

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*September 30, 2016*

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### CRIMINAL JUSTICE REFORM

At its meeting on September 23<sup>rd</sup>, 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" N.J.S.A. 2A:162-15 et. seq. constitute an unfunded State mandate with the New Jersey Council on Local Mandates.

The New Jersey Council on Local Mandates is responsible for resolving disputes on whether a law, rule, or regulation adopted after 1996 constitutes an unfunded mandate. In general, an unfunded mandate upon boards of education, municipalities, and counties is a law, rule, or regulation that does not authorize resources, other than the property tax, to offset additional direct expenditures required to implement said law, rule, or regulation. Please note that the following categories of laws, rules, or regulations are not considered unfunded mandates: (1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements; (2) those which are imposed on both government and non-government entities in the same or substantially similar circumstance; (3) those which repeal, revise, or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities; (4) those which stem from failing to comply with previously enacted laws or rules or regulations issued pursuant to a law; and, (5) those which implement provisions of the Constitution

In summary, Criminal Justice Reform will establish non-monetary bail alternatives for individuals that previously remained in county jails awaiting trial simply because they could not afford to post bail. The new law set to take effect in January of 2017 will also keep violent criminals behind bars. The New Jersey Association of Counties (NJAC) and its twenty-one county members are committed to implementing Criminal Justice Reform as a fair and equitable administration of justice, and as a potential mechanism for containing long-term operating expenses at county jails. However, Criminal Justice Reform will cost county governments across the State 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.

Criminal Justice Reform will require the Judiciary, through its new Pretrial Services Unit, to prepare a risk assessment and recommendation on conditions of release for every eligible defendant issued a complaint warrant beginning on January 1, 2017. The Pretrial Services Unit must complete and present the risk assessment, by an automated Public Safety Assessment (PSA), to the Court within 48 hours after a defendant's commitment to jail. Please note that the Judiciary's stated goal is to complete and present the Public Safety Assessment within 24 hours. Although a laudable objective, this new procedure will force county court facilities to open on weekends, and will generate the following clear, substantial, and ongoing costs:

1. To provide security at county court facilities on weekends, county sheriffs must hire new officers and pay overtime to current officers;
2. To operate and maintain county court facilities on weekends, counties will incur additional maintenance and utility expenses; and
3. To accommodate additional staff of the Judiciary's new Pretrial Services Unit, county governing bodies must make improvements to existing court facilities.

Although the State is responsible for paying for the salaries of the Pretrial Services Unit with monies deposited in the 21<sup>st</sup> Century Justice Improvement Fund established pursuant to the law that enacted Criminal Justice Reform, county freeholder boards must pay for the operation, maintenance, and capital improvements of the county court facilities. County governing bodies are also mandated by State law to fund county sheriff and county prosecutor offices. In summary, the 21<sup>st</sup> Century Justice Improvement Fund, subsidized by an increase in various court fees, will provide: \$22.0 million for the development, maintenance, and administration of the statewide pretrial services program; \$10.0 million for the development, maintenance, and administration of the statewide digital e-court information system; and, \$10.0 million to Legal Services of New Jersey. Unfortunately, the Fund will not allocate monies to county governing bodies for the costs associated with implementing and administering Criminal Justice Reform.

Criminal Justice Reform will also require that a speedy trial apply to an eligible defendant for whom a complaint warrant is issued, where the initial charge involved is an indictable or disorderly persons' offense, and where the defendant is detained pursuant to a Public Safety Assessment (PSA). The new law will establish three separate speedy trial time standards, and will require county prosecutors to be ready for trial within two years of a defendant's commitment to county jail or the defendant will be released on conditions set by the Court. Although well intentioned, this new process will produce the following significant and continuing expenses:

1. To process eligible defendants pursuant to the newly established timeframes, county prosecutors must hire new assistant prosecutors, investigators, and administrative staff; and,
2. To accommodate additional prosecutorial staff, county governing bodies must make expensive improvements to county buildings and grounds.

As county governments across the State continue to struggle with a restrictive property tax cap levy, a declining ratable base, and mounting unfunded State mandates, NJAC is continuing to urge State leaders to consider the following solutions to address the growing costs associated with implementing Criminal Justice Reform, providing enhanced court security, and operating and maintaining county court facilities.

1. Limit conducting an in-person risk assessment within 48 hours after a defendant's commitment to jail to normal business hours of operation on Mondays through Fridays.
2. 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.
3. 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.
4. Permit the use of Class Two special law enforcement officers to provide security at county court facilities.
5. Allocate State monies or establish a funding mechanism to offset the costs associated with implementing and administering the new law in the form of **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."

#### **TRANSPORTATION TRUST FUND**

On September 22<sup>nd</sup>, NJAC and the New Jersey State League of Municipalities (NJSLOM) testified before the Assembly Transportation and Utilities Committee in support of **ASSEMBLY, NO. 4114** (*Maher-Muoio D-15/Schaer D-36*), which would require the New Jersey Department of Transportation to compensate local government entities for contractual delay damages resulting from the shutdown of projects funded by the Transportation Trust Fund (TTF).

NJAC is concerned that the now three month long shutdown of all projects funded by the TTF will carry long-term consequences as the unprecedented stoppage of work has forced county and municipal officials to terminate ongoing projects and postpone new shovel ready ones that will cost valuable taxpayer dollars in delay claims, remobilization costs, and litigation expenses. In fact, Hudson, Union, Passaic, Cumberland, and Mercer are the first of several counties expected to file a "Notice of Claim" against the New Jersey Department of Transportation (DOT) for breach of contract. In general, a "Notice of Claim" is a prerequisite to seeking damages through litigation from a public entity.

Additionally, several counties have petitioned DOT to continue with TTF funded projects to ensure the safety and well-being of residents, while other counties have decided to complete critical projects using county funds. As county and municipal governments carry over 55% of the State's overall traffic and depend on the \$190.0 million each year in State funding, failure to reauthorize the TTF and restore local aid allocations will force residents to endure further property tax increases and vital program cuts. The Committee favorably reported the measure with amendments, which would permit a local governing body to use its own funds to continue or complete a transportation project halted as a result of EXECUTIVE ORDER NO. 210 of 2016. The amendments would further prohibit DOT or any other executive branch agency from withholding, revoking, or otherwise canceling certain local aid due to the governing body's decision to use its funds to continue or complete the transportation project. The General Assembly passed A-4114 on September 29<sup>th</sup> by a vote of 53-18, and NJAC is working with the sponsors and NJSLOM to advocate for support of the measure in the Senate.

#### **PROCUREMENT PARITY**

On September 26<sup>th</sup>, NJAC noted its support before the Senate Budget and Appropriations Committee for **SENATE, No. 728** (*Cruz-Perez D-5/Beach D-6*), which would apply the local public contract bid threshold amounts to local pay to play and prevailing wage laws.

NJAC supports this common sense measure as it will promote consistency in the law and provide new opportunities for local and small businesses that struggle with the existing procurement process. Current law requires local governing bodies and businesses to comply with three separate and conflicting public procurement statutes. In general, the "Local Public Contracts Law" requires counties and municipalities to award a contract through a fair and open competitive bidding process if the anticipated goods and services exceed \$40,000.00. Additionally, the "Pay-to-Play Law" requires counties and municipalities to award a contract through a fair and open competitive bidding process if the contractor awarded said contract makes certain reportable political contributions for as a little as \$300.00. Finally, the "Prevailing Wage Law" requires contractors to register with the State and pay specific wages to its employees if the contract is expected to exceed \$2,000.00 for counties and \$15,444.00 for municipalities.

County governments have long struggled with reconciling these three conflicting laws, while local and small businesses have been impacted by its cumbersome process as they typically lack the necessary resources to comply with its many requirements. The Committee favorably reported the measure, which is now on Second Reading in the Senate, and **ASSEMBLY, No. 1118** (*Oliver D-34/Pintor-Marin D-2*) is in the Assembly State and Local Government Committee awaiting consideration.

## **911 FEES**

As previously reported, NJAC is encouraging all twenty-one counties to adopt the following resolution concerning the State's diversion of \$1.25 billion in 911 fees.

A RESOLUTION urging Governor Chris Christie and the New Jersey State Legislature to properly allocate "911 System and Emergency Trust Fund Account (Fund)" monies to county and municipal 911 centers as recommended under federal law.

WHEREAS, 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; and,

WHEREAS, the State of New Jersey has collected over \$1.25 billion in fees since 2006 with only 11% of Fund monies being spent on eligible expenses under "NET 911 Act of 2008 (H.R. 3403)" as reported by the State to the Federal Communications Commission (FCC); and,

WHEREAS, since 2009 the State of New Jersey has failed to provide funding for eligible expenses to 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 ; and

WHEREAS, counties and municipalities handle the vast majority of 911 service requests through local "Public Safety Answering Points (PSAP)" and have come to inequitably rely on the collection of local property taxpayer dollars to improve, operate, and maintain 911 systems; and,

WHEREAS, the State of New Jersey should comply with federal recommendations and restore critical Fund monies to county and municipal 911 centers to operate, maintain, and construct effective, efficient and contemporary 911 systems.

NOW, THEREFORE, BE IT RESOLVED that the New Jersey Association of Counties does in fact hereby urge Governor Chris Christie and the New Jersey State Legislature to properly allocate 911 System and Emergency Trust Fund Account (Fund) monies to county and municipal 911 centers as required under federal law.

BE IT FURTHER RESOLVED that certified copies of this Resolution are forwarded to the Governor of the State of New Jersey Chris Christie, the President of the New Jersey State Senate Steve Sweeney, the Speaker of the General Assembly Vincent Prieto, and the clerks of the board of chosen freeholders in all twenty-one counties in the State of New Jersey.

## **ELECTRONIC PROCUREMENT**

On September 26<sup>th</sup>, the General Assembly unanimously passed **ASSEMBLY, No. 2220** (*Benson D-14/Webber R-26*), which would authorize local governing bodies subject to the “Local Public Contracts Law” and “Public School Contracts Law” to use electronic procurement technologies for such purposes as authorized by the local governing body.

In summary, the measure would authorize local governing bodies to use “electronic procurement” for the receipt of proposals and quotations, competitive contracting, the use of reverse auctions, and related practices for the purchase of goods and services, the sale of personal property, and other public procurement-related activities to be determined by the Director of Local Government Services. The measure would also authorize local governing bodies, joint purchasing units, or cooperative pricing systems to use electronic procurement practices for the following purposes: to purchase electric generation service, electric related service, gas supply service, or gas related service, for use at its facilities so long as the purchase otherwise complies with the provisions of the "Electric Discount and Energy Competition Act"; for the sale of surplus personal property under certain circumstances; and, for the sale of real property that would otherwise comply with the sale and lease provisions of the “Local Lands and Buildings Law.”

Contracts awarded for the administration of electronic procurement practices would be subject to the requirements of the "Local Public Contracts Law," and the "Public School Contracts Law." The bill would also require the Director of the Division of Local Government Services in the Department of Community Affairs, in consultation with other State government entities, to promulgate rules and regulations to effectuate the provisions of the bill. NJAC supports this legislation as it would modernize the procurement process saving valuable time, money, and resources. A-2220 and **SENATE, No. 1729** (*Whelan D-2/Oroho R-24*) are on Second Reading in the Senate, which is expected to consider the matter at one of its upcoming voting sessions.

## **RECYCLING OF FOOD WASTE**

On September 26<sup>th</sup>, NJAC noted its recommendations to exempt certain counties from **SENATE, No. 771** (*Smith D-17/Bateman D-16*) before the Senate Environment and Energy Committee to make the legislation more palatable for county governments that have committed considerable resources to cutting edge recycling and solid waste management activities.

Atlantic, Burlington, Cape May, Cumberland, Gloucester, Middlesex, Ocean, Monmouth, Salem, and Warren counties have invested substantial taxpayer dollars into state of the art Landfill Gas to Energy (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.” NJAC is concerned 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 jeopardize their economic viability. The LGTE process eliminates harmful methane gas from the environment, and food waste decomposes quickly leaving valuable landfill space for other matter. Importantly, county governments have invested substantial taxpayer dollars on the development and implementation of comprehensive solid waste management plans that serve their communities well, and should retain the autonomy to manage food waste in a manner consistent with their respective solid waste management systems.

The Committee amended the legislation to grandfather, instead of exempt counties with LGTE facilities, and second referenced the measure to the Senate Budget and Appropriations Committee. NJAC is in the process of reviewing the amendments and **ASSEMBLY, No. 2417 (Eustace D-38/Zwicker D16)** is currently in the Assembly Environment and Solid Waste Committee awaiting consideration.

#### **SENATE LEGISLATIVE OVERSIGHT COMMITTEE HEARING**

Special thanks to Salem County Welfare Director Kathy Lockbaum and Camden County Welfare Director Shawn Sheekey for testifying before the Senate Legislative Oversight Committee on September 29<sup>th</sup> to discuss the adequacy and funding for the Emergency Assistance, Temporary Assistance for Needy Families, and General Assistance programs.

#### **SUMMIT ON PENSION AND HEALTH BENEFITS**

Don't miss NJAC's "Summit on Public Employee Pension and Health Benefits" scheduled for December 9<sup>th</sup> 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](http://www.njac.org) for registration and hosting opportunities.

#### **STATE HOUSE TRIVIA**

*Did you know* that the Garden State is 166 miles long from North to South and that its greatest width is 65 miles from East to West?

*"Perfection is not attainable, but if we chase perfection, we can catch excellence." Vince Lombardi*