

**LFN 2012- 22**

**October 29, 2012**

# Local Finance Notice

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## Hurricane Sandy Emergency – Financing and Procurement

Governor Christie has declared a state of emergency for the response and recovery efforts required by Hurricane Sandy. As of the issuance of this Notice, the State of Emergency is State-wide and continues. This Local Finance Notice covers matters related to emergency appropriations related to the emergency response and funding for long-term recovery.

For municipalities and counties subject to the Budget and Levy Cap Laws, expenditures resulting from a state of emergency are treated as a cap exception pursuant to N.J.S.A. 40A: 4-45.3bb and 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. As necessary, local officials must clearly respond to local needs and unplanned funds can be appropriated through the emergency appropriation process (N.J.S.A. 40A:4-46 et seq.).

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 (Appendix A).

Under the state of emergency declared by the Governor, funds appropriated and expended for emergency responses are treated as levy cap exclusions upon submission and review of certifications to the Division.

Emergency expenses are those related to the response, recovery, and restoration of services due to the hurricane that were not anticipated in the current year's budget. Only the portion of costs that exceed the cost of providing services under non-emergency conditions may be granted as levy cap exclusions.

## Emergency Appropriation for Response and Immediate Recovery Efforts

Municipalities and counties that have not 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 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 response to the flooding 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 this emergency, 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. CY 2012 Municipalities and Counties: 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 hurricane 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 (municipal), 4-45.4(q) for counties, and 4-45.45 for both.

For those municipalities desiring to spread the cost of the emergency over a period of years, applications will need to be submitted to the Local Finance Board which will routinely accommodate such requests with maturities of notes such that the cost to an average assessed home is approximately \$50 annually.

### 2. TY 2012 and SFY 2013 Municipal BUDGET NOT INTRODUCED

Include detailed appropriations on sheet 20 under "Operations Excluded from 'CAPS'" under the heading:

"Hurricane Sandy and citation"

- Use 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/TY 2012 and SFY 2013 Municipal BUDGET INTRODUCED, NOT ADOPTED

The SFY 2012 budget must be amended before the scheduled date of adoption, to include detailed appropriations on sheet 20 under "Operations Excluded from 'CAPS'" under the heading:

"Hurricane Sandy *insert citation*)"

- Use 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.

### **Other Financing Alternatives**

In addition, State law provides two other funding mechanisms that may assist in financing certain infrastructure repair costs resulting from flooding.

The first option is for municipalities and counties and can only be used **after** the budget is adopted. N.J.S.A. 40A:4-54 permits the adoption of resolutions to use the five-year “special emergency” funding provisions of N.J.S.A. 40A: 4-55 to address the “repair, reconstruction of streets, roads or bridges, or other public property” damaged by flooding after budgets are adopted.

Secondly, 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 anytime. That section of law provides the details for using the provisions, and requires Local Finance Board approval.

When used for recovery of Hurricane Sandy created purposes, these appropriations are treated as cap exceptions.

Applicants planning to use the three-year provision should introduce their ordinance, and then file an application with the Local Finance Board requesting approval. 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.

#### **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 who selflessly give of their time and would not even think of seeking to be reimbursed for the efforts they put in on behalf of their communities, the Division wishes to remind everyone 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.

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 [dllgs@dca.state.nj.us](mailto:dllgs@dca.state.nj.us).

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

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Approved: Thomas H. Neff, Director

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## **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.