

August 11, 2017

**RE: WEEKLY UPDATE**

- I. State Issues
- II. Federal Issues
- III. 102nd Annual League Conference IV. Also of Interest

Dear Mayor:

Here's a recap of recent developments here in Trenton and in DC.

**I. State Issues**

**a. Governor Takes Action**

On August 7 Governor Christie took action on 51 bills. [Please click here for the League's Town Crier blog posting summarizing action taken on bills of municipal interest.](#)

In particular, we call your attention to a couple of bills:

- i. The Governor signed into law [A-1690/S-660](#), which allows fire district elections to be moved to November; eliminates certain fire district budget referenda, and eliminates certain fire district capital purchase referenda. This new law (P.L. 2017, c. 206) takes effect on January 1, 2019. [Please click here for a Town Crier post on this new law.](#)
- ii. The Governor also signed [S-1731/A-2368](#): permits a municipality to establish civil penalties for smoking in public places. The new law will permit a municipality to adopt an ordinance establishing a civil penalty of up to \$200 for smoking in a public place, where it is prohibited by the municipality or the owner or person responsible for the operation of a public place. Prior to the enactment of this statute, a violation of a 'no smoking' ordinance had to be a criminal petty disorderly persons offense, which carried a penalty of imprisonment for up to 30 days or a criminal fine of up to \$200, or both. P.L. 2017, c.191, which the League supported, took effect on August 7, 2017.

**b. Proposed Rulemaking**

**i. Proposed Amendment – “Minor Work” Definition**

The August 7 New Jersey Register includes a proposed regulation regarding ordinary maintenance and minor work under the Uniform Construction code. It appears the intent of the proposed amendments is to eliminate some permit requirements and to change the definition of “minor work.” Last October, the League wrote the Uniform Construction Advisory Board and objected to an earlier, proposed draft of these regulations. While some modifications have been made, the League maintains significant concerns and objections to the rule proposal. The League is working closely

with a number of its affiliate organizations to draft comments on these proposed regulations, which are due by October 6. We would suggest speaking to your code officials and likewise submitting comments to the Department of Community Affairs.

[Please click here for a copy of the proposed rule.](#)

ii. **DEP Proposed Rule Changes to Permit Application Requirements**

The League would like to make you aware of a few proposed rules issued by the NJ Department of Environmental Protection (DEP). The proposed rules call for a change to certain permit application requirements when gas lines are concerned. You can review these proposed rule changes, [here](#).

Currently, the rules for certain DEP permit applications require the applicant provide written consent for the planned activity from the holders of an easement or a right-of-way. The proposed rule changes would apply specifically to gas pipelines located within municipally owned rights-of-way. The rule changes would allow the DEP to recognize a designation of a route by the Board of Public Utilities (BPU) to be the same as consent for the activity from the municipality. The issue is when the BPU makes the route designation it is because the municipality has already objected to the activity within the right-of-way. In essence the DEP would be recognizing the BPU's preemption of local rule as consent from the municipality when in reality the BPU's preemption is triggered by the municipality's disapproval of the activity in the right-of-way.

Comments on these proposed rule changes are due by September 15, 2017. The League is working with stakeholders to review these proposed rules and we anticipate submitting comments in opposition to the changes. We encourage you to review these proposed rules and if you have any comments or concerns which you would like to bring to our attention please feel free to contact us.

iii. **Proposed Beekeeping Rules Recalled**

Last week we informed you about a few proposed rules which were pre-published by the NJ Division of Agriculture. Since then, then the Division has received informal comments and has recalled the proposed rules. You can read a statement on this from the Division, [here](#).

**Contacts:**

- Michael Cerra, Assistant Executive Director, [mcerra@njslom.org](mailto:mcerra@njslom.org), 609-695-3481 x120;
- Frank Marshall, Esq., League Staff Attorney, [fmarshall@njslom.org](mailto:fmarshall@njslom.org) or 609-695-3481 x137.

c. **New Jersey Court Decisions**

i. **Salary Step Increments and the Dynamic Status Quo**

Last week, we informed you about the NJ Supreme Court ruling on, [In the Matter of County of Atlantic; In the Matter of Township of Bridgewater \(077447\) \(A-98/99/10015\)](#), a case which the League participated in as amicus. If you recall, this case dealt with PERC and the dynamic status quo doctrine. The League would like to thank Joseph Hannon, Esq., of the Genova Burns law firm, who represented the League in this case. We would also like to direct you to a recent blog post by the Genova Burns law firm which provides additional analysis of this case. To view this post, please click [here](#).

ii. **Recent Court Decisions Impacting OPRA**

Two recent court decisions have been issued dealing with the Open Public Records Act (“OPRA”). The first case, [North Jersey Media Group Inc., d/b/a The Record v. State of New Jersey Office of the Governor](#) is an Appellate Court decision concerning the ability of the Superior Court to issue civil penalties for the knowing and willful violations of OPRA. The second, [Robert A. Verry v. Franklin Fire District No. 1 \(A-77-15\)\(077495\)](#) is a NJ Supreme Court case and deals with a question regarding a fire district and a volunteer fire company’s status as a public agency subject to OPRA. For further information on these cases please see our recent blog post, [here](#).

**Contact:** Frank Marshall, Esq., League Staff Attorney, [fmarshall@njslom.org](mailto:fmarshall@njslom.org), 609-695-3481 x137.

**d. TAKE ACTION: 2% Interest Arbitration Cap to Expire At End of Year**

In June 2014, the Legislature unanimously approved and the Governor enacted an extension on the 2% cap on Interest Arbitration awards. That extension is set to expire on December 31, 2017. While the 2% property tax levy cap will continue, the cap on Interest Arbitration awards will expire on the same day that the final report and recommendations of the Police and Fire Public Interest Arbitration Impact Task Force is due, unless the Legislature and Governor act.

The temporary 2% cap on police and fire arbitration contract awards has been an effective tool to control increasing salary costs and provide a solution to assist local governments in keeping property taxes down and costs under control. However, we recognize that this change in arbitration reform needs a longer time to mature in order to see the benefits of the legislation and its actual impact on the cost of local government budgets and the impact on taxpayers.

**We urge you to pass a resolution ([pdf](#)) urging the State Legislature and Governor to extend the 2% cap on Police and Fire Arbitration Contract Awards for an additional five years, at which time the Legislature will have hard data to examine and then make a final decision as to whether this law should be made permanent.**

If the cap on interest arbitration expires, while the 2% property tax levy cap remains in effect, municipalities will be forced to reduce or eliminate municipal services in order to fund interest arbitration awards.

**Contacts:** Michael Cerra, Assistant Executive Director, [mcerra@njslom.org](mailto:mcerra@njslom.org), 609-695-3481 x120;  
Lori Buckelew, Senior Legislative Analyst, [lbuckelew@njslom.org](mailto:lbuckelew@njslom.org), 609-695-3481 x112.

### **e. State Health Benefits Program (SHBP) Recommended 2018 Rates**

At the August 3 State Health Benefits Commission Rate Renewal meeting, the State's actuarial consultant, AON, recommended no increase in premium rates for Active Employees, a decrease of 2.3% for Early Retirees, and a decrease of 6.2% for Medicare Retirees. In the aggregate, the recommended rate action represents an overall rate reduction of 1.3% for the Local Government Group State Health Benefits program. One item of note, effective January 1, 2018, Optum will be administering the prescription drug benefits, instead of Express Scripts. Click [here](#) for a summary of the recommendations.

**Contact:** Lori Buckelew, Senior Legislative Analyst, [lbuckelew@njslom.org](mailto:lbuckelew@njslom.org), 609-695-3481 x112.

## **II. Federal Issues**

### **a. Preliminary Opioid Crisis Commission Report Released**

The President's Commission on Combating Drug Addiction and Opioid Abuse has released a preliminary report. You can access the Draft Interim Report through a link on the [Opioid Crisis Commission website](#).

The Commission is urging the Chief Executive to declare a national emergency. The report notes, "With approximately 142 Americans dying every day, America is enduring a death toll equal to September 11th every three weeks. After September 11th, our President and our nation banded together to use every tool at our disposal to prevent any further American deaths. Your declaration would empower your cabinet to take bold steps and would force Congress to focus on funding and empowering the Executive Branch even further to deal with this loss of life. It would also awaken every American to this simple fact: if this scourge has not found you or your family yet, without bold action by everyone, it soon will."

Among other recommendations, which stress the need for intergovernmental cooperation, the Commission calls for regulatory flexibility to allow States to increase treatment capacity, mandated prescriber education at medical and dental schools, dedicated funding to increase access to Medication-Assisted Treatment, increased naloxone distribution, the development and distribution to state and local law enforcement of fentanyl detectors, data sharing, and enforcement of the Mental Health Parity and Addiction Equity Act.

On Thursday, the President expressed his intent to act on the Commission's primary recommendation and to declare a National state of emergency, due to the tragic consequences of

the opioid epidemic. If and when that declaration is issued, municipal actions to combat the problem would be unfettered from ‘cap’ law restrictions.

We will keep you posted, on the President’s follow through and on further developments, as the Commission works toward its final report and recommendations.

**Contact:** Jon Moran, Sr. Legislative Analyst, [jmoran@njslom.org](mailto:jmoran@njslom.org) or 609-695-3481 x121.

### **b. Federal Transit Administration Public-Private Partnership Rule Proposed for Public Comment**

The U.S. Department of Transportation’s (U.S. DOT) Federal Transit Administration (FTA) has announced a proposal to facilitate public-private partnerships in public transportation. The newly proposed Private Investment Project Procedures (PIPP) for public transportation capital projects will help the federal government develop more effective approaches to spurring private participation and investment in areas such as project planning, development, finance, design, construction, maintenance, and operations.

You can access the [Notice of Proposed Rulemaking \(NPRM\)](#) on the internet. Deadline for the receipt of comments is September 29, 2017.

If you do submit comments, please share with us at [jmoran@njslom.org](mailto:jmoran@njslom.org).

**Contact:** Jon Moran, Sr. Legislative Analyst, [jmoran@njslom.org](mailto:jmoran@njslom.org) or 609-695-3481 x121.

### **c. Time to Talk to Your Federal Reps!**

With both Houses of Congress in recess, and most Federal Legislators back home in their districts, now is the time to arrange a meeting to discuss matters of vital mutual interest. See our August 4 Weekly Update for information concerning the Federal FY ’18 appropriations package, federal tax reform proposals and the federal debt ceiling. You can also ask your representatives about when action on an infrastructure initiative is expected.

## **III. 102nd Annual League Conference**

### **a. Don’t Use Unauthorized Hotel Reservation Services**

Every year there are unauthorized firms soliciting housing and hotel reservations from attendees at the Annual League Conference. We assure you that the only firm authorized to handle our conference housing reservations is A.C. Central Reservations. This information is on the top of the official conference housing form sent to all municipal clerks and posted on our web site:

<https://nj-njslom.civicplus.com/302/2017-Conference>

## **b. Plan Now for November: Exhibit Highlights**

The Exhibit Hall at the League's Annual Conference offers a wide variety of services and products. Each day at the conference, take the opportunity to enjoy the exhibit floor by stopping in for a nice lunch and visits to the booths for every municipal need, concern, and interest.

Begin to make your list of exhibitors to visit including current favorites and the 62 new exhibiting companies—or contact them now! Plan today by visiting our interactive map at <https://shows.map-dynamics.com/NJLM2017/>

## **IV. Also of Interest**

### **a. Innovation in Governance Recognition Program**

The New Jersey Department of Community Affairs and the New Jersey League of Municipalities will again acknowledge and promote Innovation in Governance through our annual recognition program. This is a great opportunity to showcase innovative solutions to any problems that have cropped up – either suddenly or over time – in your municipality. It can also be an opportunity to let your peers in on innovations that prevented problems from even arising.

This year, the Innovation in Governance Awards Committee is looking for any original approaches in public administration undertaken by a Garden State municipality during the past 16 months – from the beginning of June 2016 to September 30, 2017. Any innovation in any department or program will be considered for recognition.

This program was established to highlight exemplary local government activities that exhibit creative and practical approaches to local problems and concerns. We will share the winning entries with municipal leaders at the 102nd Annual League of Municipalities Conference Mayors' Luncheon on Wednesday, November 15, 2017 at the Sheraton in Atlantic City, and in the December issue of our magazine, New Jersey Municipalities.

The application can be accessed by clicking on either of the links below:

- League of Municipalities website – [2017 Innovation Application](#)
- Department of Community Affairs website – [Innovation Application and Letter](#)

The nomination deadline for this program is October 2. Accordingly, we encourage you to forward this information to the appropriate people in your municipality today, giving them ample time to meet our deadline.

**Contact:** Ciara Bradley, Legislative Administrator, [cbradley@njslom.org](mailto:cbradley@njslom.org) , 609-695-3481 x128.

## **b. Free Event! Creating Healthy and Inclusive Communities**

Inclusive communities provide individuals with disabilities equal access and opportunities for healthy living. Inclusive Health goals include achieving policy and systems implementation, as well as environmental changes that increase access to physical activity and a healthy lifestyle.

**Program highlights include:** Inspirational conversations and information about resources and funding through Inclusive Health. This event is sponsored by NJ Dept. of Health, NJ Dept. of Human Services, and America Walks.

**Date:** Friday, October 13, 2017

**Time:** 9:00am-3:30pm

**Location:** RWJ Fitness & Wellness Center, 31100 Quakerbridge Rd., Hamilton, NJ

**For details contact:** [Peri.Nearon@doh.nj.gov](mailto:Peri.Nearon@doh.nj.gov)

## **c. Free Training to Keep Municipalities in Compliance with the National Flood Insurance Program**

In order to remain in good standing with the FEMA National Flood Insurance Program (NFIP), your community needs to continue to enforce your Local Flood Damage Prevention Ordinance. Information on the free training program and scheduling can be obtained at <http://www.njafm.org/cfm> and <http://www.njafm.org/resources/Documents/FPMTraining/Schedule%20-%20Floodplain%20Training.pdf>. The free training program will be available in all 21 counties.

For additional information on the training, contact James Watt, Division of Dam Safety and Flood Control at 609-292-2296 or [James.Watt@dep.nj.gov](mailto:James.Watt@dep.nj.gov)

## **d. Bloomberg Philanthropies Awards for Innovations**

It is a pleasure to share this invitation to participate in the 2017 Mayors Challenge, Bloomberg Philanthropies' initiative to help city leaders in the United States think big, be bold and uncover inventive – and, ultimately replicable – ideas that tackle the most urgent issues of the day. This year's Challenge is designed to provide more support – and more prize money – to support your efforts to create innovative solutions.

Bloomberg Philanthropies will provide expert support and guidance to every applicant city. Up to 35 Champion Cities will as much as \$100,000 to test their ideas, and of those, five will then receive millions in total to implement their ideas.

To sign up and for more details, please click [here](#). We hope that you participate in this unique opportunity.

If you have any questions, please feel free to email [mayorschallenge@bloombergcities.org](mailto:mayorschallenge@bloombergcities.org)

**e. Free Webinar on Sign Laws and Panhandling Ordinance**

On August 31, 2017, the State and Local Legal Center will be hosting a webinar discussing how local governments have been modifying their sign codes to come in compliance with the U.S. Supreme Court's 2015 holding in [Reed v. Town of Gilbert](#). The webinar will also focus on how the holding in *Reed* that content-based regulations are subject to strict scrutiny has been applied by the lower courts.

To register for this free webinar please click, [here](#). Sincerely,

Michael J. Darcy  
Executive Director, CAE