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Local Finance Notice

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Storm Response – Financing, Procurement & Property Tax Matters

Commencing on Friday, January 22nd, a severe winter storm moved through New Jersey for which Governor Christie declared a state of emergency via [Executive Order 202](#). The storm brought heavy snow, mixed precipitation, strong winds, freezing temperatures and flooding conditions to various portions of the State. This Local Finance Notice is being issued to inform impacted local units of relevant post-storm financing, procurement and property tax related matters.

Pursuant to [N.J.S.A. 40A:4-46 et seq.](#) and [N.J.S.A. 40A:4-20](#), municipal and county officials have the authority to appropriate and expend funds in response to weather related emergencies. As necessary, local officials must clearly respond to local needs and unplanned funds can be appropriated through the emergency and temporary emergency appropriation process. Likewise, purchases of goods and services in response to an emergency can be made without regard to public bidding pursuant to [N.J.S.A. 40A:11-6](#) and [N.J.A.C. 5:34-6.1](#) ([Annexed hereto as Appendix A](#)).

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 2016 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 2016 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 2016 Municipal and County BUDGETS INTRODUCED, NOT ADOPTED

The CY and SFY 2016 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.

Extension of Property Tax Grace Period due to Natural Disaster

On January 11, 2016 Governor Christie signed into law [P.L. 2015 c. 203](#) affecting municipalities that have experienced a flood, hurricane, superstorm, tornado, or other natural disaster less than 30 days prior to the date upon which a property tax installment payment is due, and where a state of emergency has been declared as a result thereof by the Governor. The law permits municipalities to pass a resolution establishing a grace period, or extending its existing grace period, for property tax payments to the first day of the next calendar month from the date upon which it became payable. Municipalities that are subject to State Supervision, the Municipal Rehabilitation and Economic Recovery Act, or Transitional Aid must obtain Director approval before the resolution can become effective.

Where a resolution is adopted extending the property tax grace period, the Municipal Clerk must notify the Division not later than the third business day next following the adoption. The Division should be notified via email at dlgs@dca.nj.gov with the subject heading entitled "Extension of Property Tax Grace Period".

Whenever the grace period has been extended pursuant to this law, the Director may, by temporary order, extend the dates for payment of taxes by a municipality due to a county pursuant to N.J.S.A. 54:4-74, any school district pursuant to N.J.S.A. 54:4-75, and any other taxing district as provided by law. **Please note that the Director has not issued such an order at this time.** As such, the Division strongly recommends that any municipality that seeks to extend their property tax grace period should consult with their county, school district(s), et al. before doing so.

For future reference, whenever the due date for the fourth quarter property tax installment payment has been extended for real property pursuant to this law, a municipality shall not conduct an accelerated tax sale with respect to that installment.

Other Considerations

Overtime Pay for Elected Officials and Management - The Division appreciates that Mayors, elected officials, and their senior advisers and managers are working hard without any additional pay or compensation during this event. While not a necessary reminder for the vast majority of such officials, the Division must reiterate that under no circumstances should elected officials or senior management seek reimbursement for overtime. All resources will be needed to pay for the legitimate costs associated with this event, including required overtime for rank and file first responders and essential activities.

Snow Removal/Storm Recovery Reserve Funds - N.J.S.A. 40A:4-62.1, as amended in 2014, changed what was a "snow removal reserve" to a "storm recovery reserve". Municipalities and counties can now utilize funds in their snow removal reserves for any purpose relating to storm recovery after current budget appropriations utilized for that purpose have been expended. Any municipality or county that wishes to utilize such funds for storm recovery must pass a dedication by rider resolution pursuant to N.J.S.A. 40A:4-39 establishing a storm recovery reserve and submit same to the Division. Any reimbursement of these expenditures shall be deposited back into the reserve. Unexpended balances annually for storm recovery expenses may be lapsed into the reserve. Please note that municipalities and counties need not have had a snow removal reserve in order to establish a storm recovery reserve.

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

Approved: Timothy J. Cunningham, Director

Document	Internet Address
Exec. Order 202	http://nj.gov/infobank/circular/eocc202.pdf
N.J.A.C. 5:30-3.9	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/R_2012_d_135_(44_NJR_1971(a)).pdf
Flood Special Emergency App. (LFB)	http://www.nj.gov/dca/divisions/dlgs/programs/lfb_docs/flood_spcl_emerg_lfb_app.doc
P.L. 2015, c.203	http://www.njleg.state.nj.us/2014/Bills/A3500/3052_R3.PDF

*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.