

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*October 12, 2018*

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### **ELECTRONIC PROCUREMENT**

On October 15<sup>th</sup>, the Senate Budget and Appropriations Committee will consider **ASSEMBLY, No. 3112** (*Benson D-14/Mukerhi D-33*)(*Beach D-6/Oroho R-24*), which would authorize local governing bodies subject to the "Local Public Contracts Law" and "Public School Contracts Law" to use electronic procurement technologies.

In summary, this legislation would authorize local governing bodies to use electronic procurement for the receipt of proposals and quotations, competitive contracting, reverse auctions, the purchase of goods and services, the sale of personal property, and other public procurement-related activities to be determined by the Director of Local Government Services (DLGS). The measure would also authorize local governing bodies, joint purchasing units, and cooperative pricing systems to use electronic procurement practices for the purchase of electric generation services, electric related services, gas supply services, or gas related services, for use at facilities so long as the purchase otherwise complies with the provisions of the "Electric Discount and Energy Competition Act"; for the sale of surplus personal property under certain circumstances; and, for the sale of real property that would otherwise comply with the sale and lease provisions under the "Local Lands and Buildings Law." The bill would further require the Director of DLGS, in consultation with other State governmental entities, to promulgate rules and regulations. NJAC supports this legislation as one of our top legislative priorities as the measure would modernize the antiquated procurement process and save valuable time, money, and resources. The General Assembly unanimously passed A-3112 in June and the Committee is expected to favorably report the bill.

### **SHARING COUNTY TAX ADMINISTRATORS**

On September 27<sup>th</sup>, the Senate passed by a vote of 38-1 **SENATE, No. 171** (*Doherty R-23/Sweeney D-3*), which would permit counties to share county tax administrators under certain circumstances.

NJAC adopted this important and timely initiative as one of our top legislative priorities because it would eliminate an outdated law that has created a significant barrier to sharing services as current law requires a county board of taxation in each county to

appoint a full-time county tax administrator. The Governor is responsible for appointing all county tax board commission members with the advice and consent of the Senate, and the State Treasurer must pay their salaries accordingly. However, county governing bodies must pay for the salaries, pension, health, and other fringe benefits of the county tax administrator, who is appointed by the county board of taxation. County governing bodies must also pay for the salaries, pension, health, and other fringe benefits of all clerical assistants, and for the operation and maintenance of the offices for the entire county board of taxation and administrator.

As county boards of chosen freeholders continue to lead the way in providing services in a cost-effective manner as the State's only true regional form of government, several governing bodies have expressed interest in sharing their county tax administrator as a meaningful cost saving measure but have been advised that such an arrangement is prohibited under current law. At a time in which all local governments are struggling to make ends meet, this archaic level of bureaucracy imposes an unnecessary barrier to progressively sharing services. The companion version **ASSEMBLY, No. 439** (*Schaer D-36/Mazzeo D-2*) is currently in the Assembly State and Local Government Committee awaiting consideration.

#### **CODE BLUE ALERT FUNDING**

Special thanks to Senator Troy Singleton (*D-7*), Assemblywoman Pintor-Marin (*D-29*), and Assemblyman Raj Mukherji (*D-33*) for introducing on behalf of NJAC, **SENATE, NO. 2737/ASSEMBLY, No. 4177**. In summary, this legislation would allow county homelessness trust funds to be used for code blue emergency shelter services.

As you may recall, in 2017, Governor Christie signed into law legislation that requires county governing bodies, through their offices of emergency management or other appropriate offices, agencies or departments, to establish plans for issuing Code Blue alerts to municipalities, social service agencies, and non-profit organizations that provide services to at-risk individuals and are located within the county's borders. In summary, the new law requires emergency management coordinators to declare a Code Blue alert after evaluating weather forecasts and advisories produced by the National Weather Service that predict the following weather conditions in the county within 24 to 48 hours: temperatures will reach 25 degrees Fahrenheit or lower without precipitation; or 32 degrees Fahrenheit or lower with precipitation; or, the National Weather Service wind chill temperature will be zero degrees Fahrenheit or less for a period of two hours or more.

With this in mind, NJAC strongly supports S-2737/A-4177 as county governments across the State have been struggling to fund and implement the 2017 law. We very much appreciate the sponsors' leadership on this matter and have asked them to also consider authorizing counties to increase the homelessness housing fund surcharge from \$3.00 to \$5.00. Current law authorizes county board of chosen freeholders to levy

a surcharge of \$3.00 on certain documents recorded by the county of which the county must use to combat homelessness. A modest increase of \$2.00 would help counties provide adequate shelter for homeless individuals during inclement weather without affecting existing programs that support permanent housing and self-sufficiency. We're optimistic that the Senate Community and Urban Affairs and Assembly Human Services committees will consider the legislation shortly.

#### **PROMPT PAYMENTS**

On October 4<sup>th</sup>, Governor Murphy signed into law **ASSEMBLY, NO. 3808** (*Greenwald D-6/Bramnick R-12*) (*Singleton D-7/Oroho R-24*), which would provide for the prompt payment of public contracts for the purchase of goods and services. The Governor Conditionally vetoed the measure in August and the Legislature concurred with the conditional veto late last week. In general, the new law requires a contracting unit to pay interest on the amount due a business concern if the required payment is not made before the required date under certain circumstances. The measure further stipulates that unless otherwise provided for in the contract, the required payment date is 60 calendar days from the date specified in the contract.

More specifically, the new law provides that *"A contracting unit, as defined in ... shall pay interest on the amount due a business concern pursuant to a properly executed invoice, when required, if the required payment is not made on or before the required payment date. Unless otherwise provided for in the contract, the required payment date shall be 60 calendar days from the date specified in the contract or if no required payment is specified in the contract, then the required payment date shall be 60 calendar days from the receipt of a properly executed invoice, or 60 calendar days from the receipt of goods or services, whichever is later.... A contracting unit may waive the interest payment for a delinquency due to circumstances beyond the control of the contracting unit, including but not limited to a strike or natural disaster...."* The new law defines a business concern as *"any person engaged in a trade or business, including a private nonprofit entity operating as an independent contractor, providing goods or services directly to a contracting unit or to a designated third party and operating pursuant to a contract with a contracting unit which requires either a single payment or multiple payments, but shall not include a "public utility...."* The law takes effect on the 120<sup>th</sup> day following enactment.

#### **CORRECTION OFFICER TITLE CHANGE**

On September 13<sup>th</sup>, the Assembly Law and Public Safety Committee considered, but held **SENATE, NO. 1739** (*Van Drew D-1/Oroho R-24*)(*Land D-1/Andrzejczak D-1*), which would retitle county correction officers as county correctional police officers.

Although NJAC supports the title change and enjoys a terrific working relationship with our county jail wardens, we're concerned that section 3.(8)b. would appear to authorize

the transfer of certain correction officers from the Public Employees Retirement System (PERS) to the Police and Firemen's Retirement System (PFRS). Although NJAC submits that this interpretation is inaccurate, certain collective bargaining units contend the following language authorizes such a transfer: *"any person eligible pursuant to subsection a. of this section to become a member of PFRS may, regardless of age, transfer membership from PERS to PFRS in accordance with the provisions of the law and regulations governing the retirement system relative to interfund transfers by waiving, with 90 days of the effective date of this supplementary act, all rights and benefits which would otherwise be provided by PERS...."*

The challenge this language would present for freeholder boards across the State is that the current employer pension contribution rate for PERS employees is 13.37% of an employee's annual salary, while the current employer pension contribution rate for PFRS employees is 27.3%. Moreover, PFRS retirees are costlier for governing bodies upon retirement as their pension benefits are greater and may be taken for a longer period. At a time in which State leaders are struggling to protect the long-term health and viability of the pension systems, NJAC will continue to advocate for an amendment to the bill that would clarify that any person whose title changed pursuant to this legislation would not be eligible to become a member of PFRS.

#### **CONSERVATIVE GROUP SUES OVER NJ LIMIT ON WHEN PEOPLE CAN QUIT LABOR UNIONS**

*Colleen O'Dea, NJ Spotlight, October 4, 2018*

A conservative organization is challenging a new state law in federal court, contending New Jersey's restriction on when a person can leave a union or stop paying dues is unconstitutional.

One New Jersey union official charged the lawsuit is part of a concerted effort by the Michigan-based Mackinac Center for Public Policy and other conservative groups to try to further weaken unions across the country; the center previously was successful in ending the payment of agency fees by public non-union workers. Filed Wednesday on behalf of three Lakewood AFSCME union members, the Mackinac lawsuit seeks to enforce the freedom given to public employees by the U.S. Supreme Court's June decision in the case known as Janus, in which the court ruled public workers cannot be forced to pay a "fair share" or agency fee to a union they have chosen not to join.

"The Workplace Democracy Enhancement Act unconstitutionally interferes with public employees' First Amendment right to resign from and end financial support to a union at any time," contends the suit, which is just seven pages long. It charges that the law, signed by Gov. Phil Murphy about six weeks before the Supreme Court handed down the Janus decision, "likely was passed in anticipation of Janus" as a way to try to counteract that ruling, which had been expected given the court's conservative majority. Many have said the decision will seriously hurt unions' power as the organizations lose the ability to automatically collect a portion of dues from those who

choose not to join. The new state law gives New Jersey unions broader rights to meet with members and potential members, including at the workplace and in some cases during the workday, and to communicate with them via email.

A spokesman for Murphy and the leaders of both houses of the Legislature, who had sponsored the law, declined to comment, as did Attorney General Gurbir Grewal, also named in the suit. But Murphy, an unabashed union supporter, boasted of the importance of the new law in an address last July to the AFSCME International conference in Boston. “In New Jersey, we were ready for the Janus decision,” Murphy said. “I am so proud that we took anticipatory action and that I signed our Workplace Democracy Enhancement Act. Now, the rights of workers to organize and form a union, and for unions to communicate with their members, are protected in New Jersey even as they are being weakened in other states ... My state is not Wisconsin. We’re not Oklahoma. We’re New Jersey — and the trend of ripping the heart out of collective bargaining will come to a full stop at our state line.”

The Mackinac suit is only challenging a provision in the law that limits the time a public worker has for withdrawing from the union or stop paying dues to the 10 days following the anniversary of his employment each year. “Constitutional rights apply all year, not just during New Jersey’s 10-day window, which is arbitrary and restrictive,” said Patrick Wright, Mackinac’s vice president for legal affairs. “The Supreme Court’s Janus decision reaffirmed public workers’ First Amendment rights of free speech and association. The purpose of the New Jersey law is to stifle these rights even before they can be exercised.” Mackinac contends the Janus decision states that “unless the employee affirmatively consents to pay” he cannot be forced to pay dues or an agency fee.

But Hetty Rosenstein, area director of the 50,000-member Communications Workers of America’s New Jersey office, said this suit is just another effort by Mackinac and other conservative organizations — and the corporations and businessmen who fund them — to undermine unions. “They are filing these lawsuits all over the country, like throwing spaghetti against a wall,” Rosenstein said. “They know at some point or another there will be differences in rulings between federal districts and then they will appeal right back to (Justice) Samuel Alito, the author of the Janus ruling.” Rosenstein defended the new state law, saying that getting one’s union card is like signing a contract. “It is legitimate to have a drop out period,” she said.

New Jersey already took action to carry out the decision as it affects non-union members and “ceased collecting agency fees from all agency dues-paying members of the executive and judicial branch with the pay period that began July 7, 2018,” said Jennifer Sciortino, a spokeswoman for the state treasurer. She said she did not know how many people are no longer paying fair-share fees today, compared with the period before the ruling. The plaintiffs in the suit are local union workers: Terence Gaudlip, Michael Porter, and Michael Thulen Jr., all inspectors in Lakewood. Thulen is the former president of AFSCME Local 3790 and a council member in Point Pleasant who has had a

stormy relationship with union leadership. According to Thulen, he and the other officers were “put under administratorship” seven months ago, meaning all official actions must go through an AFSCME staff member. He said they had asked the township to put their union dues in escrow until the state union agreed to provide them with an audit of the financial situation at the state level.

Thulen is not anti-union and agrees that the history of union actions and the protections they have won for workers is positive. But he wants the right to be able to leave the union or switch to a different union, at any time. Specifically, he would like an alternative to AFSCME. “I thought Janus was going to level the playing field,” he said. “If a person is not happy with the services a union is providing, they should be able to leave ... Everyone should have the option of getting out at any time.” Mackinac is working with the Americans for Prosperity Foundation of New Jersey on the center’s My Pay My Say campaign, which gives workers information about the Janus decision and a form to fill out and present to an employer to withdraw from a union. Kim McIntyre, a Mackinac spokeswoman, said the center has “had opt outs in the thousands in NJ and of all 50 states on the My Pay My Say platform” and the percentage of New Jersey’s public employee workforce opting out is the highest in the nation.

However, both the state CWA and AFSCME unions say few people have decided to end their membership and the number of new members they have brought in more than exceeds those who have left. A spokesman for the New Jersey Education Association previously said only a very small number of its members have chosen to resign from the state’s largest teachers union. “It’s bad stuff, but we were prepared for it,” Rosenstein said. “Our members are not just dropping out. You don’t go through eight years of Chris Christie as governor and not understand the need to be in a union.” “Since Janus came down we’ve had only about 30-40 opt-outs,” said Jocelyn Alcox, spokeswoman for AFSCME NJ, which has 20,000 active members. “We’ve actually had significantly more employees who were eager to be full members of the union post-Janus and are happy to say we’ve gained more than we’ve lost.” AFSCME NJ executive director Steve Tully defended the new law and praised Murphy for his support of labor. “AFSCME members provide valuable services to the people of New Jersey every day,” he said. “They deserve legislation that protects their rights.”

#### **MAKING CASE FOR PUBLIC BANK IN NJ, EVEN AS MURPHY PLAN FOR IT HASN’T MATERIALIZED**

*John Reitmeyer, NJ Spotlight, October 5, 2018*

Despite being left on the backburner in the State House, a new report suggests Gov. Phil Murphy’s proposal to establish a public bank in New Jersey could play a key role in advancing several big public-policy goals, like boosting investment in infrastructure and increasing access to affordable housing.

The report, released by the New Jersey Citizen Action Education Fund, addresses several issues that Murphy has yet to fully flesh out, including how the institution could be



structured and the various ways it could raise capital to support its lending. But the report's authors concede their work should remain only a starting point for lawmakers should they decide to revisit the proposal, which was once a leading piece of Murphy's economic-policy agenda. "The process for creating a public state bank will require much more research and the involvement of many more expert stakeholders," the report said.

The idea of establishing a state-owned bank is not a radical one from a historical perspective; there were several such institutions in the U.S. during the 1800s, when commercial institutions often charged interest rates of over 10 percent. But North Dakota's state-owned bank remains the only one in the country still operating under the type of full-fledged government-banking structure that Murphy has envisioned. While the idea has been explored in other places in more recent years, no state has been able to bring a new public bank to the finish line.

The New Jersey Citizen Action Education Fund's report suggests that New Jersey may be a prime location for a public-bank revival, given the state has many needs that are not being fully met by commercial banking institutions. It cites gaps in small-business lending, retirement savings, infrastructure investment, affordable-housing financing and the availability of low-cost student loans as examples. "The primary mission of the (bank) would be to expand access to capital at competitive rates for creditworthy projects that fall within socially beneficial categories and are currently not adequately funded or financed," the report said. Murphy has suggested the bank could draw its capital from taxpayer deposits and other resources, which currently are held in large commercial banks that have been making profits off New Jersey's assets without partnering with the state to fulfill its public-policy goals.

The report highlights such accounts as a source of capital for the public bank, but it suggests there are a host of other potential sources. They include security deposits in landlord-tenant agreements that by law must be kept in interest-bearing accounts. The state could also dedicate a portion of fees that are levied for things like environmental permits, sell bonds, or appropriate funds out of the annual budget to provide seed money for the bank. Tax proceeds from the expected sale of legalized recreational marijuana could also provide a revenue stream for the bank that could be "used for appropriate social benefit projects," according to the report. It also argues that the sources of capital should be diverse to ensure that the bank does not rely too heavily on "any single source."

The report also addresses one of the key issues raised by critics of Murphy's proposal, which is whether the state has the ability and expertise to make sound lending decisions free from political influence. It recommends a board of trustees loosely based within the state Department of Treasury be established to manage the bank and its operations. And, in addition to adhering to industry-accepted lending rules and best practices, the report says the board should follow "triple bottom line" lending criteria that would be

“sensitive to environmental and social equity public policy concerns, as well as traditional fiscal concerns.”

But left largely unaddressed in the report is the current status of the governor’s public-bank proposal, which hasn’t been touched by lawmakers since a public hearing just weeks after Murphy took office in January. Bills that have been introduced in both the Assembly and the Senate also remain stalled. And while Murphy laid out a major economic-policy agenda earlier this week, he did not highlight any role for the public bank even as he proposed other innovative fiscal initiatives, such as partnering with private-sector venture-capital funds to support more New Jersey-based startup businesses. (Murphy did go on to mention the public bank briefly at a separate event in Asbury Park, suggesting it ties into his goal to boost small-business lending.)

During a conference call with reporters yesterday, New Jersey Citizen Action executive director Phyllis Salowe-Kaye said she’s been pushing for years for a public bank in New Jersey, and Murphy remains the only governor in the country to have fully embraced the idea. “Since the election of Gov. Murphy, we’ve taken a giant step forward,” Salowe-Kaye said. “We are on our way,” she added. Beverly Brown Ruggia, the group’s financial justice organizer, also stressed the need for a strong deliberative process as the public-bank idea advances. She suggested advocates in other places where the idea has failed didn’t do a good enough job of bringing together stakeholders. She also emphasized a point that was once a key campaign message for Murphy as he railed against the failings of big, commercial banks. “We really want to make sure we are using our assets to the benefit of the state,” she said.

#### **UPCOMING NJAC EVENTS**

Please visit [www.njac.org](http://www.njac.org) for details about our December 14<sup>th</sup> Summit on Active Shooter Preparedness and 911 Systems. Given the magnitude and seriousness of this issue that we seem to read about in the news every day, we’re waiving registration fees for State, county, and other local officials. However, space is limited, and you *must* complete and return the attached registration form to Kim Nolan at [knolan@njac.org](mailto:knolan@njac.org) or by fax at (609) 989-8567 no later than December 7<sup>th</sup>.

**STATE HOUSE TRIVIA:** Did you know that Reese’s Peanut Butter Cups are the top selling Halloween candy with over \$500.0 million in sales each year?

*“When witches go riding, and black cats are seen, the moon laughs and whispers, tis near Halloween.” Author Unknown*