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 26th, the Senate was scheduled to vote on **SENATE, NO. 5** *(Sweeney D-3/Kean R-21),* but instead held the measure to consider potential amendments that the upper house will likely adopt at its voting session on March 26th. In the meantime, NJAC and the New Jersey State League of Municipalities (NJLM) met on March 15th with representatives from the offices of the Speaker of the General Assembly and prime sponsor of the companion version **ASSEMBLY, NO. 3671** *(Johnson D-37/Dancer R-12)* to discuss our long-standing concerns with the measure.

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 NJAC and NJLM 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%.

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 sunsetting 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.

WORKPLACE DEMOCRACY ENHANCEMENT ACT

On March 5th, the Senate Labor Committee favorably reported **SENATE BILL NO. 2137** *(Sweeney D-3)*, which would establish the "Workplace Democracy Enhancement Act."

NJAC, NJLM, and the New Jersey School Boards Association (NJSBA) plan on meeting with the sponsors 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. S-2137 is on Second Reading in the General Assembly, and the Assembly Labor Committee will consider **ASSEMBLY NO. 3686** *(Coughlin D-19)* at its meeting on Monday.

EARNED SICK LEAVE

On March 12th, NJAC, NJLM, and NJSBA testified before the Assembly Labor Committee seeking amendments to **ASSEMBLY NO. 1827** *(Lampitt D-6/Mukherji D-33),* which would mandate employers provide earned sick leave to employees.

NJAC testified that although it appreciates the intent of the legislation, we're concerned that the measure would provide additional benefits to public employees already protected by generous leave policies through collective bargaining agreements, statutory law, and past practices. As has been well documented, 20 of the State's 21 counties currently participate in civil service, which requires employers to provide employees with a minimum of 15 paid sick leave days each year that accrue without limit. Additionally, paid sick leave is a collectively bargained item in labor negotiations; and as a matter of general policy, non-affiliated and at-will employees receive the same benefits package. In light of these several layers of protection, county employees already receive substantial sick leave compensation. In order to avoid the potential for confusion and costly litigation that would result from attempting to reconcile multiple frameworks governing paid sick leave, NJAC urged the Committee to exempt local government employers from the measure. Although the Committee did not accept our specific proposal, the Committee second referenced the bill to the Assembly Appropriations Committee, and attempted to address our concerns by amending the measure to include the following language that we're still in the process of reviewing:

> *This act shall not be construed to preempt, limit, or otherwise affect the applicability of any provision of any State law or regulation regarding earned sick leave for employees of public employers that provides rights or benefits to employees which provide a greater length of earned sick leave to employees than those required by this act, but shall supersede any provision of any State law or regulation which provides a lesser length of earned sick leave to the employees than what is required by this act, notwithstanding the provisions of those other laws or regulations.*

With respect to the bill in its entirety, the measure would provide that an employee would accrue one hour of earned sick leave for every 30 hours worked. The employer

would not be required to permit the employee to accrue or use in any benefit year, or carry forward from one year to the next, more than 40 hours of earned sick leave. Accrual would begin on the effective date of the bill for any employee who commenced employment, but had not accrued leave, before the effective date, and the employee may use the earned sick leave beginning on the 120th day after employment commenced. If employment commences after the effective date, the accrual of earned sick leave will begin when employment commences and the employee may use the earned sick leave beginning on the 120th day after employment commences, unless the employer agrees to an earlier date. The employee may subsequently use earned sick leave as soon as it is accrued.

The bill would further provide that employers may choose the increments in which their employees may use earned sick leave, provided that the largest increment of earned sick leave that an employee may be required to use for each shift for which earned sick leave is used shall be the number of hours the employee was scheduled to work during that shift. The employer would be required to pay the employee for earned sick leave at the same rate of pay, and with the same benefits, as the employee normally earns. Earned sick leave may be used for: time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee; time needed for the employee to care for a family member during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or preventive medical care for the family member; absence needed due to circumstances resulting from the employee or a family member being a victim of domestic or sexual violence, if the leave is to obtain medical attention, counseling, relocation, legal or other services; time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, in connection with an epidemic or other public health emergency, or because of an official determination that the presence in the community of the employee, or a member of the employee's family, would jeopardize the health of others; time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, or event requested or required by a school official or responsible professional staff member, or to attend a meeting regarding care for the child.

The bill would permit employers to require employees to provide advanced notice of up to seven days prior to leave when the need to take the leave is foreseeable, and to make a reasonable effort to schedule the leave in a non-disruptive manner. The bill permits an employer to require reasonable documentation of the need for the leave if it is for three or more consecutive days, and provides guidelines for what constitutes reasonable documentation for specified reasons for leave. Under the bill, employers may prohibit employees from using foreseeable earned sick leave from being used on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates. The bill would also permit an employer to offer payment to

an employee for unused earned sick leave in the final month of the benefit year, which the employee may accept. If the employee declines a payment for unused earned sick leave, or agrees to a partial payment, the employee may have the unused leave carried forward to the following year. If the employee accepts the full payment, the entire accrual for the following year must be made available at the beginning of that year.

The bill would also prohibit retaliatory personnel actions against an employee for the use or requested use of earned sick leave or for filing of a complaint for an employer violation. The bill would set requirements for record keeping and for notifying workers of their rights under the bill. In cases of employer non-compliance with the requirements of the bill, including the requirements regarding retaliation, record keeping, and notification to employee of their rights, the bill would provide certain penalties based on the penalties for non-compliance with State laws regarding the payment of wages. The bill would finally prohibit counties and municipalities, after the effective date of the bill, from setting new requirements regarding earned sick leave and preempts existing local requirements. The companion version **SENATE, NO. 2171** *(Weinberg -37)* is currently in the Senate Labor Committee awaiting consideration.

SOURCE SEPARATION OF FOOD WASTE

We're pleased to report that on February 15th, Senator Bob Smith *(D-17)* and the Senate Environment and Energy Committee amended **SENATE, NO. 1206** to hold harmless and exempt existing landfill gas to energy facilities as we've been requesting for several years. In summary, this legislation would mandate the source separation of food waste from other streams of waste. Special thanks to committee members senators Kip Bateman (R-16) and Steve Oroho *(R-24)* who advocated on our behalf, and to each county, utility authority, and landfill that sent letters and resolutions.

As amended, the measure would require certain generators of solid waste to separate and recycle food waste, and amend the definition of "Class I renewable energy." More specifically, beginning January 1, 2020, every large food waste generator that is located within 25 road miles of an authorized food waste recycling facility and that generates an average projected volume of 104 or more tons per year of food waste would be required to: source separate its food waste from other solid waste; and send that source separated food waste to an authorized food waste recycling facility that has available capacity and will accept it. Beginning January 1, 2023, large food waste generators that produce an average projected volume of 52 or more tons per year of food waste would have to comply with these requirements.

If a large food waste generator is not located within 25 road miles of an authorized food waste recycling facility, or the facility will not accept the generator's food waste, the generator may send the food waste for final disposal at a solid waste management facility. In addition, a large food waste generator would be deemed in compliance with the bill if the generator: performs enclosed, on-site composting or anaerobic or aerobic

digestion of its source separate food waste; (2) recycles food waste using an alternative authorized food waste recycling method. Moreover, the bill would authorize a large food waste generator to petition the Department of Environmental Protection (DEP) for a waiver of the recycling requirement if the transportation cost together with the fee for recycling is at least 10 percent more than the transportation costs and disposal fee for noncontract commercial solid waste disposal. The bill would further provide that a large food waste generator would be deemed to be in compliance with the bill if it sends its food waste for final disposal to a sanitary landfill facility that delivers the landfill gas to a gas-to-energy facility as fuel for the generation of electricity.

The measure would require the DEP to adopt regulations concerning: recordkeeping and reporting requirements for large food waste generators and authorized food waste recycling centers; guidelines and procedures for businesses to follow to determine whether they are subject to the requirements of the bill; a list of food waste products that must be source separated and recycled pursuant to the bill; standards for the enclosed on-site composting or anaerobic or aerobic digestion of source separated food waste, including requirements for energy production and other sustainable uses of the byproducts of recycled food waste; and a list of actions businesses may take to reduce the amount of food waste they generate to a level below the threshold amounts established in the bill. The DEP would publish on its Internet website the name, location, and contact information for each authorized food waste recycling facility in the State. The Committee second referenced S-1206 to the Senate Budget and Appropriations Committee for consideration, and a companion version of the measure has not been introduced in the General Assembly at this time.

COUNTY LAW ENFORCEMENT TRAINING

On March 5th, NJAC noted it's support before the Senate Budget and Appropriations Committee for **SENATE BILL NO. 785** *(Sarlo D-36),* which would require the Police Training Commission (PTC) to establish a modified law enforcement basic training program that would permit a county correction's officer to transition into the position of sheriff's officer.

Under current law, a county correction's officer is required to complete an 18-week basic training course, and then an additional 26-week training course to transition into the position of sheriff's officer within the same county. This legislation would authorize a county correction's officer to utilize their prior training, in conjunction with the modified basic training established by the PTC under the bill, to secure employment as a sheriff's officer. Under the bill, a county correction's officer would be eligible for the modified basic training program if the officer has previously completed a PTC basic training course; has been certified by the county sheriff to transition into the position of sheriff's officer based on the officer's Civil Service test and seniority; and, has served in the county correction's officer title for 36 months in a facility under the jurisdiction of the county sheriff. The measure would also require the Civil Service Commission (CSC)

to develop a written examination equivalent to the entry level law enforcement examination, entitled the "Promotional Examination for County Correction's Officers to Transfer to the Title of Sheriff's Officer." NJAC supports the measure as it will streamline the process for hiring a sheriff's officer and reduce considerable training expenses. The Committee favorably reported S-785 and the measure is on Second Reading in the Senate.

ANIMAL CRUELTY ENFORCEMENT LAWS

On March 12th, NJAC and Mercer County Prosecutor Angelo Onofri testified before the Assembly Agriculture and Natural Resources Committee concerning the implementation of a new law that revised the way animal cruelty laws are enforced in the State. NJAC and Prosecutor Onofri urged the Committee to consider extending implementation of the new law until the end of the new year, and to identify critical sources of revenue to offset the potential costs and resources the measure may be imposing on county prosecutor offices across the State. Committee Chair Robert Andrzejczak *(D-1)* and Assemblyman Daniel Benson, the bill's prime sponsor last session, have committed to working with us and the other stakeholders on implementing the new law in an effective and efficient manner.

With respect to counties, the new law revises 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 law requires 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 is 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 law provides 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 law does 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 law also requires 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 law 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.

TRANSPORTATION TRUST FUND CAPITAL PROJECTS

On March 12th, the Senate Transportation favorably reported and second referenced to the Senate Budget and Appropriations Committee **SENATE, NO. 876** *(Sweeney D-3/Oroho R-24),* which would revise the process for administering capital projects under the New Jersey Transportation Trust Fund.

In summary, the legislation would authorize the Transportation Trust Fund Authority to hire engineering consultants to generate bi-annual reports which identify, for each transportation project and public transit transportation project, the progress achieved in expending capital funds and the progress achieved in completing capital projects. The Authority may also hire an outside consultant to generate a bi-annual report on all non-project line items in the annual capital program that are not included in the engineering consultant's report. This report would focus on the progress achieved in expending funds appropriated in the capital program and provide a description of how those funds

are being expended, including but not limited to, contracts, employment levels, and measurable outcomes relating to each capital program line item.

The bill would also require the Department of Transportation (DOT) to develop an annual highway project priority list for each county. The highway project priority list is a list of State highway projects, chosen by the county in which the projects are located, from a candidate list provided by the department to the county of all structurally deficient State bridges and State highway pavement areas in less than acceptable condition. The dollar amount of projects that a county can add to the list each year would be limited by the amount of grant money a county is statutorily scheduled to receive each year through the local county aid program. The Commissioner would be required to consider each highway project priority list for the inclusion of those projects into the capital program subject to the availability of funds. If the State is unable to begin a project on the highway project priority list that was included in the capital program within three fiscal years, the county may confer with the Department, and, if the Department finds that allowing the county to take over the project is cost-effective and will expedite completion of the project, the Department may transfer the project to the county. However, the Department would remain responsible for the cost of the project and provide payments to the county for the cost of the project on a reimbursement basis. If the department and county agree that a county is better suited to complete a project on the list, the Department and county could also form an agreement and transfer the project to a county in less than three years. For all projects on the list, regardless of whether a county has taken over completion of a project, local aid program funds are not to be used for these projects. All projects are State projects and are to be funded with department capital appropriations. Projects on the list that are transferred to a county are still required to adhere to all existing State procurement laws, including those applying to bidding and business set-asides.

The measure would also require Department to bundle the design of certain transportation design projects funded, in whole or in part, by the Transportation Trust Fund. Projects that are eligible to be bundled are projects of similar complexity, project type, or geographic proximity, that are of similar size or design, where the bundling of design projects will not require more stringent environmental review, and whose inclusion in the program will save the department time or money. The purpose of the program is to save costs and time by allowing multiple transportation projects to be designed under a single contract. Contracts issued under the design bundling program are still required to adhere to all existing procurement laws, including those applying to bidding and business set-asides. The companion version **ASSEMBLY NO. 2607** *(DeAngelo D-14)* is currently in the Assembly Transportation and Independent Authorities Committee awaiting consideration.

COUNTY CORRECTIONAL POLICE OFFICERS

On February 26th, the Senate Law and Public Safety Committee favorably reported **SENATE, NO. 1739** *(Van Drew D-1),* which would direct the Civil Service Commission to retitle county correction officer positions as county correctional police officer positions.

In summary, the title changes in this bill would apply to all correction officers employed by the counties in this State, including counties in which Title 11A, Civil Service, of the New Jersey Statutes, is not operative. The bill would further update the statutory references to county correction officers as county correctional police officers as follows:

- Warden would be retitled as county correctional police warden.
- Deputy warden would be retitled as county correctional deputy police warden.
- Correction captain would be retitled as county correctional police captain.
- Correction lieutenant would be retitled as county correctional police lieutenant.
- Correction sergeant would be retitled as county correctional police sergeant.
- Correction officer would be retitled as county correctional police officer.

The bill would require any fees associated with this retitling to be borne by the county corrections officer whose title has been changed. Examples of these fees may include any costs associated with an updated uniform, badge, equipment, etc. Under recently enacted P.L.2017, c.293, the Civil Service titles applicable to State corrections officers were changed to State correctional police officers. This bill would similarly retitle county corrections officers. S-1739 is on Second Reading in the Senate; and the companion version **ASSEMBLY, NO. 3236** *(Andrzejcak D-1/Land D-1)* is currently in the Assembly Law and Public Safety Committee awaiting consideration.

UPCOMING EVENTS

Don't miss NJAC's next Board of Directors meeting set for 9:30 a.m. on March 23rd in Committee Room 4 of the State House Annex in Trenton with the county administrators scheduled to meet at Noon on the same day and at the same location.

STATE HOUSE TRIVIA Did you know that Daylight Saving Time (DST) became a federal law in 1966 with the passage of the Uniform Time Act – and should be repealed immediately.

"No winter lasts forever; no spring skips its turn." Hal Borland