

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*April 13, 2018*

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### COUNTY COMMISSIONERS

Although we have yet to review the latest version of **SENATE, No. 402** (*Pennacchio R-26/Van Drew D-1*), on April 12<sup>th</sup> the Senate approved a substitute bill for the legislation that would replace the term “freeholder” with “commissioner.” We’ll make sure to provide you with the new language as soon as it becomes available, and will keep you posted on the progress of its counterpart **ASSEMBLY, No. 2157** (*DeCroce D-26*), which is currently in the Assembly State and Local Government Committee awaiting consideration. S-402 is now on Second Reading in the Senate.

### 9-1-1 FEE DIVERSION

On April 5<sup>th</sup>, NJAC, Camden County Freeholder and Southern New Jersey Freeholders Association Vice President Johnathan Young, Monmouth County Sheriff Shaun Golden, and the New Jersey Wireless Association testified before the Assembly Homeland Security and State Preparedness Committee concerning the State’s decade long diversion of 9-1-1 fees.

In an effort to restore critical Fund dollars, the Committee considered the following bills: **ASSEMBLY, No. 2371** (*Vainieri Huttler D-37/Holley D-2*), which would require at least 10% of 9-1-1 Fees be allocated to public safety answering point technology upgrades and maintenance; **ASSEMBLY, No. 3742** (*Conaway D-7/Benson D-14*), which would require 9-1-1 service facilities be equipped with the Next Generation 9-1-1 system and provides funding for that purpose; and, **ASSEMBLY, No. 3743** (*Vainieri Huttler D-37*), which would impose a \$0.90 surcharge on the purchase of prepaid wireless telephone service at the point of service. Although NJAC appreciates the leadership on this important and timely matter, the package of bills would not remedy the State’s diversion of funds; and, only A-3742 would provide funding for counties and municipalities, but only for Next Generation 9-1-1 system upgrades.

NJAC testified that counties and municipalities across the State handle the vast majority of 9-1-1 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. In fact, NJAC estimates that counties spent over

\$250.0 million in capital improvements over the last five years that included facility upgrades; and, the purchase or lease telephone systems, computer aided dispatch, location mapping technology, voice recording technology, data analytics, and Next Generation 9-1-1 system upgrades. Counties also spent an estimated \$100.0 million in 2016 on operating expenses, which included salaries, staff training, system maintenance, network security costs, and IT consulting services. On the average, counties provided some level of 9-1-1 dispatch services for approximately of 73% of the municipalities located within their borders.

NJAC plans on hosting a press conference within the next few weeks and is requesting to meet with the chairs of the Senate Budget and Appropriations and Assembly Budget committees to discuss the diversion. Please note that Governor Murphy's proposed Budget contemplates a \$0.90 surcharge on the purchase of prepaid wireless telephone service at the point of sale, and dedicates *"receipts in excess of the amount anticipated Telephone Assessment fees charged at the point of sale for prepaid wireless services, are appropriated to the Office of Emergency Telecommunication Services, subject to the approval of the Director of the Division of Budget and Accounting, for Next Generation 9-1-1 Transition Grants. Grants to units of local governments for equipment upgrades and consolidation of public safety answering points shall be determined in accordance with grant criteria to be jointly developed by the Statewide Public Safety Communications and the Department of the Treasury.* Although not specifically itemized in the budget, we believe this new source of revenue will generate between \$12.0 - \$15.0 million per year as the Budget projects response fee charge receipts of \$135.0 million, which equals \$12.0 million to \$15.0 million more than what the State typically collects. With this in mind, the Budget language appears to make grant funding available to local governments only if and after the fees collected exceed \$12.0 - \$15.0 million.

As has been well documented, the State of New Jersey collects annually from consumers approximately \$120.0 million in telecommunication surcharges as 9-1-1 System and Emergency Response Fees (Fees) and deposits these monies into the 9-1-1 System and Emergency Trust Fund Account (Fund). As noted above, the State has collected over \$1.3 billion in fees since 2006 with only 11% of Fund monies being spent on eligible expenses as recently reported by the Federal Communications Commission (FCC). Unfortunately, the State has failed to provide any funding for eligible expenses to local 9-1-1 centers operated by counties and municipalities; and, has instead diverted Fund dollars to cover general operating expenses in the Department of Law and Public Safety.

During the budget season, NJAC will continue urging State leaders to comply federal guidelines and restore critical Fund monies to county and municipal 9-1-1 centers to operate, maintain, and construct effective, efficient and contemporary 9-1-1 systems. NJAC is also making the following recommendations: constitutionally dedicating any new 9-1-1 fees or surcharges imposed by the Legislature and collected by the State to county and municipal 9-1-1 centers; adopting the best practices outlined in the "New

Jersey 9-1-1 Consolidation Study” published in 2006, which in part, calls for reducing the number of local 9-1-1 centers to streamline operations and save taxpayer dollars; and amending the Constitution to require the Governor and Legislature to properly allocate State monies pursuant to statutory law.

#### **COUNTY MEDICAL EXAMINER SYSTEM**

On April 12<sup>th</sup>, both houses passed and sent to the Governor **SENATE, No. 976** (*Vitale D-19*)(*Vainieri Huttle D-37*), which would establish the “Revised State Medical Examiner Act.”

As county governments are responsible for paying for the salaries, equipment, facilities, and other expenses incurred by county medical examiner offices through the collection of the county general purpose tax, this legislation should include a funding mechanism or State appropriation to offset the costs associated with implementing new standards and protocols. At a time in which all local governments are struggling to make ends meet and in the wake of the expiration of the 2.0% cap on binding interest arbitration awards, county officials will find it very difficult to allocate the necessary resources to comply with new standards. This regulatory unfunded mandate would be similar to the one imposed by the Administrative Office of the Courts through the “Court Securitization Act.” Although the Act through regulations and directives attempted to create a uniform standard for security at county judicial and prosecutorial facilities across the State, it significantly increased the costs associated with the operation and maintenance of these facilities. NJAC also recommends that county governing bodies and county prosecutors as major stakeholders in the medical examiner system have a seat at the table when promulgating any new relevant regulations, directives, standards, or other protocols.

As of this writing, Atlantic, Cape May, Cumberland, Essex, Hudson, Passaic, and Somerset counties contract with the with the Department of Law and Public Safety for medical examiner services provided by the northern or southern regional medical examiner offices; and, generally budget between \$1.0 million to \$4.0 million per year per county for such services depending on the county’s size, case load, and other relevant factors. Gloucester, Middlesex, and Morris counties operate county regional medical examiner officers; and, generally budget between \$1.0 million to \$2.0 million per year to provide such services depending on the size, case load and other relevant factors. Camden, Mercer, Monmouth, Salem, Sussex, and Warren counties contract with one of the three county regional medical examiner offices; and, generally budget \$200,000.00 and \$1.3 million per year per county for such services. Finally, Bergen, Burlington, Hunterdon, Ocean, and Union counties independently operate county medical examiner officers; and, generally budget between \$300,000.00 to \$1.0 million per year per to operate depending on the county’s size, case load, and other relevant factors, and of which includes staff compensation, facilities and equipment management, other operating expenses.

Governor Murphy's proposed budget contains a \$500,000.00 increase in funding for the State Medical Examiner's Office, which we believe is dedicated to address staffing issues with the State Office. The Governor is expected to sign the measure into law.

#### **LABOR TO MANAGE PENSION SYSTEM**

On March 30<sup>th</sup>, both houses passed and sent to the Governor **SENATE, NO. 5** (*Sweeney D-3/Kean R-21*)(*Johnson D-37/Dancer R-12*), which would transfer management of the Police and Firemen's Retirement System (PFRS) to a new labor controlled Board of Trustees.

Although NJAC and the New Jersey State League of Municipalities (NJLM) do not oppose the transfer in concept, we believe this legislation lacks critical safeguards that would protect PFRS members, local governing bodies, and property taxpayers. Funded entirely by property taxpayer dollars, county and municipal governments across the State will spend an estimated \$913.0 million in 2018 to subsidize the Police and Firemen's Retirement System (PFRS), while PFRS members will contribute approximately \$334.0 million to the defined benefit plan. In other words, property taxpayers will finance over 73.0% of PFRS in 2018, while PFRS members will pay 27.0%. It is also important to note that employee contributions are statutorily capped at 10% of an employee's annual salary, whereas employer contributions are based on actuarial recommendations and equal 27.35% of an employee's annual salary in 2018. If the Fund falls short of projections due to underperformance of investments, benefit enhancements, or other factors, the risk of loss is borne by taxpayers as local government employers must make up the difference.

With this in mind, we're primarily concerned with the fact that this legislation would inequitably vest the Board's far-reaching power with labor by a 7-5 majority; and, would enable the new Board of Trustees to enhance members, benefits before requiring PFRS to attain any target funded ratio as required under current law. One of the many hallmarks of P.L. 2011, C.78 is the prohibition enhancing member benefits in any of the State's six pension systems until the systems achieve a target funded ratio of 80% by fiscal year 2019 and maintain the ratio thereafter. This legislation removes that requirement only for PFRS; and, would further fail to establish a true fiduciary duty to prudently manage fund assets for Board of Trustee members since counties and municipalities would continue to assume the risk of loss with PFRS as it would remain a defined benefit plan and not a defined contribution plan such as a 401(k).

As has been well documented, the local pension systems funded by counties and municipalities are healthy and actuarially sound as local governing bodies have met their obligations as employers; and, have made the statutorily required full pension contributions for over a decade. As such, NJAC and NJLM are urging the Legislature to consider the following recommendations that will serve to protect the long-term health

and viability of PFRS; and, will importantly establish critical safeguards that demand the new Board of Trustees manage valuable property taxpayer dollars in an effective and efficient manner: create a 15-member PFRS Board of Trustees comprised of an equal number of labor and management representatives with 1 independent member; authorize management to make direct management appointments to the new Board of Trustees as is the case with the labor representatives; prohibit the new Board of Trustees from enhancing member benefits until the system achieves a target funded ratio of 80% in 2019 as required under current law; and, require a vote of 2/3 of the full membership of the new Board of Trustees to enhance members benefits and only after the system achieves a target funded ratio of 80%. It's unclear at this point if Governor Murphy will sign the measure into law or conditionally veto among growing concerns.

### **WRONGFUL DEATH ACT**

On April 5<sup>th</sup>, the Senate Judiciary second referenced **SENATE, No. 1766** (*Scutari D-22*) to the Senate Budget and Appropriations Committee for a comprehensive review of the costs associated with authorizing unlimited damages based on mental anguish, emotional pain and suffering, loss of society, and loss of companionship.

In summary, this legislation would expand the wrongful death statute to establish a cause of action for the wrong done to an individual's beneficiaries when that individual dies because of the wrongful conduct of another person. More specifically, the bill would expand the type of damages for which one may sue to include mental anguish, emotional pain and suffering, loss of society, and loss of companionship. Although NJAC certainly appreciates the legislation's compassion for the well-being of family members who have suffered the loss of a loved one, we're concerned with how the measure would impact county governments across the State as it would expose local governing bodies to increased wrongful death claims, litigation costs, attorneys' fees, jury awards, settlements, and liability insurance premiums. Moreover, this legislation is contrary to the intent of Title 59, the Tort Claims Act, which serves to protect public entities from tort liability by providing specific immunities under the law.

### **WORKPLACE DEMOCRACY ENHANCEMENT ACT**

On April 12<sup>th</sup>, both houses passed and sent to the Governor's Desk **SENATE BILL NO. 2137** (*Sweeney D-3*)(*Coughlin D-19*), which would establish the "Workplace Democracy Enhancement Act."

On April 19<sup>th</sup>, NJAC, NJLM, the New Jersey School Boards Association (NJSBA), and NewJerseyCan plan on meeting with the Governor's office to discuss our concerns that this legislation would impose mandatory requirements on public employers to ensure that public sector unions fulfill their statutorily required duties by having access to and being able to communicate with the employees they represent. We're initially concerned that the measure would unlevel the playing field in favor of labor in the

collective bargaining process, and would disrupt day-to-day operations by permitting representative employee organizations: to meet with employees on the premises during the work day; the right to conduct worksite meetings during lunch and other non-work breaks; and, the right to meet with newly hired employees within 30 calendar days. These items should be left to the collective bargaining process as is the case under current practice. We're also concerned that this legislation would unintentionally create a taxpayer funded data mining operation; and, may violate an employee's privacy and First Amendment rights by requiring public employers provide employee contact information before the employee joins a representative employee organization.

In summary, the bill would require public employers to provide exclusive representative employee organizations with access to members of the negotiations units. The rights of the organization to access required by the bill would include: the right to meet with individual employees on the premises of the public employer, during the work day, to investigate and discuss grievances, workplace-related complaints, and other workplace issues; the right to conduct worksite meetings during lunch and other non-work breaks, and before and after the workday to discuss workplace issues, collective negotiations, the administration of collective negotiations agreements, other matters related to the duties of the organization, and internal union matters involving the governance or business of the organization; and the right to meet with newly hired employees, without charge to the pay or leave time of the employees, for a minimum of 30 minutes, within 30 calendar days from the date of hire of each employee, during new employee orientations, or if the employer does not conduct new employee orientations, at individual or group meetings.

The bill would further require public employers within 10 calendar days of hiring to provide the organization the following information about a new employee: the name, job title, worksite location, home address, work telephone number, date of hire, work email address, and any personal email address and home and personal cellular telephone numbers on file with the public employer. Public employers would also be required to provide updates to the employee organizations of that information every 120 calendar days. The bill specifies that home addresses, phone numbers, email addresses, birth dates, employee negotiation units and groupings, and communications between employee organizations and their members, are not government records and are exempt from the disclosure requirements of P.L.1963, c.73 (C.47:1A-1 et seq.). The bill would grant employee organizations the right to use the public employer email systems to communicate with their members, and government buildings to meet with their members, regarding negotiations and administration of collective negotiations agreements, grievances and other workplace-related complaints and issues, and internal organization matters. The meetings may not be for the purposes of supporting or opposing candidates for partisan political office or distributing literature regarding partisan elections.

The bill would also require public employers to negotiate, upon request, contractual provisions to memorialize the parties' agreement to implement the provisions of the bill listed above. The bill would set forth procedures and time line regarding the resolution of any disagreement in the negotiations. The bill would further prohibit a public employer from encouraging employees to resign, relinquish membership in an employee organization, or revoke authorization of the deduction of fees to an employee organization, or encouraging or discouraging employees from joining, forming or assisting an employee organization. Violations are regarded as an unfair practice, and, upon a finding that the violation has occurred, the Public Employment Relations Commission, is directed to order public employers to make whole the employee organization for any losses suffered by the organization as a result of the unfair practice.

### **PRIVATE PUBLIC PARTNERSHIPS**

On April 5<sup>th</sup>, the Senate Budget and Appropriations Committee favorably reported **SENATE, NO. 865** (*Sweeney D-3/Oroho R-24*), which would permit private public partnership agreements for certain building and highway infrastructure projects.

NJAC is in the process of reviewing the permissive measure, which would allow local governing bodies to enter into a public-private partnership agreement under which the private entity assumes financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity. The bill would require that workers employed in the construction, rehabilitation, or building maintenance services of a project by a private entity that has entered into an agreement with a government entity be subject to the applicable provisions of the "New Jersey Prevailing Wage Act;" that building construction projects undertaken pursuant to an such agreement contain a project labor agreement; and, that the general contractor, construction manager, design-build team, or subcontractor for a project is registered and classified by the State to perform work on a project.

Under the bill, a public-private partnership project may be structured using availability payments as a financing method. However, the bundling of multiple projects would be prohibited. In addition, roadway or highway projects must include an expenditure of at least \$10 million in public funds or any expenditure in private funds. A private entity would be required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds, instead of the chief financial officer of the public entity. A contractor is precluded from engaging in a project having an expenditure of under \$50 million if the contractor contributed more than 10 percent of the project's financing. All projects would be required to undergo a procurement process established under the bill. All

applications for agreements authorized under the bill would be submitted to the EDA for its review and approval prior to commencing the procurement process. The EDA would have the power to cancel procurement after a short list of private entities is developed, if deemed in the public interest. The bill also requires the EDA to post on its official website the status of each public-private partnership agreement subject to its consideration, review, amendment, or approval, indicating the status of each agreement by designating it as a proposed, under review, or active public-private partnership project. S-865 is on Second Reading in the Senate, and the companion version Assembly, No. 1299 (Greenwald D-6/Coughlin D-19) is currently in the Assembly State and Local Government Committee awaiting consideration.

### **PROPERTY TAX CREDITS**

On March 12<sup>th</sup>, the Assembly State and Local Government Committee favorably reported **SENATE, No. 1893/ASSEMBLY, No. 3499** (*Sarlo D-36/Sweeney D-3*)(*McKeon D-27/Jasey D-27*), which would permit local governing bodies to establish one or more charitable funds, each for a specific purpose, and would further permit property tax credits in association with certain donations.

Once a local governing body establishes a charitable fund, the bill would allow anyone to make donations to it accordingly. However, if a donation is made on behalf of a real property within the jurisdiction of the local unit, the property could be entitled to a property tax credit on the next property tax bill assessed after the donation is processed. A local unit that intends to establish a charitable fund would do so by ordinance or resolution of the governing body, as appropriate. A charitable fund ordinance or resolution would designate a fund administrator to assume responsibility for the collection and distribution of donations to the fund. The ordinance or resolution would establish an annual limit on tax credit funding that may be made available as a result of local charitable donations, and an annual donation cap, which would be updated prior to the beginning of each fiscal year. The limit on tax credit funding would equal 90 percent of the annual donation cap, or a different percentage as determined appropriate by the Director of the Division of Local Government Services (“DLGS”) in the Department of Community Affairs. The annual donation cap would not limit all donations, only donations that could be creditable in relation to property tax payments. A charitable fund ordinance could also limit the extent to which a large charitable donation on behalf of an individual property owner could count against the annual donation cap.

Under the bill, a donation to a charitable fund could be made by or on behalf of a local property owner by directing the payment to the appropriate fund administrator. If the donor intends to obtain a property tax credit in association with the donation, the donor would indicate to which parcel of property the donation should apply. A donation could be credited across more than one parcel. Following receipt of a local charitable donation, the fund administrator would issue a

receipt to the donor. The fund administrator would also notify the donor in the event that the annual donation cap has been reached, in order to provide notice that the donation is either being moved to the spillover fund or is otherwise held by the local unit, awaiting the donor's direction. Following this notification, the fund administrator would provide the donor with at least 60 days to direct the fund administrator to instead allocate the donation to another charitable fund or to rescind the donation. Following donation receipt, the fund administrator also would notify the appropriate tax collector within five business days of the amount of the donation and the size of the credit made available as a result of the donation.

The legislation would also authorize charitable fund donations to be used for the payment of fees that may be required by a tax collector for their responsibilities under the bill, and the payment of administrative costs associated with the establishment of the fund. Additionally, charitable fund would be used for purposes consistent with the specified charitable purpose, as designated in the ordinance or resolution establishing the fund. The bill would further direct municipal tax collectors to allow a local property owner a credit to be applied to property taxes in association with certain charitable donations. A credit would be equal to 90 percent of the amount of donations contributed on behalf of the owner's specified parcel of property to a charitable fund within the local unit, or a different percentage as determined appropriate by DLGS. The tax collector would apply the credit against the first property tax bill with respect to the specified parcel of property that is assessed on or after the fifth business day following receipt of the notification sent by the fund administrator. If the total amount of all tax credits on a property exceed the amount of tax owed for the property to the local unit associated with a charitable fund, and the tax collector is unable to apply a full credit against the bill, then the tax collector would carry the remaining portion of the credit forward to one or more future bills. However, no tax credit would be carried forward for more than five years. The General Assembly is also expected to pass the measure and Governor Phil Murphy is expected to sign the bill into law.

#### **UPCOMING EVENTS**

Don't miss NJAC's 68<sup>th</sup> annual celebration of county government from May 9<sup>th</sup> through May 11<sup>th</sup> at Caesar's in Atlantic City. Please visit our website at [www.njac.org](http://www.njac.org) for details about this action-packed event.

**STATE HOUSE TRIVIA** Did you know that New Jersey has more race horses than Kentucky and more horses per square mile than any other state?

*"Nearly all men can stand adversity, but if you want to test a man's character, give him power." - Abraham Lincoln*