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# Local Finance Notice

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Commissioner

Melanie R. Walter  
Acting Director

## Storm Response and Recovery: Emergency Appropriations and Procurement

Commencing August 11, 2018, the State of New Jersey was impacted by major rain storms that caused severe weather conditions, for which Governor Murphy declared a state of emergency in Bergen, Essex, Monmouth, Ocean, and Passaic Counties via [Executive Order 33](#). This Local Finance Notice is being issued to inform impacted local units of relevant post-storm financing and procurement-related matters.

### Emergency Appropriations for Storm Response and Recovery

N.J.S.A. 40A:4-46 et seq. sets forth the process by which municipal and county officials can make unplanned appropriations and expenditures for weather-related emergencies. Such emergency expenses are those related to storm response, recovery, and restoration of services that were not anticipated in the current year's budget.

### Adopted Budgets

When the budget has already been adopted, an emergency appropriation resolution requires approval by a two-thirds (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 response. N.J.S.A. 40A:4-46 et seq. A copy of each resolution making such emergency appropriations must be filed with the Director of the Division of Local Government Services. Emergency resolutions that exceed the three (3%) percent expenditure limit require approval of the Director pursuant to N.J.S.A. 40A:4-49. Please note that the Flexible Chart of Account codes should correspond with the applicable appropriation.

To the extent that emergency appropriations are paying for disaster-related costs that exceed the cost of providing services under non-emergency conditions, the deferred charge to be raised in the following year's budget would be an eligible exception to both the levy cap and appropriations cap.

Pursuant to N.J.S.A. 40A:4-54, a municipality or county may adopt a resolution to use the special emergency funding provisions of N.J.S.A. 40A:4-55 to cover extraordinary expenses for the repair and reconstruction of streets, roads, bridges, or other public property damaged by flood (or hurricane) where such expenses were not foreseen at the time of budget adoption.

#### Municipal Budgets to be Adopted

Municipalities that have not adopted their budgets may utilize the provisions of N.J.S.A. 40A:4-20 to make emergency temporary appropriations directly associated with storm response efforts. The normal rules regarding emergencies must be followed.

Expenditures resulting from a state of emergency are treated as an exception to the appropriations cap (N.J.S.A. 40A:4-53(bb)) and levy cap (N.J.S.A. 40A:4-45.45(b)). N.J.A.C. 5:30-3.9 sets forth the process and terms under which emergency-related levy cap exceptions are permissible. 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.

Municipal budgets shall include upon introduction, or be amended to include before the scheduled adoption date, detailed appropriations on sheet 20 under "Operations Excluded from 'CAPS'" utilizing the heading:

"Declared State of Emergency Costs for August 2018 Storm Response & Recovery: N.J.S.A. 40A:4-45.45(b) and 40A:4-45.3(bb)"

The Chief Financial Officer must certify that the excluded appropriations are permitted exclusions pursuant to 40A:4-45.45(b) and 40A:4-45.3(bb), respectively. Pursuant to 40A:4-10, budget amendments must be submitted to the Division prior to budget adoption.

N.J.S.A. 40A:4-55.1 through 55.6 sets forth the process by which municipalities can adopt, regardless of budget process stage, a special emergency ordinance to facilitate a three-year funding cycle for extraordinary expenses for the repair or reconstruction of streets, roads, or bridges damaged by flooding (snow, ice, and frost are also eligible). If a municipality wishes to finance over three years an appropriation by special emergency ordinance, the governing body must adopt a resolution pursuant to 40A:4-55.4. Local Finance Board approval is required before the ordinance (and financing resolution if applicable) can be adopted; the application's Executive Summary must describe the purposes for which the appropriation will be spent. A copy of the adopted ordinance, and resolution if applicable, must be filed with the Director to become effective.

#### Refunding Emergency Appropriations

Municipalities and counties seeking to spread the emergency-related costs over a period of years on a non-conforming maturity schedule must first seek Local Finance Board approval. The Board has historically considered applications where emergency-related costs are very substantial in

comparison with the annual municipal budget and spreading the cost would result in a minimum \$50 annual increase to the average residential taxpayer.

### Storm Recovery Reserves

As amended in 2014, N.J.S.A. 40A:4-62.1 expanded what had been a “snow removal reserve” into a “storm recovery reserve.” A municipality or county may utilize funds in its storm recovery reserve for any purpose relating to storm recovery after current budget appropriations utilized for that purpose have been expended. Any reimbursement of these expenditures shall be deposited back into the reserve. Unexpended balances for storm recovery expenses may be lapsed into the reserve on an annual basis. To establish a storm recovery reserve or convert a preexisting snow removal reserve to storm recovery, the governing body shall adopt a resolution establishing the reserve and submit the resolution to the Division. Municipalities and counties need not have had a snow removal reserve to establish a storm recovery reserve.

### Emergency Procurement

In circumstances where an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services, a contract may be awarded without public bidding regardless of the bid threshold. N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1 are annexed as an appendix to this Notice. Pursuant to N.J.S.A. 19:44A-20.12, contracts awarded under such circumstances are excepted from Pay-to-Play due to public exigency. Please note that, pursuant to a [November 4, 2016 directive of the State Treasurer](#), contracting units awarding contracts that fall under the “public exigency” exception are no longer required to file an “emergency procurement report” with the State.

The Department of Treasury’s Division of Purchase and Property [website](#) lists all State cooperative purchasing contracts available to local governments.

### Overtime Pay Prohibition for Elected Officials and Management

Elected officials are not entitled to reimbursement for overtime. In addition, management employees such as municipal managers/business administrators, municipal clerks, CFOs, public works superintendents, police chiefs and other department heads are typically classified as having exempt status under the federal Fair Labor Standards Act (FLSA) and thus not entitled to overtime pay. Compensated leave time in lieu of cash payments is considered a form of overtime pay unless such leave is utilized in the same pay period.

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Approved: Melanie R. Walter, Acting Director

Document	Internet Address
Exec. Order 33	<a href="http://d31hzhlk6di2h5.cloudfront.net/20180814/6c/13/27/bc/a3af3d4e25287b3973deabb7/EO-33.pdf">http://d31hzhlk6di2h5.cloudfront.net/20180814/6c/13/27/bc/a3af3d4e25287b3973deabb7/EO-33.pdf</a>
<u>N.J.A.C. 5:30-3.9</u>	<a href="https://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/R_2012_d_135_(44_NJR_1971(a)).pdf">https://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/R_2012_d_135_(44_NJR_1971(a)).pdf</a>
11/4/16 Treasurer Directive	<a href="https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/treasurer_scudder_directive_re_public_exigencies.pdf">https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/treasurer_scudder_directive_re_public_exigencies.pdf</a>
State Contracts List	<a href="https://www.nj.gov/treasury/purchase/coop_purchase_contracts.shtml">https://www.nj.gov/treasury/purchase/coop_purchase_contracts.shtml</a>

## Appendix

### 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.