New Jersey State League of Municipalities
Ocean County Mayors
February 12, 2013

I. Energy Receipts diversion A-2753 & S-1923

Summary: On December 6, League President and East Windsor Township Mayor Janice S. Mironov testified before the Assembly Housing and Local Government Committee in support of A-2753. The bill, sponsored by District 14 Assemblymen Daniel Benson and Wayne DeAngelo, would provide for direct payment of certain energy taxes to municipalities. The bill was released with unanimous support and awaits action by the Assembly. Companion legislation, S-1923, has been introduced by District 14 State Senator Linda Greenstein. It awaits consideration by the Senate Community and Urban Affairs Committee. The League supports this initiative.

Background: The bill would require certain energy tax receipts to be paid directly to municipalities. This legislation would assure local property taxpayers compensation for hosting transmission facilities and lines that allow gas and electric energy corporations to serve customers and conduct business in our Garden State. Under current law, energy tax receipts are all collected by the state. Often, through the annual appropriations act, the state retains a portion of the energy tax receipts that are supposed to be distributed to municipalities under statutory law.

Thanking the sponsors, Assemblymen Daniel Benson and Wayne DeAngelo, Mayor Mironov stated:

> *The League's top priority for 2013 is the restoration to municipalities of funding diverted by the state from Energy Taxes intended for local use and property tax relief. Taxes on gas and electric utilities were originally collected by the host municipalities. When the state made itself the collection agent for these taxes, it promised to return to towns all proceeds for municipal property tax relief.*
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> *For years, however, state budget makers have diverted funding from Energy Taxes to fund state programs. Instead of being spent on local programs and services and used to offset property taxes, the money has been spent as successive Legislatures and Administrations have seen fit.*
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> *The cumulative impact of years of under funding has left many municipalities with serious needs and burdensome property taxes. Local elected officials are in the best position to decide the best use for these resources. Further, these monies were always intended to fund local programs and services and reduce property taxes.*
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> *On behalf of Mayors all around the state, we thank the sponsors and strongly support A-2753. We urge all Legislators to support this measure and to restore this funding to its intended purpose."*

League Bond Counsel Edward McManimon indicated a concern with the effect of direct payment on municipalities participating in the Qualified Bond Act program. These are municipalities that have experienced budget problems and may have engaged in - what the bond rating agencies might consider - questionable budgeting practices. For these municipalities, the State retains the right to use their 'state aid' funding to satisfy bond obligations. Because of the State's involvement, these municipalities are able to issue debt at a better rate than they otherwise would. In some cases, they are only able to issue debt at all, because they are in the program.

Matt Jessup, Esq., of McManimon, Scotland and Baumann, prepared an amendment to address this issue and the sponsors amended the bill on December 6 to reflect our concerns.

We have distributed a draft resolution in support of the bills and we are beginning to receive copies of enacted Resolutions from municipalities.

II. S-2 & A-1171, Shared Services

Summary: S-2 passed the State Senate on November 29. S-2 and A-1171 await consideration by the Assembly Housing and Local Government Committee. The League opposes this legislation.

Background: S-2, which is intended to compel municipalities to engage in shared services, passed the State Senate by a 25-9 vote on November 29. It now joins its Assembly companion A-1171 with the Assembly Housing and Local Government Committee. The bill passed the Senate with only a 4 vote margin with a number of abstentions and no votes, including Senate Minority Leader Senator Kean.

The League **opposes** S-2 & A-1171, most notably for the "voter penalty" provision, which allows the voters to express their will but penalizes them if their will does not comport with that of a majority of the appointed members of the Local Unit Alignment, Reorganization and Consolidation Commission (LUARCC).

Initially S-2 removed or reduced many of the roadblocks that increase the costs of shared services – things like terminal leave, pay, civil service mandates, employee tenure requirements – many of the original provisions in bill could reduce the costs and hurdles to shared services and consolidations, produce municipal savings and promote relief for our taxpayers. However, the amendments passed by the Senate Budget and Appropriations Committee discourage shared services from a municipalities' perspective by continuing the hindrances imposed by Civil Service.

One of the amendments would require any non civil service municipality sharing services with civil service municipality to be brought into the civil service system. Accordingly the civil service reform is only in the sense that it expands the civil service system.

Another of the amendments would make two municipalities subject to civil service rules and collective bargaining agreements for determining which employee stays, protects the seniority provisions. Municipalities that are considering merging units want the flexibility to retain the best possible qualified and efficient work force or consolidation in any form doesn't make any sense. Municipalities need the flexibility to choose which

employees it will retain and how to frame their workforce. The amendment takes that management prerogative completely out of the municipalities' hands and puts it entirely within the confines of the civil service system and collective bargaining agreements. This will certainly have a chilling effect on this process.

The amendments also include a provision requiring mediation and arbitration of contractual provisions. This will impede the process from moving expeditiously and may not result in cost savings. We do not foresee a smooth merging of two collective barging agreements so we anticipate that mediation and arbitration will become the norm, thus leading to delays and additional cost.

Yet, another amendment requires LUARCC to first study municipalities that do not share services. It is a misconception that municipalities do not share services. Shared Services are not a new concept to municipalities. We have been a long time supporter of shared services. In fact, the vast majority of municipalities are already involved in sharing of services. Many of them were initiated long before our current crisis. So we continue to question what will be the basis for LUARCC to initiate a study once those municipalities that do not share services are completed.

III. S-1914 & A-2975, User Fees

Summary: S-1914 passed the State Senate on May 31. S-1914 and A-2975 await consideration by the Assembly Housing and Local Government Committee. The League opposes this legislation.

Background: S-1914, which requires certain user fees for the provision of traditional municipal services to be included within the 2% municipal and county property tax levy cap, passed the State Senate in May, and is assigned, along with Assembly companion A-2975, to the Assembly Housing and Local Government Committee. While it passed the Senate unanimously, its fate in the Assembly is uncertain. The League **opposes** S-1914 and A-2975 for the following reasons:

- User fees are not a new budgeting tool; nor is there a statewide effort by municipalities to circumvent the 2% levy cap. Local governments enact user fees to recapture some of the costs for services provided in their community.
- As part of their Memorandum of Understanding with Transitional Aid municipalities the Division of Local Government Services requires a Transitional Plan that includes "...a plan to maximize recurring revenues, including but not limited to: updating fees, fines and penalties..."
- User fees provide a direct connection between what people pay and what they get, and good pricing encourages efficiency by providing a ready comparison to private sector competition. And competition spurs creativity.
- The definition of "traditional municipal services" is flawed. The open-ended definition is confusing and leads to multiple interpretations
- The bill only affects municipalities ignoring the typically largest portions of the property tax bill – the schools and counties
- The state should focus on the remaining management reforms that were part of the 2% cap that have not been addressed - Restoration of the Energy Receipt

Taxes, COAH Reform, Civil Service Reforms, and Accumulated Sick Leave reforms.
- Towns are struggling to make the 2% cap workable

IV. S-2511 & S-2512, Amendments to OPRA/OPMA

Summary: S-2511 and S-2512 were introduced on January 4 and was immediately scheduled for 2nd reading in the Senate, bypassing committee hearings. S-2511 and S-2512 replaces S-1451 and S-1452. The bills were scheduled for a vote before the full Senate on February 7. However, at the last minute the bills were pulled from the agenda. The companion bills, A-3712 and A-3713 await consideration by the Assembly State Government Committee. The League continues to oppose these bills.

Background: S-2511, which amends the Open Public Meetings Act, appears to replace S-1451. While we appreciate Senator Weinberg's efforts, we must continue to oppose the amendments to the Open Public Meeting Act. The changes proposed in S-211 will not only be a cost driver for local and State government but make government less effective. In addition, in the interest of transparency and openness, we urge the Legislature to remove the various exceptions in the Open Public Meetings Law that apply to the Legislature. The rules that the legislation makes applicable to other governmental bodies should apply equally to all governmental levels and officials.

S-2511 contains many of the same pr provisions found in SCS S-1451, such as the continued exemption of the Legislature from the provisions. However, there are some notable changes as follows:

Subcommittee
- Definition of subcommittees has been changed. The new definition is now "any subordinate committee of a public body, except the Legislature, regardless of label, that is formally created by that body, comprised of two or more members, but less than a quorum, of the public body, and recognized by the public body as a subcommittee thereof."
- Removes requirement that subcommittees must prepare minutes and replaces it with the requirement that the subcommittees prepare a report of its meetings that must include number of meetings, names of members of the committee and a concise statement of the matters discussed. The public body must prepare a schedule of when the reports must be filed, however, every subcommittee must file at least one report with the public body. A subcommittee report is available for public access in the same manner as minutes of a meeting of the public body.
- The public body must determine if a subcommittee meeting is open to the public. If the meeting is open to the public, adequate notice must be provided.
- Includes a statement that"...other requirements applicable to meetings of public bodies shall not apply to meetings of subcommittees."

Minutes

- Minutes must be made available to the public as soon as possible but no later than 60 days or the second meeting of the public body after the meeting for which the minutes were prepared, whichever is later.
- If a member of the public body, other the Legislature, becomes aware that the meeting is in violation of Open Public Meetings Act the presiding member must ensure that minutes of that meeting shall be made.
- Each public body, other than the Legislature, shall keep comprehensive minutes of all its meetings

Public Comment

- Removes the ability of the public body to determine a reasonable length of time for public comment. However, such comment period may be limited solely to items listed on the agenda so long as an additional public comment period is set aside at the meeting at which time a member of the public may discuss any issue he or she feels may be of concern to and within the authority of the public body.
- Each speaker is permitted at least 3 minutes during public comment. The public body may limit the amount of time a member of the public can speak in excess of 3 minutes.

Agenda

- If an item is to be added to the agenda after adequate notice has been provided 2/3 of the members present must vote in the affirmative to add the item. In addition, a statement must be included in the minutes explaining the reason for adding the item to the agenda, why the item did not appear on the agenda and why delaying consideration of the item is not in the public interest. The Legislature may add an item to the agenda at any time.

Fines/Violations

- If an individual is found in violation of the Open Public Meetings Act they must pay the fine from their personal funds.
- Under no circumstances shall public funds be used to pay a fine or reimburse a person who has paid, or will pay, a fine for violation of the Open Public Meetings Act.

Miscellaneous Changes

- Removes NJ Network Foundation for the definition of "Public Body"
- Adds the following statement to the section regarding websites "For the purposes of P.L. 1975, c. 231 (c. 10:4-6 et seq.), the Internet site to which the information is submitted shall be deemed established by each submitting public body."

S-2512, which amends the Open Public Records Act and appears that S-2512 was introduced to replace S-1452. S-2512 contains many of the same provisions found in SCS S-1452, such as the continued exemption of the Legislature from the provisions. However, there are some notable changes as follows:

Personal Identifying Information

- Amends the exemption for personal identifying information of persons under the age of 18 to permit disclosure of driver information by MVC as permitted by law

Public Agency Definition

- Adds "an educational information resource center established pursuant to P.L. 1983, c. 186 (c. 18A:6-95.1 et seq.) to the definition of public agency

Special Service Charge

- Removes the requirement to include rate of pay of the public employee preparing the response from the detail breakdown

GRC Recommendations

- Requires the posting of recommendations that the GRC will consider for each case on-line 24 hours before the meeting to the extent know. Originally only the Executive Director's recommendations were to be made available.

Prevailing Attorney Fees

- Requestor may be entitled to reasonable attorney fees

Employee Records

- Records pertaining to the factual basis for the final administrative determination of a disciplinary action in which an employee is suspended, demoted, discharged, or resigned not in good standing, if it was due to the conviction of crime, shall be a government record.

- Continues the exemption for issues involving sexual harassment, sexual assault, domestic violence or rape

Fines/Violations

- If an individual is found in violation of OPMA they must pay the fine from their individual personal funds.

- Under no circumstances shall public funds be used to pay a fine or reimburse a person who has paid, or will pay, a fine for violation of OPMA.

V. S-2368, Beach Fees

Summary: S-2368 (Sweeney and Doherty) would prohibit any municipality that accepts federal Sandy-related funding from enacting or enforcing any ordinance authorizing beach fees. Further, this bill would require these same municipalities to provide free public toilets for beach patrons from the Memorial Day weekend through the Labor Day weekend. The bill is assigned to the Senate Environment and Energy Committee. There is currently no Assembly companion.

Background: The League previously opposed legislation to prohibit beach fees. The League wrote the sponsors objecting to the legislation while noting the costs involved in operating a beach. A municipality must fund beach maintenance, beach sanitation, lifeguards, beach policing, beach related emergency medical services as well as carry liability insurance and defend lawsuits.

Beyond these, the host municipality is faced with costs related to off-beach sanitation and public safety, road maintenance, traffic and pedestrian safety and parking facilities. New Jersey beaches are, mile for mile and square foot for square foot, the most heavily used national treasures anywhere and are the driving force to our tourism industry. The minimal fees that are charged for beach access help the host municipalities to fund these services. Further, the League letter noted the requirement for public toilets is an unfunded mandate with recurring maintenance cost. The anticipated State and Federal funding is to repair the damage to the State's beaches, which was extensive and it is quite likely that the funding will be insufficient to cover the full costs of Hurricane Sandy-related damage. This additional, unfunded requirement, were it to become law, would displace these costs to property taxpayers.

VI. S-2324, Business Personal Property (BPPT) Restoration

Summary: S-2324 (Smith, Greenstein) is referenced to the Senate Community and Urban Affairs Committee. A-3393 (Caputo) is assigned to the Assembly Telecommunications and Utilities Committee. The League of Municipalities **supports** S-2324 and A-3393.

Background: S-2324 and A-3393 would clarify the responsibility of certain telecommunications corporations to continue to remit Business Personal Property Tax (BPPT) payments to municipalities.

Based on a recent Tax Court opinion, over 100 municipalities know they will enter 2013 without Business Personal Property Tax (BPPT) revenues that will cost property taxpayers well in excess of $8 million. Unless matters change, more municipalities will lose more millions in the future.

In October, the Appellate Court declined to review the June Tax Court preliminary decision in the case of *Verizon v. Hopewell.* The case, in which the League supported Hopewell as amicus curiae, involved Verizon's claimed exemption from the BPPT in any municipality where the corporation unilaterally determines, in any given year, that it no longer supplies dial tone and access to at least 51% of a local telephone exchange. Verizon's claim had been rejected by the Mercer County Board of Taxation in 2009. The Tax Court reversed that ruling and allowed Verizon to claim the exemption. The Appellate decision permits that interpretation to stand.

In response to that decision, Senators Smith and Greenstein and Assemblyman Caputo have introduced S-2324 and A-3393 which will provide better direction to the courts regarding the legislature's intent to protect residential property taxpayers, when laws regarding State taxation of telecommunications providers were reformed in 1997.

The League has written the Chairs of the respective committee to which these bills are referred, requesting these bills be scheduled for hearings as soon as possible.

VII. S-1534/A-2586, MLUL exemptions for private colleges

Summary: S-1534 passed the State Senate in June. S-1534 and A-2586 are now referenced to the Assembly Higher Education Committee. The League opposes the legislation.

Background: A-2586 and S-1534, which exempt private colleges and universities from local zoning requirements, undermines and usurps local decision making and severely diminishes the role of our taxpayers.

A court case in the early 1970s established that a public college or university is exempt from local zoning. The Court basis for this decision was its conclusion that these institutions are instrumentalities of the State. Thus, what A-2586 and S-1534 will do is provide to certain private institutions the same status as instrumentalities of the State, such as Rutgers, the Parkway and the Turnpike.

Public scrutiny, involvement and complete transparency are essential to the planning process, and should not be diminished or hindered in any way. The involvement of locally elected officials, appointed officials and residents can only improve, not diminish, projects.

Shifting the authority to private colleges and universities in the determination of land uses for education purposes further burdens taxpayers to meet the cost impacts incurred as a result of the additional, unbridled development

While the bill appears to impact only 14 institutions, we are aware that some of these schools own land in other surrounding communities, and such property would also be exempt from local zoning. Further, A-2586 & S-1534 would establish another troublesome precedent. While the bill itself applies only to private colleges and universities, a very dangerous precedent could be established, allowing other non-profit institutions who similarly serve a "public mission" to argue that they should also be

exempt from local zoning control. The logical extension of this could impact every community in this State.

Working with an ad-hoc committee of Mayors of impacted communities, the NJ Chapter of the American Planning Association, the Sierra Club and a number of interested citizen coalitions, the League has been successful, so far, in preventing movement of the bill in the Assembly. The Assembly sponsor has been quoted in the press stating that in order for the bill to move it will need to be amended to address the concerns raised by the League. The fate of this legislation, therefore, is also uncertain.

VIII. Rule Proposal – Approval Process for Non-State Health Benefit Insurance Plans (N.J.A.C. 5:30-18.1 et seq.)

Summary: Rules would require that the Division of Local Government Services review and approve municipalities plan to provide medical, prescription drugs, dental or any other health care benefit, or any combination thereof if they are not using the State Health Benefits Plan (SHBP) for medical, prescription drugs, dental or any other health care benefit, or any combination thereof.

Background: The Division has proposed rules to implement the provisions of the Health Benefits reform, in particular, the provision that permits local units to incorporate the Division's approval of an "alternative" health benefit plan. While initial guidance provided by the Division explained that the law permits a development of "alternate contribution" plans, which is an agreement providing non-standard contribution by employees and retirees, in collective barging agreements upon approval by the Division. The rules will require all municipalities that do not provide medical, prescription drugs, dental or any other health care benefit (or combination thereof) using the SHBP to receive approval from the Division before entering into a Collective Negotiate Agreement that includes health care benefit, even if the proposed plan is identical or substantially similar to the plan in the prior agreement. If the local unit is entering into Interest Arbitration for Police and Fire either the municipality or the collective bargaining unit shall seek the Division's approval no later than the time of filing for interest arbitration for inclusion in the final settlement.

The rules will require a municipality to first certify to the Division and the Division of Pensions and Benefits that during the term of the Collective Negotiate Agreement (CNA) that the proposed non-SHBP plan has a net employer cost that generates employer savings when compared to the net SHBP cost before entering into a collective bargaining contact to provide medical, prescription drugs, dental or any other health care benefit, or any combination through a non-SHBP. The certification shall include CNA duration, comparison of the net employer cost with the net SHBP cost demonstrating aggregate employer savings and an employee by employee schedule prepared for each year of the CNA.

The employee by employee schedule must include coverage tier; base salary reflecting anticipated or actual increases over the term of the CNA; proposed employer plan premium, for both active and retire employees, for the selected coverage tier; proposed employee contribution; weighed average SHBP premium for the coverage tier selected;

and c. 78 health contribution. Employee plan premium and the Weighed Average SHBP Premium shall be assumed to remain constant over the term of the CNA and the proposed first year employer plan premium and weighed average SHBP premium shall be applicable to all years covered by the CNA.

Certification for aggregate employer savings can be delegated to the Business Administrator or Chief Financial Officer. However, if a primary professional consultant prepares the certification they must sign a statement certifying to the truthfulness and accuracy of the information provided.

The Division must approve or reject the certification in writing within 30 days from the receipt of the certification. The Division must reject the certification if the local unit does not demonstrate a net employer cost that generates aggregate employer savings when compared to the net SHBP cost. If Division does not act within 30 days the certificate is deemed approved.

The rules are based on several flaw premises. First, that one can easily compare SHBP cost to that of a self-insured or Health Insurance Fund (HIF). They rules fail to take into consideration the multi-year and long-term cost savings often found in self-insured or HIFs.

Secondly, that all labor agreements and health plan contracts expire at the same time. Health plans impact all municipal employees, while collective bargaining agreements impact most municipal employees. The rules do not take into consideration the expense a local unit may incur when they must breach a contract with a health insurance provider.

Thirdly, regulations do not take into consideration the legal restraints on local entities considering their obligations to retirees and those employee groups not part of the contract in question.

Finally, we are concern that the rules will impact competition, cost and delivery of healthcare for both the covered employee and their employees.

IX. Affordable Housing, COAH & the 2.5% fee on non-residential development

On November 14, the New Jersey State Supreme Court heard oral argument in the League's challenge of the 2008 COAH regulations. Edward J. Buzak, Esq, represented the League.

On January 28, the Court heard the appeal of the lower court ruling overturning the Governor's Administrative Order abolishing COAH. The League is not directly involved in this second case, but is amicus in a related ruling that prevented the State from seizing the affordable housing trust funds.

The League is party to a case currently before the Appellate Division regarding the State's attempts to seize the municipal affordable housing trust funds. The Appellate Division issued an August 10 order which restrained the State in its efforts to seize the local trust funds and that order remains in effect. The State has appealed the August 10 order and it will be part of the January 28 Supreme Court hearing. In this matter, the League is represented by Jeffrey Surenian, Esq.

Regardless of what the Court decides, we should expect affordable housing to return to the legislative arena in the first half of 2013. The suspension of the 2.5% fee on non-residential development expires on June 30, 2013. Thus, we should expect the commercial developers lobby for an outright abolishment of the fee or, as a fallback, an extension of the moratorium.

If the Court directs the Legislature to act or, for example, rules that "growth share" is constitutional but that the Legislature must amend the Fair Housing Act to authorize it, then the issue of the 2.5% fee may then be linked to the Court's directive.