

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*July 19, 2019*

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### INTEREST ARBITRATION

NJAC, the New Jersey State League of Municipalities (NJLM), the New Jersey Municipal Managers Association (NJMMA), and the Government Finance Officers Association of New Jersey (GFOA) have joined forces to assemble an outstanding panel of finance officers, labor attorneys, and local governing body administrators that will provide management with effective strategies and recommended best practices on how to navigate the unlevel playing field created by the failure of State leaders to permanently extend the 2% cap on binding interest arbitration awards.

Senator Declan O'Scanlon (R-11), an Interest Arbitration Task Force Member, will deliver the keynote remarks followed by leading labor attorneys Matthew Giacobbe and Joseph M. Hannon, who will address the current state of negotiations. Town of Boonton Administrator Neil Henry will provide a comprehensive case study and highly regarded finance officers Jon Rheinhardt and Gabriela Simoes Dos Santos will discuss the significance of analyzing and preparing critical financial data.

The workshop will also recommend new legislative strategies to address the continued inaction of State leaders that has inequitably altered the collective bargaining process in favor of labor at the expense of property taxpayers, and recommend best practices for management, some of which include: expecting aggressive and coordinated negotiating tactics from collective bargaining units; making sure to use general counsel and an experienced labor attorney to negotiate directly with collective bargaining units; preparing comprehensive financial analysis that includes a complete and accurate picture of a governing body's ability to pay; compiling salary, wage, and fringe benefits data, and all other relevant information, to address false claims and statements made by collective bargaining units; and, staying strong on health benefit concessions, particularly with retirees and rolling back Chapter 78 requirements.

This important and timely workshop is scheduled for 10:00 a.m. – 12:00 p.m. on July 31<sup>st</sup> in Committee Room 4 of the State House Annex in Trenton. The event is free for public officials, but space is very limited, so please make sure to let us know at [knolan@njac.org](mailto:knolan@njac.org) if you plan on attending as we expect to close registration shortly.

## LANDFILL GAS TO ENERGY FACILITIES

NJAC is urging Governor Murphy to sign into law **ASSEMBLY, No. 3726** (*Kennedy D22*)(*Smith D-17/Bateman R-16*), which would require large food waste generators to separate and recycle food waste under certain circumstances.

NJAC is grateful to Senator Bob Smith and the Senate Environment and Energy Committee for taking the time work with the Association throughout the legislative process and recognizing the need to hold harmless and exempt existing landfill gas to energy facilities (LGTE) that have committed considerable public resources to cutting edge recycling and solid waste management activities. As has been well documented, Atlantic, Burlington, Cape May, Cumberland, Middlesex, Ocean, Monmouth, Salem, and Sussex counties have invested substantial taxpayer dollars into state of the art LGTE facilities that utilize methane gas produced from decomposing organic food waste to generate renewable Class One electricity under the “Electric Discount and Energy Competition Act.”

Additionally, this legislation addresses our initial concerns with the bill as introduced that mandating the source separation of food waste from other streams of waste would divert large volumes of critical material from these facilities, which in turn, would adversely affect the quantity and quality of the gas relied upon – ultimately jeopardizing their economic viability. Importantly note that last minute amendments to the legislation on June 25<sup>th</sup> would provide similar exemptions to resource recovery facilities that utilize anaerobic digestors under certain circumstances. Although NJAC has not taken a position on these specific amendments, environmentalists strongly oppose the last-minute exemption but have remained neutral on the LGTE exemption. On July 26<sup>th</sup>, NJAC is meeting with Governor’s Counsel to discuss the measure in detail and is encouraging affected counties to contact Governor Murphy.

## ISOLATED CONFINEMENT

On July 11<sup>th</sup>, Governor Murphy signed into law **ASSEMBLY, No. 314** (*Pinkin D-18/Sumter D-35*)(*Pou D-35/Cunningham D-31*), which would limit the use of isolated confinement in State and county correctional facilities. NJAC would like to once again thank Senator Pou and Assemblywoman Pinkin for taking the time to meet with NJAC and the New Jersey County Jail Wardens Association (NJCJWA) to discuss this matter.

The new law as amended addresses several of our operational concerns as it would generally prohibit inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate or serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The law as amended defines isolated confinement as “*confinement of an inmate in a correctional facility,*

*pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction.”* As introduced, the measure would have prohibited a county correctional facility from holding an inmate for more than 20 hours, which would have presented significant staffing, resource, logistic, and safety challenges, so the change to 22 hours is very much appreciated. Please note that current State regulations and federal guidelines are set at 23 hours.

The law also requires qualified healthcare personnel to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. With respect to county inmates, the bill as amended would require a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement but may be extended to 72 hours if staffing levels require. As introduced, the measure would have required county correctional facilities to conduct an examination at 48 hours, which would have required hiring or contracting for additional medical staff, so extending the time frame to 72 hours is also very much appreciated. Additionally, the law provides inmates with the opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement, absent exigent circumstances, with subsequent reviews every 30 days. Inmates will have the right to appear at the hearing presided over by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator will be responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The new law further requires that qualified healthcare personnel conduct a daily mental health and physical health status examination of State inmates to determine whether the inmate is a member of a vulnerable population; and county inmates would be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population would be immediately moved to an appropriate placement. The law defines an as a member of a vulnerable population: *“if he or she is 21 years of age or younger; is 65 years of age or older; has a disability based on a mental illness, a history of psychiatric hospitalization, or has recently exhibited conduct, including but not limited to serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness; has a developmental disability; has a serious medical condition which cannot effectively be treated in isolated confinement; is pregnant; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex.”* At the request of NJCJWA, the law as amended defines “postpartum period” as 45 days after childbirth.

A-314 as amended also restricts inmates placed in isolated confinement to not more than 20 consecutive days, or for more than 30 days during any 60-day period. As introduced, the bill would have restricted isolated confinement to not more than 15 days, or for more than 20 days during any 60 period, which would have created substantial staffing, resource, security, and logistic challenges. One final change worth noting, is that the sponsors also agreed to amend the legislation to prohibit *“a county correctional facility from directly releasing from isolated confinement to the community during the final 30 days of the inmate’s incarceration, unless it’s necessary for the safety of inmate, staff, other inmates, or the public.”* As introduced, the measure would have prohibited the release of an inmate within 180 days, so this change was critical as most inmates in county jails are awaiting trial with an average length of stay of 21 days.

The bill takes effect on the first day of the thirteenth month following enactment and requires the Commissioner of the Department of Corrections to take anticipatory administrative actions for implementation in the meantime. And, special thanks to Passaic County Jail Warden Mike Tolerico, Burlington County Jail Warden Matthew Leith, Retired Burlington County Jail Warden Millie Scholtz, and Hudson County Deputy County Administrator Oscar Aviles for their leadership and hard work on this important and sensitive matter.

#### **WORKERS COMPENSATION**

On July 8<sup>th</sup>, Governor Murphy signed into law **SENATE, NO. 716** (*Greenstein D-14/Bateman R-16*)(*Quijano D-20/Benson D-14*), which would establish the “Thomas P. Canzanella Twenty First Century First Responders Act.”

In general, this new law establishes a presumption of workers’ compensation coverage for public safety workers and other employees under certain circumstances. More specifically, the law provides that if a public safety worker can demonstrate that in the course of his or her employment, the worker is exposed to a serious communicable disease or a biological warfare or epidemic-related pathogen or biological toxin, all care or treatment of the worker, including services needed to ascertain whether the worker contracted the disease, shall be compensable under workers' compensation, even if the worker is found not to have contracted the disease. If the worker is found to have contracted a disease, there would be a rebuttable presumption that any injury, disability, chronic or corollary illness or death caused by the disease is compensable under workers' compensation.

The measure further provides workers’ compensation coverage for any injury, illness or death of any employee, including an employee who is not a public safety worker, arising from the administration of a vaccine related to threatened or potential bioterrorism or epidemic as part of an inoculation program in connection with the employee’s employment or in connection with any governmental program or recommendation for the inoculation of workers. The law also establishes a rebuttable presumption that any

condition or impairment of health of a public safety worker which may be caused by exposure to cancer-causing radiation or radioactive substances is a compensable occupational disease under workers' compensation if the worker was exposed to a carcinogen, or the cancer-causing radiation or radioactive substance, in the course of employment. Employers are required to maintain records of instances of the workers deployed where the presence of known carcinogens was indicated by documents provided to local fire or police departments under the "Worker and Community Right to Know Act," and where events occurred which could result in exposure to those carcinogens.

In the case of any firefighter with seven or more years of service, the law creates a rebuttable presumption that, if the firefighter suffers an injury, illness or death which may be caused by cancer, the cancer is a compensable occupational disease. The measure further provides that, with respect to all of the rebuttable presumptions of coverage, employers may require workers to undergo, at employer expense, reasonable testing, evaluation and monitoring of worker health conditions relevant to determining whether exposures or other presumed causes are actually linked to the deaths, illnesses or disabilities, and also requires that the presumptions of compensability are not adversely affected by failures of employers to require testing, evaluation or monitoring. The measure covers paid or volunteer emergency, correctional, fire, police, and medical personnel.

Local officials are generally concerned that this new law may increase annual expenditures by local governing bodies that employ public safety workers as it shifts the burden of proof from the worker to the employer in certain cases, which may produce increased claims for workers' compensation benefits and the requirement for employers to maintain additional records. Local officials also concerned that the new law will result in increased premium costs to provide workers' compensation coverage as the measure may increase the pool of individuals filing claims.

#### **COUNTY PROSECUTOR OVERSIGHT EXPENSES**

On June 20<sup>th</sup>, both houses passed and sent to the Governor **ASSEMBLY, No. 4223** (*Johnson D-37/Rooney R-40*)(*Weinberg D-37/Lagana D-38*), which would require the State Treasurer to pay county prosecutor's expenses for overseeing law enforcement agencies under certain circumstances.

More specifically, the measure would require the State Treasurer to reimburse the county treasurer for any expenses incurred by the office of the county prosecutor for the oversight of the operations of a State or interstate law enforcement agency. The bill would apply to expenses incurred beginning January 1, 2017 until the date on which the county prosecutor is no longer required to oversee the operations of the State or interstate law enforcement agency. The reimbursement for expenses incurred prior to the bill's enactment would be paid upon the submission by the county treasurer of any

documentation that the State Treasurer may require. Reimbursement for expenses incurred following the bill's enactment would be paid on a quarterly basis until the county prosecutor is no longer required to oversee the operations of the State or interstate law enforcement agency. The bill requires the county treasurer to transfer the payments to the office of the county prosecutor to be used to carry out the functions of that office. It's unclear if Governor Murphy will sign the bill into law.

**NJ COPS AND FIREFIGHTERS ARE ASKING FOR MUCH BIGGER RAISES. HERE'S WHY:**

*Samantha Marcus, NJ Advance Media for NJ.com, July 14, 2019*

After West Windsor's police contract expired at the end of last year and negotiations with the township stalled, the union turned to an arbitrator to break the impasse. The local union's demands? Four percent annual pay hikes for sergeants and for patrolmen at the top of the scale and 2 percent annual wage increases for everyone else, in addition to the standard wage increases officers receive for additional years of service. The township of course came in with a lower counter-offer. And, ultimately, the arbitrator awarded two years of 2-percent raises and two years of 2.25 percent raises for everyone.

Sound like business as usual to you? No, say local government lobbyists. They fear it could be a sign of bigger raises for police and firefighters who are emboldened to ask for more following the state's controversial decision not to renew a law designed to help curb property taxes. That law set a 2-percent cap on wage increases public-sector unions could win in interest arbitration. The West Windsor arbitration award is one of just three to emerge since the cap expired in December 2017, opening the door for police and firefighters to get bigger raises when contract talks stall between their unions and municipalities. The state's League of Municipalities and Association of Counties continue to urge lawmakers to extend the cap, which they say helped slow the growth of the nation's highest property taxes. Last year, the average residential property tax bill in New Jersey was \$8,767.

Without the limits on arbitration, they said local government leaders would have to cut spending and reduce services to stay within the bounds of a separate 2 percent cap on increases in spending. While the three arbitration awards issued so far indicate arbitrators are sticking pretty close to spirit of the 2 percent cap, the West Windsor award demonstrates the kind of "creep" that concerns local government employers, said Mike Cerra, assistant executive director of the New Jersey League of Municipalities. In the decades before the cap was installed in 2011, arbitration awards ranged from 2 percent to nearly 6 percent. Interest arbitration awards aren't going to jump to 6 percent overnight, experts said. Instead, Cerra said, "What we're likely to see is over the course of time a creeping upwards. This community got 2.25 percent, for this reason this town should get 2.5 percent, and for that basis this town increases to 2.75 percent."

A 2017 study — which was derided as one-sided by labor groups — determined the arbitration cap had saved taxpayers \$530 million from police and firefighters salaries between 2010 and 2015. Employers and unions head to arbitration when they can't agree on contract terms, such as wages, health care contributions, vacation time or other conditions of employment. The vast majority of contracts are settled through voluntary negotiations. That's where the real impact is being felt, Cerra said. "The level playing field we think the interest arbitration cap created has now been unlevelled," he said. "You are seeing these local bargaining units, who believe that they need to recapture what was lost, coming in with higher proposals across the board because they have the fallback option of interest arbitration." Local government leaders engaged in collective bargaining are reporting back with opening offers from police and fire unions of 4 percent and 5 percent, Cerra said.

"The police and firefighters in collective bargaining units are coming in very aggressive," said John Donnadio, executive director of the New Jersey Association of Counties. "You're seeing in negotiations that the parties are starting further apart." Michael Freeman, vice president of labor relations for the New Jersey State Policemen's Benevolent Association, said the unions' asks have been within the context of what the municipalities can afford and with the interests of taxpayers in mind. "We're not asking for 6 percent. We understand the landscape. We understand there was a need to make some changes," he said. "We've done our part, and we just want to recoup some of the losses that we've had." "We're never going to go in with anything unreasonable."

Between required increases in the pension and health benefit contributions, "our buying power has been decreased considerably," he said. "And that money going back to municipalities comes out of our paychecks." Freeman said he expects most arbitration awards will be in line with the West Windsor award, more or less, as arbitrators are still required to weigh what the municipality can afford, employee morale, comparable pay and what the market will bear. In [Bedminster](#), Policemen's Benevolent Association Local 366's final offer included 2-percent raises for all officers every six months — on Jan. 1 and July 1 of each year — for the term of the four-year contract. The union argued its members had suffered financially under the 2 percent cap and by a state law requiring them to pick up a larger share of their health care costs and they needed to make up lost ground, according to the arbitrator's decision. Armed with data on the township's finances, the local PBA said the township had amassed a healthy surplus and it could absorb the higher payroll costs.

Meanwhile, the township offered raises between 1.6 percent and 1.8 percent each year — and only for sergeants and officers at the top of the salary guide. All others would continue to receive annual increases tied to years of service. The arbitrator's final award, which has been appealed, would boost salaries for sergeants and officers at the top of the salary guide by 2 percent every year and granted one 2-percent across-the-board raise. This, the arbitrator said, would "allow the township to

continue to maintain its fiscal responsibility to the taxpayers while providing the officers a fair and reasonable increase and as such is in the public interest.”

Donnadio said he’s concerned unions are calling out local governments’ reserves in assessing their ability to pay — and that arbitrators will take this into account. “I know that’s something that they believe they’re entitled to as well,” he argued. “The reserves are for rainy days and an emergency, not to pay general everyday operating expenses.” But, Freeman countered, local governments were able to amass those reserves by paying police and firefighters less. “They have more,” he said. “We’re making less.”

### **NEW FORECLOSURE LAW AIMS TO INHIBIT LOSS OF AFFORDABLE HOMES IN NJ**

*Colleen O’Dea, NJ Spotlight, July 15, 2019*

A law signed recently by Gov. Phil Murphy requires that whenever a mortgage holder starts foreclosure proceedings on a home that is deed-restricted as affordable — meaning there is a cap on its sale price and it can only be purchased by those with low or moderate incomes — the mortgage holder must notify the municipality where the home is located. This will give municipal officials the option of purchasing the home if they think it makes sense.

The loss of a low-priced home in a state with some of the highest housing costs in the nation further exacerbates New Jersey’s affordability problem. It also could hurt municipalities that had already fulfilled prior housing obligations. Under several state Supreme Court decisions known as the Mount Laurel Doctrine, every community is required to provide for its fair share of needed low-cost housing. Some 300 municipalities have built or approved the construction of affordable homes dating back as early as the mid-1980s. A municipality must replace a lost affordable unit, according to Murphy’s conditional veto of an earlier version of the bill. The Housing and Community Development Network of New Jersey applauded the new law, signed late last month by Murphy.

“We feel it is critical New Jersey does not lose any affordable homes,” said Nina Rainiero, a spokeswoman for the network. “Public funds were invested into making these homes affordable and this bill ensures that public investment will not be lost because of foreclosure. Plus, it provides another family an opportunity to live in a home that’s affordable.” The new law does not go as far as its sponsors had hoped. As sent to Murphy last March, the measure would have required that the deed restriction on an affordable home remain in force even after a foreclosure and thus ensure that it could be re-sold at a below-market price and only to those whose incomes qualify.

Murphy had conditionally vetoed the measure, S-362, last May, saying that while the bill was well-intentioned, it could have made it difficult for most low-income families to buy an affordable home. That’s because Federal Housing Administration regulations expressly prohibit the use of FHA loans to purchase a property whose deed restriction



will not expire with a foreclosure. “This bill may actually hurt the very low- and moderate-income families it is intended to benefit by making it more difficult for these families to obtain a mortgage,” Murphy wrote. “This bill would effectively preclude all prospective affordable unit homeowners from accessing any FHA loan or insurance products. This is problematic because many first-time low- and moderate-income homebuyers rely on FHA loan products to secure the financing necessary to purchase their homes ... Few low- and moderate-income applicants have the capital on hand to obtain a private loan and the universe of lenders providing loans for the purchase of homes with affordability controls is relatively small.”

Additionally, Murphy continued, it would “further disadvantage” prospective purchasers of affordable units because they would no longer qualify for a financial assistance program offered by the New Jersey Housing and Mortgage Finance Agency that includes a 3.5 percent down payment option and \$10,000 to cover the down payment and closing costs. The HMFA is only allowed to provide this assistance to homebuyers getting FHA loans. Murphy retained the provisions in the legislation requiring creditors to inform municipal officials of their intent to foreclose on a home with an affordability restriction, saying that will put the question of trying to maintain a low-cost unit in the hands of local officials.

“This notice will ensure that municipalities do not miss an opportunity to intervene in foreclosure proceedings and, where appropriate, preserve a home’s affordability controls,” Murphy wrote in the conditional veto. In his veto message, Murphy said municipal officials may choose not to maintain as affordable some older foreclosed homes but might decide to replace them with newer units. Currently, municipal officials are in the midst of establishing new affordable housing obligations through 2025 under a process that is taking place in the courts. The Fair Share Housing Center, which has been part of legal actions and negotiations as part of this process, says it has now reached settlements with 289 municipalities, more than half of those across the state. The number of new units that these settlements call for is unknown, but Kevin Walsh, Fair Share’s director, said they could result in the construction of 50,000 new affordable homes. In March 2018, a Superior Court judge estimated the need for new affordable units at close to 155,000 statewide. Municipalities do not have to build low-cost units, but they do have to put in place zoning that would allow for the construction of their obligated number of affordable units.

The new law also mandates that a mortgage holder provide a property owner with contact information for both the municipal housing official and NJHMFA so that the owner can consult with them and try to get help to retain the home. Sen. Ronald Rice (D-Essex), one of the primary sponsors of the law, said these efforts are necessary because the large number of foreclosures in the state has led to the loss of affordable units, given that a significant portion of properties in foreclosure are deed-restricted. He said that last year, New Jersey finalized close to 70,000 foreclosures and led the nation for those procedures. “It’s heartbreaking to know so many families are losing their homes,” Rice said. “But the situation is compounded when affordable housing

properties go into foreclosure and are then stripped of the deed restriction that ensures their affordability. In times like this, when more and more New Jersey residents are faced with difficult economic conditions, we need more affordable housing protections, not less.”

#### **UPCOMING NJAC EVENTS**

Please make sure to visit our website at [www.njac.org](http://www.njac.org) for additional details about our July 31<sup>st</sup> workshop on how to navigate the collective bargaining process without the 2% cap on binding interest arbitration awards.

**STATE HOUSE TRIVIA:** *Did you know* that the top 5 summer movies of all time include: 5) American Graffiti 4) Jaws 3) Fun in Acapulco 2) Grease 1) The Sandlot

*“The price of greatness is responsibility.” Winston Churchill*