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June 22, 2018

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I. State Issues

a. Budget Impasse Continues

Yesterday, the State Senate, in a 21-17 vote, and the General Assembly, in a 46-28 vote, passed [S-2019](#), a state budget for fiscal year 2019. The State Constitution requires the adoption of a balanced state budget by July 1.

Earlier in the week, Governor Phil Murphy promised to veto that budget, disagreeing with the Legislature's revenue projections and his preference for "sustainable" revenues, such as a "millionaire's tax." The failure to come together by the deadline would result in a partial state shut-down. The Governor has ordered a freeze on state hiring and spending, pending a budget agreement. He has also ordered State Executive Branch departments and agencies to draw up operational plans, should no resolution be reached.

Of particular interest to municipalities, we can report that the Legislature's budget keeps the energy tax receipts (ETR) off-budget. As you may recall, the Governor's proposed budget intended to place these municipal revenues on-budget for general fund purposes and replace these revenues from the Property Tax Relief Fund. We ask that you contact your Legislators and thank them for protecting the ETR "lock box" and ask them to remain firm in this action. Please see our [Town Crier blog post](#) for more on the topic.

Both houses also passed [S-2](#), which allocates State school aid from the 2019-2020 through 2024-2025 school years. While it is reported that the Legislature and Administration are close on the school funding issue, the Governor has indicated he will not sign this legislation until a state budget agreement is reached. [Click here for more regarding the school funding bill.](#)

For more on these developments, please see these following stories:

NJ Spotlight: <http://www.njspotlight.com/stories/18/06/22/push-comes-to-shove-legislature-sends-its-2019-spending-bill-to-murphy/>

Advanced Media:

https://www.nj.com/politics/index.ssf/2018/06/democrats_defy_phil_murphy_pass_their_own_state_bu.html#incart_2box_nj-homepage-featured

Politico NJ: <https://www.politico.com/states/new-jersey/story/2018/06/21/budget-talks-fall-apart-again-after-murphy-lawmakers-meet-twice-482699>

Contact:

Michael F. Cerra, Assistant Executive Director, mcerra@njslo.org, 609-695-3481, Ext. 120

Jon Moran, Senior Legislative Analyst, jmoran@njslom.org, 609-695-3481, Ext. 121

b. Amendments to OPRA and OPMA Advance in Senate

On June 14, by a vote of 4-0, the Senate State Government Committee amended and released [S-106](#), which revises the Open Public Meetings Act (OPMA), and [S-107](#), which revises the Open Public Records Act (OPRA). The League testified, along with the New Jersey Association of Counties and the School Boards Association, in opposition. For more on the amendments please see our [blog post](#).

Contact: Lori Buckelew, Senior Legislative Analyst, lbuckelew@njslom.org, 609-695-3481, Ext. 112

c. Senate Passes Beach Public Access Bill

Yesterday, the State Senate passed [S-1074](#), a bill which the League opposes. This bill, like similar bills from prior legislative sessions, seeks to ensure public access to beaches and waterways through the public trust doctrine. While the League supports such public access, the provisions of S-1074 granting authority to the DEP to implement the public trust doctrine are far too vague and broad. Furthermore, S-1074 fails to take into account the responsibilities placed on municipalities to police and maintain local beaches and waterways.

A-4221, the Assembly companion bill was recently introduced and has not yet been scheduled for committee hearings. The League's goal is to ensure that municipal concerns and considerations are taken into account, should any public access bill make its way onto the Governor's desk. We will keep our members informed on this matter, including information on what you can do to help ensure municipal concerns are heard.

Contact: Frank Marshall, Esq., League Staff Attorney, FMarshall@njslom.org, 609-695-3481, Ext. 137

d. Preemptive 'Bag Bill' Sent to Governor

Yesterday in Trenton, both House passed legislation that would impose a Statewide fee on single-use carryout bags provided to customers at retail check-out counters. The League of Municipalities opposes the legislation ([A-3267/S-2600](#)), which would, in part, supersede and preempt local ordinances that are being readied for adoption, and that are meant to address problems caused by non-reusable carriers.

Already, a number of towns have taken positive action to encourage retailers and shoppers to

better protect the environment by using more durable carriers. These ordinances are grandfathered by the proposal. But others are in the process of doing the same. We see no environmental benefit in preempting their actions.

For that reason, we must oppose A-3267. Please contact the Governor's Office to express your concerns with the provisions that would prevent local actions on this issue.

Contact: Jon Moran, Senior Legislative Analyst, jmoran@njslom.org, 609-695-3481, Ext. 121

e. Legal Update

i. Supreme Court Issues Decision Regarding MLUL, Time of Application Rule

Earlier this week the State Supreme Court released its unanimous decision in [Dunbar Homes, Inc. v. Zoning Board of Adjustment of Franklin Twp.](#), a case which the League participated in as amicus. In short, this case dealt with the Municipal Land Use Law's (MLUL) Time of Application Rule (TOA), which is used to determine what municipal ordinances govern a land use development application. As the name denotes, this provision of the MLUL provides that the ordinances effective at the time of application are those which the development application must adhere to.

Specifically under review in the Dunbar case was the question: when is an application for development considered complete, thus triggering the time of application rule? The Court sided with the zoning board and the League, finding the language of the MLUL unambiguous; an application for development is only complete when all required documents are submitted for review, including all documents required by municipal ordinance. Thus, an application that fails to include all documents required by municipal ordinance is not a complete application and, therefore, the benefits of the TOA rule do not apply.

We would like to thank Louis N. Rainone, Esq., of Rainone, Coughlin, Minchello, LLC, who represented Franklin Township, and League Associate Counsel Clifford Gibbons, Esq., who represented the League, for their outstanding work on this matter.

You should review this decision with your municipal and zoning board attorneys for further information on how it may impact your municipality.

Contact: Frank Marshall, Esq., League Staff Attorney, FMarshall@njslom.org, 609-695-3481, Ext. 137

ii. NJ Supreme Court Limits Rice Notice Requirements, and Clarifies 'Promptly Available' Meeting Minutes

On Thursday, the State Supreme Court issued its much-anticipated decision in [Kean Federation of Teachers v. Ada Morell](#), a case which the League joined as amicus. In this case, the Court addressed various issues involving the Open Public Meetings Act (OPMA), including Rice notices and the meaning of "promptly available" as it relates to the release of meeting minutes.

With regards to Rice notice requirements, the Court overturned the Appellate Division ruling which required Rice notices be sent out "in advance of any meeting at which a personnel decision may occur." The Court, siding with the League and other amici, held that the lower court's ruling incorrectly expanded the reach of Rice notices and OPMA requirements. The Court clarified that Rice notices are required only when the public body first makes the choice to

discuss personnel matter in a closed session, and only when the discussion could result in adverse employment actions.

Turning to the second issue, the Court reiterated the need for a fact sensitive approach when determining whether or not meeting minutes have been made “promptly available.” The Court acknowledged that this was the approach taken by the Appellate Division but took issue with the remedy devised by the lower court. The Court overturned the lower court’s requirement that minutes be released within a specific amount of time, finding that to do so would intrude on the public body’s prerogative as to how it operates. The Court cautioned, however, that making meeting minutes promptly available is an essential function of a public body, and therefore the operations of a public body should conform to meet this function.

You should review this decision with your municipal attorney for more information on how it impacts your municipality. This information should also be shared with your municipal clerk.

We would like to thank John Gillespie, who represented the League in this matter, for his outstanding work on this case.

Contact: Frank Marshall, Esq., League Staff Attorney, FMarshall@njslom.org, 609-695-3481, Ext. 137

II. Federal Issue

a. Senate Rejects Administration ‘Claw-back’ Proposal

On Wednesday, in Washington, with a 48-50 vote, the United State Senate rejected the Administration’s rescission bill. In addition to questions about proposed cuts to certain programs, a number of legislators from both parties were concerned that the move could have long-term repercussions, and endanger future bipartisan cooperation on any spending bills.

As reported in our [May 11 Issues Alert](#), the President had asked Congress to rescind monies for certain programs, which were funded in the March bipartisan compromise. That agreement prevented a government shut-down. Both Houses had to approve the \$15.4 Billion (later scaled back to \$14.7 Billion) claw-back request within 45 days or the monies would remain in the 2018 spending plan. The House had approved the request, but the Wednesday Senate vote prevents the cuts.

This was the largest single rescission request, ever, and the first such initiative in nearly 20 years. It was expected to be the President’s first such request. But others are likely to follow as previous press reports have estimated that the Administration hopes to claw-back \$60 billion in total.

We remain worried that Amtrak Gateway funding could be jeopardized in future requests.

Contact: Jon Moran, Senior Legislative Analyst, jmoran@njslom.org, 609-695-3481, Ext. 121.

III. League Conference

a. Unauthorized Hotel Reservation Services

Every year there are unauthorized firms soliciting housing and hotel reservations from attendees at the 103rd Annual League Conference. We assure you that the only firm authorized to handle our conference housing reservations is AC Central Reservations. This information is on the top of the official conference housing form sent to all municipal clerks and posted on our [website](#).

Using unauthorized reservation services creates real problems for you and the conference as a whole. You cannot be assured your credit card information is secure and your room reservation may not actually be made. Using unauthorized services means your room will not be part of the official conference housing block, so you won't get emergency housing information (which happened in both 2011 and 2012), nor will there be adequate shuttle bus services to your hotel.

As always, the League is available to answer your questions on any aspect of the annual conference and we strive to make your participation both enjoyable and highly productive.

Contact: Michael J. Darcy, CAE, Executive Director, mdarcy@njslom.org, 609-695-3481, Ext. 116.

b. Exhibits at the Annual Conference

Do you know a vendor that would be a good fit for the Annual Conference? If so, ask them about being an exhibitor or have them contact Kristin Lawrence, Exhibit Manager at 609-695-3481, Ext. 125, or klawrence@njslom.org. Information is also available on njslom.org/exhibit.

IV. Also of Interest

a. Updated Mayors Wellness Campaign Toolkit

The new and improved Mayors Wellness Campaign (MWC) toolkit is geared to help mayors and community organizations address their unique local health needs. The toolkit contains an introductory video, and nearly 30 evidence-based, step-by-step, cost-effective program ideas in four main categories: physical health and nutrition, environment and health, education and health, and arts and health. Users can filter their search by the age of the population they wish to serve, and by the season. View the MWC at-a-glance program guide to help determine which program is best for your community. Check out the [new MWC toolkit here](#) !

Questions about the toolkit or how to join the MWC? Contact Deborah Levine at dlevine@njhcqi.org or 609-452-5980.

b. Connect with the NJLM National Affiliate

The National League of Cities represents 19,000 cities, towns, and villages across

America—giving local leaders a voice in Washington and beyond. Every day, NLC posts news, resources, and opportunities that empower elected officials to become better leaders. Sign up for NLC's Weekly newsletter at nlc.org, and follow NLC on [Facebook](#) (National League of Cities), [Twitter](#) (@leagueofcities), [Instagram](#) (@leagueofcities), and [LinkedIn](#) (National League of Cities).



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