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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STATUTE OF LIMITATIONS

On May 13th, Governor Murphy signed into law **SENATE, NO. 477** *(Vitale D-19/Scutari D-22),* which eliminates the statute of limitations in certain civil actions for sexual abuse and expands the categories of defendants liable in such actions effective December 1, 2019.

Given the concerns expressed by local officials that this legislation would eliminate the safeguards provided local governing bodies under the New Jersey Tort Claims Act (TCA) as all lawsuits are defended with limited property taxpayer dollars, Governor Murphy including the following language at the bill signing. *"I am also signing the bill based on a commitment from the bill's sponsors to introduce and swiftly pass a bill that will correct an error in the section of the bill relating to the liability of public entities. This section inadvertently fails to establish a standard of proof for cases involving claims filed against public entities. If unaddressed, the lack of clarity would create uncertainty and likely lead to additional litigation. I have received assurances that the Legislature will correct this omission by clarifying that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations. Applying a different standard would be unjustified. "*

As such, Senators Joe Vitale *(D-19)* and Nicholas Scutari *(D-22)* and Assemblywomen Annette Quijano *(D-22)* and Assemblywoman Carol Murphy *(D-7)* introduced **SENATE, NO. 3739,** which would establish new liability standards in sexual abuse lawsuits filed against public entities and public employees. In general, the measure would establish standards that would be identical to the liability standards applied to non-profit organizations under the Charitable Immunity Act. As S-477 eliminated the protections under the Tort Claims Act, local officials have been advocating for the Legislature to pass S-3739 as it would re-establish some additional layers of protection for local governing bodies while preserving the intent of the new law. Governor Murphy is expected to sign the measure into law shortly. *Please note that S-477 and S-3739 present several complex legal challenges, and we recommend your general counsels to review both measures in their entirety as this summary provides an abridged version of the matter*

WORKERS COMPENSATION

On June 20th, both houses passed **SENATE, NO. 716** *(Greenstein D-14/Bateman R-16)(Quijano D-20/Benson D-14)*, which would establish the "Thomas P. Canzanella Twenty First Century First Responders Act."

In general, this legislation would establish a presumption of workers' compensation coverage for public safety workers and other employees under certain circumstances. More specifically, the bill would provide that if a public safety worker can demonstrate that in the course of his or her employment, the worker is exposed to a serious communicable disease or a biological warfare or epidemic-related pathogen or biological toxin, all care or treatment of the worker, including services needed to ascertain whether the worker contracted the disease, shall be compensable under workers' compensation, even if the worker is found not to have contracted the disease. If the worker is found to have contracted a disease, there would be a rebuttable presumption that any injury, disability, chronic or corollary illness or death caused by the disease is compensable under workers' compensation.

The bill would further provide workers' compensation coverage for any injury, illness or death of any employee, including an employee who is not a public safety worker, arising from the administration of a vaccine related to threatened or potential bioterrorism or epidemic as part of an inoculation program in connection with the employee's employment or in connection with any governmental program or recommendation for the inoculation of workers. The bill would also establish a rebuttable presumption that any condition or impairment of health of a public safety worker which may be caused by exposure to cancer-causing radiation or radioactive substances is a compensable occupational disease under workers' compensation if the worker was exposed to a carcinogen, or the cancer-causing radiation or radioactive substance, in the course of employment. Employers are required to maintain records of instances of the workers deployed where the presence of known carcinogens was indicated by documents provided to local fire or police departments under the "Worker and Community Right to Know Act," and where events occurred which could result in exposure to those carcinogens.

In the case of any firefighter with seven or more years of service, the bill would create a rebuttable presumption that, if the firefighter suffers an injury, illness or death which may be caused by cancer, the cancer is a compensable occupational disease. The measure would further provide that, with respect to all of the rebuttable presumptions of coverage, employers may require workers to undergo, at employer expense, reasonable testing, evaluation and monitoring of worker health conditions relevant to determining whether exposures or other presumed causes are actually linked to the deaths, illnesses or disabilities, and would also require that the presumptions of compensability are not adversely affected by failures of employers to require testing, evaluation or monitoring.

The measure would cover paid or volunteer emergency, correctional, fire, police, and medical personnel.

GFOA is generally concerned that this legislation may increase annual expenditures by local governing bodies that employ the above public safety workers as it would shift the burden of proof from the worker to the employer in certain cases, which may produce increased claims for workers' compensation benefits and the requirement for employers to maintain additional records. GFOA is also concerned that the legislation may result in increased premium costs to provide workers' compensation coverage as the measure may increase the pool of individuals filing claims. For these reasons, it's unclear if Governor Murphy will sign the bill into law as it could impact the State as an employer as well.

OPEN PUBLIC MEETINGS AND RECORDS

On May 17th, the Senate Budget and Appropriations Committee favorably reported **SENATE, NOS. 106 & 107** *(Weinberg D-37/Pennacchio R-26)*, which would revise the Open Public Meetings Act (OPMA) and Open Public Records Act (OPRA) respectively. Although Senator Weinberg should be commended for taking the time to work with stakeholders to address some of our longstanding concerns and for including changes in the legislation that would modernize the government records process and authorize local governing bodies to impose surcharges on commercial entities under certain circumstance, local officials remain concerned with some of the provisions below and their impact on daily operations, staff time and resources, and exposure to liability.

- AGENDA MATTERS: the Open Public Meetings Act OPMA legislation under S-106, would require providing adequate notice, which *"shall include each individual time to be discussed or acted upon, and a brief description thereof, and shall identify the names of the parties to and approximate dollar amounts of any contracts, including employment contracts, to be discussed or acted upon."* Does identifying the names of the parties to and approximate dollar amounts of any contracts, including employment contracts, include the total value of a collective bargaining agreement? This section needs additional clarification.

- MEETING MINUTES*:* the OPMA legislation would require providing comprehensive meeting minutes that include *"the time and place, the members present, the subjects considered, the actions taken, including all motions made, the identities of the moving and seconding parties members, the vote of each member, and each member's stated reasons if any, for his or her action or vote, the identity of each member of the public who spoke and a summary of what was said…."* The requirement to include the stated reasons, if any, for a member's action on a vote would impact county operations and may force governing bodies to hire a transcribing service to make sure that accurate meeting minutes are taken.

- MEETING MINUTES*:* The OPMA legislation would require that *"minutes shall be made available to the public as soon as possible but not later than 15 days after the next meeting of the public body occurring after the meeting for which the minutes were prepared…."* Requiring meeting minutes to be made available to the public not later than 15 days after the next meeting of the public body occurring after the meeting for which the minutes were prepared would impact county operations and may force governing bodies to hire additional staff and reduce services elsewhere.

- ATTORNEY'S FEES: The OPMA legislation would require "*any party, other than a public body, that prevails in an action brought pursuant to this section, shall be awarded the amount of reasonable attorney's fees incurred in bringing the action. The cost of any attorney's fee awarded by the court shall be paid by the public body."* The courts and Government Records Council should retain the flexibility to award reasonable attorney's fees as such fees are paid for by property taxpayer dollars.

- REDACTION OF RECORDS: The OPRA legislation under S-107 and as amended, would require the custodian of a government record whom redacts information from copy of the record to provide *"the requestor with a redacted version of the document and one written statement for the entire request that states the date of the record, the originator or author of the record, the subject matter or title of the record, the number of pages with redactions, and the specific statutory provision or other lawful basis for each such redaction. The custodian shall redact any such information by deleting or obstructing only that information and shall not alter in any manner the space in the government record formerly occupied by such redacted information…."* Although the proposed amendments are an improvement, the new language would still impose an undue burden on county operations and force an administrator to assign an attorney to process requests at a significant expense.

The Committee favorably reported the measure, but the Senate did not vote on the bills on June 20th as initially expected. The companion versions **ASSEMBLY, NOS. 1018 & 1019** *(Johnson D-37/Benson D-14)* are currently in the Assembly State and Local Government Committee awaiting consideration.

CODE BLUE ALERTS

On June 20th, the Senate passed by a vote of 34-2 **SENATE, NO. 3422** *(Singer R-30/Kean R-21)*, which would require counties to declare a Code Blue alert when the National Weather Service (NWS) predicts the temperature to be 32 degrees Fahrenheit or lower.

Although the sponsors should be commended for their efforts to provide comfort for at-risk individuals during severe weather events, this legislation does not contain a funding mechanism or State appropriation to offset the costs associated with extending the 2017 law that counties, municipalities, social service agencies, and non-profit organizations have struggled to implement. As you may recall, in that year, Governor Christie signed into law legislation that requires county governing bodies, through their offices of emergency management or other appropriate offices, agencies or departments, to establish plans for issuing Code Blue alerts to municipalities, social service agencies, and non-profit organizations that provide services to at-risk individuals and are located within the county's borders.

In summary, the new law requires emergency management coordinators to declare a Code Blue alert after evaluating weather forecasts and advisories produced by the National Weather Service that predict the following weather conditions in the county within 24 to 48 hours: temperatures will reach 25 degrees Fahrenheit or lower without precipitation; or 32 degrees Fahrenheit or lower with precipitation; or, the National Weather Service wind chill temperature will be 0 degrees Fahrenheit or less for a period of 2 hours or more. Although certainly well intended, S-3422 would establish an even greater financial burden to the 2017 law that would make issuing a Code Blue alert more costly and difficult to implement, manage, and sustain. In fact, setting the parameters for issuing a Code Blue alert at 32 degrees Fahrenheit or lower would double the amount of Code Blue nights and would lead to increased costs as noted above, depleted staff and resources, and fatigued volunteers. A companion version of the legislation does not currently exist in the General Assembly.

LOCAL AID ALLOCATIONS

On June 26th, Governor Murphy signed into law **SENATE, NO. 2863** *(Sarlo D36)(Sweeney D-3)(Benson D-14)(Jone D-%),* which revises the requirements for receiving grant funding from the Local Aid program under the Transportation Trust Fund (TTF). The final version of this new law addresses the majority of GFOA's initial concerns with the bill as introduced.

In summary, this new law now requires the New Jersey Department of Transportation (DOT) to execute agreements with a county receiving Local Aid funds 90 days from the date that the county applies for funding or by April 1st of the following year, whichever is later; and, with a municipality receiving Local Aid funds 90 days from the DOT distributes the award letter to the municipality or by March 1st of the following year, or whichever is later. The law further requires a county to begin expending aid allotments within 3 years from the date that the county receives notification from DOT of that year's allotment and a municipality to begin expending aid allotments within two years from the date that the municipality receives notification from DOT that year's allotment. The new law also allows the DOT Commissioner to reallocate rescinded Local Aid awards to non-Local Aid projects; and, changes the circumstances under which a municipality may

request an extension for up to 6 months. Lastly, the measure requires all bidders on Local Aid program funded construction contracts valued at more than $5,000,000 to be prequalified by DOT. S-2863 took effect immediately.

PROPERTY TAX APPEAL REFUNDS

On June 20th, both passed and sent to the Governor **ASSEMBLY, NO. 2004** *(Karabinchak D-18/Mazzeo D-2)(Diegnan D-18),* which would require municipalities to pay certain nonresidential property tax appeal refunds in equal installments over a period of three years.

More specifically, this legislation would revise how a taxing district must provide a refund to a taxpayer who is successful in a property tax appeal. Under current law, a refund of excess taxes paid must be repaid with interest calculated at an annual rate of 5% and within 60 days of the final judgment for both residential and nonresidential property. The measure would also provide that for any property, the taxing district has to pay interest calculated at an annual rate of either 5% or 1% point above the prime rate, whichever rate is lesser. The bill would also provide that for a nonresidential property, the municipality must refund excess taxes within 3 years, except that the Local Finance Board would be authorized to establish a dollar threshold below which a refund for nonresidential property would have to be paid within 60 days of the date of final judgment. It's unclear at this time if Governor Murphy will sign the measure into law.

EXPLAINER: WHERE GOVERNOR, LAWMAKERS DIFFER ON BUDGETING FOR A DOWNTURN
John Reitmeyer, June 26, 2019

A key area where Gov. Phil Murphy and lawmakers remain at odds in the final days before a new state budget must be enacted is over how the state should prepare for the next recession. Two different funds — both part of the state budget — actually serve this purpose. But those reserve funds don't operate in the same way and that difference is at the heart of the ongoing disagreement between Murphy and lawmakers.

What are the two funds? One is the Surplus Revenue Fund — more commonly referred to as the rainy-day fund. This account is supposed to be replenished during times of economic expansion to ensure the state has enough money socked away to help absorb the big swings in revenue that come during recessions. New Jersey's rainy-day fund has been neglected for over a decade after it ran dry during the Great Recession, and Murphy, a Democrat, wants a $317 million deposit in it as part of his fiscal year 2020 spending plan. The other account at issue is the Fund Balance — more commonly referred to as simply the surplus. This account is used as a cushion to ensure the budget doesn't run on too narrow a margin on a year-to-year basis. That helps the state absorb unforeseen expenses or drops in revenue that could derail a given year's entire budget. The Legislature, which is controlled by Democrats, anticipates a surplus of $1.41 billion in the FY2020 spending

bill it sent to Murphy last week. Meanwhile, Murphy budgeted for a surplus of $1.15 billion in the spending request he sent to lawmakers in March.

What's the key difference between these funds? While both funds were set up to help keep the state prepared for fluctuations in revenues and projected spending, the surplus is generally an unrestricted account. That means the revenue that's kept in it can be used to pay for pretty much anything, and at any time. By contrast, the monies deposited into the rainy-day fund can by law only be used when there is a significant drop-off in revenue or some other type of budget emergency. State law also calls for revenue to be automatically deposited into the rainy-day fund when certain conditions arise, including unforeseen surges in tax collections. But no such law exists to direct funding into the surplus.

Why is this disagreement important? Keeping money on the side gives governors and lawmakers vital peace of mind because there are always going to be ups and downs in spending and revenue as the 12-month fiscal year progresses. Maintaining robust reserves, including a rainy-day fund, is also a key issue for the Wall Street credit-rating firms that grade New Jersey's debt every time the state wants to sell bonds to finance long-term investments in things likes roads and schools. Investors can charge the state higher interest rates when the ratings firms flag inadequate budget reserves, and those higher costs are typically passed along to taxpayers.

Another important factor relates to policy changes that lawmakers have passed in recent years as part of a push to get more funding into the public-worker pension system. Those changes, which include shifting to a quarterly pension-payment schedule and dedicating roughly $1 billion in annual state Lottery revenue to the retirement funds, have made it harder for lawmakers to raid money from the pension payment whenever there are revenue shortfalls. Such raids last occurred in 2014 and 2015 when former Republican Gov. Chris Christie was in office. While that's been good for the pension system — which is another top concern for credit-rating firms — it means there's no other big pot of money available to backstop the rainy-day fund and the surplus.

What do other states do? Whether it's building up the rainy-day fund or the surplus, New Jersey has been a national outlier when it comes to budget reserves. A recent analysis by The Pew Charitable Trusts found that as of fiscal year 2018, New Jersey was keeping only enough funds aside in reserves to cover about eight days' worth of state operating expenses. That was well below the 50-state median of 40.4 days. Another Pew analysis found that New Jersey also remains one of only three states that continue to have no money set aside in a rainy-day fund even as economists have been predicting another recession is right around the corner.

How can this disagreement be resolved? It's hard to say but, at the end of the day, Murphy will likely have the final say thanks to routine language in the annual budget. That section of the budget supersedes the rainy-day fund law. And it allows for transfers from the

rainy-day fund to the General Fund to occur, which is what lawmakers are seeking to do in FY2020 to boost the surplus. But any transfer is also “subject to the approval” of Treasury officials. It’s also worth noting that there really is only a comparatively small difference — less than $100 million — between the combined revenues that Murphy has booked for both the rainy-day fund and the surplus, and the amount that lawmakers want to put entirely into the surplus.