

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

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STATE HOUSE NEWS

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911 FEE DIVERSION

On March 5th, Governor Phil Murphy unveiled his \$38.6 billion dollar spending plan for State Fiscal Year 2020. Although we're still in the process of reviewing the annual budget, it unfortunately does not include any new funding for county and municipal 911 centers as recommended by the Federal Communications Commission (FCC).

Despite our meetings with State leaders, op-ed pieces, press conferences, media coverage, and resolutions from nearly every county, the State will once again divert an estimated 89.0% of the \$120.0 million in surcharges it expects to collect this year as 911 System and Emergency Response Fees. As has been well documented, the State of New Jersey is the worst offender of diverting 911 fees in the nation and has collected an estimated \$1.4 billion since 2006 with only 11% of Fund monies being spent on eligible expenses for the 3 State operated 911 centers. Moreover, the State has failed to provide any funding to local 911 centers operated by counties and municipalities; and, has instead diverted the balance of Fund dollars to cover general operating expenses in the Department of Law and Public Safety. As a direct result of the State's decade long practice, and the similar diversion of 911 funds by several other states, the FCC recently adopted rules that now prohibits New Jersey and its local governing bodies from applying for up to \$115.0 million in grant program funding to upgrade 911 centers with Next Generation 911 (NG911) capabilities.

Over the next few weeks, NJAC plans to testify before the Assembly Budget Committee, and the Senate Budget and Appropriations Committee, that the State of New Jersey should comply with federal guidelines to adequately fund county and municipal 911 centers pursuant to FCC guidelines. Moreover, the State of New Jersey should also adopt 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. Counties and municipalities as first responders handle most of the State's public safety service requests through local 911 centers 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 approximately \$300.0 million over the last five years in capital improvements for facility upgrades, telephone systems, computer aided dispatch, location mapping technology, voice recording technology, data analytics, and NG911 upgrades. Counties also spent

an estimated \$100.0 million in 2016 on 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 of 73% of the municipalities located within their borders Fund.

STATUTE OF LIMITATIONS

On March 11th, the Senate passed by a vote of 32-1 **SENATE, NO. 477** (*Vitale D-19/Scutari D-22*), which would eliminate the statute of limitations in certain civil actions for sexual abuse, expand the categories of defendants liable in such actions, and remove the safeguards provided local governing bodies under the New Jersey Tort Claims Act (TCA).

NJAC commends the sponsors for their efforts to provide the victims of sexual abuse with additional remedies against the perpetrators and entities guilty of committing such heinous crimes. However, we remain concerned that the most recent changes to this legislation would eliminate, in its entirety, the safeguards provided local governing bodies under the TCA as all lawsuits are defended with limited property taxpayer dollars. During our testimony on March 11th before the Assembly Judiciary Committee on the companion version **ASSEMBLY, NO. 3648** (*Quijano D-20/Vainieri-Huttle D-37*), NJAC, the New Jersey State League of Municipalities (NJLM), and the New Jersey School Boards Association (NJSBA) submitted that the TCA does prohibit the filing of lawsuits against the State, counties, municipalities, and school districts. Instead, the law simply provides important procedural protections that make the litigation process more deliberate. The Assembly Judiciary Committee favorably reported the measure and the General Assembly is expected to vote on the bill on March 25th. In the meantime, we're meeting with the Governor's office next week to discuss our concerns and recommendations.

In general, this legislation would establish an extended statute of limitations period for sexual abuse, one of which would apply to persons who were abused when minors under the age of 18 years old, and one of which would apply to persons who were abused after reaching 18 years of age. For abuse that occurred prior to, on or after the bill's effective date, a lawsuit would need to be filed within 37 years after the child victim turns 18 years of age (filed by the victim's 55th birthday), or within seven years of discovering the injury and its cause if the end date of the seven-year period would occur after the victim turns 55 years of age. Since the extended statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of 55 years when the bill takes effect, or who will reach 55 years of age sometime after the bill takes effect, and who is aware of the injury and its cause could file a suit; the "reasonable discovery" requirement would only apply if the victim filed suit after turning 55 years of age due to a delayed discovery of the injury and its cause.

As noted above, this legislation would provide that the TCA or any other law, that may provide some form of governmental immunity from lawsuits based on injuries resulting from acts of sexual abuse are inapplicable, so that any public entity, as defined in the TCA, may be held liable in any such suit in the same manner as a private organization. The bill would also eliminate the two-year statute of limitations period, set forth in N.J.S.A. 59:8-8, for bringing a sexual abuse lawsuit against a public entity, as well as any of the act's procedural requirements, such as the 90-day period for filing notice of a claim of liability against a public entity for such lawsuits; the process of filing a lawsuit with service upon the liable public entity or entities would thus be the same as when suing a private organization. Public entities would also be subject, just like a private organization, to the new, extended statute of limitations periods for child and adult victims of abuse summarized above. *Please note that this legislation presents several complex legal challenges and we recommend county counsels to review it in its entirety as this summary provides a condensed version of the measure.*

COUNTY CORRECTIONAL POLICE OFFICERS

On March 7th, the Assembly Law and Public Safety Committee amended and favorably reported **SENATE, NO. 1739/ASSEMBLY, NO. 3236** (*Van Drew D-1/Oroho R-24*)(*Land D-1/Andrzejczak D-1*) to clarify that legislation would not authorize the transfer of pension benefits from the Public Employee Retirement System (PERS) to the Police and Firemen's Retirement System (PFRS) for county correction officers.

Although NJAC supports the retitling of county correction officers to county correctional police officers under S-1739, NJAC advocated for the amendment to clarify that the measure would not alter the pension benefits of any person whose title would change. In general, county correction officers that participate in PERS are typically hired by counties at 35 years of age or older or fail to meet other PFRS requirements. NJAC testified at the Committee hearing that approximately 250 county correction officers statewide fall into this category, and that the transfer of these employees from PERS to PFRS would cost approximately \$3.7 million per year statewide for active employees. Please note that the current employer pension contribution rate for PERS employees is 13.37% of an employee's annual salary, while the current employer pension contribution rate for PFRS employees is 27.3%.

Please further note that the above figure above does not include employees who would transfer from PERS to PFRS and then retiree, and that PFRS retirees are costlier for local governing bodies as their pension benefits are greater and may be taken for a longer period. At a time in which State leaders are struggling to protect the long-term viability of the pension systems, and minimize the impact on property taxpayers, NJAC thanks the sponsors for their leadership in agreeing to amend the bill accordingly. The General Assembly is expected to vote on the measure at one of its upcoming voting sessions and the Senate is expected to concur with the amendments.

COUNTY TRANSPORTATION SERVICES

Special thanks to Michael Viera, Executive Director of NJ COST, for taking the time out of his busy schedule to testify with NJAC on March 11th before the Assembly Transportation and Independent Authorities Committee concerning the transportation services provided by county governments to senior citizens, individuals with disabilities, and others with mobility needs.

Thank you as well to our county administrators for providing NJAC with summaries of these vital services, and to Committee Chairman Daniel Benson for inviting NJAC to participate in this important and timely discussion. As noted in Bergen County's materials, these vital services are *"life sustaining for clients with serious medical and health needs; provide a lifeline to homebound clients who are delivered nutritional meals; and, offer a link to social services for clients who would otherwise be isolated or alone."* These essential services are typically provided, but not limited to, the following individuals:

- Persons with Disabilities
- Senior Citizens
- Veterans
- Welfare-to-Work Residents

Although the types of transportation services may vary somewhat from county-to-county, the list below provides a general, but not exhaustive, summary of the rides available to the State's most vulnerable population.

- Medical Appointments for Hemodialysis, Chemotherapy, and Radiation
- Physical and Mental Therapies
- Employment and Educational Training Opportunities
- Veteran Services
- Recreational Activities
- Meals on Wheels
- Visitation to loved ones in nursing homes and hospitals

As demand for community transportation systems have grown exponentially, monies from the Casino Revenue Fund, which supports the Senior Citizens and Disabled Transportation Assistance Program (SCDRTAP), have decreased by 51% since 2008 forcing county governments to either subsidize the programs or reduce services. With this in mind, NJAC is urging State leaders to develop a more dependable and stable source of revenue, so that county governments across the State may continue delivering essential transportation services for senior citizens, individuals with disabilities, and others with mobility needs.

LOCAL AID ALLOCATIONS

On March 18th, the Senate Budget and Appropriations Committee will consider **SENATE, No. 2863** (*Sarlo D36*)(*Sweeney D-3*), which would revise the requirements for receiving grant funding from the Local Aid program under the Transportation Trust Fund (TTF).

The Senate Transportation Committee previously amended the bill to address the vast majority of NJAC's initial concerns and would require that failure to award construction or other approved contracts for 100 percent of the county's allotment within three years of notification by the Department of Transportation (DOT) of that year's allotment, or failure to award construction or other approved contracts for any percentage of a county's allotment within one year following the date the county receives the first payment of the allotment, would result in the allotment being immediately rescinded, returned, or deducted by DOT from future allotments. With respect to municipalities, the legislation would require that failure to award construction or other approved contracts for 100 percent of a municipality's allotment within two years of notification by the department of that year's allotment, or failure to award construction or other approved contracts for any percentage of a municipality's allotment within one year following the date the municipality receives the first payment of the allotment would result in that year's allocation being immediately rescinded.

The measure would also authorize the Commissioner of DOT to reallocate funds on a grant basis for counties or cost reimbursement basis for municipalities. The bill would further provide that the new one year requirement may be extended if a designated chief financial officer of the county or municipality certifies to the DOT that the project would not begin construction because: (1) the allotment is aggregated with future funds for a specific project; (2) a permit needed for completion of the project has not been issued due to a delay in the permitting process; (3) the acquisition of an interest in State-owned land needed to complete the project is delayed due to the divestment of a deed restriction; (4) the project requires a utility to be relocated; or (5) a catastrophic event occurs and results in the declaration of a state of emergency.

The bill would further prohibit a local government entity from using Local Aid program funds to support the work of a local government entity's employees on Local Aid construction projects funded from Local Aid funds; would require construction contracts for projects funded out of funds from the local aid program to be bid in accordance with local public contracts law; would require all bidders on Local Aid program funded construction contracts valued at more than \$500,000 to be prequalified by the department; and, would permit Local aid Program grant recipients to use 10 percent of their awards on design costs in fiscal year 2019, and five percent of their awards on design costs in fiscal years 2020 and beyond.

MURPHY, DEM LEADERS NOW MUST ROUND UP VOTES FOR MARIJUANA LEGISLATION

Carly Sitrin, NJ Spotlight, March 13, 2019

Have they the support of enough Democrats to legalize adult use in New Jersey? That's just one question arising out of this week's agreement on legislation. Although Gov. Phil Murphy and Democratic legislative leaders have finally reached an agreement to legalize marijuana for recreational adult use in New Jersey, the smoke hasn't yet cleared enough to see whether they have the votes to pass a bill. On the heels of what looks to be a more amicable beginning to the annual budget process, the Democratic governor and Senate President Steve Sweeney have settled on the outlines of a bill to legalize cannabis for those aged 21 and older. (Specific wording of the bill has not been released.) The Murphy administration is hoping for a committee vote on March 18 and final passage by March 25. It will take at least 21 votes to pass the legislation in the upper house and as of last November before they cut this deal, there were only 20 votes in favor, at best.

"We have a deal," Murphy said Tuesday. "This was not easy. We're standing up an entire new industry so not surprisingly it took time." The proposal includes a \$42 per-ounce flat tax to be levied on cultivators, 2 percent tax revenue for municipalities, an expedited expungement process for people convicted of low-level marijuana offenses in the past, and a five-member Cannabis Regulatory Commission to oversee the industry, among other provisions. The speculation is they are taxing by weight to avoid an additional sales tax, and the \$42 per-ounce tax on growers would be passed on to consumers. Murphy is anticipating that legalization will deliver "thousands of jobs and billions of dollars of economic activity" for the state, given the experiences of states like Colorado and Massachusetts that already have legalized. Indeed, according to data compiled by Whitney Economics and the online cannabis website Leafly.com, the state-licensed cannabis industry gained over 64,000 new employees in 2018, and now employs more than 200,000 full-time workers nationally. Data compiled by the Institute on Taxation and Economic Policy show that tax revenues in 2018 derived from state-sanctioned recreational sales surpassed \$1 billion, a 57 percent increase over 2017 levels.

Murphy's fiscal year 2020 budget proposal counts on \$60 million in new revenue from a tax the state would apply to the sale of recreational marijuana. The governor called that number "modest" and said there would also be a cost to the state of \$21 million expense: \$9 million in a one-time startup cost and \$12 million in ongoing "implementation fees," although he did not clarify what those fees would be.

It's not clear when, if passed, the new law would take effect, but Murphy has targeted early 2020. Legalizing adult-use cannabis has been a priority for Democrats since Murphy's election as they were unable to make any progress under former Gov. Chris Christie, a Republican. Supporters of legalization cite data showing cannabis arrests cause extensive harm to communities of color and take up significant law-enforcement time and resources. Murphy has repeatedly said that his priority at the deal-making

table was administering “social justice” for those incarcerated or otherwise harmed by the nation’s longtime war on drugs.

“I got there via the notion [of] the yawning gaps of social injustice in our state,” Murphy said. He added that there’s a “big expungement piece” to this deal, including a “very robust lookback provision” that will handle clearing the records of individuals convicted of low-level marijuana offenses. “Without it there wouldn’t be a deal,” he said. At the same time, some lawmakers opposed to full-fledged legalization are pushing to put the issue on the ballot for voters to decide. Assemblywoman Holly Schepisi (R-Bergen) has proposed a referendum on the matter and is in talks with Sen. Ronald Rice (D-Essex) for him to be a potential co-sponsor in the upper house.

“I do not support the legalization of recreational marijuana in New Jersey. I have spoken with Assemblywoman Holly Schepisi on pushing for the measure to be put on the ballot this year because I believe the voters should decide whether recreational marijuana is legalized in this state,” Rice said in a statement. How many lawmakers will oppose? Still, it is unknown how many legislators may oppose this attempt at legalization, and legislative leaders are hoping to sell their deal to enough lawmakers to get it passed in both chambers. “This plan will allow for the adult use of cannabis in a responsible way,” said Senate President Sweeney (D-Gloucester) in a statement. “It will create a strictly regulated system that permits adults to purchase limited amounts of marijuana for personal use. It will bring marijuana out of the underground market so that it can be controlled, regulated and taxed.”

One of the major sticking points for legislators and local leaders alike has been the rate at which marijuana would be taxed. Murphy spent months pushing for a tax as high as 25 percent while Sweeney emphasized he would not go higher than 12 percent. In the agreement reached on Tuesday, adult-use marijuana will be subject to an excise tax of \$42 per ounce imposed on cultivators. Municipalities that have retail shops would be able to impose a 3-percent tax on items sold within their borders, while towns that host marijuana growers would be able to impose a 2-percent tax, and towns with wholesalers could charge a 1 percent tax. Mayors and municipal officials however have long asserted that 2 percent or 3 percent is not nearly enough for them to offset the potential costs of policing and other aspects of implementing legalization.

When the bill language is released, many will be looking to see if there’s provision for the Police Training Commission in the Department of Law and Public Safety to reimburse county and municipal expenses for training costs, as was the case in the bill’s previous version. So why a tax on weight? Politically, it protects Murphy and Sweeney from the insinuation that either gave in on their tax demands. Economically, taxing by weight takes into account the dips in marijuana pricing that states like Colorado and Oregon have experienced since legalizing. That \$42 excise tax would remain static whether the ounce cost \$300, \$150, or less.

Another major factor in the legalization debate has been how to handle expungements for those whose crimes will no longer be crimes, overnight. This disproportionately affects black New Jerseyans who are currently three times more likely to be arrested for marijuana possession than whites, despite similar cannabis use rates. ACLU data shows that hundreds of thousands of New Jerseyans could be eligible to have their records cleared if this agreement passes, but the process is lengthy and difficult to navigate. The agreement reached by Murphy and legislative leaders would establish an expedited expungement process for those convicted of low-level marijuana offenses, and it would put into place an electronic expungement process they say will “automatically prevent certain marijuana offenses from being taken into account in certain areas such as education, housing, and occupational licensing.” Further details will be released sometime this week, but advocates already have flagged a potential problem with the way arrest and conviction data is stored, collected, and entered into computer systems (or left in boxes in basements) that could put a wrinkle in the ease promised by an automated “virtual” expungement rollout.

“In as much as we would want this to be automatic it is functionally not possible,” Murphy said of expungement. He noted that many of the issues with processing people through the system will be for the regulatory commission to tease out. “All of us would have preferred an automatic, just one minute after midnight everybody’s expunged [solution] and that is not possible ... how that is going to evolve, if you could bear with us, I would appreciate that.” Although the state will be relying heavily on the newly created commission to work out many details of the legalization and to oversee all license applications for dispensaries, the regulatory body itself has been a point of contention for Sweeney and Murphy. To gain the governor’s blessing, Sweeney and Assembly Speaker Craig Coughlin agreed to grant the governor full authority to appoint a majority — three of the five commission members with the Senate’s consent. The other two members will be appointed by the governor, by recommendations of the Speaker and Senate President.

Additionally, there are provisions in the agreement aimed at creating space in the industry for those who have been impacted by marijuana prohibition, including minority and women-owned businesses, low- and middle-income individuals, and disadvantaged communities. As the final text of the bill is being edited, stakeholders will be watching to see how their concerns will be addressed including further details on the expungement process: Will small-time dealers be included or just those convicted of possession? How will the Administrative Office of the Courts be directed to handle expungements? Will those applying to have their records cleared incur a cost? How will marijuana be handled in the workplace? What provision will there be for handling intoxicated driving and cannabis-use disorder or addiction?

Indeed, upon the announcement of the agreement, longtime legalization opponent Sen. Gerald Cardinale (R-Bergen) noted the serious concerns of his constituents and many others across the state. The principal duty of government “is to safeguard public health and safety. Legalizing marijuana for recreational use is a shameful abdication of that

responsibility,” Cardinale said. “In November, New Jersey’s law enforcement community testified that we don’t have the funds, personnel, or technology to identify drugged drivers. There is no breathalyzer for marijuana.” While New Jersey could see a vote on legalization within a couple of weeks, the issue is also gaining ground on the federal level. U.S. Sen. Cory Booker (D-NJ), who announced his candidacy for president earlier this year, reintroduced his Marijuana Justice Act, which he first introduced in 2017. It would decriminalize cannabis at the national level and leverage federal funds to encourage states to legalize it. Several other presidential hopefuls have signed on to support Booker’s bill.

But even if the New Jersey legalization bill gets passed by both houses in Trenton, implementation could still be a year away. “Assuming there is not any meaningful amount of recreational sale out of the current medical dispensaries and for a lot of reasons we don’t expect that,” Murphy said, “early next year would be my best guess.” He added the next step is for himself, Sweeney, Coughlin, and sponsors of the bill in the Assembly and Senate to work to convince others that their plan is worth signing on to. “We have to get the votes now,” Murphy said. “I’m all in to help them get this over the goal line.”

REVENUE FORECAST CUT FOR FY 2019

John Reitmeyer, NJSpotlight, March 7, 2019

Worries about an income tax shortfall that have dogged the Murphy administration for much of the year could come to nothing, now that the Department of Treasury has upgraded slightly the revenue forecast for state taxes in the fiscal year 2019 budget

In fact, that change, along with others made by the administration to this year’s state budget are meant to ensure that spending stays in balance through the end of June. And that’s good news for Gov. Phil Murphy, who’s got to sell his fiscal 2020 budget proposal to lawmakers, some of whom have already expressed some skepticism about his numbers. Treasury’s increase of the overall revenue projection for the 2019 fiscal year is in large part due to a surge in corporate business-tax collections. That comes after the state’s top-end CBT rate was increased last year through a policy change that was not part of Murphy’s original budget proposal, but instead was pushed by Senate President Steve Sweeney (D-Gloucester).

In fact, the CBT is now forecast to bring in nearly \$700 million more than the original projection made in July. That more than makes up for the reduction in the income-tax projection, which totals \$414 million. It’s also helping push the overall revenue forecast up by about \$330 million compared with last year’s original estimates. Despite the income-tax downgrade, Treasury officials say they remain confident that April returns will still generate a sizable haul for the state by the time fiscal 2019 closes on June 30. “It’s our belief that we will see a correction in April,” Treasurer Elizabeth Maher Muoio told reporters earlier this week during a briefing on Murphy’s proposed budget for fiscal 2020.

While budget adjustments are made on a routine basis whenever a new state budget is proposed, it was Murphy himself who raised concerns about the pace of growth in state tax collections for fiscal 2019 back in January when he issued a controversial veto of a bill sponsored by Sweeney that sought to increase aid for a public-assistance program that is used to prevent homelessness. At the time, the state's income tax and overall tax collections were underperforming the growth projections that were included as part of the original budget the governor signed into law in July for the 2019 fiscal year. Concerns only grew after Treasury disclosed last month that income-tax collections continued to trail the year-end growth target through the end of January, and that overall tax collections were up about 3 percent. To stay in balance through the end of June, when the fiscal year closes, the original budget needed to hit a 7.5 percent growth rate.

Among the many budget adjustments released by the Murphy administration on Tuesday is the downgrading of the revenue forecast for the income tax. That comes even after Murphy, a first-term Democrat, worked with legislative leaders from his own party last year to hike the state's top-end marginal income tax rate to 10.75 percent on earnings over \$5 million. (Murphy's budget proposal for fiscal 2020 is seeking to apply that rate to all earnings over \$1 million). In all, the income tax is now projected to bring in \$15.56 billion in fiscal 2019, down slightly from the nearly \$16 billion that was projected in July. But with April around the corner, Muoio and other Treasury officials say they don't see signs that a much larger drop-off is coming because they think taxpayers this year will wait until the last minute to file their payments. That behavior would stand in contrast to last year, when many taxpayers — including high earners who provide an outsized portion of the income-tax receipts — pushed their payments into tax-year 2017 to avoid new federal tax-policy changes that took effect last year. They included a new, \$10,000 limit on the federal deduction for state and local taxes known as SALT.

Also seeing a slight reduction is Treasury's fiscal 2019 forecast for the state sales tax, which was expected to get a boost in the 2019 fiscal year, thanks to a recent U.S. Supreme Court ruling that allowed the state to extend the sales tax to most online purchases. The sales-tax downgrade announced on Tuesday is roughly \$80 million, bringing the overall projection for that tax down to \$10.05 billion. Going in the other direction is the forecast for a number of smaller revenue sources that are also tracked by Treasury. Those are being upgraded by nearly \$160 million. But by far the biggest budget adjustment is the change to the forecast for the corporate-business tax, from \$3.05 billion up to \$3.71 billion. That adjustment comes after the top-end corporate rate was hiked last year for businesses with more than \$1 million in profits, from 9 percent to 11.5 percent, under a proposal that was originally floated by Sweeney.

The CBT receipts are also being boosted this year by funds coming back into the United States from overseas under corporate-tax changes enacted at the federal level for tax-year 2018, Treasury officials said. In all, Treasury is now expecting to see total revenues increase by about \$330 million compared to the original forecast from July, reaching \$37.74 billion by the time fiscal 2019 closes on June 30. And the size of the state's rainy-

day budget surplus — which is used to hedge against any revenue shortfalls — has also been increased in the budget for the 2019 fiscal year, from \$765 million to a little over \$1 billion, according to budget documents.

UPCOMING NJAC EVENTS: Make sure to mark your calendars for NJAC’s Annual Celebration of County Government set for May 8th through May 10th at Caesar’s in Atlantic City. And, don’t forget to join us at our next board meeting on March 22nd in Committee Room 4 of the State House Annex in Trenton.

STATE HOUSE TRIVIA: Even though I typically get crab grass, did you know that the first spring flowers are typically lilacs, irises, lilies, tulips, and daffodils?

“Spring is nature’s way of saying let’s party.” Robin Williams