

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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PENSION CHANGES

On February 5th, the New Jersey Association of Counties (NJAC) and the New Jersey State League of Municipalities (NJLM) testified before the Senate Budget and Appropriations Committee in opposition to legislation that would transfer management of the Police and Firemen's Retirement System (PFRS) to the Board of Trustees of PFRS without our recommended safeguards to 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%.

For this reason alone, the NJAC and NJLM oppose this legislation. Our collective members of mayors, freeholders, business administrators, finance officers, and others are 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. As the Committee is well-aware, P.L. 2011, C.78 prohibits 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 would remove 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 full pension contributions as required under the law for over a decade. As such, NJAC and NJLM are urging the Committee 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: (1) create a 15-member PFRS Board of Trustees comprised of an equal number of labor and management representatives with 1 independent member;

(2) authorize NJAC and NJLM to make direct management appointments to the new Board of Trustees as is the case with the labor representatives; (3) 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; (4) 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%; and, (5) establish a mandatory retirement age that models the one used by the federal government where law enforcement employees may retire with 20 years of service at 50 years of age or with 25 years of service at any age.

If the Legislature and Governor fail to amend the measure accordingly, then NJAC and NJLM recommend changing PFRS to a defined contribution plan where employees make greater contributions and assume a greater risk of loss as is the case with 401(k) investments. Separate, but certainly related, we're also urging State leaders to permanently extend the 2% cap on binding interest arbitration awards, which local leaders hail 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. Given the inaction on extending the 2% cap on binding interest arbitration awards, the sunseting of employee health benefit controls implemented under Chapter 78, the restricting of SALT deductions on federal income taxes, and the long-term ramifications of enacting this legislation without the recommended safeguards, county and municipal leaders fear they are facing a perfect storm of uncontrollable property tax growth and substantial service cuts.

CAPS ON BINDING INTEREST ARBITRATION AWARDS

NJAC and the New Jersey State League of Municipalities (NJLM) commend Senator Declan O'Scanlon (*R13*), and Assemblywomen Betty Lou DeCroce (*R-26*) and Holly Schepesi (*R-39*) for introducing **SENATE, No. 1858/ASSEMBLY, No. 3378**, which would permanently extend the 2% cap on binding interest arbitration awards.

In addition to making the 2% cap on binding interest arbitration awards permanent as recommended by the Police and Fire Interest Arbitration Task Force, this legislation would: provide arbitrators with 90 days to render a decision; maintain the 14-day deadline to file an appeal and the 60-day period for the Public Employment Relations Commission (PERC) to render a decision; preserve the \$10,000.00 cap on compensation for arbitrators; include step and longevity pay in base salaries; void final agreements that are not filed with PERC or that do not include a cost summary; and, abolish the "Dynamic Status Quo Doctrine," which requires local governments to pay costly step increases after a collective bargaining agreement has expired and where the parties have failed to reach a reasonable successor agreement.

For nearly a decade, the 2% cap on binding interest arbitration awards has kept public safety employee salaries and wages under control simply because parties have been

closer to reaching an agreement from the onset of negotiations. Moreover, the 2% cap on binding interest arbitration awards has established clear parameters for negotiating reasonable successor contracts that preserves the collective bargaining process and takes into consideration the separate 2% tax levy cap on overall local government spending. 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. In addition to raising taxes, county and municipal governments across the State will need to consider imposing employee furloughs; privatizing services; freezing salaries for non-affiliated employees; and, reducing or eliminating non-mandated services such as transportation for the aged and disabled, meals on wheels, mental health and addiction services, and more. Without question, the 2% cap on binding interest arbitration awards has proven to be a vital tool for controlling personnel costs; negotiating reasonable successor contracts; and, avoiding arbitration awards granted by third party administrators who are not accountable to taxpayers.

COUNTY MEDICAL EXAMINER OFFICES

On February 15th, the Senate Health, Human Services, and Senior Citizens Committee amended and Second Referenced to the Senate Budget and Appropriations Committee **SENATE, No. 976 (Vitale D-19)**, which would establish the “Revised State Medical Examiner Act.” NJAC is in the process of reviewing the latest version of the bill, and appreciates the fact that Senator Vitale has taken the time to work with us over the years and incorporated many of our recommendations into the measure.

In summary, S-976 would establish the Office of the Chief State Medical Examiner in the Department of Health to replace the Office of the State Medical Examiner in the Department of Law and Public Safety. The measure would abolish the existing Office of the State Medical Examiner in the Department of Law and Public Safety and transfer all of its functions, powers, and duties to the newly established Office of the Chief State Medical Examiner. The Governor would appoint for a term of five years, the Chief State Medical Examiner with the advice and consent of the Senate. The Chief State Medical Examiner would report directly to the Commissioner of Health and would function independently within the Department with respect to the medical examiner system and the conducting of medicolegal death investigations.

The bill would also provide that the Chief State Medical Examiner is responsible for ensuring that the entire medical examiner system is adequately equipped and staffed to deliver medicolegal death investigation services throughout the State, including the establishment of advisory standards of funding for staff, equipment, and facilities for all medical examiner offices. Additionally, the measure would empower the Chief State Medical examiner to: appoint persons to the position of Deputy Chief State Medical Examiner and to appoint and to prescribe the duties of such other employees as may be necessary; provide advice to the governing body of a county or counties concerning the appointment of county or intercounty medical

examiners; establish minimum training and experiential requirements of eligibility for those persons appointed as Deputy Chief State Medical Examiner or as a county or intercounty medical examiner or assistant county or intercounty medical examiner; retain supervisory power over personnel employed by the Office of the Chief State Medical Examiner; provide direct supervision and oversight of any county or intercounty medical examiner facility that the Chief State Medical Examiner reasonably determines is experiencing problems that preclude its effective functioning; and, provide professional oversight concerning the operations of the county and intercounty medical examiner offices as they relate specifically to the conduct of medicolegal death investigations and the performance of autopsies.

The bill would further require the Chief State Medical Examiner to adopt certain rules and regulations that would include the establishment of uniform procedures for conducting medicolegal death investigations, and minimum performance and operating standards for, and standards of professional conduct for personnel of, the Office of the Chief State Medical Examiner and the office of each county or intercounty medical examiner. The legislation would provide the Chief State Medical Examiner with direct supervision and oversight authority over any medical examiner facility operating under State jurisdiction; and would authorize the Chief State Medical Examiner to intervene in, and to assume control over, any ongoing medicolegal death investigation in the State, regardless of whether the Chief State Medical Examiner has received permission from, or a request for intervention by, a county or an intercounty medical examiner performing the investigation.

As county governments are responsible for paying for the salaries, equipment, facilities and other operating expenses incurred by the medical examiner offices through the collection of the general county purpose tax, NJAC submits that counties should retain jurisdiction to oversee county medical examiner operations and should not be subject to the direct supervision of the new Chief State Medical Examiner. NJAC further submitted that if the Chief State Medical Examiner is to have direct supervision and oversight over county or intercounty medical examiner offices, then the Department of Health should assume the costs associated with the operation and maintenance of the county medical examiner offices. The Committee amended the legislation to eliminate the need for direct supervision by the new Chief State Medical Examiner provided the county or intercounty medical examiner office attains national accreditation.

With respect to county and intercounty medical examiner offices, the legislation would require each county to establish and maintain an office of the county medical examiner, and would permit the governing bodies of two or more counties to jointly establish and maintain an intercounty medical examiner office. The bill would require two or more counties seeking to jointly maintain an intercounty medical examiner office on a cooperative or regional basis to seek the advice of the Chief State Medical Examiner concerning such an arrangement before establishing and

maintaining a joint office. The measure would provide that each county or intercounty medical examiner office would continue to be directed by a county or intercounty medical examiner, who would be appointed by the governing body of the county or counties for a term of five years. The bill specifies that in appointing persons to the position of county or intercounty medical examiner, the governing body of a county or counties must seek the advice of the Chief State Medical Examiner regarding the appointment. The bill would also provide that the Chief State Medical Examiner may remove a county or intercounty medical examiner from office for certain enumerated causes, in consultation with the governing body of the county or counties that appointed the county or intercounty medical examiner.

Additionally, the legislation would require the governing body of a county or counties that appointed a county or intercounty medical examiner to consult the advisory funding standards adopted by the Chief State Medical Examiner when establishing county budgets for medical examiner services. The bill would mandate that the budgets for and spending by each county and intercounty medical examiner office are to be made available for review by the Chief State Medical Examiner, would be required to be published and made available to the public as part of the county budget, and must detail certain costs associated with the operation of the office.

With respect to medicolegal Investigations of a death, the bill would require the Chief State Medical Examiner to conduct medicolegal investigation of a death in this State under the following circumstances: death where criminal violence appears to have taken place; death by accident or unintentional injury; death under suspicious or unusual circumstances; death from causes that might constitute a threat to public health and safety; death not caused by readily recognizable diseases, disability, or infirmity; sudden death when the decedent was in apparent good health; suicide; death of a child under 18 years of age from any cause; sudden or unexpected death of an infant or child under three years of age or a fetal death occurring without medical attendance; death due to criminal abortion; death where suspicion of abuse of a child, family or household member, or elderly or disabled person exists; death within 24 hours of admission to a hospital or a nursing home; death in custody, in a jail or correctional facility, or in a State or county psychiatric hospital, State developmental center, or other public or private institution or facility for persons with mental illness, developmental disabilities, or brain injury; death related to occupational illness or injury; death due to thermal, chemical, electrical, or radiation injury; death due to toxins, poisons, medicinal or recreational drugs, or a combination thereof; known or suspected non-natural death; any person found dead under unexplained circumstances; the discovery of skeletal remains; or a death occurring under such other circumstances as may be prescribed by regulation of the Chief State Medical Examiner.

Finally, the bill would require the Office of the Chief State Medical Examiner to maintain and supervise a State toxicology laboratory. The bill specifies that the laboratory will provide necessary toxicology services to the Chief State Medical Examiner, Deputy Chief State Medical Examiner, each county or intercounty medical examiner, and each assistant county or assistant intercounty medical examiner in the performance of medicolegal death investigations in this State. The bill specifies that the Chief State Medical Examiner, Deputy Chief State Medical Examiner, county or intercounty medical examiner, and assistant county or assistant intercounty medical examiner requiring the services of a toxicology laboratory must enlist the services of the State laboratory unless the Chief State Medical Examiner provides permission for use of another. The bill requires the Chief State Medical Examiner to adopt rules and regulations for the operations and use of the State laboratory.

NJAC will continue to review the committee amendments and advocate for a funding mechanism 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 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 regulations, directives, standards, or other protocols. The companion version of the reform in the General Assembly **ASSEMBLY, No. 1709** (*Vainieri-Huttle D-37/Lagana D-38*) is currently in the Assembly Health and Human Services Committee awaiting consideration.

ANNUAL SALARIES INCREASES

On February 5th, the Senate Budget and Appropriations Committee favorably reported **SENATE, No. 1229** (*Sweeney D-3/Sarlo D-36*), which would establish annual salaries for certain public officers and employees within the Judicial, Executive, and Legislative branches of State government.

In summary, the bill would establish the salaries for the Governor’s cabinet officers and members of the Board of Public Utilities at \$175,000 in calendar year 2018 and thereafter. In addition, the bill would provide for an \$8,000.00 increase in calendar year 2018, and for an \$8,000.00 increase on January 1st of each of the next subsequent two years, in the annual salaries for justices of the Supreme Court, Appellate Division judges, Assignment judges, judges of the Superior Court, and judges of the Tax Court. Beginning in 2021, the bill would provide for an automatic annual salary adjustment

based on the change in the Consumer Price Index. Current law provides that the annual salaries of justices and judges range from \$165,000.00 for Tax Court judges to \$192,795.00 for the Chief Justice of the Supreme Court. The bill would also affect the annual salary for workers' compensation judges, administrative law judges; and under certain circumstances, the annual salary for surrogates, county clerks, registers of deeds and mortgages, and sheriffs as the annual salaries of these officials are linked to the annual salary for a Superior Court judge.

As you may recall, P.L. 2001, c.370 requires elected constitutional officers to earn 65% of the annual salary of a superior court judge. The Legislature amended the law again as P.L. 2007 c.350, to in part increase the annual salary of a superior court judge and elected constitutional officers to the current minimum of \$107,250.00. As a result, and "as has been the case for prosecutor salary increases," the Department of Community Affairs adopted Local Finance Notice (LFN) 2008-22 to provide for the annual reimbursement, resulting from the salary increases of elected constitutional officers, to county governing bodies "affected by the mandate as follows."

1. Salaries that were already in excess of \$102,050.00 on January 1, 2008 are unaffected by the mandate and there is no reimbursement.
2. If a constitutional officer was paid less than \$102,050.99 as of 12/31/07, once the new salary is set by resolution, the State will reimburse the county for the difference between the previous salary and the new \$102,050.00.

In order for a county to receive reimbursement, the county finance officer must certify the 2008 annual salary each constitutional officer is expected to receive. A similar certification is required for the county prosecutor from all counties, where the Department will provide for payment to each county for additional salary costs resulting from the increase in the salary of county prosecutors that exceeds \$100,000.00. The bill would also increase the annual salary for county prosecutors by the same amounts and in the same manner as the salaries of judges and justices are increased by the bill. S-1229 is on Second Reading in the Senate, but a companion version of the measure does not exist in the General Assembly at this time.

VOTE BY MAIL-IN BALLOT

On February 12th, the Senate Budget and Appropriation's Committee favorably reported Senate, No. 647 (Beach D-5/Cruz-Perez D-6), which would to enable a registered voter to vote by mail-in ballot in all future elections.

The bill would also provide that a person who requested a mail-in ballot for all future elections, including future general elections, will continue to receive a mail-in ballot for such elections until the person notifies the appropriate county clerk in writing that the person no longer wishes to receive such a ballot, or is no longer eligible to vote. Current law provides that if a voter who has requested a mail-in ballot for

future general elections only does not vote in the fourth general election following the general election at which the voter last voted, the county clerk will send a notice to that voter to ascertain whether he or she continues to reside at the address from which that voter is registered to vote.

The legislation would also provide that a sample ballot for an election would not be mailed to any voter who has been sent a mail-in ballot for that election and whose voted ballot has been received by the county board of elections prior to the transmission of sample ballots to voters required by current law; would permit a county board to send an acknowledgement to a voter when his or her mail-in ballot has been received; would require the Secretary of State to update the Statewide Voter Registration System to allow the postal tracking of mail-in ballots using Intelligent Mail barcodes, or a similar successor tracking system, upon the finding by the Secretary of State that such technology is viable; would reformat the text of the required public notice concerning the use of mail-in ballots that appears in newspapers before an election; and, would permit the clerk to use an alternative mail-in ballot certification that permits the voter to certify the correctness of the identifying information contained on the label of the ballot instead of requiring the voter to provide the voter's name and address on the certification.

Additionally, the bill would provide that every mail-in ballot that bears a postmark date of the day of an election and that is received within 48 hours after the time of the closing of the polls for that election is to be considered valid and canvassed; adds two days to the deadline by which county and State canvassers boards must meet after an election, a recount may be requested, and a petition challenging any nomination or election to elective office may be filed; and, provides that clerk of each county must add to the list of registered voters receiving a mail-in ballot for all future elections without further request each voter in the county who requested and received a mail-in ballot for the 2016 general election. Each voter so added would have the option to inform the clerk in writing that the voter does not wish to receive a mail-in ballot automatically for all future elections. The county clerks are to transmit to such voters a notice that he or she will automatically receive a mail-in ballot for all future elections unless the voter informs the clerk in writing that he or she does not wish to receive such a ballot. S-647 is on Second Reading in the Senate, and the companion version **ASSEMBLY, No. 1186** (*Jones D-5/Lampitt D-6*) is currently in the Assembly Housing and Local Government Committee awaiting consideration.

UPCOMING EVENTS

Please join us at 9:30 a.m. on March 23rd in Committee Room 4 of the State House Annex in Trenton for our next Board of Directors meeting.

STATE HOUSE TRIVIA Did you know that the first Winter Olympics were held in 1924 in Chamonix, France?

"If you fail to prepare, you're prepared to fail." Nine-time Olympic gold medalist Mark Spitz