

**LFN 2015-08**

**March 12, 2015**

# Local Finance Notice

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## Distribution

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## States of Emergency Relating to Snow Storms: Budget/Levy Cap Implications and Procurement Matters

Governor Christie recently signed two executive orders declaring States of Emergency for the response and recovery efforts required by various snow storms occurring on: January 26, 2015 and March 5, 2015. This Local Finance Notice addresses matters relating to financing and procurement with respect to these declared emergencies.

### Financing Matters

For municipalities and counties subject to the appropriation and levy cap laws, expenditures resulting from a state of emergency are treated as a cap exception: N.J.S.A. 40A: 4-45.3bb; N.J.S.A. 40A: 4-45.4q; and N.J.S.A. 40A:45-45(b). These statutes grant municipal and county officials the authority to appropriate and expend funds in response to weather related emergencies. When required, local officials must respond to local needs and unplanned funds can be appropriated through the emergency or temporary emergency appropriation process (N.J.S.A. 40A:4-46 et seq.; N.J.S.A. 40A:4-20).

[N.J.A.C. 5:30-3.9](#) sets forth the process and terms under which emergency-related levy cap exceptions are permissible for municipalities and counties. Levy exceptions are only available for "extraordinary costs" incurred for the immediate preparation, response, recovery, and restoration of public services due to extreme weather conditions or other catastrophic events not anticipated in the current budget year and subject to the terms of a gubernatorial emergency declaration. Only the portion of costs exceeding the cost of providing services under non-emergency conditions may be granted as property tax levy cap exclusions.

Municipalities and counties may only treat such costs as a one-time (non-permanent) levy cap exclusion after submitting a certification describing the expenditures for review by the Director of the Division of Local Government Services. The amount excluded may be subject to adjustment to account for the receipt of State or Federal reimbursements.

## Emergency Appropriation for Response and Immediate Recovery Efforts

Municipalities and counties that have not introduced or adopted their budgets may use the emergency temporary appropriations provision of N.J.S.A. 40A: 4-20 to provide appropriations directly associated with the state of emergency. The normal rules regarding emergencies must be followed. These appropriations will be outside the cap for the current year.

For adopted SFY budgets, an emergency resolution pursuant to N.J.S.A. 40A:4-46 et seq. requires approval by 2/3 vote of the full membership of the governing body and a certification of the Chief Financial Officer that the resolution covers expenses incurred during the emergency snow removal process must be filed.

Emergency resolutions that exceed the 3 percent expenditure limit require approval of the Director (N.J.S.A. 40A:4-49). For these emergencies, the Director is granting blanket approval – formal approval of the resolution is not required in order to authorize spending. In all cases, the Flexible Chart of Account codes should correspond with the applicable appropriation.

Please follow the instructions that are appropriate to your municipality or county.

### 1. SFY 2015 Municipalities: BUDGET ADOPTED

If the budget has been adopted, the budget exception does not provide any advantage.

If it is necessary to adopt an emergency resolution pursuant to N.J.S.A. 40A: 4-46 to pay for the costs associated with the snow removal that exceed the cost of providing services under non-emergency conditions, the deferred charge to be raised in the following year's budget will be excluded from the cap pursuant to the same exceptions; for the N.J.S.A. 40A: 4-45.3bb and 4-45.45(b).

### 2. CY 2015 Municipalities and Counties: BUDGET NOT INTRODUCED

Include detailed appropriations on sheet 20, (for municipalities), under "Operations Excluded from 'CAPS'" under the heading:

"Declared State of Emergency costs for Snow Removal: N.J.S.A. (40A:4-45.45(b))" and  
- 40A: 4-45.3(bb) for municipalities or 4-45.4(q) for counties

The Chief Financial Officer must certify that the appropriations excluded from the cap were made pursuant to N.J.S.A. 40A: 4-45.3(bb) or 4-45.4(q) and 40A:4-45.45(b).

### 3. CY and SFY 2015 Municipal and County BUDGETS INTRODUCED, NOT ADOPTED

The CY and SFY 2015 budgets must be amended before the scheduled date of adoption, to include detailed appropriations on sheet 20, (for municipalities), under "Operations Excluded from 'CAPS'" under the heading:

"Declared State of Emergency costs for Snow Removal: N.J.S.A. (40A:4-45.45(b))" and  
- 40A: 4-45.3(bb) for municipalities or 4-45.4(q) for counties

Budget amendments must be submitted to the Division prior to the adoption of your budget.

In addition, State law provides a funding mechanism that may assist in financing certain infrastructure repair costs resulting from snow or ice damage.

N.J.S.A. 40A: 4-55.1 et seq. permits municipalities to adopt “special emergency ordinances” to allow a three year funding cycle for the “extraordinary expenses for the repair or reconstruction of streets, roads, or bridges damaged by snow, ice, frost, or flooding.” This can be passed at any time. That section of law provides the details for using the provisions, and requires Local Finance Board approval.

Applicants planning to use the three-year provision should introduce their ordinance, and then file an application with the Local Finance Board requesting approval. An application form has been posted on the [Local Finance Board website](#). The application’s Executive Summary must describe the purposes for which the appropriation will be spent. There are no specific Local Finance Board rules addressing this provision. The ordinance can be adopted after the Board approves the introduced ordinance.

If you have any questions concerning these practices, contact the Bureau of Financial Regulation and Assistance at 609-292-4806 or by e-mail at [dlgs@dca.state.nj.us](mailto:dlgs@dca.state.nj.us).

Municipal Clerks and Freeholder Board Clerks are asked to distribute this notice to their elected officials.

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Approved: Timothy Cunningham, Director

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2	Local Finance Board website	<a href="http://www.nj.gov/dca/divisions/dlgs/programs/lfb_docs/flood_spcl_emerg_lfb_app.doc">http://www.nj.gov/dca/divisions/dlgs/programs/lfb_docs/flood_spcl_emerg_lfb_app.doc</a>
3	Division e-mail	<a href="mailto:dlgs@dca.state.nj.us">dlgs@dca.state.nj.us</a>

**Appendix A**  
**Emergency Procurement References**

**N.J.S.A. 40A:11-6. Emergency contracts**

Any contract may be negotiated or awarded for a contracting unit without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold, when an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services; provided that the awarding of such contracts is made in the following manner:

- a. The official in charge of the agency wherein the emergency occurred, or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent, a supervisor of the purchasing agent, or a designated representative of the governing body, as may be appropriate to the form of government, of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.
- b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services shall be entitled to be paid therefor and the contracting unit shall be obligated for said payment. The governing body of the contracting unit shall take such action as shall be required to provide for the payment of the contract price.
- c. The Director of the Division of Local Government Services in the Department of Community Affairs shall prescribe rules and procedures to implement the requirements of this section.
- d. The governing body of the contracting unit may prescribe additional rules and procedures to implement the requirements of this section.

L.1971, c. 198, s. 6; amended 1975, c. 353, s. 5; 1977, c. 53, s. 3; 1979, c. 350, s. 3; 1985, c. 60, s. 3; 1985, c. 469, s. 8; 1999, c. 440, s. 10.

**N.J.A.C. 5:34-6.1      Emergency Purchases/General requirements**

- (a) The use of emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 shall be subject to the following requirements:
  1. An actual or imminent emergency must exist requiring the immediate delivery of the goods or the performance of the service;
  2. As soon as reasonably possible, but within three days of declaring the emergency, the chief school administrator of a board of education shall notify the superintendent of education for the county of the nature of the emergency and the estimated needs for goods and services necessary to respond to it;
  3. The emergency purchasing procedure may not be used unless the need for the goods or services could not have been reasonably foreseen or the need for such goods or services has arisen notwithstanding a good faith effort on the part of the contracting unit to plan for the purchase of any goods or services required by the contracting unit;
  4. The contract shall be of such limited duration as to meet only the immediate needs of the emergency; and

5. Under no circumstances shall the emergency purchasing procedure be used to enter into a multi-year contract.

- (b) The governing body of each contracting unit shall adopt rules or regulations as appropriate to the contracting unit to ensure that there is a procedure for determining and confirming the existence of an emergency and that the provisions for emergency purchasing pursuant to N.J.S.A. 40A:11-6 or 18A:18A-7 may be implemented. Such rules or regulations shall include such provisions that ensure that if initially designated individuals are not available, there is a designated chain of command to ensure that there are always appropriate individuals available to make such decisions.

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Approved: Timothy J. Cunningham, Director