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STATE HOUSE NEWS FOR FINANCE OFFICERS

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ELECTRONIC PROCUREMENT

On October 15th, the Senate Budget and Appropriations Committee will consider **ASSEMBLY, NO. 3112** *(Benson D-14/Mukerhi D-33)(Beach D-6/Oroho R-24),* which would authorize local governing bodies subject to the "Local Public Contracts Law" and "Public School Contracts Law" to use electronic procurement technologies.

In summary, this legislation would authorize local governing bodies to use electronic procurement for the receipt of proposals and quotations, competitive contracting, reverse auctions, the purchase of goods and services, the sale of personal property, and other public procurement-related activities to be determined by the Director of Local Government Services. The measure would also authorize local governing bodies, joint purchasing units, and cooperative pricing systems to use electronic procurement practices for the purchase of electric generation services, electric related services, gas supply services, or gas related services, for use at facilities so long as the purchase otherwise complies with the provisions of the "Electric Discount and Energy Competition Act"; for the sale of surplus personal property under certain circumstances; and, for the sale of real property that would otherwise comply with the sale and lease provisions under the "Local Lands and Buildings Law." The bill would further require the Director of the Division of Local Government Services, in consultation with other State government entities, to promulgate rules and regulations. GFOA generally supports this legislation as as the measure would modernize the antiquated procurement process and save valuable time, money, and resources. The General Assembly unanimously passed A-3112 in June and the Committee is expected to favorably report the measure.

PROMPT PAYMENTS

On October 4th, Governor Murphy signed into law **ASSEMBLY, NO. 3808** *(Greenwald D-6/Bramnick R-12) (Singleton D-7/Oroho R-24),* which would provide for the prompt payment of public contracts for the purchase of goods and services. The Governor Conditionally vetoed the measure in August and the Legislature concurred with the conditional veto late last week. In general, the new law requires a contracting unit to pay interest on the amount due a business concern if the required payment is not made before the required date under certain circumstances. The measure further stipulates that unless otherwise provided for in the contract, the required payment date is 60 calendar days from the date specified in the contract.

More specifically, the new law provides that *"A contracting unit, as defined in … shall pay interest on the amount due a business concern pursuant to a properly executed invoice, when required, if the required payment is not made on or before the required payment date. Unless otherwise provided for in the contract, the required payment date shall be 60 calendar days from the date specified in the contract or if no required payment is specified in the contract, then the required payment date shall be 60 calendar days from the receipt of a properly executed invoice, or 60 calendar days from the receipt of goods or services, whichever is later…. A contracting unit may waive the interest payment for a delinquency due to circumstances beyond the control of the contracting unit, including but not limited to a strike or natural disaster…."* The new law defines a business concern as *"any person engaged in a trade or business, including a private nonprofit entity operating as an independent contractor, providing goods or services directly to a contracting unit or to a designated third party and operating pursuant to a contract with a contracting unit which requires either a single payment or multiple payments, but shall not include a "public utility…."* This law takes effect on the 120th following enactment.

NO MORE PLASTIC BAGS

On September 27th, the Senate Environment and Solid Waste Committee Second Referenced to the Senate Budget and Appropriations Committee for consideration **SENATE, NO. 2776** *(Smith D-17/Greenstein D-14*), which would prohibit stores and food service businesses from providing carryout bags made of plastic film, polystyrene foam food service products, and single-use plastic straws. The bill would also require stores to asses a fee on paper carryout products.

The bill would define a carryout bag as a bag that is provided by a store or food service business to a customer at the point of sale for the purpose of transporting groceries, prepared foods, or retail goods. The measure would prohibit customers from using a non-handled bag made of plastic film used to separate and prevent a food item from damaging or contaminating another item; a bag made of plastic film used to contain an unwrapped food item; or a durable, handled carryout bag made from any natural or synthetic material other than plastic film, including woven or nonwoven plastic or cloth, that is at least 10 mils thick, and that is specifically designed and manufactured for multiple reuse.

The bill would also prohibit a person from selling or offering for sale any polystyrene foam food service product and prohibit a food service business from selling or providing any food in a polystyrene foam food service product. However, the legislation would provide an exemption from this prohibition for a period of one year after the effective date for: disposable, long-handled polystyrene foam soda spoons, when required and used for thick drinks; portion cups of two ounces or less, if used for hot foods or foods requiring a lid; and meat and fish trays for raw or butchered meat or fish that is sold from a refrigerator or similar retail appliance. Under certain circumstances, the DEP would have the ability to waive the prohibition for up to one year upon written application by a person or food services business.

The measure would also prohibit a food service business from selling or providing a single-use plastic straw to a customer. However, a food service business would be permitted to provide, upon request, a single-use plastic straw to a person that requires one due to a disability or medical condition. Finally, the legislation would require each operator of a store to impose a fee of at least $0.10 on the customer for each paper bag that is provided as a carryout bag to the customer. Each operator would be required to remit $0.05 of the fee to the Director of the Division of Taxation in the Department of the Treasury. The companion version **Assembly, No. 4330** *(Pinkin D-18/Kennedy D-20)* is currently in the Assembly Solid Waste and Recycling Committee awaiting consideration.

Pension Forfeitures

Also on September 27th, the General Assembly passed by a vote of 79-0 **Assembly, No. 3766** *(Armato D-2/Houghtaling D-11),* which would require a person who holds or has held any public office, position, or employment to forfeit the person's pension or retirement benefit if the person is convicted of harassment, sexual contact, lewdness, or sexual assault when the offense is related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person.

The measure would also require such forfeiture if the person is convicted of the crime of corruption of public resources in the first degree. The crime is of the first degree when a person knowingly uses or makes disposition of a public resource valued at $500,000 or more for an unauthorized purpose, when that public resource is subject to an obligation to be used for a specified governmental function or public service. Under current law, a person who holds or has held any public office, position, or employment is required to forfeit their pension or retirement benefit upon conviction of certain enumerated crimes involving or touching such office, position or employment. This bill would add the crimes of corruption of public resources, harassment, sexual contact, lewdness, and sexual assault to that list of crimes. The companion version **Senate, No. 2595** *(Corrado R-40)* is currently in the Senate State Government, Wagering, and Tourism Committee awaiting consideration.

Countdown to New State Sales Tax on Online Shopping
John Reitmeyer, NJ Spotlight, October 9, 2018

New Jersey has a new tax law on the books that will soon require most e-commerce websites to collect sales taxes — and send the revenue to Trenton — whenever they sell products to Garden State residents. The new tax policy goes into effect next month, just in time for the start of this year's holiday shopping season.

Signed into law by Gov. Phil Murphy last week, the policy change comes several months after a major U.S. Supreme Court ruling made it clear that states have a right to require that companies collect sales taxes in the states where they are selling products online even if they don't have a physical presence there. New Jersey's new law will require online retailers and marketplaces like eBay to begin collecting sales taxes and turning the revenue over to the state if they have gross revenues over $100,000 a year in New Jersey, or if their in-state sales volume exceeds more than 200 transactions annually.

Lawmakers have portrayed the levying of online sales taxes as an issue of fairness for the state's brick-and-mortar retailers, putting them on a more equal footing with online companies. The new policy, which takes effect on November 1, could also juice up revenue collections for the cash-starved state; initial estimates predict nearly $200 million or more could be collected during the current fiscal year. Relevant legal precedents related to what are known as "remote sales" date back to a time when most purchases that were not made in-person were completed using catalogs or print advertisements. In those cases, courts determined it was too onerous to make out-of-state companies track and collect sales taxes for every state where residents were buying their products. After the internet was invented and e-commerce grew into a major industry, websites and online marketplaces continued to skirt the sales-tax laws as residents were instead supposed to keep track and pay their states any sales-tax obligations on their own.

But in a decision issued by the U.S. Supreme Court in June, the justices upheld a South Dakota law that established a sales tax for online purchases made by that state's residents. In their decision, the justices suggested the online sales have created a tax shelter that disadvantages in-state brick-and-mortar businesses selling the same products. They also noted technological advances and tax software make it much easier to track and process state sales-tax rates. The court decision came down just days before New Jersey's deadline for a new budget, and lawmakers rushed to pass a measure resembling South Dakota's. Murphy conditionally vetoed the measure, after which lawmakers redrafted it, and it eventually made it back to the governor's desk late last month. He signed the bill into law late last week, meaning it will be in place for Black Friday and Cyber Monday, two of the year's busiest days for e-commerce.

A notice issued recently by the state Division of Taxation defines a remote seller that will be subject to the new law as "a business that sells products online or by mail order or telephone to a customer located in a state in which the seller has no physical presence." That means it applies to companies that sell their own products online, but also those like eBay that create an online marketplace for buyers and sellers. Amazon falls under both categories since it sells its own products and also operates a product marketplace. But Amazon's own products have already been subject to the state sales tax since 2013, thanks to a policy enacted during the tenure of former Gov. Chris Christie.

The new tax law requires the same 6.625 percent sales-tax rate that is currently levied on in-person purchases in New Jersey to also be applied to the remote sales. But it provides an exemption for travel agencies, including those that arrange accommodations online. Although it took lawmakers awhile to get on the same page with Murphy, the tax-policy change still has the potential to generate a sizable portion of new revenue for the state budget during the 2019 fiscal year. Lawmakers assumed the remote sales tax would eventually be adopted, and an official revenue estimate of $188 million was included in the state budget that Murphy signed into law in early July. Other, more optimistic projections suggest as much as $350 million could be generated by the time the fiscal year closes next June.

After Murphy's recent decision to sign the bill, sponsors suggested the policy change should benefit state-based businesses — which hire New Jersey residents and pay local taxes on their properties — whereas the online companies have no real ties to the state. "The fact that they are not physically located in New Jersey should not exempt a business from sales tax and use requirements," said Assemblyman Paul Moriarty (D-Camden). "These businesses should play by the same rules as other New Jersey businesses who pay property taxes, local taxes and make an investment in the communities they're in."

NEW JERSEY IS AMONG AMERICA'S LEAST PREPARED STATES IF ANOTHER RECESSION HITS
Samantha Marcus, NJ Advance Media, September 20, 2018

About a decade after the start of the Great Recession that rocked the U.S. economy, New Jersey remains among the states least fit to weather another economic downturn. In fact, the state's budget's reserves are too low to soften the blow of even a moderate slump, according to a pair of new reports measuring states' readiness.

The reports also said the state continues to rely on volatile taxes -- such as the income tax, which can fluctuate wildly depending on how the economy is doing -- and that puts revenues at risk. "Budget reserves are a first-line defense against revenue shortfalls and in a majority of states remain insufficient to absorb the first-year fiscal effects of a moderately severe recession," an S&P Global Ratings report said. Moody's Analytics pegged New Jersey as 47th among all states in its capability of weathering a recession, followed by Oklahoma, North Dakota and Louisiana. S&P also had New Jersey near the bottom of the list.

Moody's found the "typical" state would need to sock away the equivalent of 11 percent of its budget to ride out a moderate recession without cutting spending or raising taxes and 18 percent in a severe downturn. New Jersey state government will spend $37.4 billion this year but only has a tiny fraction of that -- 2 percent -- in its rainy day fund to fall back on. "We are acutely aware of these concerns," said state treasury spokeswoman Jennifer Sciortino. "This is why we fought throughout the budget process to build a healthier surplus and secure recurring revenue sources. This is and will continue to be a priority for us moving forward."

The reports put some numbers to the problem. S&P projects that in the first year of a moderate recession, states could lose a combined $71 billion, or roughly 10 percent, of the money they collect from personal income, corporate and sales taxes. In a more severe downturn, they'll be out $84.7 billion, or nearly 12 percent. The projected losses are even greater than during the Great Recession, as states are relying increasingly on taxes vulnerable to economic conditions, analysts said. New Jersey is no exception. Two of the largest sources of tax revenue here -- personal income and corporation business taxes -- are hard to predict, often fluctuating from year to year. The gross income tax is highly dependent on wealthy filers, which is why state coffers and lawmakers sighed when billionaire hedge fund manager David Tepper relocated to Florida.

From this year's budget battle came a new, 10.75 percent top marginal tax rate on personal income over $5 million, which will make the state's highly progressive income tax system even more so. This, analysts said, also helps explain why New Jersey is at greater risk than others. "By states putting more of their eggs in one basket, tax bases have become more dependent on a smaller number of taxpayers with extremely volatile incomes, manifesting higher highs and lower lows for tax collections," said Moody's Analytics in its own analysis.

A moderate downturn could gouge 18 percent of those three tax streams here, as measured by S&P's stress test of the big three taxes. In a more severe downturn, the loss could reach 20 percent. Only Alaska would lose a bigger share of its income, S&P said. But that's why states have rainy day funds. Twenty states have enough reserves to cope with the first year losses in revenue, S&P said. Of course, New Jersey is not among them. The state's low reserves would cover just 14 percent of the lost revenue in a moderate economic event and 13 percent in a severe one, according to the report.

The four states least capable of cushioning the blow, according to S&P -- New Jersey, Illinois, Kentucky and Pennsylvania -- all have the worst-funded public pension systems in the country. They're also among the 15 states S&P deemed most at risk, and those underfunded pension systems have something to do with their troubles. State's don't have a lot of flexibility to cope with a recession outside of increasing taxes and cutting spending. Those with "high fixed costs" like debt service and contributions to post-retirement health and pension benefits have even less wiggle room," S&P said. "Therefore, the states most at risk to experiencing severe fiscal stress in a recession are those with a combination of a propensity for revenue volatility; insufficient budget reserves to withstand the first-year fiscal deficits associated with a moderate recession; and elevated fixed costs," the analysts said. Moody's Analytics found New Jersey would lose nearly 12 percent of all revenues in a moderate recession and nearly 17 percent under a severe scenario.