

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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CAPS ON BINDING INTEREST ARBITRATION AWARDS

NJAC and the New Jersey State League of Municipalities (NJSLOM) met on December 15th with Governor Elect Phil Murphy's Chief of Staff and Chief Counsel to discuss permanently extending the 2% cap on binding interest awards. We also held a press conference on December 18th with a broad based coalition of community and business leaders from across the State who hailed the cap as a critical tool for controlling personnel costs; negotiating reasonable successor contracts; and, avoiding arbitration awards granted by third party bureaucrats who are not accountable to taxpayers.

Special thanks to Gloucester County Freeholder and NJAC President Heather Simmons, East Rutherford Mayor and NJSLOM President James Cassella, President Heather Simmons, New Jersey Chamber of Commerce President Tom Bracken, and Assemblyman DeClan O'Scanlon for speaking at the event and to the growing list of organizations that support our coalition including: *the Chamber of Commerce of Southern New Jersey, the Commerce and Industry Association of New Jersey, the Government Finance Officers Association of New Jersey (GFOANJ), the International Council of Shopping Centers (ICSC), NJ Chapter, NAIOP New Jersey, the New Jersey Association of County Finance Officers (NJACFO), the New Jersey Builders Association (NJBA), the New Jersey Business & Industry Association (NJBIA), the New Jersey Chamber of Commerce (NJCC), the New Jersey Conference of Mayors (NJCM), the New Jersey Municipal Management Association (NJMMA), the New Jersey Realtors (NJR), The New Jersey Urban Mayors Association (NJUMA), and the Southern New Jersey Freeholders Association (SNFA).* Thank you to Mike Cerra with NJSLOM as well for spearheading the coalition.

Although it appears likely that the cap will sunset on New Year's Eve, we fully intend to keep up the pressure despite the approaching deadline. As you may recall, we faced a similar scenario in 2014 with the cap being extended at that time for an additional three years and several months after the original one sunset. With this in mind, we're encouraging our members to continue sending letters and resolutions, and making phone calls to Governor Christie, Governor-Elect Phil Murphy, Senate President Steve Sweeney, Speaker of the General Assembly Vincent Prieto, and incoming Speaker Craig Coughlin as failure to permanently extend the 2% cap on binding interest arbitration awards will inequitably alter the collective bargaining process in favor of labor at the expense of taxpayers.

ANIMAL CRUELTY ENFORCEMENT LAWS

Thank you to Somerset County Sheriff Frank Provenzano, Mercer County Prosecutor Angelo Onofri, and Sussex County Prosecutor Francis Koch for taking the time out of their busy schedules to meet with Senator Ray Lesniak (*D-20*) to discuss our initial concerns with the costs associated with implementing **SENATE, No. 3558**. On December 14th, the Senate Budget and Appropriations Committee amended the legislation to alleviate our concerns; and, the New Jersey Association of County Prosecutors supported the measure at the Committee hearing testifying that the bill would not require any new resources or impose any new liability for county prosecutors.

With respect to counties, the bill would revise the way animal cruelty law is enforced in the State by transferring the power of humane law enforcement from the New Jersey Society for the Prevention of Cruelty to Animals (NJSPCA) to the county prosecutor in each county; and would further require the designation of a municipal humane law enforcement officer in each municipality with an existing police department. The bill would require the county prosecutor of each county to designate an animal cruelty prosecutor, and would allow for the designation of any assistant prosecutor, to investigate, prosecute, and take other legal action as appropriate for violations of the animal cruelty laws of the State. The county prosecutor would also be required to either designate, in consultation with the county sheriff, a county law enforcement officer to serve as the chief humane law enforcement officer of the county, or enter into a memorandum of understanding with the county society for the prevention of cruelty to animals authorizing the county society, under the supervision of the county prosecutor, to assist with animal cruelty law enforcement and designate humane law enforcement officers to assist with investigations, arrest violators, and otherwise act as officers for detection, apprehension, and arrest of animal cruelty law offenders.

Additionally, the bill would provide for a county prosecutor to be responsible for designating a county society for the prevention of cruelty to animals. The charter system applicable to county societies under current law would be abolished by the bill. A county society chartered by the NJSPCA at the time of the substitute's enactment would then become the county society designated by the county prosecutor. If a county society chartered prior to enactment does not wish to be designated as the county society, or if there is no chartered county society in the county, the county prosecutor is required to select a non-profit corporation that is organized to promote the interests of, and protect and care for, animals to be designated as the county society for the prevention of cruelty to animals. Following abolishment of the charter system, the bill would not require a chartered county society to surrender any assets to the State or any political subdivision or other entity thereof. A county society so designated by a county prosecutor would be responsible for efficiently providing or locating humane shelter and care for any animals at the request of a municipal humane law enforcement officer, a county prosecutor, or a county sheriff.

This bill would also require the governing body of each municipality with a police department to designate at least one municipal humane law enforcement officer who is responsible for animal welfare within the jurisdiction of the municipality, and who is required to enforce and abide by the animal cruelty laws of the State and ordinances of the municipality. An animal control officer or police officer may be appointed to serve concurrently as a municipal humane law enforcement officer, and a municipal humane law enforcement officer may be appointed concurrently by more than one municipality, so long as the officer is able to carry out the duties and responsibilities required of each position held. Under current law, animal control officers may be empowered by a municipality to enforce, investigate, and sign complaints concerning any violation of the animal cruelty laws of the State or ordinances of the municipality, and to act as an officer for the detection, apprehension, and arrest of offenders against the animal welfare and animal cruelty laws of the State and ordinances of the municipality. This legislation would instead grants those powers to the municipal humane law enforcement officer. A municipal humane law enforcement officer may be authorized by a municipality to use a firearm in the furtherance of the officer's duties, if the officer has completed a firearms training course approved by the Police Training Commission and twice annually qualifies in the use of a revolver or similar weapon.

All third and fourth degree criminal offenses under the animal cruelty laws of the State received by a municipal humane law enforcement officer would be required to be referred to the county prosecutor for investigation and prosecution as appropriate. Civil and disorderly person offenses under the animal cruelty laws of the State may be handled by the municipality in which the violation occurred or in which the offender resides, or may be referred to the county prosecutor. The Senate passed S-3558 on December 18th by a vote of 29-0, and the General Assembly is expected to consider the measure at one of its upcoming voting sessions. However, it's unclear time if Governor Christie will sign the measure into law.

SOURCE SEPARATION OF FOOD WASTE

On December 7th, the Senate amended on the floor **SENATE, No. 771** (*Smith D-18/Bateman R-16*), which would mandate the source separation of food waste from other streams of waste. In summary, the amendments would extend the dates by one year after which a large food waste generator would be required to begin sending its source separated food waste to an authorized food waste recycling facility. The amendments would also extend the date for the payment of host community benefits for food waste recycling facilities by one year. Finally, the amendments would provide that a large food waste generator would be in compliance with the bill's requirements if the large food waste generator sends its food waste for final disposal to a sanitary landfill facility that has a landfill gas recovery system that was financed by the New Jersey Environmental Infrastructure Trust (NJEIT), the Department of Environmental Protection (DEP), or both; and the food waste is sent to the sanitary landfill facility no later than 15 years after receipt of that financing by the sanitary landfill facility.

NJAC is in the process of reviewing the floor amendments, but our initial concern is that the NJEIT or NJDEP did not provide financing for the county operated landfill gas to energy facilities (LGTE), which were more than likely financed through general obligation bonds issued by a county improvement authority or some other funding mechanism that would not qualify for the exemption. County governments across the State 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 sustainable, clean, and reliable energy. In fact, Atlantic, Burlington, Cape May, Cumberland, Middlesex, Ocean, Monmouth, Salem, and Sussex counties have committed considerable capital and ongoing resources into cutting edge LGTE facilities, which remove harmful methane gas from the environment and generate Class One electricity as classified under the “Electric Discount and Energy Competition Act.” With this in mind, NJAC is concerned with the fact that this legislation would divert critical volumes of decomposing organic food waste from county LGTE facilities, which would jeopardize their economic viability as this diversion would adversely affect the quality and quantity of the gas relied upon by these facilities.

For the reasons set forth above, NJAC will continue advocating for amendments to S-771 that will exempt county LGTE facilities that have dedicated valuable property taxpayer dollars to cutting edge energy producing, recycling, and solid waste management activities. S-771 is on Second Reading in the Senate; and, the companion version **ASSEMBLY, No. 2417** (*Eustace D-38/Zwicker D-16*) is currently in the Assembly and Solid Waste Committee awaiting consideration with time running out in lame duck.

INCLUSIVE PLAYGROUNDS

On December 18th, the Senate unanimously passed **ASSEMBLY, No. 3612/SENATE No. 2118** (*Greenwald D-6/Lampitt D-6*)(*Beach D-6/Cruz-Perez*) as Jake’s Law, which would incentivize counties to design and construct inclusive playgrounds as a priority for State funding for recreational and conservation purposes. Special thanks to Assembly Majority Leader Lou Greenwald, and to the New Jersey Parks and Recreation Association, for working with NJAC early on in the legislative process to craft a measure that enhances the accessibility for individuals with disabilities at our county parks, and establishes a fair and equitable process to secure important grant funding.

In summary, this legislation would require that the Department of Environmental Protection (DEP) prioritize any application submitted by a county seeking to acquire or develop lands for recreational and conservation purposes using Green Acres funds, provided that the Green Acres funds requested by the county are to be used for the design and construction of an inclusive playground. The Committee further amended the bill to require that the Commissioner grant additional prioritization to the applications submitted by counties that do not currently operate and maintain an inclusive playground, in an effort to ensure at least one such playground is operated and maintained by each county.

The bill would also clarify that the Department of Community Affairs (DCA) would be required to: promulgate rules and regulations specifically for inclusive playgrounds that generally exceed current State and federal standards within 90 days of the effective date of the bill; consult with nonprofit organizations with a demonstrated expertise in the design and construction of inclusive playgrounds; and, promulgate rules and regulations mandating that inclusive playgrounds would be designed to facilitate access by adults and children with disabilities. The General Assembly is expected to concur with the technical amendments made by the Senate to A-3612/S-2118, and Governor Christie is expected to sign the measure into law.

STANDARDIZED CHANGE CONDITION CLAUSES

On December 18th, the Senate unanimously passed **SENATE, No. 3409** (*Gordan D-38/Sacco R-25*), which would establish standardized changed condition clauses for construction contracts awarded under the "Local Public Contracts Law."

In summary, this bill would require that local public construction contracts include standardized changed condition clauses for differing site conditions, suspensions of contract work, changes in the character of the contract work, and changes in the amount of work to be performed by a contractor. Under the bill, a contractor that encounters differing site conditions in the performance of a contract would be required to promptly notify the contracting unit of the conditions. The bill defines differing site conditions as "conditions at a contract work site that are subsurface or otherwise concealed, and that either differ materially from those indicated in the contract documents or are of such an unusual nature that they differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract." After receipt of a differing conditions notice, the contracting unit would be required to promptly investigate the conditions and issue directions on how to proceed. Based on those directions, the contract price and completion date may be adjusted. If the contracting unit refutes that differing site conditions exist, the contractor must continue to perform the contract, but would have the right to pursue a claim for additional compensation or time. The measure would require the contracting unit to make a fair and equitable adjustment to the contract price and contract completion date for increased costs and delays resulting from the agreed upon differing site conditions.

With respect to suspensions of contract work of more than 10 days and material changes in the character of the contract work, the bill would require the contractor to first notify the contracting unit of the issue, and then the contracting unit must evaluate the issue and respond. A possible adjustment of the contract price or timeframe may then be made, and if the contracting unit determines that the contractor is not entitled to additional compensation or time, the contractor may pursue a claim. The bill defines "material change" as a character change, which increases or decreases the contractor's cost of performing the work, increases or decreases the amount of time by which the contractor completes the work in relation to the contractually required completion date, or both.

The measure would further require that whenever a work suspension exceeds 60 days, either party shall have the option to terminate the contract for cause upon and seek compensation upon 7 days written notices. The bill would authorize a contracting unit to increase or decrease the quantity of work to be performed by the contractor and provide how the contract price is to be adjusted depending on whether the quantity change qualifies as a major or minor quantity change. For a minor quantity change, the bill would require the contracting unit to make payment for the quantity of the pay item performed at the bid price for the pay item. For a major quantity change, the measure would authorize the contracting unit and contractor to renegotiate the price. If the parties do not reach an agreement, the bill would require that payment be made for actual costs of the change plus an additional 10% for overhead and an additional 10% for profit.

After seeking advice and counsel from our county purchasing officials and making recommendations concerning standardized notices, permissible overhead, and profit costs, NJAC supports the legislation as the sponsors and Utility Transportation Contractors Association (UTCA) agreed to incorporate our recommendations into the final draft of the bill. The General Assembly is expected to consider the companion version **ASSEMBLY, No. 5071 (Vainieri-Huttie D-37)** at one of its upcoming voting sessions, and Governor Christie is expected to sign the measure into law.

UPCOMING EVENTS

Please join us at 10:00 a.m. on January 19th at NJAC's office in Trenton for our Conference Committee kick-off meeting as we begin planning for our 68th annual celebration of county government. And don't miss NJAC's Reorganization Meeting scheduled for 11:00 a.m. on January 26th in the Senate Chambers of the State House where Hunterdon County Clerk Mary Melfi will become our 77th President.

THE 12 DAYS OF CHRISTMAS AT MY HOUSE

- 12 expletives hanging Christmas lights on my roof in the freezing cold
- 11 shots of Fire Ball by Uncle Marc at our Christmas Eve party
- 10 mean and nasty looks by Mrs. Donnadio because Uncle Marc had 11 shots of Fire Ball
- 9 too many presents for each of the five spoiled rotten kids
- 8 more expletives making sure the real Christmas tree is straight
- 7 times the power went out because there's Christmas lights everywhere
- 6 dishes of fish on Christmas Eve instead of 7 and I don't know why
- 5 more shots of Fire Ball by Uncle Marc
- 4 crummy presents I bought with Kohl's bucks that Mrs. Donnadio will return
- 3 pounds of braised short ribs stolen by the sneaky pit bull dog
- 2 times I lost cell service while wishing my mother-in-law a Merry Christmas
- 1 day before Christmas and I haven't been to Kohl's yet

"You're supposed to leave the presents under the tree," ordered a seven year old Nicholas Donnadio as he grabbed hold of my Santa suit and beard on Christmas Eve as I attempted to place a gift under his pillow thinking he was fast asleep.