

# NEW JERSEY ASSOCIATION OF COUNTIES

*County Government with a Unified Voice!*

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## STATE HOUSE NEWS

*January 20, 2017*

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### **ELECTRONIC WASTE RECYCLING**

After more than two years of steadfast advocacy by NJAC's Legislative Director Allen Weston, Governor Christie signed into law **SENATE, No. 981** (*Smith D-17/Bateman R-16*)(*McKeon D-27/Gusciora D-15*), which requires manufacturers of "covered electronic devices" to provide for the collection, transportation, and recycling of its market share in weight of all covered electronic devices collected in a program year.

Special thanks to Gloucester County Recycling Coordinator Monica Gismondj, Burlington County District Recycling Coordinator Ann Moore, Ocean County Director of Department of Solid Waste Management Ernest Kuhlwein, and Camden County District Recycling Coordinator Brian Costantino for making countless trips to Trenton to meet with stakeholders and testify at committee hearings. And, thank you to our friends at the Association of New Jersey Recyclers (ANJR) and the New Jersey State League of Municipalities (NJSLOM) for their partnership on this important and timely matter. Additionally, NJAC commends Senate Environment and Energy Committee Chairman Bob Smith, Senator Kip Bateman, Senator Dawn Addiego, Assemblyman John McKeon, and Assemblyman Reed Gusciora for their leadership in making sure this legislation made its way to the Governor's Desk.

In summary, the measure authorizes the State Department of Environmental Protection (DEP) to adjust the market share in weight obligation based upon the total weight in pounds actually collected in each program year. The law changes the definition of "consumer" to include State entities, school districts, and local government units; and, would include fax machines and printers in the definition of "covered electronic device." Additionally, the law encourages DEP to establish a statewide standard program to collect, transport, and recycle covered electronic devices. The law also requires each manufacturer to provide for the convenient collection of covered electronic devices, especially used televisions in densely populated areas. The law streamlines DEP's planning and reporting requirements by requiring an annual report with a complete listing of all collection locations for covered electronic devices including televisions, the parties that operate them, the amount of material by weight collected at each site, and a complete listing of all recyclers that recycle covered electronic devices, together with the amount of material by weight recycled annually.

The measure requires collection locations to report semiannually. The reports include the total weight or volume of covered electronic devices collected, the date, time, and volume of covered electronic devices transported from the collection location, and the name and identifying information of the authorized recycler transporting the covered electronic devices. Every authorized recycler must identify the address of each collection location, and the total weight of covered electronic devices delivered or collected from each collection location, the weight of each type of covered electronic device collected from each collection location, the address of any facility where covered electronic devices are handled, and the disposition of all components of covered electronic devices. Each manufacturer must report semiannually its progress towards achieving its market share in weight obligation.

The measure further allows DEP to assess a per pound fee of \$0.50 multiplied by a manufacturer's market share in weight obligation for a manufacturer that fails to collect, transport, and recycle covered electronic devices under the law. Finally, the new law establishes the "Electronic Waste Management Fund" whereby all program revenues and penalties would be deposited in the fund for administration and enforcement and other costs of the program. NJAC supports this important and timely initiative as it ensures that manufacturers provide free and convenient electronic waste recycling programs for all covered and collected electronic devices.

#### **TRANSPORTATION DELAY CLAIMS AND LOCAL AID ALLOCATIONS**

On January 10<sup>th</sup>, the New Jersey Department of Transportation (NJDOT) provided written guidance to county and municipal officials across the State concerning contractual delay claims resulting from **EXECUTIVE ORDER, No. 210** (E0-210), which ordered the 2016 shutdown of projects funded by the Transportation Trust Fund (TTF). NJAC is in the process of reviewing the letter copied below with our county engineers and counsels.

"The purpose of this letter is to advise State Local Aid Grant Recipients ("Grant Recipients") that the New Jersey Department of Transportation ("NJDOT") will consider requests for additional funding on Transportation Trust Fund ("TTF") funded projects that were impacted by Executive Orders Nos. 210 and 216.

Additional funds may be made available for reasonable costs to accelerate project completion as well as costs related to the safe and orderly shutdown of a project under Executive Order No. 210, pursuant to the provisions of the NJDOT's Standard Specifications for Road and Bridge Construction, Sections 108.11 and 104.03. Grant Recipients should submit requests for additional funds after a careful evaluation of the time impact to the project end date that was in place at the time of the shutdown. For example, the reasonableness of a request for acceleration costs must consider the scope and duration of the impacted project. Consistent with the NJDOT's regulations and guidelines, by providing

additional funding, the NJDOT is not establishing any contract or other rights, including but not limited to any third party beneficiary rights, with any entity other than the Grant Recipient. Counties and municipalities proposing acceleration costs and costs related to the safe and orderly shutdown of the project shall provide a certification (see attached) by a duly authorized representative of the grant recipient that the work and costs associated with the acceleration and safe and orderly shutdown of the project are reasonable.

The NJDOT will authorize the payment of these additional funds only if a duly authorized representative of the Grant Recipient certifies that the Grant Recipient has released the State of New Jersey and the NJ DOT, their agents, officers and employees, from all claims and liabilities arising under their applicable State-County (or municipality, as applicable) agreement. Additionally, it is within the discretion of the Grant Recipient to determine whether to seek such a release from any contractors, material providers, or others who provided goods and/or services regarding a project.”

The table and footnotes below provide a random sampling of the contractual delay claims county governments are facing as a result of EO-210.

COUNTY	CONTRACTUAL DELAY CLAIMS <sup>1</sup>	CONTRACTUAL DELAY CLAIMS TOTAL COST <sup>2</sup>	NOTICE OF CLAIM BY COUNTY <sup>3</sup>
Bergen	0	Not Applicable	No
Burlington	0	Not Applicable	No
Camden <sup>4</sup>	2	\$29,180	No
Cumberland <sup>5</sup>	4	\$80,000 - \$1,000,000	Yes
Gloucester	0	Not Applicable	No
Mercer <sup>6</sup>	4	\$383,000	Yes
Middlesex <sup>7</sup>	Anticipating 2	Undetermined	Yes
Monmouth <sup>8</sup>	7	\$6,812,936	Likely
Morris <sup>9</sup>	0	Not Applicable	Yes
Ocean <sup>10</sup>	2	\$912,243	No
Passaic <sup>11</sup>	6	Undetermined	Yes
Salem <sup>12</sup>	2	Undetermined	No
Somerset <sup>13</sup>	1	Undetermined	No
Union	0	Not Applicable	Yes
Warren <sup>14</sup>	1	Undetermined	Yes
TOTALS	32	\$9,137,359	7

**FOOTNOTES:**

1. Column 1 summarizes the number of contractual delay claims filed by contractors in each county as a result of the TTF shutdown ordered by EO-210.
2. Column 2 summarizes the total cost of contractual delays claims filed by contractors in each county as a result of the TTF shutdown ordered by EO-210.

3. Column 3 summarizes whether each county has filed a notice of claim against the New Jersey Department of Transportation (DOT) for breach of contract as a result of the TTF shutdown ordered by EO-210.
4. Camden County reports that contractual delay claims will cost the County \$5,320 for traffic protection at Haddon Avenue Transit Village in Camden City, and \$23,859 for demobilization and remobilization costs on the Clements Street Bridge project in in Runnemede and Barrington.
5. Cumberland County estimates that contractual delay claims will cost the County between \$20,000 and \$250,000 per project for the following projects: 2015 road program; FY 2014 federal road program; 2015 federal road program; and 2016 overlay program.
6. Mercer County reports that contractual delay claims will cost the County \$150,000 for the replacement of Bridge 543.7 on Carter Road in Lawrence Township; \$110,000 for the replacement of Bridge 672.4 on South Broad Street in Trenton; and, \$123,000 for the removal and reconstruction of a security fence at the Trenton Mercer Airport in Ewing. The County also faces claims for an undetermined amount on the following projects for the rehabilitation of bridges 212.12 and 218.1 on River Drive in Hopewell Township.
7. Middlesex County reports that the County halted 8 projects as a result EO 210 and expects contractors to file delay claims on at least two of those projects. The County also expects that a consultant responsible for conducting various inspections on the above projects seek additional monies to complete the inspections.
8. Monmouth County reports that contractual delay claims will cost the County \$5,803,000 for Bridge MA-14; \$336,236.00 for Bridge MT-9; \$513,690 for Bridge S-31; and \$160,000 for Bridge S-17. The County also faces claims of an undetermined amount for the following projects: Bridge O-10; Bridge O-11; and, Bridge MT-4.
9. Morris County notes that it will not proceed with its Notice of Claim if the County does receive any claims from contractors or consultants.
10. Ocean County reports that a contractual delay claim will cost the County \$912,243 for Interchange 91 improvements, and that the County received a Notice of Intent to file a contractual delay claim for the reconstruction and resurfacing of CR 528.
11. Passaic County reports that contractual delay claims will cost the County an undetermined amount for the following projects: 2015 road resurfacing on Central Avenue in Passaic; 2016 road resurfacing on Grand Street in Paterson; 2016 road resurfacing on Union Valley Road in West Milford; 2016 road resurfacing on Greenwood Lake Turnpike in Ringwood; 2016 road resurfacing of Margaret King Road in West Milford; and, replacement of the Eighth Street Bridge over the Passaic River in Passaic and Wallington.
12. Salem County reports that contractual delay claims will cost the County an undetermined amount for the following projects: resurfacing of the Woodstown-Alloway Road (CR 603); and, resurfacing of Pointers-Auburn Road (CR 540).
13. Somerset County reports that contractual delay claims will cost the County an undetermined amount for the following project: reconstruction of Readington Road in Branchburg/Readington Township as bi-county project with Hunterdon County.
14. Warren County reports one contractual delay claim that will cost the County an undetermined amount for the Old Turnpike Road project, which is an intercounty project between Warren and Morris counties.

In December, NJAC sent NJDOT Commissioner Richard Hammer a letter seeking guidance on contractual delay claims and Local Aid Allotments. Although NJDOT's direction on delay claims is certainly a step in the right direction, NJAC remains concerned with the fact that the Department is projecting 2017 Local Aid Allotments at 2016 levels. NJAC plans on meeting with legislative leadership and the front office shortly to discuss the fact that Local Aid to counties and municipalities should increase from \$190.0 per year to \$400.0 per year from 2017 through 2024.

## **CRIMINAL JUSTICE REFORM**

On December 29<sup>th</sup>, the New Jersey Council on Local Mandates denied NJAC's request for preliminary injunctive relief. Although NJAC supports Criminal Justice Reform as good public policy, we're disappointed with the Council's decision as we make a compelling argument that the new law imposes a significant financial hardship on property taxpayers across the State. In fact, we stand by the data presented in our case that Criminal Justice Reform will cost county governments alone an estimated \$45.0 - \$50.0 million to implement as counties must: hire new assistant prosecutors, investigators, sheriff officers, and correction officers; make capital improvements to court facilities and county jails; and, purchase new information technology.

We're further disappointed that for nearly two years, State leaders have rejected our recommendations to control costs and streamline operations that include: having the Attorney General impose a hiring freeze for new assistant prosecutors and investigators related to Criminal Justice Reform; requiring the use of video conferencing on weekends and holidays to conduct risk assessments within 48 hours after a defendant's commitment to jail instead of leaving it to the discretion of an assignment judge; authorizing the use of Class Two special law enforcement officers to provide costly courthouse security; and, using a modest increase in certain court filing fees to offset the substantial financial burden imposed by the new law.

On the merits of the case, there's a clear disconnect between the 2014 ballot question and the actual language contained in the constitutional amendment. In other words, we're not convinced that voters completely understood what they were voting on in 2014 as the ballot question focused on keeping violent criminals behind bars. *"Do you approve amending the Constitution to allow a court to order pretrial detention of a person in a criminal case? This would change the current constitutional right to bail. The change to the Constitution would mean that a court could order that a person remain in jail prior to trial, even without a chance for the person to post bail, in some situations. The amendment also removes language in the Constitution about bail eligibility for death penalty cases. The death penalty no longer exists in New Jersey."* We submit that the 2014 interpretive statement provided no further guidance on the matter. Moreover, the legislation that enacted the constitutional amendment went beyond what was contemplated by the ballot question, the interpretive statement, the amendment itself; and, imposes an unfunded mandate. We look forward to next month's oral arguments on the State's motion to dismiss the complaint.

## **COUNTY EMERGENCY MANAGEMENT**

Special thanks to Monmouth County Office of Emergency Management Coordinator Mike Opeggard for testifying in support of **SENATE, No. 2538 (Sweeny D-3/Singer R-30)** before the Senate Law and Public Safety Committee on January 12<sup>th</sup>.

In summary, this legislation would create a program in the Department of Law and Public Safety to distribute aid annually to county OEMs based on a county's risk exposure to natural disasters with each county receiving a minimum allotment. The program would allow counties to apply for aid for a variety of storm readiness and preparedness objectives that may include purchasing supplies, maintaining equipment, and staging rescue operations.

In general, county OEMs are responsible for coordinating emergency responses to natural disasters, technological emergencies, and severe weather events. County OEMs work closely with municipal OEMs to ensure rapid and well-coordinated responses that avoid the duplication of services and potential breakdowns in communication. Additionally, county OEMs operate and maintain comprehensive websites for residents that contain vital information such as homeland security status, registries for family members with special needs and pets, contact information for health emergencies, how to create a family preparedness plan, and housing and shelter updates. County OEMs may also provide volunteer Community Emergency Response Team (CERT) training for residents to assist during certain emergency management operations. The Committee favorably reported the measure; and, the Assembly Homeland Security and State Preparedness Committee favorably reported the companion version **ASSEMBLY, No. 4204 (Mazzeo D-2/Houghtaling D-11)** on January 19<sup>th</sup>.

#### **NJAC ANNUAL CELEBRATION OF COUNTY GOVERNMENT**

We also look forward to seeing you at 11:00 a.m. on January 27<sup>th</sup> in the Senate Chambers of the State House in Trenton for NJAC's Reorganization meeting where Gloucester County Freeholder Heather Simmons will become our 76<sup>th</sup> President. And, the deadline for submitting proposals for conference workshops is approaching fast. Space is limited, so please contact Loren Wizman at [lwizman@njac.org](mailto:lwizman@njac.org) or visit [www.njac.org](http://www.njac.org) for additional details.

#### **STATE HOUSE TRIVIA**

*Did you know* tourism is the second largest industry in the State contributing \$37.3 billion to the State's gross domestic product in 2016?

*"Whatever you are, be a good one." Abraham Lincoln*

