

February 23, 2018

**RE: WEEKLY UPDATE**

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Dear Mayor:

**I. State Issues**

**a. Bill to Transfer Control of PFRS to a Labor-Management Board before Senate **Time Sensitive****

**On Monday, February 26**, the full Senate will consider [S-5](#), which transfers the management of Police and Fire Retirement System (PFRS) to a Board of Trustees of PFRS. This legislation would disproportionately shift control of the PFRS, from balanced labor-management control to a union-dominated (7-5) decision-making structure. (To date, an Assembly companion has not been introduced.)

The League adamantly **opposes** [S-5](#).

**Please contact and ask your State Senator to oppose this bill, unless it is amended to add the necessary safeguards advocated by the League, the Conference of Mayors (NJCM), and the Association of Counties (NJAC.)**

You can find your Senator's contact information, listed by municipality, [here](#).

Given the inaction on extending the 2% cap on binding interest arbitration awards, the sun setting of employee health benefit controls implemented under Chapter 78, the restricting of SALT deductions on federal income taxes, and the long-term ramifications of enacting this legislation without the recommended safeguards, municipal and county leaders fear they are facing a perfect storm of uncontrollable property tax growth and substantial service cuts.

Funded entirely by property taxpayer dollars, municipal and county governments will spend an estimated \$913.0 million in 2018 to subsidize the Police and Firemen's Retirement System (PFRS), while PFRS members will contribute approximately \$334.0 million to the defined benefit plan. In other words, property taxpayers will finance over 73.0% of PFRS in 2018, while PFRS members will pay 27.0%.

In its current form, the bill will allow public safety union members and retirees to enhance their own benefits; while forcing their public employers, and New Jersey taxpayers, to assume a disproportionate amount of the risk.

The legislation gives the labor-majority board, *at its discretion*, and at such time and in such a manner as it determines, the ability to:

- Enhance any benefit set forth in N.J.S.A. 43:16A-1 et seq.; and
- Modify any such benefit as an alternative to an increase in the member contribution rate; and
- Reinstate, when appropriate, such reduced benefit to the statutory level without an additional contribution by the member.

The legislation would allow the PFRS to enhance member benefits without meeting the 80% target fund ratio. The target fund ratio is a measure put in place to ensure the financial stability of the State's pension

systems, prior to enhancing member benefits; and it is a prudent requirement that serves to protect all the State's other pension systems.

PFRS is not like a 401K. Rather, it is a defined benefit program, in which the employers are responsible for any shortfall in funding. Employees' contribution rates are capped by statute at 10% of their salary; while the employers' contribution rates are based on the fund's needs and performance, based on actuarial reports. Currently, that requires local employers to contribute 27.35% of the employees' salary.

**As a result, any shortfall due to a downturn in the economy, mismanagement of fund assets, or any enhancement in benefits ordered by the labor-controlled board, will be borne by property taxpayers.**

The League, along with NJCM and NJAC, opposes the bill for the reasons outlined above. We have unsuccessfully requested the following taxpayer-friendly changes that will serve to protect the long-term health and viability of PERS, as well as establish critical safeguards that require the new Board of Trustees to manage valuable property-taxpayers'-dollars in an effective and efficient manner.

- Create a 15-member PFRS Board of Trustees comprised of an equal number of labor and management representatives with 1 independent member.
- Authorize the League and Association of Counties to make direct management appointments to the new Board of Trustees, as is the case for the labor representatives;
- Prohibit the new Board of Trustees from enhancing member benefits until the system achieves a target funded ratio of 80%, as required under current law.
- Require a vote of 2/3 of the full membership of the new Board of Trustees to enhance members benefits, and only after the system achieves a target funded ratio of 80%; and
- Establish a mandatory retirement age.

The League and Association of Counties further suggest that if the Legislature and Governor fail to amend the measure accordingly, then PFRS must be changed to a defined contribution plan, where employees make greater contributions and assume a greater risk of loss as is the case with 401(k) investments.

**Contacts:**

- Michael F. 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.

**b. A-3414/S-1964 – The Alternative to S-5**

On February 16, Assemblyman Thomson, who is a pension actuary by trade, introduced legislation proposing alternatives to the legislation (S-5) that transfers management of Police and Fire Retirement System (PFRS) to labor dominated Board of Trustees. Likewise, Senator Declan O'Scanlon has introduced an identical Senate companion. While [A-3414 and S-1964](#) include many of the same elements of S-5 there are differences, which the League believes are improvement over S-5. Both bills await consideration by their respective committees. For more please see our [blog post](#).

**Contacts:**

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**c. Senate President's Working Group Announced**

On Tuesday, Senate President Sweeney announced the creation of the Economic and Fiscal Policy Working Group to evaluate the impact of the federal tax law on New Jersey's economy, jobs, housing values and revenue collections; and to assess the broad array of issues that impact taxes and spending at all levels of government in New Jersey. The 24 member group is led by Senators Sarlo and Oroho and Assemblyman Greenwald. In announcing the working group, Senate President Sweeney stated that “we need to know how we can mitigate the negative impact of the federal tax plan and undertake a long-overdue examination of the adequacy, fairness, and competitiveness of our tax structure. We want to make sure that government spending is efficient and effective so that we maximize the impact and minimize the costs.”

The working group will be analyzing: the fairness and efficiency of the state and local tax system; county school districts; K-12 regionalization; options to control property taxes; the stabilization of the pension system; an assessment of the causes and extent of out-migration; and best practices in the delivery of government services at all levels, to make New Jersey a better and more affordable place to live.

Senator Sarlo noted that the “working sessions will be private and deliberative.” The working group members include Senators Singleton, Addiego and Bucco, Assemblywoman Pintor Marin, Marc Pfeiffer, Dr. Ray Caprio and Dr. Henry Coleman.

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

#### **d. TTF Municipal Aid Grant Awards Announced**

Earlier this week the State announced that 505 municipalities will be receiving more than \$161 million in Transportation Trust Fund (TTF) Municipal Aid grants in FY2018. The Governor noted that the, “renewal of the Transportation Trust Fund made it possible to more than double the size of the grant program from \$78.75 million in 2017 to \$161.25 million in 2018. These funds are instrumental in allowing each municipality to maintain its local roads and bridges in a state of good repair. Providing Municipal Aid grants to nearly 90 percent of our towns and cities is truly historic and demonstrates our commitment to relieve pressure on local property taxpayers”. The list of awards can be found by clicking [here](#).

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

#### **e. Electronic Municipal Tax Lien Sales**

The Division of Local Government Services has issued [Local Finance Notice 2018-08](#) to discuss the recent adoption of the regulations for electronic municipal tax lien sales. In order to have a smooth transition from the Pilot program to the new regulatory requirements, the Division is permitting municipalities that have been previously approved by DLGS to conduct online tax sales under the rules of the Pilot program, until June 30, 2018. If a municipality was not previously approved, then the new regulations are in effect immediately. The Local Finance Notice details the notice and advertising requirements; the online bidding process; procuring a third party online tax sale vendor; contract requirements with the vendor; vendor cybersecurity; and internal controls. We suggest you review this Local Finance Notice with your Tax Collector. In addition, the League will be holding a webinar from 11:00 a.m. to 12 noon, on March 23, on Electronic Municipal Tax Lien Sales. For more information please click [here](#).

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

## **f. Attorney General Announces New Office to Fight Opioid Addiction Crisis**

On Thursday, NJ Attorney General Grewal announced the creation of the Office of the New Jersey Coordinator of Addiction Response & Enforcement Strategies (“NJ CARES”) dedicated to fighting the opioid epidemic. NJ CARES will be responsible for overseeing addiction fighting efforts across the Department of Law and Public Safety and creating partnerships with other agencies and groups. Sharon Joyce, Acting Director of the Division of Consumer Affairs and Deputy Director in the Division of Law, has been named Director of NJ CARES.

NJ CARES will be rolling out a series of new addiction fighting programs, including Statewide Opioid Response Teams (“ORT”), which is a 24/7 program in which participating police departments and EMTs work with volunteers and local treatment agencies to provide crisis intervention to individuals suffering from opioid abuse. ORT will be called by local police or EMTs to assist addicted individuals by providing them with support, information, and referrals to treatment programs. For more information on the new office please visit the NJ CARES [website](#).

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

## **g. Supreme Court Rules in Municipal Favor on Torts Claim Act**

On Wednesday, the NJ Supreme Court issued its ruling in [Hazel Hamrick Lee v. Florence Brown, et al.](#), a case in which the League joined as Amicus. In this case, the Court was tasked with interpreting the Tort Claims Act (“TCA”), specifically regarding the application, under particular circumstances, of absolute immunity from tort liability, rather than qualified immunity.

Absolute immunity means exactly what it sounds like – complete immunity from a claim for damages and an affirmative defense that insulates a municipality and its employees from lawsuits at an early stage of litigation. On the other hand, qualified immunity is much different and opens a municipality up to a much greater possibility of being held liable for damages unless it can be proven that the municipality or its employee acted in good faith. Proving good faith can be difficult and often time requires lengthy and expensive litigation.

Under the TCA, an employee and the municipality are afforded absolute immunity from liability for damages arising out of an employee’s *failure to enforce a law*. In contrast, municipalities and their employees are granted only qualified immunity when they are *enforcing the law* – a subtle, but important, distinction. In [Hazel Hamrick Lee](#), the Court examined this distinction in their quest to determine which form of immunity to apply.

In its 5-0 opinion (Justice Solomon and Timpone did not participate), the NJ Supreme Court ruled that a fire official and his municipal employer were entitled to absolute immunity under the TCA. The decision to apply absolute immunity turned on the Court determining that, despite the official’s conduct of inspecting and issuing notices of violations, these actions were not sufficient enough to be considered an enforcement of a law. Instead, the Court determined that the official failed to enforce the law, and thus entitled to absolute immunity, when the official failed to report the findings of his inspection to his proper superiors.

This is an important decision that provides municipalities and their employees with the proper protection from liability needed in order to more effectively and efficiently carry out their duties, as contemplated by the TCA. You should review this decision with your own municipal attorney and risk manager for further information.

We would like to thank Robert Renaud of the firm Palumbo, Renaud, & Deappolonio, LLC., for his tremendous work in representing both the League and the Institute for Local Government Attorneys in this matter.

**Contact:** Frank Marshall, Esq., League Staff Attorney, [FMarshall@njslom.org](mailto:FMarshall@njslom.org) or 609-695-3481 x. 137.

## **II. League Conference Follow- Up**

### **a. Claim Your CEUs from the Annual Conference**

Attention Municipal Officials! Do Not Forget to Claim Your CEUs from the 2017 NJLM Annual Conference! Please click on the following link to claim your credits: [www.njslom.org/confceu](http://www.njslom.org/confceu).

### **b. The Conference App is Still Available!**

Misplaced your printed Session or Exhibitor Program Guide? The app can still be downloaded in your app store to reference session details or view contact information for participating consultants and exhibitors. The app will be available for download through the end of this calendar year and remains available for accessing on your device as long as it is installed.

### **c. Exhibits at the Annual Conference**

Don't forget to follow up with the exhibitors you met during the Annual Conference! They're available to answer your questions and provide solutions to your town's issues. The full listing with contact information is available on the interactive floor plan and the mobile app.

## **III. Also of Interest**

### **a. LEAD Marijuana Symposium**

Law Enforcement Against Drugs (LEAD) is holding a marijuana symposium in conjunction with its annual conference March 18-20 in Atlantic City.

It will take an agnostic look at marijuana, legal or not; including national and international presenters in the fields of health, law, and policy.

For details, [click here](#).

### **b. The NJ Conservation Foundation Holds its 22nd Annual NJ Land Conservation Rally**

The Rally is a one-day educational conference program bringing professionals together in connection with environmental leadership, ideas, and experiences. The program is beneficial for those looking to obtain CEU's in NJ Recreation and Parks, NJ Urban and Community Forestry, American Planning Assoc. Certification Maintenance, and more. There will an abundance of workshops and exhibitors, including keynote speaker and Author, David Case.

The Rally is **March 2, 2018**, at the Hyatt Regency Hotel, New Brunswick, NJ. You can check the agenda by clicking [here](#). Register soon or [click here](#) and reserve your spot today!

**Contact:** Laura Szwak at [rally@njconservation.org](mailto:rally@njconservation.org) or 908-234-1225.

### **c. NJ Future Redevelopment Forum**

Local government employees may benefit from a reduced registration at the March 9 Redevelopment Forum in New Brunswick held by New Jersey Future. The deadline to apply is March 2. [Please click here for more information.](#)

Very truly yours,

Michael F. Cerra  
Assistant Executive Director