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

May 17, 2019

BINDING INTEREST ARBITRATION

As predicted, the failure 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.

]In fact, county and municipal officials from across the State, and on both sides of the aisle, are once again urging 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.

Moody's Investors Services, Fitch Ratings, and Standard and Poor's all agree and have issued stern warnings about allowing the cap's expiration. Of note, Moody's submitted *"that salary costs are among the largest of municipal expenditures, the cost implications are obvious and considerable,"* and that *"the effect of this is, in most cases, unlikely to be rapid, but ultimately, the loss of the arbitration cap is likely to cause the public sector's credit quality to deteriorate."* Fitch Ratings concluded that "*the arbitration cap is beneficial to local government credit quality as it helps to align revenue and spending measures and supports structural balance in the context of statutory caps on property tax growth."* Additionally, a broad-based coalition of public and private sector organizations support efforts to permanently extend the cap of which you may review at https://nj-njslom.civicplus.com/DocumentCenter/View/6276/2017-Final-IA Coalition-Letter-PDF. In the meantime, GFOA and our partners plan to hold strategy sessions for local governing bodies on how to effectively navigate the unlevel playing field created by the failure of State leaders to act accordingly. Stay tuned for additional details.

ENERGY TAX RECEIPTS

On May 13th, the Senate Community and Urban Affairs Committee favorably reported and Second Reference to the Senate Budget and Appropriation Committee for consideration, **SENATE, NO. 51** *(Singleton D-7/O'Scanlon R-13)*, which would require the distribution of additional State aid to municipalities under the "Energy Tax Receipts Property Tax Relief Act."

In general, this legislation would require that beginning in fiscal year 2021, municipalities would receive an aid increase equal to 20% of the difference between the distribution of Consolidated Municipal Property Tax Relief Aid (CMPTRA) and Energy Tax Receipts Property Tax Relief Aid (ETR Aid) they received in fiscal Year 2008 and fiscal Year 2012. Municipalities would receive equal increases in each of the following four fiscal years. The fully restored amount would be distributed beginning in fiscal year 2025 and in each fiscal year thereafter. The total amount of aid to be restored to each municipality would be in addition to the total amount of CMPTRA and ETR Aid distributed to each municipality in Fiscal Year 2012. This legislation would also extend the existing ETR Aid protection to ensure that each municipality would receive an aid amount not less than the combined payment of CMPTRA and ETR Aid to municipalities in Fiscal Year 2012 and the additional aid distributed under the bill.

This bill would also amend current law to require a municipality to subtract any additional amount of ETR aid it receives, pursuant to the bill, from its adjusted tax levy when computing that amount for its next fiscal year. By deducting the additional amount of ETR Aid from the previous year's levy, municipalities would be permitted to raise a lower amount of taxes through the levy for municipal purposes. Although we may need an abacus to keep track of the formulas, GFOA generally supports the measure as it would restore, over time, approximately $331.0 million in diversions in CMPTRA and ETR Aid by the State since fiscal year 2009. The companion version **ASSEMBLY, NO. 274** *(Weber R-26/Conaway D-7)* is currently in the Assembly State and Local Government Committee awaiting consideration.

STATUTE OF LIMITATIONS

On May 13th, Governor Murphy signed into law **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, In light of 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, GFOA appreciates the fact that the Governor included the language below 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-1)* and Nicholas Scutari *(D-22)* and Assemblywoman Annette Quijano *(D-22)* introduced **SENATE, NO. 3739/ASSEMBLY, NO. 5392,** 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, and their officers, employees and other agents, based on the immunity granted to such organizations and agents under the Charitable Immunity Act. Under the bill, a public entity or public employee could be held liable for the willful, wanton or grossly negligent acts resulting in a sexual assault, any other crime of a sexual nature, a prohibited sexual act or sexual abuse being committed against a person. Additionally, a public entity could be held liable for a claim that its negligent hiring, supervision or retention of any public employee resulted in any such form of sexual abuse being committed against a minor under the age of 18 years.

The bill would take effect on December 1, 2019, the same effective date as S-477, which creates new, extended statute of limitations periods for civil actions by child and adult victims of sexual abuse and establishes a two-year window during which actions may be commenced even though they would otherwise be time-barred, even after using the appropriate new, extended statute of limitations period. S-3739/A-5392 would require that that once lawsuits commence against public entities and public employers beginning on December 1, 2019, these suits, and any suits previously filed that have not yet been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations, and lawsuits could, if otherwise time-barred, be brought during the two-year window. The Assembly Judiciary Committee will consider A-5392 on May 20th, and S-3739 is currently in the Senate Judiciary Committee awaiting consideration. *Please note that S-477 and S-3739/A-5392 present several complex legal challenges, and we recommend general counsel to review both measures in their entirety as this summary provides a condensed version of the matter.*

PROPERTY TAX APPEAL REFUNDS

On May 13th, the Senate Community and Urban Affairs Committee favorable reported **ASSEMBLY, NO. 2004** *(Karabinchak D-18/Mazzeo D-2),* 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. The General Assembly passed A-2004 by a vote of 51-22 on June 7, 2018 and is currently in the Senate Budget and Appropriations Committee awaiting consideration.

PAYMENTS IN LIEU OF PROPERTY TAXES

Also on May 13th, the Senate Community and Urban Affairs Committee favorably reported and Second Reference to the Senate Budget and Appropriations Committee for consideration **SENATE, NO. 59** (*Singleton D-7/O'Scanlon R-13),* which would provide counties and school districts with notice that municipality is considering granting long term tax exemptions and would further require municipalities to share amounts received from urban renewal entities in lieu of property taxes with school districts.

Under the bill, urban renewal entities would be required to provide counties and school districts with copies of applications for long term tax exemptions. The bill would require an urban renewal entity to certify, in its annual audit to the mayor and the governing body of the municipality, the number of school-age children attending public school who are residing in the approved project. Mayors would be required to provide counties and school districts with copies of the recommendations mayors submit to municipal governing bodies with regard to applications from urban renewal entities. Municipal governing bodies would afford counties and school districts a 10-day period to review mayoral recommendations, within which period counties and school districts could submit their own recommendations. When determining whether to approve an application, a municipal governing body would give due consideration to the concerns of counties and school districts.

The bill would also require municipalities to provide a portion of the amounts received in lieu of property taxation from urban renewal entities to the school district or districts that serves the municipality, including a regional school district. A municipality that receives a payment in lieu of taxation from an urban renewal entity would be required to distribute a portion of the amount received immediately upon receipt. For a residential project, this portion would equal the amount derived by multiplying the number of school-age children, who are attending public school in the municipality or at a school in a regional school district that serves the municipality and who are residing in the project, by the school district's budgetary cost per pupil. For a nonresidential project and for a mixed-use project with residential and nonresidential components, the portion would be five percent of the annual service charge collected by the municipality or an in-kind contribution equal in value to five percent of the annual service charge. Lastly, the measure would require a school district to reduce its property tax levy by any amount received from a municipality out of a payment in lieu of property taxation made by an urban renewal entity. The companion version **ASSEMBLY, NO. 1544** *(Carroll R-25/Bucco R0-25)* is currently in the Assembly State and Local Government Committee awaiting consideration.

POLITICIANS COULD PUNT TO VOTERS ON HOW TO PUT NJ'S FISCAL HOUSE IN ORDER
John Reitmeyer, NJ Spotlight, May 17, 2019

Locked in a bitter dispute with the governor over the budget, the senate president proposes a referendum on cuts in public-worker benefits and New Jersey voters could soon be dragged into an ongoing and increasingly bitter dispute over how best to address the biggest fiscal challenges that continue to dominate the latest state budget discussions in Trenton.

Under a plan unveiled yesterday by Senate President Steve Sweeney (D-Gloucester), a series of proposed public-worker benefits cuts that are designed to free up cash for other items and also ease the burden on local property-tax bills would be put before voters in the form of proposed constitutional amendments, as early as this year. Sweeney said he's introducing the ballot questions — which would change both healthcare and pension benefits for thousands of workers — sometime today. And to add another wrinkle, the same proposals were introduced as legislation yesterday. That sets the stage for a potential compromise with Gov. Phil Murphy, a fellow Democrat who has strongly opposed making any public-worker benefits cuts. But it also puts on the table the direct threat of using the ballot questions to simply go around the governor. "The time to act really is now, and we're not going to be stonewalled by an administration either," Sweeney said during a news conference yesterday in Trenton.

All of the proposals were originally part of the "Path to Progress" report issued by a nonpartisan group of fiscal-policy experts that Sweeney assembled last year in the wake of a series of federal tax-policy changes enacted in 2017. Murphy says he'll look for 'common ground' Murphy issued a statement yesterday in response to Sweeney's announcement stressing the need for a balance of spending cuts and tax increases to address the state's fiscal challenges, including an unfunded pension liability that tops $100 billion by some calculations. "I will carefully review the bills introduced today to see where we can find common ground, but the bottom line is that savings alone will not help us meet the entirety of our obligations," Murphy said.

Meanwhile, the formal introduction of the new proposals drew praise yesterday from business-lobbying groups who've long supported benefits reform. And they were loudly opposed by unions representing the public workers who would be directly impacted. While Sweeney has been touting the pension and healthcare cuts for nearly a year, Murphy has favored a proposed millionaire's tax to help cover the rising cost of worker benefits. Though popular with voters and embedded into his $38.9 billion budget proposal for the coming fiscal year, the governor's tax on the wealthy has been a nonstarter for both Sweeney and Assembly Speaker Craig Coughlin (D-Middlesex). Time is running out for legislative action. With a little over a month left before June 30, when the next state budget must be enacted, there's little time to advance all of the proposals unveiled by Sweeney yesterday. The broader package of reform bills also includes measures seeking to encourage consolidation among local school districts and municipal governments.

Among the most complicated elements of Sweeney's benefits-reform proposal is a plan to radically alter retirement benefits for thousands of new workers and those with less than five years on the job. While police officers, firefighters and judges wouldn't be impacted, teachers and other government workers would receive a traditional, "defined-benefits" pension on only up to $40,000 of salary. For any additional earnings, the affected workers would be enrolled in a hybrid "cash-balance" savings plan that would not require a matching contribution from the state. That savings plan would guarantee a 4-percent annual return for workers and offer a chance to do better based on how general pension-fund investments perform. The same proposal would also move back the retirement age for the same group of workers from 65 to 67, and change investment-return assumptions and the amortization schedule for the broader pension system, one of the worst-funded state-retirement plans in the country.

Based on actuarial estimates distributed yesterday, Sweeney assumes his plan would save the state $17.1 billion over 30 years, and local governments another $7.5 billion over the same period. "A new pension plan is just common sense," said Sweeney. But union leader Hetty Rosenstein, state director of the Communications Workers of America, called the proposal "shameful" while speaking to reporters yesterday moments after Sweeney's announcement. She said the pension reforms target worker groups that are predominantly "women and people of color" while sparing those dominated by white men. "I think it is designed to (pit) the public versus public-sector workers, and that is shameful," she said. The proposed healthcare changes could save another $1 billion or more annually, in part by moving workers at all levels of government in New Jersey from what would be considered "platinum" level coverage under the federal Affordable Care Act to "gold" coverage. The precious-metal classifications generally connote how much of the cost of coverage is picked up by the patient, with platinum-level coverage leaving 10 percent or less to the patient and gold level leaving 20 percent.

The change would be made either through legislation or constitutional amendment, and Sweeney said any ballot question would also require healthcare savings at the local level to be returned to property taxpayers. "We'll be in line with many states that have gold healthcare plans now," Sweeney said. Meanwhile, to achieve more savings, Sweeney is also backing legislation that would disband the School Employees Health Benefits Program and move those currently enrolled in that benefits system into the generally cheaper State Health Benefits Program. Other education-spending proposals would require consolidation of non-K-12 school districts and shift some the cost of funding what's known as "extraordinary" special education onto the state. A statement issued by Marie Blistan, head of the state's largest teachers' union, said New Jersey Education Association officials were still reviewing the bills introduced yesterday. But she also said teachers should not be "scapegoated" as the state struggles with fiscal challenges largely created by its long history of underfunding the pension system. "It is time for New Jersey to prioritize the interests of middle-class families over millionaires," Blistan said.

Among other bills unveiled yesterday as part of the same reform package are those that would generate municipal and county government savings by capping payments for unused sick time and by establishing a permanent commission to review savings opportunities and make regular recommendations to the Legislature. Murphy has been backing an approach that involves negotiating cost-savings measures directly with unions such as the CWA and NJEA while also relying on revenue from the millionaire's tax and other tax-policy changes to boost state revenues. Murphy's FY2020 budget proposal counts on $1.1 billion in spending cuts. And the latest revenue projections from the Department of Treasury assumes $536 million would be generated by applying the top-end rate of 10.75 percent on earnings between $1 million and $5 million, now only in place for incomes of more than $5 million. That added-revenue projection is nearly the same figure as the annual savings estimate from Sweeney's hybrid pension proposal.

"My budget is about putting New Jersey on a new trajectory for the long term, and I am committed to working with the Legislature to do just that," Murphy said.

The last time the Democratic-controlled Legislature enacted major public-worker benefits changes was 2011, when Republican Chris Christie was in office. Those changes, which likewise curbed healthcare and pension benefits, created a rift in the Democratic Party, especially in the Assembly. Asked whether he's concerned about the new proposals upsetting party unity just as the Assembly is up for re-election this year, Sweeney — who was flanked by two Republican lawmakers yesterday but none from his own party — responded by talking about the appeal that potential cost savings could have with voters. "Everyone's weary of property taxes," Sweeney said. "This is an opportunity to run for election (saying) we're cutting property taxes — cutting them for real."