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Local Finance Notice

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Local Government Responses to Hurricane Harvey

With the recent hurricane disaster affecting Texas and the Gulf Coast, this Local Finance Notice serves to advise New Jersey local governments that may be seeking ways to support disaster relief efforts; providing information on how money, resources, and time can be donated through trusted and reputable organizations. Matters related to donating surplus local unit equipment, how to "loan" personnel to recovery efforts, and concerns about allocating financial resources to the effort are also covered.

Local governments are also advised to review the Federal Emergency Management Agency's "[Intergovernmental Affairs Advisory #17](#)," which outlines effective ways to support disaster survivors in their recovery.

Donating Surplus Equipment

To assist out-of-state local government agencies that lost vehicles, trucks and equipment, including public safety and fire fighting vehicles and equipment, some local units in New Jersey may desire to donate public safety and public works vehicles and equipment to these communities.

State law provides a simple process for donating surplus "personal property" (including government goods or equipment) no longer needed for public use to any governmental unit in the United States. This statutory authority is found in [N.J.S.A. 40A:11-36\(2\)](#) of the Local Public Contracts Law. Any action to donate surplus equipment, vehicles, or supplies must be authorized by a governing body resolution stating that the vehicles and equipment are no longer needed for public use before final disposition.

Please note that State law **does not** authorize local units to buy personal property with the intent of donating it to another government agency – the property must be already acquired and determined to be surplus by the governing body. Local units that wish to donate assets and have not established a formal relationship with a recipient community can have their items posted as an available resource on the Emergency Management Assistance Compact (EMAC) system, which is discussed in the next section.

“Loan of Assets” to Stricken Municipalities

State law and procedures provide the mechanism for local officials to “donate” local staff to assist out-of-state government agencies in disaster recovery efforts. Following this process ensures that public employees on out-of-state disaster recovery assignment are protected under state employment laws, maintain benefits, have insurance, and that the public agency’s liability insurance covers the employee and the agency itself for any actions taken by the employee. Failing to follow these policies and procedures places the employee and public employer at significant risk; State law does not authorize any other approach.

A national compact called the Emergency Management Assistance Compact (EMAC) is a legal document that provides the basis for states to support other states with personnel and support resources (officially known as “assets”) during and while recovering from an emergency. When local assets (personnel and equipment/supplies, etc.) are provided to another state through the EMAC system, the assets receive full legal authority and protection. The EMAC system operates an Internet-based communication system that is used by emergency managers across the country. Local New Jersey OEM officials are familiar with its capabilities and how to access it.

If a local unit wants to provide staff and support (i.e., vehicles or equipment for the loaned staff) to a community in need, several steps must be taken:

1. The community receiving the assets must make a formal request through its own State EMAC system. Their emergency management personnel have instructions on how to access the system.
2. If plans have been made between a recipient and providing local unit, the recipient must make a formal request through its EMAC system for a “pre-identified asset” from the providing community in New Jersey. The request should very clearly note it is directed to New Jersey and the name of the municipality. The request should include the person’s name and any other assets that have been arranged between the communities.
3. That request will go through the recipient’s state system to the New Jersey EMAC office, which is part of the State Police Office of Emergency Management. The providing municipality should advise its OEM Coordinator to notify the State OEM of the request.
4. When the request is received, State OEM personnel will contact the local OEM to verify the request and the local unit’s agreement to provide the assets. State OEM will then prepare a standard “contract” that describes the assets to be provided, what they will do, and the period of time involved. The local unit Chief Executive Officer (in most municipalities, the Mayor) must then execute the agreement and return it to the State. While it sounds time-consuming, electronic transmission of the documents makes the process move very quickly.
5. Upon approval by the parties, the assets can be sent on their way, with full legal and operational protection and authority. Personnel deployed through this process remain a local unit employee, but become an officer of the State for liability purposes (because they are working under the State’s compact).

Because the donation is under a FEMA disaster declaration, the local unit is eligible for reimbursement of an employee’s time and fringe benefit costs spent on the effort. When submitting the OEM contract, the local unit should also provide the hourly rate of each employee and a percent to be used for salary-based fringe benefits calculations. State OEM will calculate

the reimbursement (including overtime if applicable) and submit the cost to the recipient State for eventual FEMA reimbursement. No estimate can be given as to how long it will take to get the reimbursement.

Local officials must use this process to ensure that their employees, other resources, and their organization are properly protected.

Managing Charitable Contributions

Local governments may be planning to collect funds, or will be asked to establish funds, for making contributions to national charities or local organizations affected by Hurricane Harvey. While collections are appropriate ways to respond to the concerns of the public, they need to be carefully considered and managed by local officials.

First and foremost, local officials should urge the public to make cash contributions directly to established charities – the government should not engage in the collection of money on behalf of a charity. While the government can support activities of charities, it *should* avoid taking physical control of any charitable funds. Local units are not authorized to use its taxing or fee-raising power to raise funds for these types of purposes.

In the event, however, they are given cash contributions or gifts for support of disaster related purposes, the local unit may appropriate funds and spend them for the purpose for which they are donated; N.J.S.A. 40A:5-29 (Acceptance of Gifts) provides the authority to do so.

The procedure for accepting and appropriating funds for these purposes through the N.J.S.A. 40A:5-29 process for municipalities and counties is as follows:

1. The governing body must pass a Dedication by Rider resolution to use N.J.S.A. 40A: 5-29, with the title of the appropriation dedication including a reference to the “Hurricane Harvey Relief Fund.”
2. The Rider resolution must include a plan of disposition of funds, including who (the specific organizations) will receive funds, how they will be allocated, and the process for making allocation decision (if funds go to more than one organization).
3. There should be public disclosure (at time of contribution or by other public means) specifying the purpose for which the money will be spent.
4. Budgeted appropriations not offset by contributions are not permitted; State law does not permit property tax or utility fee based contributions for these purposes. Only funds donated by the public are allowed to be made as donations.
5. Donations to organizations affected by the disaster should be based on the formal plan.

Authorities or fire districts should contact the Division for specific guidance on how to handle donations.

Local governments have been at the forefront of efforts, and continue to promote and sponsor community programs for donations to local or national charities, the collection of supplies needed in affected areas and arranging for their transportation. Again, government financial resources cannot be used for these purposes and community resources should be the basis for the actions.

Some questions have been raised as to the authority of a government to establish a separate non-profit organization to serve as a charity. There are two major considerations local officials need to keep in mind with respect to non-profits and charities.

First, local units are **not** authorized to create or operate non-profit corporations [i.e., IRS section 501(c)(3)]. While local officials can participate and even facilitate the creation of a local non-profit corporation, it cannot control its operations by providing support through taxpayer resources or having the majority of the Board of Directors/Trustees of a non-profit composed of government officials or employees.

Secondly, if a local unit wants to facilitate the creation of a non-profit organization that will serve as a charity, legal counsel should review the law regulating charities to ensure that those requirements can be met. Charities, regardless of how they are created must be registered with and meet the requirements of the Bureau of Charities in the State's Division of Consumer Affairs. After consideration, it may be found that partnering with an existing non-profit or charitable organization might best fill the purposes intended by the municipality.

It is of great credit to New Jersey's local government leaders that their efforts are providing relief to the suffering of people in our sister states. Ensuring that these deliberate procedures are carefully followed will provide for accountability and safety for all involved.

Approved: Timothy J. Cunningham, Director

Document	Internet Address
FEMA Intergovernmental Affairs Advisory #17	https://www.sffma.org/SFFMAPages/femadocument.pdf