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## August 14, 2020

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**Municipal Clerks:** Please forward to your Mayor, Governing Body and Department Heads.

To assist in providing guidance and information we have created a [COVID-19 resource page](#). We will continue to update the page as we get pertinent information and include announcements in our Daily Updates.

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### I. State

#### a. COVID-19 Update

Today Governor Murphy announced that there were 585 new positive cases and an additional 10 confirmed deaths resulting from COVID-19. To date, there have been 187,164 confirmed cases, and 14,064 confirmed deaths. There are also 1,839 probable deaths associated with the virus. The rate of transmission is at .92.

Since our last update, Governor Murphy issued the following executive orders:

[Executive Order 174](#): Declares State of Emergency in Response to Hurricane Isaias.

[Executive Order 175](#): Open New Jersey's Schools For In-Person Instruction Subject to Critical Health and Safety Protocols.

[Executive Order 176](#): Lifts State of Emergency Declared in Response to Hurricane Isaias.

In addition, the Governor announced today that he will be issuing an executive order later

today regarding the November election being conducted, primarily, through vote-by-mail. In his announcement the Governor noted that all voters will receive a mail in ballot on October 5, that each municipality must have at a minimum one polling location open, all public schools will be closed for in person learning on November 3 to allow for in-person voting, and the new online voter registration system will be available on September 4.

See the League's [COVID-19 page](#) for all our resources and communications.

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## **b. NJ Supreme Court Rules COVID-19 Emergency Bond Act Constitutional**

The New Jersey Supreme Court [ruled Wednesday](#) that the State's plan to bond for up to \$9.9 billion to deal with revenue shortfalls brought on by the COVID-19 pandemic is constitutional, provided certain restrictions are followed.

The case was brought to the Supreme Court shortly after the law was signed when the New Jersey Republican State Committee and others challenged that the borrowing plan was unconstitutional because it ran afoul of the State Constitution's Debt Limitation Clause. The Debt Limitation Clause generally requires voter approval for the State to incur certain debts but includes an exception for debts "to meet an emergency caused by a disaster."

The Court determined that the COVID-19 pandemic was certainly an emergency within the meaning of the exception within the Debt Limitation Clause. The Court continued to examine the Bond Act and whether the limitations set on the borrowing and spending within the Act were in line with the exception that debts be used "to meet an emergency." In this regard, the Court found that the ambiguity within the Act required court-imposed limitations be set to avoid borrowing in excess of what the law allows, and to be faithful to the Emergency Exception, with the ultimate effect of these limitations to prevent the State from issuing bonds or borrowing funds beyond the actual fiscal exigency caused by the pandemic.

To achieve this, the Court is requiring the Governor or the Treasurer to certify publicly, the State's projected revenue and consequent shortfall as a result of the COVID-19 pandemic before each tranche of borrowing. According to the opinion, "[w]hat this means in practice is that, even though the Bond Act allows for borrowing of up to \$9.9 billion, if the Governor or the Treasurer were to certify that the fiscal shortfall due to COVID-19 was \$7 billion, then the State could borrow only up to that amount at that time."

Because of the way the Court ruled, it is not anticipated that the legislature will need to take additional action before borrowing can occur.

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## **c. NJ HMFA Launches Small Landlord Emergency Relief Grant Program**

This week the New Jersey Housing and Mortgage Finance Agency (HMFA) announced the Small Landlord Emergency Grant Program (SLEG). As a reminder the program will reimburse residential rental property owners for lost rent revenue due to COVID-19

between April and July 2020, as long as landlords agree to forgive outstanding back rent and late fees that their tenant accrued during this time.

The application portal will open on Wednesday, August 19 at 9 a.m. and remain open until Wednesday, August 26 at 1 p.m. Once the application portal is closed, applications will be reviewed and awarded in a computer-randomized order to give each application an equal chance of being funded. Application will be evaluated for eligibility and completeness. For more information, including eligibility requirements and contact information for those with questions, please see the [NJ HMFA's webpage](#).

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## **II. Federal**

### **a. 9th Circuit Mostly Upholds FCC Order Preempting Local Authority Over 5G Deployment**

On Wednesday, the [Ninth Circuit largely upheld](#) a series of Federal Communication Commission (FCC) Orders aimed at expediting the deployment of small cell and 5G technology at the expense of local control and autonomy. Although many provisions of the Order, such as the cap on local fees and the prohibition on moratoriums was upheld, the court did modify the Order as it relates to local authority on aesthetic requirements and how different types of providers can be regulated.

The court held that, to the extent that provision required small cell facilities to be treated in the same manner as other types of communications services, the regulation was contrary to the congressional directive that allowed different regulatory treatment among types of providers, so long as such treatment did not “unreasonably discriminate among providers of functionally equivalent services.” The court also held that the FCC’s requirement that all aesthetic criteria must be “objective” lacked a reasoned explanation – vacating the requirement, and remanding to the FCC.

It is not clear at this time whether the decision will be appealed or what action the FCC will take in response to the decision. The League continues to monitor the issue and will keep our members up to date on any developments.

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### **b. Time is Running Out for the 2020 Census**

This week, the U.S. Census Bureau began its full, nationwide follow up, with households that have not yet responded to the 2020 Census. Up to 500,000 census takers across the country will go door to door to assist people in responding to the 2020 Census. Based on the current self-response rate of 65.4%, the Census Bureau estimates it will need to visit about 56 million addresses to collect responses in person.

With only six and a half weeks to go until the Census Bureau’s September 30 completion deadline, this ‘Nonresponse Follow-up’ (NRFU) operation is the final stage of conducting

the once-a-decade population count of everyone living in the United States.

Please remind your residents that they can still respond online at [2020census.gov](https://2020census.gov), by phone at 844-330-2020, or by completing and mailing back the paper questionnaire they received. Those that do so will not need to be visited to obtain their census response.

Those who choose to wait for personal contact can expect census takers to make multiple attempts to count residents at each housing unit address. In addition, phone calls may be used when in-person contact attempts have not resulted in an interview. If a voicemail is available, the census taker will leave a message asking the household to call one of the Census Bureau's call centers.

After exhausting their efforts to do an in-person interview with a resident of an occupied housing unit, Census employees may seek out proxy sources — a neighbor, a rental agent, a building manager or some other knowledgeable person familiar with the housing unit — to obtain as much basic information about the occupants as possible.

Let your residents know that Census Takers can be [easily identified](#) by a valid government ID badge with their photograph, a U.S. Department of Commerce watermark, and an expiration date on the badge. To confirm a census taker's identity, the public may contact the New York Regional Census Center, which covers New Jersey operations, at 212-882-7100, to speak with a Census Bureau representative.

At this moment, New Jersey's response rate is 65.4%, twenty-first, nationally. This week, we want to highlight the top-ranking municipality in each county.

- Bergen County – Glen Rock (88.5%)
- Union County – Berkeley Heights (85.3%)
- Morris County – Mountain Lakes (84.7%)
- Essex County - Glen Ridge (84.7%)
- Middlesex County – Cranbury Township (84.1%)
- Burlington County (tie) – Mansfield Township and Medford Lakes (82.6%)
- Warren County – Greenwich Township (82.3%)
- Passaic County – Ringwood (82.2%)
- Hunterdon County – Bethlehem Township (82.2%)
- Camden County – Audubon Park (82%)
- Somerset County – Bernards Township (81.4%)
- Monmouth County – Little Silver (81.3%)
- Gloucester County – Wenonah (80.3%)
- Mercer County – West Windsor (79.8%)
- Atlantic County – Weymouth (77.6%)
- Ocean County – Manchester Township (76.6%)
- Sussex County – Fredon Township (76.4%)
- Salem County – Pilesgrove Township (75.3%)
- Cumberland County – Stow Creek (70.7%)
- Cape May County – Dennis Township (64.9%)
- Hudson County – Hoboken (64.3%)

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### **c. President's Supplemental Unemployment Compensation Plan Poses**

## Problems

As reported in our Monday Daily Update, the President Trump took action last weekend, to address a few aspects of the economic crisis, caused by the Coronavirus. His [Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019](#) looked to address the July expiration of the \$600 a week federal supplement to state unemployment benefits. It would divert \$44 billion of FEMA Disaster Relief Funding to a program that could add up \$400 a week to state unemployment benefits. Federal FEMA funding would cover \$300 of the total, if States agree to provide the other \$100. The memo orders the aid to continue through December 6, or until funding is exhausted.

States may provide claimants a lost wages supplement of up to \$400, composed of a \$300 federal contribution from the Disaster Relief Fund (DRF) and an additional amount up to \$100 from state funds. The state-funded portion may be sourced from the Coronavirus Aid Relief (CRF) and Economic Security Fund allocation. The total lost wages supplemental payment may not exceed \$400. States may instead provide claimants the lost wages supplement of \$300 paid entirely from the \$300 federal contribution and satisfy the match, with no additional state payout, by leveraging existing state funding used to pay regular state unemployment benefits. In this case, the state must demonstrate at the aggregate level that the total of its state-funded unemployment benefits to claimants receiving the lost wages supplement were at least 25 percent of the total lost wages assistance benefits paid in conjunction with all of the unemployment programs.

According to the U.S. Bureau of Labor Statistics, there were 750,000 unemployed New Jerseyans, at the end of June. At \$100, each, it would cost the State \$75 million, each week, to provide the full \$400 supplement.

Further, most of the CRF and Economic Security Funds have already been allocated or obligated by the States for other purposes. Use of the funding to offset the State portion of the unemployment benefit may reduce the amount of money states have promised to local governments.

Using DRF during hurricane season could also severely limit the ability of FEMA to respond to and provide assistance to local governments that may be impacted by large scale disasters. FEMA also recently released a [notice of funding opportunity](#) for the new Building Resilient Infrastructures and Communities (BRIC) grant program to states, local communities, tribes and territories (SLTTs) for pre-disaster mitigation activities. However, the use of the DRF, which funds the BRIC grants, for unemployment benefits could also reduce the amount of money that is available to state and local governments for disaster mitigation.

It is important that Congress act immediately to extend the unemployment benefits in the next relief package and that the federal government does not siphon funding from the critical DRF program to supplement unemployment benefits.

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## III. 2020 Annual League Conference

The 105<sup>th</sup> Annual Conference will be held as a virtual conference the week of November 16 through November 20. For more information, [please see our August 14 letter](#).

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