

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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END THE 911 FEE DIVERSION

On Thursday, NJAC testified before the Senate Budget and Appropriations Committee requesting that the State Legislature include \$21.0 million in funding for County 911 Centers in the Fiscal Year 2023 State Budget with a \$1.0 million grant made available for each county to maintain, upgrade, or regionalize its 911 system as the State of New Jersey has failed to provide any funding to counties for this purpose for well over a decade.

Although the stated intent of the 2004 law that imposed a monthly telecommunication surcharge of .90 cents on every telephone line in the State was to build a cutting edge and fully funded 911 system with revenues collected from the surcharge, administrations on both sides of the aisle have instead diverted 90% of the funding to pay for general operating expenses in the Department of Law and Public Safety to the tune of \$1.5 billion. In addition to laying the groundwork for an imminent public safety crisis, the State's continued misallocation of 911 fees has imposed an inequitable system of double taxation on residents already burdened with paying the highest property taxes in the land with no meaningful relief in sight. For the record, county governments alone spent an estimated \$175.0 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 Next Generation 911 upgrades. Counties also spend an estimated \$100.0 million per year on general operating expenses for salaries, staff training, system maintenance, and network security.

As previously reported, NJAC is also urging members of congress to adopt the "Report and Recommendations" of the "Ending 911 Fee Diversion Now Strike Force (911 Strike Force) established by the Federal Communications Commission (FCC) as the State of New Jersey continues to reign as the worst offender of diverting 911 fees in the entire nation. In part, the 911 Strike Force concluded that:

- 911 fee diversion negatively impacts the ability of the public to access emergency assistance via reliable 911 services and technology.
- 911 fee diversion negatively impacts public safety, 911 operations, first responders, and the fiscal sustainability of 911 service.

- 911 fee receipts and expenditures should be distinguishable and auditable to ensure 911 fees are used for eligible activities directly related to the provision of 911 services.
- 911 systems require significant capital and recurring operational investments to accomplish the mission.

The 911 Strike Force further concluded that *"one of the most recognizable impacts of fee diversion is insufficient resources to support day-to-day operations, which prevents public safety answering points (PSAPs) from achieving and maintaining proper performance and operational service."* Moreover, *"911 is a complex system of critical infrastructure that is designed to process emergency communication. The lack of relevant and enhanced technology could be catastrophic and 911 fee diversion may result in: inadequate funding to plan, implement, and transition to NextGen 911 Technologies while simultaneously funding the legacy system until it can be decommissioned; inadequate funding for the integration of emerging technologies such as text-to-911 and wireless location accuracy applications, inadequate funding for the implementation of telecommunicator resources such as integrated call handling protocol software; the inability to maintain or replace end-of-life equipment; and, the lack of integration with key systems and ability to optimize features."* With this mind, ... NJAC fully supports the following remedial recommendations of the 911 Strike Force:

- State agencies that divert 911 fees should be subject to fines, penalties, and be ineligible for public safety spectrum FCC license renewals, modifications, or new licenses until the FCC determines that the diversion has been remediated.
- State agencies that divert 911 fees should be ineligible for federal grant funding that includes 911 as an eligible expense.
- State agencies that divert 911 fees with an obligation to serve as the State Administrative Authority shall pass 100% of the remaining grant funding through to the local agencies after covering authorized administrative costs.

In a nutshell, the State of New Jersey collects annually from consumers approximately \$126.0 million in telecommunication surcharges as "Telephone Assessment Fees" (Fees) and deposits these monies into the 911 System and Emergency Trust Fund Account (Fund). As noted above, the Garden State has diverted more than \$1.5 billion of the nearly \$1.75 billion collected since 2009 with only 11% of Fund monies being spent on eligible expenses. Moreover, the State has failed to provide any funding for eligible expenses to local 911 centers operated by counties and municipalities and is the only state in the nation that doesn't share 911 monies. You may review the "Report and Recommendations" of the 911 Strike Force in its entirety at www.fcc.gov.

For the reasons set forth above, NJAC is again respectfully requesting that the State Legislature support \$21.0 million in funding for County 911 Centers in the Fiscal Year 2023 State Budget with a \$1.0 million grant for each county to maintain, upgrade, or regionalize its 911 system with a precise, accurate, and reliable communication network.

COST OF LIVING INCREASES FOR RETIREES

Given recent reports of bipartisan support for **S-260/A-2758** (*Turner D-15/Stack D-33*)(*Reynolds-Jackson D-15/Wimberly D-35*), which would reinstate automatic Cost of Living Adjustments (COLA) for retirees enrolled in the State administered retirement systems, NJAC is asking to meet with the sponsors of the measure to discuss our concerns with its significant fiscal implications.

Although NJAC certainly appreciates the fact that retirees haven't received a COLA increase in several years and are struggling to make ends meet in the face of soaring inflation, the Association is concerned that S-260 would substantially increase local employer pension contributions, funded with property taxpayer dollars, by \$1.6 billion as estimated by State Treasurer Muoio during her recent testimony before the Senate Budget and Appropriations Committee. The Treasurer's forecast is particularly troublesome given that local government employers across the State are once again experiencing significant increases in total pension contributions in 2022 - despite fulfilling their fiduciary duties as employers for more than a decade, booming pension investment returns in 2021 of nearly 22%, and full pension payments for the first time in 25 years in the FY 2022 State budget.

As the State administered retirement systems are considered defined benefit plans, property taxpayers ultimately bear the risk of loss for poor investments, a decline in the stock market, a decrease in the assumed rate of return for long-term investments as was the case in 2020, benefit enhancements as is the case with a new law that enhanced the benefits of members of Police and Firemen Retirement System (PFRS), and COLA increases as would be the case with this legislation. At a time in which State leadership should be focusing on how to relieve the ever-growing burden on the State's beleaguered taxpayers and businesses while protecting the long-term health and viability of the pension systems, this legislation imposes a new and untimely liability.

Separate, but related, NJAC further submits that the State of New Jersey must take proactive measures to reform the pension systems with real solutions that pay off existing deficits and do not affect, dilute, or divert local pension system assets. As noted above, for more than a decade, counties and municipalities have met their pension obligations as employers while the State of New Jersey has historically underfunded the pension systems in varying degrees since 1996 creating one of the worst publicly funded retirement systems in the nation. Even more alarming for local government employers is the fact that the funded ratio of PERS in 2022 for the Local Part is 67.1% with the State Part funded at 31.2%, and the combined rate a disconcerting 52.0% far below the target funded ratio of 75.0%. In theory, total pension contributions and the unfunded liability of local government employers should be decreasing but it instead appears that the State is using property taxpayer dollars to subsidize its long mismanagement and underfunding of pension systems. S-260 is currently in the Senate State Government, Wagering, Tourism, and Historic Preservation Committee awaiting consideration and A-2758 is currently in the Assembly State and Local Government Committee.

RECOMMENDATIONS TO STREAMLINE THE OPEN PUBLIC RECORDS ACT (OPRA)

NJAC is a strong proponent of openness and transparency in government and has made the recommendations below to State leaders to address the fact each county in State processes between 250 to 3000 OPRA requests each year with a single request taking up to 10 hours to complete and are often made by commercial entities seeking to gain profit by utilizing public records and government services.

1. **COMMERCIAL REQUESTS:** The law should be amended to curtail requests by commercial entities that utilize public records and the services of local government employees to generate profits. For example, the county clerks regularly receive requests for copies of instruments recorded in counties that companies in turn use for profit making online search engine and public record search services. Please note that in general: a clerk of the board of county commissioners typically employs between 3-4 staff members; county governments process between 250 to 3000 record requests each year; and, a single record's request may take up to 10 hours to process
2. **ATTORNEY'S FEES:** In the case of an OPRA challenge filed in Superior Court or before the Government Records Council (GRC), attorney's fees should be awarded to the prevailing party at a judge's discretion. Additionally, attorney's fees should be capped at the rate a public entity pays outside counsel as some firms charge up to \$500.00 per hour to litigate. Moreover, the law should not incentivize attorneys to base an entire practice on exploiting technical and immaterial OPRA violations. For example, certain law firms have business arrangements wherein identical OPRA requests are simultaneously made to all 21 counties and 500 plus municipalities by outside agencies for the sole purpose of catching a mistake and filing a lawsuit for the recovery of attorney's fees.
3. **SPECIAL SERVICE CHARGES:** Any request that requires more than two hours to fulfill, should automatically be subject to a special service charge. The base rate for the special service charge should be standardized across the State, but should be adjustable depending on the nature of the request and the level of review required for production. For purposes of fee calculation, serial requests for the same types of records should be aggregated, meaning that a requestor cannot simply break up one large request into several smaller requests for the purpose of avoiding fees. This amendment is particularly important now that: body worn camera footage is required to be produced and entities are required to review and/or redact the entirety of the footage before producing it; and, wholesale requests for searches of specific terms on a public email server are commonplace.
4. **PUBLIC RECORD DATABASE & WEBSITE:** A public entity should be authorized to make available public records on the entity's website or to create and maintain a digitized database of public records such as contracts, resolutions, meeting minutes, agendas, and communications from concerned residents. The records should be maintained in a

pdf/a format and the database should be searchable. The public should have the ability to access the database online with their own device or with a publicly available device, such as computers located in public libraries. If a public record is readily available on a public entity's website or in its database, then the agency has no further obligation under OPRA or common law to provide it.

5. **REQUESTOR OBLIGATIONS AND RAMIFICATIONS FOR ABUSE:** The law should clarify that if a requestor fails to pay or fails to object to a service charge or actual cost of a records production within 30 days, the original request is deemed withdrawn. The law should also establish a cause of action for a public entity to prevent OPRA abuse if the entity can demonstrate that a requestor is submitting requests to harass the entity or is submitting an excessive number of requests. As such, the requestor should face fines, civil penalties, and be prohibited from filing further requests under OPRA. Additionally, a requestor should not have the ability to deny a request for an extension provided the extension is justified and for a reasonable time period.
6. **PRODUCTION OF RECORDS:** A record custodian's obligation to produce records under OPRA should be limited to records and data in the actual possession, custody, or control of a public agency. The fact an agency may have access to a database maintained by another entity should not trigger an obligation to produce additional records and data. Moreover, the law should not be designed to prevent custodians and attorneys from speculating over whether a record is subject to disclosure. The GRC should generate a definitive list of what records are confidential and which ones are not. The process should be transparent, and a custodian should have the ability to easily determine which records are subject to disclosure without significant deliberation.
7. **GOVERNMENT RECORDS COUNCIL (GRC):** The GRC should have the ability to hear and make determinations on all public record disputes before a requestor may file suit in Superior Court. Under current law, a requestor may supersede the GRC by directly suing a local governing body. For example, if a public entity requests an extension of time to produce a record or imposes a special assessment fee that is denied by a requestor, the requestor may force a local governing body into costly litigation and legal settlement by suing directly in Superior Court.
8. **FUNDING:** The State should make available additionally funding to assist counties and municipalities with digitizing public records and with purchasing OPRA tracking software to help streamline the process. This funding should also be used to purchase OPRA tracking software to help streamline the process.

SHARING COUNTY TAX ADMINISTRATORS

One of these days we'll get this bill passed both houses and signed into law. On March 24th, the Senate unanimously passed **S-668** (*Doherty R-23/Turner D15*), which would permit counties to share county tax administrators under certain circumstances.

A very long time ago, at the request of one of our counties, NJAC adopted this initiative as one of legislative goals because it would eliminate an antiquated 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. In general, the Governor is responsible for appointing all county tax board commission members, with the advice and consent of the Senate, and that the State Treasurer must pay their salaries accordingly. However, each county must pay for the salary, pension, health, and other fringe benefits of its county tax administrator, who is appointed by the County's 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 board of taxation and administrator. As county governments across the State continue to lead the way in providing essential services in a cost-effective manner as the State's only true regional form of government, current law unfortunately prohibits sharing county tax administrators as a meaningful cost saving measure. At a time in which all local governments are struggling to make ends meet, this outdated level of bureaucracy imposes an unnecessary barrier to progressively sharing resources and services. S-668 is now in the Assembly State and Local Government Committee awaiting consideration.

PRIMARY ELECTION DEADLINES

On March 25th, Governor Murphy signed into law **A-3587** (*Freiman D-16/Beach D-6*) as P.L. 2022, c.7, which changes the election deadlines for certain primary elections.

In general, this new law changes the deadline for filing a certificate to fill a vacancy from 55 days to 56 days before the primary election. The law also changes the deadline for municipal clerks to certify the names of candidates to the county clerks and for the transmittal of the Secretary of State certification from 54 days to 55 days before the primary election. The measure further changes the deadline for the certification of nominees and the drawing of ballot positions from 53 days to 54 days before the primary election. Additionally, the law changes the deadline to object to a petition to 4:00 p.m. on the fourth day after the last day for the filing of petitions; changes the date for municipal clerks to certify the local candidates to the county clerk from 55 days to 54 days prior to primary election and adds a deadline of noon; changes the deadline to amend a defected petition from within three days of the filing deadline to 4:00 p.m. of the third day after the filing deadline; and, changes the date for the Secretary of State to certify federal and State candidates to the county clerk from 55 days to 54 days prior to primary election and add a deadline of noon. The law took effect immediately.

POLL WORKER COMPENSATION

On March 25th, Governor Murphy signed into law **A-208** (*Rooney R-40/Karabinchak D-18*(*Diegnan D-18/Greenstein D-14*) as P.L. 2022, which increases the compensation of election workers from \$200 per day to \$300 per day. Additionally, the measure increases the maximum hourly rate for election workers serving at a school board election from \$14.29 to \$19.94 and authorizes counties to provide an election worker training program for district board members. Importantly, the measure would appropriate from the State General Fund to the Department of State the sum of \$7.0 million to reimburse the counties for the costs of implementing the bill. Previously, election workers were paid \$200.00 per day for primary, general, and special elections. In general, the State is required to reimburse counties \$125.00 of the payment to election workers while the counties account for the balance. The new law increases the State's reimbursement to counties to \$225.00 while keeping the counties balance due at \$75.00 and took effect immediately.

VOLUNTEER FIRST AID, AMBULANCE, AND RESCUE SQUADS

On March 24th, both houses unanimously passed **S-399** (*Johnson D-37/Bucco R-25*)(*Park D-37/Jaffer D-16*), which would increase the maximum amount that a county or municipality may annually contribute to a volunteer first aid, ambulance, or rescue company. Currently, a county or municipality may annually contribute up to \$70,000, and if any company experiences extraordinary need, an additional \$35,000 annually. This bill would increase these amounts to \$125,000 and \$70,000 respectively. Governor Murphy is expected to sign the measure into law.

UPCOMING NJAC EVENTS: Don't miss NJAC's Annual Celebration of County Government set for May 4th through May 6th at Caesar's in Atlantic City. Please visit our website at www.njac.org for additional details and the action-packed schedule of events.

TOP 10 SPOTS FOR A GREAT SLICE OF PIZZA AND A BEER OR TWO OR MORE IF NECESSARY

10. DiMaio's in *Berkely Heights*
9. DeLorenzo's Tomato Pies in *Robbinsville*
8. Nonna's Pizza in *Florham Park*
7. Delucia's Brick Oven Pizza in *Raritan*
6. Carluccio's Coal Fired Pizza in *Northfield*
5. Razza Pizza in *Jersey City*
4. Patsy's Italian Restaurant in *Paterson*
3. The Star Tavern in *Orange*
2. Conte's Pizza and Bar in *Princeton*
1. Santillo's Brick Oven Pizza in *Elizabeth*

"They who can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." Benjamin Franklin