

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 Amendments: N.J.A.C. 5:30-5.3 through 5:30-5.5

Authorized By: Local Finance Board, Timothy J. Cunningham, Chair.

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

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

Proposal Number: PRN 2017-017.

Please submit written comments on the proposal by March 8, 2017 in writing or via e-mail to:

Patricia Parkin McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
PO Box 803
Trenton, New Jersey 08625-0803
dLgs@dca.nj.gov

For comments submitted via e-mail, please place in the subject heading "N.J.A.C. 5:30 Certification of Available Funds Rule Proposal". The agency proposal follows:

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, at a public meeting on December 10, 2014, approved the proposal of amendments to N.J.A.C. 5:30-5.4(a)1 and 2 that would: 1. require a certification of available funds to set forth the maximum dollar amount of the contract pending approval by the governing body; 2. bar a certifying financial officer from issuing a certification of funds unless the maximum dollar value of the contract pending approval by the governing body is provided; and 3. require the resolution awarding the contract to set forth the maximum dollar amount of the contract. The proposed amendments, published in the January 20,

2015, New Jersey Register at 47 N.J.R. 247(a), were based on the recommendations of Board staff in response to a petition for rulemaking submitted by Mr. John Paff, Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, published in the September 15, 2014, New Jersey Register at 46 N.J.R. 1977(b).

Two of the three comments received on the proposed amendments expressed concern that they would conflict with the procedure for certifying availability of funds under the special situations set forth in N.J.A.C. 5:30-5.5. Upon reviewing these comments, the Board determined that technical guidance on the part of the Division of Local Government Services would be insufficient to resolve any conflict between the amendments initially proposed and the certification of available funds for contracts falling under certain special situations set forth in N.J.A.C. 5:30-5.5. N.J.A.C. 5:30-5.5 addresses methods of certifying available funds in the following situations: when a local unit is operating under a temporary budget pursuant to N.J.S.A. 40A:4-19; open end contracts, contracts up to 12 months not coinciding with the local unit's fiscal year; and multi-year contracts. In certain instances, the local unit is not able to certify, or has the option of not certifying, the availability of funds for the maximum dollar value of a contract that falls within the special situations set forth in N.J.A.C. 5:30-5.5. The Board sought to avoid any potential for confusion relating to encumbrance of funds in these special situations.

The Board, at its May 11, 2016, meeting, voted to prepropose draft amendments to N.J.A.C. 5:30-5.4 and 5.5, in lieu of its original proposed amendments. The draft amendments to N.J.A.C. 5:30-5.4 and 5.5 took into account the above-referenced scenarios while seeking to ensure the integrity of the process for certifying available funds. Draft amendments to N.J.A.C. 5:30-5.4(a)1 and 2 required a certification of available funds to set forth the maximum dollar amount of the contract pending approval by the governing body; barred a certifying financial officer from issuing a certification of funds, unless the maximum dollar value of the contract pending approval by the governing body is provided; and required the resolution or ordinance awarding the contract to set forth the maximum dollar amount of the contract. However, the draft amendments included a caveat that the requirement for a certification of available funds set forth the maximum dollar amount of the contract pending approval by the governing body is subject to exceptions set forth in N.J.A.C. 5:30-5.5. The maximum dollar value of the contract would still need to be supplied by the governing body to the certifying officer, as well as appear on the contract award resolution.

In addition to the above-referenced changes, the Board also preproposed draft amendments to N.J.A.C. 5:30-5.3(c), 5.4(b), and 5.5(b)2 that would reflect the current process for ensuring availability of funds when: 1. a contract is awarded by a purchasing agent rather than the governing body; or 2. goods or services are ordered pursuant to an open-end contract. Further, the Board determined that amendments to various phrases and wording, including, but not limited to, the consolidation of current N.J.A.C. 5:30-5.4(a)4 and 5 into existing N.J.A.C. 5:30-5.4(a)6 (creating new N.J.A.C. 5:30-5.4(a)4), were

necessary in order to enhance regulatory clarity. The draft amendments were published as a notice of preproposal in the June 20, 2016, New Jersey Register as 48 N.J.R. 991(a). Although comments were originally to be submitted no later than July 20, 2016, the deadline was extended to July 27th due to a delay in publishing the June 20, 2016, New Jersey Register. The Board received comments from several entities and individuals.

The Government Finance Officers Association of New Jersey, New Jersey Association of Counties, and Gerald Seneski, Chief Financial Officer for Cumberland County, proffered joint comments to the Board, which are summarized below, along with the Board's responses thereto.

COMMENT: The Board's draft amendments to N.J.A.C. 5:30-5.3 and 5.4(a)4 and (b) make sense in that when a contract is issued as a purchase order or an amendment thereto, the accounting system will ensure the availability of funds before a purchase order is issued.

RESPONSE: The Board appreciates the comments supporting updating the regulatory text to reflect the current process for certifying available funds where a contract is issued as a purchase order.

COMMENT: In the draft amendment to N.J.A.C. 5:30-5.4(a)1, there is language that would prevent the chief financial officer or certifying finance officer from certifying the availability of funds until the governing body provides the maximum dollar amount of the contract. The draft language here does not accurately reflect the reality that the chief financial officer will know the maximum dollar amount before the governing body does. Indeed, the governing body would authorize the contract based on the information provided to them by those running the local unit's day-to-day operations.

RESPONSE: Upon further consideration, the Board concurs with the commenters that the draft language does not follow the standard flow of information during the course of contract authorization. As such, the requirement that the chief financial officer (CFO) refrain from certifying funds until the governing body provides the maximum dollar value of the contract, shall not be incorporated into the Board's proposed amendments to N.J.A.C. 5:30-5.4.

COMMENT: Requiring the local unit's attorney to confirm that the CFO provided the governing body with a certification of available funds, per the language in the draft amendment to N.J.A.C. 5:30-5.4(a)2, is not practical, would add transaction costs, and is very difficult to enforce. If the Board desires to involve the attorney in the process, then the amendment's language should simply require that the certification of available funds be incorporated into the resolution authorizing entering into the contract; this way, the attorney can confirm there is an executed certification of available funds when reviewing the overall resolution in advance of the governing body meeting. In this light, N.J.A.C. 5:30-5.4(a)3 should also be amended to permit the certification of available funds to be incorporated into the resolution authorizing the contract, rather than requiring the certification to be on a separate sheet of paper. There should be movement away from requiring the preparation and storage of multiple paper documents; perhaps an electronic process could be facilitated as well.

RESPONSE: N.J.A.C. 5:30-5.4(a) has always required the local unit's attorney to ensure that the certification of available funds has been provided by the chief financial officer or certifying finance officer. The Board's draft amendments consolidated N.J.A.C. 5:30-5.4(a)4 into paragraph (a)1 and replaced the term "satisfied" with "confirmed" in an attempt to provide more clarity as to the attorney's role. The Board does not contemplate the attorney having to execute a separate certification as to the CFO's issuance of a certification of available funds. To avoid the inference that the attorney must issue a written document, the Board shall propose amending N.J.A.C. 5:30-5.4(a)2 to replace the word "confirm" with "ensure" and change the location of the reference in the paragraph. Recognizing that local units may not have their attorney review resolutions for routine contract awards, the Board also proposes amending this section to allow the option of designating the secretary of the local unit's governing body as the individual responsible for ensuring the certification of available funds is present. For example, the secretary to a municipal or county governing body would be the municipal clerk and the freeholder board clerk, respectively. The commenters' point regarding incorporation of a certification of available funds into the resolution authorizing the contract is accepted by the Board as a means

to promote economy and efficiency. Currently, N.J.A.C. 5:30-5.4(a)3 requires that the certification be attached to the resolution. The Board will propose an amendment to N.J.A.C. 5:30-5.4(a)3 that will expressly permit the certification of available funds to be incorporated into the resolution authorizing entering into a contract. With respect to an electronic process, the draft amendments already amend N.J.A.C. 5:30-5.3(c), 5.4(a)4, and 5.5(b)2 to effect this substantive change when a contract does not require authorization by the governing body.

COMMENT: N.J.A.C. 5:30-5.5(a) should be amended as follows: allow the CFO to certify the full cost of a contract beyond the temporary budget period and anticipate that funds will be available upon adoption of the final annual budget; and permit overencumbrance of a line-item during the temporary budget period, so long as the account is not overexpended. Although paragraph (a)1 allows the full cost of a contract to be certified entirely against the temporary budget, this rarely happens in practice. The alternate option set forth in paragraph (a)2, allowing certification of a prorated amount of the full contract cost against the temporary budget, is impractical, as it is difficult to enter into a contract with a contingency clause that makes it subject to the appropriation of sufficient funds past the temporary budget period. This "subject to future appropriation" clause required by paragraph (a)2 does not take into account the difference between the budget process for State government versus that of local governments. Further, counties and larger municipalities can average over 50 contract resolutions per month, to require an additional certification of available funds to be prepared for the remaining balance of each contract and appended to each corresponding resolution is unreasonable when good accounting and encumbrance systems provide the necessary assurance. Finally, certain computer software vendors servicing a majority of the State overly restrict encumbrances based on the current provisions of paragraph (a)2. Requiring purchase orders to be amended after budget adoption is extremely time consuming. Permitting overencumbrance of a line-item during the temporary budget period, so long as the account is not overexpended, would provide assurance that there will be sufficient funds appropriated when the final annual budget is actually adopted. A contractual obligation exists regardless of whether or not the local unit is operating under a temporary budget, which is a similar principle to the regulation requiring that an emergency appropriation approved during the temporary budget period be included in the final annual budget. If there is concern that a contract will not be extended beyond the temporary budget period, the governing body should not award the contract until it is ready to commit.

RESPONSE: The Board seeks, wherever feasible, to reduce administrative burden on local units; however, the fact remains that funds cannot be certified as available until budgeted for. N.J.S.A. 40A:4-57 prevents municipalities and counties from incurring any liability or entering into any contract for which no appropriation is provided or in excess of the amount appropriated for such purpose. If funds are certified as available on a prorated basis pursuant to N.J.A.C. 5:30-5.5(a)2, there is no assurance that funds will in fact be available to fund the remainder of a particular contract balance until appropriations are made in an adopted municipal or county budget. The fact that funds have been routinely made available in prior adopted budgets does not guarantee that unanticipated expenditures and revenue limitations will not bar continued funding of a contract past the temporary budget period. In recognition of this fact, N.J.A.C. 5:30-5.5(a)2 requires that a contract must contain a clause making its continuation past such date subject to the appropriation of sufficient funds. If a municipal or county governing body wishes to prioritize the funding of a particular contract during the temporary budget period, and not make the contract contingent on continued funding in the adopted annual budget, N.J.A.C. 5:30-5.4 (a)1 allows a contract's full cost to be certified/encumbered against the temporary budget.

COMMENT: N.J.A.C. 5:30-5.5(b)1, which allows the option of certifying the full amount of an open-end contract against the budget at the time the contract is entered into, makes sense. However, this section should also be amended to permit the unspent balance at the end of open-end contracts to be cancelled as an administrative action rather than by resolution of the governing body.

RESPONSE: The commenters' proposed change deals with a circumstance where a local unit awards an open-end contract with an established maximum, encumbering funds on an as-needed basis, and does not end up ordering the maximum dollar amount of goods or services. The Board understands that the proposed change is not meant to pertain to unexpended appropriation balances. No current statute or rule currently bars unused balances from open-end contracts from being cancelled administratively. As such, the Board finds that the proposed change is not necessary.

COMMENT: N.J.A.C. 5:30-5.5(b)2, which for open-end contracts, permits encumbrance of funds as goods and services are ordered, should be amended to permit a resolution awarding a contract to stipulate certain account numbers that shall be assigned as work against the contract is authorized. In the context of legal services, amending the regulation in this fashion would permit the resolution to state the maximum dollar amount of the contract while reflecting the fact that multiple accounts may be charged, some of which may not be known at the time of the award.

RESPONSE: The Board does not find that commenters' proposed amendment is necessary because, for open-end contracts, the existing rules and draft amendments do not prevent local unit accounts from being charged in this fashion.

COMMENT: N.J.A.C. 5:30-5.5(c) and (d), which address the certification of available funds for contracts of either 12 months that do not coincide with the fiscal year or multi-year contracts, should be amended to allow for overcumbrances in future-year temporary and adopted budgets. Separate certifications corresponding to multiple budgetary periods pose an immense bureaucratic burden for chief financial officers that interferes with the active management of budgets and contracts. Moreover, it would be difficult at best for a local unit to cancel a contract midway through without sufficient cause or notice. For example, if a contract runs from July 1 through June 30 for a local unit with a calendar year budget, the certification need only say that "\$x,xxx total contract amount of which \$x,xxx is charged to [Account Number] x-xx-xx-xxx-xxx and funds for the balance will be provided in the 20XX budget"; this would alleviate the need for three separate certifications while providing the desired public disclosure.

RESPONSE: The Board must reject the proffered amendments for similar reasons as those in response to the commenters' proposed amendments to N.J.A.C. 5:30-5.5(a), which applies to the certification of available funds in the temporary budget context. N.J.S.A. 40A:11-15 generally requires multi-year leases and contracts to contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or in the alternate contain an annual cancellation clause. This requirement is implemented by N.J.A.C. 5:30-5.5(d)2.

Mr. Marc Pfeiffer, Principal of PfeifferGov, proffered comments to the Board, which are summarized below along with the Board's responses thereto:

COMMENT: Any references in the draft amendments to "approval" of a contract should be changed back to "awarded." Pursuant to N.J.S.A. 40A:11-6.1, governing bodies award a contract to a vendor and authorize the mayor or other officer to approve or execute the contract.

RESPONSE: The term "award" does not apply in the context of every contract a local unit enters into. For example, a contract to purchase real property would not be "awarded" by the governing body. Nevertheless, the Board concurs with the commenter to the extent that references to the governing body "approving" a contract should be changed to "authorize" or "authorized," as the governing body would authorize any contract to be executed by the responsible officer on behalf of the local unit.

COMMENT: The Board should delete the term "written" wherever it is applied to a certification of available funds, and consider language permitting the use of an electronic certification that meets the intent of the rule, but is consistent with technology used by a contracting unit. For certification of contracts not approved by governing body resolution or authorized by purchase order, the certification would be an electronic transaction in the accounting system.

RESPONSE: The draft amendments already amend N.J.A.C. 5:30-5.3(c), 5.4(a)4, and 5.5(b)2 to effect the substantive change requested by the commenter.

COMMENT: The draft amendments prohibit the certifying officer from certifying availability of funds, unless the governing body provides the officer the amount. This process is inconsistent with the current flow of documents and information and would have the effect of delaying the contract award process. Further, the language relating to cost-inflators is unnecessary as it would routinely be a part of the certification in any case. The inflator would be inherently known to the certifying officer.

RESPONSE: Upon further consideration, the Board concurs with the commenter that the draft language does not follow the standard flow of information during the course of contract authorization. As such, the requirement that the CFO refrain from certifying funds until the governing body provides the maximum dollar value of the contract (along with any cost-inflator that may be a part of the contract) shall not be incorporated into the Board's proposed amendments to N.J.A.C. 5:30-5.4.

COMMENT: At N.J.A.C. 5:30-5.4(a)2, the commenter is unaware of a circumstance when an ordinance is used to award a contract under the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.). Could the Board provide an example that justifies this change? Otherwise, the phrase should remain "resolution."

RESPONSE: N.J.S.A. 40A:12-5(a) of the Local Land and Buildings Law requires municipalities to acquire real property by ordinance.

COMMENT: The draft amendment to N.J.A.C. 5:30-5.4(a)4 requiring the attorney to "confirm" that the certification of available funds has been provided, appears to change the threshold from the attorney being "satisfied" of the certification being provided. It is unclear if "confirmation" will require a formal document or continuation of the practice where the attorney may acknowledge on the record that the certification was provided, or if it is a lesser standard. To avoid adding red tape to the process, the Board should revert to the existing language or clarify what confirmation means in order to prevent unnecessary challenges to contract awards.

RESPONSE: The Board's draft amendments replaced the term "satisfied" with "confirmed" in an attempt to provide more clarity as to the attorney's role. The Board does not contemplate the attorney having to execute a separate certification as to the CFO's issuance of a certification of available funds. To avoid the inference that the attorney must issue a written document, the Board will propose amending N.J.A.C. 5:30-5.4(a)2 to replace the word to "confirm" to "ensure" and change the location of the reference in the section. Recognizing that local units may not have their attorney review resolutions for routine contract awards, the Board also proposes amending this section to allow the option of designating the secretary of the local unit's governing body as the individual responsible for ensuring the certification of available funds is present. For example, the secretary to a municipality's or county's governing body would be the municipal clerk and the freeholder board clerk, respectively.

COMMENT: The new language proposed throughout N.J.A.C. 5:30-5.4(a) and 5.5(b)2 regrettably requires those reading the rule to track back and forth among three separate sections to learn how to handle purchase order-based encumbrances. The Board is urged to consider how local officials will use the rules and endeavor to organize them so related information is contained in single sections, even though this may potentially result in repeated text.

RESPONSE: The Board disagrees that removing repetitive text concerning purchase order-based encumbrances would confuse local officials, and counters that economizing text serves to ease the burden of regulatory compliance.

COMMENT: In the draft amendments to N.J.A.C. 5:30-5.5(c)2, there seems to be a word missing from the following phrase "... one basic object it provides ..." It is suggested that the word "or" may be missing between "it" and "provides."

RESPONSE: The Board agrees that a word is missing in the referenced sentence. The proposed sentence will add an "and" between "object" and "it," as this paragraph requires that the contract provides for goods and services to be provided, that is not an option for this paragraph to apply.

COMMENT: In the draft amendment to N.J.A.C. 5:30-5.5(d)1i, as this provision affects construction and related services, the language where the "... full amount of the contract shall be charged against the budget at the time ..." should have the term "or bond ordinance" after the word "budget."

RESPONSE: The Board agrees with commenter that this section should be amended to accommodate appropriations such as bond appropriations that are outside the budget. As such, the proposed amendment to N.J.A.C. 5:30-5.5(d)1i will read "and/or appropriation from a source other than the budget" after the word "budget." Such language will also be added to N.J.A.C. 5:30-5.4(a)1 and 2.

Chris Conley, Purchasing Agent/Assistant Board Secretary, Lower Township Board of Education.

COMMENT: The commenter opposed the draft amendments on the basis that they would require the certification of available funds prior to bids being received.

RESPONSE: The draft amendments do not require the certification of available funds prior to bids being received, but rather, only before a contract is authorized by the governing body.

After considering the comments in response to the draft amendments, the Board voted to propose amendments to N.J.A.C. 5:30-5.3 through 5.5 at its December 14, 2016, meeting. Proposed amendments to N.J.A.C. 5:30-5.4(a)1 and 2 would require the certification of available funds to reference the maximum dollar value of the contract pending authorization by the governing body, unless a special situation set forth in N.J.A.C. 5:30-5.5 permits the certification of an amount less than the maximum dollar value of the contract, or no amount; and require the resolution or ordinance awarding the contract to set forth the maximum dollar amount of the contract. The Board also proposes amending N.J.A.C. 5:30-5.4(a)2 to allow local units to designate their governing body secretary as responsible for ensuring the certification of available funds accompanies a resolution or ordinance authorizing entering into a contract, and N.J.A.C. 5:30-5.4(a)3, to expressly permit the certification of available funds to be incorporated into a resolution authorizing entering into a contract, rather than requiring that the certification be on a separate sheet of paper.

Language in the pre-proposed draft amendments to N.J.A.C. 5:30-5.4(a)2 that would bar a certifying financial officer from issuing a certification of funds unless the governing body provides the maximum dollar value of the contract pending authorization by the governing body is not incorporated into the proposed amendments.

In addition to the above-referenced amendments, the Board is also proposing amendments to N.J.A.C. 5:30-5.3(c), 5.4(b), and 5.5(b)2 that would reflect the current process for ensuring availability of funds when: 1. a contract is awarded by a purchasing agent rather than the governing body; or 2. goods or services are ordered pursuant to an open-end contract. For open-end contracts, N.J.A.C. 5:30-5.5(b)2 currently requires a purchasing agent to obtain from the chief financial officer or certifying finance officer a written certification of available funds before each purchase, and attach same to the file copy of each corresponding purchase order. However the certifying finance officer, through the encumbrance accounting system utilized by local units, already enters into the system an encumbrance equal to the funds required to effectuate the purchase; thus, preventing overexpenditure of funds. The proposed amendments to the above-referenced regulations would eliminate the paper-driven process required by N.J.A.C. 5:30-5.5(a)2. N.J.A.C. 5:30-5.3(c) and 5.4(b) would also be amended to more clearly reference the current process for ensuring available funds through a local unit's encumbrance accounting system.

N.J.A.C. 5:30-5.5(d)2 sets forth the circumstances under which a multi-year contract shall either contain a clause making the contract subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation or, in the alternate, an annual cancellation clause. The Board proposes amending this paragraph to reflect that an installment contract for the purchase of real property by a municipality or county is barred by N.J.S.A. 40A:12-5(b) from being contingent upon annual appropriation.

Further, the Board has also determined that amendments to various phrases and wording, including, but not limited to, the consolidation of

current N.J.A.C. 5:30-5.4(a)4 and 5 into recodified N.J.A.C. 5:30-5.4(a)6, are necessary in order to enhance regulatory clarity.

This notice of proposal provides for a comment period of 30 days because the Board published a notice of pre-proposal of the proposed amendments in accordance with N.J.A.C. 1:30-5.3(b) and (c). Therefore, pursuant to N.J.A.C. 1:30-3.3(a)4, the proposed amendments are excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments increase transparency by requiring that, unless certain special circumstances apply, documents accessible to the public, the certification of available funds, and the contract award resolution, to reference the maximum dollar value of the contract. In addition, certain updates to the proposed amendments serve to streamline, and make more efficient, the process of certifying availability of funds, such as permitting the incorporation of the certification into a resolution awarding a contract, as well as permitting the secretary of the governing body, rather than the attorney, to confirm that the certification is present.

Economic Impact

The Board anticipates that the proposed amendments will have a positive fiscal impact by enhancing local government fiscal accountability. Ensuring access to this information improves the public's ability to monitor how tax dollars are being spent.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendments are not 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 jobs as a result of the proposed amendments, as they pertain to the disclosure of the maximum dollar value of contracts authorized by a governing body.

Agriculture Industry Impact

The Board does not anticipate that the proposed amendments will have an impact on the agriculture industry, as they pertain to the disclosure of the maximum dollar value of contracts authorized by a governing body.

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 disclosure of the maximum dollar value of contracts authorized by a governing body.

Housing Affordability Impact Analysis

The proposed amendments are not anticipated to have an impact on housing affordability or evoke a change in the average costs associated with housing, as they pertain to the disclosure of the maximum dollar value of contracts authorized by a governing body.

Smart Growth Development Impact Analysis

The proposed 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 applicability of the amendments 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

5:30-5.3 General requirements
(a)-(b) (No change.)

(c) If a purchase or the execution of a contract does not require, either by State law or any State or local regulation, specific authorization by formal action of the governing body, then the individual approving the contract or release of the purchase order shall **be able to** ascertain from **an appropriate entry made into the local unit's encumbrance system** by the chief financial officer or certifying finance officer, as appropriate, that there are available sufficient uncommitted appropriations to provide for the payment. The administrative official or employee shall be so authorized pursuant to N.J.S.A. 40A:11-3.

5:30-5.4 Procedure

(a) The following procedure shall be utilized for the certification of funds when a contract is to be [awarded] **authorized** 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] **that is pending [approval] authorization** by the governing body. Said certification shall designate specifically the line item appropriation(s) of the official budget **and/or appropriation from a source other than the budget** to which the contract will be properly charged[.]; 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. **The maximum dollar value of the contract pending authorization by the governing body shall be referenced in the certification, unless a special situation set forth in N.J.A.C. 5:30-5.5 permits the certification of either no amount or an amount less than the maximum dollar value of the contract.**

2. No resolution **or ordinance** 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] **the governing body has been provided with the written certification of available funds required by (a)1 above and the resolution or ordinance** recites that [such a certificate showing availability of] **the required certification of available funds** has been provided to the governing body. **Either the local unit's attorney or the secretary to the governing body shall ensure that the required certification of available funds has been provided to the governing body prior to it adopting a resolution or ordinance authorizing entering into a contract.** The resolution **or ordinance** authorizing entering into the contract shall **also** specify the exact line item appropriation(s) [or ordinance] **and/or appropriation from a source other than the budget**, which shall be charged **and the maximum dollar value of the contract.**

3. The certification of availability of funds shall **either be incorporated into the resolution or ordinance authorizing entering into the contract or** attached to [the] an original copy of the resolution or ordinance. [and] **The certification of availability of funds shall be kept in the files of the municipal clerk, clerk of the board of chosen freeholders, or secretary to the governing body.**

[4. Before a governing body approves a resolution or ordinance authorizing the entering into of a contract, the local unit's attorney shall be satisfied that a certificate of availability of funds has been provided.

5. A local unit's governing body shall not enter into or execute a contract unless it has been presented with a written certification from its chief financial officer or certifying finance officer, as appropriate, stating the availability of sufficient funds for the contract(s) pending approval by the governing body.]

[6.] 4. When a contract is issued as a purchase order or amendment thereto, [the certification of availability of funds shall be executed through] the budgetary accounting encumbrance process **set forth in N.J.A.C. 5:30-5.3(c) and (b) shall take the place of, and be used instead of, the written certification of available funds described in (a)1 above.**

(b) When a contract is awarded and a resolution **or ordinance** of the governing body is not required, [the availability of funds shall be certified by] the chief financial officer or certifying finance officer shall [make] **cause an appropriate entry to be made** into the local unit's

encumbrance system pursuant to N.J.A.C. 5:30-5.1 and 5.2 prior to the issuance of a contract.

5:30-5.5 Methods of accounting for and certifying available funds for special situations

(a) Temporary budget: When a local unit is operating under a temporary budget, as provided for in N.J.S.A. 40A:4-19, [it] **the local unit** may enter into a contract for a period extending beyond the time period funded in the temporary budget[, subject to] **upon compliance with** the following:

1. [The] **If the full cost of that year is to be charged against the temporary budget at the time the contract is authorized by a resolution or ordinance of the governing body, the written certification of available funds required by N.J.A.C. 5:30-5.4(a) shall certify the availability of the full cost of the contract for that fiscal year [shall be certified against] in the temporary budget, which must contain sufficient appropriations therefor; or**

2. If the full cost of that year [is] **would not be charged against the temporary budget[,] at the time the contract is authorized by a resolution or ordinance of the governing body, the written certification of available funds required by N.J.A.C. 5:30-5.4(a) shall certify the availability of at least [the] a prorated amount reflecting all liability to be incurred during the temporary budget period [must be charged and certified], and the contract must contain a clause making its continuation past [such date] the temporary budget period** subject to the appropriation of sufficient funds. Immediately after the final budget [adoption] **is adopted, a [certificate] written certification of available funds shall be prepared for the remaining balance and filed with the original ordinance or resolution authorizing entering into the contract.**

(b) [Open end] **Open-end** contracts: When a contract provides for certain goods or services to be provided upon request, up to an established maximum, and the local unit is not obligated to order, accept, or pay for said goods or services, except when it orders them, [then the certification of available funds shall be as follows] **the local unit may enter into the contract upon compliance with the following:**

[1. The full maximum amount covered by the contract shall be charged against the budget at the time the contract is awarded, and the full amount shall be certified; or]

1. **If the full amount of the contract is to be charged against the budget at the time the contract is awarded by the governing body, the written certification of available funds required by N.J.A.C. 5:30-5.4(a) shall certify the availability of the full amount of the contract; or**

2. [No] **If the full amount of the contract would not be charged against the budget at the time the contract is awarded by the governing body, no amount shall be [chargeable or certified] encumbered until such time as goods or services are ordered, pursuant to the open-end contract.** [or otherwise called for. Prior to incurring the liability by placing the order, the certification of available funds shall be made by the chief financial officer or certifying finance officer, as appropriate, and attached to the file copy of the purchase order or other such document. It shall be the responsibility of the official responsible for issuing the purchase order to notify and seek the certification of availability of funds from the chief financial officer or certifying finance officer, as appropriate.] **When this option is utilized, the budgetary accounting encumbrance process set forth in N.J.A.C. 5:30-5.3(c) and 5:30-5.4(b) shall take the place of, and be used instead of, the written certification of available funds set forth at 5:30-5.4(a).**

(c) Contracts up to 12 months not coinciding with fiscal year: When a contract [is awarded for a period] **has a term of up to 12 months that does not [coinciding] coincide with the established fiscal year of the local unit, [the following methods shall be followed for purposes of accounting and providing the certification of available funds.] the local unit may enter into the contract upon compliance with the following:**

1. If the contract is for a professional service or is [essentially] **for a single undertaking or project with one basic [work project required] object** (such as, but not limited to, contracts for revaluation, codification, management studies, and feasibility surveys), rather than being divisible into separate steps or actions, which in themselves are

independently acceptable as complete work products, then the full [cost of the contract shall be chargeable to and certified against the budget or appropriation of the year in which the contract is awarded] **amount of the contract shall be charged against the budget and/or appropriation from a source other than the budget at the time the contract is authorized by the governing body and the written certification of available funds required by N.J.A.C. 5:30-5.4(a) shall certify the availability of the full amount of the contract.** This method may also, at [local] the option of the local unit, be followed for contracts described in (c)2 below.

2. If the contract is not [of the character described in (c)1 above, and] **for a professional service or for a single undertaking or project with one basic object and it provides for goods or services to be provided at separate intervals over the contract period, then the [amounts for which liability is to be incurred shall be charged and certified to the two respective years' appropriations at the times, as appropriate, of] contract shall be charged against the budgets in the two consecutive fiscal years as follows: at the time the contract [being] is awarded by the governing body ([with respect to] for the amount [from] to be incurred during the first fiscal year);] and at the time of the adoption of the temporary budget and the adoption of the final budget (for the [remainder] remaining amount of the contract for the second fiscal year). The written certification of available funds required by N.J.A.C. 5:30-5.4(a) shall certify the availability of the prorated amount reflecting the liability to be incurred during the first fiscal year and a second written certification of available funds shall certify the availability of the remaining amount to be incurred during the second fiscal year.**

(d) Multi-year contract requirements [are as follows] **when a contract has a term of more than 12 months, the local unit may enter into the contract upon compliance with the following:**

1. [Contracts entered into] **If the contract is pursuant to N.J.S.A. 40A:11-15 [for periods in excess of 12 months shall be charged and certified as follows]:**

i. [For] **If the contract is for construction and related services authorized by N.J.S.A. 40A:11-15(9), [to the budget or appropriation in full at the time of contract award] the full amount of the contract shall be charged against the budget and/or appropriation from a source other than the budget at the time the contract is awarded by the governing body and the written certification of available funds required by N.J.A.C. 5:30-5.4(a) shall certify the availability of the full amount of the contract;**

ii. For all other contracts[, to the respective budgets in accordance with the time(s) at which the respective work or services are performed or liability for payment otherwise incurred, and] **with a term of more than 12 months, an amount reflecting all liability to be incurred during the fiscal year shall be charged to the budget for each fiscal year covered by the term of the contract, subject to such requirements of this section as might apply with respect to temporary budgets, open-end contracts, or contracts not commencing at the beginning of the fiscal year. The written certification of available funds required by N.J.A.C. 5:30-5.4(a) for each fiscal year shall certify the availability of all funds to be charged to the budget for that fiscal year.**

2. [All] **If the contract is for a multi-year lease[s and] or a contract[s except contracts] that is not specifically exempted pursuant to N.J.S.A. 40A:11-15 or 40A:12-5(b), it shall contain a clause making [them] the contract subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation or contain an annual cancellation clause permitting the local unit to unilaterally cancel the contract for the coming year.**

(e)-(f) (No change.)

HEALTH

(a)

HEALTH FACILITIES EVALUATION AND LICENSING DIVISION

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

Hospice Licensing Standards

Proposed Amendments: N.J.A.C. 8:42C-1.2, 2.4, 2.5, 3.2, and 3.4

Proposed New Rules: N.J.A.C. 8:42C-11

Authorized By: Cathleen Bennett, Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5, 12, 79, and 81.

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

Proposal Number: PRN 2017-018.

Submit written comments by April 7, 2017, electronically to <http://www.nj.gov/health/legal/comments.shtml>, or by regular mail postmarked by April 7, 2017, to:

Joy L. Lindo, Director
Office of Legal and Regulatory Compliance
Office of the Commissioner
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

On April 24, 1997, P.L. 1997, c. 78, codified at N.J.S.A. 26:2H-79 through 81, was enacted. N.J.S.A. 26:2H-79 establishes standards for hospice care programs operating in New Jersey, specifying the care and services that must be provided to hospice patients and their families. N.J.S.A. 26:2H-81 requires the Department of Health (Department) to develop rules for licensure of hospice care programs as necessary to implement N.J.S.A. 26:2H-79 through 81. N.J.A.C. 8:42C fulfilled this statutory mandate. The Department now proposes to amend N.J.A.C. 8:42C and add new N.J.A.C. 8:42C-11 to establish rules for inpatient hospice care providers. The only existing manner by which a freestanding inpatient hospice care provider can obtain licensure is by applying for licensure as a comprehensive personal care home in accordance with N.J.A.C. 8:36. There are currently four inpatient hospice care providers licensed in this manner.

The Department worked with stakeholders to undertake a comprehensive analysis of inpatient hospice services in New Jersey. The proposed amendments and new rules are the result of this process.

The Department expects that the proposed amendments and new rules would bring uniformity and consistency to the delivery of inpatient hospice care Statewide and would ensure the quality of services provided by inpatient hospice care providers through effective inspections and appropriate enforcement.

Following is a summary of the proposed amendments and new rules:

The Department is proposing technical amendments throughout the chapter to correct grammar and punctuation, to update and correct references to publications that the chapter incorporates by reference, as amended and supplemented, and to improve readability.

The Department proposes to amend existing N.J.A.C. 8:42C-1.2 to add definitions of the terms, "family," "Hand Hygiene Guideline," "inpatient hospice care provider," "inspection," "unit," and "unit manager." Within the definition of the proposed new term, "Hand Hygiene Guideline," the Department proposes to incorporate by reference, as amended and supplemented, the CDC guidance document, "Hand Hygiene in Health-Care Settings: Recommendations of the Healthcare Infection Control Practices Advisory Committee and the HICPAC/SHEA/APIC/IDSA Hand Hygiene Task Force." These terms