

STATE HOUSE NEWS FOR FINANCE OFFICERS

August 9, 2018

911 FUNDING

The federal government is moving forward with plans to make New Jersey ineligible for \$115.0 million in 911 grant funding to upgrade public safety answering points (PSAPs) with Next Generation (NG911) capabilities pursuant to the Middle Class Tax Relief and Job Creation Act, which also required the National Telecommunications and Information Administration (NTIA) and the National Highway Traffic Safety Administration (NHTSA) to jointly administer a matching grant program to provide financial assistance for eligible government entities.

With this in mind, on August 3rd the Federal Registry contained new regulations that will *“require all applications for grant funding to: “certify that the State has not diverted any portion of designated 911 charges imposed by the State for any purposes other than the purposes for which such charges are designated or presented,” and “that no taxing jurisdiction in the State will be a recipient of 911 grant funds if it has diverted any portion of designated 911 surcharges imposed by the taxing jurisdiction for any purpose for which such charges are designated or presented.”* In other words, and as a direct result of the State’s decade long diversion of 911 fees, county and municipal governments across the State are ineligible to receive critical 911 monies from the federal government.

Moreover, Congressman Leonard Lance (NJ-7) signed on as a co-sponsor of recently introduced federal legislation that would prevent states from diverting fees collected from consumers on their cell phone bills. In summary, H.R. 6424 (*Collins R-NY-27/Lance R-NJ-7*), would direct the Federal Communications Commission (FCC), in consultation with public safety organizations, and state and local governments, to determine the appropriate use of the 911 fees collected from consumers. Current federal law authorizes states to establish their own definitions of eligible 911 expenses, which has led to the wide spread diversion of fees across the nation with the State of New Jersey as the number one offender.

As has been well documented, the State diverts an estimated 89.0% of the \$120.0 million in surcharges it collects each year as 911 System and Emergency Response Fees (Fees) and of which it deposits into the 911 System and Emergency Trust Fund Account (Fund). In fact, the State has collected approximately \$1.3 billion in fees since 2006 with only 11% of Fund monies being spent on eligible expenses as recently reported by the FCC.

Moreover, the State has failed to provide any funding for eligible expenses to local 911 centers operated by counties and municipalities; and, has instead diverted Fund dollars to cover general operating expenses in the Department of Law and Public Safety. Importantly, counties and municipalities as first responders handle the vast majority of the State's public safety service requests through local PSAPs and have come to inequitably rely on the collection of local property taxpayer dollars to improve, operate, and maintain 911 systems. For these reasons, State leaders must restore critical Fund dollars and comply with federal grant funding to streamline operations and save taxpayer dollars.

JANUS QUESTION AND ANSWERS

By Joseph M. Hannon, Esq. with Genova Burns and NJAC Labor Counsel

1. *What did the Court rule in Janus?* The Supreme Court, in a 5-4 ruling, determined that the involuntary payment of an "agency shop fee" by nonmembers of a union is unconstitutional as a violation of the free speech rights of those employees.
2. *What are agency shop fees?* In New Jersey, if a majority of employees in a negotiations unit vote to be represented by a union, then that union is the exclusive representative of all employees covered by the collective negotiations agreement. This includes employees who choose to be members of the union and those employees who are part of the collective negotiations unit due to their titles, but who choose not to be union members. Those individuals who choose not to be union members pay a fee known as an "agency shop fee" that is deducted from their pay, which is paid to the union.
3. *Did the Supreme Court decision in Janus affect those individuals who are members of the union?* No, individuals who choose to be members of the union and have the full union dues deducted from their paychecks are not affected by the Supreme Court's ruling in *Janus*. The Supreme Court's decision only affected those individuals who are not union members, but are covered by a collective negotiations agreement and therefore had "agency shop fees" deducted from each paycheck.
4. *How were agency shop fees covered in New Jersey prior to the Janus ruling?* N.J.S.A. 34:13A:5-5 to 5.8 of the Employer-Employee Relations Act governed the payment of "agency shop fees", or representation fee in lieu of dues in New Jersey. The fee included the regular membership dues, initiation fees and assessment charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event could the fee exceed 85% of the regular membership dues, fees and assessments. The fee could not include costs of support of lobbying activities to foster policy goals in collective negotiations and contract administration, i.e. it could not include monies spent to further political activities.

5. *Is any fee structure permissible for nonmembers of unions after Janus?* Yes. The Supreme Court invalidated any involuntary fee collected by unions from nonmembers covered by a collective negotiations agreement. However, the Court stated that an “agency shop fee” may be deducted if the nonmember affirmatively consents to pay. In order to satisfy this criterion, the nonmember must “clearly and affirmatively” consent before any money is taken from them. We recommend a written consent form.
6. *How should public employers handle the “agency shop fees” deductions that are currently being made to employees’ paychecks?* In light of the Supreme Court’s ruling in *Janus*, public employers should immediately cease the payroll deductions of “agency shop fees” or representation fee in lieu of dues from all its employees who choose not to be members of a union, yet are covered by a collective negotiations agreement and notify the union of same in advance.
7. *How should such notice be provided?* In light of the recent provisions of the Workplace Democracy Enhancement Act, the most advisable course of action for public employers would be to notify union leadership that the fee deductions will cease immediately
8. *What if the union or employee advises that they would like the agency shop fee to continue to be deducted? Is that appropriate?* A fee in lieu of dues for nonmembers prohibited by the Supreme Court’s ruling in *Janus* if it is involuntary. No fees should be deducted for nonmembers unless the nonmembers show by “clear and compelling” evidence that the nonmember is consenting to the fee deduction.
9. *What is the appropriate amount for a voluntary “agency shop fee” after the Janus ruling?* The decision is not clear as to what an appropriate amount would be if the employee provides a clear and compelling consent to the deduction. As any fee that is deducted must be though “clear and compelling” evidence that the employee has consented to fees being deducted, then any amount agreed upon would potentially be permissible. The provision of the Employer-Employee Relations Act should be used as a guidepost for such an arrangement.
10. *If an employee chooses not to pay any agency shop fee are they still covered by the collective negotiations agreement?* Yes, nonmembers who are covered by the Recognition Clause of a collective negotiations agreement are still entitled to the benefits of that collective negotiations agreement, including wages, benefits and other negotiated terms and conditions of employment. Public employers must continue to treat these employees as covered by the contract and provide them the same rights as all other members of their union. In fact, unions could directly charge nonmembers who do not pay a fee for representation services in a grievance or disciplinary hearing as provided in the Supreme Court’s decision.

11. *How should a public employer handle a situation in which union members seek to withdraw from the union?* Withdrawal from a union by a union member is not affected by the *Janus* decision. Any withdrawals shall be handled in accordance with current law including, but not limited to, the Workplace Democracy Enhancement Act, Employer-Employee Relations Act and rules and regulations of the Public Employment Relations Commission.

WATER INFRASTRUCTURE

GFOA's Legislative Affairs Committee is in the process of reviewing **SENATE, NO. 2805/ASSEMBLY, NO. 4324** (*Smith D-17*)(*Pinkin D-18*), which would establish the "Water Resources Protection Trust Fund Act" to impose a user fee on water consumption and to utilize fee revenues for water quality, supply, and infrastructure projects.

In summary, this bill would establish in the Department of Environmental Protection (DEP) a special non-lapsing fund as the "Water Resources Protection Trust Fund" to finance water quality, supply, and infrastructure projects, and to further provide grants or low-interest loans to assist local governing bodies and water purveyors in funding water quality, supply, and infrastructure projects. To support the Fund, the bill would impose on the owner or operator of every public community water system, a water consumption user fee of \$0.40 per 1,000 gallons of water delivered to a consumer, not including water delivered for resale. The measure would further provide that any person subject to the water consumption user fee may collect the fee by including the amount of the user fee due as a separate line item on every customer bill or other statement presented to consumers. The person subject to the water consumption user fee may use up to one percent of all revenues collected to defray the costs of administration and collection accordingly.

The legislation would permit the use of monies in the Fund for the following purposes: the costs of transferring water between public water systems during a state of water emergency or to avert a drought emergency in all or any part of the State; the protection of existing water supplies through the acquisition of watershed and wetlands areas; the interconnection of existing water supplies, and the extension of water supplies to areas with contaminated ground water supplies; water supply infrastructure projects undertaken by water purveyors for the purpose of drought mitigation; the costs of a safe or dependable yield analysis of the State's surface and ground water sources undertaken by the Department; projects to rehabilitate, repair, or replace public water system infrastructure; grants to local government units to finance the cost of developing asset management programs for public water systems; and projects to remediate lead in drinking water infrastructure.

In addition to the projects authorized above and beginning 10 years after the effective date of the bill, moneys in the fund may be used for projects to rehabilitate, repair, or replace wastewater treatment system infrastructure, including, but not limited to,

combined sewer overflow abatement projects. As noted above, the legislation would authorize the Department to make low-interest loans available to local governing bodies or or water purveyors to finance the costs of certain water quality, supply, and infrastructure projects. Each loan and the terms and conditions would be subject to approval by the State Treasurer, and local governing bodies and water purveyors must demonstrate the ability to match the grant funding requested by generating funds in ratios as determined by DEP. Additionally, the legislation would require the Department to submit each year to the Legislature, a financial plan designed to implement the financing of projects on the Department's priority list. S-2805 and A-4324 are respectively awaiting consideration in the Senate Environment and Energy and Assembly Environment and Solid Waste committees.

MAKE EXTRA MORTGAGE PAYMENTS, GET A NEW STATE TAX CREDIT

John Reitmeyer, NJ Spotlight, August 1, 2018

Citing a need to do more to help middle-class residents build up home equity in high-cost New Jersey, lawmakers are proposing a new tax credit that would reward homeowners for making extra mortgage payments.

The proposed new tax credit is being modeled on a similar piece of federal legislation, and the state version would be worth as much as \$1,000 annually if legislation now under consideration in the State House becomes law. The push to encourage homeowners to get ahead on their mortgages also comes as the GOP-led Congress is considering making permanent a series of federal tax-code changes that are expected to hurt many New Jersey residents and the state's housing market. These include a cap on a longstanding federal write-off for state and local taxes known as SALT.

New Jersey recently expanded its own state income-tax deduction for local property taxes in response to what's been happening at the federal level. Creating a new tax break for early mortgage payments would also help address the affordability issue in the face of the federal tax changes, according to the bill's sponsors. We wanted to be in a position to counterbalance some of the things that we saw coming out of Washington," said Sen. Troy Singleton (D-Burlington). "The fundamental point is to allow folks to really get more resources that they can use for other things, and to use the equity in their home as early as they can."

The SALT assault: Among the many tax changes that President Donald Trump signed into law late last year was a \$10,000 limit on the federal SALT deduction, which had previously been uncapped for over a century. New Jersey residents cherish the deduction, as it has helped to offset the cost of the state's highest-in-the-nation local property taxes. Originally set up to expire in 2025, the SALT cap is being considered for inclusion as a permanent part of the tax code by Congress. State Attorney General Gurbir Grewal is participating in a multistate lawsuit that was filed earlier this month in federal court to challenge the new limit on the SALT deduction. The suit wants the \$10,000 cap to be

declared unconstitutional, in part on the grounds that it intrudes on the well-established taxing authority of the states. Meanwhile, state lawmakers also worked with Gov. Phil Murphy in recent weeks to expand New Jersey's income-tax write-off for local property taxes, lifting the cap on the state's deduction from \$10,000 to \$15,000.

Under Singleton's proposed tax-credit legislation, New Jersey's middle-class homeowners could also qualify for an up to \$1,000 annual tax credit on their state income-tax liability if they make early payments on 15- or 30-year home mortgages. Homeowners earning up to \$125,000 annually, or married couples earning up to \$250,000 annually, would be eligible to receive the largest tax credits, which would be worth up to 50 percent of their mortgage prepayments, capped at \$1,000. Homeowners earning up to \$135,000 annually and married couples earning up to \$270,000 annually could also qualify for less generous tax credits, according to the legislation, while anyone making over those amounts would not be eligible for any tax break. The credit could be taken for up to 10 years, and it would be available for those who have either a home mortgage for their primary residence or a refinanced mortgage that requires payments to be made in regular intervals.

Impact on state's tax revenue not clear: Singleton said the legislation is modeled on a similar effort by Democrats at the federal level, the Building Equity for the American Middle-Class Act. It also follows an approach that's generally encouraged by financial advisors as homeowners can realize significant interest savings over the life of a long-term mortgage if they are able to pay more each month or make one additional mortgage payment each year. "We look at this as an opportunity to further expound on the stuff we're trying to do to not only help and promote homeownership, but in this instance to promote equity in peoples' homes, and to use our tax code to do that," Singleton said.

It's unclear how much income-tax revenue would be lost by the state if the mortgage-prepayment write-off is eventually enacted. The nonpartisan Office of Legislative Services will be preparing a routine fiscal estimate for the legislation, Singleton said. But he also suggested any revenue loss could be made up in the long run if the tax credit ends up strengthening the state's middle class, and if it encourages more residents to remain in New Jersey instead of leaving for other states where the total state and local tax burden is much lower. "If you look at the opportunity to counterbalance what can happen, in terms of lost revenue, and what this means as another added incentive for homeownership and for folks to stay in the state, we think this is something that we can deal with," Singleton said.

LAWMAKERS WANT TO BORROW \$1B FOR EDUCATION ITEMS BUT LEAVE VOTERS WITH FINAL SAY

John Reitmeyer, NJ Spotlight, July 9, 2018

A proposed \$1 billion bond question on the November ballot to fund a range of education-facility upgrades won overwhelming bipartisan support as it moved through the Legislature in recent weeks. Now, Gov. Phil Murphy must decide whether New Jersey voters should have the final say this fall.

Under legislation sent to Murphy last week, the state would issue long-term general-obligation bonds to raise money for improving security at K-12 school districts, expanding vocational-technical training facilities, and upgrading school drinking-water infrastructure. Sponsors and other advocates of the bond issue have been pointing to the need to harden educational facilities in the wake of recent mass shootings inside schools in other states and to help New Jersey's vocational-technical high schools keep up with the increasing demand for a career-focused technical education. But at a cost of \$1 billion, the proposed new borrowing will likely test voters' willingness to add to the state's credit-card bill as New Jersey already ranks among the most indebted states in the U.S.

For his part, Murphy, a first-term Democrat, has spoken in favor of expanding vocational-technical facilities, suggesting it would complement his own efforts to beef up a part of the state economy that relies heavily on those with technical-skill certifications instead of college degrees. But that was before lawmakers significantly added to an original, \$500 million borrowing proposal by inserting the school-security and school-water language, doubling the size of the proposed borrowing to \$1 billion.

It started out as borrowing for vo-techs: According to the final version of the legislation that both the Assembly and Senate passed, the new bond issue would raise \$450 million for school security upgrades; \$400 million to expand vocational-technical high schools; \$100 million for school water-system improvements; and \$50 million to expand county college technical-training facilities.

The original proposal for the bond issue came out of a yearlong review of state policies related to the manufacturing industry, which lawmakers are trying to revive as a leading sector of New Jersey's economy. During a series of hearings, legislators heard from industry leaders who said they have a number of job openings, but not enough qualified applicants to fill them. And officials from the New Jersey Council of County Vocational-Technical Schools testified that more than 30,000 students filed applications last year to attend a vocational-technical high school, but only a little more than 12,000 students statewide were accepted, primarily due to space constraints.

"The overwhelming demand for these programs proves that many employers are actively looking for job candidates with technical training," said Sen. Steve Oroho (R-Sussex), a primary sponsor of the proposed bond issue. "With proper funding, I am confident that our county vo-tech schools will continue to create pathways to long-term employment for countless New Jersey residents," said Oroho, who is one of the members of the legislative-manufacturing caucus. The \$450 million for school-security upgrades was added to the proposed bond issue in April, several weeks after a mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida left 17 people dead. The massacre sparked thousands of Garden State students to walk out of class to demand more action by lawmakers to protect them. It also prompted the New Jersey Legislature to hold hearings on how to improve school security, including with facility upgrades.

Trying to clean up lead: “Creating comprehensive school security programs is one of the most critical ways we can safeguard our students, our teachers, and our communities from outside threats,” said Sen. Tony Bucco (R-Morris), another primary sponsor of the legislation. Meanwhile, the decision by lawmakers to add language to raise money to improve school drinking-water infrastructure comes as many communities in New Jersey have been struggling to address concerns about aging pipes and increased lead levels in school-district facilities.

Last year, New Jersey voters had no problem approving \$125 million in new borrowing to fund library capital projects throughout the state. It was just the latest state bond issue to get support at the ballot box, as voters in 2012 also authorized \$750 million in new debt to help fund improvements at colleges and universities throughout the state. But at \$1 billion, this year’s proposed borrowing issue is worth more than the last two combined. It would also go before voters after the most recent official state-debt report from the state Department of Treasury indicated New Jersey is now carrying a total of \$46.1 billion in bonded debt, easily outpacing the size of the current, \$37.4 billion annual budget.

Sen. Michael Doherty’s was sole ‘nay’ vote: More recent borrowing issues that did not require voter approval — including for an ongoing renovation of the State House in Trenton — have also helped New Jersey maintain its standing as one of the nation’s most-indebted states, ranking fourth highest in the categories of net tax-supported debt and per-capita debt, according to Treasury’s report. A fiscal estimate prepared by the nonpartisan Office of Legislative Services also projected annual borrowing costs for a \$1 billion bond issue could total between \$57 million and \$72 million, based on current interest rates and market conditions.

Sponsors of the proposed bond issue — which only one member of the 120-seat Legislature, Republican Sen. Michael Doherty, voted against — have responded to questions about the state’s already high debt burden by saying the ballot question would ultimately leave it up to voters to determine whether the state should take on the additional borrowing. But to get on the ballot in its current form this November, the bill needs a final sign-off from Murphy. The governor has generally declined comment on pending legislation since taking office earlier this year, and his press aides did not respond when asked for his position on the proposed bond issue last week.