

(C)

CC: Adm.
NA email

Masser, Michelle

From: egg@dca.state.nj.us
Sent: Monday, January 25, 2016 3:32 PM
To: Masser, Michelle
Subject: LFN 2016-02: State of Emergency Relating to Snow Storm

(Handwritten initials)

Dear Municipal Clerk:

Commencing on Friday, January 22nd, a severe winter storm moved through New Jersey for which Governor Christie declared a state of emergency via Executive Order 202, which may be found at <http://nj.gov/infobank/circular/eocc202.pdf>. The storm brought heavy snow, mixed precipitation, strong winds, freezing temperatures and flooding conditions to various portions of the State. Local Finance Notice 2016-02 (www.nj.gov/dca/divisions/dlgs/lfns/16/2016-02.pdf) is being issued to inform impacted local units of relevant post-storm financing, procurement and property tax related matters.

THIS NOTICE HAS BEEN SENT TO THE FOLLOWING OFFICIALS: Municipal Clerk, Chief Financial Officer, Tax Collector / County Freeholder Board Clerk, Chief Financial Officer / Procurement Officials

LFN 2016-2

January 25, 2016

Local Finance Notice

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Charles A. Richman
Commissioner

Timothy J. Cunningham
Director

Contact Information

Director's Office

V. 609.292.6613

F. 609.292.9073

Local Government Research

V. 609.292.6110

F. 609.292.9073

Financial Regulation and Assistance

V. 609.292.4806

F. 609.984.7388

Local Finance Board

V. 609.292.0479

F. 609.633.6243

Local Management Services

V. 609.292.7842

F. 609.633.6243

Authority Regulation

V. 609.984.0132

F. 609.984.7388

Mail and Delivery

101 South Broad St.

PO Box 803

Trenton, New Jersey

08625-0803

Web:

www.nj.gov/dca/divisions/dlgs

E-mail: dlgs@dca.nj.gov

Distribution Chief
Financial Officers Tax
Collectors Procurement
Officials Municipal Clerks
Freeholder Board Clerks
Elected Officials

Storm Response – Financing, Procurement & Property Tax Matters

Commencing on Friday, January 22nd, a severe winter storm moved through New Jersey for which Governor Christie declared a state of emergency via Executive Order 202. The storm brought heavy snow, mixed precipitation, strong winds, freezing temperatures and flooding conditions to various portions of the State. This Local Finance Notice is being issued to inform impacted local units of relevant post-storm financing, procurement and property tax related matters.

Pursuant to N.J.S.A. 40A:4-46 et seq. and N.J.S.A. 40A:4-20, municipal and county officials have 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 and temporary emergency appropriation process. Likewise, 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 (Annexed hereto as Appendix A).

Financing Matters

For municipalities and counties subject to the appropriation and levy cap laws, expenditures resulting from a state of emergency are treated as a cap exception: N.J.S.A. 40A: 4-45.3bb; 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. When required, local officials must respond to local needs and unplanned funds can be appropriated through the emergency or temporary emergency appropriation process (N.J.S.A. 40A:4-46 et seq.; N.J.S.A. 40A:4-20).

N.J.A.C. 5:30-3.9 sets forth the process and terms under which emergency-related levy cap exceptions are permissible for municipalities and counties. 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.

Municipalities and counties may only treat such costs as a one-time (non-permanent) levy cap exclusion after submitting a certification describing the expenditures for review by the Director of the Division of Local Government Services. The amount excluded may be subject to adjustment to account for the receipt of State or Federal reimbursements.

Emergency Appropriation for Response and Immediate Recovery Efforts

Municipalities and counties that have not introduced or 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 SFY 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 snow removal process 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 these emergencies, 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. SFY 2016 Municipalities: 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 snow removal 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 and 4-45.45(b).

2. CY 2016 Municipalities and Counties: BUDGET NOT INTRODUCED

Include detailed appropriations on sheet 20, (for municipalities), under "Operations Excluded from 'CAPS'" under the heading:

"Declared State of Emergency costs for Snow Removal: N.J.S.A. (40A:4-45.45(b))" and 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 and SFY 2016 Municipal and County BUDGETS INTRODUCED, NOT ADOPTED

The CY and SFY 2016 budgets must be amended before the scheduled date of adoption, to include detailed appropriations on sheet 20, (for municipalities), under "Operations Excluded from 'CAPS'" under the heading:

"Declared State of Emergency costs for Snow Removal: N.J.S.A. (40A:4-45.45(b))" and 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.

In addition, State law provides a funding mechanism that may assist in financing certain infrastructure repair costs resulting from snow or ice damage.

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

Applicants planning to use the three-year provision should introduce their ordinance, and then file an application with the Local Finance Board requesting approval. An application form has been posted on the Local Finance Board website. 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.

Extension of Property Tax Grace Period due to Natural Disaster

On January 11, 2016 Governor Christie signed into law P.L. 2015 c. 203 affecting municipalities that have experienced a flood, hurricane, superstorm, tornado, or other natural disaster less than 30 days prior to the date upon which a property tax installment payment is due, and where a state of emergency has been declared as a result thereof by the Governor. The law permits municipalities to pass a resolution establishing a grace period, or extending its existing grace period, for property tax payments to the first day of the next calendar month from the date upon which it became payable. Municipalities that are subject to State Supervision, the Municipal Rehabilitation and Economic Recovery Act, or Transitional Aid must obtain Director approval before the resolution can become effective.

Where a resolution is adopted extending the property tax grace period, the Municipal Clerk must notify the Division not later than the third business day next following the adoption. The Division should be notified via email at dlgs@dca.nj.gov with the subject heading entitled "Extension of Property Tax Grace Period".

Whenever the grace period has been extended pursuant to this law, the Director may, by temporary order, extend the dates for payment of taxes by a municipality due to a county pursuant to N.J.S.A. 54:4-74, any school district pursuant to N.J.S.A. 54:4-75, and any other taxing district as provided by law. **Please note that the Director has not issued such an order at this time.** As such, the Division strongly recommends that any municipality that seeks to extend their property tax grace period should consult with their county, school district(s), et al. before doing so.

For future reference, whenever the due date for the fourth quarter property tax installment payment has been extended for real property pursuant to this law, a municipality shall not conduct an accelerated tax sale with respect to that installment.

Other Considerations

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, the Division must reiterate 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.

Snow Removal/Storm Recovery Reserve Funds - N.J.S.A. 40A:4-62.1, as amended in 2014, changed what was a "snow removal reserve" to a "storm recovery reserve". Municipalities and counties can now utilize funds in their snow removal reserves for any purpose relating to storm recovery after current budget appropriations utilized for that purpose have been expended. Any municipality or county that wishes to utilize such funds for storm recovery must pass a dedication by rider resolution pursuant to N.J.S.A. 40A:4-39 establishing a storm recovery reserve and submit same to the Division. Any reimbursement of these expenditures shall be deposited back into the reserve. Unexpended balances annually for storm recovery expenses may be lapsed into the reserve. Please note that municipalities and counties need not have had a snow removal reserve in order to establish a storm recovery reserve.

Municipal and Freeholder Clerks are asked to distribute this notice to their elected officials. 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 dlgs@dca.nj.gov.

Approved: Timothy J. Cunningham, Director

Document	Internet Address
Exec. Order 202	http://nj.gov/infobank/circular/eocc202.pdf
N.J.A.C. 5:30-3.9	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/R_2012_d_135_(44_NJR_1971(a)).pdf
Flood Special Emergency App. (LFB)	http://www.nj.gov/dca/divisions/dlgs/programs/lfb_docs/flood_spcl_emerg_lfb_app.doc
P.L. 2015, c.203	http://www.njleg.state.nj.us/2014/Bills/A3500/3052_R3.PDF

*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.

EXECUTIVE ORDER NO. 202

WHEREAS, beginning on January 22, 2016, the State of New Jersey is expected to experience a severe winter storm with heavy snow, mixed precipitation, strong winds, and freezing temperatures throughout the State; and

WHEREAS, the National Weather Service has issued storm warnings throughout New Jersey, including Blizzard Warnings and Winter Storm Warnings; and

WHEREAS, this severe winter storm may cause hazardous travel conditions, fallen trees and power outages, and coastal, stream, and river flooding throughout the State; and

WHEREAS, the impending weather conditions may make it difficult or impossible for citizens to obtain the necessities of life, as well as essential services such as police, fire, and first aid; and

WHEREAS, the impending weather conditions constitute an imminent hazard, which threatens and presently endangers the health, safety, and resources of the residents of one or more municipalities and counties of this State; and

WHEREAS, this situation may become too large in scope to be handled by the normal county and municipal operating services in some parts of this State, and this situation may spread to other parts of the State; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4, and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, in order to protect the health, safety, and welfare of the people of the State of New Jersey, do DECLARE

AND PROCLAIM that a State of Emergency exists throughout the State of New Jersey and I hereby ORDER AND DIRECT the following:

1. I authorize and empower the State Director of Emergency Management, who is the Superintendent of State Police, to implement the State Emergency Operations Plan and to direct the activation of county and municipal emergency operations plans as necessary, and to coordinate the preparation, response, and recovery efforts for this emergency with all governmental agencies, volunteer organizations, and the private sector.

2. I authorize and empower the State Director of Emergency Management, in accordance with N.J.S.A. App. A:9-33 et seq., through the police agencies under his control, to determine the control and direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

3. I authorize and empower the Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, acting through the Superintendent of State Police, to determine the control and direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road and any access road, including the right to detour, reroute, or divert any or all traffic, and to prevent ingress or egress. I further authorize all law enforcement officers to enforce any such

order of the Attorney General or the Superintendent of State Police within their respective municipalities or jurisdictions.

4. I authorize and empower the State Director of Emergency Management to order the evacuation of all persons, except for those emergency, governmental, or essential personnel whose presence the State Director deems necessary, from any area where their continued presence could present a danger to their health, safety, or welfare because of the conditions created by this emergency.

5. I authorize and empower the State Director of Emergency Management to utilize all facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure, or vehicle during the course of this emergency.

6. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to

provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

8. In accordance with N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

9. In accordance with N.J.S.A. App. A:9-40, no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution that will or might in any way conflict with any provision of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

10. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this state of emergency.

11. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6, and N.J.S.A. 40A:14-156.4, no municipality or public or semipublic agency shall send public works, fire,

police, emergency medical, or other personnel or equipment into any non-contiguous, disaster-stricken municipality within this State, nor to any disaster-stricken municipality outside this State, unless and until such aid has been directed by the county emergency management coordinator or his or her deputies in consultation with the State Director of Emergency Management.

12. This Order shall take effect immediately, and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

GIVEN, under my hand and seal this
22nd day of January,
Two Thousand and Sixteen,
and of the Independence of
the United States, the Two
Hundred and Fortieth.

[seal]

/s/ Chris Christie

Governor

Attest:

/s/ Thomas P. Scrivo

Chief Counsel to the Governor