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February 22, 2018

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Municipal Clerks: Please forward to Mayor, Governing Body and Department Heads.

I. State Issues

a. Marijuana Legalization Weekly Update 2/22/19

Over the holiday weekend, published reports in various outlets indicate that the Governor, the Senate President and the Assembly Speaker have reached an agreement on the major broad strokes of legalization and regulation of adult cannabis use. It has also been reported that news of this consensus on major sticking points was leaked prematurely, as other important issues, including issues of particular interest to municipalities, are still being negotiated.

From these news reports, it appears there is an agreement on how the state would tax cannabis products. **It is our understanding, however, that while progress has been made, a number of issues still need to be worked out.**

The current legislative proposal sets the tax rate at 12%, which would include the State's current sales tax. While the Governor's office never publicly stated what it believes the tax rate should be it has been reported consistently that the Governor wanted a 25% tax rate. Now, there is an apparent agreement to instead implement a \$42 per ounce state tax on the sale of recreational cannabis. The rationale behind this new approach is that taxing cannabis sales by weight will mitigate any negative impact based on market demands and provide a steadier revenue stream to the State.

Here are some important takeaways for local officials:

- It is our understanding that there is no agreement in place on the rate of the local option tax. The current proposal includes an optional 2% excise tax on any of the 4 proposed licenses. The League continues to argue that municipalities should have the flexibility to implement a rate up to 5%. **This is still an area of negotiation.**
- It is also our understanding that issue of expungement and restorative justice is still subject to negotiation. Currently, the bill allows for the automatic eligibility for expungement of convictions for possession of 50 grams or less of marijuana. There remain concerns regarding an individual's cost of seeking expungement, which can be time-consuming, complicated and burdensome. **This too is still an area of negotiation.**

Some media accounts have suggested that a final vote could come this month. That would appear very unlikely since there are a number of outstanding issues. Further, even with an agreement in place the respective legislative caucuses would need to be briefed, votes would need to be whipped and there could be further hearings and amendments on other issues. Thus, it appears more likely that a vote could come by the end of March.

Please take action and [contact your Legislators](#) immediately and let them know your thoughts on the issue. Further, we urge you to prioritize the issues highlighted above, that is the need to increase the 2% local option tax to 5% so that taxpayers are made whole and full funding and expansion of the expungement provisions. **Your timely outreach to your State representatives can help us achieve a positive outcome for municipalities.**

[The League's November 27 letter](#) has additional details as does the [PDF of the free webinar](#) offered by the League on November 30 and the Cannabis Legalization [web page](#).

Contacts: Michael F. Cerra, Assistant Executive Director, mcerra@njlm.org, 609-695-3481 x120.

b. Legislation Opening Preserved Farmland to Commercial Activity Advances in Senate

The League **opposes** [S-3393](#), which would establish a pilot program to allow special occasion events to be conducted on preserved farmland under certain conditions. The bill directs the State Agriculture Development Committee (SADC) to establish a pilot program, allowing for special occasion events to be conducted on preserved farmland. The bill was recently introduced in the Senate and advanced quickly to approval in a floor vote yesterday. To date there is no Assembly companion.

We note that this follows the pilot program in which certain wineries are permitted to host special events under certain conditions. The League is part of an SADC Work Group evaluating that pilot and there will be recommendations forthcoming that address the very issue in this legislation. Thus, we view this legislation as premature and unnecessary as the SADC Work Group should be allowed to finish its work and make its recommendations under the current pilot program's limited scope before expanding to a pilot program that includes all preserved farmland.

It is our belief that this legislation circumvents the objectives of the State's successful farmland preservation efforts, in which public dollars have been committed to permanently preserve prime agricultural lands throughout the Garden State.

Further, we are concerned that S-3393 would qualify preserved farmland for commercial activities without the appropriate degree of local input and oversight over the frequency, intensity and other planning related impacts. Of particular concern is the language in the bill that provides that such events may be held as a right, without variance or site plan approval. This language essentially provides right to farm protection to nonagricultural activities, without the due-process required to balance the competing interests.

Since the bill has already passed the Senate, we suggest contacting your Assembly representatives and urge their opposition to S-3393. The League will advise you if and when an Assembly companion is introduced.

Contact: Michael F. Cerra, Assistant Executive Director, mcerra@njlm.org, 609-695-3481 x120.

c. Bill Advancing that Could Lead to Increase Public School Costs

On Monday the Assembly will be considering [A-3395](#), which would prohibit public school districts and institutions of higher education for entering into a subcontract, which would affect the employment of covered employees, during the term of an existing collective bargaining agreement.

Subcontracting has a proven track record of success in New Jersey and is a financial management tool that saves public school districts, colleges and universities millions of dollars annually. These savings are used not only to expand educational programs and services, hire instructional staff but control the growth of property taxes and tuition. As it provides benefits to both students and taxpayers, subcontracting should remain a viable option for the public employers overseeing our educational institutions to pursue.

While A-3395 does not apply to municipalities we are concern that absent the ability to subcontract, particularly during times of fiscal crisis, public schools will need to explore other ways to balance their budgets, including increases in property taxes, cuts to critical programs and services, and staff layoffs.

Contact: Lori Buckelew, Senior Legislative Analyst, lbuckelew@njlm.org, 609-695-3481 x112.

d. Progress Being Made on Amendments to Vegetation Management Bill

As you are likely aware, thanks to your calls to your legislators the League was able to postpone a full Senate vote on [S-2505](#), known as the "Vegetation Management Response Act" and were invited to work with the bill's sponsors and stakeholders regarding possible amendments to address our concerns.

The League opposed the bill as it would give electric utility companies complete discretion to clear, move, cut, or destroy vegetation growing in, near, or adjacent to the utility's right of way and without input from municipal officials.

We are still working with the sponsors to ensure proper amendments are made and we

are hopeful that municipal concerns will be fully addressed in the final product.

While progress has been made, our work is ongoing and it is still important for you to continue to contact your legislators to express your concerns. Your legislator's contact information can be found using the [state's website](#) which breaks this information down by municipality. And, for more information on the implication of S-2505/ A-2558 please see our daily alert from [December 14](#).

Contact: Frank Marshall, Esq., League Staff Attorney, fmarshall@njlm.org, 609-695-3481 x137.

e. Bill to Permit Appointment of Non-Resident EMCs in Smaller Municipalities Advances

The Assembly Homeland Security and State Preparedness Committee has released A-4145. The League supports this bill, which permits the appointment of nonresident municipal emergency management coordinators in municipalities with populations under 5,000 persons, in certain circumstances.

This bill would allow a municipality with a population under 5,000 persons to appoint a nonresident as its municipal emergency management coordinator if a qualified resident cannot be recruited. The appointee would have to be a resident of the applicable county. Current law requires these coordinators to be municipal residents unless the municipality participates in a shared service agreement.

A-4145 awaits a Floor Vote in the Assembly. Its companion, S-2750 has been referred to the Senate Law and Public Safety Committee.

We thank the sponsors for their attention to a problem faced by less populous New Jersey municipalities. And we will continue our work to advance this legislation.

Contact: Jon Moran, Senior Legislative Analyst, jmoran@njlm.org, 609-695-3481 x121.

II. Federal Issue

a. SCOTUS Rules Eighth Amendment Applies to States and Local Governments

On Wednesday, in a unanimous decision the Supreme Court of the United States ("SCOTUS") ruled that the Eighth Amendment's ban on excessive fines applies to state and local governments. The case, [Timbs v. Indiana](#), dealt with an individual who had a \$42,000 vehicle seized from them through civil forfeiture proceedings after pleading guilty to drug dealing charges, even though the maximum criminal penalty for such a crime was just \$10,000.

While New Jersey's own Constitution has a provision banning excessive fines Wednesday's ruling now makes it possible for defendants to challenge forfeitures as excessive under the U.S. Constitution. Since New Jersey law regarding excessive fines is similar to those at the Federal level it is not yet known what, if any, impact the *Timbs*

decision will have in the Garden State.

You should review this decision with you municipal attorney for more information on its potential impact in your municipality.

Contact: Frank Marshall, Esq., League Staff Attorney, fmarshall@njlm.org, 609-695-3481 x 137.

III. League Conference Follow Up

a. Do Not Forget to Claim Your CEUs from the 2018 NJLM Annual Conference!

Attention Municipal Officials! Do Not Forget to Claim Your CEUs from the 2018 NJLM Annual Conference! Please go to the [League website](#) to claim your credits.

IV. Also of Interest

a. League Publications: Read All About It

The League offers a wide variety of publications to provide extra insights on the hot topics in local government, from Newly Elected guidebooks to the latest editions on OPMA, License Fees, Salaries, and Local Public Contracts. For more information on the full publication list or to order volumes for your reference, see the [Publication Order Form](#).

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