

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

JONATHAN L. YOUNG
NJAC President
Camden County Commissioner

JOHN G. DONNADIO, ESQ.
Executive Director

STATE HOUSE NEWS

June 23, 2023

PROHIBITION OF PRIVATIZATION CONTRACTS

On June 15th, NJAC testified before the Assembly Labor Committee in opposition to **A-5430** (*Reynolds-Jackson D-15/Wimberly D-35*), which would establish procedures and standards concerning public services privatization contracts.

NJAC is primarily concerned with the fact that this legislation would effectively prohibit the use of privatization contracts by requiring county governments to pay new employees' wages and benefits at a rate not less than the wages and benefits paid to displaced employees. As noted below, counties enter into privatization contracts to recognize important cost savings in salary, wage, pension, and health benefit costs that comprise nearly 65% of overall operating budgets and as one of the only few available resources to manage the ever-increasing property tax burden. NJAC is also concerned that this legislation would create an overly burdensome and unnecessary level of bureaucracy by requiring the Office of the State Comptroller (OSC) to review and approve privatization contracts. Moreover, elected county officials and management should retain the autonomy to enter into privatization agreements that they believe are in the best interest of local residents.

As a means to deliver often mandated services in a more cost effective and creative manner, and without impacting the level of service provided, counties throughout the State have carefully chosen to privatize various services and functions that may include: dietary and laundry services at county jails and juvenile detention facilities; maintenance services at county administrative, judicial, and prosecutorial facilities; home health services; risk management services; and, much more. Importantly note that several counties have considered privatizing welfare services and transportation services for the aged and disabled, but ultimately decided against it after conducting comprehensive feasibility studies. For the reasons set forth above, the New Jersey State League of Municipalities (NJLM), the New Jersey School Boards Association (NJSBA), the Government Finance Officers Association of New Jersey (GFOA), the New Jersey Business and Industry Association (NJBIA), and the New Jersey Chamber of Commerce (NJCC) also opposed A-5430 and urged the Committee to consider the measure's long-term ramifications.

In general, A-5430 as amended would prohibit the State or any political subdivision from entering into a contract of \$500,000 or more to purchase from private entities services previously performed by agency employees, other than legal, management consulting, planning, engineering or design services, prevailing wage construction work, or certain services provided by disabled individuals employed by rehabilitation facilities, unless:

1. The agency solicits competitive sealed bids for the contracts based on a comprehensive statement of requirements by the agency;
2. The contract requires that the public not be charged fares, fees or other charges greater than those currently charged, that the quantity and quality of the services provided equal or exceed the quantity and quality of services currently provided, that the contractor is qualified, and that contractor employees have qualifications and wage and benefit rates at least equal to the agency employees currently performing the services;
3. The agency permits the union of the affected agency employees to review the agency's estimate of current costs and submit an alternative cost estimate and propose cost saving measures compliant with requirements of the bill and the agency reviews the union estimate and proposal and makes a determination whether to reduce the agency's estimate of current costs;
4. The contract requires compliance with antidiscrimination standards, requires available positions to be offered to qualified displaced agency employees, and requires the agency to prepare a plan of training and assistance for displaced employees;
5. The contractor and specified associates have no adjudicated record of substantial or repeated noncompliance with any federal or State law pertaining to the operation of a business, including laws regarding contracting and conflict of interest;
6. After receiving bids, the agency publicly designates the bidder to which it proposes to award the contract and issues a comprehensive written analysis of the total contract cost of the designated bid; and,
7. The agency provides written certification that the agency and the proposed contract are in compliance with all provisions of the bill and the total estimated contract cost is less than the cost of agency employees performing the services, with a statement of the amount of the savings.

The bill would also require the Office of the State Comptroller (OSC) to review the certification and prohibit the agency from entering into the privatization contract if the Office provides a written determination that the bid does not provide cost savings or that the agency has otherwise failed to comply with any requirement under the bill. Despite strong opposition from local governments and the business community, the Committee favorably reported the measure to the Assembly Appropriations Committee for consideration. The companion version **S-1350** (*Turner D-15/Greenstein D-14*) is in the Senate Budget and Appropriations Committee.

WORKERS COMPENSATION

On June 5th, the Senate Labor Committee was set to consider, but instead held **S-3818** (*Lagana D-38*), which would increase attorney fees in workers' compensation cases from an amount not to exceed 20% of a judgement to a flat rate of 25%. NJAC along with a broad coalition of business, insurance, and local government stakeholders strongly oppose the measure as it would unnecessarily increase attorney fees in workers' compensation matters.

Given that county governments across the State employ over 30,000 public sector employees and must insure for workers' compensation claims, NJAC is concerned that this legislation would substantially increase workers' compensation awards by at least 25%. Unfortunately, the measure would also nullify the steps county governments as employers have taken to effectively manage workers' compensation claims – ultimately paid for with property taxpayer dollars. With this in mind, NJAC submits that the Office of Legislative Services (OLS) and Executive Branch should have the opportunity to conduct a fiscal estimate on S-3818 to determine its long-term financial ramifications and whether establishing a funding mechanism to address the certain increase in expenditures to local governments would be in order.

Additionally, NJAC is concerned this legislation would eliminate a judge's discretion to carefully consider the reasonableness of both an attorney's rate of pay and the number of hours the attorney expended on the matter before making awards in workers' compensation cases. Instead, this legislation would summarily grant enhanced judgements to prevailing parties without requiring a comprehensive analysis as required under current law. Moreover, the measure would not appear to serve as an incentive for attorneys to zealously represent injured workers and their families as its stated intent, since the bill would no longer hold lawyers accountable for carefully itemizing the reasonableness of their fees. The companion version **A-5353** (*Verrelli D-15*) is currently in Assembly Labor Committee awaiting consideration, and NJAC expects the Legislature to revisit the matter some time during the lame duck session.

RECLAIMED ASPHALT PAVEMENT

On June 8th, the Senate Environment and Energy Committee amended and favorably reported to second reading **S-3255** (*Diegnan D18/Oroho R-24*), which would regulate the amounts of Reclaimed Asphalt Pavement (RAP) that may be used for certain road projects.

In summary, the bill would require the Department of Transportation (DOT) and a local contracting unit, when entering into a contract for a public highway project or local road project, to authorize the contracted party to use up to 35% of recycled materials in base and intermediate pavement courses, and up to 25% recycled materials in surface

pavement courses. The bill would also establish certain requirements for the use of recycled materials in the project, including that the asphalt mixture be sent to DOT for approval. In addition, the bill would require a local contracting unit, when entering into a contract for a local road project that does not receive State funding, to authorize the use of 50% RAP in base and intermediate pavement courses and 35% RAP in surface pavement courses. The bill would also require the contracted party to provide certification that the mixtures comply with DOT specifications.

NJAC and the New Jersey State Association of County Engineers (NJSACE) opposed the legislation as introduced and met with the New Jersey Asphalt and Pavement Association (NJAPA) on several occasions to work on a compromise that included the DOT certification as is now required under the bill as amended. S-3255 is on second reading in the Senate as is the companion version in the General Assembly **A-4797** (*Karabinchak D-18/Benson D-14*). Special thanks to the leadership at NJSACE for their hard work, resourcefulness, and patience in advocating for important changes now incorporating into the bill that the Legislature is likely to pass before its summer recess.

DANIEL'S LAW EXPANSION

On June 22nd, both houses passed and sent to the Governor **S-3125** (*Cyran D-20/Gopal D-11/Quijano D-20/Atkins D-20*), which would prohibit the disclosure of personal information of child protective investigators in the Division of Child Protection and Permanency (DCPP) in the Department of Children and Families.

In general, this bill would expand the scope of Daniel's Law beyond protecting judicial and law enforcement officers to also include DCPP child protective investigators and employees of the Department of Children and Families that engage in investigative activities in response to allegations of child abuse or neglect. Daniel's Law currently prohibits the disclosure, by both governmental entities and private parties, of the home addresses of any active, formerly active, or retired federal, State, county, or municipal judicial officer, prosecutor, or law enforcement officer. The measure would also expand the definition of "home telephone number" to clarify that the term may include either a landline or a cellular telephone number that is primarily used for personal communication, and would revise the current definition of "disclose" to provide that it includes making available or viewable within a searchable list or database, regardless of whether the list or database is actually searched.

The legislation would also remove the requirement that a covered person first receives approval from the Office of Information Privacy prior to providing written notice to a person, business, or association to cease disclosing their information. If the person, business, or association does not cease, the covered person may bring a civil suit against them. As amended, the bill would allow a covered person to assign, in writing, a covered person's right to bring a civil action for the continued disclosure of their

information, and they may do so immediately upon enactment. The measure would also require courts to impose certain penalties for a violation of Daniel's Law; whereas under current law, each of the authorized penalties is discretionary. The bill would further replace the term "aggrieved person" with "covered person" for the purposes of identifying who may bring a civil action for a violation of Daniel's Law. The Senate is expected to concur with the amendments made to the bill in the General Assembly having first passed the legislation in March.

SHBP COMPETITION & TRANSPARENCY

Also on June 22nd, the Assembly Appropriations Committee favorably reported to second reading **A-5363** (*Schaer D-36*), which would require the State Health Benefits Program (SHBP) and School Employees Health Benefits Program (SEHBP) to select more than one claims administrator for each plan and to provide claims data to public employers that participate in the programs.

In general, this legislation would require the State Health Benefits Commission and the School Employees' Health Benefits Commission to choose at least two third-party administrators from among submitted responsive proposals within a competitive range. The commissions would be required to award the contracts based on which responsive proposal within the competitive range is the most advantageous to the State based on relevant factors including price, network breadth, member experience, the ability to engage in innovative approaches designed to slow the growth of health care costs, and any other factors that the commission may deem relevant. The commissions would be authorized to award a contract to the vendor with the bid that is most advantageous to the State based upon the evaluation factors, and to thereafter award another contract to one or more vendors with bids within the competitive range that can provide a comparable bid price and factors of the first awarded contract.

The bill would also require the Department of Treasury to provide, upon request, but not more frequently than twice in a plan year, to a participating employer, a standard report which contains the requesting employer's de-identified aggregate data relating to the use of benefits by their employees, early retirees, and Medicare retirees, and their dependents, covered under the plans in the program. The report would include premiums paid by month for each month covered in the report and paid claims by month for the following categories of services: inpatient hospital; outpatient hospital; in network medical; out of network medical; prescription drugs; medical drugs; emergency room services; and behavioral health, each reported separately. The report shall cover both health and prescription benefits.

Additionally, the measure would require not later than December 1st of each year, the Treasury to collect and analyze claims data within the SHBP and SEHBP to develop, and make publicly available, a claims trend report for each program in the following

categories: inpatient hospital; outpatient hospital; in network medical; out of network medical; prescription drugs; medical drugs; emergency room services; and behavioral health. The claims trend report would also provide the information in segments including active, early retiree, and Medicare retiree for each plan in SHBP and SEHBP. The Department would also make the report available on or before December 31st of each year to all majority representatives of public employees for collective negotiations purposes with which the State negotiates. The report would be posted on the Department of the Treasury's website in a prominent and accessible location not later than January 1st of the following calendar year.

NJAC supports this important and timely legislation as it would increase competition and transparency in the wake of SHBP approving unprecedented health benefit insurance rate hikes late last year. Of note, the Office of Legislative Services (OLS) "estimates that requiring the State Health Benefits Commission and the School Employees' Health Benefits Commission to contract with multiple claims administrators for each plan offered by the State Health Benefits Program and the School Employees' Health Benefits Program and requiring the programs to annually provide certain claims data to participating plan sponsors will potentially reduce combined State and local expenditures by five to 20 percent, or \$319 million to \$1.3 billion, given certain assumptions." The companion version **S-3756** (*Scutari D-22/Sarlo D-36*) is on second reading in the Senate as well.

MENTAL HEALTH DIVERSION PROGRAM

On June 22nd, the Assembly Appropriations Committee favorable reported **A-1700** (*Quijano D-20/Mukherji D-33*), which would create a Mental Health Diversion Program (MHDP) to divert eligible persons away from criminal justice system and into appropriate case management and mental health services.

In general, this legislation would establish an MHDP for individuals with mental illness involved in the criminal justice system in three judicial vicinages located in the northern, central, and southern regions of the State. The intent of the program would be to divert eligible persons with serious mental illness who have committed certain offense away from the criminal justice system and into appropriate case management and mental health services. The goals of the program would be to: reduce incarceration rates for the appropriate target population through effective diversion away from the criminal justice system; increase the quality of life for the target population through efficient linkage to available social entitlements and community based mental health treatment providers, in conjunction with supportive monitoring to ensure compliance; increase community awareness and understanding through cross training of law enforcement and mental health communities; and, reduce recidivism and re-hospitalization rates for the target population leading to an increase in public safety.

The measure would define an “eligible offense” as a crime of the third or fourth degree that does not involve violence. Additionally, the bill would define an “eligible person” as is one who is mentally competent; allegedly committed an eligible offense and is not otherwise disqualified by the provisions of this act; and, has been diagnosed with a mental illness, either previously or through a mental health evaluation conducted through the program, and there is a nexus between the person’s mental illness and the commission of the alleged crime as determined by a certified mental health professional. The bill would require the Attorney General, in consultation with the Administrative Office of the Courts (AOC) to establish a MHDP in one vicinage in each of the northern, central, and southern regions of the State and to accept eligible persons accordingly. The legislation clarifies that similar programs in operation at that time may be deemed to comply with the requirements of this Act and may be selected for inclusion in the MHDP. A-1700 is on second reading in the General Assembly as is the companion version in the Senate **S-524** (*Ruiz D-29/Cunningham D-31*).

UPCOMING NJAC EVENTS: Stay tuned for details about the Association’s free virtual workshop set for 10:00 a.m. on July 12th.

The top 7 songs that you’ve been skipping to after watching the last of your many children graduate from high school ending a three-decade long reign of terror on schoolteachers, guidance counselors, coaches, principals, boards of education, chiefs of police, municipal prosecutors, most neighbors, and far too many more to mention, but enjoying just about every minute of it.

7. I’m Still Standing *by Elton John*
6. Walking on Sunshine *by Katrina & the Wave*
5. Top of the World *by the Carpenters*
4. The Battle Hymn of Republic *by any marching band*
3. It’s a Miracle *by Barry Manilow*
2. Hallelujah *by Leonard Cohen*
1. The Old Landmark *by the Reverend James Brown & Cleveland Choir*

“A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken.” James Dent