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March 29, 2019

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

I. State Issues

a. Cannabis Legalization Stalls

On Monday the State Legislature did not act on [A4497/S2703](#), which would legalize adult use of recreational cannabis. The measure did not have the needed 21 votes to pass in the State Senate.

Through this long process, the League, while not taking a position on the issue of legalization itself, championed measures to facilitate municipal implementation of legalization, if it were to become a reality. The League pointed out the inadequacy of the initial local tax structure, advocated for strong home rule and planning protections in the Legislation, and worked closely with the New Jersey Urban Mayors Association and Conference of Mayors to assure that the bill adequately addressed expungement and restorative justice.

This delay does offer local officials a fresh chance to review the current proposal to assess what their local course of action will be, if legalization becomes a reality. This legislation may return in May, and there are indications that some of the expungement provisions currently in S2703 may be moved to separate legislation. [S-3205](#), instead. For more, please see the [League's alert from earlier this week](#) or [the League's cannabis legalization page](#).

For an overview of the Legislation in its current form, please see the [League's Urgent alert from Friday, March 22](#).

Have updates on this topic delivered directly to you when new information is posted by subscribing to [receive email alerts on cannabis legalization](#). [Visit the Cannabis Legalization](#) webpage for more resources.

Contact: Michael F. Cerra, Assistant Executive Director, mcerra@njlm.org, 609-695-3481, ext. 120.

b. Municipalities Prevail in NJ Supreme Court Case

Earlier this week the New Jersey Supreme Court issued its decision in [Caraballo v. City of Jersey City Police Department](#) a case in which the League participated in as *amicus*, along with the NJ Institute of Local Government Attorneys and the NJ Municipal Excess Liability Joint Insurance Fund.

In this case, the Court considered the relationship between two statutory schemes: the NJ Law Against Discrimination (LAD) and the NJ Workers' Compensation Act (ACT). Specifically, the Court was to determine whether a plaintiff who pursues a workers' compensation claim under the Act but fails to utilize its enforcement mechanisms may make a claim for failure to accommodate under the LAD. Relatedly, the Court also considered whether medical treatment qualifies as a reasonable accommodation under the LAD.

The Court, siding with Jersey City and the *amici* held that a plaintiff's failure to utilize the Act's administrative remedies to obtain medical treatment precludes them from making a failure-to-accommodate claim under the LAD. And, in addition, the court held that medical treatment cannot qualify as a reasonable accommodation under the LAD.

This is an important ruling because, as the Court pointed out in amplifying the argument made by the League and other *amici*, "[plaintiff's] position, if accepted, would allow employees to 'leverage the threat of a LAD suit against an employer' if a demand for workers' compensation benefit is denied."

The League would like to thank Fred Semrau, Susan Sharpe, and Edward Pasternak, of Dorsey & Semrau in Boonton for their work representing the League and other *amici* in this matter.

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

c. Small Municipality Economic Development Proposal Gains Traction

On Monday, the State Senate unanimously approved [S-2256](#), a bill which establishes the Main Street Assistance Program to provide financial and technical assistance to businesses located in the Main Street area within a small municipality. The bill's purpose is to encourage business development in small municipalities having substantially developed commercial areas.

There are two ways to qualify for the assistance as a small municipality. First, a municipality with a population of less than 20,000, according to the latest decennial census, can qualify if it is over 70% developed, according to the according to the 2012 New Jersey Department of Environmental Protection (DEP) land use/land cover data set. Second, a county seat can qualify if its population was less than 11,000, according to the last census.

The bill authorizes the governing body of a small municipality to designate a Main Street area in the municipality. To designate a Main Street area, the governing body must provide a statement of intent to the Economic Development Authority (EDA) setting forth

the municipality's findings concerning the economic conditions existing in the Main Street area and the municipality's intentions for addressing them.

For a business to be eligible to receive financial and technical assistance from the EDA under the program, at least 15% of the full-time employees of the business are to reside within the small municipality. Under the bill, the EDA is to work cooperatively with other state agencies to explore and implement opportunities to direct resources and create enhanced incentives for Main Street area businesses participating in the program. The bill provides qualifying Main Street-area businesses with corporation business tax credits and gross income tax credits equal to 15% of the cost of employee compensation expenses. The bill, further, requires the EDA to establish a Main Street Assistance Fund, which would be used to provide loans, loan guarantees, and technical assistance to Main Street area businesses.

We support this bill, and expect it to join its companion, A-1183 in the Assembly Commerce and Economic Development Committee.

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

d. Bill Expanding Statute of Limitations for Sexual Abuse Victims Heads to Governor's Desk

State Legislators on Monday voted to approve [A-3648/S-477](#), which would extend the statute of limitations on civil actions for sexual abuse claims, expand categories of potential defendants in civil actions, and create a two-year window for parties to bring previously time-barred actions based on sexual abuse.

The League is supportive of any measure that would allow survivors of sexual assault the ability to seek justice against the individual perpetrator as well as those who knowingly and willfully enabled them. However, we have concerns with language in the bill that would completely eliminate the application of Title 59 (Tort Claims Act) in such cases against municipal governments. The wholesale exemption to all of Title 59 in these matters would create a host of unintended consequences outside of the scope of the legislation's purpose and substantially increase municipal expenditures.

The nonpartisan Office of Legislative Services (OLS), which provides research assistance and prepares Fiscal Estimates for legislators, notes in [their review of A-3648](#) that the bill would expose, "local units of government to civil claims that may result in added legal defense expenditure and substantial settlement and judgements..." Estimating further that individual settlements could produce expenditures in the hundreds of thousands, if not millions of dollars. And, as noted in the OLS Fiscal Estimate, even local governments without claims against them would see an increase in expenditures as liability insurance premiums would rise substantially across the board.

It should be made clear, the League is not asking for, nor does Title 59 provide, complete immunity for municipal governments against claims of sexual abuse. What we are seeking is that the unnecessarily broad action to completely eliminate Title 59 consideration for sexual abuse claims be curtailed. With the information provided by OLS in hand, and thanks in part to your calls, efforts were made by legislators to amend A-3648/S-477 to do just this. However, these efforts failed and the bill passed with language completely eliminating Title 59.

With the bill now awaiting Governor Murphy's action we focus our efforts to improve the bill towards his office. We ask our members to do the same by [contacting the Governor's office](#).

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

3481, ext. 137.

e. Bill Limiting Local Control of Planning Headed to Governor's Desk

State legislators on Monday voted to approve [S-1074/A-4221](#), which seeks to provide protections for the public's right to access waterways under the public trust doctrine. While the League is supportive of public beach access, we opposed S-1074/A-4221 because it would give the Department of Environmental Protection (DEP) a tremendous amount of authority over local planning. If signed by Gov. Murphy, the bill would allow the DEP to determine, based on statewide criteria rather than local factors, how much and what kind of beach access is necessary.

Requiring beach access would not simply mean a walkway from a road. It could mean the installation of public restrooms or the building of parking facilities. Under the bill, the DEP would be required to withhold certain permits, including, among others, those required before municipalities can undertake beach replenishment projects, and condition their issuance on the permit seeker providing, at their own cost, public beach access.

The League believes that this is a heavy-handed approach to beach access that fails to take into consideration unique local characteristics and instead replaces it with an unworkable, one-size-fits-all approach. In addition, the bill does not consider the potential increased expense and liability that would be forced upon municipalities who are responsible for the maintenance and safety of local beaches and waterways.

We are asking our members to reach out to the [Governor's office](#) and urge him not to sign the bill until municipal concerns are addressed.

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

II. Federal Issue

a. Federal Deficit and Budget Proposal Pose Risks for Local Residents and Redevelopment

The federal government posted the largest monthly federal budget deficit in U.S. history last month. The government spent \$234 billion more than it brought in through tax receipts, producing a gap much wider than the deficit levels hit during the global financial crisis. Senior Treasury Department officials claimed the record federal deficit explosion was largely due to huge spending increases that the White House and Congress agreed to in the past two years, as defense spending and money for other programs went up sharply. However, federal tax receipts have been effectively flat since last year. During the first five months of this federal fiscal year, the government has spent \$544 billion more than it brought in through tax receipts, the Treasury reported at the end of last week. That \$544 billion deficit is nearly 50% greater than that of the corresponding period one year ago.

According to the Treasury, for the current federal fiscal year, which began last October, tax receipts are down 1%, but federal spending has increased 9%. Corporate tax receipts are down \$8 billion, or just under 25%, in the first five months of the fiscal year. (The tax cuts Congress and the President enacted reduced corporate tax rates by 40% from 35% to 21%.) Similarly, individual income tax revenues declined by \$15 billion, or 1%, compared to one year ago.

According to a senior Treasury official, it is too soon to assess whether the \$544 billion

federal deficit in the first five months of the fiscal year would mean that the federal government's annual deficit would breach \$1 trillion for the first time in American history. In fact, President Donald Trump, in the budget he submitted to Congress for FY2020, projected this month that the federal deficit would hit \$1.1 trillion, this year. In that context, policy makers in Washington must construct a budget for the next Federal Fiscal Year.

The administration's budget proposal for FY20 looks to bring spending and debt under control through drastic cuts to safety net programs, including food stamps, Medicaid and Medicare. The proposal also looks to eliminate programs that expand economic opportunity and mobility, including Community Development Block Grants, Economic Development Grants, Community Services Block Grants, Social Services Block Grants, 21st Century Community Learning Centers, and the Weatherization Assistance Program. These proposed cuts come at a time when federal support for local assistance has already been diminished, and when the ability of municipalities to raise funds, locally, has been constrained by the SALT deduction cap, state preemption of local revenue alternatives, and the slowing of economic recovery.

Our partners at the National League of Cities (NLC) are again tracking funding for municipal priorities throughout the federal budget and appropriations process. A breakdown of proposed [funding for individual programs is available](#).

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

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 [our website](#) to claim your credits.

IV. Also of Interest

a. How to Celebrate 1st NJ Local Government Week April 7-13!

The 1st NJ Local Government Week is approaching quickly; have you started planning yet?

NJ Local Government week creates an opportunity to let your residents know about your municipal facilities and careers, and highlight the services that their local government provides on a daily basis.

Visit the League website for a [how to packet](#) with ideas ranging from basic, no cost activities to some that are more complex.

Want the League to share the events that your municipality is planning to hold? [Complete this form on the League website](#) and let us help you spread the word! Share your activities and event photos with the League so that we may share on the League's website, social media and in NJ Municipalities magazine. And remember to use the #NJLocalGovt on social media.

b. 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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New Jersey State League of Municipalities

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