, as individuals who would have previously remained in jail awaiting trial because they could not afford to post bail will require additional job training, counseling, and other necessary services.

Additionally, NJAC has recommended the following solutions to address the costs associated with implementing Criminal Justice Reform, providing enhanced court security, and operating and maintaining county court facilities: (1) Allocate State monies or establish a funding mechanism to offset the costs associated with implementing and administering Criminal Justice Reform through **SENATE BUDGET RESOLUTION, NO. 4287 (Oroho R-24)**, which would establish a supplemental appropriation of \$21.0 million, or **ASSEMBLY, No. 3491 (Wimberly D-34)**, which would establish the "County Government Criminal Justice Reform Administration Fund"; (2) limit conducting an in-person risk assessment to within 48 hours after a defendant's commitment to jail to normal

business hours of operation on Mondays through Fridays.; (3) permit conducting a risk assessment within 48 hours after a defendant's commitment to jail by video conferencing on weekends and holidays and at either the county court facility or county jail; (4) extend implementing Criminal Justice Reform until 2018 to permit for the use of the recommendations contained herein and for county governments to develop a clearer picture on the costs associated with implementing and administering Criminal Justice Reform; and, (5) permit the use of Class Two special law enforcement officers to provide enhanced security at county court facilities.

911 FEES

Thank you to Assemblywoman Vainieri Huttle (*D-37*) for sponsoring legislation that would require the State to annually dedicate monies to the "911 System and Emergency Trust Fund Account" (Fund) for the purpose of upgrading and maintaining 911 public safety answering point technology, including the upgrading and maintaining of automatic location identification technology. NJAC is working with the Assemblywoman to advocate that the measure contain critical funding for county and municipal local public safety answering points. NJAC and the New Jersey Wireless Association (NJWA) are also meeting with Assemblyman Singleton (*D-7*) later next month to discuss the matter in more detail.

As has been well documented, the State of New Jersey collects annually from consumers approximately \$120.0 million in telecommunication surcharges as "911 System & Emergency Response Fees (Fees)" and deposits those monies into the Fund. In fact, the State has collected over \$1.25 billion in fees since 2006 with only 11% of Fund monies being spent on eligible expenses under the "NET 911 Act of 2008 (H.R. 3403)" as reported by the State to the Federal Communications Commission (FCC). Since 2009, the State has failed to provide funding for eligible expenses to the local 911 centers operated by counties and municipalities across of the State, and has instead diverted Fund dollars for ineligible expenses such as funding for the State's Department of Law and Public Safety. Counties and municipalities handle the vast majority of 911 service requests through the 197 local public safety answering point, and have come to inequitably rely on the collection of local property taxpayer dollars to improve, operate, and maintain 911 systems. With this mind, NJAC is encouraging all twenty-one counties to adopt a resolution urging State leaders to properly allocate 911 Fund monies to county and municipal 911 centers as recommended under federal law.

RECYCLING OF FOOD WASTE

On October 13th, NJAC requested that Senate Environment and Energy Committee to amend **SENATE, No. 771** (*Smith D-17/Bateman D-16*) to make the legislation more palatable for county governments that have committed considerable resources to cutting edge recycling and solid waste management activities. In summary, this legislation would require large food waste generators to separate and recycle food waste under certain circumstances; and, NJAC requested the amendments on the following page.

“A large food waste generator shall be deemed in compliance with the provisions of this section if: (a) the large waste food generator is sending its food waste for final disposition to a sanitary landfill facility that as of the date of enactment of this act is delivering and continues to deliver landfill gas to one or more landfill gas to energy facilities generating electricity with the landfill gas; and, (b) the large food waste generator annually notifies the Department of Environmental Protection in writing of its disposal at such a landfill on a form provided by the Department.”

NJAC submits that the amendments would hold harmless existing “Landfill Gas to Energy” (LGTE) facilities that have committed considerable resources to cutting edge recycling and solid waste management activities. Moreover, the amendments would address NJAC’s concern that mandating the source separation of food waste from other streams of waste would divert large volumes of critical material from these facilities, which in turn, would adversely affect the quantity and quality of gas relied upon by LGTE facilities, and ultimately jeopardize their economic viability.

Atlantic, Burlington, Cape May, Cumberland, Gloucester, Middlesex, Ocean, Monmouth, Salem, Sussex, and Warren counties have invested substantial taxpayer dollars into state of the art LGTE facilities that utilize methane gas produced from decomposing organic food waste to generate renewable Class One electricity under the “Electric Discount and Energy Competition Act.” Of significant concern, Covanta submitted a letter to the Committee that objects to the grandfathering or exemption of county operated LGTE facilities arguing that such facilities lead to global warming and other natural disasters. Although the Committee favorably reported the measure to the Senate Budget and Appropriations Committee for consideration with the grandfathering provision intact, Senator Smith is considering removing it from the bill because of the concerns raised in the letter. NJAC is working with our county recycling coordinator and improvement authorities on a rebuttal to the Covanta letter. The counterpart **ASSEMBLY, NO. 2417** (*Eustace D-38/Zwicker D16*) is currently in the Assembly Environment and Solid Waste Committee awaiting consideration.

PRISONER RE-ENTRY

Early next month, NJAC and the New Jersey County Jail Wardens Association (NJCJWA) are meeting with Assemblywoman Elizabeth Muoio (D-15) to discuss Assembly, No. 3822, which would require the superintendent of each county correctional facility to provide to inmates at least 10 days prior to their release certain information, documents, and other assistance to facilitate their reentry into the community. Although NJAC and NJCJWA commend the Assemblywoman for the legislation’s intent to provide progressive prisoner re-entry services, we’re concerned the legislation’s impact on county jail operations and limited resources.

With this in mind, we’ve proposed amendments that would require the jail warden of each county correctional facility to provide each county inmate serving a sentence of incarceration, at least 10 days prior to release from that facility, a fact sheet that assists the inmate in obtaining the following information and resources: where the

inmate may obtain their criminal history record; information on the inmate's right to vote; the availability of faith based programs, employment training, and rehabilitative programs; a non-driver identification card; the inmate's birth certificate and social security card; and several other pieces of information. In general, the bill as introduced would have required the county jail warden in each county to physically produce the documents and resources listed above. The proposed amendments would also make the legislation apply only to those inmates who have been sentenced to a term of incarceration and not pre-adjudicated inmates awaiting trial. NJAC and NJCJWA met with the Senator Shirley Turner (D-15), who is the sponsor of this legislation, in June and shared the same concerns and recommendations. A-3822 is currently in the Assembly Law and Public Safety Committee awaiting consideration; and, S-2284 is currently in the Senate Budget and Appropriations committee after being reported from the Senate Law and Public Safety Committee earlier this year.

PERMITTED INVESTMENTS AND CAP LAW

Thank you to Monmouth County Finance Officer Craig Marshall for taking the time out of his busy schedule to meet with NJAC and the Division of Local Government Services to discuss providing local governing bodies with the authority to invest in Governmental Accounting Standards Board (GASB) regulated products as was the case in practice before the Security and Exchange Commission's (SEC) 2014 rule change on money market funds that took effect earlier this month. Although that was a very long sentence, you may recall that the SEC's rule change is forcing prime money market funds to abandon their stable \$1.00 per share price and instead "float" net asset values (NAV). The rule change is also imposing penalties and early redemption fees for the premature withdrawal of funds to meet liquidity needs.

Money market funds have proven to be a vital cash management tool for county governments, which until the SEC's untimely rule change, relied on the stability of managing cash with a consistent principal value. With this in mind, NJAC and the New Jersey Association of County Finance Officers (NJACFO) are advocating for legislation that would preserve the list of limited investment choices for local governing bodies by authorizing counties and municipalities to invest in products managed in accordance with GASB guidelines for local government investment pools. NJAC and NJACFO are meeting with Assemblyman Greenwald later next month to discuss this issue in more detail. Separately, we requested that the Division publish a Local Finance Notice to provide guidance to counties struggling with implementing the new that places a 2.0% cap on the budgets of county agencies and constitutional officers set to take effect in January of 2017.

ELECTRONIC WASTE RECYCLING

Special thanks to the county recycling coordinators, who once again made the journey to Trenton to support **ASSEMBLY, No. 4763** (*McKeon D-27/Gusciora*) and **SENATE, No. 981** (*Smith D-17/Bateman R-16*), which would make various changes to the State's electronic waste recycling laws as it would require each manufacturer of "covered electronic devices" to provide for the collection, transportation, and recycling of its market share

in weight of all covered electronic devices collected in a program year. The Senate Environment and Energy Committee held the bill for discussion purposes on October 7th and NJAC testified in support of the bill.

In summary, the measure would further authorize DEP to adjust the market share in weight obligation based upon the total weight in pounds actually collected in each program year. The bill 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." Additionally, the legislation would allow DEP to establish a statewide standard program to collect, transport, and recycle covered electronic devices. The bill would also require each manufacturer to provide for the convenient collection of covered electronic devices, especially used televisions in densely populated areas. 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.

The measure would require collection locations to report semiannually. The reports would include the total weight or volume of covered electronic devices collected, the date, time, and volume of covered electronic devices transported from the collection location, and the name and identifying information of the authorized recycler transporting the covered electronic devices. Every authorized recycler would be required to identify the address of each collection location, and the total weight of covered electronic devices delivered or collected from each collection location, the weight of each type of covered electronic device collected from each collection location, the address of any facility where covered electronic devices are handled, and the disposition of all components of covered electronic devices. Each manufacturer would be required to report semiannually its progress towards achieving its market share in weight obligation.

The bill would further allow DEP to assess a per pound fee of \$0.50 multiplied by a manufacturer's market share in weight obligation for a manufacturer that fails to collect, transport, and recycle covered electronic devices under the law. Finally, the bill would establish the "Electronic Waste Management Fund" whereby all program revenues and penalties would be deposited in the fund for administration and enforcement and other costs of the program. NJAC supports this legislation as it would ensure that manufacturers provide free and convenient electronic waste recycling programs for all covered and collected electronic devices as county governments across the State are weighing whether to absorb electronic waste recycling costs or eliminate the popular programs entirely. A-2375/S-981 is currently on Second Reading in the General Assembly.

SCRAP TIRES

Thank you to Senator Fred Madden (*D-4*) for taking the time to meet with NJAC and the county recycling coordinators to address our concerns with the potential costs associated with **SENATE, No. 2422**, and for amending the legislation to address these concerns.

On October 7th, the Senate Energy and Environment Committee amended S-2422 to require the Department of Environmental Protection (DEP) to establish a system for the manifesting, tracking, collection, recycling, and disposal of scrap tires. The system would require all scrap tires to be collected and transported from their source for delivery to a licensed scrap tire facility or disposal facility. Under the bill, as amended, only persons who are licensed scrap tire haulers would be permitted to collect and transport scrap tires. The bill excludes from its requirements county, municipal, and other local agencies and authorities. The bill would require that each district recycling plan require source separation of scrap tires from the solid waste stream. Finally, the Committee amended the bill to provide that up to \$200,000 of the funds in the existing Tire Management and Cleanup Fund may be used to implement the provisions of the bill and the remainder of the moneys in the fund are required to be used to implement the Local Tire Management Program. The Committee second referenced the measure to the Senate Budget and Appropriation Committee; and, the companion version in the General is currently in the Assembly Environment, Solid Waste, and Recycling Committee awaiting consideration as **ASSEMBLY, No 4093** (*Eustace D-38*).

SUMMIT ON PENSION AND HEALTH BENEFITS

Don't miss NJAC's "Summit on Public Employee Pension and Health Benefits" scheduled for December 9th at the historic Trenton Country Club in Trenton. This important and timely event will examine the State's looming pension crisis and provide meaningful recommendations for making the pension systems more affordable for taxpayers and sustainable for members. The Summit will also address health benefits for public employees and present viable solutions for controlling public sector healthcare costs in a fair and equitable manner. Please visit our website at www.njac.org for registration and hosting opportunities.

STATE HOUSE TRIVIA

Did you know that Halloween is the second highest grossing commercial holiday after Christmas, and my favorite, and that Jack O Lanterns were originally made from turnips?

"Eye of newt, and toe of frog, wool of bat, and tongue of dog, Adder's fork, and blind-worm's sting, Lizard's leg, and owlet's wing, for a charm of powerful trouble, like a hell-broth boil and bubble." William Shakespeare.