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STATE HOUSE NEWS

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VOTE-BY-MAIL

On January 21st, Governor Murphy signed into law, **SENATE, NO. 4315** *(Beach D-6/Turner D-15)(Jones D-5/Zwicker D-16),* which creates a fund to reimburse local governing bodies for the cost of certain mail-in ballot procedures and appropriates $3.0 million.

The Governor and Legislature enacted the new law in response to NJAC's successful complaint with the New Jersey Council on Local Mandates that the 2018 and 2019 vote-by-mail laws violated the Constitution as unfunded State mandates. In summary, this new law creates the "Mail-In Ballot Local Reimbursement Fund" to reimburse counties, municipalities, boards of education, and fire districts for the costs of implementing the laws enacted in 2018 and 2019 that require county clerks to provide mail-in ballots for all future elections to voters who requested a mail-in ballot for the 2016 general election and any election in 2017 and 2018. The new law also requires the Legislature to make an annual appropriation to the Fund; and, requires the clerk of each county to certify to the Department of State, the total costs incurred by the county, or any municipality, board of education, or fire district in the county that is responsible for administering an election pursuant to the 2018 and 2019 vote-by-mail laws.

As noted above, the new law appropriates for the current State fiscal year $3.0 million from the General Fund for deposit into the new Fund to reimburse counties, municipalities, boards of education, and fire districts for the additional direct costs incurred in carrying out the purposes of the 2018 and 2019 vote-by-mail laws. This amount is in addition to the $2.0 million that was appropriated in the 2019 vote-by-mail law, and of which remains available for a total of $5.0 million. Although NJAC certainly appreciates the appropriation and long-term funding mechanism to address the ongoing costs of implementing the vote-by-mail laws, NJAC is concerned that language added to the new law at the request of the Attorney General during the lame -duck voting session violates the Constitution as the overreaching new provision stipulates that a law or rule determined to be an unfunded mandate by the New Jersey Council on Local Mandates, would become effective, if resources are authorized after the passage of the law or adoption of the rule.

More important than undermining the finality of decisions by the Council and marginalizing local governments only recourse against the State Legislature and Administration from imposing unconstitutional unfunded State mandates, the Attorney General's recommended language as adopted in the new law is in direct conflict with the Constitution, which states*"… any provision of such law, or of such rule or regulation issued pursuant to a law, which is determined in accordance with this paragraph to be an unfunded mandate upon boards of education, counties, or municipalities because it does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation, shall, upon such determination cease to be mandatory in its effect and expire."* As such, NJAC, the New Jersey State League of Municipalities (NJLM), and the New Jersey School Boards Association (NJSBA) are contemplating what course of action to take and potential legal remedies to pursue.

911 FEE DIVERSION

Following NJAC's annual reorganization meeting on January 24th, the Association hosted a press conference with the New Jersey Wireless Association (NJWA) to urge State leaders to comply with federal guidelines and restore critical 911 dollars to county and municipal 911 centers as the State of New Jersey has once again earned the distinction of being the worst offender of diverting 911 fees in the entire nation.

As one of only five states *(Nevada, New Jersey, New York, Rhode Island, and West Virginia)* that continue diverting 911 fees, State leaders have created an emerging public safety issue and imposed a system of double taxation on residents who are already burdened with the highest property tax bill in the land. In fact, the Federal Communications Commission (FCC) concluded in its recent "Annual Report on the Collection and Use of 911 Fees," that New Jersey diverted $92,083,000.00 of the $122,905,000.00 it collected in 911 fees. Moreover, the State has failed to provide any funding to local 911 centers operated by counties and municipalities by instead diverting the balance of collected 911 monies to cover general operating expenses in the Department of Law and Public Safety. As a direct result this longstanding misappropriation, the FCC adopted rules in 2018 that now prohibit New Jersey, and its counties and municipalities, from applying for millions in federal grant funding to upgrade 911 centers with Next Generation 911 (NG911) capabilities.

As has been well documented, counties and municipalities as first responders, handle the vast majority of the State's 911 calls through local public safety answering points (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 an estimated $500.0 million over the last several years on capital improvements for facility upgrades, telephone systems, computer aided dispatch, location mapping technology, voice recording technology, data analytics, and NG911 upgrades. Counties also spend an estimated $125.0 million per year on general 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 73% of the municipalities located within their borders. In addition to restoring critical fund dollars, NJAC and NJWA are making the following recommendations: constitutionally dedicating any new 911 fees or surcharges imposed by the Legislature and collected by the State to county and municipal 911 centers; adopting 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.

Special thanks to Senator Michael Testa (R-1), NJAC President and Cape May County Freeholder Marie Hayes, Cumberland County Freeholder and NJAC Secretary/Treasurer Joseph Derella, Monmouth County Sheriff Shaun Golden, and NJCWA President Rob Ivanoff for addressing this important and timely matter with the media. And, thank you to NJAC's Board of Directors, first responders, and members of the business community for standing with us at the press conference.

CODE BLUE 32

Also on January 21st, Governor Murphy signed into law **S-3422/A-6056** *(Singer R-30/Kean R-21)(Houghtaling D-11/Downey D-11),* which would require counties to declare a Code Blue alert when the National Weather Service (NWS) Predicts the temperature to be 32 degrees Fahrenheit or lower.

Although NJAC commends the sponsors and Governor Murphy for their efforts to provide comfort for at-risk individuals during severe weather events, this new law does not contain a funding mechanism or State appropriation to offset the costs associated with extending the 2017 law that counties, municipalities, social service agencies, and non-profit organizations have struggled to implement. As you may recall, in that year, 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 2017 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.

Although certainly well intended, this new law establishes an even greater financial burden to the 2017 law that would make issuing a Code Blue alert more costly and difficult to implement, manage, and sustain. In fact, setting the parameters for issuing a Code Blue alert at 32 degrees Fahrenheit or lower would double the amount of Code Blue nights and would lead to increased costs as noted above, depleted staff and resources, and fatigued volunteers. With this in mind, NJAC recently compiled the table and footnotes below as we contemplate our potential next steps.

County	2018/19 Nights[2]	2018/19 Guests[3]	2018/19 Providers[4]	2018/19 Costs[5]	2019/20 Projected Nights[6]	2019/20 Projected Guests[7]	2019/20 Projected Providers[8]	2019/20 Projected Costs[9]
Camden	70	4,466	3	$150,000	93	7,200	5	$499,000
Cape May	35	348	3	$80,245	55	220	3	$105,550
Essex	80	12,000	11	$396,000	80	12,000	8	$396,000
Gloucester	52	253	1	$22,220	TBD	238	1	$19,770
Hudson[10]	30	422	1	$314,000	TBD	450	TBD	$325,000
Hunterdon	58	232	1	$28,000	120	480	1	$60,000
Monmouth	40	650	3	$13,000	80	850	TBD	$30,000
Morris	62	255	7	$187,110	92	439	7	$217,000

Footnotes

1. The above table includes information from 8 counties that provided NJAC with the most complete data pursuant to the questions presented in footnotes 2-9 below. Please note that these footnotes also summarize the additional responses from several counties that the table does not include.
2. Column 2 summarizes the total number of declared Code Blue alerts issued for each county in the winter of 2018/19 pursuant to P.L. 2017, c.68, which requires emergency management coordinators to declare a Code Blue alert when temperatures reach 25 degrees Fahrenheit or lower without precipitation; or 32 degrees Fahrenheit or lower with precipitation; or, the National Weather Service (NWS) wind chill temperature will be 0 degrees Fahrenheit or less for a period of 2 hours or more.
3. Column 3 summarizes the total number of guests housed at warming centers in each county during declared Code Blue alerts in the winter of 2018/19 pursuant to P.L. 2017, c.68.
4. Column 4 summarizes the total number of non-profit or social service agencies that assist each county with providing various services to the homeless population during declared Code Blue alerts in the winter of 2018/19 pursuant to P.L. 2017, c.68.
5. Column 5 summarizes the total costs to declare Code Blue alerts for each county in the winter of 2018/19 pursuant to P.L. 2017, c.68.
6. Column 6 summarizes the projected number of declared Code Blue alerts each county will issue in the winter 2019/20 pursuant to P.L. 2017, c.68 and if S-3422 is signed into law. S-3422 would require counties to declare a Code Blue alert when NWS predicts the temperature to be 32 degrees Fahrenheit or lower.
7. Column 7 summarizes the projected number of guests that each county anticipates it will host at a warming center during declared Code Blue alerts in the winter of 2019/20 pursuant to P.L. 2017, c.68 and if S-3422 is signed into law.
8. Column 8 summarizes the projected number of non-profit or social service agencies that each county anticipates will provide various services to the homeless population during declared Code Blue alerts in the winter of 2019/20 pursuant to P.L. 2017, c.68 and if S-3422 is signed into law.
9. Column 9 summarizes the projected total costs to declare Code Blue alerts for each county in the winter of 2019/2020 pursuant to P.L. 2017, c.68 and if S-3422 is signed into law.
10. Hudson County reported that the County spends approximately $60,000 per month to operate the County's warming center, which does not include costs for transportation, meals, hygiene

kits, and repairs to the facility. Although utilization of the warming center increased by 12% during the winter of 2019/20, it's too early to determine the fiscal impact. However, the County noted that S-3422, if implemented, would equal more meals, hygiene kits, trips to the center, and increased staff to insure adequate coverage.

11. In addition to the information contained in the above table, Cape May County also shared a comprehensive report that details the level of Code Blue service provided during the winter of 2018/19 and will be forwarded as an addendum to this memorandum.
12. Cumberland County reported that the County spent $18,000 on 1,130 individuals for 30 Code Blue nights issued during the winter of 2018/19. The County further reported that it uses a faith-based volunteer network with churches in the major cities of Bridgeton, Millville, and Vineland.
13. Mercer County reported that the County spent $50,700 on 574 individuals for 56 Code Blue nights issued during the winter of 2018/19.
14. Middlesex County reported that the County spent $39,000 for 44 Code Blue nights issued during the winter of 2018/19 for the City of Perth Amboy.
15. Ocean County reported that the County spent $80,000 for 52 Code Blue nights issued during the winter of 2018/19. Ocean County also shared a comprehensive report that details the level of Code Blue service provided during the winter of 2018/19 and will be forwarded as an addendum to this memorandum.
16. Passaic County reported that the County received inconsistent data from warming centers located within the County to accurately track utilization costs on 211 individuals for the 43 Code Blue nights issued during the winter of 2018/19. The Sheriff's Department provides transportation to warming centers and conducts welfare checks on unsheltered individuals during Code Blue alerts.
17. Somerset County reported that the County spent $19,000 on 380 individuals for 103 Code Blue nights issued during the winter of 2018/19.
18. Union County reported that the County spent $350,000.00 for 72 Code Blue nights issued during the winter of 2018/19 on maintaining and operating warming centers. The County further reported that S-3422, if implemented, would double the amount of declared Code Blue alerts and add approximately $100,000.00 to the program's cost. The County also reported challenges with bed capacity limits; barriers for individual's ineligible for emergency assistance; transportation; assistance from municipalities; and, the lack of additional services such as case management, employment, childcare, and mental health issues.

Prisoner Re-Entry Legislation

On January 24th, NJAC testified before the Senate Health, Human Services, and Senior Citizens Committee on a package of prisoner re-entry bills and plans to work with the sponsors on developing new language that protects the intent of the bills and minimizes the operational and fiscal burden imposed on county jails and welfare agencies. In summary, the bills include:

- **Senate, No. 370** *(Cryan D-20/Vitale D-19),* which would establish a "County Jail Rehabilitation and Re-Entry Program" to evaluate county inmate needs and to assign a caseworker to assist inmates in accessing appropriate benefits, treatment, and services.
- **Senate, No. 374** *(Cryan D-20/Vitale D-19),* which would require each county to establish an inmate re-entry services committee.
- **Senate, No. 375** *(Cryan D-20/Vitale D-19*), which would authorize the use of inmate welfare funds for certain re-entry services.

- **Senate, No. 527** *(Vitale D-19/Stack D-33),* which would require county correctional facilities to offer inmates hepatitis B and hepatitis C testing.
- **Senate, No. 528** *(Vitale D-19/Cryan D-20),* which would require the State and county correctional facilities to provide certain inmates with medication-assisted treatment.
- **Senate, No. 877** *(Vitale D-20/Cryan D-20),* which would require the State and county correctional facilities to develop strategic plans to provide peer counseling and peer health navigator programs to support treatment of substance use disorders.

Before making general recommendations concerning the legislation, NJAC outlined the differences between the State prison system and county correctional facilities. In general, State prisons house inmates convicted of crimes following a trial, while approximately 85% - 90% of the statewide county jail population is comprised of inmates awaiting trial or their first appearance after being issued a warrant for their arrest. County jails process and house an estimated 10,000 to 12,000 inmates on any given day with an average length of stay between 5 – 15 days depending on the county. Additionally, between 25% - 40% of the above noted county jail population is now compromised of defendants awaiting their first appearance, which is a hearing held between 24-48 hours of a defendant being taken into custody at a county jail. At this hearing, the court determines to either release the defendant with certain pretrial conditions or detain the defendant pending trial. Under Criminal Justice Reform, most defendants fall into the latter category and are released from a county jail within 48 hours after confinement.

In concept, NJAC recommends establishing a State grant funded County Re-entry Coordinator position in each county to address the requirements in S-370, S-374, and S-877. The Re-entry Coordinator would help inmates navigate available social services, mental health programs, job training, and other resources upon release from a county jail under certain circumstances. The Coordinator would also serve as a liaison between the county jails and boards of social services and welfare agencies and work with the county jails on developing peer counseling programs. Although NJAC and the New Jersey County Jail Wardens Association (NJCJWA) do not necessarily object to using inmate welfare fund monies for certain re-entry services as S-375 is permissive, the State Legislature has depleted the funds over the years by restricting the use of telephone and video visitation fees accordingly. As such, county jails would be forced to use other monies to provide the same level of resources and programs currently available to inmates. As mentioned in last month's edition of State House News, NJAC recommends eliminating county jails from S-527 or provide a funding mechanism to offset the certain costs associated with offering blood testing for hepatitis B and hepatitis C upon an inmate's confinement to a county jail.

Finally, NJAC and NJCJWA are in the process of reviewing S-528 to determine the difference between what the measure would require and the Medication-Assisted Treatment (MAT) programs currently available at the county jails through grant funding provided by the Division of Mental Health and Addiction Services (DMHAS) and the technical assistance available through the PEW Foundation. Please also note, that NJAC has entered into an agreement with the PEW Foundation for PEW to provide (3) training sessions on MAT in 2020. *Special thanks to Ocean County Jail Warden Sandra Mueller, Salem County Welfare Director Kathy Lockbaum, Hudson County Deputy County Administrator Oscar Aviles, and Director of the Hudson County Community Reintegration Program Frank Mazza* for taking the time out of their busy schedules on January 24th to meet with the chiefs of staff for senators Vitale and Cyran and for joining NJAC at the committee hearing.

NEW JERSEY INFRASTRUCTURE BANK

On January 21st, Governor Murphy signed into law **ASSEMBLY, NO. 5972** *(Pinkin D-18/Benson D-14)(Greenstein D-14/Singleton D-7),* which makes changes to the New Jersey Infrastructure Banks enabling Act.

In general, this new law renames the line of credit loan as the planning, design, and construction loan as a short-term or temporary loan for eligible costs incurred in project planning, engineering design, or construction issued before or during the planning stage of an environmental infrastructure or transportation project. The measure also provides that for a planning, design, and construction loan, project planning or engineering design activities may not exceed two years from the closing date of the loan. With respect to any short-term or temporary loan or planning, design, and construction loan made by the NJIB for environmental infrastructure or transportation projects, the law provides that the NJIB may authorize one short-term supplemental loan for residual project expenses.

NJIB is only be authorized to make the short-term supplemental loan upon receipt from the Department of Environmental Protection (DEP) or the Department of Transportation, as applicable, of a certification that states that the time required by the project sponsor to complete construction of the project exceeds the maximum maturity date of the project sponsor's outstanding short-term or temporary loan or planning, design, and construction loan. A short-term supplemental loan would not exceed in duration the last day of the third succeeding fiscal year following the loan closing of the supplemental loan.

The law further clarifies that the DEP Loan Origination Fee Fund would be credited with any interest paid on the amounts on deposit in the fund. The measure provides that amounts in excess of the funds drawn by the DEP from the fund during any given fiscal year would be carried forward into the following fiscal year and held on deposit in the fund. The law clarifies that a "Department of Environmental

Protection loan origination fee" means the fee charged by the DEP in connection with engineering and environmental services provided by the DEP to a project sponsor pursuant to the project sponsor's participation in the NJ Environmental Infrastructure Financing Portion. The law also provides that a project sponsor may finance any portion of the loan original fee through the NJIB by a trust loan. Additionally, the measure makes substantially similar changes regarding the Transportation Loan Origination Fee Fund, and the transportation loan origination fee. Finally, the new law authorizes the NJIB to apply, with notice to the DEP, for funds under the federal "Water Infrastructure Finance and Innovation Act."

NJ IS SET TO CHANGE KEY ASSUMPTION ABOUT PUBLIC EMPLOYEE PENSION INVESTMENTS
John Reitmeyer, NJ Spotlight, January 21, 2020

Later this year, New Jersey will begin a planned lowering of the public-employee pension system's assumed rate of return for its long-term investments. The move will bring New Jersey more in line with what other states have been doing in response to changing market conditions, as bond yields shrink and annual economic growth rates are more modest compared to those seen before the Great Recession.

A seemingly arcane aspect of fiscal planning, the change has important ramifications for the state's budget, in addition to the pension system itself. It could also have political consequences, since the lowering of the assumed rate coincides with the ongoing effort to ramp up state pension funding to the full amount required by actuaries. The challenge of meeting that goal will likely bring to a head an ongoing policy disagreement involving Gov. Phil Murphy and many lawmakers, including Senate President Steve Sweeney (D-Gloucester).

A recent study published by The Pew Charitable Trusts tracked the trend to lower assumed rates of return by looking at the returns of more than 70 state-sponsored pension systems between 2007 and 2017. None of the funds maintained a 10-year average of returns that matched or exceeded their assumption rates, according to Pew. More than half — including New Jersey's — are in the midst of making downward adjustments. It's considered fiscally responsible to lower assumption rates, but the policy can also come with a potential cost. That's because expecting less from investments means more of the long-term liability will have to be covered with contributions from taxpayers and workers.

Just how much of an impact the assumption-rate change will have on New Jersey's budget, as well as the budgets for local governments, remains to be seen. The first annual spending plan that will reflect the state's move to a more realistic rate of return is fiscal year 2021, which begins later this year. Murphy is due to unveil his budget proposal for FY2021 to lawmakers next month. For well over a decade, New Jersey's $77.7 billion pension system operated under an assumed rate of return that equaled roughly 8%, which was considered an aggressive figure, especially for a retirement plan that is one the nation's worst-funded. But governors and lawmakers from both parties cherished the higher figure because it allowed the state to forecast more revenue coming from its investments than would be required under a more conservative estimate, thereby lowering the employer pension payment coming from the state in the annual budget. (Even with the more favorable math, governors and lawmakers still shorted the state's annual pension contribution on a regular basis, a trend Murphy, a Democrat, has continued but is also working to reverse.)

Under a plan adopted by Murphy shortly after he took office in early 2018, the new assumed rate for state and local public-worker retirement plans in New Jersey was set at 7.5%. That reversed a last-minute policy change enacted by his predecessor, former Republican Gov. Chris Christie shortly before he left office, when he lowered the rate abruptly from 7.65% to 7%. There had been an outcry from local governments when Christie lowered the rate because of concerns over the resultant potential increases in their pension payments; unlike the state, they're not allowed to shirk their annual pension obligations. Their concerns dissipated when Murphy set the assumed rate at 7.5% for both fiscal years 2019 and 2020. But he also put the state on course to drop the rate back to 7%, by FY2023. (The assumed rate will be lowered to 7.3% in FY2021, which begins this year on July 1; will stay at 7.3% in FY2022; and then drop to 7% in FY2023.)

According to the latest reports from the Division of Investment, the agency within Treasury that handles the investment of pension-fund assets daily, returns fell short of the 7.5% assumed rate by more than a full percentage point during the state's most recently completed fiscal year, which ended on June 30, 2019. And over the last five years, the pension system's investment returns have averaged 6.55%, according to the DOI's data. Looking forward, the Pew study suggests the outlook for pension-fund investment returns generally will reflect a "new normal" of more modest gains than those of before the Great Recession, when returns could easily top 8% year-over-year. That suggests New Jersey and the dozens of other states that are taking steps to lower their assumption rates are taking appropriate action.

"Market experts generally agree that lower investment returns will persist going forward," the Pew study said. "Pew forecasts a long-term median return of only 6.4% a year for a typical pension fund portfolio, considering expected GDP growth and interest rates." The study also reinforced the notion that lowering an assumption rate is smart fiscal policy even if it may give governors and lawmakers heartburn when they see how the change influences the long-term projections of overall liabilities owed to retirees, which are calculated into the future using what's called a "discount rate." "Reducing the assumed rate of return leads to increases in reported plan liabilities on fund balance sheets, which in turn increases the actuarially required employer contributions," Pew said. "Still, making such changes can ultimately strengthen plans' financial sustainability by reducing the risk of earnings shortfalls, and thus limiting unexpected costs."

To make long-term pension funding more affordable, Sweeney has been calling for reduced public-worker benefits, including the establishment of a new, less-generous retirement system for many new workers and those with less than five years of service. However, Murphy has been backing proposed tax hikes and policies that generate more revenue by growing the state's economic base. The pension payment in the current budget is $3.8 billion. If the state pension funding were ramped up to the full amount required by actuaries, it would require a pension contribution well north of $6 billion in FY2023.

UPCOMING NJAC EVENTS: Make sure to mark your calendars for NJAC's Annual Celebration of County Government set for May 6th through May 8th at Caesars in Atlantic City. And, you're welcome to join us at our next board meeting on March 27th.

STATE HOUSE TRIVIA: Did you know that the Cleveland Browns, Detroit Lions, Houston Texans, and Jacksonville Jaguars have never played in the Super Bowl? The damn Jets haven't been there since 1969 and the only real memory I have about Joe Namath playing football is him throwing an interception against the Oakland Raiders with my old man cursing at the television.

"The measure of who we are is what we do with what we have." Vince Lombardi