

STATE HOUSE NEWS FOR FINANCE OFFICERS

March 15, 2019

STATUTE OF LIMITATIONS

On March 11th, the Senate passed by a vote of 31-1 **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).

Although the sponsors should be commended for their efforts to provide the victims of sexual abuse with additional remedies against the perpetrators and entities guilty of committing such heinous crime, local officials should be concerned that the most recent changes to this legislation would eliminate the safeguards provided local governing bodies under the TCA as all lawsuits are defended with limited property taxpayer dollars. During the March 11th hearing of the Assembly Judiciary Committee on the companion version **ASSEMBLY, No. 3648** (*Quijano D-20/Vainieri-Huttie D-37*), local officials submitted that the TCA does prohibit the filing of lawsuits against the State, counties, municipalities, and school district. 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. Governor Murphy is also expected to sign the bill into law.

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, 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 your general counsels to review in its entirety as this summary provides an abbreviated version of the measure's scope.*

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 award construction or other approved contracts for 100 percent of a 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 shall 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.

RETROACTIVE SALARY INCREASES

On March 13th, the Senate passed by a vote of 31-1 **SENATE, No. 3369** (*Scutari D-22*), which would prohibit all locally elected officials from receiving retroactive salary increases. In general, this bill would prohibit all local elected officials from receiving retroactive salary increases as of December 1, 2018. This bill would apply to elected officials in counties, municipalities, school districts, and all other political subdivisions of the State. The companion version **ASSEMBLY, No. 5090** (Munoz R-21) is currently in the Assembly State and Local Government Committee awaiting consideration.

ELECTRONIC BIDDING CONSTRUCTION ACT

On March 13th, the Senate passed by a vote of 31-0, **SENATE, No. 3137** (*Sweeney D-3/Oroho R-24*), which would require public contracting agencies that contract for the construction of public works to use electronic procurement technologies for public works construction projects when a project's value exceeds \$5,000,000. These entities include those governed by the "Public School Contracts Law," the "State College Contracts Law," the "County College Contracts Law," the "Local Public Contracts Law," and the State and its agencies and instrumentalities.

In summary, the bill would require the State Treasurer to promulgate regulations to effectuate the electronic procurement of public works as required by the bill. The regulations must set forth each of the steps the treasurer deems appropriate to be taken by each public contracting unit when a public works project project's value exceeds \$5,000,000. The regulations must also create a procedure to be followed by a public contracting unit for the awarding of a contract for the administration of the electronic procurement process, and all aspects of electronic procurement. The regulations must also require that a contractor or vendor seeking a contract for public works under the bill be classified with the Division of Property Management and

Construction in the Department of the Treasury, or be prequalified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, prior to submitting a bid. The companion version **ASSEMBLY, No. 1308** (*Greenwald D-6/Milam D-1*) is currently in the Assembly State and Local Government Committee awaiting consideration.

911 FEE DIVERSION

On March 5th, Governor Phil Murphy unveiled his \$38.6 billion 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).

The State plans to 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 three 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.

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.”

WITH AID FROM TRENTON FLAT, MUNICIPAL OFFICIALS FORESEE PROBLEMS

Coleen O’Dea, NJ Spotlight, March 8, 2019

While inflation has risen 21 percent since mid-2007, total state aid to towns is down almost 11 percent over that time. State aid to New Jersey municipalities would remain essentially flat under Gov. Phil Murphy’s budget proposal, with the total amount of financial assistance from Trenton to towns coming in lower than it was a dozen years ago.

The budget would allocate \$1.55 billion to help municipalities cover costs in the 2020 fiscal year — a bump of just \$4.1 million, or less than 1 percent, over the current spending plan. All of that increase would go for transitional aid, available only to cities and towns in dire financial straits. The most current data available from the state Division of Local Government Services shows 11 municipalities got \$90.4 million in transitional aid during the 2018 fiscal year, with Paterson getting the most — \$27 million.

That leaves all but a handful of communities with no aid increase from the state to help cover inflationary increases and a new higher minimum wage for towns’ lowest paid workers, such as summer recreation help.

In his budget address, Murphy promised \$400 million in savings to schools, counties and municipalities from lower healthcare spending. But lawmakers from both parties want to see that money used exclusively for property-tax relief. And municipal officials say they are not counting on the savings because they have received no details about it, nor how much any individual town might receive. “It is not yet apparent to us exactly what these savings entail and how much will be realized for municipalities, for counties and for school districts,” said Michael Cerra, assistant executive director of the New Jersey State League of Municipalities. “It is premature to suggest such savings should be used to offset property taxes when property tax relief funding has been flat for over a decade ... and with all local governments operating under a 2 percent levy cap.” In other words, municipalities may be stretching to provide services given that they’ve had flat aid for more than 10 years.

Cerra said towns are also grappling with the expiration of a 2-percent cap on raises that an arbitrator could award police officers and paid firefighters to end a contract dispute, as well as the higher minimum wage, which will increase to \$10 on July 1 and then continue to rise until reaching \$15 in 2024. These concerns have not stopped lawmakers, including Senate President Steve Sweeney (D-Gloucester) from calling for any savings to be used to reduce property taxes. Although the average local tax bill increased by the smallest amount in decades last year — less than 1 percent — New Jersey’s property taxes are still the highest in the nation, on average. “One of my suggestions is if towns and counties can save up to \$400 million in healthcare costs that we legislate that they have to cut their property taxes by those dollars saved,” Sweeney said Thursday in an interview.

with NJ Spotlight. “What happens is, when you get savings, there’s always a pressing need, there’s always a project that someone wanted to do. ‘Guess what? (Revenue) just fell out of the sky, now I can build my playground.’ So restricting dollars I think is critically important.”

Colleen Mahr, president of the League of Municipalities and mayor of Fanwood, said local officials are eager to learn “how the proposed \$400 million in savings from collective bargaining translates to property tax relief at the local level.” And while the league is grateful for the slight increase in transitional aid, what officials really want is for Trenton to pass along all the energy and other tax money they say is rightfully theirs. As early as 1900, the state collected taxes on public utilities and transferred them to municipalities. Over time, some of the taxes, and how they were collected, changed. But ultimately they are all supposed to be municipal revenues, according to the league. For decades, though, the state has collected and distributed the money, while skimming some for the state budget. That skim reached new heights during the Great Recession and continues.

Mahr called it “unfortunate” that Murphy proposes to continue diverting Energy Tax Receipts collected by the state for use in the state budget. She said the governor’s proposal of level funding for ETR and Consolidated Municipal Property Tax Relief Assistance (CMPTRA), the second-biggest category of municipal aid, is “better than a cut,” but still a disappointment. If lawmakers agree with Murphy’s proposal, FY2020 funding for ETR and CMPTRA will total \$190 million less than before the recession. “The League continues to call on the administration and Legislature to begin the long-overdue full restoration of this property-tax relief,” she said.

Municipal services account for about \$3 of every \$10 paid in property taxes. (The rest goes for schools and counties.) And while the Consumer Price Index has risen by 21 percent from mid-2007, total municipal aid is almost 11 percent less than 12 years ago. There could be some unknown amount of future savings to municipalities teased by the Budget in Brief document from shared services. Last year, Murphy named “Shared Services Czars” to encourage more municipalities to pursue shared services. The budget proposal would create a Local Assistance Bureau within the Division of Local Government Services to “facilitate shared services and consolidation assistance,” according to the document. It also put forward the possibility of municipal savings from counties assuming certain local services, although that would raise county costs by at least some unknown amount.

“Local Government Services (LGS) has also provided the Governor with its first suggestions for services that should be offered at the county level, including recommendations that counties assume the responsibility for 9-1-1 dispatch, public health, and road maintenance (e.g., snow removal) for municipalities,” the Budget in Brief states. “The State’s largest cities may need to continue operating their own programs.” No other details about when or even whether counties would take over road maintenance and other services, or about potential cost savings, were available.

Murphy's office referred questions to the Department of Community Affairs, which houses LGS, but officials there did not respond to a request for comment. "We were unaware of these recommendations and still don't know the details and what is the basis for them," said the league's Cerra. "We have no problem with the counties 'offering' any services, providing any such service agreement is entered into voluntarily by all parties."