



**State of New Jersey**  
**LOCAL UNIT ALIGNMENT, REORGANIZATION,**  
**AND CONSOLIDATION COMMISSION**  
**DEPARTMENT OF COMMUNITY AFFAIRS**  
**101 SOUTH BROAD STREET**  
**PO Box 800**  
**TRENTON, NJ 08625-0803**

**CHRIS CHRISTIE**  
*GOVERNOR*  
**KIM GUADAGNO**  
*Lt. GOVERNOR*

**John H. Fisher, III**  
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**Lori Grifa, Commissioner**  
**Department of Community**  
**Affairs**  
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**Treasurer**

January 13, 2011

Greetings Senate President Sweeney,

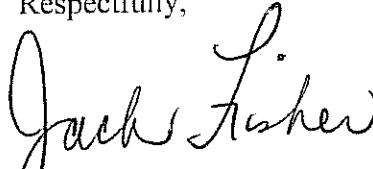
Attached you will find a 12 page LUARCC position paper entitled Statutory Obstacles to Shared Service Implementation by Local Government prepared by Commission Member Robert Casey. This document presents recommendations on how and why to remove and reform Civil Service obstacles to shared and consolidated services.

Also attached is Civil Service Obstacles to Greater Shared Services prepared by Commission Member Gary Passanante.

The backgrounds and recommendations of these two papers are based on research and testimony presented to LUARCC over the past several years.

This information is provided as a base to the legislature's efforts to provide relief to local governments in the implementation of meaningful consolidation of governmental services at the local level. LUARCC believes that beyond legislative action there is an immediate need for a public forum to initiate the dialogue to accelerate the shared service process. To that end, LUARCC stands ready and is anxious to assist.

Respectfully,

  
Jack Fisher, Chairman

cc: Andrew D. Hendry, Executive Director  
All LUARCC Commission Members

## **STATUTORY OBSTACLES TO SHARED SERVICE IMPLEMENTATION BY LOCAL GOVERNMENT**

**1. CIVIL SERVICE STATUTES AND SHARED SERVICES. OVERVIEW:** There are no specific sections of Title 11A (Civil Service) that directly impede shared service activity. However in 2007 the Legislature passed Chapter 63 of the Laws of 2007 recodifying and modifying the existing shared service and consolidation statutes (40A:65 11 et seq). The 2007 Statute revised shared service procedures imposed specific requirements on civil service municipalities. Experience has shown that these new requirements can impede shared service activity. In addition, the actual implementation of the Reconciliation Plan, required whenever one or more civil service municipalities merge operations, may in fact have negative impacts since the authority of the service provider to determine which employees are transferred to the provider agency from the receiving agency and the rights of these imported employees versus the rights of the existing provider employees is not a known factor (see below).

In sum, the 2007 modifications made to “fix” perceived deficiencies in the prior statutes in fact have caused significant operational obstructions to the shared service movement and denied to local governments the flexibility needed to reorganize local services to be more cost effective.

**Recommendation:** In order to limit the impact of these suggested civil service changes, it is recommended that Title 11 not be changed per se but provisions be placed in Chapter 40A – 65 Subarticle B, Shared Services, that provide for the necessary exemptions to Civil Service law to allow the shared service activity to progress. These provision should clearly state that the goal of improving the provision of services through a shared service agreement is the primary goal of the State of New Jersey and civil service provisions must be secondary to and complimentary with the primary goal

## **2. CIVIL SERVICE AND “CREATIVITY” IN CREATING AND IMPLEMENTATING SHARED SERVICE ACTIVITIES**

**Recommendation:** Chapter 40A – 65-11 have a specific provision providing local governments with the flexibility to initiate new job titles, and to reassign duties and responsibilities of existing employees so that new merged operations resulting from a shared service activity can be initiated. In essence Civil Service must become a “partner” with municipalities in creating new personnel environments to facilitate shared service

**activities rather than a simple regulatory agency more concerned with existing employee rights than with restructuring government services to be more cost effective.**

Background: Several counties have advised LUARCC that they faced serious obstacles from Civil Service as they attempted to provide for new merged services. Shared Service contracts are for a fixed duration, often 3 years or less in duration. To change personnel to reflect these new procedures can require a longer time frame than the contract calling for the changes. There needs to be a mechanism allowing incremental short term changes so that any new consolidated operation can experiment with the best method to achieve its stated goals with the understanding that after the operation has been tested, Civil Service process can be undertaken to insure that the affected employees are in sync with existing civil service procedures, and/or the civil service titles and procedures are modified to reflect the new merged operational reality. To require these civil service changes before the initiation of the merged service requires an extended period of time that can easily result in the demise of the desired merged service.

### **3. SHARED SERVICE IN GENERAL – CIVIL SERVICE AND “BUMPING RIGHTS”**

**Recommendation: Revise 40A65-11 to provide for more flexibility for the service provider in a shared service contract to retain its existing employees if it so chooses (even those who are provisional); to determine which employees of the receiver municipality it wishes to select to fulfill its requirements (irrespective of their civil service status in the receiver municipality); and to require that the “employment rights” of existing employees of the provider agency are not made secondary to those of any imported employees of the receiving agency. Those civil service employees who are laid off shall be given priority for future employment opportunities in the provider agency as well as being available to any other civil service municipalities in that county seeking a person with their certification / qualifications (but not placed on any mandatory employment certification list)**

Background: LUARCC has reviewed the impact of the existing shared service statutes adopted in 2007 with particular attention to the various changes in the law as these changes impact on municipalities trying to implement new shared service contracts for construction code activities. This review indicated that whenever a civil service municipality attempted a shared service agreement with another civil service municipality or even a non civil service municipality, the provisions in 40a:65-11 have a direct and often negative impact on the possible implementation the new shared service. **In particular, it must be noted that these new requirements do not affect non civil service municipalities, or when all participating jurisdictions are not part of civil service.** When one municipality is civil service and the other is not, special provisions apply and the statute’s requirements are confusing to local officials. **In essence the message to municipalities with civil service requirements is to seek out shared service agreements with non civil service municipalities since if the non civil service municipality is the provider, there is greater flexibility over and control over the shared service process.**

The review by LUARC ascertained three provisions of that require attention.

The first one is the requirement for and implementation of a “reconciliation plan” and preventing the execution of a shared service contract until the Reconciliation Plan is approved by Civil Service (45 day delay) or the modifications required by Civil Service are included in the Plan and any shared service agreement. When both jurisdictions are civil service, the net effect of the “special reemployment list” created in 40A65-11 is that any permanent employee in the agency to receive the service can “bump” or replace a non-permanent employee in the provider agency even if the provider agency does not wish to employ the particular person from the receiver municipality. This “reality” is in contradiction to subsection b which states that “the final decision of which employees shall transfer to the new employer is vested solely with the local unit that will provide the service and subject to any collective bargaining agreements within the local units”.

In reviewing shared service activity in the Construction Codes, several local officials advised that this requirement caused the provider agency to turn down the contract with the receiver municipality since employees that the provider agency had recruited and trained (and often, local residents) who had not yet achieved “permanent civil service status” could have to be laid off. This would occur when the provider municipality asked for and obtained a certification list for the position after the shared service was implemented and there was a person on the Special County wide Reemployment list from the receiver agency (created pursuant to the requirements of 40A:65-11) who would receive a priority certification on the new list. The probability of this occurring is significant the current extended delay in the development of a civil service new hire list for construction cod services.

When one municipality is civil service and the other is not, similar issues can arise depending upon which municipality has the civil service requirements. If the non civil service municipality is the “service provider”, then that municipality retains the ability to determine which employees will be employed in the new enlarged operation (subject to local regulations and labor contracts) and the law has provisions to allow this transfer. If however the civil service agency is the “provider agency”, then there is confusion as to the “rights” of the employees of the abolished non civil service agency to obtain employment with the civil service provider agency especially when the provider agency has employees who are not permanent and the receiver employees may be in mid term in their appointment.

The second major issue was the mandated payment of severance to a permanent civil service employee who is laid off because of the abolishment of one municipality’s operation and the consolidation of employees in the provider’s operation. This severance would be in addition to any required unemployment insurance payments. **The recently enacted legislation S2391 and A3590 addresses the issue of the required severance payments by making the severance optional.**

The third obstacle in the Shared Service statute that impacts on civil service municipalities has to do with the creation of “county wide reemployment lists” The revised

2007 Shared Service statute established a county wide reemployment list for those civil service employees who may be laid off through a shared service process. Under Title 11 (Civil Service), normally reemployment lists due to layoffs are limited to the jurisdiction making the lay offs; however in the revised shared service statute adopted in 2007, this new county wide list is established. If the civil service agency providing the service under the shared service contract has employees who are non permanent, those on the county wide reemployment list can bump them even though the provider agency may have significant time and expense invested in the provision employee and may be 100% satisfied with the employee's performance. In addition, since these provisions relate only to civil service municipalities; these provisions place an undue burden on these locations versus those municipalities that are not in the civil service system.

**It must be emphasized that if both municipalities are non civil service, it appears that there are no impediments in the new law that need to be overcome.** In essence the 2007 amendments to the law governing Shared Services add a layer of confusion, cost, and loss of control to one set of municipalities which are not in existence for other municipalities. Although this information was obtained through the review of Construction Code activities, the same information is pertinent for all other shared activities when Civil Service status is present in one or both of the participants.

#### **4. SHARED SERVICE AND THE RECONCILIATION PLAN.**

**Recommendation: that the formal approval of a Reconciliation Plan be required before the initiation of the shared service activity and not the approval of the shared service contract. Civil Service local governments who wish to get the approval before formally approving the shared service contract can still do so; others can make the approval of the plan a condition of the final shared service contract (similar to conditions attached to any land use development plan)**

Background: The Reconciliation Plan required by the 2007 statute for civil service municipalities has two immediate impacts: 1. The 45 day delay in approving any shared service contract to allow for civil service to review and approve / modify the Reconciliation Plan can result in the loss of momentum in the drive for the shared service as well as allowing opponents to gather opposition to the merged service. Since some shared service agreements can generate opposition, this delay can have significant impact.

2. Very often the special titles etc., required by civil service can require an extensive time period to analyze and implement. Delaying formal approval until all of these conditions can be met results in uncertainty in the final plan of action and financial plan, the possibility of which can discourage local officials from pursuing a shared service agreement. The prospect of meeting civil service regulations and/or obtaining the necessary modification can be daunting for

“creative shared service plans” reducing the willingness of many local officials to undertake the task.

## **5A. SHARED SERVICE IN POLICE DEPARTMENTS.**

**Recommendation:** That 40A65:8 be revised to refer to the “**Joint Provision of Law Enforcement**” thereby returning the state law to what was in existence prior to the 2007 revisions.

Background: LUARCC interviewed various municipal officials who have or are currently working on the sharing of police services. There have been a number of successfully merged police departments wherein one municipality (usually a jurisdiction with a small police department in terms of manpower and resources) abolishes its department and enters into a contract with an adjacent municipality to provide this important function. In all of the instances reviewed by LUARCC, the final “merged” department provided a higher level of services to both jurisdictions at a cost saving to both the provider municipality as well as the receiving municipality. All of these cases instituted this merger under the law governing shared services prior to 2007, or were in the process during 2007 and used the statute in effect in the early part of the year.

The original shared service law was in NJSA 40:8A “Interlocal Services”. Section 6.1 “Contracts between two or more local units for the joint provision of law enforcement services; preservation of existing rights” contains the following provisions: “Whenever two or more local units enter into a contract provided in PL1973 c. 208 . . . for the **joint provision** of law enforcement services within their respective jurisdictions the contract shall recognize and preserve the seniority, tenure and pension rights of every full time law enforcement officer . . . To provide for the efficient administration and operation of the **joint** law enforcement services within the participating local units, the contract may provide for the appointment of a chief law enforcement officer. . . ”

Section 8A-6.1 provides procedures for the combining of two departments into one “joint department” and these procedures provide for retention of existing officers, etc. Original law had limited definitions, which did not include shared services or joint.

LUARCC has been advised that under this provision one of the jurisdictions entering into shared service agreements for police services would abolish its department and then contract for the service with another jurisdiction. This process was done to avoid the requirement that the larger remaining department had to accept the entire personnel base of the smaller department. In this process many but not necessarily all of the manpower of the department being abolished were employed by the other agency; however it was not unusual for the new operation not to require the services of all of these officers and in some instances, the Chief of the larger department had reservations about the qualifications / experience of some of the smaller agency’s personnel. In addition, some of the “superior officers” from the small abolished department could not have the

same level of responsibilities in the larger department again due to the absence of positions but also do to the limited training and experience.

The new statute, Chapter 63 of PL 2007, states in 40A:65-8 "Preservation of seniority, tenure pension rights for law enforcement officers"

"8. a. Whenever two or more local units enter into an agreement pursuant to section 4 of PL 2007, c63, . . . for the **shared provision** of law enforcement services within their respective jurisdictions the agreement shall recognize and preserve the seniority, tenure and pension rights of every full time law enforcement officer . . .

8. b. To provide for the efficient administration and operation of the **shared** law enforcement services within the participating local units, the agreement may provide for the appointment of a chief of police or other chief law enforcement officer . . .

In addition under section 40A:65-3 "Definitions relative to shared services and consolidation" the following definition was added: "Shared Service or "shared" means any service provided on a regional, joint, interlocal, shared or similar basis between local units, the provision of which are memorialized by agreement between the participating local units . . ."

Under the new law, when one department is abolished for the purpose of entering into a contract for services, all of the existing personnel are transferred to the agency designated to provide police services with full tenure and seniority rights and rank, and then there are detailed provisions for reducing the size of the new combined force to meet the requirements of the new expanded operation with these reductions being in essence "Last in first out" without consideration for specialized capabilities, prior experience, employment history, etc.

In sum, the procedures of the new law have severe ramifications on the department that is to provide the new service to the extent that the Police Chiefs to whom LUARCC has talked have indicated that if these new procedures were in effect when their merged department was created, they would not have voluntarily entered into the agreement. Their reluctance or even hostility would in essence prevent the forming of the new shared service. Developing and implementing a law enforcement shared service agreement is one of the most difficult processes that can be undertaken by local officials. If the existing personnel object, especially the leadership of the agency, there would be no incentive for the municipal officials to proceed further.

The goal of the legislature in assuring "full employment and rights to everyone" in essence presents a hurdle that is so high as to curtail the process. If the goal is to effectuate a new agency that can be more cost effective and efficient (which seems to have been accomplished in the pre 2007 mergers), then this goal is in direct conflict with the legislative goal of providing full employment rights to everyone involved.

LUARCC recommends that the legislature revise 40A65-8 to return to the pre 2007 process thereby providing more flexibility and authority to the department that is to provide the service in selecting those officers that it needs to provide the new service as well as reassigning superior

officers in a manner that recognized their capabilities and training versus the existing officers in the department.

## **5. B. SHARED SERVICE AND LAYOFF PLANS / MERGED OPERATIONS**

**Recommendation: if the recommendation in 5A is not approved, then 40A:65-8 be amended to allow municipalities to abolish existing operations and lay off those employees not required in a new merged operation. This would be in lieu of the requirement for the merger of the two departments.**

Background: for Civil Service municipalities which are merging functions including police agencies to reduce manpower to reflect the new requirements of a shared service activity requires between 75 days (minimum based upon the 30 day review period and 45 day notice) and 150 days (a realistic time frame to meet all of the plan development, review notice and notice requirements). Consequently for any local unit intending to reduce operational cost via a shared service agreements the budget impact is realistically 180 days or ½ of a budget year. The net effect is that the cost of operations will remain constant for the first ½ of a budget year and the savings begin thereafter. This hurdle is so great that shared service agreements for civil service jurisdictions and police agencies must realistically assume minimal manpower savings in year one making it more difficult to “sell” the merits of the shared service plan to local residents who often are skeptical if not adversarial in order to prevent change that may impact local employees.

Compounding this problem is the requirement in the existing 2007 law for the integration of labor contracts in merged police agencies into one new master contract involving PERC and arbitration rules. These integration efforts normally result in the “highest and best” benefits from all participating agencies being combined into one new agreement which results in an even higher cost structure that often overshadow any manpower savings that can be projected.

## **6. SHARED SERVICE IN HEALTH DEPARTMENTS**

**Recommendation: that NJSA 26:3A2-16 and 2-17 be amended to provide that full time employees of a local health agency who are being terminated by reason of the assumption of the public health functions by another local public health agency pursuant to 40A65-1 et seq. be given priority in filling any vacancy in the new public health agency for which they are certified / qualified for a period of 5 years from the effect date of the transfer of the local public health functions from one agency to another. This is in lieu of the current statute providing guaranteed employment for the employees of the agency being abolished.**

Background: In 2008 and 2009 LUARCC interviewed various municipal and state officials who have or are currently working on the sharing of local public health services. Although the cost of providing public health services is not a significant cost driver in most municipal budgets, many municipalities have formed regional service providers or County agencies have been designated to provide services to county municipalities. However over 100 municipalities continue to provide public health services at the municipal level and efforts by some of these municipalities to join in shared services for these activities on a function wide basis have at times been stymied by state statute protections provided to local public health employees. Municipal officials and others have commented that it is fairly common for a municipal agency to join a regional or county wide service agency only upon the retirement of the existing public health officer, or a vacancy in that position. Data indicates that public health services provided by larger agencies are more diversified and cost effective than those provided by single agency providers, when the totality of the services rendered is considered.

It appears that the obstacle that may be preventing further sharing of public health services is NJSA 26:3A.2-16 thru 18 (the text of these statutes is attached to this recommendation).

Under the law, when a municipal agency is abolished and the functions assigned to a regional agency or county agency, all of the existing personnel are transferred to the agency designated to provide health services with full tenure and seniority rights and rank. If the transfer results in an excess of employees at the new agency, then reduction in force procedures govern the resizing of the larger agency. These "layoff" procedures often result in the loss of specialized employees and / or generate an adverse work environment at the new agency. These potential problems result in a reluctance to affect the consolidation of these activities, even if this consolidation will result in more services being available to the municipality at a reduced cost. Developing and implementing a public health shared service agreement is a difficult and often controversial process to be undertaken by local officials. If the existing personnel object, especially the leadership of the local Board of Health, there is a disincentive for the municipal officials to proceed further, given the procedural hurdles facing the receiving agency.

The goal of the legislature in assuring "full employment and rights to everyone" in essence presents a hurdle that is so high as to curtail the shared service / functional consolidation process. If the goal is to effectuate a new agency that can be more cost effective and efficient (which seems to be case based upon the service mergers to date), then this goal is in direct conflict with the legislative goal of providing full employment rights to everyone involved.

## **7. "TENURED MUNICIPAL OFFICIALS" AND SHARED SERVICE**

**Recommendation: Section 40A:65-11 be supplemented with a provision providing the authority to a municipality to entered into a shared service agreement with another municipality for provision of tax assessing, tax collection, municipal finance, and municipal clerk activities with the understanding that the receiving jurisdiction will either eliminate the existing position / official and use the official from the provider municipality or reduce the hours of operation / compensation of the receiving municipality's official to reflect the transfer of some responsibilities to the another provider municipality. This section should**

**have a provision for the appeal of this decision to the Local Finance Board to insure that the financial procedures being implemented are adequate and if so, that the “tenure” of the affected local official can be terminated or his duties reduced accordingly. This section would not be in conflict with Section 40A65-6 since that section provides for the appointment of an official that a local government is required to have; rather it would provide flexibility to local government to determine who shall perform this function and would avoid duplicative officials doing the same work.**

Background. In a recent meeting discussing the tax assessment function, the question was raised by several local officials as to the capability of a municipality to perform the assessment function via a shared service given the existence of a tenured tax assessor. Information was later obtained about an attempt to reduce the hours of work and pay of a “tenured” assessor due to a furlough (it appears that a court ruled that although the office employees can have reduction due to the reduced work week the Assessor could not). A review of existing state statutes indicates a number of statutorily defined positions that a municipality could or must have which, once established and with qualified people so appointed, have “tenure” wherein the officials cannot be replaced nor their duties nor their salaries reduced by a governing body other than for “good” or “just” cause. In these cases a municipality is not able to enter into a shared service agreement for the provision of these services unless the office is vacant, or the tenured employee continues after the transfer in the new provider agency, or the tenure official agrees to the reorganization of his office and probably reduction in pay, etc. Many of these functions (e.g. tax collection and tax assessment) can often be done more cost effectively on a larger scale however municipalities are precluded from this potential cost savings due to the incumbency of an existing tenure official. **The existence of “tenure” provisions must not be allow to trump changes that can result in a more efficient and effective government operation.** There is a need for flexibility to be provided to local elected officials to be able to reorganize these specific functions provided that this reorganization is reviewed by an appropriate state agency to insure that the required specific functions (tax assessment, collections, treasury and financial accounting, and municipal clerk) will be properly performed,

A listing of some of the existing statutes is contained below – there may be others and for this reason the recommended addition to NJSA 40A:65 – 11 should be broadly written to provide the greatest flexibility to local governments to provide services in the most cost effective manner.

A sampling of Statutory restrictions affecting local governments:

Municipal Clerks – 40A:9-133. – in every municipality there shall be a municipal clerk ...

133.1a. the provisions of any other law to the contrary notwithstanding, . . . . all municipal clerks shall hold office by virtue of appointment

133.7 any person who shall be appointed municipal clerk . . . shall have acquired tenure; shall hold office during good behavior and efficiency . . . and shall not be removed therefrom for political reasons but only for good cause . . .

Municipal Finance Officers – 40A:9-140.8 . . . notwithstanding the provisions of any other law to the contrary, any person who has served as the chief financial officer of a municipality for four consecutive years and who is reappointed . . . shall be granted tenure . . . thereafter the person shall continue to hold office during good behavior and efficiency, and shall not be removed therefrom except for just cause . . .

40A:9-140.10. Notwithstanding the provisions of any law to the contrary, in every municipality there shall be a chief financial officer . . . the term of office shall be for four years

Tax Collector – 40A9-141. Notwithstanding any other law the governing body or chief executive, . . . by ordinance shall provide for the appointment of a municipal tax collector . . . the governing body may by resolution set appropriate hours of operation of the tax collector's office and the work hours of the tax collector, commensurate with the compensation paid to the tax collector . . .

9-145 . . . any person who has held or shall have held the office of tax collector . . . for a continuous period of not less than 5 years or shall be . . . reappointed . . . shall thereafter continue to hold such office during good behavior and shall not be removed therefrom except for good cause . . .

Tax Assessors – 40A:9-146 . . . the governing body or chief executive . . . shall provide for the appointment of a tax assessor and such deputy tax assessors as it may deem necessary. The appointing authority . . . set the total number of weekly hours of operation . . . commensurate with the compensation paid to the tax assessor. The appointing authority shall not set the specific work hours of the tax assessor. . . .

9-148. . . . Every municipal tax assessor and deputy tax assessor shall hold office for a term of 4 years . . .

Municipal Treasurers – 40A9-152. . . . Whenever a person has held or shall have held the office of municipal treasurer for 10 consecutive years, the governing body may grant tenure in office to such person

9-152.1 . . . Any removal of a municipal treasurer having tenure in office shall be upon a written complaint setting forth the charge or charges against him . . .

Municipal superintendent of public works – 40A9-1544.6. A person holding office, position or employment as full time municipal superintendent of public works who has held the office, position or employment continuously for 5 years or more shall continue to hold the office, position or employment, notwithstanding he is serving for a fixed term, during good behavior

and efficiency and shall not be removed therefrom for political or other reasons except for good cause . . .

Removal of officers and employees – 40A9-161 . . . In any municipality wherein Title 11 (Civil Service) of the revised Statutes is not operative and unless otherwise provided by law, no officer or employee . . . who has tenure in office shall be removed from his office or position except upon written charges . . .

Salaries – 40A9-165. . . . Salaries, wages or compensation fixed and determined by ordinance may, from time to time, be increased, decreased or altered by ordinance. No such ordinance shall reduce the salary of, or deny without good cause an increase in salary given to all other municipal officers and employees to, any tax assessor, chief financial officer, tax collector, or municipal clerk during the term for which he shall have been appointed.

## **8. JOINT COURTS AND SHARED SERVICES**

**Recommendation: That the necessary legal processes be initiated to provide for an alternate appointment mechanism for the judge of a joint court**

Background – In 2008 there were 19 “joint municipal courts” and 27 “shared municipal courts” throughout the state. One significant obstacle to the “Joint Court” is the constitutional requirement that the Judge is a gubernatorial appointment . The Joint Court is a valid and meaningful shared service activity which should be endorsed and expanded. The administrative processes are simplified and the systems work well in the less developed parts of the state. In the long term the development of a more centralized, cost effective and accessible municipal court structure is a valid goal and one which could feature the development of joint courts. Some elected local officials are reluctant to cede the appointment authority (even if shared with other local officials) to the Governor. This reluctance may be hindering the creation of Joint Courts

A recent effort was made to pass a constitutional amendment providing for an alternate appointment of the Judge for the Joint Court. This failed and many commentators expressed the opinion that it failed due to the confusing interpretative statement that was provided to the voters. It is recommended that another amendment be developed with a more understandable interpretative statement.

## **EXISTING STATUTES: Health Departments**

### **26:3A2-16. Transfer of civil service employees of terminated local health agency to superseding agency**

Each person who shall have been employed as a full-time employee of a local health agency whose employment by such agency was governed by the provisions of the Civil Service law and whose employment by such agency shall have been terminated by reason of the assumption of its activities and responsibilities by another local health agency shall be transferred to such other local agency, shall be assigned duties comparable to those previously performed by him, and shall be entitled to and credited with all rights and privileges accruing to him by reason of his tenure in such previous office or position, the same as if the entire period of such previous employment had been in the position to which he shall have been transferred. His compensation shall be fixed at not less than the amount received by him at the time of transfer.

L.1975, c. 329, s. 16, eff. April 1, 1976.

### **26:3A2-17. Transfer of non-civil service employees of terminated local health agency to superseding agency**

Each person who shall have been employed as a full-time employee for a period of 2 years or more by a local health agency whose employment by such agency was not governed by the provisions of the Civil Service law, and whose employment by such agency shall have been terminated by reason of the assumption of its activities and responsibilities by another local health agency, shall be transferred to the local health agency and be assigned duties comparable to those previously performed by him. He shall be entitled to and credited with all rights and privileges accruing to him by reason of his tenure in such previous office or position the same as if the entire period of such employment had been in the position to which he shall have been transferred. In the event employment by the county health department to which such person shall have been transferred is subject to the provisions of the Civil Service law, the board shall forthwith certify to the Civil Service Commission, pursuant to applicable rules of said commission, the entitlement of such person to such rights and privileges. In such event, the Civil Service Commission shall appropriately classify such person in the competitive civil service without examination; a person so classified shall thereafter be subject to the provisions of the Civil Service law with regard to the terms of his employment, promotion, tenure, classification, compensation and like matters. His compensation shall be fixed at not less than the amount received by him at the time of transfer.

L.1975, c. 329, s. 17, eff. April 1, 1976.

### **26:3A2-18. Terminated part-time employee; placement on preferential reemployment list**

Every person, who shall have been employed as a part-time employee of a local board of health for a period of 2 years or more, and whose employment by such agency shall be terminated by reason of the assumption by another local health agency of activities and responsibilities, shall be placed on a preferential reemployment list for a period of at least 2 years for positions in that local health agency requiring the same license and type and class of work.

L.1975, c. 329, s. 18, eff. April 1, 1976.

## Civil Services Obstacles to Greater Shared Services

### Overview

New Jersey's Civil Service Commission was established in 1908 to protect employees from politically motivated actions by management. At the time, this was a major step forward for the working class people providing a method of job security and requiring management to exercise care and forethought in their handling of employee related issues. This was particularly important in that evidence existed that hiring/firing, promotions and disciplinary actions, in many cases, were being effected by personal and politically related events.

The Civil Service laws created stringent guidelines that required employers to follow procedures and to document cases before disciplinary actions could be imposed. Furthermore, it established working longevity as a method of protecting employee's jobs and/or ranks.

The focus of this report is on the impact that civil service laws have in the sharing of services between government units. With that said we should not look at the civil service laws in a vacuum but in conjunction with the more recent shared services laws that were modified in April 2007. By doing so, we can better identify the specific language that currently exists which prevent or severely hamper our ability to share services in a meaningful way.

As part of this report, some specific examples will be provided that better demonstrate these roadblocks.

### **P.L. 2007, CHAPTER 63, approved April 3, 2007 Assembly, No. 4**

*(3) the Department of Personnel shall place any employee that  
13 has permanent status pursuant to Title 11A, Civil Service, of the  
14 New Jersey Statutes that is terminated for reasons of economy or  
15 efficiency at any time by either local unit on a special  
16 reemployment list for any civil service employer within the county  
17 of the agreement or any political subdivision therein.*

This language creates a condition whereby displaced employees, as a result of the consolidation of two or more government entity's departments, must be provided "bumping" or "first hiring" rights which can ripple throughout the entire county. Little consideration is given to the employee's work performance or skill set but rather longevity is the major consideration. This scenario makes it nearly

Department of Central Services  
Division of Shared Services  
Ian K. Leonard  
Freeholder Liaison  
Gary J. Passanante  
Director



Charles J. DePalma Complex  
2311 Egg Harbor Rd.  
Lindenwold, NJ 08021  
(p) 856.566.2930  
(f) 856.566.3140  
shareandsave@camdencounty.com

impossible for employers to move employees into areas of greatest need. In some cases, it requires employers to displace excellent workers in positions that were not originally slated for any action.

An example of this surfaced in Clifton City in 2009.

In Clifton City, a 4 percent tax-levy cap required furloughs, demotions, a hiring freeze and staff cuts through attrition in 2009.

According to Mayor Anzaldi, a layoff plan was submitted to Civil Service Dec. 17, 2008, and approved March 6, 2009. Several challenges were mounted to the layoffs, but the city prevailed, he said.

“Unfortunately, we experienced some troubling, unintended consequences. Bumping rights resulted in positions that were not targeted for reduction to be affected. Employees in the non-targeted positions lost their positions due to bumping rights.” Anzaldi said. “As a result, you had a less qualified employee in a position that required resources to retrain an employee. In addition, part-time employees, who had seniority, bumped full-time employees. We had three full-time positions that we had to offer to the part-time employee and displace the full-time employee.”

On top of that, Anzaldi said, the city could not transfer some employees to jobs in different departments because of civil service titles.

One of the lessons towns have learned from the last budget is that laying off employees in civil service municipalities can take as long as six months, diminishing the savings a layoff may have in a budget year. Sometimes, layoff appeals can even add to a municipality's administrative costs. Laying off employees involves a convoluted process of applications, reviews, appeals and approvals that will drag on in municipalities governed by civil service rules.

While this example is of a single government entity, it demonstrates what also happens when multiple government entities wish to consolidate service and the resultant “ripple effect” of the civil service laws that impose significant hurdles and effectively reduce the targeted benefit.

Countries and municipalities facing such hurdles will opt to avoid the sharing or consolidation because it is just not worth it in the end.

- d. *If the local unit that will provide the service is not subject to*  
19 *the provisions of Title 11A, Civil Service, of the New Jersey*  
20 *Statutes, but the local unit that will receive the service is subject to*  
21 *that Title and the parties desire that some or all employees of the*  
22 *recipient local unit are to be transferred to the providing local unit,*  
23 *the transferred employees shall be granted tenure in office and shall*  
24 *only be removed or suspended for good cause and after a hearing;*

Department of Central Services  
Division of Shared Services  
Ian K. Leonard  
Freeholder Liaison  
Gary J. Passanante  
Director



... Making It Better, Together.

Charles J. DePalma Complex  
2311 Egg Harbor Rd.  
Lindenwold, NJ 08021  
(p) 856.566.2930  
(f) 856.566.3140  
shareandsave@camdencounty.com

25 *provided, however, that they may be laid-off in accordance with the*  
26 *provisions of N.J.S.11A:8-1 et seq., and the regulations*  
27 *promulgated thereunder. The transferred employees shall be*  
28 *subject to layoff procedures prior to the transfer to the new entity.*  
29 *Once transferred, they will be subject to any employment contracts*  
30 *and provisions that exist for the new entity. The final decision of*  
31 *which employees shall transfer to the new employer is vested solely with the local unit that will*  
*provide the service and subject to*  
32 *the provisions of any*  
33 *[agreement between the parties] existing collective bargaining agreements within the local units;*

In the case of the above law, mixing of civil service and non-civil service entities presents additional obstacles that in many cases result in the new shared arrangement costing more than the sum of the original separate entities.

Currently, the five towns that make up the so-called "Sterling Region" are conducting a feasibility study concerning the delivery of police services to their respective communities. Stratford, Laurel Springs, Hi-Nella, Somerdale and Magnolia all voluntarily opted in to the study. After nearly a year of work by the consultant, Hi-Nella decided to withdraw from the study citing their inability to cost effectively participate in a consolidated "Sterling Police Department".

Of the five towns noted, Hi-Nella is the only town which does not operate under civil service guidelines. Their current department's operational budget, in part as a result of their structure and non-civil service makeup, is significantly less costly than the other four departments. Consequently, Hi-Nella would experience a significant increase in their public safety costs since they would in effect, be required to rise to the levels of the other four communities. There is no reasonable way that the newly created Sterling Regional Police department can mix and match the labor costs with Hi-Nella within the current civil service constraints. Bottom line, the newly formed entity would, in all likelihood, be Civil Service. The result of the merged compensation package, the requirement to retain employees at the top of their pay scales because of seniority and the expected loss of part time employees that are at the lower end of the wage spectrum would dramatically increase the costs to Hi-Nella far beyond their ability to pay.

A final example of a statutory impediment to sharing services is as follows:

Section 11 and 19 of the 'Uniform Shared Services and Consolidation Act,' N.J.S.A..40A:65-11 and N.J.S.A..40A:65-19, concerning the establishment of an employment reconciliation plan when municipalities or localities engage in a joint meeting or shared service agreement that will provide a service that one is currently providing itself through local government employees. Pursuant to current State law, when there is an agreement for shared services, the localities involved must prepare an employment reconciliation plan to account for each unit's public employees. These reconciliation plans

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can be quite burdensome in light of all the statutory requirements and hurdles they must meet pursuant to State law.

Civil service protections, such as a buy-out of union contracts, when services are shared among units of local government can be cost prohibitive and a genuine dis-incentive to pursuing what could be a significant cost savings to the participating entities if such a requirement were not imposed.

### Conclusion

In closing, the problems with civil service are in many cases, very difficult to specifically identify. They crop up during the course of actions in sharing, consolidating and streamlining operations. While one approach to reforming Civil Service is to identify the specific pieces of the law that create problems, it may in fact, be the sum of the whole that is the REAL problem. If this is true, than the real solution is to start with a blank slate and construct a new set of laws that address today's environment, which is in no way the same as in 1908.

We face a new norm in government, from our local municipalities to our state and federal government. It may be impossible to effectively tweak a century old set of laws that will adequately address the nuances and challenges in government today.