

Legislative Update

March 2010

Porzio Governmental Affairs has compiled the following information to keep you apprised of recent New Jersey legislative developments.

Shortfall Results in Cuts to Current State Budget: The Governor and Legislature Take off the Gloves

Governor Christie called a special session of the Legislature on February 11 to announce his plans to fill a \$2 billion gap in the Fiscal Year 2010 Budget. As he proceeded through his speech, it was clear that it was much icier in the Assembly chamber than on the still barely-plowed streets of Trenton. Democratic leaders in both houses immediately criticized the Governor for not consulting with them in advance. "So much for a handshake," was the headline of Senate President Sweeney's press release, referring to the Governor's calling him and Speaker Oliver on to the stage for a handshake during the Governor's inaugural address. Further, they emphasized that Governor Christie's sweeping Executive Order that froze State spending usurped power that belongs to the Legislature.

The Governor stressed that his proposals to close the budget gap - including cutting funding for charity care, New Jersey Transit, and higher education - were not easy decisions. He expressed less remorse about accessing surplus funds from school districts around the State and made it clear that this solution does not "take one penny from an approved school instructional budget."

The Assembly responded with a public hearing on February 17 that lasted over eight hours. Representatives from municipalities, school districts, hospitals, and businesses - along with many unaffiliated individuals - packed the special meeting of the Assembly Budget Committee to express concern over the cuts.

The Governor will present his Fiscal Year 2010 Budget on March 16. In his February 11 speech he warned, "The cuts likely will be even deeper. The reforms will, of necessity, be even more dramatic." The one piece of bad news we can expect not to hear: tax increases.

Governor's Cabinet Nominations

The Senate Judiciary Committee began interviewing Governor Christie's nominations to his cabinet on February 8. The Governor's nominee for Attorney General, Paula Dow, the former Essex County prosecutor, was interviewed for almost five hours, including an hour of questioning by Senator Nia Gill of Essex County. Dow said her focus, as Attorney General, would include attacking public corruption, drug trafficking, illegal firearms, violent street crime, witness intimidation, and fraud. The Committee unanimously approved her appointment and the full Senate gave its approval on February 22.

In addition to Attorney General Dow, the Senate has approved four of the Governor's nominees: former New York State Tax Commissioner Andrew Sidamon-Eristoff as State Treasurer; Superior Court Judge and former Assemblyman Lee Solomon as President of the Board of Public Utilities; Monmouth County Administrator Robert Czech as head of the Civil Service Commission; and Major General Glenn Rieth to continue to serve as the Adjutant General of the Department of Military and Veterans Affairs.

Bret Schundler, the Governor's nominee for Commissioner of the Department of Education, was interviewed by the Judiciary Committee on February 22 and again on March 1. As expected, he drew intense questions on school choice, school aid cuts, preschool education, and his religious beliefs. Ultimately, the Committee approved his nomination "without recommendation." While Senator John Girgenti, a Passaic County Democrat, was the only member to abstain from voting, it was noteworthy that two of the Committee's most vocal Democrats, Senator Gill and Senator Raymond Lesniak, were absent. Additionally, while the Committee's chair, Senator Nick Scutari of Union County, cast a yes vote, he stated that he would reserve his right to vote no on the floor. At this point, there is some question as to whether Schundler has enough votes to win approval by the full Senate.

James Simpson, the Governor's choice for Commissioner of Transportation, also appeared before the Committee on March 1 and faced far less scrutiny than Schundler. The future of the Transportation Trust Fund was the focus of much of the questioning and Simpson emphasized his desire to receive increased federal funds for New Jersey transportation projects.

The remainder of the Governor's cabinet nominations will continue to appear before the Senate Judiciary Committee over the coming months. All of them are currently working in an acting capacity to lead their departments.

Bipartisan Pension Reform Bills

Despite strong opposition from the public employee unions, four pieces of bipartisan legislation targeting pension and health benefit reform moved through the Senate State Government, Wagering, Tourism and Historic Preservation Committee on February 18. Three of these measures were approved 36-0 by the full Senate on February 22. The foundation for these bills comes from the 2006 Special Session's Joint Legislative Committee on Pension and Benefits Reform. At that time, Governor Corzine rejected many of the Legislature's proposed recommendations. Governor Christie has expressed tempered support for the reforms, calling the package "a beginning" and making it clear that he believes they need to go much further in order to reign in the cost of government.

S2, sponsored by Senators Scutari (D-Union) and O'Toole (R-Bergen), makes various prospective pension system changes concerning eligibility, retirement allowance formula, compensation definition, positions eligible for service credit, non-forfeitable rights, and enrollment waiver. Senators Doherty (R-Warren) and Whelan (D-Atlantic) sponsored S3, which addresses the State Health Benefits Plan and School Employees Benefits Plan and requires public employees to contribute 1.5 percent of their salary to the cost of their health coverage.

Senator O'Toole and Majority Leader Buono (D-Middlesex) sponsored S4, which concerns payments to public employees for unused sick leave, sick leave injury in State service, and disability retirement. The bill would apply prospectively.

SCR1 was considered and released by the Senate State Government, Wagering, Tourism and Historic Preservation Committee on February 22. The Committee held a public hearing on the proposal on March 1. Sponsored by Senate President Sweeney (D-Gloucester) and Senate Minority Leader Kean (R-Union), this bill amends the State Constitution to require annual contributions by the State to the State-administered retirement system. Senate President Sweeney indicated that the upper house will vote on the measure on March 11.

To date, the Assembly has not yet introduced companion bills, and Speaker Oliver has stated that she wants to ensure careful review of these reforms. Governor Christie requested that the Assembly pass the pension reform bills before his March 16 Budget Address. Although the Assembly may schedule hearings the week of March 8, it is not expected that the bills will pass before the Budget Address. It has been speculated that the lower house will introduce the Senate package, as is, and also propose its own set of bills that could be broader, perhaps including quasi-state agencies, and deeper, perhaps containing a higher or different health insurance co-pay than the Senate.

Porzio Governmental Affairs, LLC ("PGA") Horseracing Clients Enjoy Victory in the Legislature

The New Jersey Thoroughbred Horsemen's Association and the Thoroughbred Breeders' Association of New Jersey dodged a bullet recently when Barbara DeMarco, Vice President of PGA, succeeded in removing a last-minute amendment that would have severely limited racetrack participation in legalized sports betting should that activity come to New Jersey.

The Senate State Government, Wagering, Tourism and Historic Preservation Committee ultimately passed Senate Concurrent Resolution (SCR) 49, which proposes a constitutional amendment to allow in-person wagering on sports events at Atlantic City casinos and at racetracks, without limiting the days and times sports betting could occur at the latter. Senators Lesniak (D-Union) and Van Drew (D-Cape May) sponsored the Resolution.

The Assembly Regulatory Oversight and Gaming Committee has not yet heard its Assembly companion, ACR98. SCR49 awaits consideration by the full Senate.

The proposed constitutional amendment has a long road before it, as federal law currently allows for sports betting only in Nevada, Oregon, Montana, and

Delaware. However, there is a suit pending in the United States District Court for the District of New Jersey seeking declaratory relief, in which the plaintiffs allege that as the "Professional and Amateur Sports Protection Act" discriminates against New Jersey residents and violates the 10th and 14th amendments.

Brian Sharkey Invited to Deliver Expert Testimony before the Assembly Judiciary Committee

Brian Sharkey, counsel at PGA's parent law firm, Porzio, Bromberg & Newman, and Director of Compliance and Legal Affairs for PGA, testified before the Assembly Judiciary Committee on February 18 regarding the implications of the United States Supreme Court opinion, *Citizens United v. Federal Election Commission*.

Mr. Sharkey concluded that the Supreme Court's decision should have very little, if any, impact on the State's current pay-to-play laws. He made it clear that the Supreme Court was not concerned with direct contributions to candidates but rather independent expenditures by corporations or unions. The Court ruled that it was unconstitutional for Congress to ban those expenditures. He further explained that New Jersey does not have a law comparable to the federal law that was struck down by the Court.

Assembly Financial Institutions and Insurance Committee Hearing on Out-of-Network Providers

The Assembly Financial Institutions and Insurance Committee recently received extensive testimony on various issues related to reimbursements by health insurance carriers to out-of-network healthcare providers. Going forward, this will become a hot issue for healthcare insurers who claim that their out-of-network reimbursement costs are rising significantly and for healthcare providers who are dropping out of health insurers networks because they feel the reimbursement for services is inadequate and does not cover their cost for providing quality patient care. It will be interesting to see if any future legislation is introduced to deal with this issue.

Pay-to-Play Database: We Save you Time and Energy - Grow your Business

New Jersey, along with its counties and municipalities, has a patchwork of ever-evolving laws and ordinances governing political contributions. The Porzio Pay-to-Play Database ("P2P") is a tool that allows you to stay competitive and confident that you are following the governing law. P2P saves time and allows you to focus on what really counts: growing your business. Visit the P2P website at www.porziopaytoplay.com, and schedule your free web demonstration by calling Lauren J. Ira at 609-396-6100; ext 16.