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## May 25, 2018

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On Wednesday, the Federal Treasury Department and Internal Revenue Service (IRS) announced their intentions to propose guidance on payments made in exchange for State and Local Tax Credits (SALT.) [Please see our Town Crier blog post for more.](#)

Yesterday New Jersey Attorney General responded to the IRS in writing, objecting to the anticipated actions of the agency. [Please click here for a copy of his letter.](#)

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### **I. State Issues**

#### **a. Action Needed on Energy Tax Proposal**

In testimony before the Legislature on Monday, and again on Tuesday, State Treasurer Elizabeth Maher Muoio again cited the State's 'need' to lay claim to Energy Tax (ETR) revenues that, for twenty years, have been dedicated to municipal property tax relief. We do not doubt the Administration's commitment 'to providing the municipalities with an equal level of support in FY '19.'

We sincerely appreciate the fact that this 'accounting adjustment' will result in no reduction in property tax relief funding, this year. We have, however, asked State budget-makers to look beyond their own immediate needs. We have asked them to consider the longer-term implications of the ETR shift.

Our arguments seem to have made little headway. But there is still time to change that.

Please contact your State Legislators regarding the proposal. Remind them that:

- Since 1997, municipalities have been able to count on annual baseline distributions from the off-budget, dedicated Energy Tax Receipts Property Tax Relief Fund.
- Before the Fund existed, utility tax revenues, meant for municipal property tax relief, were commonly diverted in State budgets to address annual State-level concerns.
- In order to create a dependable and predictable source of property tax relief, which would enable municipalities to engage in responsible budgetary planning, local officials, State leaders and representatives of the taxpaying utilities joined together to advocate for the creation of the ETR.
- The proposed accounting shift, to be effected by budget language, mirrors the genesis of the Consolidated Municipal Property Tax Relief Aid (CMPTRA) program, which replaced funding from Sales and Corporate Tax sources, for a number of revenue replacement programs, with Income Tax dollars.
- That shift led – not immediately, but inevitably - to the deterioration of CMPTRA property tax relief. (In its first year, CMPTRA was funded at \$755 million. In 2001, CMPTRA's best year, the fund provided \$818.5 million. By 2010, due to cuts and the steady shift of property tax relief dollars from CMPTRA to the ETR, funding was down to \$264.7 million. And this year's budget proposal calls for the distribution of \$263.3 million through CMPTRA.)

You might also want to mention the fact that unless the Legislature adjusts the proposal, this will be the eighth straight year of level ETR/CMPTRA funding. And in the three preceding years, as the State struggled to balance its budget during the great recession, the level was lowered by about \$320 million. In a recent NJSpotlight story, Colleen O'Dea noted that, since 2007, the CPI has risen by 22%; while property tax relief funding from these sources has decreased by 17%.

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## **b. Bill to Limit Sick Leave Payouts Advances**

On Wednesday, the Assembly State and Local Government Committee unanimously passed an amended [A-1851](#). The bill, sponsored by Assemblywoman Lampitt and Assembly Speaker Coughlin, limits the maximum value of accumulated unused sick leave to \$7,500 for all public employees represented by a union, and prohibits the carrying of more than one week of vacation leave per year. The bill was amended to restrict all public employees not represented by a union from receiving any value for accumulated unused sick leave. The public unions testified in opposition to the bill claiming it interferes with the collective bargaining process.

In addition, the bill prohibits the cash payout for accumulated unused sick leave. Instead, the public employer must divide the total amount of accumulated leave by 60 and make monthly installments. If the municipality offers post-retirement health benefits the installment is to be applied towards the employee health benefit contribution required under c. 78. If the municipality does not offer post-retirement health benefits the funds are to be deposited into a Health Reimbursement Account for qualified medical expenses.

There is one exception to this requirement. Any retiree who is a veteran, certified by the Adjutant General, will be entitled to receive a supplemental compensation.

Any supplemental compensation for time earned prior to the enactment of the bill or expiration of a collective bargaining agreement, whichever is later, will be payable under the current law.

Senate President Sweeney and Senate Majority Leader Weinberg have the companion bill, S-2578, which is awaiting consideration by the Senate State Government Committee.

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### **c. Bill Authorizing Municipalities to Establish PACE Program Advances**

On Monday, the Senate Environment and Energy Committee voted to release [S-1611](#), a bill which would authorize municipalities to provide for public or private financing of renewable energy systems, energy produced by such systems, energy efficiency improvements, energy storage, microgrids, water conservation, storm shelter construction, and flood and hurricane resistance projects through the use of voluntary special assessments on real property. S-1611 will now be reviewed by the Senate Budget and Appropriations Committee.

Under the current law, a municipality may undertake financing the purchase and installation of renewable energy systems and energy efficiency improvements made by property owners, only upon the application to an approval of the Division of Local Government Services. This permissive bill, would allow municipalities to issue bonds in order to finance these projects through an ordinance, without needing prior DLGS approval. S-1611 also expands the type of projects which may be eligible for financing.

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### **d. NJ Supreme Court OPRA Decision Diminishes Privacy Rights**

On Wednesday, the NJ Supreme Court issued its decision in [William J. Brennan v. Bergen County Prosecutor's Office](#), a case that examined the Open Public Records Act's competing interests of government transparency and individual privacy. In this case, the Court was asked to determine whether OPRA compels disclosure of documents containing the names and addresses of persons who successfully bid at an auction of public property?

Unfortunately, as is often the case, transparency interests prevailed to the detriment of privacy concerns. The Court ruled that those purchasing public goods do not have a reasonable expectation of privacy and therefore their names and home address must be disclosed under OPRA.

To read more about this decision please see the League's recent blog post, [here](#).

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## **II. Federal Issues**

### **a. FY '19 First Draft Federal Funding Protects Local Priorities**

The annual Congressional Appropriations process begins with the introduction and consideration of twelve annual spending bills, each focused on one or more areas of Federal spending. The bills are put together by the subcommittees of the Senate and House Appropriations Committee, each responsible for defined policies. After approval by the full Appropriations Committees, the bills advance to floor consideration and passage by the respective Houses. After differences are reconciled, final legislation is sent to the President. This all needs to happen before the beginning of the next Federal Fiscal Year, on October 1.

Or not. In which case, a Continuing Resolution (or several) keeps the Federal Government up and running.

Last week, the House and Senate Appropriations Committee's began the process.

In the House, several Fiscal Year (FY) 2019 spending bills have already received subcommittee consideration including the Energy-Water bill; the Interior-Environment bill; the Transportation-HUD bill; and the Commerce-Justice-Science bill. The Senate is expected to follow suit this week with subcommittee consideration of those bills, plus the Agriculture bill.

For local governments, the hard-fought federal funding increases for local priorities, enacted in FY '18, are generally maintained in the FY'19 drafts. According to the analysts at the National League of Cities (NLC), highlights include:

#### ***Energy-Water***

The House bill largely rejects the President's proposed cuts, providing level funding at \$251 million for Weatherization and \$2.1 billion for the Office of Energy Efficiency & Renewable Energy (EERE), a decrease of \$200 million over FY '18. The bill includes several policy riders, including one to repeal the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers Clean Water Rule.

#### ***Interior-Environment***

The House bill provides an increase to the Water Infrastructure Finance and Innovation Act (WIFIA) – providing \$75 million, compared to \$63 million in FY '18, and funds the Clean Water and Drinking Water State revolving loan fund programs at FY '17 levels, \$1.393 billion and \$863 million respectively. The bill also includes policy riders, including one to repeal the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers Clean Water Rule.

#### ***Commerce-Justice-Science***

The House bill provides \$447 million for grant programs to help stem the tide of overdoses resulting from opioid abuse, including drug treatment, prescription drug monitoring, overdose-reversal drugs, and at-risk youth programs. The bill also increases resources for

programs that reduce violent and gun crime, including \$75 million in grants to states to improve their records used in background checks, \$50 million in grants to reduce gang and gun violence, \$100 million as authorized by the STOP School Violence Act, \$100 million for youth mentoring programs, and \$20 million for police active shooter training.

### ***Transportation-HUD***

The House bill would increase funding for affordable housing and transportation programs that, according to committee documents, would represent another significant down-payment on infrastructure. The biggest increase is a \$1.7 billion, or 68 percent, increase in highway grants to states, to \$4.25 billion. The Better Utilizing Investments to Leverage Development, or BUILD, program (formerly known as TIGER Grants) would be cut under the proposal, from \$1.5 billion to \$750 million.

On the affordable housing side, the bill would maintain last year's increase for CDBG for a total of \$3.37 billion; as well as level funding for homeless assistance grants, public housing, and Choice Neighborhoods. The bill excludes most of the controversial policy riders sought by the White House including minimum rent increases, new work requirements, and time limits on assistance.

Local officials can track the development of the FY19 spending bills by visiting [NLC's Budget Tracker](#), which tracks dozens of federal programs important to cities across all federal agencies.

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## **b. US Senate Stalls on NFIP Reauthorization**

The National Flood Insurance Program (NFIP), which provides flood coverage for more than 22,000 American communities, was originally set to expire last fall. Although the House of Representatives passed legislation, entitled the 21<sup>st</sup> Century Flood Reform Act, reform for the program then stalled in the Senate. Since then, the Senate has enacted a series of NFIP extensions. The most recent extension, on March 23, came as a part of the \$1.3 trillion omnibus spending bill signed by President Trump. That reauthorized the program through July 31, 2018.

With Hurricane Season just weeks away, unless Congress renews the statutory authority of the National Flood Insurance Program (NFIP) to operate by July 31, the Federal Emergency Management Agency (FEMA) would stop selling and renewing flood insurance policies for millions of properties in communities across the nation.

Despite the strong advocacy of Senators Menendez and Booker, the Senate has been slow to consider legislation that would provide long-term reauthorization of the NFIP. The National League of Cities (NLC) is urging the Senate to quickly pass the legislation to provide long-term reauthorization of the NFIP, while making essential reforms to reduce the program's complexity.

Specifically, NLC is urging the Senate to require FEMA to work with state and local governments, the insurance industry, and other stakeholders to develop an incentive-based disaster insurance and mitigation system that would encourage property owners to retrofit existing structures to reduce future losses from natural disasters. They are also

asking that the legislation should encourage lending institutions to incorporate mitigation provisions as conditions for loans. Finally, Congress should provide additional resources to FEMA to utilize the best technology and methods available to improve the mapping process, including seeking the input from local government officials prior to approving any flood map that could impact local zoning rules.

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### **c. New Federal Court Ruling Could Impact Elected Officials' Social Media Use**

On Wednesday, a Federal Judge in the Southern District of New York ruled President Donald Trump's personal Twitter account to be a designated public forum and therefore blocking individuals from viewing his Twitter account is a violation of the First Amendment. This ruling could have widespread implications for all government officials who use any social media platforms.

It is recommended that elected officials review their social media policies, and more importantly, should ensure that their personal social media accounts are kept separate from any accounts used in their official capacity. To review the court's ruling please click [here](#). The League is currently reviewing this case and further analysis is forthcoming. In the meantime, you should review this information with your municipal attorney for more information on the matter.

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

## **III. League Conference**

### **a. 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 x125 or [klawrence@njslom.org](mailto:klawrence@njslom.org). Information is also available on [njslom.org/exhibit](http://njslom.org/exhibit).

## **IV. Also of Interest**

### **a. Women at Work Conference**

The Government Finance Officers Association (GFOA) of NJ will be holding its 2nd Annual Women at Work Conference at The Heldrich in New Brunswick, NJ on June 14, 2018. This powerful day of professional development will kick off with the history of American working women followed by sessions that focus on practical tools for effective leadership, conflict resolution and successful communication. Up to 4.5 CEUs available.

Details and registration can be found at [www.gfoanj.org](http://www.gfoanj.org). Registrants can contact Kim Nolan, GFOA Office Manager, with questions or concerns at [kim@njac.org](mailto:kim@njac.org) (609) 394-3467.

## **b. NJDEP Water Quality & Flood-Resilience – 2 Grant Programs Announced**

- **Grants Available to Improve Water Quality in the Barnegat Bay Watershed**

The NJDEP is seeking proposals for projects to reduce the input of nutrients, primarily nitrogen, which are transported into the bay by stormwater runoff. Proposals that mitigate nutrients in stormwater in the northern and southern portions of Barnegat Bay will be prioritized. This area has poorer water flow and is more highly developed than the southern bay.

Specific nutrient reduction strategies eligible under the grant program include wetland restoration, living shorelines and other resiliency projects, stormwater infrastructure mapping, stormwater basin retrofits, nutrient and pathogen source tracking, submerged aquatic vegetation and shellfish restoration, and stewardship education projects.

Projects consistent with NJDEP's Barnegat Bay Restoration, Enhancement and Protection Strategy will also be considered, [click here to view this strategy](#).

Watershed Quality Restoration grants are made possible through funds provided under Section 319(h) of the federal Clean Water Act, Natural Resource Damage settlements the state has secured with polluters, and the state's Corporate Business Tax. Additional funding is also available as low-interest and principal-forgiveness loans through the New Jersey Water Bank, administered by the NJDEP in partnership with the New Jersey Water Infrastructure Bank.

Interested applicants are strongly encouraged to attend one of the two public information sessions.

**Application Deadline: August 31, 2018.** [Click here to visit the NJDEP website for more information on this program.](#)

- **Flood-Resilience Planning Grants**

The NJDEP has announced a grant competition in which municipalities located in in nine counties most impacted by Superstorm Sandy can form teams to compete for \$200,000 resilience-planning grants to address coastal and river-related flooding. Resilient NJ is open to all municipalities in the nine Sandy-impacted counties as identified by HUD: Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union. Teams may cross county borders.

This grant is part of Resilient NJ, a new program administered through the NJDEP's Office of Coastal and Land Use Planning, to identify and implement innovative regional solutions to address coastal and river-related flooding. The U.S. Department of Housing and Urban Development is providing the grant funding as part of its National Disaster Resilience

Competition, which works to make communities more flood resilient after major natural disasters.

As many as five regional teams will receive grants of up to \$200,000. Teams must be made up of at least three contiguous municipalities and at least one community-based organization. County governments, regional planning commissions and utility authorities are also eligible to participate.

A panel of NJDEP experts will review applications submitted by each team and score them based on a set of criteria. Winning teams will be paired with multidisciplinary consulting teams of planners, engineers, ecologists, designers and other experts to participate in a comprehensive planning process to develop regional Resilience and Adaptation Action Plans and ultimately implement selected actions from those plans.

**Application Deadline: Friday, July 20.** [Click here to visit the NJDEP website for more information on this program.](#)

[Click here to visit NJLM's Grant Resource Center for more grant information and resources.](#)



New Jersey State League of Municipalities

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