



Legislative Update

Fall 2011

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

Be kind to your web-footed friends . . . Will this lame duck session be like every other?

After several months of limited activity in the State House, Trenton insiders will soon be facing that oddly-named, biennial period of time between election day and the swearing-in of a new Legislature.* Odds are it will not be a true lame duck session where the party currently holding the majority will become the minority in the new session. Thanks to a perfectly orchestrated redistricting strategy by the Democrats, it is widely thought that the November 8 election will result in their winning the requisite number of Senate and Assembly seats to remain in control of both houses. Nonetheless, November 9 through January 10 will be a hectic, chaotic, and unpredictable time in the State House.



While the current Legislature and leadership structure will remain in place until January 10, one of the top wild cards that will define the lame duck session will be the selection of the leader of each house for the new legislative session. Overall, there is general agreement that Senate President Sweeney will remain at the helm of the upper house. In the Assembly, Speaker Oliver appears to be facing challenges from several members of her caucus. Of note, these legislators all hail from counties in the northern part of New Jersey: no one is even thinking about upsetting the unspoken north-south balance. If the Senate President resides somewhere below Mercer County, then the Speaker must come from the north. Of course, there is the unlikely possibility that this could be turned upside down, but no one has explored the potential intricacies of that new arrangement with a Senate President from the north and a Speaker from the south.

What are the big-picture issues that the lame duck Legislature will address? Governor Christie is expected to push his K-12 education agenda, including vouchers and tenure reform. However, that is dependent on the du jour status of the relationship between the Governor and the Senate President and the Speaker and perhaps Speaker-elect.

For now, it looks like Senator Sweeney has forgotten about the now-famous adjective and noun he used to characterize the Governor following the line-item veto frenzy in June. And even if Governor Christie and Senate President Sweeney do not like each other, they can still play ball and get something done.

In the Assembly, the relationship between the leaders of the Democratic caucus and the Governor has always been more tenuous. Recently, Speaker Oliver has been quick and pointed in her criticism of the Governor and his actions, perhaps resulting from their complete disagreement on what took place behind-the-scenes during the pension and health benefits reform battle in June. In a supposedly private meeting during the summer, Governor Christie stated that the Speaker contacted him on the day of the vote and asked him to muster the necessary Republican support to keep her as head of the Assembly should members of her caucus attempt to unseat her. Speaker Oliver flatly denies that the conversation took place.

Right now, it looks like one issue that will not be on the lame duck agenda is legislative action to place a constitutional question on the ballot that would ask voters to approve that judges be treated equally with other State employees. Governor Christie has made this one of his priority issues following a judicial ruling that judges do not need to comply with the recently enacted increase in public employee pension contributions. Senate President Sweeney and Speaker Oliver have said that they prefer the matter go through the judicial process before considering legislative action that would result in a ballot question.

However, not everything is adversarial in Trenton. Apparently, there is agreement between the executive and legislative branches on the need for a bond for higher education capital funding. Consideration of a resolution to place a question on the ballot in November 2012 could take place in the lame duck session. Should the resolution pass, it would still need to be considered by the incoming Legislature next year, but it would need passage only by a simple majority. If it does not pass in the lame duck session, and is only considered next year, passage by a 3/5 super majority would be necessary to place it on the November 2012 ballot.

While major and controversial policy initiatives are part and parcel of a lame duck session (think same sex marriage and medical marijuana two years ago), the real heart of the limited session is hundreds of bills that do not make headlines but do cause headaches for legislative staffers, lobbyists, issue advocates, and others on the Trenton scene. If a legislator really wants a bill to pass, now is the time to push it. If you happen to be on the same side, that is a blessing. If you are on the other side, it is a blight. Legislation that appeared to be dead suddenly springs to life. Previously unseen legislative alliances are formed. And watch out for a bill that has already passed one house: there is a good chance you will see it on a committee agenda in the other house come mid-November.

The lame duck session is also a time for legacy legislation. Legislation championed by members who are not returning in the new session is given special consideration. However, unless the legislator is a retiring Speaker or Senate President, these bills typically address a pet project or local interest rather than set a new policy direction. Several long-time legislators will be saying good-bye to the State House come January: Assemblyman Joe Malone of Burlington County; Assemblywoman Joan Quigley of Hudson County; Assemblywoman Joan Voss of Bergen County; Assemblywoman Elise Evans of Passaic County; and Senator John Girgenti, also of Passaic.

What makes this lame duck session different from those in recent memory is the man

who occupies the front office. Governor Christie has demonstrated that he is not only unafraid of utilizing his veto power, but relishes it. And in the lame duck session, he has the additional option of the pocket veto--taking no action on a bill, which will render it dead once the current session concludes. Previous governors essentially signed every lame duck bill that came to their desk; that will not be the case this year. Smart legislators will keep this in mind as they assemble their priorities for the coming months.

** For all you trivia buffs, according to Wikipedia, the phrase "lame duck" was coined in the 18th century at the London Stock Exchange, to refer to a broker who defaulted on his debts. The first known mention of the term in writing was made by Horace Walpole, in a letter of 1761 to Sir Horace Mann: "Do you know what a Bull and a Bear and Lame Duck are? In 1791 Mary Berry wrote of the Duchess of Devonshire's loss of £50,000 in stocks, "the conversation of the town" that her name was to be "posted up as a lame duck." In the literal sense, it refers to a duck which is unable to keep up with its flock, making it a target for predators.*

It was transferred to politicians in the 19th century, the first recorded use being in the Congressional Globe(the official record of the United States Congress) of January 14, 1863: "In no event . . . could [the Court of Claims] be justly obnoxious to the charge of being a receptacle of 'lame ducks' or broken down politicians. OUCH.

Will New Jersey voters bet on sports wagering?

In an effort to distinguish New Jersey from competing regional gaming markets in the northeast, New Jersey voters will be asked on next Tuesday's ballot to approve an amendment to the State Constitution permitting sports wagering at Atlantic City casinos and the State's racetracks. Approval of the referendum would set the stage for a legal battle between New Jersey and the United States Department of Justice.

In 1992, the United States Congress passed the Professional Amateur Sports Protection Act ("PASPA"). Under the law, each state had one year to approve or disapprove sports wagering within their borders. Although New Jersey attempted to win approval from its citizens, voters said "no," leaving the ability to offer sports wagering only to Nevada, Delaware, Montana, and Oregon.

New Jersey State Senator Ray Lesniak believes the approval of this year's referendum will provide him the legal standing to challenge PASPA. The challenge will focus on whether or not "gaming policy" is a state or federal issue and whether or not the federal government has the right to say that it can protect professional and amateur sports in every state except for the four mentioned above.

"I believe passage of the referendum will send a strong message to the court that will be hard to deny," Lesniak told the Philadelphia Inquirer in a recent front page story. "That Congress can say 'no' to the people of New Jersey and 'yes' to the people of Nevada would be a difficult pill for the court to swallow."

Proponents for the legalization of sports wagering in New Jersey believe that if the referendum is approved and the court challenge succeeds, as much as \$225 million in new revenue will be generated for Atlantic City's 11 casinos and four racetracks. In addition, as many as 1,600 new jobs would be created. More importantly, the addition of sports wagering would attract more tourists to Atlantic City, which has seen a 30 %

drop in business due to competition for the gaming dollar from the neighboring states of New York, Pennsylvania, and Delaware.

New Jersey's racetracks would also benefit greatly because sports wagering will attract a younger demographic to go to the racetrack and generate much needed new revenue to support live racing. It would also give New Jersey a unique advantage since no other state in the region offers Las Vegas-style sports wagering. What occurs in Delaware (the parlay system) is not nearly as popular or profitable. Further, racing would benefit from the "cross-over" wager where the individual who wagers on a race will also wager on a game and vice versa.

PGA Vice President Barbara DeMarco is one of a handful of lobbyists with true expertise on this issue. Last year, she successfully stopped an effort by Atlantic City interests to cut racing out of the referendum. "What's unique about this issue is that in the 14 years I have worked on gaming issues, this is the first time that both casino and horseracing will benefit from the same gaming policy," said DeMarco. "This is important to me as an Atlantic County gal with roots in horseracing and breeding."

PGA effectively advocates for State's physical therapists

On behalf of our PGA client, the American Physical Therapy Association, New Jersey Chapter ("APTAnj") and working with the members of the APTAnj Payer Relations Advisory Group, PGA Executive Vice President, Dennis Marco, gathered sufficient information from physical therapy practices to enable the New Jersey Department of Banking and Insurance ("DOBI") to investigate the high co-payment practices of New Jersey's healthcare insurance carriers.

After its initial investigation, DOBI found two healthcare insurers were not in compliance with New Jersey's Minimum Standards for Health, Dental and Prescription Benefits (N.J.A.C. 11:22-5.1 through -5.11). As a result of this action both healthcare insurers are decreasing certain co-payment amounts for members enrolled in some of their insured individual, small employer, midsize standard (51 to 99 employees), and large group accounts. One insurer is correcting its billing practices and will also reimburse impacted members for services between April 1 and August 31 of this year.

This positive outcome was also reported in the APTA's national publication, PT in Motion, in an article titled "Effective Patient Advocacy: Reducing Co-payments in New Jersey." APTA also produced a podcast that discussed how the New Jersey Chapter was able to achieve a reduction in co-payment amounts for physical therapy patients. The podcast features Brian Mason, PT, DPT, chapter president, and Dennis Marco, who serves as the payer relations specialist for the chapter. Brian and Dennis explained how part of the chapter's strategic plan was for its Payer Relations Advisory Group to develop a closer relationship with DOBI. They also shared how those connections enabled the chapter to collaborate with DOBI staff to enforce a regulation that DOBI adopted in September 2010. Moreover, they discussed how the rule does not apply to all insurers, and that at least one large insurer was already in compliance with the rule.

Update on Medicaid Waiver

In September, the Department of Human Services, in conjunction with the Department of Health and Senior Services and Department of Children and Family Services, submitted New Jersey's long awaited Medicaid Waiver applications to the Federal Centers for Medicare and Medicaid Services ("CMS"). If approved by CMS, the five-year research and demonstration waiver is expected to afford the State greater flexibility in its administration and governance of the State and federal partnership. The State will benefit from greater autonomy in determining eligibility and benefit levels while also attaining greater administrative efficiencies. This flexibility is expected to achieve greater budget predictability, promote primary and preventative care and put the increasingly costly, yet critical, safety-net back on the path of financial sustainability.

Medicaid costs grew 18% over the past three years and the total cost of delivering health care between the Department of Human Services and the Department of Health exceeded \$5 billion dollars, excluding the federal match. It was anticipated that New Jersey would save as much as \$300 million through the waiver application in fiscal year 2012 with potentially greater savings in future years.

With the submission to CMS, New Jersey now awaits a formal and informal review and dialogue between its agencies, providers, and members and the federal approving authority. It is expected that this dialogue will lead to the opportunity for the State to respond to CMS's questions and then enter into a negotiation with CMS over portions of the waiver application that may be of concern to the federal authority or which may require additional clarification. Waiver approval or denial is anticipated by the end of the year.

PGA's Anderton to moderate panel at League of Municipalities convention

Sal Anderton, PGA's legislative director and deputy mayor of West Orange, will moderate a workshop at the League convention later this month. He will preside over "A Successful Political Campaign: Characteristics, Features and Strategies" at 2:00 on Tuesday, November 15 in Room 312 of the Atlantic City Convention Center. Panelists will be: Bart Rossi of Rossi Psychological Group; Dale Florio of Princeton Public Affairs; and Peter J. Wooley, executive director of Public Mind at Fairleigh Dickinson University.

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