July 7, 2016

Daily Alert

I. Transportation Trust Fund
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III. Sequestration of Transitional Aid Funding

Dear Mayor:

We write to provide you an update on three key and timely issues that result from the passage and adoption of the State's FY 2017 budget and the Governor's line item vetoes, revisions and Executive Orders.

I. Transportation Trust Fund

As indicted in our Friday, June 30 Dear Mayor letter a final legislative solution to reauthorize the Transportation Trust Fund (TTF) has not yet been achieved. Key decision leaders – the Governor, the Senate Leadership and the Assembly Leadership – agree on the need to increase motor fuel taxes, of which up to 30% will be paid by out-of-state drivers, in order to reinvigorate the TTF and limit the need for excess borrowing. There is disagreement, however, as to the best means to achieve offsetting tax relief as part of the legislative compromise. It is our hope and expectation that this final solution will be reached in the upcoming days and weeks.

However, upon the signing the State's Fiscal Year 2017 budget, the Governor signed Executive Order 210 which freezes all non-essential state spending on transportation projects. Yesterday, Acting Governor Guadagno released a list of TTF funded projects to be shut down as of midnight Friday. For more on this and a list of the projects, please click here.

This action, however, raises a number of concerns, particularly since it is the municipality which enters into these contracts, not the State, which has different procurement and budgetary laws. On Tuesday, the League sent correspondence to the Commissioners of the Departments of Transportation and Community Affairs. In that letter, we noted:

"*…municipal budgeting and contracting processes are different from the State's processes. For example, the State typically has in its contracts a provision that future payments would be 'subject to future appropriation.' Municipal contracts do not include this language, but will typically include language that the funds are available in a specific account. Municipalities have entered into legal contracts and local officials need to know if work can continue on already authorized projects. In the alternative, they need to know if those contracts will be nullified, and municipalities shielded from lawsuits, by the Executive Order or by the Commissioner's stop-work orders.*" We await a response.

In the meantime, for those municipalities impacted by this order and currently having a project out to bid, N.J.S.A. 40A:11-24 requires that the municipality award or reject all bids within 60 days of the receipt of bids. However, the bids "of any bidders who consent thereto may, at the request of the contracting unit, be held for consideration for such longer period as may be agreed".

II. Best Practices and CMPTRA

Included among the changes made by the Governor's line item veto of the Appropriations Act, was an amendment that could put a serious hole in virtually every municipal budget in the State. Specifically, the language puts at risk the total amount of every municipality's Consolidated Municipal Property Tax Relief (CMPTRA) allocation.

That provision, regarding the Division of Local Government Services' (DLGS) 'Best Practices' program, states (emphasis added):

Notwithstanding the provisions of any law or regulation to the contrary, the release of [1][~~the final 5% or $500, whichever is greater, of~~][1] **the total annual amount due for the current fiscal year** from Consolidated Municipal Property Tax Relief Aid to municipalities is subject to the following condition: the municipality shall submit to the Director of the Division of Local Government Services a report describing the municipality's compliance with the "Best Practices Inventory" established by the Director of the Division of Local Government Services and shall receive at least a minimum score on such inventory as determined by the Director of the Division of Local Government Services; provided, however, that the director may take into account the particular circumstances of a municipality [1][~~in computing such score~~][1]. In preparing the Best Practices Inventory, the director shall identify best municipal practices in the areas of general administration, fiscal management, and operational activities, as well as the particular circumstances of a municipality, in determining the minimum score acceptable for the release of [1][~~the final 5% or $500, whichever is greater, of~~][1] the total annual amount due for the current fiscal year [1][, ~~but in no event shall amounts be withheld with respect to municipal practices occurring prior to the issuance of the Best Practices Inventory unless related to a municipal practice identified in the Best Practices Inventory unless related to a municipal practice identified in the Best Practices Inventory established in the previous fiscal year~~][1].

As we read that language, authority has been given to the Director of DLGS: to add any requirement to the 'Inventory', as he sees fit; to determine, at his own discretion, a minimum acceptable score; and to withhold, as to him shall seem appropriate, any or all of a municipality's SFY 17 CMPTRA funding.

While we have great respect for Director Cunningham, and for DCA Commissioner Richman, we cannot believe the Legislature ever meant to grant such broad authority to any Executive Branch agency over the allocation of $281,200,000 in property tax relief funding.

We have written to Director Cunningham, detailing our concerns, and requesting that he provide guidance and assurances to our member municipalities. We await his response. We have, also, contacted key legislative leaders, in the hopes that we can work with them to address our concerns with this year's "Best Practices" program.

III. Transitional Aid

Executive Order 209 sequesters one-half of all Transitional Aid funds and withholds funding from other budget line-items, until agreement is reached on State Health Benefits savings, equaling $250 million, to be achieved by the "Plan Design committees." PL 2011, c. 78, created a 12-member Plan Design Committee for the State Health Benefits Program (SHBP) and a 6 member committee for the School Employee Health Benefits Program. The SHBP Plan Design Committee has responsibility and authority over the various plans within the Health Benefits Program. It also has the authority to create, modify, or terminate any plan or component, at its sole discretion. The committee is not scheduled to meet until October, though presumably it will now meet sooner.

During SFY 2016, eleven municipalities received transitional aid. Of that, seven were awarded Transitional Aid operated on a calendar year budget cycle. As a result, those seven municipalities, as well other calendar year municipalities that may need transitional aid, are already half-way through their budget year. For them, the date, set by statute, for the holding of a public referendum to increase the tax levy above the 2% cap has passed.

Since salary and wages are typically one of the largest line items in municipal budgets, some might suggest lay-offs or furloughs. However, ten out of the eleven SFY 2016 awardees are Civil Service municipalities. As a result, in addition to any collective bargaining agreements in place, the municipalities will be required to follow Civil Service laws and regulations which will prolong the process.

The League wrote the DCA Commissioner and asked for guidance on this issue on behalf of the municipalities in the transitional aid program. We also await his response.

These three issues are all evolving and the League will continue to keep you up-to-date on developments. In the meanwhile, any questions or comments can be directed to Mike Cerra, Assistant Executive Director at mcerra@njslom.org or 609-695-3481 x120.

Sincerely,

Michael J. Darcy, CAE Executive
Director