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Local Finance Notice

Philip D. Murphy
 Governor

Lt. Governor Sheila Y. Oliver
 Commissioner

Jacquelyn A. Suárez
 Director

Contact Information

Director's Office

V. 609.292.6613
 F. 609.633.6243

Local Assistance Bureau

V. 609.292.6858
 F. 609.633.6243

Financial Regulation and Assistance

V. 609.292.4806
 F. 609.984.7388

Local Finance Board

V. 609.292.0479
 F. 609.633.6243

Administrative Services Unit

V. 609.292.6126
 F. 609.633.6243

Mail and Delivery

101 South Broad St.
 PO Box 803
 Trenton, New Jersey
 08625-0803

www.nj.gov/dca/divisions/dlgs

E-mail: dlgs@dca.nj.gov

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Tropical Storm Ida Response and Recovery: Emergency Appropriations and Procurement

Tropical Storm Ida caused severe weather conditions and flooding for which Governor Murphy declared a state of emergency pursuant to [Executive Order 259](#). This Local Finance Notice informs 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. establishes 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 Municipal and County 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 percent (3%) 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 repair and reconstruction of streets, roads, bridges, or other public property damaged by flood (or hurricane) where such expenses were unforeseen 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 Tropical Storm Ida (September 2021) 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)

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.

Emergency Appropriations by Fire Districts

N.J.S.A. 40A:14-78.11 through 40A:14-78.15 establish standard requirements and procedures for emergency appropriations by fire districts. In the event of a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare, a fire district may make emergency appropriations post-budget adoption for purposes unforeseen at the time of budget adoption, or for which adequate provision was not made. A fire district's total emergency appropriations for one year shall not exceed three percent (3%) of the total of current operating appropriations in that year's adopted budget.

No less than two-thirds (2/3) of a Board of Fire Commissioners' full membership must adopt a resolution declaring that an emergency exists requiring a supplemental emergency appropriation. The resolution shall be in the form and content prescribed by the municipal governing body and shall set out the nature of the emergency in full. A copy of the resolution shall be filed immediately with the municipal governing body. Prior to adoption, the fire district should consult with the municipal clerk and other appropriate officials on the appropriate form and content for the resolution. The resolution shall not take effect until the municipal governing body shall, by a vote of not less than two-thirds (2/3) of the governing body's full membership, approve the emergency appropriation and certify its approval to the fire district.

The total amount of all emergency appropriations shall be provided in full by the fire district as a deferred charge in the budget of the next succeeding fiscal year. For fire districts with annual elections in February, if the voters do not approve the district budget, that deferred charge shall remain in the fire district budget adopted by the municipal governing body. A fire district may finance any emergency appropriation from the district's available surplus funds or may, subject to Local Finance Board review, borrow money for a period of time not to exceed one year.

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. State law requires that an emergency contract shall only address the immediate needs of the emergency, rather than encompass everything having to do with the

emergency. For example, tree debris removal from public rights-of-way and removal of hazards (i.e. tree debris in danger of falling on people or property) may be procured on an emergency basis; however, the emergency contract exception to public bidding cannot be utilized for other tree debris removal work that is not an urgent matter of public safety.

Pursuant to N.J.S.A. 19:44A-20.12, contracts awarded under such circumstances are exempt from Pay-to-Play due to public exigency (i.e. emergency). A [November 4, 2016 State Treasurer Directive](#) abolished the requirement to file an “emergency procurement report” with the State.

Contracting units may enter into emergency contracts without first obtaining a vendor’s or contractor’s Business Registration Certificate (BRC), but the contracting unit cannot make a payment until a copy of the BRC is provided to the contracting agency. The contracting unit should inform the vendor or contractor of the BRC requirement upon awarding an emergency contract. Contractors awarded public works contracts under emergency procedures must also be notified of applicable Public Works Contractor Registration (PWCR) and prevailing wage requirements at the time of award. The contracting unit shall confirm compliance with these requirements prior to making payment for completed work.

All State cooperative purchasing contracts available to local governments can be accessed through the Department of Treasury’s Division of Purchase and Property (DPP) [website](#). Please review DPP’s [FAQ page](#) for answers to questions on how to search State contracts, and direct any questions concerning searching for or using State contracts to [DPP](#).

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.

Approved: Jacquelyn A. Suárez, Director

Document	Internet Address
Exec. Order 259	https://nj.gov/infobank/eo/056murphy/pdf/EO-259.pdf
FCOA Budget Codes 2021	https://www.nj.gov/dca/divisions/dlgs/pdf/2021_Budget_FCOA_Codes.xlsx
N.J.A.C. 5:30-3.9	https://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/R_2012_d_135_(44_NJR_1971(a)).pdf
11/4/16 Treasurer Directive	https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/treasurer_scudder_directive_re_public_exigencies.pdf
State Cooperative Contracts	https://www.state.nj.us/treasury/purchase/
State Cooperative Contract FAQs	https://www.state.nj.us/treasury/purchase/cooperativefaqs.shtml
DPP Contact Page	https://www.state.nj.us/treasury/assets/contact/purchase/coop_purchase_contactus.shtml

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.

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.