

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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EASING THE OPRA BURDEN FROM COMMERCIAL REQUESTS AND EXCESSIVE ATTORNEY FEES

- A law firm sought court approval of legal fees for \$565.0 per hour and a grand total of \$227,667.00 to litigate a matter under the Open Public Records Act (Act).
- A company that brands itself as *“a trusted information database of government purchase orders,”* made a public records request for purchasing data and then sold the information as a supplier subscription service.
- A nationwide company that advertises itself as the *“largest network of accurate construction project leads ... to help you win more jobs,”* made a public records request for bid tabulation data and then sold the information to vendors.
- A company that bills itself as *“an international provider of solutions to the operational risks that organizations face,”* made a public records request for motor vehicle accident reports before the individuals involved in the accident had access to the information.
- A company made a public records request for all motor vehicle violations occurring in a county for the month of March and then sold the information to law firms for solicitation purposes.

These are just a handful of recent examples of excessive attorney fees and public records requests made for commercial purposes that local governing bodies must endure on a daily basis. For these reasons, NJAC applauds efforts to rein in OPRA requests made by commercial entities that take advantage of the open public records process to generate profits. Given that a single document request may take up to 10 hours or more to process, and may require the attention of multiple departments to ensure that the response is in accordance with the law, county officials have long struggled with limited staff and resources to process overly burdensome requests made for commercial purposes. In the case of an OPRA challenge filed in Superior Court or before the Government Records Council (GRC), NJAC submits that attorney fees should be awarded to the prevailing party at a judge’s discretion, particularly where the custodian of record did not act willfully or wantonly in denying a request. Moreover, attorney fees should be capped at the rate a public entity pays outside counsel to mitigate the substantial cost to property taxpayers. Importantly, NJAC will continue to support efforts to streamline and modernize the open public records process by supporting legislation that would encourage public entities to digitize documents and make searchable online, records such as contracts, resolutions, meeting minutes, agendas, and more. This process would save valuable time and resources, and is long overdue.

ONLINE LEGAL NOTICES

NJAC is once again urging State leaders to pass legislation that would provide local governing bodies with the opportunity to electronically publish legal notices in a newspaper's website or digital publication.

In general, current law requires purchasing officials, clerks of the boards, planning departments, improvement authorities, and several others to publish onerous written information and legal notices in local newspaper publications. Such notices typically include contract awards, contract addendums, meeting notices, RFP and RFQ notices, election notices, and much more. Public officials have long decried that publishing these voluminous documents in print media is costly, time consuming, and outdated. Moreover, as the newspaper industry has become increasingly digitized and struggled to retain staff, resources, and publications, local officials have found it difficult to comply with the notice requirements under the law. With this in mind, NJAC submits that Title 35 of the Revised Statutes may be supplemented with the following language along amendments made to various sections of the statutory law that would permit local governing bodies *"to electronically publish legal notices in a newspaper's website or in a newspaper's digital publication."* With respect to fees, NJAC proposes the following:

- \$1.00 per page, per ad, for posting online, a PDF document that requires no assistance from the host website or digital publication.
- \$1.50 per page, per ad, for posting online, a document that requires assistance, such as typesetting, formatting, or other, from the host website or digital publication.
- \$2.00 per page, per ad, for posting online, a document that requires returning a certified copy or Affidavit to the local governing body.

Stay tuned for additional details and a model resolution that local governments may adopt to support the initiative.

CAP CALCULATIONS

On April 11th, Governor Murphy signed into law as P.L. 2024, c.8 **S-2969** (*Sarlo D-36/Ruiz D-29*)(*Pintor Marin D-29*), provides counties with discretion related to the retirement of county debt service and the amount that may be raised under the property tax cap levy.

In general, this new law will provide that a county in preparing its budget under either of the local budget cap laws may add to its adjusted tax levy the greater of the banked property taxing authority under the two. Additionally, the law stipulates that after a county has made the determination to prepare its budget under the 1977 Cap Law, the county's maximum permissible tax levy for that local budget year will not be reduced by the amount of the difference in appropriations for debt service between the two local budget years. The measure further provides that a county may add to its adjusted tax levy the greater of the amount authorized pursuant to the amount of the difference between the maximum allowable

amount to be raised and the actual amount to be raised by the county purpose tax accumulated for both the 1977 and 2010 cap laws.

In general, county governments must prepare their budgets pursuant to the 1977 Cap Law and the 2010 Cap Law and then use the more restrictive one as its cap calculation. In general, the “2010 Cap Law” imposes a 2.0% cap on local government spending, with certain cap exceptions for capital expenditures; debt service; pension contributions in excess of 2.0%; increases in health care costs in excess of 2.0%, but not greater than the percentage increase of the State Health Benefits Program (SHBP); and extraordinary costs incurred by a local unit directly related to a declared emergency. This law also eliminates waivers; provides that local governments may only exceed the 2.0% cap levy restriction by a local cap override approved by a majority of the voters; and authorizes the use of cap banking for three years. The “1977 Cap Law” imposes a cap of either 2.5% or the Cost-of-Living Adjustment (COLA), whichever is less, of the previous year’s county tax levy. Although this cap restriction contains certain cap exceptions for capital expenditures; debt service; emergency appropriations; and several others, it does not contain an exception for pension contributions and limits the exception for health expenses for such expenses incurred over 4.0%. Additionally, the use of cap banking is restricted to two years.

NJAC has long argued that the formulation of two complex, yet significantly different cap calculations, imposes an undue burden on county governments, which exercise little control over pension expenditures, the increase in the costs of goods and services, State mandates, and much more. Please note that after the 2010 Cap Law was signed into law and inadvertently kept the 1977 Cap Law, NJAC advocated for the Department of Community Affairs (DCA) to reconsider its decision to require that counties formulate two cap calculations. Although a repeal of the 1977 Cap Law would be the best-case scenario, this legislation would certainly help as it would provide counties with the flexibility to responsibly retire debt without a resulting decrease in the amount that could be raised through property taxes the following year as the current practice seems to serve as a disincentive for counties to eliminate existing debt.

COUNTY HOSPITAL OPTION FEE

On April 11th, the Assembly Appropriations Committee favorably reported with amendments **A-3364** (*Murphy D-7/Wimberly D-35*), which would clarify the cap on fees imposed under the “County Option Hospital Fee Program Act.”

In summary, this bill would amend the “County Option Hospital Fee Program Act,” to remove the requirement that the fee implemented under the program be subject to a cap as determined by the Commissioner of Human Services. The bill would instead require that the fee is subject to review and approval by the Commissioner of which would not impact the Commissioner’s authority to annually review and approve county option programs. The bill would also specify that the fee would not exceed the aggregate amount specified under federal law minus one percent of total net patient revenues. The Committee amended the bill to provide that neither the State nor a participating county

would be liable for any amount of local-healthcare-related fee imposed on a hospital pursuant to this act that the hospital fails to pay or does not pay in a timely manner to the assessing county. The Committee further amended the bill to provide that with the exception of the period of time during which a participating county or Medicaid Managed Care Organization is in possession of payments prior to disbursement, neither a participating county nor Medicaid Managed Care Organization would be liable for any amount related to an approved expenditure plan determined to be impermissible by a federal agency.

The County Option Hospital Fee Program was established in November of 2018 to support local hospitals in designated high-need areas to ensure continued access to critical healthcare services for vulnerable populations. To effectuate this goal, the program authorizes participating counties, and hospitals within those counties, to partner with the State through a provider assessment mechanism that enhances financial support through the Medicaid program. The current participating counties are: Atlantic, Bergen, Burlington, Camden, Cumberland, Gloucester, Essex, Hudson, Mercer, Middlesex, Monmouth, Ocean, and Passaic. The Office of Legislative Services (OLS) estimates that the measure would produce an annual net revenue gain for the State and participating counties of \$667.3 million of which would generate \$1.24 billion in federal Medicaid cost reimbursements, for an estimated \$1.91 billion in program revenues. **A-3364** and the companion version **S-1252 (Vitale D-19)** are on Second Reading in both houses.

UPCOMING NJAC EVENTS: Don't miss NJAC's Annual Celebration of County Government set for 5/1 – 5/3 at Caesar's in Atlantic Cit with additional details about registration and the action-packed schedule of events at www.njac.org.

The top 7 TV shows, books, and mostly movies that have terrified a generation into never using AI, ChatGPT, Venmo, Tik Tok, or even Wi-Fi or electricity at this point.

7. Fahrenheit 451 1953
6. 2001: A Space Odyssey 1968
5. Westworld 1973
4. Blade Runner 1982
3. The War of the Worlds 1898
2. Red Dawn 1984
1. War Games 1983

“Every adversity, every failure, every heartache carries with it the seed of an equal or greater benefit.” Napoleon Hill