

STATE HOUSE NEWS FOR FINANCE OFFICERS

April 12, 2019

UNFUNDED MANDATES

On March 4th, the Senate Community and Urban Affairs Committee Second Referenced to the Senate Budget and Appropriations Committee for consideration **SENATE No. 1332** (*Gopal D-11/Singleton D-7*), which would require the Commissioner of the Department of Community Affairs (DCA) to compile and annually update a list of all unfunded State and federal mandates on municipalities and counties.

More specifically, the measure would require the Commissioner to prepare a list, and to annually update that list not later than July 1st of each calendar year, of all ongoing mandates required by the State and by the federal government on municipalities and counties for which funding to pay the entire cost thereof has not been provided by the State or by the federal government. The list would also have to contain a good faith estimate of the cost to municipalities or counties of compliance with the mandate. The bill would further require that the list, and the annual update of the list, be posted on the Department's web page.

In general, the New Jersey Constitution prohibits State government from requiring units of local government to implement additional or expanded activities without providing funding for those activities pursuant Article VIII, Section II, Paragraph 5 and N.J.S.A. 52:13H-1(1)(b). Additionally, the New Jersey Council on Local Mandates is responsible for resolving disputes on whether a law, rule, or regulation adopted after 1996 constitutes an unfunded mandate. In general, an unfunded mandate upon boards of education, municipalities, and counties is a law, rule, or regulation that does not authorize resources, other than the property tax, to offset additional direct expenditures required to implement said law, rule, or regulation. Please note that the following categories of laws, rules, or regulations are not considered unfunded mandates: (1) those which are required to comply with federal laws or rules or to meet eligibility standards for federal entitlements; (2) those which are imposed on both government and non-government entities in the same or substantially similar circumstance; (3) those which repeal, revise, or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities; (4) those which stem from failing to comply with previously enacted laws or rules or regulations issued pursuant to a law; and, (5) those which implement provisions of the Constitution. The companion version **ASSEMBLY, No. 277** (*Webber R-26/Zwicker D-16*) is currently in the Assembly State and Local Government Committee awaiting consideration.

NALOXONE

On March 14th, the Senate passed **SENATE RESOLUTION, No. 98** (*Lagana D38/Greenstein D14*), which urges county prosecutors to require all law enforcement officers in their respective counties to be equipped with naloxone, also known as Narcan.

In summary, the resolution notes that the number of people struggling with heroin and opioid addiction across this State continues to grow. In 2014, there were 781 heroin-related overdose deaths in New Jersey, marking the fourth consecutive year that the total has increased. Moreover, emergency officials have deployed naloxone, which halts the effects of an opioid overdose. The use of naloxone helps reduce the number of deaths from drug overdoses each year and the earlier the drug is administered, the better chance there is for success. In 2016, the life-saving drug had been deployed an average of 21.8 times per day as of September, putting it on pace to be utilized nearly 8,000 times by the end of the year. Based upon these figures, emergency officials are responding to heroin and opioid overdoses every day throughout the State. Equipping all law enforcement officers with naloxone would allow them to quickly administer this life-saving drug, thereby reducing the number of tragic heroin and opioid-related deaths in this State. The General Assembly passed the companion version **ASSEMBLY RESOLUTION, No. 110** (*Armato D-2/Mazzeo D-2*) on April 12, 2018.

Please note that a resolution is generally defined as an action of the Legislature that expresses the policies, sentiment, opinions or direction of one or both houses. Types of resolutions include joint, concurrent, ceremonial, and one-house. The resolutions adopted by both houses here, were one-house resolutions that expressed the opinions of both houses respectively, but do not carry require any further action other than being filed with the Secretary State.

JOB APPLICANT WAGE AND SALARY EXPERIENCE

On March 26th, the General Assembly passed by a vote of 53-24-2 **ASSEMBLY, No. 1094** (*Downey D-11/Lampitt D-6*), which would prohibit employer inquiries about a worker's wage and salary experience under certain circumstances.

In summary, this legislation would make it an unlawful employment practice for any employer to: to screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries or benefits; or, to require that the applicant's salary history satisfy any minimum or maximum criteria. Under the bill, an employer may consider salary history in determining salary, benefits, and other compensation for the applicant, and may verify the applicant's salary history, if an applicant voluntarily, without employer prompting or coercion, provides the employer with that salary history. An applicant's refusal to volunteer compensation information would not be considered in any employment decisions. An employer may also request that an applicant provide the employer with a written authorization to confirm salary

history, including, but not limited to, the applicant's compensation and benefits, after an offer of employment, which offer includes an explanation of the overall compensation package, has been made to the applicant.

The legislation would not apply to: applications for an internal transfer or a promotion with an employee's current employer, or use by the employer of previous knowledge obtained because of prior employment with the employer; any actions taken by an employer pursuant to any federal law or regulation that expressly requires the disclosure or verification of salary history for employment purposes, or requires knowledge of salary history to determine an employee's compensation; and, any attempt by an employer to obtain, or verify a job applicant's disclosure of, non-salary related information when conducting a background check on the job applicant, provided that, when requesting information for the background check, the employer shall specify that salary history information is not to be disclosed. If, notwithstanding that specification, salary history information is disclosed, the employer shall not retain that information or consider it when determining the salary, benefits, or other compensation of the applicant.

The legislation would further provide that employer inquiries regarding an applicant's previous experience with incentive and commission plans and the terms and conditions of the plans, provided that the employer shall not seek or require the applicant to report information about the amount of earnings of the applicant in connection with the plans, and that the employer shall not make any inquiry regarding the applicant's previous experience with incentive and commission plans unless the employment opening with the employer includes an incentive or commission component as part of the total compensation program. The Senate passed the companion version **SENATE, No. 559** (*Gill D-34/Weinberg D-37*) on March 22, 2018 but must take further action to make the measure identical to the changes made by the General Assembly before the legislation heads to the Governor's Desk.

PEDESTRIAN ACCESS PARKING TAX

On February 22nd, the General Assembly passed by a vote of 41-33 **ASSEMBLY, No. 5070** (*Speight D-29/Tucker D-28*), which would allow certain municipalities to impose a parking tax of 3.5% to fund projects that improve pedestrian access to mass transit stations.

Under the bill, any municipality with a population of 100,000 or greater, according to the most recent American Community Survey five-year estimate by the United States Census Bureau, would be authorized to impose the mass transit pedestrian access parking tax. These towns would include: Newark, Jersey City, Paterson, Elizabeth, Edison, and Woodbridge. This mass transit pedestrian access parking tax may be imposed in addition to parking taxes already authorized by current law in some of those municipalities, except that the mass transit pedestrian access parking tax may not be imposed whenever a special event parking tax surcharge is charged.

The bill would also allow these municipalities to establish discounts for municipal residents of up to 8.0% against existing parking taxes. The parking tax discounts authorized by the bill would apply to parking taxes that are already authorized for certain municipalities. The municipalities that may impose these parking taxes and provide discounts would include: those with a population over 200,000; those with a population between 100,000 and 125,000 and of which are contiguous with a municipality already imposing the general parking tax; and, those with a population density greater than 10,000 persons per square mile and of which are located within a county of the first class. The companion version **SENATE, No. 3507** (*Ruiz D-29/Rice D-28*) is currently in the Senate Community and Urban Affairs Committee awaiting consideration.

PREVAILING WAGE

On March 23rd, the General Assembly passed by a vote of 73-6 **ASSEMBLY, No. 4291** (*Houghtaling D-11/DeAngelo D-14*), which would expand the circumstances under which the prevailing wage must be paid on property that is or will be leased by a public body.

In summary, this legislation would lower the threshold for leased property being subject to the prevailing wage. Under the bill, the prevailing wage would apply to work if the property is or will be leased by a public body and the portion of the property that is or will be leased measures more than 10,000 square feet. The bill would also lower the threshold for being subject to the prevailing wage so that all properties leased by public bodies that receive funds from the Economic Development Authority are subject to the prevailing wage. Under current law, the prevailing wage must be paid on most construction that is considered public work. Public work is construction done on any property if the work is paid for from public funds, if, at the time of the entering into of the contract the property is owned by a public body or not less than 55% of the property is or will be leased by a public body; and, the portion of the property that is or will be leased measures more than 20,000 square feet. A companion version does not exist in the General Assembly at this time.

MURPHY TO MEET WITH TOP DEMS ABOUT LEGALIZING WEED IN NJ AS HIS DEADLINE LOOMS

Brent Johnson, NJ Advance Media for NJ.com, April 11, 2019

EDITOR'S NOTE: Entrepreneurs everywhere are eyeing the billion-dollar legal weed industry, an economic opportunity unrivaled in modern N.J. history. NJ Cannabis Insider features exclusive weekly content geared toward those interested in the marijuana industry. View a sample issue.

Thursday could be an important day in the seemingly never-ending saga to legalize marijuana in New Jersey. Eyeing a possible vote by the end of next month, the Garden State's top three elected state officials are scheduled to strategize about their latest push to gather enough support in the state Legislature to pass a bill that would legalize weed here. Gov. Phil Murphy confirmed Wednesday night during his radio show that

he will meet and talk pot with his fellow Democrats who lead the Legislature — state Senate President Stephen Sweeney and state Assembly Speaker Craig Coughlin.

The sit-down comes a few weeks after Sweeney, D-Gloucester, and Coughlin, D-Middlesex, canceled a planned vote on the bill when it became clear it would not have enough votes to pass the Senate. Leaders have now been considering holding the vote in May — that is, if they can muster the 21 votes that are needed for the Senate to approve the measure, which would legalize recreational weed for people 21 and older in New Jersey. Murphy was asked Wednesday during his regular call-in radio show what the chances were of the bill passing by the end of May. He declined to put odds on it. But Murphy said he's "cautiously optimistic."

"We came very close," he said during "Ask Governor Murphy," which was broadcast on public radio stations. "We came within a vote or two. I hope we can print this sooner than later." A legislative source confirmed Wednesday's meeting to NJ Advance Media but said a time was not certain. Depending on whom you talk to, leaders have secured anywhere from 18 to 20 votes in the Senate, according to sources. One issue casting a cloud over the gathering: The Legislature has packaged the bill with two other measures — one that would greatly expand the state's medical marijuana program and another that would expunge the records of thousands of people with pot convictions in the state. The hope is to garner more support for the legalization bill if all three are put up for a vote at the same time.

But Murphy has said if lawmakers don't pass the measures by the end of May, he will use his executive authority to expand the medical weed program because patients have waited too long. Sources have told NJ Advance Media that lawmakers are worried that gives some legislators reason not to vote for legal pot because medical marijuana will be expanded either way. But Murphy defended his plans Wednesday, saying he'd have "no choice" because the "demand to open (the program) up further is overwhelming." "Next month is a reasonable amount of time," the governor said. "There's too much at stake here," he added. "We must continue to open it up."

A LOOK UNDER THE HOOD OF NJ'S INCOME TAX AND ITS SPECIAL QUIRKS

John Reitmeyer, NJ Spotlight April 9, 2019

Rules that hew to the state constitution limit the uses of the state's biggest source of revenue to items that lower property taxes. Residents across New Jersey are sending their state income-tax returns to Trenton this month, helping provide the revenue for what's by far the largest single source of tax dollars for the state budget

But even as state spending has become increasingly reliant on the income tax — more than 40 percent is now supported by just that one source of revenue — it's not widely known exactly how those dollars can and can't be spent under a constitutional restriction on income-tax proceeds that was enacted decades ago. The income tax is

also a particularly hot issue this year as Gov. Phil Murphy has projected an increase in tax collections that had yet to fully materialize heading into the crucial April tax-filing season, meaning last-minute cuts or other spending adjustments could be looming in a matter of weeks. The governor has also made the establishment of a true millionaire's tax a key element of his overall \$38.6 billion budget plan for fiscal year 2020, but that proposal is getting very little support so far in the Legislature.

How it works: The state collects income taxes in a number of ways, including by regularly withholding funds that are deducted from individual worker paychecks. Estimated payments are also collected every few months from those who are self-employed or have large amounts of non-wage income — things like capital gains and stock dividends. Year-end payments are also collected in April from residents who did not fully fund their income-tax liabilities throughout the course of the tax year and must submit a check with their return.

The rates: In New Jersey, income taxes are paid under a “progressive” system of marginal tax rates that generally increase as more income is earned by an individual taxpayer. For example, residents who face the state's highest marginal rate of 10.75 percent don't pay that rate on all of their earnings, just on the portion that surpasses the \$5 million income threshold set under current state law. The result is most taxpayers pay what's known as an “effective rate” — a blend of the various rates that can be applied to their income as it moves up the scale.

The history: Believe it or not, there was a time when New Jersey didn't levy any income tax at all. But that changed in the 1970s, after a court ruling said the state had to play a bigger role in paying for education. After a few tries, an income tax was eventually established in 1976, and it originally functioned with only two tax rates: 2 percent levied on income under \$20,000, and 2.5 percent on income over \$20,000. Several new marginal rates were added in the 1990s during former Gov. James Florio's tenure, and a then-top-end rate of 8.97 percent was set for earnings over \$500,000 by former Gov. Jim McGreevey in 2004. The current rates range from 1.4 percent up to the 10.75 percent rate, which was just added last year. If Murphy eventually can get lawmakers to go along with his true millionaire's tax proposal, the 10.75 percent rate would be applied to all earnings over \$1 million, generating an estimated \$447 million in new revenue.

The catch: Unlike the state's other big revenue sources, like the general sales tax and the corporate-business tax, New Jersey's income-tax revenues are wholly dedicated under the state constitution to providing property-tax relief. To ensure those rules are followed, the constitution requires income-tax dollars to flow directly into a fund that's separate from the budget's General Fund. That fund is called the Property Tax Relief Fund.

What is and isn't property-tax relief? The most obvious items for which officials can tap the Property Tax Relief Fund are the state's direct-relief programs, such as Homestead and Senior Freeze reimbursements. But other items also qualify for income-tax funding,

like state aid to K-12 education, county colleges and even teacher pensions, because those things would otherwise have to be paid for using revenue from local property taxes. Many categories fall completely outside the property-tax relief designation, such as the subsidy for New Jersey Transit and aid provided to four-year colleges, even though those are sometimes falsely identified as items that would benefit from the millionaire's tax by its proponents. It's also no longer the case that revenue from the income tax can readily be used to ease pressure on the General Fund. Years ago, General Fund revenue helped cover state spending on property-tax relief. But in more recent years, newly enacted tax cuts like the 2016 reduction of the sales tax have eaten into the General Fund's revenue stream, making it more difficult to simply "move money around." Just last year, the Murphy administration needed to use a creative accounting maneuver to ensure the General Fund had enough money in it even as the Property Tax Relief Fund was flush.

The latest: The Department of Treasury has been keeping a close eye on the income tax this year as officials wait to see how taxpayer behavior is being influenced by a new cap on a federal income-tax write-off for state and local taxes that was enacted in late 2017 by President Donald Trump and Congressional Republicans. The federal deduction, known as SALT, used to be unlimited, and the highest earners would usually pay their state and federal income-taxes well before April to take advantage of the federal tax benefit. But with the federal SALT deduction now capped at \$10,000 annually, Treasury officials believe there's no longer an incentive for many taxpayers to pay ahead of time. Income-tax collections were running behind the Murphy administration's year-end growth target heading into April, but Treasury officials have remained confident that taxpayers are just waiting until the last minute to pay up this year. In fact, they expect a full \$3 billion to come in just this month to keep spending in line with revenues and obviate the need for cuts.