GFOA | Government Finance Officers Association of New Jersey

GFOA of NJ
150 West State Street.
Trenton, NJ 08608
Phone (609) 394-1155
Fax (609) 989-8567
info@gfoanj.org

STATE HOUSE NEWS FOR FINANCE OFFICERS

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BINDING INTEREST ARBITRATION

The failure of State leaders to permanently extend the 2% cap on binding interest arbitration awards in December of 2017 has inequitably altered the collective bargaining process in favor of labor and at the expense of property taxpayers. As such, GFOA and our partners plan to hold strategy sessions and develop best practices for local governing bodies on how to effectively navigate the unlevel playing field. Some initial recommendations include:

1. Make sure to utilize general counsel and an experienced labor attorney to negotiate directly with a collective bargaining unit.
2. Be prepared with a comprehensive financial analysis that includes a complete and accurate picture as an arbitrator must consider a local governing body's ability to pay.
3. Be prepared with data and all relevant information to address false claims and statements made by a collective bargaining unit.
4. Stay strong on health benefit concessions, particularly with retirees and rolling back Chapter 78 requirements.

In addition, GFOA will continue to urge State leaders to permanently extend the 2% cap on binding interest arbitration awards as police and fire unions have been aggressively leveraging its expiration to win contracts in excess of 50% of the 2% spending cap imposed on local governing bodies for nearly a decade. As has been well documented, the 2% cap on binding interest arbitration awards allowed local governments to live within their limited means and kept public safety employee salaries and wages under control, simply because parties were closer to reaching an agreement from the onset of negotiations. Moreover, the 2% cap on binding interest arbitration awards established clear parameters for negotiating reasonable successor contracts that preserved the collective bargaining process and took into consideration the separate and permanent 2% spending cap. The equation is clear, failure to renew and permanently extend the 2% cap on binding interest arbitration awards is unsustainable without increasing property taxes or eliminating essential services

Separate, but related, counties and municipalities are facing litigation concerning health benefits for certain retirees under Chapter 78. In summary, N.J.S.A. 40A:10-21.1 provides that a retiree must contribute to the cost of health benefits coverage as determined by N.J.S.A. 52:14-17.28c, which for example, provides that for family coverage *"an employee who earns $110,000 or more shall pay 35 percent of the cost of coverage."* However, N.J.S.A. 40A:10-21.1b.(3) provides for an exemption from the retiree health benefit contribution payment levels as follows: *"(3) Employees described in paragraph (2) of this subsection who have 20 or more years of creditable service in one or more State or locally-administered retirement systems on the effective date of P.L.2011, c.78 shall not be subject to the provisions of this subsection."*

Chapter 78 took effect on June 28, 2011; and, local officials have long understood this section of the law to mean that a retiree must have accrued 20 years of creditable pension service before June 28, 2011 to qualify for the exemption. Despite a clear reading of the statutory law, several lawsuits allege that retirees are only obligated to pay no more than 1.5 percent of the monthly retirement allowance for health benefits as the exemption under N.J.S.A. 40A:10-21b.(3) was intended to take effect on either June 28, 2011 or after the expiration of an applicable collective binding negotiations agreement in force on that effective date. In other words, these complaints contend that if an employee is subject to the health benefit contributions under N.J.S.A. 40A:10-21.1 and is covered under a binding negotiations agreement on the date that Chapter 78 took effect, then the Chapter 78 health benefit contribution requirements would not take effect until the expiration of the collective binding negotiations agreement. In this case, the retiree was covered under such an agreement from January 1, 2007 through December 31, 2014. As noted above, several administrators, county counsels, labor attorneys, the New Jersey State League of Municipalities (NJLM), the New Jersey School Boards Association (NJSBA), the New Jersey Association of Counties (NJAC), and the Division of Local Government Services (DLGS) concur that a retiree must attain 20 years of creditable pension service before June 28, 2011 to qualify for the exemption under N.J.S.A. 40A:10-21.1b(3).

LOCAL EXCHANGE PERSONAL PROPERTY TAX

On June 13th, the Assembly Appropriations Committee favorably reported **ASSEMBLY, NO. 5450** *(Burzichelli D-3/Schaer D-36),* which would clarify the application of the business personal property tax on local exchange telephone companies that were subject to the tax as of April 1, 1997.

In summary, this legislation would clarify the changes made in 1997 to the business personal property tax that defined local exchange telephone companies subject to that tax on April 1, 1997. More specifically, the measure would restore the local property tax status quo intended to be determined in 1997 by revising the definition of "local exchange telephone company" to mean a telecommunications carrier which held the regional monopoly on landline service before the market was opened to competitive local exchange carriers by the federal Telecommunications Act of 1996,

or the corporate successors of such a local exchange telephone company. The bill would also require that if a municipality is the prevailing party in a court proceeding between it and a local exchange telephone company concerning the taxation of business personal property following a court decision, settlement, or other resolution of that proceeding, the municipality, and any related amicus entities, shall be awarded attorney's fees as costs to the local exchange telephone company.

The sponsors introduced this legislation in response to the Tax Court's decision in *Verizon New Jersey Inc. v. Borough of Hopewell*, which was decided on June 26, 2012 and incorrectly construed the plain meaning of the language of the statutory change made in 1997 in a manner inconsistent with Legislative intent. The sponsors submit that the statutory change was intended to permanently make part of a municipality's property tax base the business personal property of all incumbent local exchange companies that were then subject to that tax and were a telecommunications carrier then meeting the definition of providing dial tone and access to 51 percent of a local telephone exchange. The sponsors further contend that local exchange telephone companies have taken advantage of the tax court's interpretation of the statute and informed municipalities in which their business personal property is located that will no longer pay tax on that business personal property, such as equipment, utility poles, cables and more in any given municipality where it claims on an annual basis that it does not provide 51 percent or more of landline service to its residents. This unintended erosion of the local property tax base in the affected municipalities impacts all other local property taxpayers in these municipalities.

Local officials support this legislation as it would require the dominant telecommunications carrier in each region pay the business personal property tax on its business personal property regardless of the percentage of a local telephone exchange that it serves and would permanently enshrine that business personal property into the tax base of the municipalities in which it is located. A-5450 is on Second Reading in the General Assembly and the companion version **SENATE, NO. 3827** *(Turner D-15/Andrzejcak D-1)* is currently in the Senate Community and Urban Affairs Committee awaiting consideration.

DEFIBRILLATORS

On June 3rd, the Senate Health, Human Services, and Senior Citizens Committee second referenced to the Senate Budget and Appropriations Committee **SENATE, NO. 2424** *(Andrzejczak D-1),* which would require local recreation departments and youth serving organizations to have automated external defibrillators (AED) at youth athletic events.

In summary, this legislation would require county and municipal recreation departments and youth serving organizations that organize, sponsor, or are otherwise affiliated with youth athletic events and of which are played on county, municipal, school, or other publicly-owned fields, to provide an onsite AED at all youth athletic events and practices.

As such, the measure would mandate the purchase, maintenance, and secure storage of defibrillators by local governing bodies and non-profit organizations across the State that host youth athletic events on facilities owned and operated by counties, municipalities, and school districts at an estimated initial investment of approximately $40.0 million with additional monies needed annually for equipment maintenance, upgrade, and security.

Although Senator Andrzejczak should be commended for his efforts to improve the potential life-saving precautions taken at youth sporting events and practices, local officials are concerned that the measure does not contain the necessary appropriation to address its broad scope and impact. Unfortunately, the bill would force local governing bodies and non-profit organizations to either increase registration fees, which could prove cost prohibitive for families struggling to make ends meet from participating in certain activities and events or result in the reduction or elimination of recreation services and programs. As noted above, S-2424 is currently in the Senate Budget and Appropriations Committee awaiting consideration but a companion version does not exist in the General.

SUBCONTRACTING AGREEMENTS

On May 24th, the General Assembly passed by a vote of 76-6 **ASSEMBLY, NO. 3395** *(McGuckin R-10/Dancer R-12)*, which would prohibit public school districts and institutions of higher education from using subcontracting agreements that may affect employees in a collective bargaining unit under certain circumstances.

Local officials are primarily concerned with the long-term ramifications of this legislation as it would effectively prohibit the use of subcontracting agreements used by public school districts and institutions of higher education. Although the measure may not directly impact municipalities, it would essentially prevent the use of subcontracting agreements by county special services school districts and county colleges. County governments provide substantial funding for county colleges and transportation services for county special services school districts. As has been well documented, local governments across the State save valuable property taxpayer dollars, without impacting the level of service provided, by using subcontracting or privatization agreements for the delivery of food services, custodial services, transportation services, and much more. As counties, municipalities, and school districts continue struggling to make ends meet under a restrictive 2% cap on spending, the use of such agreements must remain a viable option for the delivery of services in a cost effective and efficient manner. A-3395 is currently in the Senate Education Committee awaiting consideration.

RAFT OF BILLS ADVANCE TO EASE WAY FOR STATE HEALTH INSURANCE EXCHANGE
Lilo H. Stainton, June 10, 2019

New Jersey lawmakers have advanced a dozen bills to create the infrastructure for a state-based health insurance marketplace. The bills are part of a Democratic-led effort to better

control the cost and quality of these policies and protect against attacks at the federal level by the Trump administration. But, while supporting the legislation in concept, insurance and business representatives have raised questions about some of the details, including language that would enable New Jersey to hike the tax on certain insurance plans to 5 percent — from the current 3.5 percent — which critics said would add to consumer costs. Some Republican lawmakers also have flagged this as a concern.

Versions of the bills were approved by the Senate Commerce Committee last Monday and the Assembly Financial Institutions and Insurance Committee Thursday, some along party lines. They would empower the state Department of Banking and Insurance to establish its own system to craft, market and sell federally subsidized health plans to lower-income workers who do not get insurance through work and earn too much to qualify for Medicaid. Currently in New Jersey, these "individual market" plans are sold through the federal health insurance exchange website, healthcare.gov. "With the federal government in turmoil, I'm glad the state Legislature is doing everything we can to ensure that the people who benefit from the Affordable Care Act will continue to be protected," said Senator Joseph Vitale Jr., the health committee chair and a lead sponsor of several of the measures. "We cannot leave the health and safety of New Jerseyans up to the whims of the Oval Office." "This legislation, particularly the state-based exchange for health benefits plans, will go a long way in ensuring our state can offer affordable healthcare to all of our residents," Vitale (D-Middlesex) said.

The proposals were endorsed by healthcare advocates, including hospitals, clinical professionals and NJ For Health Care — a coalition of community, labor and social justice groups that have long pushed for expanded insurance coverage through the ACA and other mechanisms. However, several people who testified Monday said they favored a state-based exchange but worried establishing this system might cost consumers more than it would to continue to use the federal governments. "One of our goals is to make sure this is run efficiently and outperforms the federal exchange. That's the reason to do this," Ward Sanders, head of the New Jersey Association of Health Plans, testified Monday. "To tax insurance to make insurance cheaper doesn't really work."

Lawmakers amended the Senate version of the bill related to the fee on exchange plans, which is estimated would raise $55 million a year to support its operation, to cap this tax at 5 percent. But Sanders said that still would allow the state to impose a burden far beyond the 3.5 percent now charged to support the federal system. (The federal fee is slated to go down to 3 percent next year. In March, Gov. Phil Murphy, a Democrat, announced his intention to take control of the exchange — a transition he said would enable the state to create higher-quality plans, better protect against cost increases, and control how plans were marketed and sold. Under Republican President Donald Trump, the federal government has drastically reduced funding for outreach and marketing of these policies and cut in half the amount of time people have to enroll each fall.

Democratic lawmakers introduced drafts of enabling legislation in late May, which would allow DOBI to collect a tax — that now goes to the federal government — to fund the creation of a website and sales platform for plans tailored to individuals; the system covered nearly 290,000 people at the end of 2018, according to state statistics. (More than two-thirds of these consumers obtain federal subsidies to help offset the costs; others benefit from the lower prices and comprehensive benefits built into these products but purchase them directly from insurance companies without any subsidy.) The proposals also call for DOBI to integrate the small-business insurance market into this same system, although there are few details of how this would happen. Small-business policies covered nearly 330,000 people in companies with fewer than 50 employees, at the end of last year, in New Jersey with plans sold through the state and the exchange.

Sanders, with AHP, is concerned that if small-business plans are rolled into the same exchange as plans for individuals they could be subject to the same tax of up to 5 percent, adding significantly to the costs of these products. And business representatives are concerned what that would mean for employers already struggling to provide coverage for their workers. “We support an exchange, but we are concerned about the costs that go along with that,” said New Jersey Business & Industry Association vice president Tony Bawidamann. “Healthcare is one of the top issues for (our members) — one of the top costs,” he said. As of 2018, some 28 states — including New Jersey — made use of the federal system for the sale of individual and small-business health insurance plans and 12 jurisdictions, with Washington, D.C., operated these markets themselves. Nevada is now in the process of shifting from a federal to state system, scheduled to start this fall; lawmakers there anticipate it can be run for a fee of 1.5 percent on the plans sold, saving the state half of the $12 million the federal government now spends on the operation, according to Healthinsurance.org, an industry publication. New Mexico is planning a similar shift in 2021 and Oregon is also considering taking control of its system.

While healthcare advocates in New Jersey have long pushed for a state-run exchange, dating back to 2012 at least, former Gov. Chris Christie, a Republican, declined to embrace the process and left it in the hands of the federal government. But, as the Trump administration ratcheted back support for the exchange — and attacked other elements of the ACA, or Obamacare — Democrats in the Garden State have vowed to protect the once-controversial, now highly popular program. (Federal lawmakers, including several from New Jersey, are also seeking to expand these protections. “The ACA was monumental legislation and expanded coverage for thousands of New Jerseyans,” said Sen. Nellie Pou (D-Passaic), a lead sponsor of several of the bills and chair of the commerce committee. “Everyone deserves the right to affordable healthcare and codifying this federal law into state law will help give New Jerseyans more options and greater coverage for years to come, regardless of who is in charge of the Oval Office.”

Most of the attention in the hearings was focused on the legislation to create the exchange and impose the controversial fee (S-49/A-5499), sponsored by Pou, Vitale, and

Sen. Nia Gill (D-Essex), and Assembly members Herb Conaway (D-Burlington), John McKeon (D-Union) and Nancy Pinkin (D-Middlesex). Other bills approved last week would ensure key ACA protections are also enshrined in New Jersey law if the state creates its own exchange; many of these received bipartisan support. Among other things, these other proposals would enable adult children to remain on their parents' plans until age 27; ensure breastfeeding, contraceptives and other essential benefits are covered; and guarantee patients with pre-existing conditions could obtain insurance. Most of these elements are already codified in Garden State statute in some form. While some of the bills will go straight to the floor for a full vote in the Assembly and Senate, many were referred to the appropriations committees in both houses for further review.

GOVERNOR AND LAWMAKERS DIVERGE OVER MEDICAL MARIJUANA EXPANSION
Carly Sitrin, June 6, 2019

Gov. Phil Murphy this week made good on his promise to rapidly expand the medical marijuana program in New Jersey, but his unilateral move may put the Legislature's own expansion plan in jeopardy. As part of the governor's expansion, the state Department of Health announced on Monday it is seeking new applicants to operate up to 108 additional Alternative Treatment Centers in the Garden State for cultivating, manufacturing and dispensing medical marijuana. This represents a major increase. Currently, there are six ATCs in operation; another six permits have been granted but those facilities are not yet up and running.

Meanwhile, state lawmakers are attempting to move their own bill that would expand the program — and it contains elements that Murphy's plan does not. The bill (S-10) would remove medical marijuana from the Department of Health's jurisdiction and give it to a new five-member Cannabis Regulatory Commission in the Department of Treasury. It would also cap cultivator licenses at 23: Murphy's request for applications (known as an RFA) calls for 24. "Patients cannot continue to wait for access to life-changing medical treatment, and this week's announcement is an important step toward ensuring sustainable and affordable access," Murphy's spokesperson Alyana Alfaro said in a statement. "The Department of Health is overseeing the expansion of the Medicinal Marijuana Program to ensure that it is done responsibly and in a way that puts the needs of patients first. There was no agreement on the bill as currently written."

The governor and his administration have said expanding the program was urgent as the demand in the state for medical marijuana has skyrocketed. Indeed, since Murphy took office, the number of patients in New Jersey's medical marijuana program has swelled, from less than 17,000 to more than 47,500 as of June 3, 2019.v"We are at a point where patients just cannot wait any longer for easily accessible, affordable therapy. This request for applications allows for specialization of businesses to increase medical product in our state," said New Jersey Health Commissioner Dr. Shereef Elnahal in a statement.

Three types of licenses will be available under the new expansion — for growing, manufacturing and selling. This is the first time the state is issuing separate permits for

these categories as the six ATCs already in operation — and the additional six license holders selected last year — were required to be vertically integrated, meaning they must all grow, process and sell marijuana on their own. The Department now will seek to issue up to 24 cultivation licenses (or endorsements, as the department terms them), up to 30 manufacturing licenses and up to 54 dispensary licenses. These ATCs would be throughout the state, with up to 38 in the northern region of the state (in Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren counties), up to 38 in the central region (Hunterdon, Middlesex, Mercer, Monmouth, Ocean, Somerset and Union counties), and up to 32 in the southern region (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties).

According to the DOH, these regional specifications are based on an assessment it conducted of patient need. Applications will be accepted from both for-profit and nonprofit groups now that the current law's mandatory threshold for two nonprofit alternative treatment centers in each region has been met. To avoid conflict with national law, because cannabis is still federally categorized as a Schedule I drug, applicants from a nonprofit entity will not be required to be recognized as a 501(c)3 organization by the Internal Revenue Service.

Permits (or licenses) would be granted according to a scoring system which takes into account factors like ties to the local community (20 points), ability to provide appropriate research data (10 points), experience in cultivating, manufacturing, or dispensing marijuana (100 points) and a workforce and job creation plan that would involve women, minorities and military veterans (100 points). There will also be a $20,000 application fee separated in two payments to the state Treasurer, one $18,000 payment and one $2,000 payment. For unsuccessful applicants, the $18,000 will be returned, but the Department of Health gets to keep the $2,000 fee. This new request for applications was not wholly unexpected. Murphy campaigned on adult-use cannabis legalization and once that plan stalled in the Legislature, he turned his attention to medical expansion.

The state Senate passed its expansion bill just last week, and the Assembly approved its measure two weeks prior. Because the Senate added a requirement for labor peace agreements, that has sent the bill back to the Assembly before it can go to the governor for his signature. Initially, the medical expansion bill was to be packaged with legalization language and expungement reform, allowing those convicted of low-level cannabis crimes to clear their records. At the time, Murphy deferred to lawmakers to pass their bills but noted if they couldn't get it done, he would step in. "I'm prepared to hold off for a short amount of time, and I would say the month of May would be the edge of that," Murphy said in March.

When the Legislature failed to secure the votes to pass all three bills, Murphy went ahead in early May with his own new rules that would extend the program's reach, widen the list of qualifying conditions, reduce patient costs, and allow doctors to participate without being named publicly. And when the Senate sent its bill back to the Assembly again last week, Murphy pulled the trigger on further medical expansion, earning the ire of Senate President Steve Sweeney (D-Gloucester). "Once again, the governor is ignoring the hard

work of the Legislature and the agreement between the Senate, the Assembly and the administration on this issue," Sweeney (D-Gloucester), said in a statement. "The legislation that is in the process of being approved by both houses is a direct reflection of that agreement — and now the governor wants to preempt what is a thoughtful plan to expand medical marijuana in an effective and responsible way." The Legislature's plan differs slightly from Murphy's as it would install a Cannabis Regulatory Commission to oversee the industry and set rules and regulations for how permits would be granted, and businesses run. The proposal for a commission was copied directly from the adult-use bill and had been an ongoing point of contention between Sweeney and Murphy, as both wanted power to appoint members to it.

In addition, the lawmakers' bills would cap cultivator licenses at 23 whereas Murphy's plan would grant 24. All of this could mean Murphy is squaring up to conditionally veto the bill once it makes it to his desk. Another option on the table could be amending the request for applications to align with the Legislature's cap but that still would not address the conflict over the commission. The medical expansion bill — with the Senate's small labor agreement changes — will be put to a vote in the Assembly again on June 10.