NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

MARY MELFI
NJAC President
Hunterdon County Clerk

JOHN G. DONNADIO
Executive Director

STATE HOUSE NEWS

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LABOR TO MANAGE PFRS

On May 10th, Governor Phil Murphy conditionally vetoed **SENATE, NO. 5** *(Sweeney D-3/Kean R-21)(Johnson D-37/Dancer R-12),* which transfers management of the Police and Firemen's Retirement System (PFRS) to a new labor controlled Board of Trustees.

NJAC appreciates Governor Murphy's conditional veto of S-5 and the fact that he recognized the measure needed additional protections for local governing bodies and property taxpayers that will spend nearly $1.0 billion in 2018 alone to fund PFRS. We remained concerned that the measure does not require PFRS to hit the target funded ratio of 80% before enhancing member benefits as is the case with the State's other pension systems; and, that the legislation would allow the new board of trustees to enhance member benefits by a voting majority of 8 members instead of 9 as local governing bodies make up only 4 members of the new board with labor getting 7 direct appointments and the Governor having 1. Although NJAC never objected to the concept of labor managing PFRS, taxpayers ultimately bare the risk of loss if the fund underperforms, the stock market struggles, or the new board enhances member benefits as PFRS is a defined benefits plan.

The Legislature is expected to concur with the conditional veto before its summer recess and we're still in the process of reviewing the proposed changes, some of which include: requiring at least 8 votes of the 12-member board to enhance member benefits; requiring an actuary to certify that any benefit enhancements will not increase the employer contribution rate in the current year and that such benefit enhancements will not impact the long-term viability of the fund; requiring the State Treasurer, and not the new board, to establish the fund's annual rate of return; keeping the power to invest and reinvest fund monies with the State Investment Council and Division of Investments; having the State retain 100% control over the Common Pension Fund L, which is the fund that includes revenue generated from the State Lottery transfer; Prohibiting the Executive Director and Chief Investment Officer of the fund from being engaged in any other profession or occupation; and requiring the State Treasurer to remain custodian of the fund.

WORKPLACE DEMOCRACY ENHANCEMENT ACT

On May 17th, Governor Murphy signed into law **SENATE BILL NO. 2137** *(Sweeney D-3)(Coughlin D-19)*, which establishes the "Workplace Democracy Enhancement Act."

NJAC, the New Jersey State League of Municipalities (NJLM), and the New Jersey School Boards Association (NJSBA) strongly opposed this legislation throughout the legislative process as it will 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 primarily concerned that the new law will unlevel the playing field in favor of labor in the collective bargaining process; and, will disrupt the day-to-day operations by permitting representative employee organizations to meet with employees on the premises during the work day. The new law will also provide employee organizations with 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 the new law will create a taxpayer funded data mining operation; and, violate an employee's privacy and First Amendment rights by requiring public employers to provide employee contact information before the employee joins a representative employee organization.

In summary, the new law requires 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 new law further requires 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.

This law now also requires 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 measure further prohibits 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.

SALARY INCREASES

Earlier today, Governor Murphy signed into law **SENATE, NO. 1229** *(Sweeney D-3/Sarlo D-36),* would establish annual salary increases for certain public officers and employees within the Judicial, Executive, and Legislative branches of State government.

In summary, the new law establishes 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 new law also affects 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.

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 measure also increases 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. We expect DLGS to publish a similar notice later this year.

SALT CHARITABLE CONTRIBUTIONS

On May 4th, Governor Murphy signed into law **SENATE, NO. 1893** *(Sarlo D-36/Sweeney D-3)(McKeon D-27/Jasey D-27),* which permits local governing bodies to establish one or more charitable funds, each for a specific purpose, and further permits property tax credits in association with certain donations. If you haven't done so already, please take a moment to review the Division of Local Government Services' (DLGS) recent Local Finance Notice 2018-15 for additional guidance on the matter at http://www.nj.gov/dca/divisions/dlgs/lfns/18/2018-15.pdf. Importantly note that DLGS is charged with promulgated regulations to implement the new law; and, that the Internal Revenue Service (IRS) has not officially weighed in on whether it will permit such deductions from a taxpayer's federal income tax obligation. *See IRS may nix SALT Deduction Workarounds" below.*

TAXPAYER FRIENDLY CAP ON BINDING INTEREST ARBITRATION AWARDS.

NJAC and NJLM are continuing to urge State leaders to renew the 2% cap on binding interest arbitration awards, which has helped save over $2.9 billion in property taxpayer dollars since 2011.

Since that time, the 2% cap on binding interest arbitration awards has allowed local governments to live within their limited means while making sure that we take care of and protect our most vulnerable residents. In fact, the fiscal reality is that 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 and permanent 2% tax levy cap on overall county and municipal 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 property taxes long-term, local elected officials will have no choice but 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.

Moody's Investors Services, Fitch Ratings, and Standard and Poor's all agree and have issued stern warnings about allowing the cap to expire. Of note, Moody's submitted *"that salary costs are among the largest of municipal expenditures, the cost implications are obvious and considerable,"* and that *"the effect of this is, in most cases, unlikely to be rapid, but ultimately, the loss of the arbitration cap is likely to cause the public sector's credit quality to deteriorate."* Fitch Ratings concluded that "*the arbitration cap is beneficial to local government credit quality as it helps to align revenue and spending measures and supports structural balance in the context of statutory caps on property tax growth."* For these clear and convincing reasons, we're urging Governor Phil Murphy and the State Legislature to permanently extend the cap before it's too late for property taxpayers already struggling to make ends meet with the highest tax burden in the nation. Given the inaction on extending the cap and the sunsetting of employee health benefit controls also implemented in 2011, county and municipal leaders are facing a perfect storm of uncontrollable property tax growth and substantial service cuts.

SUPREME COURT RULING FAVORS SPORTS BETTING
Adam Liptak & Kevin Draper, New York Times, May 14, 2018

WASHINGTON — The Supreme Court struck down a 1992 federal law on Monday that effectively banned commercial sports betting in most states, opening the door to legalizing the estimated $150 billion in illegal wagers on professional and amateur sports that Americans make every year.

The decision seems certain to result in profound changes to the nation's relationship with sports wagering. Bettors will no longer be forced into the black market to use offshore wagering operations or illicit bookies. Placing bets will be done on mobile devices, fueled and endorsed by the lawmakers and sports officials who opposed it for so long. A trip to Las Vegas to wager on March Madness or the Super Bowl could soon seem quaint. The law the decision overturned — the Professional and Amateur Sports Protection Act — prohibited states from authorizing sports gambling. Among its sponsors was Senator Bill Bradley, Democrat of New Jersey and a former college and professional basketball star. He said the law was needed to safeguard the integrity of sports. But the court said the law was unconstitutional. "It is as if federal officers were installed in state legislative chambers and were armed with the authority to stop legislators from voting on any offending proposals," Justice Samuel A. Alito Jr. said, writing for the majority. "A more direct affront to state sovereignty is not easy to imagine."

Across the country, state officials and representatives of the casino industry greeted the ruling with something like glee, nowhere more than in New Jersey, which anticipated the decision and had been prepared to quickly take advantage of it. In 2011, the state's voters passed a constitutional amendment in favor of legalizing sports betting, and three years later, the Legislature repealed its law against sports betting. Both were challenged in court. But now the Legislature only has to pass a law establishing the rules and regulations for sanctioned sports betting to begin at casinos and racetracks in the state.

A spokesman for Gov. Philip D. Murphy said his office sent a proposed bill to the Legislature weeks ago and has been negotiating behind the scenes in anticipation of a favorable ruling from the court. Stephen M. Sweeney, the State Senate president, said people in New Jersey would "definitely" be able to bet before June 30. That would give the state a head start in joining Nevada, which was granted an exemption under the 1992 law, in allowing sports betting. But five states — Connecticut, Mississippi, New York, Pennsylvania and West Virginia — have recently passed sports betting laws, and similar legislation has been introduced in at least another dozen states.

"This is a dry constitutional issue about states' rights, but it will likely change how we have viewed sports for the past 100 years," said Gabriel Feldman, the director of the sports law program at Tulane Law School. "It's called the gamblization of sports," he added. "Fans will become much more focused on gambling than following a team. It will make every second of every game of every week interesting to fans as it will give everyone something to root for." The American Gaming Association, a trade group that represents casinos, predicted that the ruling would generate revenue without endangering the integrity of sports competitions. "Through smart, efficient regulation, this new market will protect consumers, preserve the integrity of the games we love, empower law enforcement to fight illegal gambling and generate

new revenue for states, sporting bodies, broadcasters and many others," the group said in a statement.

The ruling in Murphy v. National Collegiate Athletic Association, No. 16-476, is also likely to be a boon for media and data companies that have existing relationships with the major sports leagues. They include television networks like ESPN, which is likely to benefit from more fans having a more deeply vested interest in the action — resulting in higher ratings. In addition, an entire industry has been created anticipating this kind of sweeping change. It includes data companies like Sportradar, which compiles and distributes instant information. Sportradar already has a relationship with the N.F.L. and the N.B.A., as well as the International Tennis Federation.

Not everyone was enthusiastic about the decision. "The court's decision is monumental, with far-reaching implications for baseball players and the game we love," Tony Clark, the executive director of the Major League Baseball Players Association, said in a statement. "From complex intellectual property questions to the most basic issues of player safety, the realities of widespread sports betting must be addressed urgently and thoughtfully to avoid putting our sport's integrity at risk as states proceed with legalization." But the ruling confirmed what professional sports leagues like the N.B.A. and Major League Baseball have come to accept in recent years — that no matter how hard they resisted, legalized sports wagering was inevitable. The leagues and their teams long fought efforts to make it so, because, among other reasons, they were not assured of being able to directly tap into the new, vast revenue stream.

TAX FIGHT: IRS MAY NIX STATES' WORKAROUND ON DEDUCTION CAPS FROM TAX CUTS AND JOBS ACT
Darla Mercado, CNBC, May 15, 2018

A number of high-tax states have recently passed legislation to help residents manage new caps on their ability to take federal tax deductions. However, accountants are warning taxpayers to proceed with caution. This year, the Tax Cuts and Jobs Act put in place a $10,000 cap on the amount of state and local taxes (SALT) that filers can claim on their taxes. Residents in high-tax locales can expect to feel the pain: In 2015, the average New Yorker's SALT deduction was $22,169, according to the Tax Policy Center. In New Jersey and Connecticut, those amounts were $17,850 and $19,665, respectively.

In response to the new tax code, those three states passed laws to create a workaround: Municipalities will be permitted to establish charitable funds to pay for local services and offer property tax credits to incentivize homeowners to make contributions. New York Gov. Andrew Cuomo signed off on this legislation on April 17. New York has also enacted a new voluntary payroll tax to address workers' inability to exceed the cap on their income taxes. On May 4, New Jersey Gov. Phil Murphy signed legislation to permit cities and towns in the Garden State to move forward on the charitable fund strategy.

And Connecticut lawmakers approved the state's bill for a similar measure on May 9. The measure awaits the signature of Gov. Dannel P. Malloy.

Tax filers who itemize on their taxes are also able to claim a charitable tax deduction on their federal taxes — and can do so above and beyond the $10,000 SALT cap. What's unknown is whether the IRS will bless these workarounds. Treasury Secretary Steve Mnuchin has already signaled his disapproval. "I hope that the states are more focused on cutting their budgets and giving tax cuts to their people in their states than they are in trying to evade the law," he said at a news briefing in January. Even though state legislators have given their blessing — and have signaled that they're willing to fight the federal government in court — tax lawyers are telling their clients to hold off on making contributions to municipalities' charitable funds for now. "I think for everybody that we've dealt with in the states with the workarounds, we've expressed our concern that Treasury may not go along with this," said Michael D'Addio, a principal at Marcum LLP.

Attorneys and critics of the workarounds said that the IRS requires that there be charitable intent in order for a contribution to be deductible. Municipalities' decision to offer donors a credit for donating to a charitable fund may also be seen as fishy, critics and lawyers said. "Also, if you make a contribution that imposes a liability on the recipient, then the liability disallows the contribution," said Jared Walczak, senior policy analyst at the Tax Foundation. "In this case, the liability is the local or state government offering a tax credit, which zeroes out the actual charity," he said.

For individuals who are questioning whether to make a contribution to their municipality's charitable fund instead of paying the property tax as they usually do, attorneys are advising them to sit tight for now. "The caveat we give clients is that it remains to be seen from the IRS' point of view," said Seth Rabe, senior manager of the state and local tax services group at Mazars USA. "You could potentially be subject to back taxes and your contribution isn't viewed as a gift." To play it safe, filers could always try maxing out the available $10,000 SALT deduction prior to making charitable contributions to state funds, Walczak said. Waiting until the absolute last minute for guidance might also be smart. "Hopefully, we'll know in December whether to make the charitable contributions," Galle said. "You'd want to wait until the end of the year to see what the federal government will say about the federal deductibility of these things.

UPCOMING EVENTS

We look forward to seeing you at NJAC's next Board of Directors meeting set for June 29th in Committee Room of the State House Annex in Trenton.

STATE HOUSE TRIVIA Did you know that Memorial began in the years following the Civil War and was originally known as Decoration Day?

"He who is prudent and lies in wait for an enemy who is not, will be victorious," Sun Tzu