

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*September 16, 2022*

### HEALTH BENEFIT INCREASES

On September 14<sup>th</sup> by telephone conference, the State Health Benefits Committee (SHBC) summarily approved unprecedented health benefit insurance rate hikes for local governments participating in the State Health Benefits Program (SHBP) by a vote of 3-1-1 with an overview of the outrageous increases summarized below.

- The recommended rate change for Local Government Actives is a 24.0% increase for medical and a 3.7% increase for the prescription drug premium rates, for a total increase of 21.6%.
- The recommend rate change for Local Government Early Retirees is a 16.6% increase for medical and a 5.7% decrease for the prescription drug premium rates, for a total increase of 13.0%.
- The Medicare Retiree medical decrease for Plan Year 2023 is 7.9%, which includes both self-insured medical premiums and fully insured Medicare Advantage premiums.
- The recommended prescription drug rate change in Plan Year 2023 is a 7.8% increase.
- The projected combined Active and Retiree Medical and Prescription Drug Claim Stabilization Reserve Balance is projected to be below the targeted 2.0 months of plan cost in Plan Year 2023. As a result, 2.0% margin has been added to the Active, Early Retiree, and Medicare Retiree Medical and Prescription Drugs premiums.

Please note that the Commission also approved significant rate increases for State workers, but that the Administration negotiated lower rates where in exchange for an estimated 20% increase, State workers will pay higher copays for certain specialists and urgent care. NJAC is working get a clearer understanding of why the State couldn't negotiate similar cost savings for counties and towns and whether counties and towns may negotiate these items on their own. Following the Commission's vote, Governor Phil Murphy and the public sector labor unions representing most State employees reached an additional agreement where State employees would instead see premium increases of only 3% in 2023 with the State to absorb the additional costs. The agreement does not apply to counties and municipalities participating in the SHBP nor will it benefit local government employees. As such, NJAC and the New Jersey State League of Municipalities (NJLM) issued the following joint statement on the matter:

John G. Donnadio, Executive Director of the New Jersey Association of Counties said: *“We’re disappointed that the State Health Benefits Commission voted to support unprecedented health benefit rate increases as a matter of routine business at its meeting by telephone conference earlier today without due consideration for local governments, property taxpayers, or public employees already struggling to make ends meet. As such, NJAC is recommending that participating members leave the State Health Benefits Program if feasible as the rate approval process demonstrated the Commission’s lack of transparency, accountability, and foresight to accurately project substantial rate increases with such far reaching consequences.”*

Michael F. Cerra, Executive Director of the New Jersey State League of Municipalities stated: *“The unprecedented health benefit rate increase approved today by the SHBC will have a staggering impact on municipalities, local government employees, and property taxpayers. This was avoidable and there were options that could and should have been taken, including delaying the vote today and engaging an open and transparent process. Local governments will now do their due diligence and explore more cost-effective alternatives. Now we call on the Administration and Legislature to act immediately, engage local stakeholders and focus on cost savings solutions that will benefit employees, employers, and taxpayers.”*

NJAC will continue to urge the Administration and State Legislature to consider immediate and long-term solutions that will reduce the unparalleled rate increases such as adopting referenced based pricing, using American Rescue Plan Act (ARPA) monies to temporarily offset the extraordinary increases, and legislation introduced by Senate Majority Leader Teresa Ruiz and Senate Budget and Appropriations Committee Chair Paul Sarlo that would appoint county and municipal officials to the SHBC as management does not currently have a voice and it most certainly should.

## **ELECTRIFICATION OF BOILERS**

As a component of Governor Murphy’s Energy Master Plan (EMP), regulations set to take effect at this end of the year as promulgated by the New Jersey Department of Environmental Protection (DEP) in sections 7:27F-4.1 – 7:27F-4.11 on pages 151 – 165, will require the electrification and necessary facility retrofitting of boilers with 1 MMBTUs or greater in every building in the State of New Jersey beginning on January 1, 2025.

In addition to apartment complexes, educational institutions, commercial properties, and more, the proposed regulations will impact 195 county-owned facilities across the State with a list of these facilities also attached for your review. According to an example provided by the Fuel Merchants Association of New Jersey (FMANJ), the regulations will cost an estimated \$2.0 million for the owner of a building to replace a 1.5 MMBTU natural gas boiler with an electric boiler as the owner will need to make an initial capital investment and then conduct “a

*complete retrofit of the building, which includes dedicating an autonomous electric source, demolishing the existing boiler, increasing ampacity, and installing switch gears and transformers.”* As a recent example, NJ Transit spent \$3.25 million to retrofit a bus garage in Camden and an additional \$4.33 million to retrofit another garage in Maplewood.

Importantly note that DEP has not refuted these costs nor has the Department conducted a comprehensive fiscal analysis on the overall financial impact the regulations will impose on businesses, local governing bodies, and property taxpayers. Moreover, the recently published Energy Master Plan Ratepayer Impact Study conducted by the Brattle Group on behalf of the New Jersey Board of Public Utilities (BPU) did not *“include capital costs associated with clean energy investments, nor any new federal incentives available through the Inflation Reduction Act.”* With this in mind, NJAC is urging DEP and the Administration to halt implementation of the regulations until an extensive, objective, and transparent cost benefit analysis is conducted with input from stakeholders on all sides of the issue as required under the attached **S-2671/A-3935 (Gopal D-11)(Moriarty D-4)**, which will also prohibit any State agency from adopting rules and regulations that mandate the use of electric heating systems or electric water systems as the sole or primary means for heating buildings or providing hot water to buildings.

NJAC supports this legislation, in part, as the measure will not prohibit a State agency from offering incentives for the voluntary installation or use of an electric heating system or an electric water heating system. In particular, NJAC commends the sponsors for including language in the bill that will require the Department of Community Affairs (DCA) to work in collaboration with DEP and BPU by holding at least six public hearings throughout the State, within 18 months after the bill's enactment, to solicit information on topics related to the costs and benefits of electric heating systems and the reduction of greenhouse gas emissions from residential and commercial buildings in the State. The bill will also require DCA, in consultation with DEP and the BPU, to publish, within 24 months after the bill's enactment, a report that summarizes the information submitted at the public hearings and to make legislative and regulatory recommendations. After the report is published, the bill's prohibition on regulatory actions to mandate the installation of electric heating systems or electric water heating systems will expire. S-2671 is currently in the Senate Community and Urban Affairs Committee awaiting consideration and A-3935 is currently in the Assembly Community Development and Affairs Committee.

### **MODERNIZING THE OPEN PUBLIC RECORDS ACT (OPRA)**

County governments alone process between 250 to 3,000 public record requests each year with many requests taking up to 10 hours to process using valuable staff time, resources, and taxpayer dollars. As recommended by our county officials from across the State, NJAC is presenting State leaders with the following recommendations to streamline and modernize the open public records process while preserving openness and transparency in government.

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. As noted above: 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.

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.

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.

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.

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.

**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.

**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.

**FUNDING:** The State should make available additional 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.

**UPCOMING NJAC EVENTS:** Stay tuned for details about NJAC’s December 16<sup>th</sup> Summit on Human Trafficking where key law enforcement officials will examine how it has grown into one of the largest criminal enterprises in the world and where leading experts will present critical strategies on how to prevent a trafficking situation along with vital resources available for victims. *Registration is free for county, municipal, state, and other public officials.*

**TOP 10 SONGS THAT MAY PROVIDE YOU WITH SOME COMFORT WHEN YOU LEARN THAT YOUR ADULT CHILDREN  
PLAN TO MOVE BACK HOME**

10. Leaving on a Jet Plane, *Peter, Paul, & Mary*
9. Movin’ Out, *Billy Joel*
8. Bye, Bye, Bye, *NSYNC*
7. Happy Trails, *Roy Rogers & Dale Evans*
6. So Long, Farewell, *the Van Trapp Family*
5. Free Bird, *Lynyrd Skynard*
4. Ramble On, *Led Zeppelin*
3. Rambling Man, *the Allman Brothers*
2. On the Road Again, *Willie Nelson*
1. Poppa was a Rolling Stone, *the Temptations*

*“Yesterday is not ours to recover, but tomorrow is ours to win or lose.” Lyndon B. Johnson*