

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

BRENDAN GILL  
NJAC President  
Essex County Freeholder

JOHN G. DONNADIO  
Executive Director

## STATE HOUSE NEWS

*January 30, 2019*

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### MINIMUM WAGE

On January 28<sup>th</sup>, NJAC, the New Jersey State League of Municipalities (NJLM), the New Jersey School Boards Association, and the Government Finance Officers Association of New Jersey (GFOA) testified before the Assembly Appropriations Committee and the Senate Budget and Appropriations Committee on **ASSEMBLY, NO. 15/SENATE, NO. 15** (*Coughlin D/ Tucker D*)(*Sweeney D-3*), which would increase the minimum wage to \$15.00 per hour over time.

Our collective organizations testified that this legislation, may ultimately, force certain local governing bodies to either increase user fees, reduce or eliminate services, or cut staff as the measure would now include counties, municipalities, and school districts as employers. The State's current minimum wage law only applies to private businesses and does not include the State, counties, municipalities, and school districts Allen v. Fauver 327 N.J. Super. 14 (App. Div. 1999). However, all must comply with the federal minimum wage of \$7.25 per hour. Given that local governments are subject to a 2% property tax cap levy, recently enacted laws such as the "Workplace Democracy Enhancement Act" and "Earned Sick Leave" that place additional burdens on local governing bodies, and the failure to permanently extend the 2% cap on binding interest arbitration awards and Chapter 78, a mandated increase in the minimum wage does not help counties and municipalities deliver often services in an effective and efficient manner, and does help control the continued growth of property taxes.

Thank you to our county finance officers and the Government Finance Officers Association of New Jersey (GFOA) for providing data on how an increase in the minimum wage would impact local governing bodies across the State. Please let us know if you would like to review a summary of the results, which vary from a minimal fiscal impact in certain counties and municipalities to a considerable one in others. For example, an increase in the minimum wage would have little impact on Cinnaminson Township and Cumberland County, but Toms River reported that it would cost the Township \$575,673.00 per year to fully implement a \$15.00 per hour minimum wage. Toms River further reported that the increase would force the Township to increase registration fees for recreation programs, youth programs, beach tags, and the Township's swimming pool. In an effort to alleviate some of our concerns, both committees amended the legislation to expand the definition for "seasonal

employment” to mean “*employment during a year by an employer that is a seasonal employer, or non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that “seasonal employment” does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis.*” As summarized below, the legislation would not exempt seasonal employees but would extend the phase-in date to \$15.00 per hour to 2026.

More specifically, this legislation would incorporate into the minimum wage law the constitutional provision which has resulted in the increase of the minimum wage rate to \$8.85 per hour on January 1, 2019, and which increases the rate on January 1 of each subsequent year by any increase which occurs in the consumer price index for all urban wage earners and clerical workers (CPI-W) during the 12 months prior to the September 30<sup>th</sup> before that January 1<sup>st</sup>. The bill would also incorporate into the law that whenever the federal minimum wage exceeds the State minimum wage, the federal minimum wage would be adopted as the State minimum wage and the increases based on increases in the CPI-W would be applied to the federal minimum wage rate.

In addition, the bill would provide for certain increases in the State minimum wage greater than the increases resulting from the provisions of the Constitution. The bill would provide that except for certain specified workers, the general minimum wage rate would be increased to \$10.00 per hour on July 1, 2019, to \$11.00 per hour on January 1, 2020, followed by \$1.00 increases each year until the rate reaches a level of \$15.00 per hour in 2024. As noted above, the measure would provide for a longer phase-in period for employees of any employer with less than six employees, and for seasonal employees other than tipped employees. For these employees, the minimum wage rate would be increased to \$10.30 per hour on January 1, 2020, and then increased each year from 2021 to 2025 by eighty cents, and then increased in 2026 by seventy cents so that it reaches a level of \$15.00 per hour in 2026, followed by further increases from 2027 to 2028 as needed to have these employees earning the same minimum wage rate as the general minimum wage rate in 2019. Both houses are expected to pass the legislation shortly, and Governor Murphy is expected to sign the bill into law.

#### **VOTE BY MAIL**

As authorized by NJAC’s Board of Directors at its December 14, 2018 meeting and pursuant to resolutions adopted by Atlantic, Cape May, Hudson, Hunterdon, Monmouth, Morris, and Somerset counties, NJAC recently filed a complaint with the New Jersey Council on Local Mandates that the “Vote-by-Mail” law enacted as P.L. 2018, Chapter 72 constitutes an unfunded State mandate in violation of the State’s Constitution.

As a result of the unfunded mandate imposed by the new Vote-by-Mail law, county governments across the State spent approximately \$1.51 million to implement and administer in 2018 and will continue to spend additional property taxpayer dollars every year thereafter on personnel, printing, postage, and supplies as a direct result of the new law. These ongoing costs include: personnel costs, such as salaries, wages, health and other fringe benefits; contracted costs with outside vendors for printing services; postage and letters; and, additional costs such as supplies and labels.

In part, the new law requires county clerks to add to the list of registered voters receiving mail-in ballots in all future elections: all voters who requested and received mail-in ballots for the 2016 general election. This new mail-in ballot voting procedure is forcing county clerks to use valuable staff time, and other resources normally dedicated to regular pre-election duties, as it requires their offices to manually convert such voters to the vote-by-mail system as the Statewide Voter Registration System does not have the capability to manage the transfers otherwise. The new law also requires county clerks to automatically furnish mail-in ballots to voters that vote-by-mail in all future elections without further request. This new mail-in ballot voting procedure is forcing county clerks to substantially increase the number of mail-in ballots their offices must prepare, deliver, receive, process, and record. As a result, county clerks are struggling to manage the new mail-in ballot voting procedure with existing staff and have hired or are planning to hire temporary, part-time, or full-time staff to comply with the Act. The new mail-in ballot voting procedure is also forcing county clerks to spend additional county resources on printing, postage, and other supplies.

The new law also requires county clerks to provide written notice to voters who vote-by-mail that they will automatically receive mail-in ballots for all future elections and until a voter informs a clerk that the voter no longer chooses to vote-by-mail accordingly. This new mail-in ballot voting procedure is forcing county clerks to use valuable staff time preparing the notice and additional county resources mailing the notice to qualified voters accordingly. This new mail-in ballot voting procedure is also causing confusion among voters who are mailed ballots but decide to vote at a polling station as the Act requires such voters to vote by provisional ballot if they do not opt out as prescribed under the new law – creating additional operational burdens and expenses in preparing provisional ballots.

In general, the New Jersey Council on Local Mandates is responsible for resolving disputes on whether a law, rule, or regulation adopted after 1996 constitutes an unfunded mandate. In general, an unfunded mandate upon boards of education, municipalities, and counties is a law, rule, or regulation that does not authorize resources, other than the property tax, to offset additional direct expenditures required to implement said law, rule, or regulation. Please note that the following categories of laws, rules, or regulations are not considered unfunded mandates: (1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements; (2) those which are imposed on both government and non-government

entities in the same or substantially similar circumstance; (3) those which repeal, revise, or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities; (4) those which stem from failing to comply with previously enacted laws or rules or regulations issued pursuant to a law; and, (5) those which implement provisions of the Constitution

## **TAX ABATEMENTS**

On January 17<sup>th</sup>, the Senate Community and Urban Affairs Committee favorably reported **SENATE, No. 58** (*Singleton D-7*), which would require municipalities to file copies of tax abatement and exemption agreements with county chief financial officer and county counsel with 10 days of execution.

In summary, this bill would require municipalities to file copies of any tax agreements authorizing short-term property tax abatements and exemptions with the county chief financial officer and county counsel within 10 days of their adoption. Under current law, these tax agreements are required to be filed within 30 days of their adoption with the Division of Local Government Services in the Department of Community Affairs. This bill would lower this timeframe to 10 days, delete the requirement that a copy be sent to the Division of Local Government Services, and instead require copies be forwarded to the county chief financial officer and county counsel.

This bill would also require municipalities that provide short-term property tax abatements and exemptions to annually report the total amount of real property taxes exempted and abated in the current tax year. Under current law, this information is only reported to the Division of Local Government Services and the Division of Taxation in the Department of the Treasury. This bill would add the county chief financial officer and county counsel to the list of recipients of this information. S-58 is on Second Reading in the Senate with no current companion version in the General Assembly.

## **CODE BLUE ALERTS**

On December 17<sup>th</sup>, the Senate passed **SENATE, No. 2737** (*Singleton D-7/Ruiz*) by a vote of 39-0 and substituted the measure with **ASSEMBLY, No. 4177** (*Pintor Marin D-39/Mukherji D-33*), which the General Assembly passed by a vote of 76-0-1 on October 9<sup>th</sup>. Since the Senate amended the bill, the General Assembly must vote on the new version at one of its upcoming voting sessions.

As amended, this legislation would allow county governing bodies to increase the homelessness housing fund surcharge from \$3.00 to \$5.00 and would further dedicate the \$2.00 increase to support emergency shelter for the homeless services provided in connection with a Code Blue alert. NJAC supports this modest increase as it would help counties provide adequate shelter for homeless individuals during inclement weather without affecting existing programs that support permanent housing and self-sufficiency. 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 0 degrees Fahrenheit or less for a period of 2 hours or more. Since that time, county governments across the State have been struggling to fund and implement the 2017 law; and, NJAC has adopted the legislation as one of its top priorities. Special thanks to Senator Singleton and Assemblywoman Pintor-Marin for their leadership in supporting this important and timely initiative.

## **911 FEES**

As Governor Murphy and legislative leaders begin planning for State fiscal year 2020, NJAC will continue to advocate for properly funding county and municipal 911 centers as recommended under federal law.

As has been well documented, the State diverts an estimated 89.0% of the \$120.0 million in surcharges it collects each year as 911 System and Emergency Response Fees (Fees) and of which it deposits into the 911 System and Emergency Trust Fund Account (Fund). In fact, the State has collected approximately \$1.3 billion in fees since 2006 with only 11% of Fund monies being spent on eligible expenses as recently reported by the Federal Communications Commission (FCC). Moreover, the State has failed to provide any funding for eligible expenses to local 911 centers operated by counties and municipalities; and, has instead diverted Fund dollars to cover general operating expenses in the Department of Law and Public Safety. As a result of the State's decade long practice, and the similar diversion of 911 funds by several other states, the FCC recently adopted rules that prohibits New Jersey and its local governing bodies from applying for \$115.0 million in grant program funding to upgrade 911 centers with Next Generation 911 (NG911) capabilities.

Importantly, counties and municipalities as first responders handle the vast majority of the State's public safety service requests through local PSAPs and have come to inequitably rely on the collection of local property taxpayer dollars to improve, operate, and maintain 911 systems. County governments alone spent approximately \$300.0 million over the last five years in capital improvements for facility upgrades, telephone systems, computer aided dispatch, location mapping technology, voice recording technology, data analytics, and NG911 upgrades. Counties also spent an estimated \$100.0 million in 2016 on operating expenses for salaries, staff training, system maintenance, network security, and IT consulting services. On the average, county

governments provide some level of 911 dispatch services for approximately of 73% of the municipalities located within their borders Fund dollars, comply with federal guidelines for grant funding, and adopt the best practices outlined in the “New Jersey 911 Consolidation Study” published in 2006, which in part, calls for reducing the number of local 911 centers to streamline operations and save taxpayer dollars.

### **MURPHY CALLS FOR RETURNING RIGHT TO VOTE TO FELONS ON PROBATION OR PAROLE**

*Colleen O’Dea, NJ Spotlight, January 17, 2019*

Gov. Phil Murphy wasn’t shy about patting himself and lawmakers on the back in his State of the State speech for making it easier both to register to vote and to cast a ballot. But he also wants to increase the number of registered voters by re-enfranchising felons on probation or parole, a controversial initiative.

This marked Murphy’s first public support for the concerted effort, launched last year by a number of progressive advocacy groups and legislators, to undo a 175-year-old law that strips the right to vote from those convicted of serious crimes until they have completed their entire sentence. But the governor stopped short of fully embracing legislation — embodied in S-2100 and A-3456 — that would return the right to vote to those who are incarcerated. “Let’s open the doors to our democracy even wider,” Murphy said toward the end of his speech to a joint session of the Legislature on Tuesday. “Let’s restore voting rights for individuals on probation or parole, so we can further their reentry into society. And we further their reentry into society by allowing them to exercise the most sacred right offered by our society — the right to vote.”

During his address, Murphy also called for lawmakers to pass additional voter expansion measures that he backed during his campaign. These include: allowing residents to register to vote online; permitting Election Day registration at the polls; letting 17-year-olds register and vote in the June primary if they will turn 18 in time for the November general election; and, enacting “true” early, in-person voting statewide. But Murphy’s call for restoring voting rights to convicted felons on probation or parole is likely to be the most controversial of his efforts to expand voting. Republicans, certainly, were not enthusiastic, but it is the type of issue that could cross party lines.

Murphy’s call came a day after activists gathered in Trenton to push for a number of progressive priorities, including expanding the right to vote. “We must continue the work of building an inclusive democracy in the Garden State by restoring the right to vote to nearly 100,000 people with convictions,” said Ryan Haygood, president of the New Jersey Institute for Social Justice. “The lesson to take from this important moment is that people who care about social and racial justice cannot afford to be timid. The heart of our democracy is at stake.” The institute has been at the fore of the push, releasing a report last February that showed more than 94,000 New Jerseyans — 87 percent of them not in jail but on probation or parole — cannot vote as a result of the 1844 law. More than half of the disenfranchised, or about 47,400 people, were African-Americans.



Murphy's support for restoring the vote to that 87 percent drew applause from the crowd in the Assembly chamber, but also some head-shaking by a few Republicans. Following the speech, Assembly Minority Leader Jon Bramnick (R-Union) said this effort should not be one of Murphy's priorities and voiced his own opposition to the idea. "Whether you agree with that or not, clearly, I don't believe that that's one of the priorities for the voters and the residents of the state of New Jersey ... for the people who are trying to put food on the table," he said. "I would have some concerns that until you've completed your entire sentence ... including probation and parole. At that point, the person has met all the requirements by the law." Until then, Bramnick continued, "you're still under the supervision of the courts or probation, which indicates you haven't completely paid your price to society."

Supporters for re-enfranchisement argue that there's no reason why losing the right to vote needs to be a part of the price a person must pay, and it is under lawmakers' control to change that. Currently, all those convicted of indictable offenses lose the right to vote until they complete their entire sentences, which include probation or parole. Such offenses range from being charged as a minor for marijuana distribution or shoplifting more than \$200 in merchandise to rape or murder.

It had been common throughout the country for states to strip felons of their voting rights, sometimes forever. More recently, however, states have been reinstating these rights to some degree. According to the National Conference of State Legislatures, felons never lose their right to vote in two states — Maine and Vermont. In 14 other states and Washington, D.C., felons cannot vote while incarcerated but are automatically re-registered upon release, including while on parole. The laws in 21 other states are similar to New Jersey's. In the remaining 12 states, felons have an additional waiting period, have to seek gubernatorial or court approval to vote again, or may never be able to vote again for convictions for the most serious offenses.

Legislative sponsors and advocates view restoring the vote here as a civil rights issue. Blacks in New Jersey are affected disproportionately by the current system because they make up such a large portion of the prison population. Although African-Americans account for just 15 percent of New Jersey's overall population, they represent about half of those who have lost their voting rights as a result of a criminal conviction, according to the NJISJ report. More than 5 percent of New Jersey's voting-age African-Americans have been denied the right to vote by the law. The effort to change the voting law has the support of about 80 organizations. Groups like the institute hold the position that voting rights should never be taken away for a crime, thus allowing prisoners to continue to vote while behind bars. An inmate would vote by mail using the address where he lived prior to incarceration.

Murphy spokesmen did not return a request for comment on whether the governor might also support allowing felons to vote while still in prison, which he did not expressly state. Neither the institute nor the American Civil Liberties Union of New Jersey responded to the question of whether they would back the re-enfranchisement

of those on parole and probation if it did not also apply to those still incarcerated. Sen. Sandra Cunningham (D-Hudson), a co-sponsor of the legislation to re-enfranchise felons, issued a statement praising Murphy's call for action on the issue. The measure, introduced last March, has not had a hearing in either the Senate or Assembly. "The incarcerated are among the most underrepresented population in the state. New Jersey already allows for former non-violent felons to vote, but we can do better," Cunningham said. "New Jersey could become a leader in this country with this needed criminal justice reform. I look forward to working with him on this important issue in the near future."

### **AUDIT SPARKS OVERLAPPING PROBES INTO STATE BUSINESS INCENTIVE PROGRAMS**

*Colleen O'Dea, NJ Spotlight, January 25, 2019*

Two investigations — a task force empaneled by Gov. Phil Murphy and a joint hearing scheduled by the Legislature — are announced hours apart. Two branches of government announced new plans to conduct overlapping probes of New Jersey's system of business tax incentives, despite — or due to — a recent State Comptroller audit that raised troubling questions about oversight of the incentives and their effectiveness. The two investigations, one by Gov. Phil Murphy's administration and another by the Legislature, also point to the continued divide between the separate branches of government, both led by Democrats.

Murphy, who has proposed new incentive programs to replace the ones in question, signed an executive order Thursday creating the Task Force on EDA's Tax Incentives to "conduct an in-depth examination of the deficiencies in the design, implementation, and oversight" of the state's two major incentive programs. The task force will have subpoena power and its legal team will include the former co-chair of a commission that investigated public corruption in New York. About two-and-a-half hours later, the leaders of the state Senate and Assembly announced a joint legislative hearing for mid-February "to review the operations, oversight and effectiveness of the New Jersey Economic Development Authority and its tax incentive programs." That hearing will delve into the audit released earlier this month by the State Comptroller, as well as other assessments of the incentives.

These will bring to three the number of investigations spurred by the audit. Last week, state Attorney General Gurbir Grewal said his office was probing whether any wrongdoing had occurred. New Jersey has offered tax incentives for over two decades, but the programs got a major facelift in 2013 by former Republican Gov. Chris Christie, working with Democratic legislative leaders, in an attempt to add jobs and boost economic growth in the wake of the Great Recession. One of Murphy's earliest actions on taking office was to order the audit of the incentives — the Grow New Jersey Assistance and the Economic Redevelopment and Growth Grant programs that remain in place, as well as earlier incentives — to determine their effectiveness. "The audit released earlier this month unfortunately validated my long-standing concerns that New Jersey's tax incentive programs gave out billions of dollars in tax breaks but failed to



deliver the promised economic benefits,” Murphy said in a statement announcing the task force. “The idea that up to \$11 billion was awarded without so much as basic verification of claims regarding job creation and retention should shock and appall every New Jersey taxpayer.”

While \$11 billion in incentives has been approved, some dating back to the early days of the programs, most of that has not been handed over yet to businesses. Of roughly \$8 billion actually ratified by the EDA, less than 9 percent, or close to \$700 million, has been paid out. (The earliest \$3 billion was allotted before the existence of the EDA.) The audit came to some troubling conclusions, particularly regarding job creation and retention — major requirements of GrowNJ and some of its predecessor programs. Businesses can receive annual tax credits of up to \$5,000 per job created or retained, with additional bonus credits possible. The audit cited the EDA for “a failure to properly analyze recipient performance data to determine whether the incented jobs were actually created or retained pursuant to the award terms.” In a sample of projects examined, the audit could not find proof that almost 3,000 jobs were created or kept — about 20 percent of those promised. Additionally, the audit found that the EDA did not use the proper statute and regulations in evaluating five commercial projects and so improperly awarded them \$179 million in incentives. It also cited the agency for inadequate monitoring, for lacking an adequate process to determine whether the state realized promised economic benefits and for failing to assess and collect appropriate fees from all applicants.

In total, 1,000 projects approved for almost \$11 billion over the life of the incentive programs were to have created or retained about 240,000 jobs and resulted in \$34 billion in capital investments. The way the audit was conducted, it was impossible to determine whether its finding that one in five jobs may not actually have been saved or created applied to all projects. Murphy said he is pleased that the EDA, which disputed some of the audit findings, has put some policies in place, and pledged others, to address some of the deficiencies found by the comptroller’s office. “But taxpayers deserve a full explanation of how and why these massive shortcomings in performance existed,” Murphy said. “The Task Force I am establishing today will give the public that explanation, and help provide a roadmap for how tax incentives can be responsibly designed and implemented going forward.”

Murphy has his own plan for revamping the incentive programs, which expire mid-year. First announced last fall, it envisions programs to provide gap financing to projects, reward businesses that create jobs in certain areas, encourage the redevelopment of brownfields and preservation of historic sites and help boost the state’s startup sector. The agency’s board approved Murphy’s choice of Tim Sullivan to lead the EDA last February. To chair the new task force, Murphy tapped Ronald Chen, dean of Rutgers Law School in Newark and a former state public advocate. The governor did not name any other members, but announced that the group will have legal counsel from Walden Macht & Haran LLP of New York. Its lead attorneys will include Jim Walden, a former Assistant U.S. Attorney for the Eastern District of New York, and Milton L. Williams,

former co-chair of the Moreland Commission created in 2013 by New York Gov. Andrew Cuomo to investigate public corruption.

“We look forward to undertaking an objective and straightforward investigation to determine whether New Jersey’s tax-credit programs were misused,” Walden said in a statement. Murphy’s office did not answer questions about whether the state has entered into a contract with Walden Macht & Haran or how much they expected to pay the firm and its attorneys for their work. The governor’s task force will hold public hearings. If necessary, it can refer matters to the state comptroller’s office to exercise its subpoena authority, or to the EDA to exercise its authority over the incentive programs. The legislative hearing is scheduled for February 11 before the Senate Economic Growth and the Assembly Commerce and Economic Development committees. Lawmakers issued no comment on either Murphy’s task force or their hearing. The notice of the hearing states that the committees’ findings “will be used to inform the Legislature on how to improve the state’s incentive programs, how they should be structured and implemented, and what oversight controls are needed to ensure full accountability.” Murphy’s recent criticisms of the incentive programs have seemed to exacerbate his ongoing feud with Sen. President Steve Sweeney (D-Gloucester). Following the governor’s State of the State address last week, half of which Murphy devoted to the audit, Sweeney defended the programs.

“To say the programs we did were bad is just wrong,” he said. “It was the enforcement within the agency ... I can point to Subaru and many others who would have left the state if not for these programs.” Sweeney worked with Christie on revamping the programs six years ago. Some of the changes allowed companies and developers to get more generous tax incentives, while also reducing their requirements for investment and job creation. This was especially true in places like Camden, where Sweeney and other South Jersey Democrats determined the most significant economic boosts were needed. Any changes to the programs will require Murphy to reach accommodation with the Legislature, as he will have to gain the support of Sweeney and Assembly Speaker Craig Coughlin (D-Middlesex) to get his proposals or other program revisions enacted.

**UPCOMING NJAC EVENTS:** Make sure to mark your calendars for NJAC’s Annual Celebration of County Government set for May 8<sup>th</sup> through May 10<sup>th</sup> at Caesar’s in Atlantic City. And, you’re welcome to join us at our next board meeting on March 22<sup>nd</sup>.

**STATE HOUSE TRIVIA:** Did you know that midway through the 2018/19 legislative session, legislators have introduced 8,265 bills and Governor Murphy has signed 169 into law?

*“Lead me, follow me, or get out of my way.” General George Patton*