

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF LOCAL GOVERNMENT SERVICES

#### LOCAL FINANCE BOARD

#### Certification of Available Funds

#### Proposed Amendment: N.J.A.C. 5:30-5.4

Authorized By: Local Finance Board, Thomas H. Neff, Chair.

Authority: N.J.S.A. 52:27BB-10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-007.

Submit comments by March 21, 2015, to:

Patricia Parkin McNamara, Executive Secretary  
Local Finance Board  
Department of Community Affairs  
P.O. Box 803  
Trenton, New Jersey 08625-0803  
[dlgs@dca.nj.gov](mailto:dlgs@dca.nj.gov)

For comments submitted via e-mail, please name the subject heading "NJAC 5:30-5.4 Certification of Available Funds".

#### Summary

When the governing body of a local unit governed by the Local Budget Law or Local Authorities Fiscal Control Law (N.J.S.A. 4A:4-1 et seq. and 40A:5A-1 et seq., respectively) awards any contract, the chief financial officer or another certifying financial officer must certify to the availability of funds in writing to the governing body pursuant to N.J.A.C. 5:30-5.4 and, for certain special situations, N.J.A.C. 5:30-5.5. N.J.A.C. 5:30-5.4(a)1 and 2 require that the certification of available funds and the governing body resolution awarding the contract set forth the budget line item appropriation or appropriations to which the contract will be charged.

The Local Finance Board proposes amending N.J.A.C. 5:30-5.4(a)1 and 2 to require that 1) the certification of available funds sets forth the maximum dollar amount of the contract pending approval by the governing body; 2) the certifying financial officer cannot issue a certification of funds unless the maximum dollar value of the contract pending approval by the governing body is provided; and 3) the resolution awarding the contract sets forth the maximum dollar amount of the contract.

In response to a petition for rulemaking submitted Mr. John Paff, Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, and published in the September 15, 2014, New Jersey Register as 46 N.J.R. 1977(b), the Board referred the matter to Division of Local Government Services staff for further deliberation and

recommendation. A notice regarding this referral was published in the November 3, 2014, New Jersey Register at 46 N.J.R. 2199(a). The Board is proposing within the amendments based upon the recommendations of Division staff.

This rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:20-3.1 and 3.2 governing rulemaking calendars.

#### Social Impact

The proposed amendments increase transparency by requiring that documents accessible to the public, the certification of available funds and the contract award resolution, display the maximum dollar value of the contract. Ensuring access to this information improves the public's ability to monitor how tax dollars are being spent.

#### Economic Impact

The Board anticipates that the proposed rule amendments will have a positive fiscal impact by enhancing local government fiscal accountability. Expressly requiring the governing body to provide the maximum dollar value of a contract pending approval before a certifying financial officer can certify that funds are available ensures that the certification of available funds is a viable control against overexpenditure. The certification of available funds is of limited value unless the certifying officer knows the maximum amount of the contract.

Even in cases such as contracts with hourly billing, a maximum value can still be reasonably estimated. For example, a governing body can estimate the maximum that will be expended on an hourly billing contract based on some metric, such as how much was spent on similar services during the prior budget year or, in the case of a specific project, how many hours it is expected to take for completion.

#### Federal Standards Statement

No Federal standards analysis is required because the proposed rule amendments are not being proposed to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

#### Jobs Impact

The Board does not anticipate the creation or loss of any private sector jobs as a result of the proposed rule amendments, as they pertain to the display of certain fiscal information on the financial documents of local units.

#### Agriculture Industry Impact

The Board does not anticipate that the proposed rule amendments will have an impact on the agriculture industry, as they pertain to the certification of available funds for the award of a contract by a local unit.

#### Regulatory Flexibility Statement

The proposed rule amendments would not impose any reporting, recordkeeping, or compliance requirement on "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-

16 et seq., as they pertain to the certification of available funds for the award of a contract by a local unit.

#### Housing Affordability Impact Analysis

The proposed rule amendments are not anticipated to have an impact on housing affordability as they pertain to the certification of available funds for the award of a contract by a local unit.

#### Smart Growth Development Impact Analysis

The proposed rule amendments pertain to the certification of available funds for the award of a contract by a local unit. As such, the amendments will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan despite the rule amendments' applicability Statewide.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 5. CERTIFICATIONS OF AVAILABILITY OF FUNDS, AND ACCOUNTING SYSTEM REQUIREMENTS FOR LOCAL UNITS

#### 5:30-5.4 Procedure

(a) The following procedure shall be utilized for the certification of funds when a contract is to be awarded by the governing body of the local unit:

1. The chief financial officer or certifying finance officer, as appropriate, charged with the responsibility of maintaining the financial records of the contracting unit shall certify in writing to the governing body the availability or lack thereof of adequate funds for each contract which is pending approval by the governing body. Said certification shall designate specifically the line item appropriation(s) of the official budget to which the contract will be properly charged **and the maximum dollar value of the contract pending approval by the governing body**, ensuring that the same funds shall not be certified as available for more than one pending contract. Said officer shall be solely responsible for the accuracy of the certification. **No chief financial officer or certifying finance officer shall issue a certification of available funds unless the governing body provides the maximum dollar value of the contract.**

2. No resolution authorizing the entering into of any contract pursuant to N.J.S.A. 40A:11-1 et seq. or any other law for the expenditure of public funds to a vendor shall be enacted unless it shall recite that such a certificate showing availability of funds has been provided. The resolution shall specify the exact line item appropriation(s) or ordinance which shall be charged, **and the maximum dollar value of the contract.**

3.-6. (No change.)

(b) (No change.)

## ENVIRONMENTAL PROTECTION

### (a)

#### NEW JERSEY WATER SUPPLY AUTHORITY

#### Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Raritan Basin System

#### Proposed Amendments: N.J.A.C. 7:11-2.3, 2.4, 2.5, and 2.6

Authorized By: New Jersey Water Supply Authority, Bob Martin, Chair, and Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

Calendar Reference: See Summary below for explanation of the exception to the calendar requirement.

DEP Docket Number: 11-14-12.

Proposal Number: PRN 2015-011.

In accordance with N.J.A.C. 7:11-2.14(a)4, a **pre-public hearing meeting** concerning this proposal will be held on:

Friday, January 9, 2015, at 10:00 A.M.  
New Jersey Water Supply Authority Administration Building  
1851 Route 31  
Clinton, New Jersey

A **public hearing** concerning this proposal will be held on:

Friday, February 6, 2015, at 10:00 A.M. to close of comments  
New Jersey Water Supply Authority Administration Building  
Executive Conference Room  
1851 Route 31  
Clinton, New Jersey

Submit comments by March 21, 2015, electronically to the Department of Environmental Protection (Department) at <http://www.nj.gov/dep/rules/comments>, and to the New Jersey Water Supply Authority (Authority) at [info@njwsa.org](mailto:info@njwsa.org).

The Department and the Authority encourage electronic submittal of comments. In the alternative, comments may be submitted on paper to:

G. Colin Emerle, Esq.  
Department of Environmental Protection  
Office of Legal Affairs  
Attn: DEP Docket No. 11-14-12  
401 East State Street, 7th Floor  
Mail Code 401-04L, P.O. Box 402  
Trenton, NJ 08625-0402

and

Henry S. Patterson  
Executive Director  
New Jersey Water Supply Authority  
Attn: DEP Docket No. 11-14-12  
1851 Route 31  
P.O. Box 5196  
Clinton, NJ 08809

The Basis and Background document, which is available at the Authority's website <http://www.njwsa.org/rbs.htm>, explains in further detail the financial justification for the proposed revised rate schedule. The rules can also be viewed or downloaded from the Authority's website.

The agency proposal follows:

#### Summary

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Authority is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Raritan Basin System (System), to cover expenses for Fiscal Year (FY) 2016. The Authority operates on a July 1 to June 30 Fiscal Year. The amendments to specific aspects of the rate structure proposed in this rulemaking will result in an increase to the overall rate from \$246.00 per million gallons (MG) to \$253.00 per million gallons. The Authority anticipates the rates will be adopted operative July 1, 2015.

The general rate schedule for operations and maintenance (O&M) covers the operation expenses of the System. This component, set forth at N.J.A.C. 7:11-2.3 and incorporated by reference in the stand-by charge at N.J.A.C. 7:11-2.12, was last adjusted effective August 4, 2014, when the amount was increased from \$152.00 to \$167.00 per MG. See 46 N.J.R. 474(a) and 1743(b).

The O&M rate component sales base is set forth at N.J.A.C. 7:11-2.3(a)8. The O&M rate component sales base for FY 2015 was 182.271 million gallons per day (MGD), which is expected to increase to 182.339 MGD. Projected operating costs for FY 2016 indicate that an increase in the O&M rate component, from \$167.00 to \$171.00, will be needed for FY 2016. The Authority proposes to amend N.J.A.C. 7:11-2.3(a)8 and (b) to incorporate both these changes.

At N.J.A.C. 7:11-2.4(b), the debt service assessment rate for FY 2015 was based on a sales base of 182.271 MGD. The Authority anticipates that the applicable sales base for FY 2016 will increase to 182.339 MGD. For FY 2016, no change is necessary in the debt service assessment rate