

---

NEW JERSEY REPUBLICAN STATE : SUPREME COURT OF NEW JERSEY  
COMMITTEE a/k/a the NJGOP; : DOCKET NO.: M-1291  
DECLAN O'SCANLON; HAL : September Term, 2019  
WIRTHS; LISA NATALE- : 084731  
CONTESSA; and ILEANA : CIVIL ACTION  
SCHIRMER, :  
 :  
 :  
 Plaintiffs, : On Certification from:  
 :  
 v. : SUPERIOR COURT OF NEW JERSEY  
 : MERCER COUNTY, LAW DIVISION  
 : DOCKET NO. MER-L-1263-20  
 PHILIP D. MURPHY, in his :  
 official capacity as the :  
 GOVERNOR of the STATE OF :  
 NEW JERSEY, :  
 :  
 Defendant.

---

DEFENDANT'S APPENDIX

VOLUME 5 OF 6

---

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Defendant  
Richard J. Hughes Justice Complex  
25 Market Street, P.O. Box 112  
Trenton, New Jersey 08625-0112

By: Jean Reilly  
(Attorney ID: 021081997)  
Assistant Attorney General  
(609) 376-2809  
[jean.reilly@law.njoag.gov](mailto:jean.reilly@law.njoag.gov)

Of Counsel and on the Brief  
Jean P. Reilly, Assistant Attorney General

Also on the Brief, Deputy Attorneys General  
Jamie M. Zug  
Eric Apar  
Eileen W. Siegeltuch  
Victoria G. Nilsson  
Susan J. Wilkerson

APPENDIX TABLE OF CONTENTS

PAGE

VOLUME I

**CERTIFICATION OF ELIZABETH M. MUOIO, NEW JERSEY STATE  
TREASURER.....**Da001

EXHIBIT A - OPENING STATEMENT TO THE ASSEMBLY BUDGET COMMITTEE ON JUNE  
1, 2020.....Da026

EXHIBIT B - OPENING STATEMENT TO THE ASSEMBLY BUDGET COMMITTEE ON May  
28, 2020.....Da036

EXHIBIT C - OPENING STATEMENT BEFORE THE ASSEMBLY BUDGET COMMITTEE ON  
JUNE 1, 2020 (HEARING ON A.4175 "NEW JERSEY COVID-19 EMERGENCY BOND  
ACT").....Da045

EXHIBIT D - TREASURER'S REPORT ON THE FINANCIAL CONDITION OF THE STATE  
BUDGET FOR FISCAL YEARS 2020 AND 2021 DELIVERED ON MAY 22, 2020 TO THE  
LEGISLATURE.....Da049

EXHIBIT E - REVENUE REPORT OF MAY 2020.....Da079

EXHIBIT F - REVENUE REPORT OF JUNE 2020 .....Da081

EXHIBIT G - THE NEW JERSEY MEDICAL EDUCATION FACILITIES BOND ACT OF  
1977, L. 1977, C. 235.....Da083

EXHIBIT H - NEW JERSEY PUBLIC BUILDINGS CONSTRUCTION BOND ACT OF 1968,  
L. 1968, C. 128.....Da095

EXHIBIT I - AN ACT APPROPRIATING FUNDS FROM THE PUBLIC BUILDINGS  
CONSTRUCTION FUND, L. 1969, C. 13.....Da105

EXHIBIT J - NEW JERSEY GREEN ACRES BOND ACT OF 1983, L. 1983,  
C. 354.....Da111

EXHIBIT K - AN ACT APPROPRIATING FUNDS FROM THE 1983 NEW JERSEY GREEN  
ACRES FUND AND THE GREEN TRUST FUND, L. 1984, C.224.....Da124

EXHIBIT L - FISCAL YEAR 2016 APPROPRIATIONS ACT, L. 2015, C.63....Da138

EXHIBIT M - THE COMPREHENSIVE ANNUAL FINANCIAL REPORT ("CAFR") FOR  
FISCAL YEAR 2016.....Da141

EXHIBIT N - GOVERNOR'S FISCAL YEAR 2018 BUDGET MESSAGE .....Da143

EXHIBIT O - THE FISCAL YEAR 2018 APPROPRIATIONS ACT, L. 2017,  
C. 63.....Da146

EXHIBIT P - THE COMPREHENSIVE ANNUAL FINANCIAL REPORT ("CAFR") FOR  
FISCAL YEAR 2018 .....Da149

EXHIBIT Q - GOVERNOR'S FISCAL YEAR 2020 BUDGET MESSAGE.....Da151

EXHIBIT R - COMPARISON OF REVENUE SHORTFALLS UNDER COVID-19 AND PRIOR RECESIONS.....Da154

PAGE

**CERTIFICATION OF MICHAEL B. KANEF, DIRECTOR OF OFFICE OF PUBLIC FINANCE, DEPARTMENT OF THE TREASURY.....Da156**

EXHIBIT A - STATE OF NEW JERSEY DEBT REPORT FISCAL YEAR 2019, PUBLISHED ON APRIL 2, 2020.....Da178

EXHIBIT B - MY OPENING STATEMENT BEFORE THE NEW JERSEY ASSEMBLY BUDGET COMMITTEE ON June 1, 2020.....Da280

EXHIBIT C - MOST RECENT CREDIT RATING REPORTS ON THE STATE'S GO BONDS AS PUBLISHED BY MOODY'S INVESTORS SERVICE ON April 24, 2020 ("Moody's") .....Da421

EXHIBIT D - STANDARD AND POOR'S GLOBAL RATINGS ON April 29, 2020 ("S&P") .....Da433

EXHIBIT E - (MOODY'S, S&P, FITCH, AND KROLL, COLLECTIVELY, THE "CREDIT RATING AGENCIES"); MOODY'S ANALYTICS, STRESS-TESTING STATES: COVID-19, April 19, 2020 REPORT ON THE EXPECTED IMPACT OF COVID-19 ON STATE BUDGETS.....Da461

EXHIBIT F - OTHER REPORTS FROM VARIOUS COMMERCIAL BANKS AND INVESTMENT BANKS; AND THE NEW JERSEY TREASURER'S REPORT ON THE FINANCIAL CONDITION OF THE STATE BUDGET FOR FISCAL YEARS 2020 AND 2021 ISSUED ON MAY 22, 2020.....Da477

EXHIBIT G - NEW JERSEY COVID-19 EMERGENCY BOND ACT (THE "EMERGENCY GO BOND ACT"), L. 2020, c. 60 .....Da506

EXHIBIT H - FEDERAL RESERVE'S APRIL 27, 2020, MUNICIPAL LIQUIDITY FACILITY TERM SHEET, p. 2 .....Da529

EXHIBIT I - THE FEDERAL RESERVE'S April 27, 2020, TERM SHEET, AS UPDATED ON MAY 11, 2020 .....Da537

EXHIBIT J - THE FEDERAL RESERVE'S APRIL 27, 2020, TERM SHEET, AS UPDATED ON MAY 15, 2020.....Da547-a

EXHIBIT K - THE FEDERAL RESERVE'S APRIL 27, 2020, TERM SHEET, AS UPDATED ON JUNE 3, 2020.....Da548

EXHIBIT L - MUNICIPAL LIQUIDITY FACILITY APPLICATION (AS OF June 16, 2020)..... Da554

EXHIBIT M - PERIODIC REPORT: UPDATE ON OUTSTANDING LENDING FACILITY AUTHORIZED BY THE BOARD UNDER SECTION 13(3) OF THE FEDERAL RESERVE ACT, May 15, 2020 .....Da563

**CERTIFICATION OF MICHAEL B. KANEF, DIRECTOR OF OFFICE OF PUBLIC FINANCE, DEPARTMENT OF THE TREASURY (CONT.).....**

EXHIBIT N - PERIODIC REPORT: UPDATE ON OUTSTANDING LENDING FACILITY AUTHORIZED BY THE BOARD UNDER SECTION 13(3) OF THE FEDERAL RESERVE ACT, AS UPDATED ON JUNE 14, 2020 .....Da581

EXHIBIT O - PERIODIC REPORT: UPDATE ON OUTSTANDING LENDING FACILITY AUTHORIZED BY THE BOARD UNDER SECTION 13(3) OF THE FEDERAL RESERVE ACT, AS UPDATED ON JULY 9, 2020 .....Da590

EXHIBIT P - FEDERAL RESERVE, MUNICIPAL LIQUIDITY FACILITY SAMPLE PURCHASE RATES, AS PUBLISHED ON July 27, 2020 .....Da599

EXHIBIT Q - CERTIFICATION OF ELIZABETH MAHER MUOIO, TREASURER OF THE STATE OF NEW JERSEY, DATED July 31, 2020 .....Da601

**CERTIFICATION OF TIMOTHY SULLIVAN, CHIEF EXECUTIVE OFFICER OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY .....Da627**

**CERTIFICATION OF LESLEY HIRSCH, ASSISTANT COMMISSIONER OF THE OFFICE OF RESEARCH AND INFORMATION OF THE NEW JERSEY DEPARTMENT OF LABOR .....Da639**

**CERTIFICATION OF MICHELE McGAHEY .....Da649**

EXHIBIT A - E-MAIL FROM ROBERT HEYM, NEW JERSEY STATE LIBRARIAN ON JULY 27, 2020 .....Da651

EXHIBIT B - DEFENDANT'S REPLY BRIEF - LANCE..... ..Da655



# **EXHIBIT M**

**Periodic Report: Update on Outstanding Lending Facilities  
Authorized by the Board under Section 13(3) of the Federal Reserve Act  
May 15, 2020**

**Overview**

The Board of Governors of the Federal Reserve System (Board) is providing the following updates concerning certain lending facilities established by the Board under section 13(3) of the Federal Reserve Act (12 U.S.C. § 343). Pursuant to section 13(3)(C) of the Federal Reserve Act, the Board must provide the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives (the Committees) an initial report regarding each facility established under section 13(3) and periodic updates at least every 30 days thereafter. This report provides the first periodic update for (1) the Municipal Liquidity Facility (MLF), (2) the Main Street New Loan Facility (MSNLF), (3) the Main Street Expanded Loan Facility (MSELF), and (4) the Paycheck Protection Program Liquidity Facility (PPPLF).

In addition to the MLF, MSNLF, MSELF, and PPPLF, the Board also has authorized the establishment of the following credit facilities under section 13(3) of the Federal Reserve Act: the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Term Asset-Backed Securities Loan Facility, and the Main Street Priority Loan Facility (MSPLF). Periodic updates concerning these facilities will be provided at least every 30 days, in accordance with section 13(3) of the Federal Reserve Act.

**A. Municipal Liquidity Facility**

On April 8, 2020, the Board authorized the establishment of the MLF. The MLF is intended to support lending to state, city, and county governments and certain multistate entities. The Federal Reserve Bank of New York will operate the MLF.

The Board revised the terms of the MLF on April 27, 2020, and May 11, 2020. The current terms can be found in [appendix A](#). Additional information about the MLF can be found on the Board's public website at

<https://www.federalreserve.gov/monetarypolicy/muni.htm>.

Update. As of May 6, 2020, the MLF was not yet operational. Accordingly, there are no transaction data to report.

As described in the Board’s initial report to Congress regarding the MLF, the MLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the MLF will not result in losses to the Federal Reserve.

### **B. Main Street New Loan Facility**

On April 8, 2020, the Board authorized the establishment of the MSNLF. The MSNLF is intended to facilitate lending to small- and medium-sized businesses by eligible lenders. The Federal Reserve Bank of Boston (FRBB) will operate the MSNLF.

On April 30, 2020, the terms of the MSNLF were revised. The amended terms can be found in [appendix B](#). Additional information about the MSNLF can be found on the Board’s public website at <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

Update. As of May 6, 2020, the MSNLF was not yet operational. Accordingly, there are no transaction data to report.

As described in the Board’s initial report to Congress regarding the MSNLF, the MSNLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the MSNLF will not result in losses to the Federal Reserve.

### **C. Main Street Expanded Loan Facility**

On April 8, 2020, the Board authorized the establishment of the MSELF. The MSELF is intended to facilitate lending to small- and medium-sized businesses by eligible lenders. The FRBB will operate the MSELF.

On April 30, 2020, the terms of the MSELF were revised. The amended terms can be found in [appendix C](#). Additional information about the MSELF can be found on the Board’s public website at

<https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

Update. As of May 6, the MSELF was not yet operational. Accordingly, there are no transaction data to report.

As described in the Board’s initial report to Congress regarding the MSELF, the MSELF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the MSELF will not result in losses to the Federal Reserve.

**D. Paycheck Protection Program Liquidity Facility**

On April 8, 2020, the Board authorized each of the 12 Federal Reserve Banks to establish and operate the PPPLF. The PPPLF offers a source of liquidity to the financial institution lenders that lend to small businesses through the Small Business Administration’s (SBA) Paycheck Protection Program (PPP).

On April 30, 2020, the terms of the PPPLF were revised to reflect the following:

- The scope of eligible institutions was expanded from depository institutions to lenders that are eligible to originate PPP loans, and the Board identified the Federal Reserve Bank from which each eligible institution should borrow as follows:

<b>Eligible institution type</b>	<b>Federal Reserve Bank</b>
Depository institution or credit union.	The Federal Reserve Bank in whose District the eligible depository institution is located (see Regulation D, 12 CFR 204.3(g)(1)–(2), for determining location).
Community development financial institution as defined in 12 U.S.C. § 4702 and certified by the U.S. Treasury (that is not a depository institution or credit union).	Federal Reserve Bank of Cleveland.
Member of the Farm Credit System (that is not a depository institution or credit union).	Federal Reserve Bank of Minneapolis.
Small business lending companies as defined in 13 CFR 120.10 (that is not a depository institution or credit union).	Federal Reserve Bank of Minneapolis.
Other eligible institution type not listed above.	Federal Reserve Bank of San Francisco.

- The scope of eligible collateral was clarified to include SBA-guaranteed PPP loans that a lender has originated or purchased.
- The facility was renamed the Paycheck Protection Program Liquidity Facility, from Paycheck Protection Program Lending Facility.

Additional information about the PPPLF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/ppplf.htm>.

Update. As of May 6, 2020:

- The total outstanding amount of all advances under the PPPLF was \$ 29,180,979,329.85.
- The value of the collateral pledged to secure outstanding advances was \$29,180,979,329.85.
- The amount of interest, fees, and other revenue or items of value received under the facility, reported on an accrual basis, was \$2,541,470.23.
- As described in the Board's initial report to Congress regarding the PPPLF, the PPPLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the PPPLF will not result in losses to the Federal Reserve.

Transaction-specific disclosures for the PPPLF can be found in [appendix D](#).

## **Appendix A—MLF Term Sheet**

Effective May 11, 2020<sup>1</sup>

**Facility:** The Municipal Liquidity Facility (“Facility”), which has been authorized under Section 13(3) of the Federal Reserve Act, will support lending to U.S. states and the District of Columbia (together, “States”), U.S. cities with a population exceeding 250,000 residents<sup>2</sup> (“Cities”), U.S. counties with a population exceeding 500,000 residents<sup>3</sup> (“Counties”), and Multi-State Entities. Under the Facility, the Federal Reserve Bank of New York (“Reserve Bank”) will commit to lend to a special purpose vehicle (“SPV”) on a recourse basis. The SPV will purchase Eligible Notes directly from Eligible Issuers at the time of issuance. The Reserve Bank will be secured by all the assets of the SPV. The Department of the Treasury, using funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act, will make an initial equity investment of \$35 billion in the SPV in connection with the Facility. The SPV will have the ability to purchase up to \$500 billion of Eligible Notes.

**Eligible Notes:** Eligible Notes are tax anticipation notes (TANs), tax and revenue anticipation notes (TRANs), bond anticipation notes (BANs), and other similar short-term notes issued by Eligible Issuers, provided that such notes mature no later than 36 months from the date of issuance. In each case, a note’s eligibility is subject to review by the Federal Reserve. Relevant legal opinions and disclosures will be required as determined by the Federal Reserve prior to purchase.

**Eligible Issuer:** An Eligible Issuer is a State, City, or County (or, subject to Federal Reserve review and approval, an entity that issues securities on behalf of the State, City, or County for the purpose of managing its cash flows) or a Multi-State Entity. An Eligible Issuer that is not a Multi-State Entity must have been rated at least BBB-/Baa3 as of April 8, 2020, by two or more major nationally recognized statistical rating organizations (“NRSROs”). An Eligible Issuer that is not a Multi-State Entity and that was rated at least BBB-/Baa3 as of April 8, 2020, but is subsequently downgraded, must be rated at least BB-/Ba3 by two or more major NRSROs at the time the Facility makes a purchase. An Eligible Issuer that is a Multi-State Entity must have been rated at least A-/A3 as of April 8, 2020, by two or more major NRSROs. A Multi-State Entity that was rated at least A-/A3 as of April 8, 2020, but is subsequently downgraded, must be rated at least BBB-/Baa3 by two or more major NRSROs at the time the Facility makes a purchase. Notwithstanding the foregoing, if a State, City, County, or Multi-State Entity was rated by only one major NRSRO as of April 8, 2020, it may be an Eligible Issuer under the Facility if (i) the rating was at least BBB-/Baa3 (for a State, City, or County) or A-/A3 (for a

---

<sup>1</sup> The Board of Governors of the Federal Reserve System (“Board”) and Secretary of the Treasury may make adjustments to the terms and conditions described in this term sheet. Any changes will be announced on the Board’s website.

<sup>2</sup> Source: U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2018, as of April 6, 2020 (<https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>).

<sup>3</sup> Source: U.S. Census Bureau, “Population, Population Change, and Estimated Components of Population Change: April 1, 2010 to July 1, 2019 (CO-EST2019-alldata)” dataset as of April 6, 2020 ([https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par\\_textimage\\_739801612](https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par_textimage_739801612).)

Multi-State Entity); (ii) the State, City, County, or Multi-State Entity is rated by at least two major NRSROs at the time the Facility makes a purchase; and (iii) such ratings are at least BB-/Ba3 (for a State, City, or County) or BBB-/Baa3 (for a Multi-State Entity).

Only one issuer per State, City, County, or Multi-State Entity is eligible; provided that the Federal Reserve may approve one or more additional issuers per State, City, or County to facilitate the provision of assistance to political subdivisions and other governmental entities of the relevant State, City, or County.

**Multi-State Entity:** A Multi-State Entity is an entity that was created by a compact between two or more States, which compact has been approved by the United States Congress, acting pursuant to its power under the Compact Clause of the United States Constitution.

**Security for Eligible Notes:** Note security will be subject to review and approval by the Federal Reserve. The source of repayment and security for Eligible Notes will depend on the applicable constitutional and statutory provisions governing the Eligible Issuer and should be generally consistent with the source of repayment and strongest security typically pledged to repay publicly offered obligations of the Eligible Issuer. Eligible Notes issued by Eligible Issuers that are not Multi-State Entities will generally be expected to represent general obligations of the Eligible Issuer, or be backed by tax or other specified governmental revenues of the applicable State, City, or County. If the Eligible Issuer is an authority, agency, or other entity of a State, City, or County, such Eligible Issuer must either commit the credit of, or pledge revenues of, the State, City, or County, or the State, City, or County must guarantee the Eligible Notes issued by such issuer. If the Eligible Issuer is a Multi-State Entity, the Eligible Notes will be expected to be parity obligations of existing debt secured by a senior lien on the Multi-State Entity's gross or net revenues.

**Limit per State, City, County, and Multi-State Entity:** The SPV may purchase Eligible Notes issued by or on behalf of a State, City, or County in one or more issuances of up to an aggregate amount of 20% of the general revenue from own sources and utility revenue of the applicable State, City, or County government for fiscal year 2017.<sup>4</sup> The SPV may purchase Eligible Notes issued by a Multi-State Entity in one or more issuances of up to an aggregate amount of 20% of the Multi-State Entity's gross revenue as reported in its audited financial statements for fiscal year 2019. States may request that the SPV purchase Eligible Notes in excess of the applicable limit in order to assist political subdivisions and other governmental entities that are not eligible for the Facility.

**Pricing:** The methodology for pricing is set forth in the attached Pricing Appendix.

**Origination Fee:** Each Eligible Issuer that participates in the Facility must pay an origination fee equal to 10 basis points of the principal amount of the Eligible Issuer's notes purchased by the SPV. The origination fee may be paid from the proceeds of the issuance.

---

<sup>4</sup> Source: U.S. Census Bureau, 2017 State & Local Government Historical Datasets and Tables, as of April 6, 2020 (<https://www.census.gov/data/datasets/2017/econ/local/public-use-datasets.html>).

**Prepayment Right:** With the approval of the SPV, Eligible Notes purchased by the SPV may be prepaid by the Eligible Issuer at any time, in whole or in part, at par (or, in the case of Eligible Notes purchased at a premium, par plus unamortized premium) plus accrued interest, prior to maturity.

**Eligible Use of Proceeds:** An Eligible Issuer may use the proceeds of Eligible Notes purchased by the SPV to help manage the cash flow impact of income tax deferrals resulting from an extension of an income tax filing deadline; deferrals or reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic; and requirements for the payment of principal and interest on obligations of the Eligible Issuer or its political subdivisions or other governmental entities. An Eligible Issuer (other than a Multi-State Entity) may use the proceeds of the notes purchased by the SPV to purchase similar notes issued by, or otherwise to assist, political subdivisions and other governmental entities of the relevant State, City, or County for the purposes enumerated in the prior sentence.

**Termination Date:** The SPV will cease purchasing Eligible Notes on December 31, 2020, unless the Board and the Treasury Department extend the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.



### Municipal Liquidity Facility—Pricing Appendix

**Tax-Exempt Eligible Notes:** If interest on the Eligible Notes is excluded from gross income for federal income tax purposes, pricing will be at a fixed interest rate based on a comparable maturity overnight index swap (“OIS”) rate plus the applicable spread based on the long-term rating of the security for the Eligible Notes as follows:

Rating*	Spread (bps)
AAA/Aaa	150
AA+/Aa1	170
AA/Aa2	175
AA-/Aa3	190
A+/A1	240
A/A2	250
A-/A3	265
BBB+/Baa1	325
BBB/Baa2	340
BBB-/Baa3	380
Below Investment Grade	590

\* To account for split ratings across different credit rating agencies, an average rating generally will be calculated.

**Taxable Eligible Notes:** If interest on the Eligible Notes is not excluded from gross income for federal income tax purposes, pricing will be at a fixed interest rate that is calculated by (i) first, adding the comparable maturity OIS rate to the spread in the above table that would apply to such Eligible Notes if the Eligible Notes were tax-exempt Eligible Notes, and (ii) second, dividing the sum calculated under clause (i) by 0.65.

## **Appendix B—MSNLF Term Sheet**

Effective April 30, 2020<sup>1</sup>

**Program:** The Main Street New Loan Facility (“Facility”), which has been authorized under section 13(3) of the Federal Reserve Act, is intended to facilitate lending to small and medium-sized Businesses by Eligible Lenders. Under the Facility, the Main Street Priority Loan Facility (“MSPLF”), and the Main Street Expanded Loan Facility (“MSELF”), the Federal Reserve Bank of Boston (“Reserve Bank”) will commit to lend to a single common special purpose vehicle (“SPV”) on a recourse basis. The SPV will purchase 95% participations in Eligible Loans from Eligible Lenders. Eligible Lenders will retain 5% of each Eligible Loan. The Department of the Treasury, using funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), will make a \$75 billion equity investment in the single common SPV in connection with the Facility, the MSPLF, and the MSELF. The combined size of the Facility, the MSPLF, and the MSELF will be up to \$600 billion.

**Eligible Lenders:** An Eligible Lender is a U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

**Eligible Borrowers:** An Eligible Borrower is a Business<sup>2</sup> that:

1. was established prior to March 13, 2020;
2. is not an Ineligible Business;<sup>3</sup>
3. meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of \$5 billion or less;
4. is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
5. does not also participate in the MSPLF, the MSELF, or the Primary Market Corporate Credit Facility; and

---

<sup>1</sup> The Board of Governors of the Federal Reserve System (“Board”) and the Secretary of the Treasury may make adjustments to the terms and conditions described in this term sheet. Any changes will be announced on the Board’s website.

<sup>2</sup> For purposes of the Facility, a Business is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. § 657a(b)(2)(C), except that “small business concern” in that paragraph should be replaced with “Business” as defined herein. Other forms of organization may be considered for inclusion as a Business under the Facility at the discretion of the Federal Reserve.

<sup>3</sup> For purposes of the Facility, an Ineligible Business is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the Paycheck Protection Program established by section 1102 of the CARES Act (“PPP”) on or before April 24, 2020. The application of these restrictions to the Facility may be further modified at the discretion of the Federal Reserve.

6. has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).<sup>4</sup>

**Eligible Loans:** An Eligible Loan is a secured or unsecured term loan made by an Eligible Lender(s) to an Eligible Borrower that was originated after April 24, 2020, provided that the loan has all of the following features:

1. 4 year maturity;
2. principal and interest payments deferred for one year (unpaid interest will be capitalized);
3. adjustable rate of LIBOR (1 or 3 month) + 300 basis points;
4. principal amortization of one-third at the end of the second year, one-third at the end of the third year, and one-third at maturity at the end of the fourth year;
5. minimum loan size of \$500,000;
6. maximum loan size that is the lesser of (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt, does not exceed four times the Eligible Borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA");<sup>5</sup>
7. is not, at the time of origination or at any time during the term of the Eligible Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments; and
8. prepayment permitted without penalty.

**Loan Classification:** If the Eligible Borrower had other loans outstanding with the Eligible Lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.

**Assessment of Financial Condition:** Eligible Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application.

**Loan Participations:** The SPV will purchase at par value a 95% participation in the Eligible Loan. The SPV and the Eligible Lender will share risk in the Eligible Loan on a pari passu basis. The Eligible Lender must retain its 5% of the Eligible Loan until it matures or the SPV sells all of its participation, whichever comes first. The sale of a participation in the Eligible Loan to the SPV will be structured as a "true sale" and must be completed expeditiously after the Eligible Loan's origination.

**Required Lender Certifications and Covenants:** In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants will be required from Eligible Lenders:

- The Eligible Lender must commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such

---

<sup>4</sup> For the avoidance of doubt, Businesses that have received PPP loans are permitted to borrow under the Facility, provided that they are Eligible Borrowers.

<sup>5</sup> The methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.

outstanding obligations, until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.

- The Eligible Lender must commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in an event of default.
- The Eligible Lender must certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement in section 6(ii) of the Eligible Loan paragraph above is the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.
- The Eligible Lender must certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

**Required Borrower Certifications and Covenants:** In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants<sup>6</sup> will be required from Eligible Borrowers:

- The Eligible Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- The Eligible Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- The Eligible Borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- The Eligible Borrower must commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- The Eligible Borrower must certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

**Retaining Employees:** Each Eligible Borrower that participates in the Facility should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan is outstanding.

**Transaction Fee:** An Eligible Lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the Eligible Loan at the time of origination. The Eligible Lender may require the Eligible Borrower to pay this fee.

---

<sup>6</sup> An Eligible Lender is expected to collect the required certifications and covenants from each Eligible Borrower at the time of origination of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower.

**Loan Origination and Servicing Fees:** An Eligible Borrower will pay an Eligible Lender an origination fee of up to 100 basis points of the principal amount of the Eligible Loan at the time of origination. The SPV will pay an Eligible Lender 25 basis points of the principal amount of its participation in the Eligible Loan per annum for loan servicing.<sup>7</sup>

**Facility Termination:** The SPV will cease purchasing participations in Eligible Loans on September 30, 2020, unless the Board and the Department of the Treasury extend the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

---

<sup>7</sup> Further information regarding credit administration and loan servicing will be made available on the Board's website.

## **Appendix C—MSELF Term Sheet**

Effective April 30, 2020<sup>1</sup>

**Program:** The Main Street Expanded Loan Facility (“Facility”), which has been authorized under section 13(3) of the Federal Reserve Act, is intended to facilitate lending to small and medium-sized Businesses by Eligible Lenders. Under the Facility, the Main Street Priority Loan Facility (“MSPLF”), and the Main Street New Loan Facility (“MSNLF”), the Federal Reserve Bank of Boston (“Reserve Bank”) will commit to lend to a single common special purpose vehicle (“SPV”) on a recourse basis. The SPV will purchase 95% participations in the upsized tranche of Eligible Loans from Eligible Lenders. Eligible Lenders will retain 5% of the upsized tranche of each Eligible Loan. The Department of the Treasury, using funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), will make a \$75 billion equity investment in the single common SPV in connection with the Facility, the MSPLF, and the MSNLF. The combined size of the Facility, the MSPLF, and the MSNLF will be up to \$600 billion.

**Eligible Lenders:** An Eligible Lender is a U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

**Eligible Borrowers:** An Eligible Borrower is a Business<sup>2</sup> that:

1. was established prior to March 13, 2020;
2. is not an Ineligible Business;<sup>3</sup>
3. meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of \$5 billion or less;
4. is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
5. does not also participate in the MSPLF, the MSNLF, or the Primary Market Corporate Credit Facility; and

---

<sup>1</sup> The Board of Governors of the Federal Reserve System (“Board”) and the Secretary of the Treasury may make adjustments to the terms and conditions described in this term sheet. Any changes will be announced on the Board’s website.

<sup>2</sup> For purposes of the Facility, a Business is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. § 657a(b)(2)(C), except that “small business concern” in that paragraph should be replaced with “Business” as defined herein. Other forms of organization may be considered for inclusion as a Business under the Facility at the discretion of the Federal Reserve.

<sup>3</sup> For purposes of the Facility, an Ineligible Business is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the Paycheck Protection Program established by section 1102 of the CARES Act (“PPP”) on or before April 24, 2020. The application of these restrictions to the Facility may be further modified at the discretion of the Federal Reserve.

6. has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).<sup>4</sup>

**Eligible Loans:** An Eligible Loan is a secured or unsecured term loan or revolving credit facility made by an Eligible Lender(s) to an Eligible Borrower that was originated on or before April 24, 2020, and that has a remaining maturity of at least 18 months (taking into account any adjustments made to the maturity of the loan after April 24, 2020, including at the time of upsizing), provided that the upsized tranche of the loan is a term loan that has all of the following features:

1. 4 year maturity;
2. principal and interest payments deferred for one year (unpaid interest will be capitalized);
3. adjustable rate of LIBOR (1 or 3 month) + 300 basis points;
4. principal amortization of 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year;
5. minimum loan size of \$10 million;
6. maximum loan size that is the lesser of (i) \$200 million, (ii) 35% of the Eligible Borrower's existing outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured), or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt, does not exceed six times the Eligible Borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA");<sup>5</sup>
7. at the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is senior to or pari passu with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt; and
8. prepayment permitted without penalty.

**Loan Classification:** The Eligible Loan must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of December 31, 2019.

**Assessment of Financial Condition:** Eligible Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application.

**Loan Participations:** The SPV will purchase at par value a 95% participation in the upsized tranche of the Eligible Loan, provided that it is upsized on or after April 24, 2020. The SPV and the Eligible Lender will share risk in the upsized tranche on a pari passu basis. The Eligible Lender must be one of the lenders that holds an interest in the underlying Eligible Loan at the date of upsizing. The Eligible Lender must retain its 5% portion of the upsized tranche of the Eligible Loan until the upsized tranche of the Eligible Loan matures or the SPV sells all of its 95% participation, whichever comes first. The Eligible Lender must also retain its interest in the

---

<sup>4</sup> For the avoidance of doubt, Businesses that have received PPP loans are permitted to borrow under the Facility, provided that they are Eligible Borrowers.

<sup>5</sup> The methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be the methodology it previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April 24, 2020.

underlying Eligible Loan until the underlying Eligible Loan matures, the upsized tranche of the Eligible Loan matures, or the SPV sells all of its 95% participation, whichever comes first. Any collateral securing the Eligible Loan (at the time of upsizing or on any subsequent date) must secure the upsized tranche on a pro rata basis. The sale of a participation in the upsized tranche of the Eligible Loan to the SPV will be structured as a “true sale” and must be completed expeditiously after the Eligible Loan’s upsizing.

**Required Lender Certifications and Covenants:** In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants will be required from Eligible Lenders:

- The Eligible Lender must commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- The Eligible Lender must commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in an event of default.
- The Eligible Lender must certify that the methodology used for calculating the Eligible Borrower’s adjusted 2019 EBITDA for the leverage requirement in section 6(iii) of the Eligible Loan paragraph above is the methodology it previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April 24, 2020.
- The Eligible Lender must certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

**Required Borrower Certifications and Covenants:** In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants<sup>6</sup> will be required from Eligible Borrowers:

- The Eligible Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- The Eligible Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- The Eligible Borrower must certify that it has a reasonable basis to believe that, as of the date of upsizing of the Eligible Loan and after giving effect to such upsizing, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- The Eligible Borrower must commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners’ tax obligations in respect of the entity’s earnings.

---

<sup>6</sup> An Eligible Lender is expected to collect the required certifications and covenants from each Eligible Borrower at the time of upsizing of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower’s certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower.



- The Eligible Borrower must certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

**Retaining Employees:** Each Eligible Borrower that participates in the Facility should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the upsized tranche of the Eligible Loan is outstanding.

**Transaction Fee:** An Eligible Lender will pay the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing. The Eligible Lender may require the Eligible Borrower to pay this fee.

**Loan Upsizing and Servicing Fees:** An Eligible Borrower will pay an Eligible Lender an origination fee of up to 75 basis points of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing. The SPV will pay an Eligible Lender 25 basis points of the principal amount of its participation in the upsized tranche of the Eligible Loan per annum for loan servicing.<sup>7</sup>

**Facility Termination:** The SPV will cease purchasing participations in Eligible Loans on September 30, 2020, unless the Board and the Department of the Treasury extend the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

---

<sup>7</sup> Further information regarding credit administration and loan servicing will be made available on the Board's website.

**Appendix D—PPPLF Transaction-specific Disclosures**

Transaction-specific disclosures regarding the PPPLF may be found in the attached spreadsheet.

# **EXHIBIT N**

**Periodic Report: Update on Outstanding Lending Facility  
Authorized by the Board under Section 13(3) of the Federal Reserve Act  
June 14, 2020**

**Overview**

The Board of Governors of the Federal Reserve System (Board) is providing the following update concerning a lending facility established by the Board under section 13(3) of the Federal Reserve Act (12 U.S.C. § 343). Pursuant to section 13(3)(C) of the Federal Reserve Act, the Board must provide the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives (the Committees) an initial report regarding each facility established under section 13(3) and periodic updates at least every 30 days thereafter. This report provides the second periodic update for the Municipal Liquidity Facility (MLF).<sup>1</sup>

In addition to the MLF, the Board also has authorized the establishment of the following credit facilities under section 13(3) of the Federal Reserve Act: the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Term Asset-Backed Securities Loan Facility, the Main Street New Loan Facility, the Main Street Expanded Loan Facility, the Paycheck Protection Program Liquidity Facility, and the Main Street Priority Loan Facility. The Board will provide periodic updates concerning these facilities at least every 30 days, in accordance with section 13(3) of the Federal Reserve Act.

**A. Municipal Liquidity Facility**

On April 8, 2020, the Board authorized the establishment of the MLF. The MLF is intended to support lending to state, city, and county governments, certain multistate entities, and other issuers of municipal securities. The Federal

---

<sup>1</sup> The first periodic update, dated May 15, 2020, also included information regarding the Main Street New Loan Facility (“MSNLF”), Main Street Expanded Loan Facility (“MSELF”), and Paycheck Protection Program Liquidity Facility (“PPPLF”). To synchronize the reporting schedules of various facilities and promote transparency, the Board provided an update regarding the MSNLF and MSELF on June 6, 2020, and a separate update regarding the PPPLF on June 9, 2020. Accordingly, this report only provides information about the MLF.

Reserve Bank of New York operates the MLF.

The Board revised the terms of the MLF on April 27, 2020; May 11, 2020; and June 3, 2020. Under the June 3rd revisions, all U.S. states will be able to have at least two cities or counties eligible to directly issue notes to the MLF. Governors of each state will also be able to designate two issuers in their jurisdictions that derive revenue from operating government activities to be eligible to directly use the facility. The current terms of the MLF can be found in [Annex A](#). Additional information about the MLF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/muni.htm>.

Update. As of June 4, 2020:

- The total outstanding amount of the FRBNY's loans to the special purpose vehicle (SPV) was \$0.<sup>2</sup>
- The total outstanding amount of the notes held by the SPV was \$0.<sup>3</sup>
- The total value of the collateral pledged to secure the FRBNY's loans to the SPV was \$17,500,236,276.<sup>4</sup>
- The total amount of interest, fees, and other revenue received by the SPV with respect to the MLF, reported on an accrual basis, was \$236,276.
- The total amount of interest, fees, and other revenue or items of value received by the FRBNY, reported on an accrual basis, was \$0.
- As described in the Board's initial report to Congress regarding the MLF, the MLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the MLF will not result in losses to the Federal Reserve.

Additional transaction-specific disclosures regarding the MLF may be found in the attached spreadsheet.

---

<sup>2</sup> Loans are extended to the SPV by the FRBNY on the basis of settled purchase transactions. As of June 4, 2020, the SPV had entered into an agreement to purchase notes from one issuer, but the transaction had not yet settled. Accordingly, no loans had been extended as of that date.

<sup>3</sup> Only settled transactions are included in the total outstanding amount of the notes held by the SPV.

<sup>4</sup> Includes equity investment from the Department of the Treasury and interest earned thereon.

## **Annex A—MLF Term Sheet**

Effective June 3, 2020<sup>1</sup>

**Facility:** The Municipal Liquidity Facility (“Facility”), which has been authorized under Section 13(3) of the Federal Reserve Act, will support lending to each:

- U.S. state and the District of Columbia (together, “States”),
- U.S. city that (i) has a population exceeding 250,000 residents<sup>2</sup> or (ii) is a Designated City (together, “Cities”),
- U.S. county that (i) has a population exceeding 500,000 residents<sup>3</sup> or (ii) is a Designated County (together, “Counties”),
- Multi-State Entity, and
- Revenue Bond Issuers that are designated as described below (“Designated RBIs”).

Under the Facility, the Federal Reserve Bank of New York (“Reserve Bank”) will commit to lend to a special purpose vehicle (“SPV”) on a recourse basis. The SPV will purchase Eligible Notes directly from Eligible Issuers at the time of issuance. The Reserve Bank will be secured by all the assets of the SPV. The Department of the Treasury, using funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act, will make an initial equity investment of \$35 billion in the SPV in connection with the Facility. The SPV will have the ability to purchase up to \$500 billion of Eligible Notes.

**Eligible Notes:** Eligible Notes are tax anticipation notes (TANs), tax and revenue anticipation notes (TRANs), bond anticipation notes (BANs), revenue anticipation notes (RANs), and other similar short-term notes issued by Eligible Issuers, provided that such notes mature no later than 36 months from the date of issuance. In each case, a note’s eligibility is subject to review by the Federal Reserve. Relevant legal opinions and disclosures will be required as determined by the Federal Reserve prior to purchase.

**Eligible Issuer:** An Eligible Issuer is a State, City, or County (or, subject to Federal Reserve review and approval, an entity that issues securities on behalf of the State, City, or County for the purpose of managing its cash flows), or a Multi-State Entity or Designated RBI.

An Eligible Issuer that is not a Multi-State Entity or Designated RBI must have been rated at least BBB-/Baa3 as of April 8, 2020, by two or more major nationally recognized statistical rating organizations (“NRSROs”). An Eligible Issuer that is not a Multi-State Entity or Designated RBI and that was rated at least BBB-/Baa3 as of April 8, 2020, but is subsequently downgraded, must be rated at least BB-/Ba3 by two or more major NRSROs at the time the Facility makes a purchase. An Eligible Issuer that is a Multi-State Entity or Designated RBI must have been rated at least A-/A3 as of April 8, 2020, by two or more major NRSROs. A Multi-State Entity or Designated RBI that was rated at least A-/A3 as of April 8, 2020, but is subsequently downgraded, must be rated at least BBB-/Baa3 by two or more major NRSROs at the time the Facility makes a purchase. Notwithstanding the foregoing, if a State, City, County, Multi-State Entity, or Designated RBI was rated by only one major NRSRO as of April 8, 2020, it may be an Eligible Issuer under the Facility if (i) the

---

<sup>1</sup> The Board of Governors of the Federal Reserve System (“Board”) and Secretary of the Treasury may make adjustments to the terms and conditions described in this term sheet. Any changes will be announced on the Board’s website.

<sup>2</sup> Source: U.S. Census Bureau, Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2018, as of April 6, 2020 (<https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>).

<sup>3</sup> Source: U.S. Census Bureau, “Population, Population Change, and Estimated Components of Population Change: April 1, 2010 to July 1, 2019 (CO-EST2019-alldata)” dataset as of April 6, 2020 ([https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par\\_textimage\\_739801612](https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html#par_textimage_739801612)).

rating was at least BBB-/Baa3 (for a State, City, or County) or A-/A3 (for a Multi-State Entity or Designated RBI); (ii) the State, City, County, Multi-State Entity, or Designated RBI is rated by at least two major NRSROs at the time the Facility makes a purchase; and (iii) such ratings are at least BB-/Ba3 (for a State, City, or County) or BBB-/Baa3 (for a Multi-State Entity or Designated RBI).

Only one issuer per State, City, County, Multi-State Entity, or Designated RBI is eligible; provided that the Federal Reserve may approve one or more additional issuers per State, City, or County to facilitate the provision of assistance to political subdivisions and other governmental entities of the relevant State, City, or County.

**Governor-Designated Participants:** The Governors of U.S. states may designate cities, counties, and Revenue Bond Issuers located in their states for participation in the Facility, and the Mayor of the District of Columbia may designate a Revenue Bond Issuer located in the District of Columbia for participation in the Facility, in each case subject to the limits described below. Any such designated cities will be “Designated Cities,” designated counties will be “Designated Counties,” and designated Revenue Bond Issuers will be “Designated RBIs.”

**Designated Cities and Counties:** For each Governor of a U.S. state, the maximum total number (on a combined basis) of Designated Cities and Designated Counties that he or she may designate is set forth in Appendix A. The numbers set forth in Appendix A were selected to ensure that each U.S. state has at least two total cities and counties (on a combined basis) that may participate in the Facility.<sup>4</sup>

A Governor that has the ability to designate one Designated City or Designated County may choose either (i) the most populous city in his or her state that has less than 250,000 residents or (ii) the most populous county in his or her state that has less than 500,000 residents.

A Governor that has the ability to designate two Designated Cities and Designated Counties (on a combined basis) may choose any of the following combinations:

- The most populous city and most populous county;
- The most populous city and second-most populous city; or
- The most populous county and second-most populous county.

**Revenue Bond Issuer:** A Revenue Bond Issuer is a State or political subdivision thereof, or a public authority, agency, or instrumentality of a State or political subdivision thereof, that issues bonds that are secured by revenue from a specified source that is owned by a governmental entity.

**Designated RBIs:** Each Governor of a U.S. state may designate up to two Designated RBIs. The Mayor of the District of Columbia may designate one Designated RBI.

**Multi-State Entity:** A Multi-State Entity is an entity that was created by a compact between two or more States, which compact has been approved by the United States Congress, acting pursuant to its power under the Compact Clause of the United States Constitution.

**Security for Eligible Notes:** Note security will be subject to review and approval by the Federal Reserve. The source of repayment and security for Eligible Notes will depend on the applicable constitutional and statutory provisions governing the Eligible Issuer and should be generally consistent with the source of

---

<sup>4</sup> In determining the number of cities and counties in each U.S. state that may participate in the Facility, cities and counties were not counted if they have an issuance limit of zero dollars because they have no general revenue from own sources and utility revenue for fiscal year 2017.

repayment and strongest security typically pledged to repay publicly offered obligations of the Eligible Issuer. Eligible Notes issued by Eligible Issuers that are not Multi-State Entities or Designated RBIs will generally be expected to represent general obligations of the Eligible Issuer, or be backed by tax or other specified governmental revenues of the applicable State, City, or County. If the Eligible Issuer is an authority, agency, or other entity of a State, City, or County, such Eligible Issuer must either commit the credit of, or pledge revenues of, the State, City, or County, or the State, City, or County must guarantee the Eligible Notes issued by such issuer. If the Eligible Issuer is a Multi-State Entity or Designated RBI, the Eligible Notes will be expected to be parity obligations of existing debt secured by a senior lien on the gross or net revenues of the Multi-State Entity or Designated RBI.

**Limit per State, City, County, Multi-State Entity, and Designated RBI:** The SPV may purchase Eligible Notes issued by or on behalf of a State, City, or County in one or more issuances of up to an aggregate amount of 20% of the general revenue from own sources and utility revenue of the applicable State, City, or County government for fiscal year 2017.<sup>5</sup> The SPV may purchase Eligible Notes issued by a Multi-State Entity or Designated RBI in one or more issuances of up to an aggregate amount of 20% of the gross revenue of the Multi-State Entity or Designated RBI, as reported in its audited financial statements for fiscal year 2019. States may request that the SPV purchase Eligible Notes in excess of the applicable limit in order to assist political subdivisions and other governmental entities that are not eligible for the Facility.

**Pricing:** The methodology for pricing is set forth in the attached Appendix B.

**Origination Fee:** Each Eligible Issuer that participates in the Facility must pay an origination fee equal to 10 basis points of the principal amount of the Eligible Issuer's notes purchased by the SPV. The origination fee may be paid from the proceeds of the issuance.

**Prepayment Right:** With the approval of the SPV, Eligible Notes purchased by the SPV may be prepaid by the Eligible Issuer at any time, in whole or in part, at par (or, in the case of Eligible Notes purchased at a premium, par plus unamortized premium) plus accrued interest, prior to maturity.

**Eligible Use of Proceeds:** An Eligible Issuer may use the proceeds of Eligible Notes purchased by the SPV to help manage the cash flow impact of income tax deferrals resulting from an extension of an income tax filing deadline; deferrals or reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic; and requirements for the payment of principal and interest on obligations of the Eligible Issuer or its political subdivisions or other governmental entities. An Eligible Issuer (other than a Multi-State Entity or Designated RBI) may use the proceeds of the notes purchased by the SPV to purchase similar notes issued by, or otherwise to assist, political subdivisions and other governmental entities of the relevant State, City, or County for the purposes enumerated in the prior sentence.

**Termination Date:** The SPV will cease purchasing Eligible Notes on December 31, 2020, unless the Board and the Treasury Department extend the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

---

<sup>5</sup> Source: U.S. Census Bureau, 2017 State & Local Government Historical Datasets and Tables, as of April 6, 2020 (<https://www.census.gov/data/datasets/2017/econ/local/public-use-datasets.html>).



**Municipal Liquidity Facility – Appendix A**

<b>State</b>	<b>Designated Cities and Counties</b>	<b>State</b>	<b>Designated Cities and Counties</b>
Alabama	1	Montana	2
Alaska	1	Nebraska	0
Arizona	0	Nevada	0
Arkansas	2	New Hampshire	2
California	0	New Jersey	0
Colorado	0	New Mexico	0
Connecticut	2	New York	0
Delaware	1	North Carolina	0
Florida	0	North Dakota	2
Georgia	0	Ohio	0
Hawaii	1	Oklahoma	0
Idaho	2	Oregon	0
Illinois	0	Pennsylvania	0
Indiana	0	Rhode Island	2
Iowa	2	South Carolina	1
Kansas	0	South Dakota	2
Kentucky	0	Tennessee	0
Louisiana	1	Texas	0
Maine	2	Utah	0
Maryland	0	Vermont	2
Massachusetts	0	Virginia	0
Michigan	0	Washington	0
Minnesota	0	West Virginia	2
Mississippi	2	Wisconsin	0
Missouri	0	Wyoming	2

### Municipal Liquidity Facility - Appendix B

**Tax-Exempt Eligible Notes:** If interest on the Eligible Notes is excluded from gross income for federal income tax purposes, pricing will be at a fixed interest rate based on a comparable maturity overnight index swap (“OIS”) rate plus the applicable spread based on the long-term rating of the security for the Eligible Notes as follows:

Rating*	Spread (bps)
AAA/Aaa	150
AA+/Aa1	170
AA/Aa2	175
AA-/Aa3	190
A+/A1	240
A/A2	250
A-/A3	265
BBB+/Baa1	325
BBB/Baa2	340
BBB-/Baa3	380
Below Investment Grade	590

\* To account for split ratings across different credit rating agencies, an average rating generally will be calculated.

**Taxable Eligible Notes:** If interest on the Eligible Notes is not excluded from gross income for federal income tax purposes, pricing will be at a fixed interest rate that is calculated by (i) first, adding the comparable maturity OIS rate to the spread in the above table that would apply to such Eligible Notes if the Eligible Notes were tax-exempt Eligible Notes, and (ii) second, dividing the sum calculated under clause (i) by 0.65.

Reporting date	6/4/20	Issuer name	State of Illinois	Type of governmental entity	State	CUSIP	4521526N6	Date transaction entered into	6/2/20	Closing date	6/5/20	Face value of note when issued to the MLF (\$ value)	\$ 1,200,000,000.00	Price paid by MLF for note (Price per \$100 face value)	100.00	Current outstanding amount of note (\$ value)	\$ 1,200,000,000.00	Maturity date of note	6/5/21	Interest rate or coupon on note (%)	3.82%	Origination fee paid by issuer to SPV (\$ value)	1,200,000.00
----------------	--------	-------------	-------------------	-----------------------------	-------	-------	-----------	-------------------------------	--------	--------------	--------	--	---------------------	---	--------	---	---------------------	-----------------------	--------	-------------------------------------	-------	--	--------------

# **EXHIBIT O**

**Periodic Report: Update on Outstanding Lending Facilities  
Authorized by the Board under Section 13(3) of the Federal Reserve Act  
July 9, 2020**

**Overview**

The Board of Governors of the Federal Reserve System (Board) is providing the following updates concerning certain lending facilities established by the Board under section 13(3) of the Federal Reserve Act (12 U.S.C. § 343). Pursuant to section 13(3)(C) of the Federal Reserve Act, the Board must provide the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives (the Committees) an initial report regarding each facility established under section 13(3) and periodic updates at least every 30 days thereafter. This report provides the third periodic update on the Municipal Liquidity Facility (MLF) and the Paycheck Protection Program Liquidity Facility (PPPLF). In addition, this report provides the fourth periodic update on the Primary Dealer Credit Facility (PDCF), the Money Market Mutual Fund Liquidity Facility (MMLF), the Commercial Paper Funding Facility (CPFF), the Primary Market Corporate Credit Facility (PMCCF), the Secondary Market Corporate Credit Facility (SMCCF), and the Term Asset-Backed Securities Loan Facility (TALF).<sup>1</sup>

In addition to these eight facilities, the Board also has authorized the establishment of the following credit facilities under section 13(3) of the Federal Reserve Act: the Main Street New Loan Facility, the Main Street Expanded Loan Facility, and the Main Street Priority Loan Facility. The Board will provide periodic updates concerning these facilities at least every 30 days, in accordance with section 13(3) of the Federal Reserve Act.

**A. Primary Dealer Credit Facility**

On March 17, 2020, the Board authorized the Federal Reserve Bank of

---

<sup>1</sup> The Board provided its second periodic update for the MLF on June 14, 2020, and its third periodic update for the PMCCF, SMCCF, and TALF on June 27, 2020. Although 30 days have not passed since those reports, providing an update on the PMCCF, SMCCF, TALF, and MLF to Congress on July 9, 2020, as of June 30, 2020, will synchronize the reporting of these facilities at the end of the month, thereby promoting transparency and facilitating standardized monthly reporting. The Board previously aligned the “as of” date for the PDCF, MMLF, CPFF, and PPPLF with the end of the month with its June 9, 2020, update. The Board will provide reports about all eight facilities to the Committees at least every 30 days.

New York (FRBNY) to establish and operate the PDCF. The PDCF is a term loan facility that provides funding to primary dealers in exchange for a broad range of collateral and is intended to foster the functioning of financial markets more generally. The facility allows primary dealers to support smooth market functioning and facilitate the availability of credit to businesses and households. Additional information concerning the PDCF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/pdcf.htm>.

Update. As of June 30, 2020:

- The total outstanding amount of the FRBNY's loans under the PDCF was \$2,489,100,000.
- The total value of the collateral pledged to the FRBNY was \$2,827,083,827.
- The amount of interest, fees, and other revenue or items of value received by the FRBNY, reported on an accrual basis, was \$11,824,383.
- As described in the Board's initial report to Congress regarding the PDCF, the PDCF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the PDCF will not result in losses to the Federal Reserve.

## **B. Commercial Paper Funding Facility**

On March 17, 2020, the Board authorized the FRBNY to establish and operate the CPFF. The purpose of the CPFF is to provide liquidity to short-term funding markets. The CPFF provides a liquidity backstop to U.S. issuers of commercial paper, including municipalities, by purchasing three-month unsecured and asset-backed commercial paper directly from eligible issuers. Additional information concerning the CPFF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/cpff.htm>.

Update. As of June 30, 2020:

- The outstanding amount of the FRBNY's loans to the special purpose vehicle (SPV) was \$4,242,570,889.
- The total outstanding amount of the commercial paper held by the SPV was \$4,252,354,764.
- The total value of the collateral pledged to secure the FRBNY's loan

to the SPV was \$14,299,243,516.<sup>2</sup>

- The amount of interest, fees, and other revenue or items of value received by the FRBNY, reported on an accrual basis, was \$808,687.
- The amount of interest, fees, and other revenue or items of value received by the SPV, reported on an accrual basis, was \$20,616,578.
- As described in the Board's initial report to Congress regarding the CPFF, the CPFF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the CPFF will not result in losses to the Federal Reserve.

### **C. Money Market Mutual Fund Liquidity Facility**

On March 18, 2020, the Board authorized the Federal Reserve Bank of Boston (FRBB) to establish and operate the MMLF. The MMLF provides funding to U.S. depository institutions and bank holding companies to finance their purchases of certain types of assets from money market mutual funds under certain conditions. The program is intended to assist money market mutual funds that hold such paper in meeting demands for redemptions by investors and to foster liquidity in the markets for the assets held by money market mutual funds, including the market for short-term municipal securities. Additional information concerning the MMLF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/mmlf.htm>.

Update. As of June 30, 2020:

- The total outstanding amount of the FRBB's loans under the MMLF was \$21,442,189,003.
- The total value of the collateral pledged to secure the FRBB's loans was \$21,451,019,503. In addition, the Department of the Treasury is providing \$10 billion as credit protection to the FRBB.
- The amount of interest, fees, and other revenue or items of value received by the FRBB, reported on an accrual basis, was \$126,907,551.
- As described in the Board's initial report to Congress regarding the MMLF, the MMLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the MMLF will not result in losses to the Federal Reserve.

---

<sup>2</sup> Includes \$10 billion equity investment from the Department of the Treasury.

## **D. Corporate Credit Facilities**

The Board has established two facilities to support credit to large employers—the PMCCF for new bond and loan issuance and the SMCCF to provide liquidity for outstanding corporate bonds (together, corporate credit facilities, or the CCFs). The FRBNY has established one SPV to manage and operate the CCFs. This section provides aggregate information about the CCFs, while Section E provides information about recent updates to the terms of the PMCCF. Additional information about the CCFs can be found on the Board’s public website at <https://www.federalreserve.gov/monetarypolicy/pmccf.htm> and <https://www.federalreserve.gov/monetarypolicy/smccf.htm>.

Update. As of June 30, 2020:

- The total outstanding amount of the FRBNY’s loans under the CCFs was \$9,444,965,504.<sup>3</sup> All loans were extended under the SMCCF.
- The total value of the collateral pledged to secure the FRBNY’s loans to the SPV was \$47,085,326,366.<sup>4</sup>
- The total amount of interest, fees, and other revenue received by the SPV with respect to the CCFs, reported on an accrual basis, was \$13,698,621.
- The total amount of interest, fees, and other revenue or items of value received by the FRBNY with respect to the CCFs, reported on an accrual basis, was \$590,500.
- As described in the Board’s initial report to Congress regarding the CCFs, the CCFs include features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the CCFs will not result in losses to the Federal Reserve.

Additional transaction-specific disclosures regarding the SMCCF may be

---

<sup>3</sup> Loans are extended to the SPV by the FRBNY on the basis of settled securities purchase transactions.

<sup>4</sup> Includes the market value of exchange-traded fund holdings under the SMCCF in the amount of \$7,973,551,046 and the amortized cost of corporate bonds purchased under the SMCCF in the amount of \$1,586,130,865, each of which is the recorded value of transactions that have reached their contractual settlement date as of June 30, 2020. As of June 30, 2020, no transactions had yet closed under the PMCCF. For purposes of this report, the value of collateral has been reduced by the total proceeds of trades that have not reached their contractual settlement date (\$228,101,243); *see also supra*, n.1. Also includes equity investment from the Department of the Treasury and related reinvestment earnings of \$37,503,674,979; cash equivalents of \$9,832,409; and interest and other miscellaneous receivables of \$12,137,067.



found in the attached spreadsheet (Spreadsheet A). As of June 30, 2020, the PMCCF was operational but had not yet closed any transactions. Accordingly, there are no transaction-specific disclosures for the PMCCF.

#### **E. Primary Market Corporate Credit Facility**

On June 15, 2020, the Board adopted a revised term sheet for the PMCCF, reflecting changes to the following terms:

***Eligible Issuers.*** The updated term sheet clarifies that an issuer cannot be a subsidiary of a depository institution holding company.

***Pricing.*** The updated term sheet revised the pricing criteria for the purchase of eligible corporate bonds as sole investor. For these bonds, pricing will be issuer-specific, informed by market conditions, plus a 100 bps facility fee. Pricing also will be subject to minimum and maximum spreads over yields on comparable maturity U.S. Treasury securities, where such spread caps and floors will vary based on an eligible issuer's credit rating as of the date on which the PMCCF makes a purchase.

#### **F. Term Asset-Backed Securities Loan Facility**

On March 22, 2020, the Board authorized the FRBNY to establish and operate the TALF. Under the TALF, the FRBNY will lend to an SPV, which will make loans to U.S. companies secured by certain AAA-rated asset-backed securities (ABS) backed by recently originated consumer and business loans. The TALF is intended to support the provision of credit to consumers and businesses by enabling the issuance of ABS backed by private student loans, auto loans and leases, consumer and corporate credit card receivables, certain loans guaranteed by the Small Business Administration, and certain other assets. Additional information about the TALF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/talf.htm>.

**Update.** As of June 30, 2020:

- The total outstanding amount of the FRBNY's loans to the SPV under the TALF was \$252,155,890.<sup>5</sup>
- The total outstanding amount of loans made by the SPV to eligible borrowers was \$252,155,890.

---

<sup>5</sup> Loans are extended to the SPV by the FRBNY on the loan closing date.

- The total value of the collateral pledged to secure the FRBNY's loans to the SPV was \$10,252,748,670.<sup>6</sup>
- The total value of the collateral pledged to secure the SPV's loans to eligible borrowers was \$304,988,644.<sup>7</sup>
- The total amount of interest, fees, and other revenue received by the SPV with respect to the TALF, reported on an accrual basis, was \$342,005.
- The total amount of interest, fees, and other revenue or items of value received by the FRBNY, reported on an accrual basis, was \$3,454.
- As described in the Board's initial report to Congress regarding the TALF, the TALF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the TALF will not result in losses to the Federal Reserve.

Additional transaction-specific disclosures regarding the TALF may be found in the attached spreadsheet (Spreadsheet B).

### **G. Municipal Liquidity Facility**

On April 8, 2020, the Board authorized the establishment of the MLF. The MLF is intended to support lending to state, city, and county governments, certain multistate entities, and other issuers of municipal securities. The FRBNY operates the MLF. Additional information about the MLF can be found on the Board's public website at

<https://www.federalreserve.gov/monetarypolicy/muni.htm>.

Update. As of June 30, 2020:

- The total outstanding amount of the FRBNY's loans to the SPV was \$1,200,000,000.<sup>8</sup>
- The total outstanding amount of the notes held by the SPV was \$1,200,000,000.<sup>9</sup>

---

<sup>6</sup> Includes \$10 billion equity investment from the Department of the Treasury.

<sup>7</sup> Reflects the estimated market value of the collateral, based on information from third-party vendors.

<sup>8</sup> Loans are extended to the SPV by the FRBNY on the basis of settled note purchase transactions.

<sup>9</sup> Only settled transactions are included in the total outstanding amount of the notes held by the SPV.

- The total value of the collateral pledged to secure the FRBNY's loans to the SPV was \$18,705,928,425.<sup>10</sup>
- The total amount of interest, fees, and other revenue received by the SPV with respect to the MLF, reported on an accrual basis, was \$4,854,488.
- The total amount of interest, fees, and other revenue or items of value received by the FRBNY, reported on an accrual basis, was \$82,192.
- As described in the Board's initial report to Congress regarding the MLF, the MLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the MLF will not result in losses to the Federal Reserve.

Additional transaction-specific disclosures regarding the MLF may be found in the attached spreadsheet (Spreadsheet C).

#### **H. Paycheck Protection Program Liquidity Facility**

On April 8, 2020, the Board authorized each of the 12 Federal Reserve Banks to establish and operate the PPPLF. The PPPLF offers a source of liquidity to the financial institution lenders that lend to small businesses through the Small Business Administration's Paycheck Protection Program. Additional information about the PPPLF can be found on the Board's public website at <https://www.federalreserve.gov/monetarypolicy/ppplf.htm>.

Update. As of June 30, 2020:

- The total outstanding amount of all advances under the PPPLF was \$68,214,997,827.
- The total value of the collateral pledged to secure outstanding advances was \$68,214,997,827.
- The amount of interest, fees, and other revenue or items of value received under the facility, reported on an accrual basis, was \$29,662,327.
- As described in the Board's initial report to Congress regarding the PPPLF, the PPPLF includes features that are intended to mitigate risk to the Federal Reserve. The Board continues to expect that the

---

<sup>10</sup> Includes \$17.5 billion equity investment from the Department of the Treasury and interest earned thereon.

PPPLF will not result in losses to the Federal Reserve.

Additional transaction-specific disclosures regarding the PPPLF may be found in the attached spreadsheet (Spreadsheet D).

# **EXHIBIT P**

# FEDERAL RESERVE BANK of NEW YORK *Serving the Second District and the Nation*

## Municipal Liquidity Facility Sample Purchase Rates

Sample purchase rates are published by the New York Fed each week solely to provide indicative pricing information to market participants. Actual transactions will be priced according to the specifics of each transaction and may differ from these rates. The indicative rates are not intended to be a measure of market conditions and should not be used as reference rates for other transactions.

### MLF Sample Purchase Rates as of Monday, July 27, 2020

LOAN TERM	6M	1Y	2Y	3Y
AAA/Aaa	1.56	1.53	1.50	1.50
AA+/Aa1	1.76	1.73	1.70	1.70
AA/Aa2	1.81	1.78	1.75	1.75
AA-/Aa3	1.96	1.93	1.90	1.90
A+/A1	2.46	2.43	2.40	2.40
A/A2	2.56	2.53	2.50	2.50
A-/A3	2.71	2.68	2.65	2.65
BBB+/Baa1	3.31	3.28	3.25	3.25
BBB/Baa2	3.46	3.43	3.40	3.40
BBB-/Baa3	3.86	3.83	3.80	3.80
Below Investment Grade	5.96	5.93	5.90	5.90

If an issuer has split ratings, these ratings will be averaged according to the published methodology found in the MLF FAQs.

To determine indicative taxable rates for Eligible Notes with interest that is not excluded from gross income for federal income tax purposes, divide the purchase rates outlined in this table by 0.65.

The OIS rates used in determining these indicative purchase rates are as of 7:30am ET.

### PREVIOUS PERIODS

#### RECEIVE E-MAIL ALERTS FOR THIS PAGE

enter your email

SUBMIT

# **EXHIBIT Q**

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
P.O. Box 106  
25 Market Street  
Trenton, NJ 08625-0106

By: Eileen W. Siegeltuch  
Deputy Attorney General  
ID # 033662000  
(609) 376-2891  
eileen.siegeltuch@law.njoag.gov

_____ )	
NEW JERSEY REPUBLICAN STATE )	SUPREME COURT OF NEW JERSEY
COMMITTEE a/k/a the NJGOP; )	DOCKET NO. 084731
DECLAN O'SCANLON; HAL WIRTHS; )	
LISA NATALE-CONTESSA; and )	
ILEANA SCHIRMER, )	
)	
Plaintiffs, )	<u>Civil Action</u>
)	
v. )	
)	CERTIFICATION OF
PHILIP D. MURPHY, in his )	ELIZABETH MAHER MUOIO
Official Capacity as Governor )	IN SUPPORT OF THE STATE
of New Jersey, )	
)	
Defendant. )	
_____ )	

Elizabeth Maher Muoio, of full age, upon her oath certifies and says:

1. I am the Treasurer of the State of New Jersey ("State"), and I submit this Certification in support of the Defendant, Governor Philip D. Murphy.

2. As the State Treasurer, I am involved in the formulation of the Governor's Annual Budget Message and the Annual Appropriations Act for the State, and am responsible for the administration of the State's fiscal matters pursuant to N.J.S.A. 52:18A-1 to -49 and N.J.S.A. 52:27B-1 to -85. I am aware of the general practices, procedures, and information pertaining to the administration and financial operations of the State.

3. In preparing this Certification, I have relied upon my knowledge and experience as State Treasurer, including, but not



limited to, the following sources of information: the Fiscal Year 2020 Budget, available at <http://www.state.nj.us/treasurer/omb>; the Fiscal Year 2020 Appropriations Act, L. 2019, c. 150; the Governor's Fiscal Year 2021 Budget Message delivered on February 25, 2020 available at [https://www.nj.gov/governor/news/addresses/approved/20200225\\_budget.shtml](https://www.nj.gov/governor/news/addresses/approved/20200225_budget.shtml); the COVID-19 Fiscal Mitigation Act, L. 2020, c. 19; the Fiscal Year 2020 Appropriations Law Extension Act, L. 2020, c. 43; Executive Order 73 (Murphy June 30, 2019) ("EO73"); Executive Order 102 (Murphy Feb. 3, 2020) ("EO102"); Executive Order 103 (Murphy Mar. 9, 2020) ("EO103"); Executive Order 107 (Murphy Mar. 21, 2020) ("EO107"); Executive Order 137 (Murphy May 4, 2020) ("EO137"); Ben Casselman, The U.S. Economy's Contraction in the Second Quarter was the Worst on Record, N.Y. Times, July 30, 2020, <https://www.nytimes.com/live/2020/07/30/business/stock-market-today-coronavirus#the-us-economys-contraction-in-the-second-quarter-was-the-worst-on-record>; an Act to Amend New Jersey Statute 54:10A-5.41, L. 2018, c. 48, § 1; my Opening Statement Before The New Jersey Senate Budget Committee on June 1, 2020, attached hereto as Exhibit A; my Opening Statement to the Assembly Budget Committee on May 28, 2020, attached hereto as Exhibit B; my Opening Statement before the Assembly Budget Committee on June 1, 2020 (Hearing on A.4175 "New Jersey COVID-19 Emergency Bond Act") attached hereto as Exhibit C; the Treasurer's Report on the Financial Condition of the State Budget for Fiscal Years 2020 and 2021 delivered on May 22, 2020 to the Legislature pursuant to L. 2020, c. 19 ("Report"), a true and correct copy of which Report is attached hereto as Exhibit D; the May 2020 Revenue Report, a true and correct copy of which Report is attached hereto as Exhibit E; the June 2020 Revenue Report, a true and correct copy of which Report is attached hereto as Exhibit F; the "New Jersey Medical Education Facilities Bond Act of 1977," L. 1977, c. 235, a true and correct copy of which is attached hereto as Exhibit G; the "New Jersey Public Buildings Construction Bond Act of 1968," L. 1968, c. 128, a true and correct copy of which is attached hereto as Exhibit H; an Act appropriating funds from the "Public Buildings Construction Fund," L. 1969, c. 13, a true and correct copy of which is attached hereto as Exhibit I; the "New Jersey Green Acres Bond Act of 1983," L. 1983, c. 354, a true and correct copy of which is attached hereto as Exhibit J; an Act appropriating funds from the "1983 New Jersey Green Acres Fund," L. 1984, c. 224, a true and correct copy of which is attached hereto as Exhibit K; the Fiscal Year 2016 Appropriations Act, L. 2015, c. 63, a true and correct copy of relevant portions of which are attached hereto as Exhibit L; the Comprehensive Annual Financial Report ("CAFR") for Fiscal Year 2016, a true and correct

copy of relevant portions of which are attached hereto as Exhibit M; the Governor's Fiscal Year 2018 Budget Message, a true and correct copy of relevant portions of which are attached hereto as Exhibit N; the Fiscal Year 2018 Appropriations Act, L. 2017, c. 63, a true and correct copy of relevant portions of which are attached hereto as Exhibit O; the CAFR for Fiscal Year 2018, a true and correct copy of relevant portions of which are attached hereto as Exhibit P; the Governor's Fiscal Year 2020 Budget Message, a true and correct copy of relevant portions of which are attached hereto as Exhibit Q; and a Comparison of Revenue Shortfalls under COVID-19 and Prior Recessions, a true and correct copy of which is attached hereto as Exhibit R.

**I. The Annual Appropriations Enactment is a Public, Transparent Process that Abides Necessary Checks and Balances between Co-Equal Branches of the Government.**

4. Preparing the budget for the Governor's Budget Message ("Governor's Budget Message" or "GBM") in February and enacting an appropriations act is a year-long, routine, and publicly transparent process with many levels of review, and a checks and balances system between the legislative and executive branches of government.

5. Assisting the Governor in preparing his annual budget recommendations are numerous full-time staff in the Department of the Treasury ("Treasury"), including the Office of Management and Budget ("OMB"), the Office of Revenue and Economic Analysis ("OREA"), the Division of Pensions and Benefits, and knowledgeable staff in all of the departments and agencies of State government.

6. Implementation of the budget process usually begins during the month of August, eleven months prior to the fiscal year for which the appropriations act will be effective.

7. To formally initiate the process, in September the OMB provides salary projection reports, technical budget instructions, and general guidance, including preliminary draft budgets to the departments and agencies. This enables them to best allocate resources anticipated to be available in the coming fiscal year.

8. The ensuing planning process includes reviews of the Governor's program priorities, individual program performance and demand assumptions, and economic conditions and outlook.

9. Departments and agencies prepare deliberative planning documents that describe in detail (1) their ability to achieve their core missions at the preliminary budget level (including projections of anticipated enrollment growth in public assistance programs); (2) the agencies' priorities for reduction of current services, and the impact of such reductions on their core mission areas; and (3) priority packages representing either expansion of current programs or new programs to address new or evolving priorities in the upcoming fiscal year based on current and anticipated trends.

10. The OMB reviews the planning documents with the departments and agencies from November through mid-January in a forum that includes the Governor's and the Treasurer's office staffs. Based on these discussions, preliminary recommendations are developed.

11. During the months of January and February, the Director of OMB reviews the preliminary budget recommendations with the Treasurer, the Governor's staff, and the Governor.

12. Running parallel to this process is the review of capital spending requests, which has several stages.

13. All State departments requesting capital funding must submit a seven-year Capital Improvement Plan to the New Jersey Commission on Capital Budgeting and Planning ("Commission"). Each capital project request must include an operating impact statement.

14. The Commission, comprised of legislative and executive branch and public members, schedules public hearings, analyzes the capital requests, and recommends projects to the Governor.

15. The Governor, in turn, selects projects to be recommended in the annual GBM in February.

16. The Fiscal Year 2020 Appropriations Act was enacted on June 30, 2019. L. 2019, c. 150.

17. The arrival of the coronavirus in New Jersey approximately eight (8) months into the fiscal year completely overturned the State's budget.

## **II. The Onslaught of the Coronavirus Pandemic Immediately Overwhelmed the State's Economy.**

18. Unlike previous fiscal crises like the stock market crash of the Great Depression, the bursting of the dotcom bubble in 2000 or the subprime mortgage lending of the Great Recession, the economic crisis facing New Jersey was entirely unforeseen, unimagined, and unstoppable. It is the direct result of coronavirus disease 2019 ("COVID-19" or "coronavirus"), a highly contagious and, particularly for the elderly and those with compromised immune systems, often fatal respiratory disease.

19. In December 2019, the coronavirus erupted in Wuhan, China, and quickly spread like wildfire throughout the world. The coronavirus gained national attention in February 2020 when reports emerged that the disease had infected residents and staff members of a long-term health care facility located in King County, Washington.

20. On February 3, 2020, prior to the identification of any known cases of COVID-19 in New Jersey, the Governor established a Coronavirus Task Force to monitor developments in the United States and around the world and take preparatory actions to safeguard New Jersey residents.

21. Right before the onset of the coronavirus pandemic, on February 25, 2020, the Governor issued his annual Governor's Budget Message. The GBM forecast improved revenue growth for Fiscal Year 2020 ("FY20") and, along with some tax policy increases, continued revenue growth for Fiscal Year 2021 ("FY21"). The GBM was based, thus, on a pre Covid-19 economy which had been quite robust for several years and was anticipated to continue in that direction.

22. New Jersey reported its first case of the coronavirus on March 4, 2020. Once the virus took hold in the State, the number of people infected, and the number of resulting deaths, increased at an alarming and unremitting rate. Before long, New Jersey was second only to New York in the number of reported cases and deaths from the coronavirus.

23. On March 9, 2020, the Governor declared a public health emergency and a state of emergency as a result of the outbreak of COVID-19 in the State.

24. Beginning on March 10, 2020, the legislative budget committees convened public hearings for the purpose of receiving testimony about the Governor's recommended budget from interested entities and individuals. At those hearings, dozens of advocates requested additional funding for a variety of unmet needs in various areas including education, health care, transportation infrastructure, child services, mental health, addiction services, and many others.

25. The pandemic not only caused a public health emergency, but a fiscal emergency. In a necessary attempt to mitigate the community spread of an exponentially increasing virus, on March 21, 2020, the Governor issued a "stay-at home" order and also ordered the closure of all non-essential retail businesses.

26. By the end of April 2020, unemployment had surged to a record high, payrolls had dropped by historic numbers, and a decade of job growth was wiped out in a single month. Small businesses suffered huge financial setbacks and were forced to furlough or lay-off workers. In New Jersey, the second wealthiest state in the nation, the lines were miles-long at foodbanks, which were distributing record-breaking amounts of food to unemployed residents.

27. In one fell swoop, the coronavirus pandemic toppled all revenue forecasts. As a direct consequence of the coronavirus pandemic and the actions taken to combat its health-care and economic devastation, the State is confronting a significant, severe, and unanticipated revenue shortfall.

28. Following deep and painful budgetary cuts necessitated by revenue decline precipitated by the Great Recession, the annual appropriations act has emphasized essential State funding priorities and obligations, which cannot readily be reduced or altogether eliminated without triggering immediate and potentially far-reaching impacts on New Jersey residents.

29. In fact, the vast majority of appropriations in recent years are used to meet the State's school funding and long-term structural obligations.

30. Under the FY20 appropriations act as enacted, for example, less than 10% of budgeted funds supported Executive Branch operations, which include human services, mental health institutions, children and families, veterans' homes, adult

prisons, juvenile facilities, State police, and law enforcement. By contrast, over 70% of budgeted funds were appropriated for distribution to non-State entities as State aid, including education aid, municipal aid, support for county colleges, and school construction debt (more than \$16 billion or 43% of appropriated funds), or as Grants-in-aid, including property tax relief programs, NJ FamilyCare, pharmaceutical assistance, nursing homes, and support for higher education (more than \$11 billion or 28% of appropriated funds). If drastic budget cuts are made, the responsibility for providing critical programs and services will fall to the municipalities, whose workforces include thousands of essential public workers, including teachers, police, and firefighters.

31. Some departments, including Children and Families and Human Services, are subject to court monitors, consent decrees, and pending litigation involving constitutional issues that effectively limit or preclude the possibility of major cuts implicating areas such as foster care and child welfare.

32. The remainder of the budget is dedicated to operations of the Legislature and the Judiciary (approximately 2.3%), debt service other than school construction (7.6%), and State employee benefits, rent, and utilities (8%). Against this backdrop, it is clear that traditional belt-tightening on State staffing, operations, and expenses alone will not even begin to address the billions of dollars in reductions required to offset the State's lost revenues.

33. The cost of responding to the health-care and economic crisis caused by the COVID-19 pandemic completely devastated the State's budget. In a crucial effort to salvage the remnants of what had been a stable economy at the beginning of the fiscal year and to access federal financial assistance offered through the Federal Reserve's Municipal Liquidity Facility, the Legislature enacted the "New Jersey COVID-19 Emergency Bond Act" ("Emergency Bond Act"), L. 2020, c. 60.

### **III. Due to COVID-19, Revenues Have Fallen Off a Cliff.**

34. The COVID-19 pandemic has created a global economic crisis that the world has not experienced since the Great Depression nearly a century ago, and a health crisis not witnessed since the 1918 Spanish Flu pandemic. A comparison of these pandemic-caused revenue shortfalls to the revenues shortfalls experienced during

the dotcom recession and the Great Recession underscores the severity of the present crisis. During the dotcom recession, the FY02 shortfall between the original GBM forecast and the Appropriations Act was approximately \$2.299 billion, or -10.1%. In the two-year period of the Great Recession, the combined shortfall for FY08 and FY09 was approximately \$4.348 billion (-10.7% in FY08 and -3.0% in FY09). At the time the Report was prepared, the revenue shortfall for FY21 was projected to be \$7.207 billion, or -17.5%.

35. There is no longer any doubt that both the national and state economies will suffer a recession in 2020. Initial estimates from early May 2020 show that real GDP growth for the United States during the first quarter of 2020 declined by 4.8% on an annualized basis. During the second quarter, GDP fell by 32.9% on an annualized basis, a rate that "was unprecedented in its speed and breathtaking in its severity." Ben Casselman, The U.S. Economy's Contraction in the Second Quarter was the Worst on Record, N.Y. Times, July 30, 2020, <https://www.nytimes.com/live/2020/07/30/business/stock-market-today-coronavirus#the-us-economys-contraction-in-the-second-quarter-was-the-worst-on-record>. The dramatic fall in GDP was one of the steepest in modern American history, comparable to the collapse that occurred during the Great Depression and the demobilization after World War II. Ibid. Only time will tell just how severe and how long lasting the decline will be. However, the May 2020 projections indicate that real GDP will not return to pre-COVID-19 levels until mid-2022 at the earliest.

36. An analysis of recent State-level economic data indicates that New Jersey's recession and recovery will largely mirror the national trends, signaling that it will take two or more years before the State economic output is restored to last year's levels.

37. As a result of the mitigation efforts taken by the State to contain the coronavirus, the State was able to relax some of the social-distancing restrictions. Residents may nonetheless delay spending until they have repaid arrearages on rent, utility bills, and other debts. Consequently, although some businesses have been able to re-open, demand for their goods and services has decreased. Because of the safety restrictions imposed on businesses that are allowed to reopen, revenues will continue to decline. Businesses are also confronting the need to repay several months' worth of back-rent and supplier invoices. There also

exists the possibility of re-closures of businesses and facilities based on a potential resurgence of the coronavirus in New Jersey.

38. The OREA consists of a staff of economists and research professionals who examine economic and financial data to provide projections and analyses that are used in formulating the GBM. The OREA also monitors the State's fiscal performance throughout the fiscal year in comparison to revenue projections.

39. The OREA has undertaken an in-depth analysis of the financial impact of the COVID-19 pandemic on the State's economy. The OREA analysis indicates that the COVID-19 pandemic caused a massive decline in anticipated Fiscal Year 2020 ("FY20") and Fiscal Year 2021 ("FY21") tax and non-tax revenue, including for the period from July 1, 2020 to September 30, 2020 ("extended-FY20"). The OREA forecasts that follow are reflected in the Report and the May 2020 and June 2020 Revenue Reports. They are based on the best information available at the time the analyses were prepared.

**A. Revenues Declined Precipitously in the Three-Month Period After the Coronavirus Struck New Jersey.**

40. The OREA analysis confirms that forecasted revenues for FY20 and FY21 have derailed as a consequence of the rapid, severe, and unexpected onset of COVID-19.

41. April: Tax revenue collection figures for April 2020 provide a snapshot of just how swiftly and sharply the COVID-19 pandemic shook the New Jersey economy:

- a. Total collections fell \$3.5 billion below April of 2019, down 59.7%.
- b. Sales Tax collections were 13.7% lower than a year ago.
- c. Employer withholding fell about 7.0% in comparison to the comparable weeks in April 2019.
- d. Gross Income Tax ("GIT") and Corporate Business Tax ("CBT") filings plummeted by 60 to 90% as taxpayers took advantage of extended tax filing deadlines, which were extended by L. 2020, c. 19 from April 15, 2020 to July 15, 2020.



42. April 2020 Sales Tax collections reflect March sales. Because non-essential businesses were not ordered to close until the middle of March 2020, April collections, as bad as they were, do not fully capture the impact of the economic shutdown.

43. May: May collections reflect consumer behavior during April, the first full month of the COVID-19-based restrictions. May 2020 Sales Tax collections of \$544.1 million were down 29.0% below May 2019. In comparison, in June 2009, the worst Sales Tax collection month during the Great Recession, collections were down only 18.4%.

44. While May Sales Tax collections appear to show an unprecedented decline, collections may have been actually buoyed by the direct stimulus payments made by the federal government to individuals. The OREA noted that, because these payments reached their height in April and were essentially completed by the end of May, the stimulus effect will likely disappear in subsequent months if there is no additional federal assistance.

45. Prior to the onset of the coronavirus pandemic, GIT revenue collections through the end of March were growing by 7.1%. In contrast, GIT posted May collections of \$680.8 million, 0.5% below last May.

46. In general, a comparison of the collections for May 2020 with May 2019 highlight how the State's finances continued to collapse due to the coronavirus pandemic:

- a. Total collections fell \$331.2 million below May of 2019, down 13.5%.
- b. From the beginning of the fiscal year to the end of May 2020, GIT collections of \$11.803 billion were down 14.2%.
- c. CBT collections in May 2020 were 31.0% below May 2019, while Year-to-Date collections of \$2.821 billion were 13.0% below last year's collections. Although some declines were consistent with the scheduled 1% reduction in the surtax on CBT taxpayers having New Jersey allocated taxable income that exceeded \$1 million in privilege periods beginning on or after January 1, 2020 (see

L. 2018, c.48, § 1), they were enhanced by the economic downturn due to the COVID-19 pandemic.

- d. Motor Fuels Tax revenues fell 58.8%.
- e. Petroleum Products Gross Receipts Tax revenues dropped by 57.4% compared to the same month last year.

47. June: Comparing June 2020 with June 2019 collections confirms that the coronavirus pandemic continued to wreak havoc on the State's economy:

- a. For the fiscal Year-to-Date, collections totaled \$29.784 billion and were \$3.0 billion, or 9.2% lower than the same period last year.
- b. Collections for the major taxes totaled \$2.92 billion, falling \$503 million, or 14.7% below June 2019 collections.
- c. GIT posted collections of \$1.281 billion, 12.6% below June 2019 collections.
- d. From the beginning of the fiscal year to the end of June 2020, GIT collections totaled \$13.085 billion and were \$2.14 billion, or 14.1% lower than the same twelve-month period in 2019.
- e. The Sales Tax collections totaled \$714.9 million, a 14.6% decline from June 2019 collections. This represented the third largest monthly decline in at least the last twenty (20) years, including during the Great Recession, with the largest decline of 29.0% occurring in May 2020.
- f. CBT generated collections of \$620.5 million, down 23.0% from June 2019.
- g. From the beginning of the fiscal year to the end of June 2020, CBT collections totaled \$3.441 billion and were \$613 million, or 15.1% lower than the same twelve-month period in 2019. June was the seventh consecutive month in which CBT revenues declined.

48. These stunning declines in revenue are more than just analytical facts, they also have real-life consequences. The decrease in revenues will inexorably lead to a decrease in the State's ability to provide crucial services and assistance to New Jersey residents at a time when they are needed most. A comparison of these pandemic-caused revenue shortfalls to the revenues shortfalls experienced during the dotcom recession and the Great Recession underscores the severity of the present crisis. During the dotcom recession, the FY02 shortfall between the original GBM forecast and the Appropriations Act was approximately \$2.299 billion, or -10.1%. In the two-year period of the Great Recession, the combined shortfall for FY08 and FY09 was approximately \$4.348 billion (-10.7% in FY08 and -3.0% in FY09). At the time the Report was prepared, the revenue shortfall for FY21 was projected to be \$7.207 billion, or -17.5%.

**B. Extending the Tax Filing Deadline Resulted in Billions of Dollars in Deferred GIT and CBT Revenue.**

49. On March 21, 2020, the IRS extended the federal tax filing deadline from April 15, 2020 until July 15, 2020.

50. Because of this, on April 14, 2020, the State likewise extended its tax filing deadline.

51. Extending the tax filing deadline shifted final and estimated payments of GIT and CBT from April 15, 2020 to July 15, 2020.

52. Extending the tax filing deadlines necessarily resulted in billions of dollars in deferred revenue.

53. At about 42% of the overall revenue, the GIT is the largest source of the State's revenue. The New Jersey Constitution mandates that the GIT be dedicated to the Property Tax Relief Fund ("PTRF"). Due to New Jersey's highly progressive tax rate structure and the GIT's character as a tax on gross rather than net incomes, this tax revenue is extremely sensitive to the economic cycle and thus, unpredictable.

54. During each fiscal year, the State uses quarterly GIT estimated payments, due on June 15, September 15, January 15, and April 15, and other income tax receipts, such as withholding payments, to monitor GIT revenue collections and to determine whether collections are in line with estimates. High quarterly

estimated payments, a large portion of which are received from higher-income taxpayers who are taxed at a higher rate, are historically associated with high final GIT payments in April.

55. Although New Jersey taxes capital gains like ordinary income, capital gains realizations are not tracked by any standard statistical series. Furthermore, taxpayers are not obligated to remit any taxes owed on a capital gains transaction prior to the April final payment. Yet, based upon taxpayer behavior in prior years, the normal expectation is that taxpayers will step up quarterly payments to avoid extremely large April payments and that strong growth of estimated payments is consistent with an increase in final April payments.

56. GIT: The OREA projected in the Report that GIT FY20 revenues would be \$910.9 million, or 5.4% lower than the GBM forecast, while FY21 collections would be \$3.955 billion, or 22.2% lower than the GBM forecast.

57. CBT: The OREA projected in the Report that FY20 revenues would be \$451.9 million, or 11.6% lower than the GBM forecast, while FY21 revenues were projected to be \$1.228 billion, or 32.0% lower. The projected two-year decline between the CBT revenue peak in FY19 and FY21 was pegged at 35.4%, which is similar to the two-year decline between FY08 and the CBT low-point in FY10 due to the Great Recession.

58. Treasury is monitoring and analyzing revenue collections in July. Due to the unprecedented deferral of final and estimated GIT and CBT payments from April to July, significant collections have been flowing into State coffers during the month of July. The Division of Revenue and Enterprise Services ("DORES") is currently receiving and tallying final tax year 2019 payments, first quarter tax year 2020 payments, and significant taxpayer refund claims. The processing of these deferred payment and refund streams will likely continue into early August.

59. The revenue forecast will most certainly change in the coming weeks and months as actual collections data are tabulated and as state specific economic impacts of the pandemic begin to crystalize.

60. As with any revenue forecast, actual collections will vary. Some will finish below while others will finish above the

forecast. Actual tabulations for FY20 will not be complete until the auditing process is finalized sometime in the coming winter. The August 25 Budget proposal will include new, updated forecasts for FY20 and FY21, but not the final audited amounts.

**C. The State Economy is Volatile and Unpredictable.**

61. The official State revenue statement was outlined in depth in the Report. In preparing the Report, tax policy proposals originally contained in the GBM were eliminated to provide an unfiltered analysis of the impact of the coronavirus pandemic on State revenues.

62. The Report remains the official forecast for FY20 and FY21, both in the aggregate and by month. The next official revenue statement will be contained in the Governor's August 25 Budget proposal, as required by law.

63. On June 30, 2020, the Governor and the Legislature adopted a supplemental appropriations bill ("Supplemental Act") for spending for the extended-FY20. See L. 2020, c.43.

64. After calculating preliminary June collections data, in conjunction with passage of the Supplemental Act authorizing appropriations and de-appropriations for the extended-FY20, the OREA increased forecasts for the Sales Tax and the Realty Transfer Fee relative to the initial projections contained in the Report.

65. The Sales Tax forecast was increased by \$361.6 million in FY20 and by \$287.0 million for the extended-FY20. The Realty Transfer Fee forecast was increased by \$28.2 million in FY20 and by \$18.7 million for the extended-FY20. As a result, the projected FY20 revenue shortfall was reduced by \$389.8 million, from \$2.732 billion to \$2.342 billion. The projected FY21 revenue shortfall was reduced by \$305.7 million through the extended-FY20, effectively reducing the annual total from \$7.207 billion to \$6.901 billion. The OREA updated the monthly targets for these two revenue sources to account for the change in revenue receipts.

66. The current revenue trends, while incomplete as of the last week of July, suggest that overall FY20 revenues, including for the extended-FY20, are likely to exceed the May 22 and June adjusted official forecasts.

67. In particular, Sales Tax collections, while still below the same months last year, are exceeding expectations due to economic activity opening sooner than previously expected and consumers utilizing the federal stimulus payments. CBT revenues are down compared to last year, but by lower rates than originally projected. For the GIT, employee wage withholding has also not fallen by the amount anticipated, even given the recent 15% and 16% unemployment rates.

68. July revenues are in the process of being tabulated and the August 25 updated revenue forecasts will not be completed for several weeks. Consequently, the May 22 and June adjusted forecasts remain the only official targets.

69. While New Jersey has been more successful than other states in beating back the coronavirus pandemic, a resurgence of the COVID-19 virus in the fall and winter would drive down revenues again, causing significant revenue shortfalls for FY21. If the pandemic continues into the spring of 2021, FY21 revenue collections will decline even further, with potential carry over into FY22.

**IV. The State Instituted Spending Cuts and De-Appropriations to Curtail the Economic Calamity Caused by the Coronavirus Pandemic.**

70. At the beginning of FY20, the State had taken decisive action to promote fiscal responsibility and was making steady progress towards improving its financial condition.

71. As Treasurer, I have prioritized and consistently advocated in support of increasing the State's fiscal reserves in order to guard against unanticipated events that adversely affect State revenues. Prior to COVID-19, the administration had succeeded in increasing the State's undesignated (surplus) balances from as little as \$300 million in recent years to well over a billion dollars for FY20.

72. To ensure that these balances were achievable and available throughout the fiscal year, the Governor, at the same time as enactment of the FY20 Appropriations Act, directed Treasury to identify and place in reserve items of appropriation sufficient to ensure that the budget remained in balance while maintaining an

anticipated FY20 closing fund balance of at least \$850 million in addition to a \$401 million deposit into the Surplus Revenue Fund, also known as the Rainy Day Fund ("SRF").

73. At the time of the Governor's Budget Message in February 2020, Treasury had projected a total closing fund balance through June 30, 2020 of \$1.5 billion, including \$732 million projected in the SRF.

74. The arrival of the COVID-19 pandemic hit the State's economy like a sledgehammer. As indicated in the Report, as a result of the unprecedented economic impact of the pandemic, revenues through June 30, 2020 were expected to decline by approximately \$2.7 billion.

**A. The State Significantly Modified its Spending Plan for FY20 to Address the Devastating Financial Effects of the COVID-19 Pandemic on the State's Budget.**

75. As a direct result of the COVID-19 pandemic, the State's previously budgeted surplus entirely disappeared under the weight of declining revenues and high fixed costs for Medicaid payments, debt servicing, and pension and health-care benefits.

76. Instead of a surplus, as stated in the Report, the revised projected fund balance for FY20 was projected to be negative \$1.2 billion without identifying and enacting spending and/or revenue solutions.

77. As of the end of March 2020, the State had already expended approximately \$30 billion of its \$40 billion budget for FY20 because it was three-quarters through FY20.

78. Consequently, the State was limited in its ability to make any consequential adjustments to lessen the financial impact of the coronavirus pandemic.

79. Nonetheless, in an attempt to ameliorate the economic impact of the COVID-19 pandemic, the State took a number of significant steps to ensure the State remained in a solvent financial position, including:

- Reviewing State spending across all branches of government and placement of over \$1 billion of available appropriations into reserve

- Transferring the entire \$421 million SRF to the undesignated General Fund balance to help offset the anticipated shortfall due to the anticipated decline in revenues through June 30, 2020, and eliminating the planned additional deposit to the SRF on June 30, 2020
- Implementing a Statewide hiring freeze with the exception of COVID-19 needs and other related life-saving and safety needs
- Limiting the use of hourly and temporary employees
- Coordinating with vendor partners to attempt to obtain better procurement terms and conditions for new contracts and extensions
- Conducting ongoing review and approval by the Office of Management and Budget of department spending and contracting
- Cancelling and reserving pre-encumbrances which will result in deferral or elimination of planned department spending
- Deferring or eliminating other planned FY20 spending, including the pension contribution related to the revised experience study (\$279 million); the pension contribution to offset certain lottery shortfalls; the proposed lead infrastructure program in the Department of Environmental Protection (\$80 million); and Economic Redevelopment & Growth ("ERG") grants (\$49 million)

80. These, in addition to other actions, enabled the State to avoid a negative fund balance and instead achieve a positive fund balance.

81. As described in the Report, the revised spending plan required de-appropriations of approximately \$1.32 billion, including State balances available as the result of the application of certain federal revenues towards State spending included in the



fund balance model. This included the increased federal match for all Medicaid programs and amounts received from the Coronavirus Relief Fund ("CRF") through the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").

82. In addition, all operating reserves not currently considered for de-appropriation or needed by departments for financial year close out, as well as any additional unanticipated balances, which are referred to as "normal lapses," will be retained in reserve until final FY20 revenues are determined. To the extent necessary, these unanticipated balances will be lapsed at the end of extended-FY20, i.e., September 30, 2020, to ensure that the State maintains a positive fund balance.

**B. The State Maintained a Balanced Budget by Making Substantial Adjustments to its Extended Fiscal Year Spending Plan.**

83. In an attempt to mitigate the devastating economic effects of the coronavirus pandemic, pursuant to L., c. 19, the COVID-19 Fiscal Mitigation Act, the Legislature and the Governor extended the State's fiscal year to September 30, 2020. As required under that Act, on June 30, 2020, the Governor and the Legislature adopted the Supplemental Act.

84. The Supplemental Act for extended-FY20 defers and cuts essential spending in order to fulfill the constitutional obligation to maintain a balanced budget. The Supplemental Act includes budget cuts of \$1.19 billion and deferrals of \$2.188 billion, and eliminates \$849.7 million in spending that the Governor had proposed in late February in the FY21 GBM.

85. The Supplemental Act contains the following cost-cutting measures and deferred payments:

- De-Appropriating \$1.19 billion dollars
- Continuing to implement the school funding formula designed in partnership with the Legislature without any additional funding over FY20, and delaying the September 22, 2020 school aid payment (\$467 million) into October 2020
- Delaying the Extraordinary Special Education Aid payment (\$250 million) into October 2020

- Delaying September 2020 payments (\$355 million) for Consolidated Municipal Property Tax Relief Aid ("CMPTRA") and Energy Tax Receipts ("ETR") until October 2020
- Delaying the September 2020 pension payment (\$950 million) to October 2020
- Instituting a 5% across-the-board reduction in funding for non-salary operating costs and a 10% reduction in discretionary grants
- Negotiating with the Communications Workers of America to delay cost of living adjustments

86. The Supplemental Act does not include any operating subsidy to NJTRANSIT, nor does it provide funding for senior freeze and homestead benefit payments, or operating aid for higher education.

87. In general, the Supplemental Act provides 25% of projected annual need for social services programs and operating accounts not otherwise reduced. State Aid and grants and other discretionary payments are appropriated during the three-month extended year based on the normal timing of disbursements or as projected to cover actual services rendered.

88. The Supplemental Act appropriates about 35% of the typical annual Department of Transportation/NJTRANSIT's capital project list for the supplemental period.

89. In total, the Supplemental Act provides the same overall funding for hospitals as the first quarter of FY20 (e.g., charity care, graduate medical education).

90. The Supplemental Act does not institute any new revenue raising measures.

91. The Supplemental Act does not impact debt service payments.

92. The Supplemental Act for extended-FY20 is supported by \$8.711 billion in total resources and includes a revised surplus of \$957 million by September 30, 2020.

93. Primarily due to increased Sales Tax revenues resulting from the incremental opening of the State's economy, the revised surplus is up \$462 million from the Report.

94. All told, the actions taken led to an ending undesignated fund balance of \$704 million as of June 30, 2020 and an undesignated ending fund balance of \$957 million on September 30, 2020.

95. While the revised projected fund balances are improved over the projections made at the time of the Report, because the State's financial situation is so volatile, these funding balances are hardly adequate to cover the State's financial needs and could disappear in a flash.

96. Moreover, the State will continue to grapple with an unprecedented decline in overall projected revenue. The absence to date of a second federal stimulus bill to assist individuals and businesses may result in more bankruptcies and closures, thereby potentially affecting revenues.

97. Following enactment of the Supplemental Act, the Treasury began work on a nine-month budget for FY21, which will run from October 1, 2020 through June 30, 2021 ("shortened-FY21"). See L. 2020, c. 43.

98. The Governor must propose the appropriations act for shortened-FY21 by August 25, 2020, and it must be enacted before October 1, 2020 because the extended-FY20 ends on September 30, 2020. Id. at § 6. By August 25, 2020, Treasury will submit a budget for shortened-FY21, which will contain revised estimates for both FY20 and FY21 and start the budget negotiations process for shortened-FY21. See L. 2020, c. 19.

**V. The Calculation of Revenue and Expenses Takes Into Consideration the Funds Received from the Cares Act.**

99. When Treasury calculated the State's need for revenues for the extended-FY20 and the shortened-FY21, Treasury mostly deducted from both sides of the ledger increased expenditures related to the pandemic as well as CARES Act and other federal stimulus funds that the State had received. The shortfall in revenues that remains is the State's level of need after the stimulus funds have been accounted for.

100. So far, the federal government has provided the State with \$5.317 billion in funding under the CARES Act and other stimulus bills. The current federal guidance explicitly states that the funds cannot be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. The statute is clear that, while a broad range of uses is allowed, revenue replacement is not a permissible use of the federal funds. Questions exist concerning how federal relief funds that the State has already received may be spent. These questions arise directly from the text of the CARES act itself as well as guidance that the United States Department of the Treasury is continually updating.

101. In short, the federal assistance must be utilized for COVID-19 related expenses. Accordingly, most of the federal assistance is utilized for specific COVID-19 purposes, such as laboratory testing and the purchase of personal protective equipment, and for permissible COVID-19-related purposes, such as school lunches, meals for seniors, and childcare.

102. Further, it is uncertain whether the federal government will provide a new stimulus package and, even if it does, what its terms will be. To date, the federal government has firmly resisted the states' pleas for more direct, substantial, flexible financial assistance.

**VI. It is a Common Mechanism for the Proceeds of General Obligation Bonds to be Appropriated Outside of the Appropriations Act, and therefore Outside of the Appropriations Clause's Balanced Budget Requirement.**

103. For more than half a century and probably longer, it has been a common mechanism for the proceeds of GO bonds to be appropriated outside of the annual Appropriations Act. This mechanism is colloquially known as a "Debt Limitation Appropriation."

104. These "debt limitation appropriations" have taken several forms over the decades, but the constant feature is that they are done in stand-alone chapter laws.

105. In some instances, the very act authorizing the issuance of GO bonds appropriates the proceeds thereof directly to a State

agency or authority. We see an example of this in L. 1977, c. 235, wherein the Legislature authorized the issuance of \$120 million in GO bonds for the construction of "medical education facilities" and, within that very act, "hereby appropriated" a portion of the proceeds for a "teaching hospital project." Id. at §§ 1, 5.

106. Sometimes the Legislature uses a variant of this process, whereby it appropriates bond proceeds both within the act authorizing the bonds and in a separate stand-alone chapter law. For example, in L. 1968, c. 128, the Legislature authorized the issuance of \$640 million in GO bonds to improve mass transportation within the State. See id. at § 3. In this authorizing act, the Legislature provided that "all" bond proceeds "are hereby appropriated to the Department of Transportation." Id. at § 13. The Legislature also provided, however, that "no such monies shall be expended" until the Department of Transportation submitted a project list to the Legislature and the latter made a "specific appropriation" for the recommended projects. Ibid. Notably, the specific appropriation was not in the annual appropriations act or any supplement thereto, but rather in a stand-alone chapter law. See L. 1969, c. 13.

107. At other times, the Legislature dispenses altogether with a direct appropriation in the authorizing act and provides that all bond proceeds will be appropriated in a stand-alone chapter law - not the annual Appropriations Act or a supplement thereto - after the agency submits a project list. For example, in L. 1983, c. 354, the Legislature authorized the issuance of \$135 million in GO bonds "to meet the cost of public acquisition and development of lands by the State for recreation and conservation purposes." Id. at § 3. This authorizing act provided that these "Green Acres" funds "shall not be expended except in accordance with appropriations from such fund made by law." Id. at § 15. Further, "[a]ny act appropriating moneys from the 1983 New Jersey Green Acres Fund shall identify the particular project or projects to be funded with such moneys." Ibid. L. 1984, c. 224 was the first stand-alone chapter law to appropriate monies for the Green Acres program. See id. (appropriating \$19 million of Green Acres funds to Department of Environmental Protection for specifically delineated projects such as Nature Center Bridge in Allaire State Park).

108. Again, debt limitation appropriations such as those described above are outside of the annual appropriations act. As

the Director of the Office of Public Finance certified in his Certification, Section 14 of the Emergency GO Bond Act requires that the balance remaining in the Emergency Fund after the transfer to the General Fund or the Property Tax Relief Fund is a debt limitation appropriation. See Certification of Michael B. Kanef ("Kanef Cert.") at ¶ 44. Therefore, as outlined in the first sentence of Section 14, the balance may be appropriated by the Legislature - separate and apart from - the annual Appropriations Act or any supplemental act thereto in one or more separate chapter laws.

109. Each year, Treasury prepares a Comprehensive Annual Financial Report ("CAFR"), which presents the financial position and operating results of the State under generally accepted accounting principles ("GAAP") applicable to state and local governments. The CAFR contains all of the State's revenues, costs, assets, and liabilities. That debt limitation appropriations are off-budget is evidenced by the facts that neither in the CAFR nor in the Governor's revenue certification that he issues in compliance with the Appropriations Clause are these debt limitation appropriations considered revenues for purposes of balancing the budget.

110. In the past, the State has, through a mechanism known as interfund transfers, transferred GO bond proceeds to the General Fund as revenue to meet general operating expenses. For example, in FY16, proceeds of bonds authorized by the "New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996" ("Dredging Bonds"), see L. 1996, c. 70, were transferred as revenue to the General Fund. Specifically, the Fiscal Year 2016 Appropriations Act listed as "Anticipated Resources," \$454,000 of Dredging Bond proceeds. See L. 2015, c. 63 (FY16 Appropriations Act) at A-10, relevant excerpt attached hereto as Exh. L. These proceeds were to be used to meet the administrative expenses of the "Office of Dredging and Sediment Technology" in the Department of Environmental Protection. See L. 2015, c. 63 (FY16 Appropriations Act) at B-64, relevant excerpt attached hereto as Exh. L. As it turned out, actual expenses were only \$429,975.27, which was the amount of Dredging Bond proceeds the General Fund actually received. The "transfers to other funds" line on page 159 of the CAFR for FY16 reports this movement and records the funds as revenue. See FY16 CAFR at p. 159 "Dredging and Containment Facility Fund," relevant excerpt attached hereto as Exh. M. The Governor's FY18 Budget Message likewise demonstrates

that the General Fund actually received \$430,000 in Dredging Bond proceeds, recorded them as revenue, and used them to support General Fund expenditures. See Governor's FY18 Budget Message at C-7, D-128, relevant excerpts attached hereto as Exh. N. This interfund transfer involved the transfer of the bond proceeds themselves (i.e., the principal amount received after issuance) and not mere interest on investment earnings.

111. Similarly, in FY18, proceeds of bonds authorized by the 2009 "Green Acres, Water Supply and Floodplain Protection, and Farmland and Historic Preservation Bond Act of 2009" ("Preservation Fund"), see L. 2009, c. 117, were transferred as revenue to the General Fund. Specifically, the Fiscal Year 2018 Appropriations Act listed as "Anticipated Resources," \$84,000 of Preservation Fund proceeds. See L. 2017, c. 99 (FY18 Appropriations Act) at A-10, relevant excerpt attached hereto as Exh. O. These proceeds were to be used by the "Department of Community Affairs for Historic Trust/Open Space administration costs." See L. 2017, c. 99 (FY18 Appropriations Act) at B-30, relevant excerpt attached hereto as Exh. O. As it turned out, actual expenses were only \$82,263, so that is the amount of Preservation Fund proceeds the General Fund actually received. The "transfers to other funds" line on page 176 of the CAFR for FY18 reports this movement and records the funds as revenue. See FY18 CAFR at p. 176, relevant excerpt attached hereto as Exh. P. The Governor's FY20 Budget Message likewise demonstrates that the General Fund actually received Preservation Bond proceeds, recorded them as revenue, and used them to support General Fund expenditures. See Governor's FY20 Budget Message at C-7, D-60, relevant excerpt attached hereto as Exh. Q. This interfund transfer involved the transfer of the bond proceeds themselves (i.e., the principal amount received after issuance) and not mere interest on investment earnings.

## **VII. The Economic Outlook for FY21 is Bleak.**

112. As currently projected, the State is facing serious fiscal and economic challenges for shortened-FY21 and will not have enough funds to meet its obligations unless a) there is a highly improbable, earlier-than-expected economic recovery; b) taxes are raised sharply; and c) there are drastic cuts to spending adopted as part of the shortened-FY21 budget. In case - as is highly likely - a), b), and c) do not materialize or are insufficient to address the crisis, the State will need to have

available in its toolbox the General Obligation ("GO") bonds the Emergency GO Bond Act authorizes.

113. Even with stronger than expected June collections, the OREA and OMB estimate that, in shortened-FY21, there will be a \$6.458 billion shortfall between expected revenues and expenditures.

114. A shortfall in the magnitude of \$6.458 billion will cripple the State's ability not only to meet its financial obligations but to provide the residents of New Jersey with desperately needed assistance during this unparalleled financial and health crisis.

115. Further, the Supplemental Act deferred various September 2020 payments into October 2020. This includes the \$950 million in pension payment, \$467 million in school aid, \$355 million for CMPTR and ETR, \$250 million in Extraordinary Special Education aid, \$114 million for New Jersey Transit, and any required Transitional Aid currently estimated at \$28 million.

116. Additionally, if there is a resurgence of the COVID-19 virus in the fall and winter, the OREA noted in the Report that shortened-FY21 revenues could decline by an additional \$1.065 billion.

117. The uncertainty surrounding the projected path of the virus is echoed by what OREA, the Office of Legislative Services, and economists around the country agree is a high degree of volatility and uncertainty surrounding revenue projections during this unprecedented crisis, and further underscores the need for the authority to borrow in order to help ensure our ability to meet the needs of our residents to the best extent possible.

118. It is likely that no feasible amount of additional taxes or spending cuts alone will enable the State economy to adequately recover from this once-in-a-century pandemic.

**VIII. Treasury Intends to Utilize a Number of Measures to Address the State's Financial Needs.**

119. Treasury intends to consider every possible measure to resolve the financial crisis, from cutting expenditures across all categories of appropriation, raising taxes, persuading the federal government to lift restrictions on the use of CARES Act funds, and



a panoply of new ideas for bringing extra money into the State's coffers. But the State still needs the option of borrowing, with the flexibility it brings, especially in these unprecedented, fluid economic times.

120. The State also has to have the tools available to plan for a future resurgence of the COVID-19 virus and the need to respond to its health-care and economic costs. Because it is impossible to predict with certainty whether there will be a resurgence, the State must have as much leeway and flexibility as possible to meet its financial obligations and must be able to act within the available windows of opportunity afforded by the public and private markets.

121. The State is in the midst of a dire fiscal crisis, and the GO Emergency Bond Act will provide a multi-pronged, flexible approach to GO bond borrowing that will enable the State to address plummeting revenues and restore some degree of financial stability.

The foregoing statements are true to the best of my knowledge, information, and belief. I am aware that, if any of the statements are willfully false, I may be subject to punishment.



---

ELIZABETH MAHER MUOIO  
State Treasurer  
State of New Jersey  
Department of the Treasury

Dated: 7/31/2020

B. STEPHAN FINKEL  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
P.O. Box 106  
25 Market Street  
Trenton, NJ 08625-0106

By: Victoria G. Nilsson  
Deputy Attorney General  
Attorney ID No. 269692018  
(609) 376-2905  
victoria.nilsson@law.njoag.gov

NEW JERSEY REPUBLICAN STATE  
COMMITTEE a/k/a the NJGOP;  
DECLAN O'SCANLON; HAL WIRTHS;  
LISA NATALE-CONTESSA; and  
ILEANA SCHIRMER,

Plaintiffs,

vs.

PHILIP D. MURPHY, in his  
Official Capacity as Governor  
of New Jersey,

Defendant.

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 084731

Civil Action

ON CERTIFICATION PURSUANT TO  
R. 2:12-1 FROM THE NEW JERSEY  
SUPERIOR COURT, LAW DIVISION,  
MERCER COUNTY

DOCKET NO.: MER-L-1263-20

**CERTIFICATION OF  
TIMOTHY SULLIVAN IN  
SUPPORT OF THE STATE**

Timothy Sullivan, of full age, upon his oath certifies  
and says:

1. I am the Chief Executive Officer ("CEO") of the New  
Jersey Economic Development Authority (the "NJEDA").

2. As the CEO, I am responsible for overseeing the NJEDA's  
strategic direction, leading policy and governance initiatives,  
and serving as the principal representative of the NJEDA throughout  
the State.

3. I also serve as a co-chair of the Governor's Restart and Recovery Advisory Council (the "Council"), established on May 8, 2020, by Executive Order 140. The Council provides guidance to Governor Murphy (the "Governor") on the reopening and recovery of the State's economy. The members of the Council represent the wide variety of the State's economic sectors.

4. The NJEDA serves as the State's principal agency for driving economic growth. Through partnerships with a diverse range of stakeholders, the NJEDA creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

5. To accomplish its mission, the NJEDA continuously monitors the local economy. As such, I, along with the NJEDA staff, hold numerous meetings and discussions with business owners, lenders, chambers of commerce, business associations, and other stakeholders. The NJEDA Board also contains representatives from different sectors of the New Jersey economy. Since the pandemic hit, the NJEDA has also surveyed New Jersey's small- and medium-size businesses and not-for-profit enterprises ("SMEs") to assess their needs, and the NJEDA staff have held numerous weekly meetings with the leaders of major business associations and chambers of commerce.

6. As the CEO of the NJEDA, I have personal knowledge of the material facts of this Certification.

7. On March 9, 2020, the Governor issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency in the State of New Jersey.

8. On March 20, 2020, the Governor signed legislation (A3845), L. 2020, c. 8, authorizing the NJEDA to make grants during a state of emergency or a public health emergency declared by the Governor and for the duration of the resulting economic disruptions. These grants may be used "for the planning, designing, acquiring, constructing, reconstructing, improving, equipping, and furnishing of a project, including, but not limited to, grants for working capital and meeting payroll requirements, upon such terms and conditions as the authority shall deem reasonable." L. 2020, c. 8, §1 (N.J.S.A. 34:1b-5(jj)).

9. As a result of the COVID-19 Pandemic, the SMEs were in unchartered territory and the SME's finances were being ravaged. SMEs, which fuel New Jersey's economy, were facing collapse and were disappearing. Entire sectors of the economy lie dormant.

10. For businesses often operating on small margins, the COVID-19 Pandemic had caused sudden and unexpected financial disruptions. With the economy in New Jersey basically placed on hold, the SMEs did not have a way to cope or know how to stay afloat.

11. Already in late March, the SMEs were becoming cash flow constrained and were struggling to meet payroll obligations, to pay basic operating expenses, and to keep at bay the serious risk that they might never re-open.

12. Many SMEs were in the difficult position of having no choice but to furlough or lay-off employees.

13. In order to respond to the escalating economic crisis in New Jersey, the NJEDA Board authorized a package of emergency programs during a March 26, 2020 Special Meeting (the "Special Meeting").

14. In developing these programs, the NJEDA focused on three core principles: getting funding to the market as soon as possible; leveraging private, federal and philanthropic capital; and providing a suite of compatible offerings to help address the varied needs of the New Jersey marketplace.

15. The six programs established by the NJEDA at the Special Meeting are: Small Business Emergency Assistance Grant Program, Small Business Emergency Assistance Loan Program, Community Development Financial Institution Emergency Assistance Grant Program, Community Development Financial Institution Emergency Loan Loss Reserve Fund, Small Business Emergency Assistance Guarantee Program, and the New Jersey Entrepreneur Support Program.

**A. Grant Program.**

16. The Small Business Emergency Assistance Grant Program (the "Grant Program") focuses on the most immediate needs of small businesses and not-for-profit enterprises in targeted industries greatly impacted by the containment measures. Phase 1 of the Grant Program utilizes \$5 million to provide short-term payroll and working capital grants of up to \$5,000 to New Jersey small businesses and not-for-profit enterprises that had been negatively impacted by the COVID-19 Pandemic ("Phase 1 Grant Program"). In order to qualify, the grantee must have between one (1) and ten (10) full-time equivalent employees, have a physical commercial location in New Jersey, and operate within the following industries: retail, accommodation and food services, arts, entertainment and recreation, and other services.

17. The NJEDA has received an unprecedented number of applications for the Phase 1 Grant Program. The Phase 1 Grant Program application period opened on April 3, 2020, and closed on April 10, 2020 at 9:00 a.m. EST. During that period, 34,403 applications were submitted. Since the inception of Phase 1 of the Grant Program, an additional \$7 million has been made available to support Phase 1 applicants.

18. As of July 20, 2020, 3,380 applications were approved in the aggregate amount of \$10,975,000. The average award size is

\$3,247.04. If the average award size was applied to all submitted applications, demand would equal approximately \$111,707,917.

19. The economic impact of the Phase 1 Grant Program has been profound. The NJEDA has, however, been unable to meet the full extent of the SMEs financial needs because of soaring demand and has exhausted the Phase 1 Grant Program funds.

20. Additionally, because the need far exceeded the resources that the NJEDA could make available, the Casino Redevelopment Authority ("CRDA") offered to contribute funding. On April 16, 2020, the NJEDA and CRDA entered into an agreement for the NJEDA to disburse \$2 million through the Grant Program to applicants in Atlantic County. \$1,094,000 received from the CRDA has been disbursed; this satisfied the entire group of eligible Atlantic County businesses.

21. The slight deviation between Phase 1 Grant Program demand, roughly \$11.09 million, and approved applications, almost \$11 million, is merely a timing issue.

22. In light of the unprecedented demand for assistance, the State appropriated to the NJEDA, and the NJEDA Board approved on May 22, 2020, as revised on June 9, 2020, an additional \$45 million toward phase 2 of the Grant Program ("Phase 2 Grant Program"), funded through the Coronavirus Relief Fund from the Coronavirus Aid, Relief and Economic Security Act, P.L. 116-136 ("CARES Act"). Among other things, for the Phase 2 Grant Program, the NJEDA

increased the maximum grant to \$10,000, expanded eligibility to businesses with up to 25 full-time equivalent employees, removed the restriction on industries, allowed sole proprietorship and home-based businesses, expanded the Grant Program to include not-for-profits organized under all subsections of 501(c) of the Internal Revenue Code, instead of just (c)(3), (c)(4), and (c)(7), and set aside one-third of the total available funding through the Phase 2 Grant Program for eligible SMEs in New Jersey Opportunity Zone eligible tracts (i.e., a New Market Tax Credit census tract).

23. The NJEDA Board also approved using an additional \$5 million to fund grants for applications waitlisted in the existing Phase 1 Grant Program.

24. The Phase 2 Grant Program application period opened on June 9, 2020, and closed on June 30, 2020. During that period, 37,162 applications were submitted. As of July 24, 2020, 7,028 applications have been approved in the aggregate amount of \$22,722,000. The average award size is \$3,233.

**B. Loan Program.**

25. The Small Business Emergency Assistance Loan Program (the "Loan Program") consists of \$10 million to be used to provide low-cost financing to New Jersey small businesses and not-for-profits that have been negatively impacted by the COVID-19 emergency ("Phase 1 Loan Program").



26. The Phase 1 Loan Program makes available a ten (10) year direct loan of up to \$100,000 per borrower at zero percent (0%) fixed interest for the first five (5) years and at the fixed interest rate of NJEDA's prevailing rate floor, capped at three percent (3%), for the remaining five (5) years of the loan. The Phase 1 Loan Program funds are to be used by the borrower as working capital to support business continuity.

27. Small businesses and not-for-profits, facing immediate and crushing financial pressure as a result of the COVID-19 Pandemic, rushed to secure loans through the Phase 1 Loan Program.

28. The Phase 1 Loan Program application period opened on April 13, 2020. No new applications were allowed to be started after April 16, 2020 at 12:00 p.m. EST. During that period, 3,521 applications were submitted. As of July 20, 2020, the Phase 1 Loan Program has approved 70 applications in the aggregate amount of \$4,776,732.84. The aggregate total financial assistance requested under the Phase 1 Loan Program is \$247,692,226.

29. On June 9, 2020, the NJEDA reported at its June Board Meeting that it had been invited by the United State Economic Development Administration (the "USEDA") to apply for a revolving loan fund ("RLF") of up to \$10,000,000 to be used to support New Jersey business recovery and reopening efforts as part of Phase 2 of the Loan Program (the "Phase 2 Loan Program").

30. On July 14, 2020, the NJEDA Board approved the creation of the Phase 2 Loan Program in order to provide funding for operating expenses incurred on, or after, March 9, 2020, to cover: inventory, rent/mortgage, payroll, utilities, personal protective equipment, or certain furniture, fixtures or equipment needed as a result of the COVID-19 Pandemic. \$3.5 million of the Phase 2 Loan Program funding was reserved for entities located in an eligible New Jersey Opportunity Zone census tract. The USEDA approved NJEDA's RLF application on July 29, 2020. It is anticipated that the Phase 2 Loan Program will launch in Fall 2020.

**C. CDFI and Private Lender Programs.**

31. At the Special Meeting, the NJEDA Board also approved three programs for Community Development Finance Institutions ("CDFIs") and private lenders. CDFIs are private financial institutions dedicated to delivering lending instruments to help disadvantaged enterprises. These programs support and leverage the expertise and funding of CDFIs and private lenders to provide increased financial assistance to New Jersey micro-, small-, and medium-sized enterprises and not-for-profits. These programs are:

- a. A \$1.25 million CDFI Emergency Assistance Grant Program to offset incremental operating costs of CDFIs due to a surge in COVID-19 related lending or to buy down interest rates, with a maximum \$250,000 grant per CDFI.

b. A \$10 million CDFI Emergency Loan Loss Reserve Fund to offer a first-loss guarantee pool for CDFIs loans of up to \$75,000 to micro and small businesses. The maximum guarantee per loan is 50% and an aggregate maximum NJEDA exposure of the \$10 million. The leverage from the CDFI Loan Loss Reserve program is \$30 million.

c. A \$10 million Small Business Emergency Assistance Guarantee Program to offer NJEDA's Premier Lender banks and Premier CDFIs a one-year, first-loss 50% guarantee of permanent working capital loans and lines of credit with a maximum of \$100,000 of exposure to the NJEDA per loan. This program has not yet been launched.

**D. Entrepreneur Program.**

32. Discussions with New Jersey entrepreneurial companies made the NJEDA also realize that without intervention, the entrepreneurs might fail. The impact of the COVID-19 Pandemic has been exacerbated by the recent dramatic decline in the financial markets impacting the liquidity of the investors who are critical to funding entrepreneurs. As a result, the ability for investors to support the short-term cash needs of entrepreneurial companies is uncertain.

33. To address this, the NJEDA Board authorized a \$5 million NJEDA Entrepreneur Support Program (the "Entrepreneur Program") to assist New Jersey entrepreneur businesses by creating a one-year

guarantee to support loans for working capital purposes advanced by an investor in the business.

**E. Additional Flexibility for Existing NJEDA Loan Programs.**

34. At the Special Meeting, the NJEDA Board also expanded flexibility for participants in existing NJEDA loan programs by: approving an immediate three (3) month payment moratorium for all borrowers; expanding delegated authority for staff to grant additional moratoria and to subordinate or release collateral to allow for additional financing if the borrower is facing financial hardship; and waiving certain late fees and modification fees from businesses impacted by the COVID-19 Pandemic.

**F. Implementation and Impact of New Programs.**

35. Because of the immediate pressing need, the NJEDA aimed to implement these new programs as soon as possible with the capacity to receive thousands of applications. Accordingly, the NJEDA staff worked non-stop to redesign the online application system to automate and expedite processing.

36. The COVID-19 Pandemic has decimated many New Jersey small- and medium-size businesses and not-for-profit enterprises, and the New Jersey economic outlook has shifted dramatically.

37. While the outlook ahead is uncertain, the NJEDA has worked, and continues to work, to create and implement programs that provide meaningful financial resources needed for businesses, workers, and communities, to survive.

The foregoing statements are true to the best of my knowledge, information, and belief. I am aware that, if any of the statements are willfully false, I may be subject to punishment.



---

Timothy Sullivan  
Chief Executive Officer  
State of New Jersey  
New Jersey Economic Development Authority

Dated: July 30, 2020

GUBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
25 Market Street  
P.O. Box 106  
Trenton, New Jersey 08625-0106  
Attorney for Plaintiff

By: Susan J. Wilkerson  
Attorney ID. # 171222016  
Deputy Attorney General  
(609) 376-2892

NEW JERSEY REPUBLICAN STATE  
COMMITTEE a/k/a the NJGOP; DECLAN  
O'SCANLON; HAL WIRTHS; LISA  
NATALE-CONTESSA; and ILEANA  
SCHIRMER,

Plaintiffs,

vs.

PHILIP D. MURPHY, in his Official  
Capacity as Governor of New  
Jersey,

Defendant.

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 084731

Civil Action

ON CERTIFICATION PURSUANT TO  
R. 2:12-1 FROM THE NEW JERSEY  
SUPERIOR COURT, LAW DIVISION,  
MERCER COUNTY

DOCKET NO.: MER-L-1263-20

**CERTIFICATION OF  
LESLEY HIRSCH  
IN SUPPORT OF THE STATE**

Lesley Hirsch, of full age, upon her oath certifies and  
says:

1. I am the Assistant Commissioner of the Office of Research  
and Information at the New Jersey Department of Labor and Workforce  
Development ("Department of Labor").

2. I have served as the Assistant Commissioner of the Office  
of Research and Information at the Department of Labor since July

2018. My office oversees the Bureau of Labor Statistics cooperative program; the U.S. Bureau of the Census' State Data Center; a labor market information bureau with regional and industry-specific expertise; state and federal workforce and benefits program reporting, monitoring systems, and evaluation teams; and the Center for Occupational Employment Information, which oversees the review and approval of private career schools and the Eligible Training Provider list. I have held senior research positions for over twenty years, twelve of which as a Labor Economist. In the ten years prior to joining the Department of Labor, I was the founding director of the New York City Labor Market Service (NYCLMIS), housed at the City University of New York's (CUNY) Graduate Center. NYCLMIS provided research and technical assistance services to public sector agencies and private sector organizations in New York City and the surrounding region. I earned a Bachelor of Arts from Barnard College at Columbia University, and completed doctoral work (all but dissertation) in political science at the CUNY Graduate Center.

3. The impact of the COVID-19 pandemic (the "Pandemic") on the New Jersey economy has been swift and devastating; in just a few short weeks, the State endured job separations at a previously unheard-of scale.

4. New Jersey's seasonally adjusted unemployment rate for the month of June 2020 was a historic 16.6 percent, 5.1 percentage

points higher than the national average and the second highest of the 51 states and territories for which the statistic is issued.

5. The Department of Labor ascribes the unprecedented job loss to the COVID-19 Pandemic, the spread of which necessitated business shutdowns and stay-at-home protocols enacted by Governor Murphy.

6. In April 2020, the State had a record employment loss of more than three-quarters of a million (756,200) jobs; the previous record monthly job loss was in September 1945; however, April 2020's loss was nearly eight times greater.

7. For comparison, the State added 405,900 jobs during the ten-year employment expansion that took place between February 2010 and February 2020; *It then lost an unparalleled 831,300 jobs during the employment collapse of the next two months (February 2020-April 2020), more than double the state's ten-year employment gain.*

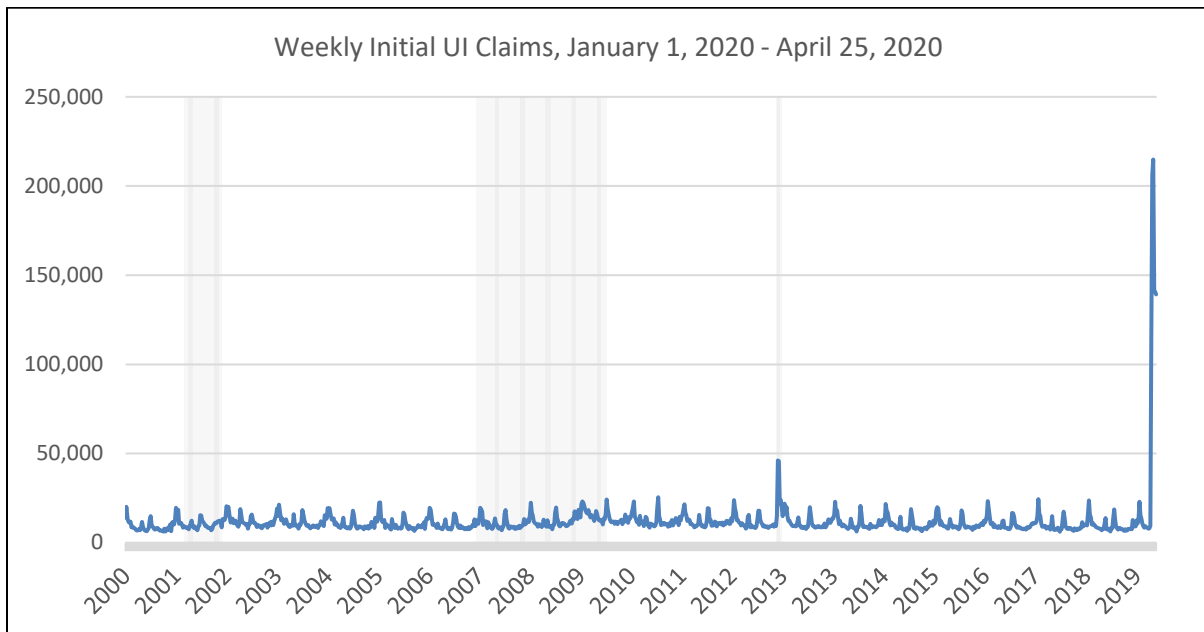
8. One data set that is able to show the real-time impact the Pandemic has had on the New Jersey economy is unemployment insurance ("UI") administrative data. This data depicts the dramatic, and again unprecedented, impact the Pandemic has had on New Jersey's workforce, employers, and economy during the six-week period beginning March 14, 2020 and ending April 25, 2020.

9. From the commencement of shutdown protocols on March 14, 2020 through the week ending April 25, there were an extraordinary



number of residents – 929,429 – who filed initial unemployment insurance claims:

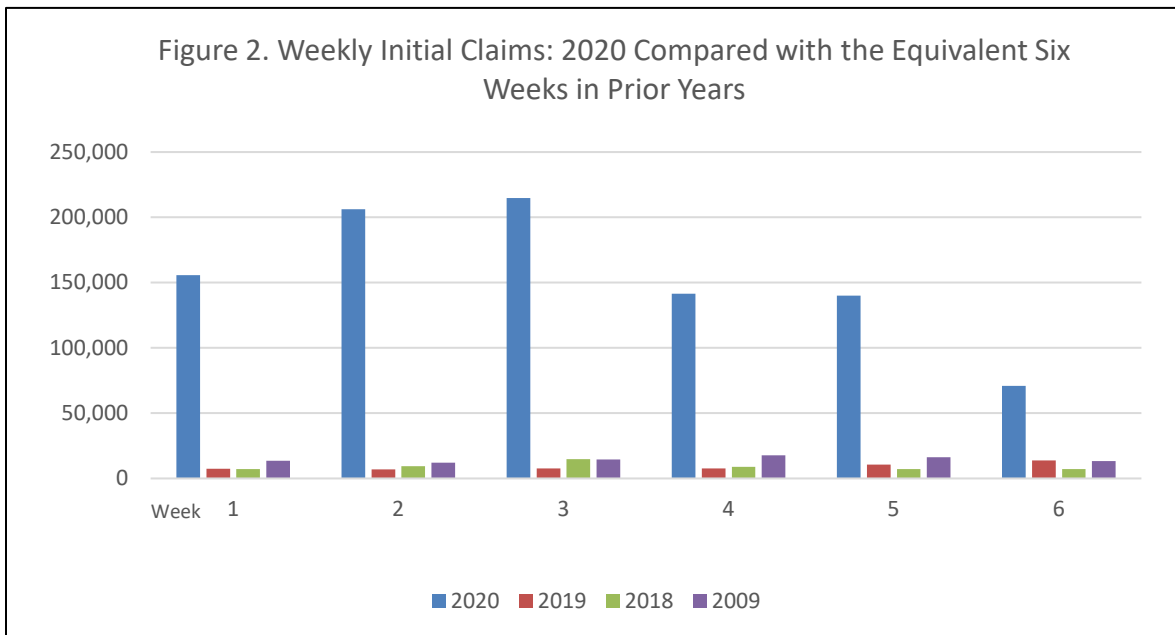
- a. In fact, this six-week total is almost twice the total number of claims filed in all of 2019 and more than 50 percent greater than the average *annual* number of initial claims between 1971 to 2019;
- b. This figure of 929,429 represents 21 percent of the total number of residents employed in New Jersey;
- c. Figure 1 shows weekly initial claims since 2000, with the most recent weeks to the far right of the chart. The spike at the far right demarcates the commencement of shutdown protocols.



10. Next, Figure 2 shows the number of initial claims per week for the six-week period from March 14, 2020 through April 25,

2020 compared to the number of claims for the same six-week period in 2018 and 2019; it also includes a comparison of the six-week period from March 14, 2020 through April 25, 2020 to the same six-week period in 2009, during the depths of the Great Recession:

- a. The week beginning March 21, 2020 (week 2), initial claims (206,253) were almost 30 times higher than the number in the same week in the previous year (6,894);
- b. Even for the week beginning April 19, 2020 (week 6), which had the fewest initial claims in the six-week period, there were more than five times more claims in 2020 (71,017) than there were in the comparable weeks in 2009 (13,351) and 2019 (13,778), and 10 times more than there were in 2018 (7,098).



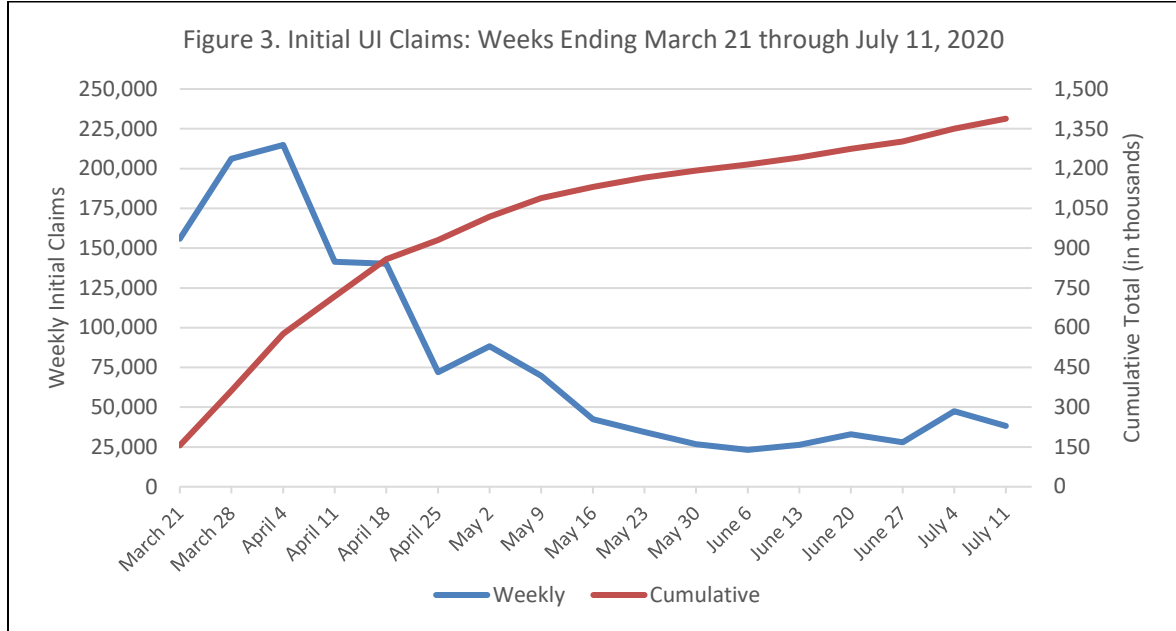
11. Because the UI system was put in place as a result of the Great Depression, there is no historical precedent for the current magnitude of demand for UI benefits ("Benefits").

12. From April 25, 2020 to July 11, 2020, the total number of initial claims jumped from 929,429 to 1,388,069.

13. New initial claims have been submitted by the tens of thousands each week (Figure 3). Weekly new initial claims have been as follows:

- a. March 21, 2020: 155,815
- b. March 28, 2020: 206,253
- c. April 4, 2020: 214,836
- d. April 11, 2020: 141,420
- e. April 18, 2020: 140,139
- f. April 25, 2020: 71,996
- g. May 2, 2020: 88,326
- h. May 9, 2020: 69,689
- i. May 16, 2020: 42,365
- j. May 23, 2020: 34,410
- k. May 30, 2020: 26,752
- l. June 6 2020: 23,166
- m. June 13, 2020: 26,392
- n. June 20, 2020: 33,004
- o. June 27, 2020: 27,965
- p. July 4, 2020: 47,391

q. July 11, 2020: 38,150



14. The number of initial claims will continue to grow by the tens of thousands in the upcoming weeks because as of July 11, 2020, there were 86,000 initial claims in the backlog of unprocessed claims.

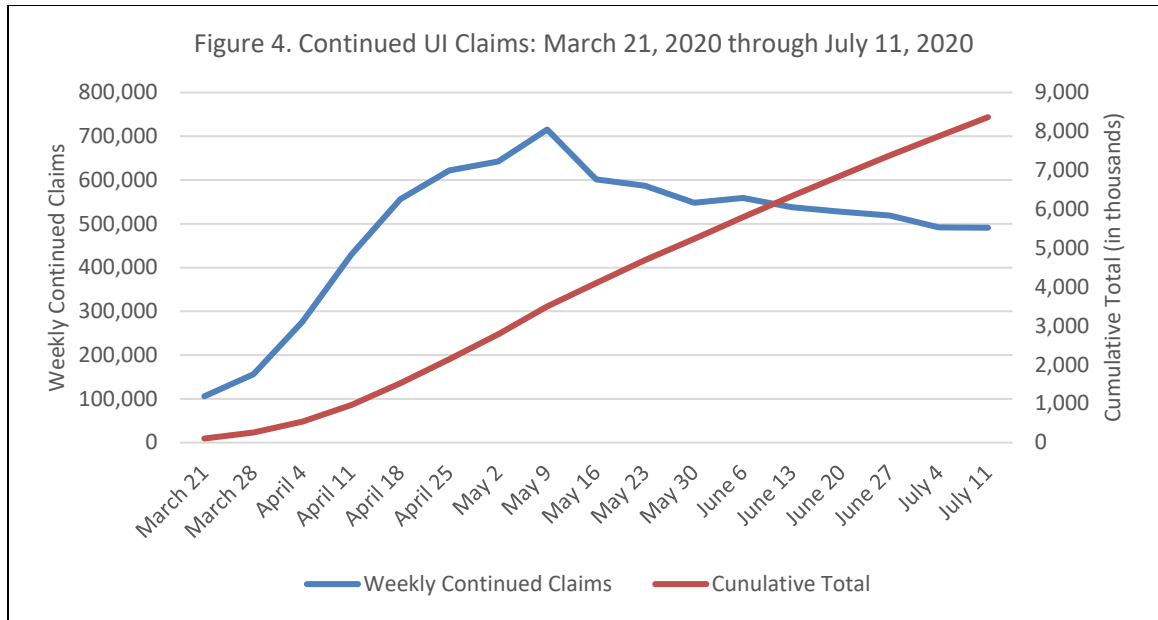
15. In addition to filing initial claims, claimants must certify each week their continued eligibility to collect Benefits. For the week ending May 9, 2020, the Department of Labor had a record number of more than 700,000 certified weekly eligibility claims.

16. For comparative purposes, the next highest number of certified weekly eligibility claims was the last recessionary high of 230,000 in March 2009.

17. After reaching a high of more than 715,433 in May, continuing claims have decreased each week as workers return to

their jobs. Nevertheless, the number of continuing claims is still close to 500,000. Weekly continuing claims were as follows:

- o March 21, 2020: 105,840
- o March 28, 2020: 156,181
- o April 4, 2020: 276,119
- o April 11, 2020: 429,388
- o April 18, 2020: 556,005
- o April 25, 2020: 621,753
- o May 2, 2020: 642,651
- o May 9, 2020: 715,433
- o May 16, 2020: 601,770
- o May 23, 2020: 586,532
- o May 30, 2020: 547,913
- o June 6, 2020: 559,057
- o June 13, 2020: 537,857
- o June 20, 2020: 527,870
- o June 27, 2020: 518,886
- o July 4, 2020: 491,565
- o July 11, 2020: 491,049



18. In terms of fiscal impact, the State pays UI benefits from its Unemployment Insurance Trust Fund ("Trust Fund"), which is funded through employer payroll tax contributions; however, payroll tax payments have not been adequate to replenish the Trust Fund balance.

19. \$3.3 billion was paid out from the Trust Fund since the beginning of the Pandemic through July 11, 2020; this does not include the benefits paid by the federal government.

20. To further illustrate the dire condition of New Jersey's economy and the fact that payroll taxes have not been adequate to replenish the Trust Fund, the Trust Fund has already decreased from a robust \$2.7 billion dollars on March 16, 2020 before the COVID-19 pandemic, to \$760 million as of July 7, 2020.

21. The State has requested an advance of up to \$1.7 billion from the federal government in order to keep the

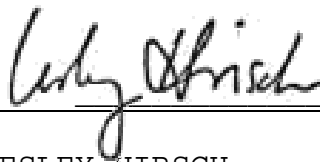
Trust Fund solvent and continue to make benefit payments from August through October 2020.

22. The Department of Labor anticipates that it will be a protracted period of several months to get hundreds of thousands of New Jersey residents back onto payrolls after adequate testing, contact tracing, and social distancing measures have been put in place, according to the Governor's recovery plan.

23. For instance, in June 2020, even though New Jersey experienced its greatest monthly employment increase (130,900 jobs) in history, the State simultaneously had the highest level of unemployment (16.6%).

24. Until non-essential businesses that have been shuttered re-open, the Department of Labor cannot know how many businesses will survive and begin to employ the unemployed and how many businesses will be forced to permanently close.

The foregoing statements are true to the best of my knowledge, information, and belief. I am aware that, if any of the statements are willfully false, I may be subject to punishment.



---

LESLEY HIRSCH  
Assistant Commissioner of the Office of  
Research and Information  
New Jersey Department of Labor and  
Workforce Development

Dated: July 30, 2020

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
R.J. Hughes Justice Complex  
25 Market Street  
PO Box 106  
Trenton, NJ 08625-0106

By: Jamie M. Zug  
Deputy Attorney General  
Attorney #216832016  
(609) 376-2913

NEW JERSEY REPUBLICAN STATE  
COMMITTEE a/k/a the NJGOP; DECLAN  
O'SCANLON; HAL WIRTHS; LISA  
NATALE-CONTESSA; and ILEANA  
SCHIRMER,

Plaintiffs,

vs.

PHILIP D. MURPHY, in his Official  
Capacity as Governor of New  
Jersey,

Defendant.

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 084731

Civil Action

ON CERTIFICATION PURSUANT TO  
R. 2:12-1 FROM THE NEW JERSEY  
SUPERIOR COURT, LAW DIVISION,  
MERCER COUNTY

DOCKET NO.: MER-L-1263-20

**CERTIFICATION OF  
MICHELE MCGAHEY.**

Michele McGahey, of full age, hereby certifies and says:

1. I am employed as an Attorney Assistant by the Department of Law and Public Safety, Division of Law, with offices at the R.J. Hughes Justice Complex, 25 Market Street, Trenton, New Jersey 08625. In my capacity as an Attorney Assistant, I am assigned to assist with the representation of Governor Philip D. Murphy in the above-captioned case.



2. On July 27, 2020, Law Librarian Robert Heym of the New Jersey State Library sent me an email, attached as Exhibit A, including a link that I used to download the following documents:

- a. Plaintiffs'/Appellants' Reply Brief in Further Support of Emergency Declaratory Relief and Preliminary Injunction, attached as Exhibit B.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

        s/ Michele McGahey        

Michele McGahey  
Attorney Assistant

Dated: 7/31/2020

# **EXHIBIT A**

**From:** [reflaw](#)  
**To:** [Michele McGahey](#)  
**Subject:** [EXTERNAL] Re: Lance v. McGreevey  
**Date:** Monday, July 27, 2020 10:10:17 AM

---

Incidentally, the briefs that we have scanned in Lance have been uploaded to

<https://hdl.handle.net/10929.1/26827>

Bob Heym

---

**From:** Michele McGahey <[Michele.McGahey@law.njoag.gov](mailto:Michele.McGahey@law.njoag.gov)>  
**Sent:** Sunday, July 26, 2020 11:00 PM  
**To:** reflaw  
**Subject:** RE: Lance v. McGreevey

Thanks a million to both you and Leslie!

Michele

---

**From:** reflaw <[reflaw@njstatelib.org](mailto:reflaw@njstatelib.org)>  
**Sent:** Friday, July 24, 2020 2:08 PM  
**To:** Michele McGahey <[Michele.McGahey@law.njoag.gov](mailto:Michele.McGahey@law.njoag.gov)>  
**Subject:** [EXTERNAL] Re: Lance v. McGreevey

Michele,

I have forwarded to you information (found by our supervisor, Leslie) on the fact that there are no

transcripts of oral arguments in this case (on record).

Jones

---

**From:** Michele McGahey <[Michele.McGahey@law.njoag.gov](mailto:Michele.McGahey@law.njoag.gov)>  
**Sent:** Thursday, July 23, 2020 5:39 PM  
**To:** reflaw  
**Subject:** Lance v. McGreevey

Back in December of 2019, you so kindly provided me with all the Briefs in Lance v. McGreevey. Would you also have a transcript of oral argument? Many thanks for your great help!

Michele

Michele D. McGahey  
Attorney Assistant  
Division of Law  
Richard J. Hughes Justice Complex  
25 Market Street  
7<sup>th</sup> Floor, West Wing  
P.O. Box 093  
Trenton, NJ 08625  
Phone: 609-376-2786  
Fax: 609-341-5030  
Email: [Michele.mcgahey@law.njoag.gov](mailto:Michele.mcgahey@law.njoag.gov)

CONFIDENTIALITY NOTICE The information contained in this communication from the Office of the New Jersey Attorney General is privileged and confidential and is intended for the sole use of the persons or entities who are the addressees. If you are not an intended recipient of this e-mail, the dissemination, distribution, copying or use of the information it contains is strictly prohibited. If you have received this communication in error, please immediately contact the Office of the Attorney General at (609) 292-4925 to arrange for the return of this information.

CONFIDENTIALITY NOTICE The information contained in this communication from the Office of the New Jersey Attorney General is privileged and confidential and is intended for the sole use of the persons or entities who are the addressees. If you are not an intended recipient of this e-mail, the dissemination, distribution, copying or use of the information it contains is strictly prohibited. If you have received this communication in error, please immediately contact the Office of the Attorney General at (609) 292-4925 to arrange for the return of this information.

# **EXHIBIT B**

A 103 SEP 2003

FILED

JUL 19 2004

*Stephen W. Lounsbury*  
CLERK

**HONORABLE LEONARD LANCE**, as a citizen of New Jersey and a taxpayer;  
**HONORABLE ALEX DeCROCE**, as a citizen of New Jersey and a taxpayer; **HONORABLE JOSEPH M. KYRILLOS, JR.**; as a citizen of New Jersey and a taxpayer; **HONORABLE STEVEN LONEGAN**, as a citizen of New Jersey and a taxpayer; **HONORABLE BRET SCHUNDLER**, as a citizen of New Jersey and a taxpayer; and **ROBERT LINDMARK**, a citizen and a taxpayer

Plaintiffs/Appellants,  
v.

**HONORABLE JAMES E. McGREEVEY**, Governor of the State of New Jersey; **HONORABLE JOHN E. McCORMAC**, Treasurer of the State of New Jersey; and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

Defendants/Respondents,  
and

**HONORABLE RICHARD J. CODEY**, President of the New Jersey Senate; and **HONORABLE ALBIO SIRES**, Speaker of the Assembly

Intervenors/Defendants/  
Respondents.

: SUPREME COURT OF NEW JERSEY  
: DOCKET NO: 56,643

: CIVIL ACTION

: DIRECT CERTIFICATION FROM  
: SUPERIOR COURT OF NEW JERSEY  
: APPELLATE DIVISION  
: DOCKET NO: A-103-03

: ON APPEAL FROM  
: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION: COUNTY OF MERCER  
: DOCKET NO: MER-L-1633-04

: SAT BELOW:

: HON. LINDA R. FEINBERG, J.S.C.

ot 4

---

**PLAINTIFFS'/APPELLANTS' REPLY BRIEF IN FURTHER SUPPORT OF EMERGENT DECLARATORY RELIEF AND PRELIMINARY INJUNCTION**

---

On the Brief:  
Mark D. Sheridan  
James K. Webber, Jr.  
Andrew C. White  
Andrew T. Fede  
Thaddeus Maciag  
W. Timothy Howes

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT .....	1
LEGAL ARGUMENT	
I.    THE NEW JERSEY STATE CONSTITUTION REQUIRES A BALANCED BUDGET .....	2
A.    Debt Is Not Revenue .....	3
B.    The Proceeds Of Bonds Sold Pursuant To The Deficit Bond Acts Cannot Be Used To Offset Appropriations .....	5
II.   DEFENDANTS FAIL TO UNDERMINE PLAINTIFFS' ARGUMENTS ON THE DEBT LIMITATION CLAUSE .....	8
III.  DEFENDANTS HAVE PROVIDED NO BASIS FOR THIS COURT TO AVOID ITS ROLE TO INTERPRET THE CONSTITUTION AND TO ACT AS A CHECK ON THE POWERS OF THE POLITICAL BRANCHES .....	12
CONCLUSION .....	15

TABLE OF AUTHORITIES

CASES

Abbott v. Burke,  
153 N.J. 480 (1998) ..... 13

Asbury Park Press, Inc. v. Woolley,  
33 N.J. 1 (1960) ..... 13

City of Camden v. Byrne,  
82 N.J. 133 (1980) ..... 2

Gilbert v. Gladden,  
87 N.J. 275 (1981) ..... 12, 13

Lonegan v. State,  
174 N.J. 435 (2002) ..... 6, 8, 9, 10, 11

Lonegan v. State,  
176 N.J. 2 (2003) ..... 6, 8, 9, 10, 11

Marbury v. Madison,  
1 Cranch 137, 5 U.S. 137, 2 L. Ed. 60 (1803) ..... 12

Robinson v. Cahill,  
70 N.J. 155 (1976) ..... 2, 13

Valent v. New Jersey State Bd. of Educ.,  
114 N.J. Super. 63 (Ch. Div. 1971) ..... 12

Vreeland v. Byrne,  
72 N.J. 292 (1977) ..... 13

White v. North Bergen Twp.,  
77 N.J. 538 (1978) ..... 12



PRELIMINARY STATEMENT

This Court's primary role is to be the final arbiter of the meaning of the terms of the New Jersey State Constitution. It is a role the Court has fulfilled with distinction throughout its history. On occasion, the Court has deferred to the Legislature and the Executive as those branches exercised their constitutional prerogatives in managing the State's finances. Given the various and complex factors involved with those tasks, the Court's deference has been understandable.

In this matter, however, Defendants ask the Court not simply to defer to their legitimate exercise of authority, but to abandon altogether the project of reviewing the constitutionality of State borrowing. They do so in support of an unprecedented bonding scheme that flouts two provisions of the State Constitution and, if carried out, will threaten the long-term health of the public fisc. The proper response from the Court to such a request is not deference. In the face of Defendants' proposed plan, the Court is obliged to reassert its authority in this arena and underscore a simple principle that has long been recognized as the law in New Jersey: borrowing to balance the budget is impermissible.

Nothing in Defendants' opposition briefs has undercut or shed new light on Plaintiffs' contentions in this matter. The issues remain as they were explained at length in Plaintiffs'

initial brief to the Court, and in their papers submitted below. Plaintiffs pause to highlight their response to just a few of Defendants' arguments.

#### LEGAL ARGUMENT

##### **I. THE NEW JERSEY STATE CONSTITUTION REQUIRES A BALANCED BUDGET**

The New Jersey State Constitution requires a balanced budget. See City of Camden v. Byrne, 82 N.J. 133, 151 (1980). This truism has been accepted by every Governor and Legislature since the adoption of the New Jersey State Constitution in 1947. If deficit financing was constitutionally permissible, is it possible that fifty-seven (57) budgets would have been proposed and enacted by Governors and Legislatures (many facing fiscal crises and at least one constitutional crisis - see Robinson v. Cahill, 70 N.J. 155 (1976)) without one previous attempt to use borrowed funds to balance the budget? Indeed, even Governor McGreevey, echoing his predecessors, expressed what he had learned from two decades of public service when he stated: "[w]e simply cannot avoid our responsibility by spending money we not have or engaging in flagrantly unconstitutional deficit spending."<sup>1</sup> Defendants' arguments rewrite this history and

---

<sup>1</sup> June 26, 2003 audio clip of Governor McGreevey, contained on the State's website, which can be found at [http://www.state.nj.us/governor/audio\\_clips/20030626.html](http://www.state.nj.us/governor/audio_clips/20030626.html) (last viewed July 18, 2004).

attempt to create a new paradigm in which the Governor becomes the final lexicographer of terms in the New Jersey State Constitution, including "revenue," so that the requirement of a balanced budget can be obliterated. This new archetype would serve only to allow New Jersey to join the Federal Government as a devotee of deficit financing. In doing so, it would usurp from the citizens and taxpayers of this State the last iota of their right to decide whether or not to go into debt.

**A. Debt Is Not Revenue**

Defendants' papers turn a blind eye to these facts, choosing instead to rely on the notion that because the Governor is authorized to certify what the "revenue" of the State is, he is free to define "revenue" as he sees fit - even if the Governor's definition defies common understanding, the State's traditional treatment of the term, and renders the Balanced Budget Clause superfluous. Defendants' position in this regard is unavailing.

Without repeating the arguments set forth in their initial papers, Plaintiffs maintain that "revenue" never has been, and never can be, considered to include debt. Rather than address this matter in a straightforward manner, Defendants have attempted to muddy the waters with repeated references to "interfund transfers" and bonds issued prior to the enactment of

the Balanced Budget Clause. Plaintiffs will attempt to shed light on that which Defendants have endeavored to keep hidden.

The Balanced Budget Clause requires that "revenues" meet appropriations in order to balance the budget. Defendants suggest that "interfund transfers," while not listed under "revenue," are used to offset appropriations. Defendants suggest, but can not prove, that those "interfund transfers" include proceeds from the sale of bonds. From those two "facts," Defendants leap to the erroneous conclusion that "revenue" includes debt in the form of bond proceeds. That is not so.

While a close examination of the "interfund transfers" makes clear that a small percentage of the monies transferred to the General Fund come from funds that were created with proceeds from the sale of general obligation bonds, what is not clear is whether those monies are actually the proceeds from the sale of general obligation bonds or interest earned on those proceeds, which would properly be considered "revenue." See Letter from Richard Fair, State Auditor, to Senator Leonard Lance dated July 8, 2004 (Pa167). Even assuming the transferred monies were actually proceeds from the sale of general obligation bonds, a point Plaintiffs do not concede and Defendants have not proven, the State itself, in its budget, does not characterize such "interfund transfers" as "revenue." (Da6). That admission is significant because it demonstrates that bond proceeds are not

"revenue." Moreover, that treatment is consistent with the numerous authorities defining "revenue" as being tantamount to income.<sup>2</sup> Thus, if the Balanced Budget Clause is read as a stand-alone provision, as Defendants maintain it should be, it does not permit the use of bonds, either general obligation or contract, to offset appropriations because such debts are not "revenue."

**B. The Proceeds Of Bonds Sold Pursuant To The Deficit Bond Acts Cannot Be Used To Offset Appropriations**

Nevertheless, Defendants assert that bonds are used to offset appropriations through "interfund transfers."<sup>3</sup> Assuming *arguendo* Defendants' position is correct (a dubious assumption to make), Defendants ignore one significant fact -- all previous "interfund transfers" have involved transfers from funds supported by general obligation bonds.<sup>4</sup> To the extent proceeds

---

<sup>2</sup> Defendants argue that defining "revenue" as income would foreclose use of monies traditionally treated as "revenue." Defendant cite funds remaining at the end of the previous year as an example. (Def. Br. at 41). To demonstrate their point, they argue that monies remaining in an average citizens checking account are not "income." (Def. Br. at 42). Of course, what Defendants ignore is that those funds, to the extent they were "income" in the prior year, are now "revenue" "on hand" as referenced in the Balanced Budget Clause. Defendants' attempted comparison fails as a matter of simple logic.

<sup>3</sup> Even assuming such transfers have in the past included bond proceeds, that does not make the practice constitutional.

<sup>4</sup> As detailed in Plaintiffs' initial papers, the majority of monies sent to the General Fund through "interfund transfers" are from funds supported with taxes, fees, sales of lottery ticket and other resources commonly understood to be "revenue." (Pal67).

from the sale of general obligation bonds have been used to offset appropriations, it has been constitutionally permissible only if the Debt Limitation Clause is read as an exception to the Balanced Budget Clause.

To reach this conclusion, one must read the Balanced Budget Clause and the Debt Limitation Clause together. As Defendants point out in their opposition papers, immediately preceding the Constitutional Convention of 1947, there were numerous general obligation bond issues aimed at providing relief from the Great Depression. See Def Br. at p.45.<sup>5</sup> It is seemingly with that accumulation of debt in mind and the number of states defaulting on similar debt, that the Framers enacted the Balanced Budget Clause. See Lonegan v. State, 174 N.J. 435 (2002) ("Lonegan I") (citing Proceedings of the Constitutional Convention of 1844, at 519 (1942) (regarding the enactment of the Debt Limitation Clause in 1844)). Indeed, at the same time as they enacted the Balanced Budget Clause, the Framers raised the limit the State could borrow without voter approval under the Debt Limitation Clause to 1% of appropriations. It is likely that the Framers' intended purpose was to provide a means to deal with those years

---

<sup>5</sup> "Def. Br." shall refer to the brief in opposition submitted on behalf of Defendants Governor McGreevey and Treasurer McCormac.



in which there was a modest fiscal shortfall.<sup>6</sup> Viewed in this light, it is reasonable to conclude that the Debt Limitation Clause should be read as an exception to the Balanced Budget Clause. The Opinion of Albert Porrone, Legislative Counsel, Office of Legislative Services, further supports such a conclusion. (Pa23).

Thus, the State may only use bond proceeds to offset appropriations if these bonds are issued in accordance with the Debt Limitation Clause, i.e., are general obligation debt submitted to the voters for approval. Under this theory, the bonds issued pursuant to the Deficit Bond Acts do not qualify.

Whether the Court should read the Balanced Budget Clause and the Debt Limitation Clause as entirely separate or interrelated, it matters not. Plaintiffs submit that neither reading permits the use of authority-issued bonds to offset appropriations. Plaintiffs further note that if the State's position is correct that "interfund transfers" involving proceeds from the sale of general obligation bonds have been used to offset appropriations, the only reason that could be permissible is that the Debt Limitation Clause is an exception to the Balanced Budget Clause. Notably, it would appear that a

---

<sup>6</sup> Regrettably, there is no direct legislative history on the enactment of the Balanced Budget Clause. Plaintiffs assume this is because its intended purpose is self-evident.

contextual reading of the two clauses is in keeping with this Court's rulings in Lonegan I and II, as it would make the Debt Limitation Clause inapplicable to contract bonding while at the same time prohibiting contract bond proceeds from being used to offset appropriations.

**II. DEFENDANTS FAIL TO UNDERMINE PLAINTIFFS' ARGUMENTS ON THE DEBT LIMITATION CLAUSE**

Defendants' briefs in opposition do little to refute Plaintiffs' contention that this case is indeed one of first impression with regard to the Debt Limitation Clause. This case is not simply Lonegan I and II all over again, as Defendants would have the Court believe. See Lonegan v. State 176 N.J. 2 (2003) ("Lonegan II"). This case is the result of Defendants' stretching, pulling, distorting, and exploiting the Lonegan decisions and their precursors to create a circumstance that the State has never before seen, and that threatens to obviate not one, but two, constitutional provisions.

The Lonegan Courts did not anticipate the present situation, as they were limited to the facts the Court had before it. In Lonegan I, the Court went out of its way to point out that the debt at issue was sui generis. Lonegan I, supra, 174 N.J. at 461. Because the debt at issue in that opinion was authorized by the Constitution (indeed, it was mandated by it), the Court held that it did not offend the Debt Limitation



Clause. Id. at 461-462. Similarly, in Lonegan II the Court readily acknowledged that its decision regarded only the statutes at issue in the case. Lonegan II, supra, 176 N.J. at 5. It even concluded its opinion in Lonegan II with the following: "We are unwilling to disrupt the State's financing mechanisms in the circumstances presented to us[.]" Id. at 21 (emphasis added).

Defendants cannot refute that the Court has never ruled on the kind of bonding scheme at issue. It is true, as Defendants point out, that the Lonegan II Court chose not to side with sister jurisdictions in looking to the purpose of a proposed bond issuance to determine its constitutionality. Lonegan II, supra, 176 N.J. at 21. But in declining to pass on the constitutionality of the challenged bond issuances at issue in that case, the Lonegan II Court declined to make judgments about the political branches' decisions regarding specific and discrete government priorities, all of which were entirely legal. There is nothing per se unconstitutional or illegal in building schools, for example, or undertaking other legitimate objects of government. In the present matter, however, the very purpose of the bond issuance is impermissible. By creating "revenue" to be deposited in the General Fund without any intended purpose other than to provide the State with money it

could not find elsewhere, the State has created a scheme whose sole purpose is to evade the Balanced Budget Clause.

Plaintiffs are not asking this Court to look at minutia of governmental appropriations or the purpose to which the bonds should be put in terms of deciding the worthiness of any particular projects. Rather, Plaintiffs are asking the Court to look at the purpose of the present financial proposal in broad, constitutional terms, recognizing the simple fact that the State wants to use borrowing that is not authorized by the voters to support current governmental operations generally. This is not asking the Court to become inappropriately involved in the fiscal matters of the State.

Defendant EDA's Opposition Brief helps make Plaintiffs' point. At page 10 of its Brief, the EDA writes, "the statutes themselves put to rest any question, under the Appropriations Clause or otherwise, about the legitimacy of the use to which the State may put the bond proceeds. . . . both statutes make clear that whatever their application, the bond proceeds will only be used for a *lawful* purpose." No reasoning could be more circular. Echoing their erroneous arguments on the justiciability of this matter, discussed below, Defendants' position is that their actions will be lawful because they have said they will be. Defendants' position amounts to an invitation to the Court to leave them alone to do as they wish,

including to interpret the Constitution as it suits them. For all of Defendants' posturing about the importance of maintaining a balance between the branches of government, Defendants' actual goal appears to be the collapse of the functions of the judiciary into the other two. Plaintiffs respectfully urge the Court to reject such an invitation.<sup>7</sup>

Defendants also make much of the supposed uncertainty or instability that Plaintiffs' position would create. Their oft-repeated suggestion is a red herring. As Plaintiffs have argued throughout this matter, the Court need not disturb many years of precedent to find in their favor.<sup>8</sup> Those precedents can remain and continue to provide adequate guidance to the political branches as they fulfill their legitimate constitutional functions. In this instance, however, the political branches have not sought the well-established shelter of the Court's

---

<sup>7</sup> Even if the Court were to accept Defendant EDA's position that the Balanced Budget Clause and the Debt Limitation Clause are separate and distinct, its argument that its proposed bond issuance is permissible simply because it does not run afoul of the Debt Limitation Clause fails. Like any piece of legislation, if the purpose of the Deficit Bond Acts violates any constitutional provision, they are invalid. If the Court holds that proceeds from the proposed bonds may not be deposited into the General Fund in order to "balance" the State's budget, then the Deficit Bond Acts are unconstitutional and the EDA must be enjoined from acting pursuant to them.

<sup>8</sup> Indeed, a ruling in Defendants' favor would undo nearly 60 years of history regarding the New Jersey State Constitution's requirement that the budget be balanced without resort to deficit financing.

previous holdings. To the contrary, they have brazenly attempted to push the envelope and stake out new ground to achieve unconstitutional objectives. Under these circumstances, the Court will not create uncertainty by holding for Plaintiffs. Rather, by holding for Plaintiffs, it will establish a "bright line" which the political branches will learn they may not cross: proceeds from the sale of bonds may not be used to "balance" the budget, unless it is subject to the restrictions of the Debt Limitation Clause.

**III. DEFENDANTS HAVE PROVIDED NO BASIS FOR THIS COURT TO AVOID ITS ROLE TO INTERPRET THE CONSTITUTION AND TO ACT AS A CHECK ON THE POWERS OF THE POLITICAL BRANCHES**

Plaintiffs respond in passing to Defendants' assertion that this Court has no role in the present dispute.<sup>9</sup> It is without question that this Court is the "ultimate arbiter of the Constitution of this State." Gilbert v. Gladden, 87 N.J. 275, 282 (1981). Despite Defendants' claims to the contrary, the Court cannot ignore the overarching principle that the New Jersey Constitution is "the business of the Courts," and the Court's interpretative role of that historic document "is a matter of judicial obligation." White v. North Bergen Twp., 77 N.J. 538, 555 (1978).

---

<sup>9</sup> In their moving papers, Plaintiffs set forth a plethora of legal authority demonstrating the role of the Courts as the interpretative arm in our system of checks and balances. As such, Plaintiffs will not repeat those arguments here.

[I]n matters of substantial constitutional dimension the Executive and the Legislature are not the determining or final arbiters of what is and what is not constitutional. Since Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 2 L.Ed. 60 (1803), this obligation is imposed upon the judiciary, not the executive or legislative branches.

[Valent v. New Jersey State Bd. of Educ., 114 N.J.Super. 63, 69 (Ch. Div. 1971).]

In its role as arbiter, the Court has not shied from exercising its institutional responsibility to act as a check on the actions of the Executive and Legislative branches. If Defendants' arguments had merit, this Court would have left it to the political branches to decide the meaning of the Education Clause of the New Jersey State Constitution (see Robinson v. Cahill, 70 N.J. 155 (1976); Abbott v. Burke, 153 N.J. 480 (1998)) and should not have voided an appointment to the Supreme Court (see Vreeland v. Byrne, 72 N.J. 292 (1977)). Despite the often difficult nature of its duties, the Court must not disregard its responsibilities now.

It cannot be forgotten that ours is a government of laws and not of men, and that the judicial department has imposed upon it the solemn duty to interpret the laws in the last resort. *However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it.*

Gilbert v. Gladden, 87 N.J. 275, 289 (N.J. 1981) (quoting Asbury Park Press, Inc. v. Woolley, 33 N.J. 1, 12 (1960) (emphasis added)).

Arguing the Court should abdicate its role as arbiter, Defendants assert that "the very essence of representative democracy" is threatened if this Court were to exercise its role as a "check" on the other branches of government. (Inter. Br. at 9).<sup>10</sup> Plaintiffs respectfully submit that the "very essence of representative democracy" would, in reality, be shattered if this Court were to heed Defendants' call. Renunciation of its responsibility would remove the Courts from our tripartite form of government as a check on the other two branches of government.

This Court has not shirked its responsibilities in that regard in the past, and Plaintiffs respectfully request that the Court not forego its constitutional role now.

---

<sup>10</sup> "Inter. Br." shall refer to the brief in opposition submitted on behalf of Intervenor-Respondents Richard J. Codey as President of the Speaker of the New Jersey Senate and Albio Sires as Speaker of the New Jersey General Assembly.



**CONCLUSION**

Based upon the foregoing and the arguments submitted in their initial papers, Plaintiffs respectfully submit that this Court should overturn the decision below and grant Plaintiffs the relief requested in their initial papers.

DRINKER BIDDLE & REATH LLP



\_\_\_\_\_  
Mark D. Sheridan, Esq.  
Robert M. Leonard, Esq.  
Attorneys for the Honorable  
Leonard Lance, the Honorable Alex  
DeCroce, the Honorable Joseph M.  
Kyrillos, Jr. and Robert Lindmark

Dated: July 19, 2004

And

CONTANT ATKINS & FEDE, LLC

\_\_\_\_\_  
/s/Andrew T. Fede  
Andrew T. Fede, Esq.  
Attorneys for Plaintiff  
Honorable Steven M. Lonigan

Dated: July 19, 2004

MACIAG & ASSOCIATES, P.C.

\_\_\_\_\_  
/s/ Thaddeus Maciag  
Thaddeus Maciag, Esq.  
Attorneys for Plaintiff  
Honorable Bret Schundler

Dated: July 19, 2004

HOWES & HOWES

/s/ W. Timothy Howes  
W. Timothy Howes, Esq.  
Attorneys for Plaintiff  
Honorable Bret Schundler



LEGISLATIVE SERVICES COMMISSION



New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
Executive Director  
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI  
Legislative Counsel

LEONARD J. LAWSON  
First Assistant Legislative Counsel

MARCI LEVIN ROCHMAN  
Assistant Legislative Counsel

JAMES G. WILLSON  
Senior Legislative Counsel

SENATE

BYRON M. BARR  
ANTHONY E. BUCCO  
RICHARD J. COFFEY  
MIA M. GILL  
BERNARD F. KENNY, JR.  
LEONARD LANCE  
ROBERT S. LITTELL  
ROBERT W. EDWARDS

GENERAL ASSEMBLY

CHRISTOPHER "KIP" BATTIMAN  
FRANCIS J. BLASE  
JOHN J. BURZICHELLI  
ALEX DIACIOCCO  
GUY R. DRISCOLL  
JOSEPH J. ROBERTS, JR.  
ALBIO EDDES  
LORETTA WEDNEBERG

June 17, 2004

Honorable Leonard Lance  
Senate Chambers  
P.O. Box 099  
Trenton, New Jersey 08625-0099

Dear Senator Lance:

You have asked for our advice whether certain proceeds<sup>1</sup> of long term debt may lawfully be considered "revenue" for the purpose of "balancing" the budget under Article VIII, Section II, paragraph 2 of the New Jersey Constitution. Further, you have asked if this use of long term debt as revenue to arrive at a balanced budget is challenged and the Supreme Court ultimately holds this use is violative of the Constitution, what is the exposure of the State in terms of a court remedy.

It is our opinion that the use of a device to securitize revenues from future years to finance appropriations in the current year is violative both of the balanced budget requirement and the debt limitation clause of Article VIII, Section II of the Constitution, paras. 2 and 3. Our advice relies on the need to read both paragraphs together in a manner which is faithful to the revision made in the 1947 Convention and which seems to have been lost in the case law and legislation enacted since. Our attempt to set forth that understanding follows with acknowledgement of contrary case law and legislation as relevant.

<sup>1</sup> According to the Governor's Budget Message, dated February 24, 2004, the proposed \$26.3 billion budget is balanced in part by revenue enhancements of which \$1.52 billion comes "from the securitization of motor vehicle surcharges and new revenue from a 45 cent increase in the cigarette tax . . ." page B-5. These proceeds are cited again at page C-8 of the Message with some explanation of the motor vehicle surcharges relied on. The \$1.52 billion is then included as anticipated in FY2005 as State revenues in the Department of the Treasury, page C-17.



Honorable Leonard Lance

Page 2

June 17, 2004

The constitution mandates that withdrawals of monies from the State treasury can be accomplished only by legislative appropriation and that there shall be "one general appropriation law covering one and the same fiscal year." Its exact terms in this respect are:

No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the fiscal year is made, necessary provision may be made to effect the transition. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.

[N.J. Const. (1947), Art. VIII, Sec. II, para. 2.]

The constitutional requirement of a unitary general appropriations law covering but a single fiscal year is the center beam of the state's fiscal structure. It expresses the basic understanding that fiscal soundness and integrity are the foundations for proper governmental operations. The constitutional plan for the expenditure of public revenues for governmental purposes centralizes and simplifies state financial affairs, serving to improve the operations of government, define fiscal commitments, and clarify official responsibility. [Karcher v. Kean, 97 N.J. 483, 488 (1984), citing *City of Camden v. Byrne*, 82 N.J. 133, 146 (1980)].

It is this constitutional provision that requires that appropriations be incorporated into a single balanced budget in which current expenditures of those appropriations must be met by current revenues.

The payment of an expenditure of a current fiscal year appropriation matched by the proceeds of State borrowing to be paid from revenue from a future fiscal year would likely be viewed under our Constitution as an effort ". . . to increase state expenditures, which presumably have already been calculated and included in a unitary budget that effectively appropriates revenues sufficient to meet all such expenditures for the fiscal year, [and] would tend to tilt the



Honorable Leonard Lance

Page 3

June 17, 2004

budget toward imbalance. This cannot be done without violating the constitutional command that the State's finances be conducted on the basis of a single fiscal year covered by a single balanced budget." City of Camden, at 151.

You should be aware that certain revenue collected after the end of a State fiscal year may be considered "revenue on hand and anticipated which will be available to meet" the appropriations made for the previous fiscal year. N.J.S.A. 52:27B-46 provides that "all accounts receivable and payable, all balances of all funds, and such other information as is required for a proper statement of the financial conditions and operations of the State" are to be maintained through "a complete set of double-entry accounts, which shall reflect directly or through proper controlling accounts, on an accrual basis, all assets, liabilities, revenues, and expenditures of the State, and all of its accounting agencies." This statute provides the legislative recognition that funds constructively in the State's treasury during the fiscal year may be treated as actually in the treasury.<sup>2</sup>

At least since this statute's enactment in its current form under P.L.1944, c.112, the State's revenue and appropriations accounting has been based on the accrual method of accounting. N.J.S.A. 52:27B-46 was enacted as one of the bills proposed by the New Jersey Commission on State Administrative Reorganization, which, in Part 2 of its report of March 1944, recommended streamlining measures involving State fiscal procedures, that were expressed in the Commission's memorandum on the bill, as part of an overall effort ". . . to provide the facilities . . . [to] the Governor to meet . . . his obligation . . . to provide adequate direction and control of both revenues and expenditures . . . without conflict in authority between the executive and legislative branch . . ." Report of the New Jersey Commission on State Administrative Reorganization, Part 2, March 1944, at 1. This method of accounting is further noted to be applicable to the revenues available to support the State appropriation act in N.J.S.A. 52:27B-46, which in addition to requiring the preparation of the public annual fiscal year comprehensive financial report of the State, provides that the Director of the Division of Budget and Accounting in the Department of the Treasury prepare a ". . . summarized monthly report of the General State Fund no later than 30 days following the end of each month which shall reflect the accrued revenues as compared with anticipated revenues, itemized by revenue source for major taxes, [and] by department for miscellaneous revenues. . . ." These statutorily established revenue accounting rules, although without specific mention in the convention proceedings, were, along with all other statutory and other law in force at the time, declared to remain in full force unless superseded, altered or repealed by the

---

<sup>2</sup>Thus, for example, sales tax revenues which are collected by vendors and accrue to the State during the last part of the current fiscal year, but are not received by the State during the fiscal year because of the statutorily established time lag in the remitting of the collected taxes, are properly allocated to the current fiscal year.



Honorable Leonard Lance

Page 4

June 17, 2004

new Constitution of 1947. Article XI, Section I, paragraph 3. Nothing in our review of the Constitutional Convention proceedings of 1947 and of the changes incorporated in the 1947 Constitution indicates any suspension or alteration of these rules. To our knowledge they have been applied to the annual appropriation act to the present.

Of most importance, the State Constitution's Debt Limitation Clause contains the authority for the State Legislature to address a deficiency in State revenues to match appropriations for a fiscal year by way of borrowed funds through the issuance of State debt without a public referendum. To our knowledge, however, this form of State borrowing has not been previously utilized.

The State Constitution's Debt Limitation Clause is found in Article VIII, Section II, paragraph 3 and reads in relevant part as follows:

The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. . . . Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. No voter approval shall be required for any such law authorizing the creation of a debt or debts in a specified amount or an amount to be determined in accordance with such law for the refinancing of all or a portion of any outstanding debts or liabilities of the State heretofore or hereafter created, so long as such law shall require that the refinancing provide a debt service savings determined in a manner to be provided in such law and that the proceeds of such debt or debts and any investment income therefrom shall be applied to the payment of the principal of, any redemption premium on, and interest due and to become due on such debts or liabilities being refinanced on or prior to the redemption date or maturity date thereof, together with the costs associated with such refinancing. All money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This paragraph shall not be construed to refer



Honorable Leonard Lance  
Page 5  
June 17, 2004

to any money that has been or may be deposited with this State by the government of the United States. Nor shall anything in this paragraph contained apply to the creation of any debts or liabilities for purposes of war, or to repel invasion, or to suppress insurrection or to meet an emergency caused by disaster or act of God. (emphasis added)

The underlined text was the subject of an amendment to this paragraph discussed and adopted at the State constitutional convention of 1947. The amendment to increase the \$100,000 debt limit in the 1844 Constitution to the one percent of annual appropriations was made by Senator Van Alstyne who was a delegate from Bergen County and Chairman of the Joint Appropriations Committee in 1947. The text of the amendment as it appears at pages 1240-1241 of the Convention Proceedings, Volume II, is attached as Appendix A for your reference. The debate during the course of the movement and adoption of the amendment on the floor of the convention is compelling on the subject. It is set forth in its entirety as it appears in the Convention Proceedings, Record, Volume I at pages 701 to 704 in Appendix B which is attached for your reference.

The debate strongly suggests that the one percent debt limitation was intended to create flexibility in the annual appropriation act by allowing the act to be balanced within a "leeway" of one percent of appropriations. In other words, the State's ability to incur debt of up to one percent of appropriations was intended to help the State meet its operating expenses in those years when revenue anticipated in the beginning of the fiscal year fell short of expectations. In opposing the amendment, Frank J. Murray, Vice-Chairman of the Committee on Finance and Taxation for the Constitutional Convention described the State's ability to incur debt as follows:

In addition to \$100,000 and the debt that could be incurred for these excepted purposes which I have read, all other money spent beyond available appropriations, or available monies and revenues which could be appropriated, must be by referendum approved by the voters of the State. Now, it is just a question of policy as to whether we want to preserve a situation where the State should not incur a debt beyond these emergencies except by the vote of the people, or whether we do want to make it a reasonable sum such as the Senator has suggested. [Vol. I, page 702]

This statement expresses Vice-Chairman Murray's concern that Senator Van Alstyne's proposed amendment would permit the Legislature to incur debt up to one percent of appropriations without



Honorable Leonard Lance  
Page 6  
June 17, 2004

going to the voters for approval.

Another appropriate point of reference for this portion of the Debt Limitation Clause is the monograph on Constitutional Limitation on the creation of State Debt by Amos Tilton. Constitutional Convention of 1947, Convention Proceedings, Volume II, at 1708-1727 (hereinafter cited as "Monograph" and attached as Appendix C for your reference). This and other monographs were prepared at the direction of the Governor and were immediately available to the delegates upon their election. *Id.*, Volume II at 1328. The Monograph provides an excellent overview of the use of debt financing by New Jersey up to the time of the 1947 convention and the historical context which generated the adoption of the debt limitation provision in 1844. Of particular interest is the statement that the "balance of unredeemed<sup>3</sup> state bonds on January 1, 1947 was \$72,200,000." Monograph at 1715. Of further interest is the characterization of the then existing \$100,000 limit as "permitted for casual deficiencies," in the summary on page 1724.

Given the discussion on the amendment to this clause and the framework placed on the clause by the Monograph, it seems that the provision limiting to one percent of the total amount appropriated in the fiscal year was understood by the framers to authorize the creation of debt in that amount as a means of balancing an unbalanced budget without the requirement of voter referendum. Further a sensible reading leads to the construction that the phrase "together with previous debt or liabilities" in this clause applies only to this type of deficit financing, and not to obligations approved by the voters. Although there is no New Jersey case that resolves the issue of whether the phrase includes all previous voter-authorized debt, the history of the constitutional convention suggests that general obligation debt should not be included in the definition of previous debt.

The only New Jersey case<sup>4</sup> that addresses the issue is Bulman v. McCrane, 64 N.J. 105 (1973), wherein the court declined to resolve the issue. In that case, the Attorney General argued that, even if the State's lease with the builder-developer for a records storage center was considered a debt under the Debt Limitation Clause, such debt did not violate the clause because,

---

<sup>3</sup>The word "redeemed" is used, but in the context of the tables and discussion we presume that its use is a typographical error.

<sup>4</sup> In Clayton v. Kervick, 52 N.J. 138, 143-144 (1968), the court accepted a stipulation that the one percent limit was exceeded by existing general obligation bonds but this was not necessary to its rationale and decision. A passing mention of the lost relevance of the debt limitation clause as a check on aggregate State debt was made by Justice Stein in Lonegan v. State, 174 N.J. 435, 498 (2002) (Lonegan I).



Honorable Leonard Lance  
Page 7  
June 17, 2004

1) the value of the lease was not greater than one percent of the fiscal year 1972-73 State appropriations, and, 2) the State had no previous debt to which the amount of the lease needed to be added. The court ultimately found that the State's sole obligation was for future installments of rent and not a present debt in the constitutional sense. Bulman, at 118.

The court recounted the argument:

The Attorney General points out that the total potential liability of the State under the lease is \$3,644,075, which is less than one percent of the fiscal 1972-1973 legislative appropriation of \$2,047,934,209. His legal contention is that the approximate \$1,200,000,000 in presently outstanding State bonds is not to be included within the text, "any previous debts or liabilities," in the excerpt . . . above, within the true meaning of the Constitution. The implied position is that once the people have voted on specific items of funded debt pursuant to the constitutional mandate the policy underlying the debt limitation provision is met as to such debts and thereafter only new debts aggregating in excess of the one percent limitation are of constitutional concern. [ Bulman, at 108.]

Curiously, the court went on to conclude that there was no history of the constitutional framers' intent on this issue.

We think this issue of constitutional interpretation raised by the Attorney General is a substantial one. Unfortunately, however, it was not adequately researched for us by either side. No case on point is cited. Our own independent search of the 1844 and 1947 constitutional proceedings has revealed no significant light as to the framers' intent in the respect under contention. See Proceedings of the New Jersey State Constitutional Convention of 1844 (1942) at 135, 185, 203, 277, 310-311, 340-343, 519-522, 524-527, 595; V Proceedings, Constitutional Convention of 1947, at 543, 590, 600, 601, 602, 844. In these circumstances, and in view of the fact that the instant litigation will be concluded by our determination that the contract for a lease did not create a debt or liability within



Honorable Leonard Lance  
Page 8  
June 17, 2004

the constitutional proscription, we defer to another day resolution of the issue posed.<sup>2</sup>

\* \* \*

---

<sup>2</sup>It is to be noted that determination of the issue as to whether this transaction is a debt within Art. VIII, Sec. II, Par. 3 is useful even if the Attorney General's alternative position ultimately prevails. In that event the State's fiscal officers would still need to know whether this transaction is to be charged against the quantum of "free" debts up to 1 percent of the appropriation law. [Bulman, at 109-110.]

It appears from the foregoing passage that no reference to Senator Van Alstyne's presentation of the amendment to one percent on the convention floor is made and that the most crucial piece of evidence in favor of the Attorney General's argument on this point was not considered.

We are of the opinion that there is good authority in the record of the 1947 Constitutional Convention for the proposition that debt approved by voter referendum does not count in the aggregation of State debt or liabilities up to the one percent limit. The case law, notably Bulman v. McCrane, is not dispositive of the issue. In the only other case on point, the California Supreme Court, in a decision of some vintage, addressed the issue under a similar debt limitation clause under the California constitution that had a \$300,000 limit on debt created by the Legislature itself. In Bickerdike v. State, 144 Cal. 681 (1904), the court applied the same reasoning later used by the New Jersey Attorney General in Bulman, that the phrase "any previous debts" included only the limited category of debt permitted to be created by the legislature under the limited circumstances of revenue deficiencies, and excluded therefrom the unlimited category of debt that may be created by voter referendum. 144 Cal. at 695-697.

Therefore, we are of the opinion that the Legislature has authority under the State Constitution to create debts up to one percent of the total amount appropriated by the annual appropriation act in the current fiscal year to finance a budget deficit which debt would be subject to repayment in future years if an authorizing act so provided. Further, in a determination of the forms of outstanding debt that would be aggregated in counting up to that limit, outstanding general obligation bonds approved by the voters would not count. While language in paragraph



Honorable Leonard Lance

Page 9

June 17, 2004

3 uses "the total amount appropriated," that language was drafted and adopted at the time of the adoption of the unitary general appropriations requirement in paragraph 2 which predates the creation of the current constitutionally dedicated funds contained within the appropriation act. For example, the Governor's Budget Message at page B-1 shows the recommended budgeted appropriations for the 2004-05 State fiscal year for the General Fund at \$17,865,378,000 and for the Property Tax Relief Fund at \$7,843,000,000 and for the Casino Revenue Fund at \$478,880,000. It may be argued that the one percent limit should be calculated on the \$17.865 billion figure and that dedicated funds were not in the contemplation of the convention delegates. (The Comprehensive Annual Financial Report of the State of New Jersey for the fiscal year ended June 30, 2003, at page 316, would appear to set forth a calculation of the State's legal debt limit under this one percent provision using the same assumption.) Assuming this is the correct understanding, there may be authorized by law State debt of \$178,865,378 in this fiscal year without a referendum on the assumption that no other outstanding debt exists which counts against the limit.

A necessary part of this background is the line of cases placing the Legislature in the ultimate position of responsibility for appropriations recognizing the "significant responsibilities for the State's fiscal affairs" of the Governor. Karcher v. Kean, 97 N.J. 483,489 (1984); City of Camden v. Byrne, 82 N.J. 133,146 (1980). In answering in the negative whether a variety of statutes had the effect of appropriating moneys for the purposes of those statutes, the court relied on "the constitutional provisions requiring appropriations to be incorporated into a single balanced budget in which current expenditures must be met by current revenues." City of Camden, *supra*, 82 N.J. at 151.

More particularly focusing on the debt limitation clause is the line of cases culminating in Lonegan v. State, 176 N.J. 2 (2003) (Lonegan II), in which the court ultimately held that "the restrictions of the Debt Limitation Clause do not apply to appropriations-backed debt." *Id.* at 21. Here also, the court recognizes the preeminent role of the Legislature in addressing the concerns of the three dissenting justices. *Ibid.* Deference to the Legislature and Executive Branch permeates the approach of the court. 176 N.J. at 5.

In order to complete the backdrop, the handling of the unfunded pension liabilities in 1997 by means of the "Pension Bond Financing Act of 1997," P.L. 1997, c.114 (N.J.S.A. 34:1B-7:45 et al.) in conjunction with Chapter 115 which revalued the assets of the pension systems was fully discussed by Justice Handler's dissenting part in Spadaro v. Whitman, 150 N.J. 2,4 (1997). The immediate effect of these two laws was to take the pressure off the interdepartmental accounts in the State operations portion of the budget for FY1997-98, in the reliance on \$144.7 million of pension surplus. Governor's Budget Message, page B-4.



Honorable Leonard Lance

Page 10

June 17, 2004

Notable recent examples of innovative means of balancing the State budget occurred with the immediate use of tobacco settlement moneys in the appropriations act for FY 2000, P.L. 1999, c.138, with the recognition of \$92,808,000 from the tobacco settlement fund in the interfund transfer part of the General Fund revenue certification and its charge for various departments and programs in section 53 of Chapter 138. In the FY 2001 appropriations act, P.L. 2000, c.53, \$144,219,000 was certified as available from the tobacco settlement fund and charged for general fund uses in subsection a. of section 56 of Chapter 53. Further off-budget appropriations of \$245,064,000 were made in subsection b. of section 56. In the FY 2002 appropriations act, P.L. 2001, c.130, \$365,204,000 was certified and charged for general fund purposes in section 54 of Chapter 130. In 2002, the "Tobacco Settlement Financing Corporation Act," P.L. 2002, c.32 (N.J.S.A. 52:18B-1 et seq.) established the corporation to manage the proceeds of the tobacco settlement and convert the State's interest into a present value. In section 5 of the act (N.J.S.A. 52:18B-5), subsection d. provides that the net proceeds may be applied . . . "for any bona fide governmental purposes . . . including . . . capital expenditures, debt service . . . or operating deficit needs . . . . The FY 2003 appropriations act, P.L. 2002, c.38 certified \$1,351,706,000 in the tobacco settlement fund as revenue and authorized \$1,075,000,000 to be appropriated in section 49 of Chapter 38. In the FY 2004 appropriations act, P.L. 2003, c.122, \$1,612,022,000 was certified as available in the tobacco settlement fund and \$1,487,247,000 was appropriated in section 49 of Chapter 122.

It appears that the tobacco settlement fund received approximately \$205,000,000 more in FY 2003 than set out in the paragraph above, but that no amount is anticipated for FY 2005 in that fund as set out at page C-19 of the Governor's Budget Message, dated February 24, 2004.

While the exact details of the Governor's proposed securitization are unknown as of this writing, it is our opinion that the proposal necessarily requires a commitment of what appear to be ordinary revenue in a stream from future years, to anticipate in the coming fiscal year, an amount that is a significant multiple of what would actually be anticipated in the fiscal year if not securitized. We further are unaware of what means or device by which the securitization would be effected. It is our opinion based on what we believe was the purpose of the changes made in the 1947 Constitutional Convention that the balanced unitary budget requirement of paragraph 2 and the one percent debt limitation of paragraph 3 are flip sides of the same coin. With this view in mind and the obvious difficult history of case law (driven in every case by legislation of various devices subject of the challenge) culminating in *Lonegan II*, it is our opinion that an attempt to "securitize" ordinary revenue to balance the FY 2005 budget violates the requirement of a unitary budget in one fiscal year in paragraph 2 and goes beyond what the case law has heretofore upheld against a debt limitation challenge under paragraph 3.

Your second question asks what is the exposure of the State in terms of a remedy by the



Honorable Leonard Lance

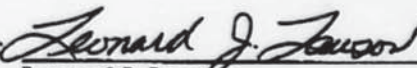
Page 11

June 17, 2004

court. Our best assessment is that the court would, if before the fact of securitization, defer to the Legislature and the Governor to restore balance and use those powers already committed by the Constitution and law<sup>5</sup> most notably as discussed in *Karcher v. Kean*, *supra*. If the ruling came after the fact of securitization, judicial relief could be "problematic." *Spadaro v. Whitman*, 150 N.J. at 14. The court could "grandfather all existing transactions that otherwise might be constitutionally infirm, leaving them undisturbed." *Lonegan v. State*, 176 N.J. at 24 (Justices Long, Verniero and Zazzali, dissenting, citing Justice Stein's dissent in *Lonegan I*, 174 N.J. at 500-504 for prospective application of potentially disruptive judicial decisions). Based on the fact that the proposed securitization is equal to one dollar out of seventeen or slightly less than six percent of the State budget and the impossibility of knowing where the loss would fall and the olive branches offered in the above cases, it is our belief the court would be considerate of the legislative and executive branches, responsibilities in balancing the budget.

Very truly yours,

Albert Porroni  
Legislative Counsel

By:   
Leonard J. Lawson  
First Assistant Legislative Counsel

AP:L/fa

---

<sup>5</sup> For example, the executive power to revise quarterly allotments when revenues have fallen below those anticipated is set forth in N.J.S.A. 52:27B-26.



# TREASURY NEWS RELEASE

NEW JERSEY DEPARTMENT OF THE TREASURY

Phil Murphy, Governor  
Sheila Oliver, Lt. Governor  
Elizabeth Maher Muoio, Treasurer



**For Immediate Release:**

May 28, 2020

**For Information Contact:**

Jennifer Sciortino  
(609) 633-6565

**Treasurer Muoio Testifies Before Assembly Budget Committee on Revised Fiscal Plan to Weather COVID-19 Crisis**

*With State Facing \$10 Billion Shortfall through Next June, Drastic Cuts on Table*  
(TRENTON) – State Treasurer Elizabeth Maher Muoio testified during a virtual hearing before the Assembly Budget Committee today, providing a detailed revenue report and fielding questions on the difficult choices the Murphy Administration has been forced to make in order to close the massive gap that looms for the remainder of the extended fiscal year due to the devastating impact COVID-19 has had on New Jersey’s finances.

**ASSEMBLY BUDGET COMMITTEE HEARING  
State Treasurer Elizabeth Maher Muoio  
Testimony as Prepared for Delivery  
May 28, 2020**

Good afternoon, Chairwoman Pintor Marin, Vice Chair Burzichelli, Budget Officer Wirths, members of the committee.

I don’t think anyone in a million years could have predicted this would be the circumstances under which we would be addressing the Governor’s proposed budget for the first time.

Even though you can’t see them at the moment, I am joined virtually by my colleagues –

- Deputy Treasurer Catherine Brennan
- Acting Director of the Office of Management and Budget (OMB) David Ridolfino,
- OMB Deputy Director Lynn Azarchi, and
- Martin Poethke, the Director of the Office of Revenue and Economic Analysis (OREA).

They and their staff, along with many others in our front office and across Treasury’s divisions, have been invaluable in navigating the uncharted territory that has come to epitomize this budget season and lending their expertise to a number of complex issues we’ve been managing.

As I’ve said before, our primary goal from day one has been to ensure first and foremost that all of our departments and agencies have the resources they need to help the people of New Jersey confront this brutal health crisis.

At the same time, we've been working non-stop to address the fiscal crisis that has grown to unprecedented proportions.

No amount of planning could have predicted the magnitude of the financial devastation we are facing...and that's evident by the constantly evolving professional forecasts we've seen...and continue to see.

To truly appreciate the magnitude of the fiscal crisis we find ourselves in, it helps to view the present situation in the context of more recent history.

As you all know, we spent the last two years working together to shore up the state's finances:

- proposing a third consecutive record payment into the pension system;
- increasing the state surplus to three times the level we inherited;
- planning a second consecutive deposit into the rainy day fund - the first time that would have been done in more than a decade;
- making record investments in key areas like public education and NJ TRANSIT that had long been neglected; and
- reducing the state's historical reliance on fiscal gimmicks like one-shots and diversions.

Let me just say this – it's a good thing we had begun to make headway in building up our surplus and rainy day fund.

While our reserves going into this crisis were still not comparable to many other states, I can't imagine how we would be weathering this storm right now without that cushion.

As a case in point, the ratings agencies had also begun to take note of our progress. Even while issuing warnings recently, Moody's and S&P noted the headway we have made in recent years.

Then COVID came along...and halted this progress in its tracks...

...and the budget we spent MONTHS working on all but evaporated.

The difficult decisions in the Governor's proposed budget for the remaining fiscal year and the three-month extension demonstrate our enormous need for additional federal assistance as well as legislative authorization to borrow in order to ensure our cash flow.

To balance out billions in lost revenue, the State must make devastating cuts across nearly all sectors and all branches of government.

The report we sent to you last week proposes decreasing planned spending by over \$5 billion, including:

- \$1.3 billion in proposed deappropriations;
- \$3.2 billion in reduced or delayed first quarter appropriations; and
- \$849.7 million of the Governor's proposed priorities withdrawn.

We have tried to strike a balance...tightening our belt, incorporating significant cuts, and proposing borrowing to address our cash flow issues.

But as I walk you through some of our revenue projections, it will become clear that even with these solutions, we are still facing many more difficult decisions, especially without significantly more federal funding, and flexible funding at that, as well as the ability to borrow.

## **ECONOMIC OVERVIEW**

Let me start by quickly providing a picture of the economic outlook we are forced to contend with.

The onset of the COVID-19 health pandemic has created a global economic crisis that the world has not seen since the Great Depression nearly a century ago, and a health crisis not seen since the 1918 Spanish Flu pandemic.

In April, national unemployment rose to 14.7 percent and New Jersey's unemployment rate rose to 15.3 percent, the highest level since the Great Depression nine decades ago.

As a point of reference, the national unemployment rate *peaked* at 10.0 percent during the 2008-09 Great Recession, while the New Jersey rate *peaked* at 9.8 percent.

The Congressional Budget Office projects that the national unemployment rate will average 15.0 percent during the second and third quarters of 2020 and then begin to decline, reaching 9.5 percent by the end of 2021.

When it comes to the national real GDP, second quarter forecasts vary from a 12.9% to 36.9% decline, with the Blue Chip Consensus Forecast now predicting a 24.5% drop.

This Q2 decline is unprecedented, but so is the speed at which professional economic forecasters have revised their projections downward.

For context, in February, most national forecasters were projecting low rates of growth for all quarters of 2020.

By mid-March to mid-April, there was a race to the bottom as forecasts plummeted.

The bottom line, based on a recent Wall Street Journal Economic Forecasting survey, is that real GDP is not expected to return to pre-COVID levels until mid-2022 at the earliest.

These rapidly devolving projections have complicated what was already an increasingly daunting revenue forecasting situation.

Quite frankly, there are no forecasting models for this type of scenario.



With that in mind, the report we delivered to you last week is designed to serve as a road map to help us navigate what is essentially uncharted territory.

But bear in mind, the virus will ultimately dictate the outcome of not only the health crisis, but also the economic crisis.

## **12 MONTH REVENUE FORECASTS**

The revenue scenarios I'm about to walk you through are based on the assumption that regardless of the status of New Jersey's "stay-at-home" order, we can expect its effects to be felt through June and beyond since experiences across the globe indicate that economic activity does not return to normal as soon as lockdowns expire.

Tax revenue collection figures released two weeks ago for the month of April provided a first look at the impact of COVID-19 on New Jersey.

Overall, total collections fell \$3.5 billion below April of 2019, down nearly 60 percent over last April.

As we noted at the time, April revenue collections largely reflect March economic behavior due to the fact that many of the major revenues report with a one-month lag.

Because the social and commercial restrictions implemented due to the COVID-19 pandemic were only in place for about half the month of March, the impact of the pandemic on New Jersey's revenue collections is still not fully apparent.

Additionally, April's collections reflect the impact of extending the filing and payment deadline for both the income tax and the corporation business tax from April 15 to July 15.

While we expect a portion of this shortfall to be made up during July, just how much remains to be seen because it is likely more taxpayers than usual will request extensions.

I just want to take a second to clarify that, for comparison purposes, the projections I'm about to detail are all prepared based on the traditional fiscal year of July 1st through June 30th, not the new temporarily extended and shortened fiscal years.

In terms of the big picture, the revised forecast prepared by our Office Revenue and Economic Analysis through Fiscal Year 2021 is staggering, particularly in light of the fact that the Governor's Budget Message (GBM) was delivered just 12 weeks ago

We are now projecting that revenues for Fiscal Year 2020 (FY 2020) will come in at \$36.733 billion, which is \$2.732 billion, or 6.9 percent, lower than the revised forecast we issued at the time of the GBM in February.

Additionally, we are projecting that revenue collections for the FY 2021 budget will come in at \$33.955 billion, which is \$7.207 billion, or 17.5 percent, lower than our February forecasting.

In total, the revenue shortfall for FY 2020 and FY 2021 combined is approximately \$10 billion.

It's important to note that these figures do not incorporate any of the tax policy proposals contained within the GBM, nor do they assume another surge of the virus in the fall.

If that resurgence scenario does in fact occur, our revenue analysts estimate that we could in fact see an additional shortfall of roughly \$1 billion.

Now, let me walk you through the projections for some of the major taxes so you can understand what we have to contend with for the foreseeable future.

**For the Gross Income Tax (GIT):**

- FY 2020 revenues are projected to be \$910.9 million, or 5.4 percent, lower than our GBM forecast, while
- FY 2021 collections are projected to be \$3.955 billion, or 22.2 percent lower than the February forecast.

**When it comes to the Sales and Use Tax:**

- FY 2020 revenues are projected to be \$1.131 billion, or 10.9 percent, lower than the GBM forecast, while
- FY 2021 revenues are projected to be \$1.528 billion, or 14.2 percent, lower than the February forecast.
- For the near term - May thru July of this year, Sales Tax collections are forecast to decline by 33.0 percent compared to this same period last year.

**As for the Corporation Business Tax (CBT):**

- FY 2020 revenues are projected to be \$451.9 million, or 11.6 percent, lower than the GBM forecast, while
- FY 2021 revenues are projected to be \$1.228 billion, or 32.0 percent lower than the February forecast.

It's interesting to note that the projected two-year decline between the CBT revenue peak in FY 2019 and FY 2021 is 35.4 percent, similar to the two-year decline between FY 2008 and the CBT low-point in FY 2010 due to the Great Recession.

Other notable forecasts for select major taxes include:

**The Motor Fuels Tax:**

- FY 2020 revenues are projected to be \$65.4 million, or 13.5 percent lower than the GBM forecast, while
- FY 2021 revenues are projected to be \$71.0 million, or 15.1 percent lower than the February forecast.



- Collections are projected to decline between 40 and 50 percent for the duration of the lockdown.

As for the **Petroleum Products Gross Receipts Tax:**

- FY 2020 revenues are projected to be \$169.0 million, or 11.6 percent below the GBM forecast, in line with the decline in the Motor Fuels Tax, while
- FY 2021 revenues are projected to be \$203.0 million, or 14.3 percent lower than the February forecast.

As you can see, gas tax-related revenues, like most other revenues during this pandemic, have plummeted.

One last revenue stream of note - the **Realty Transfer Fee:**

- FY 2020 revenues are projected to be \$60.6 million, or 15.7 percent lower than the GBM forecast.
- Although realtors are allowed to show homes to individuals, data from the New Jersey Realtors Association indicate that pending sales had already declined by 27.8 percent by early March.
- Moreover, the significant decline in employment is expected to hurt home sales for the near future.
- As a result, FY 2021 revenues are projected to be \$134.5 million, or 33.8 percent below the GBM forecast.

**PROJECTED FUND BALANCE**

What all of this means is that our ambitious plans for closing out this fiscal year – as well as the proposed budget we unveiled to you in February – have all been rendered obsolete.

We are going to require federal assistance and the ability to access borrowing facilities in order to meet our obligations.

At the time of the Governor’s Budget Message in February, our projected closing fund balance through June 30 of this year was \$1.5 billion, which included \$732 million in the Surplus Revenue Fund (SRF), also known as the Rainy Day Fund.

However, given the unprecedented economic impact of the current pandemic, revenues through June 30 are expected to decline by \$2.7 billion.

As a result, we are looking at a revised projected fund balance, through June 30th – the date by which we must still close our financial year – of NEGATIVE \$1.2 billion.

Obviously we can’t let that happen for many reasons, chief among them the fact that we are constitutionally required to have a balanced budget.

So we had to take many decisive and crucial steps early on to remain solvent:

- Placing approximately \$1 billion of available appropriations into reserve;
- Implementing a statewide hiring freeze with the exception of COVID-19 related needs;
- Transferring the entire \$421 million Surplus Revenue Fund (Rainy Day Fund) to the undesignated General Fund balance to help offset the anticipated shortfall and foregoing the planned deposit on June 30, 2020;
- Subjecting department spending and contracting to ongoing review and approval by the Office of Management and Budget; and
- Deferring more than \$500 million in other planned FY 2020 spending, including:
  - the additional \$280 million FY 2021 pre-payment we had hoped to make into the pension system to cover the increased liability brought on by the latest experience study;
  - and \$80 million we had hoped to invest in infrastructure related to lead remediation;

Additionally, as I mentioned at the top of my remarks, we are proposing to decrease planned spending by over \$5 billion across all sectors and branches of government, including:

- \$1.3 billion in proposed de-appropriations;
- \$3.2 billion in reduced or delayed first quarter appropriations; and
- Withdrawal of \$849.7 million in proposed spending priorities put forth by the Governor in February.

Taken as a whole, these decisions get us to a POSITIVE fund balance of \$344 million as of June 30, 2020 and a \$494 million ending fund balance as of September 30, 2020.

While that is certainly better than a NEGATIVE fund balance of \$1.2 billion, it's far from acceptable.

That type of surplus balance might have been customary during the last administration, but it's anything but advisable.

In volatile economic times such as this, it is the equivalent of a "rounding error" and could disappear in a flash.

And I would remind you that should we see a second surge of the virus, additional adjustments will need to be made.

## **FEDERAL ASSISTANCE**

The \$2.4 billion from the federal Coronavirus Relief Fund that we have received to date will certainly be a big help, but without more robust AND flexible federal aid – as well as the ability to borrow – additional, substantial cuts will be necessary to produce a balanced FY 2021 budget.

The reason for this is simple - we must spend this \$2.4 billion in accordance with U.S. Treasury guidance otherwise it may result in the claw back of these funds by the federal government.

To complicate matters, U.S. Treasury guidance remains incomplete as it relates to eligibility for payroll and other expenditures for COVID-related activities.

While we do have a proposed spending framework mapped out, until we receive clear guidance and approval from the U.S. Treasury, the state simply cannot formalize a final plan or dedicate funds widely to sub-grantees that would be reliant on Treasury guidance to expend these funds.

Rest assured, we are eager to begin disbursing these funds where they are needed most –

- like helping our Health Department improve critical oversight at long term care facilities;
- helping our Labor Department administer crucial unemployment assistance more efficiently;
- or helping food banks address the very real threat of food insecurity that continues to grow as this crisis worsens.

As we get more guidance and finalize plans for disbursement we will be sure to share them with you.

Like I've said before, we have been faced with many tough decisions already...and we'll be faced with many even tougher ones as we work on the nine-month budget ahead.

But, we are not alone. All across the country, states are facing similar challenges that seemed inconceivable just a few short months ago.

Managing this crisis will require an unprecedented level of cooperation, and we look forward to working with all of you in the weeks and months ahead to address this unprecedented challenge.

We are now happy to answer any questions. Thank you.

---

---

# Public Hearing

before

## ASSEMBLY BUDGET COMMITTEE

*The public hearing will be held in accordance with Rule 18:1(j) of the New Jersey General Assembly on the following Assembly Bill:*

### Assembly Bill No. 4175

---

**LOCATION:** Committee Room 11  
State House Annex  
Trenton, New Jersey

**DATE:** June 1, 2020  
11:00 a.m.

#### **MEMBERS OF COMMITTEE PRESENT:**

Assemblywoman Eliana Pintor Marin, Chair  
Assemblyman John J. Burzichelli, Vice Chair  
Assemblyman Daniel R. Benson  
Assemblyman Gordon M. Johnson  
Assemblyman John F. McKean  
Assemblywoman Carol A. Murphy  
Assemblywoman Verlina Reynolds-Jackson  
Assemblyman William W. Spearman  
Assemblyman Benjie E. Wimberly  
Assemblyman Robert D. Clifton  
Assemblywoman Serena DiMaso  
Assemblywoman Nancy F. Mufioz  
Assemblyman Harold J. Wirths



#### **ALSO PRESENT:**

Scott A. Brodsky  
Neal Lang  
*Office of Legislative Services*  
*Committee Aides*

Aaron Binder  
*Assembly Majority Office*  
*Committee Aide*

Ross W. Dammer  
Debbie DePiano  
*Assembly Republican Office*  
*Committee Aides*

*This transcript was prepared using an outside recording not designed for transcription purposes. Therefore, portions of this transcript may not be completely accurate as portions were inaudible and/or indiscernible.*

**Hearing Transcribed by**  
**The Office of Legislative Services, Public Information Office,**  
**Hearing Unit, State House Annex, PO 068, Trenton, New Jersey**

---

Eliana Pintor Marin  
Chair

John J. Burzichelli  
Vice-Chair

Daniel R. Benson  
Gordon M. Johnson  
John F. McKeon  
Carol A. Murphy  
Verlina Reynolds-Jackson  
William W. Spearman  
Benjie E. Wimberly  
Robert D. Clifton  
Serena DiMaso  
Nancy F. Munoz  
Harold J. Wirths



Scott A. Brodsky  
Neal Lang  
Office of Legislative Services  
Committee Aides  
609-847-3835  
Fax 609-943-5995

## NEW JERSEY STATE LEGISLATURE

### ASSEMBLY BUDGET COMMITTEE

STATE HOUSE ANNEX - P.O. BOX 068 • TRENTON, NJ 08625-0068  
www.njleg.state.nj.us

## PUBLIC HEARING NOTICE

&

## COMMITTEE MEETING

**The Assembly Budget Committee will hold a public hearing on Monday, June 1, 2020 at 11:00 AM in Committee Room 11, 4th Floor, State House Annex, Trenton, New Jersey.**

*The public may address comments and questions to Scott A. Brodsky, Neal Lang, Committee Aides, or make bill status and scheduling inquiries to Jeanette McCue, Secretary, at (609)847-3835, fax (609)943-5995, or e-mail: OLSAideABU@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.*

**Due to the public health emergency, the State House Annex remains closed to visitors and the public will not be allowed to attend the meeting in person. The Committee will take oral testimony on bills, by telephone and/or video, limited to three minutes. If you are interested in testifying orally, you should fill out the Assembly Budget Committee Registration Form located on the New Jersey Legislature home page. The form must be submitted by 3:00 p.m. Friday May 29, 2020. Committee contact information will be forwarded to you.**

**The public is encouraged to submit testimony electronically in lieu of oral testimony. Written testimony will be included in the committee record and distributed to the Committee members. Written testimony should be submitted to: OLSAideABU@njleg.org**

**The public hearing will be held in accordance with Rule 18:1G of the New Jersey General Assembly on the following Assembly Bill:**

A-4175  
Pintor Marin  
(pending intro and  
referral)

"New Jersey COVID-19 Emergency Bond Act," authorizes issuance of State bonds totaling \$5,000,000,000 and authorizes borrowing from federal government.

(OVER)

Da694

**The Assembly Budget Committee will hold a committee meeting immediately following the public hearing.**

The following bills will be considered:

A-4175 Pintor Mari n (pending i ntro and referraJ)	"New Jersey COVID-19 Emergency Bond Actt authorizes issuance of State bonds total i ng \$5,000,000,000 and authorizes borrowi ng from federal government.
---	---

Issued 5/27/20

For reasonable accommodation *of* disability call the telephone number or fax number above, or for persons with hearing loss dial 71 I for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.

**ASSEMBLY, No. 4175**

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

INTRODUC ED MAY 28, 2020

**Sponsored by:**

**Assemblywoman ELIANA PINTOR MARI N**

**District 29 (Essex)**

**SYNOPSIS**

"New Jersey COVID-1 9 Emergency Bond Act:' authorizes issuance of State bonds totaling \$5 billion and authorizes borrowing from federal government.

**CURRENT VERSION OF TEXT**

As introduced.



2 AN ACT authorizing the creation of a debt of the State of New  
3 Jersey by the issuance of bonds of the State in the aggregate  
4 principal amount of \$5,000,000,000 for the purpose of  
5 responding to the fiscal exigencies caused by the COVID-19  
6 Pandemic; authorizing the Governor to apply for and receive  
7 federal stimulus loans for the benefit of the State; authorizing the  
8 Governor to apply for and receive federal stimulus loans for the  
9 benefit of local government units; authorizing the issuance of  
10 refunding bonds and emergency liquidity notes; and providing  
11 the ways and means to pay and discharge the principal of and  
12 interest on the bonds.

13 BE IT ENACTED by the Senate and General Assembly of the State  
14 of New Jersey:

15  
16 I. This act shall be known and may be cited as the "New Jersey  
17 COVID-19 Emergency Bond Act.,

18  
19 9 2. The Legislature finds and declares that:

20 a. Due to the increase in the number of SARS-CoV-2 novel  
21 coronavirus ("COVID-19") cases in New Jersey, the surrounding  
22 region and across the globe, the Governor of the State of New  
23 Jersey (the "Governor") issued Executive Order No. 103 declaring a  
24 public health emergency and a state of emergency in the State of  
25 New Jersey (the "State") on March 9, 2020. The declaration allows  
26 for certain executive actions to respond to the increasing number of  
27 COVID-19 cases in the State.

28 b. On March 11, 2020, the World Health Organization declared  
29 the COVID-19 outbreak a pandemic, and on March 13, 2020, the  
30 President of the United States proclaimed that the COVID-19  
31 outbreak constituted a national emergency.

32 c. On March 16, 2020, the Governor issued Executive Order  
33 No. 104, whereby the Governor ordered restrictions, including that  
34 all K-12 schools be closed (with limited exceptions); all universities  
35 and colleges in the State cease in-person instruction; casinos,  
36 racetracks, in-person sports wagering, gyms and fitness centers, and  
37 entertainment centers be closed; non-essential businesses cease  
38 operations from 8:00 p.m. to 5:00 a.m., and when open, adhere to  
39 limited occupancy restrictions; and all restaurants and bars close  
40 except for delivery or take-out services.

41 d. On March 19, 2020, the Governor issued Executive Order  
42 No. 105, whereby the Governor, among other things, ordered that  
43 certain local elections scheduled during the rest of March and in  
44 April be moved to May 12, 2020, and that all elections on May 12,  
45 2020, take place via mail-in ballot only.

46 e. On March 19, 2020, the Governor issued Executive Order  
47 No. 106, whereby the Governor, among other things, ordered that  
48 no lessee, tenant, homeowner or any other person shall be removed



1 from a residential property by foreclosure or eviction; and that  
2 enforcement of all judgments for possession, warrants for removal,  
3 and writs of possession are stayed while Executive Order No. 106 is  
4 in effect, unless the court hearing the matter determines that  
5 enforcement is necessary in the interests of justice.

6 f. On March 21, 2020, the Governor issued Executive Order  
7 No. 107, which superseded the operative paragraphs of Executive  
8 Order No. 104 and whereby the Governor ordered that for the most  
9 part all State residents remain home or at their place of residence  
10 except for certain very limited exceptions. The Governor also  
11 ordered that all non-essential retail businesses be closed to the  
12 public.

13 g. On March 21, 2020, the Governor issued Executive Order  
14 No. 108, whereby the Governor ordered that any county or  
15 municipal restriction imposed in response to COVID-19 that in any  
16 way conflicts with the provisions of Executive Order No. 107 is  
17 invalidated; and no municipality, county or any agency or political  
18 subdivision of the State may enact any order, rule, regulation,  
19 ordinance, or resolution which would conflict with Executive Order  
20 No. 107.

21 h. On March 23, 2020, the Governor issued Executive Order  
22 No. 109, whereby the Governor ordered all elective surgeries  
23 suspended as of March 27, 2020.

24 i. On March 25, 2020, the Governor issued Executive Order  
25 No. 110, whereby the Governor ordered all child care centers to  
26 close, except those certified to care for the children of essential  
27 persons, including essential government employees; health care  
28 workers; law enforcement personnel; fire and emergency services  
29 personnel; staff at correctional facilities; individuals employed at  
30 emergency child care centers operating on or after April 1, 2020;  
31 group home and shelter staff; essential government employees who  
32 are unable to work from home, including child protection services  
33 workers, child welfare workers, foster care workers, unemployment  
34 compensation processing staff, and public health employees; and  
35 certain critical workers at essential retail business.

36 j. On March 28, 2020, the Governor issued Executive Order  
37 No. 111, whereby the Governor ordered health care facilities to  
38 report data concerning their capacity and supplies on a daily basis.

39 k. On April 1, 2020, the Governor issued Executive Order  
40 112, whereby the Governor ordered the removal of various statutory  
41 barriers applicable to various health care professionals and provided  
42 immunity to health care professionals and health care facilities  
43 aiding in the response by the State to the COVID-19 Pandemic.

44 l. On April 2, 2020, the Governor issued Executive Order No.  
45 113, whereby the Governor authorized the State Director of  
46 Emergency Management, who is the Superintendent of State Police,  
47 to use the Governor's full authority to reallocate medical resources  
48 to the regions and health care facilities affected by COVID-19, to

1 take or use, subject to the compensation provisions of the New  
2 Jersey Civilian Defense and Disaster Control Act, personal services  
3 and/or real or personal property, including medical resources, for  
4 the purpose of protecting or promoting the public health, safety, or  
5 welfare.

6 m. On April 3, 2020, the Governor issued Executive Order No.  
7 114, whereby the Governor ordered that the flags of the United  
8 States of America and of New Jersey shall be flown at half-staff at  
9 all State buildings in recognition and mourning of all those who  
10 have lost their lives and have been affected by COVID-19.

11 n. On April 6, 2020, the Governor issued Executive Order No.  
12 115, whereby the Governor authorized, for the duration of the  
13 public health emergency and the state of emergency, the return by  
14 retirees of government agencies to employment without having to  
15 re-enroll in any retirement system.

16 o. On April 7, 2020, the Governor issued Executive Order No.  
17 116, whereby the Governor extended the deadline to June 9, 2020,  
18 for the governing body of each municipality, after consultation with  
19 the school board of education, to present and to certify a tax levy to  
20 the county board of taxation; school districts that were scheduled to  
21 have their annual board of education elections on April 21, 2020,  
22 but which were postponed to May 12, 2020, have until June 5, 2020  
23 to provide notice to non-tenured teaching staff members as to  
24 whether they will be employed for the next succeeding year and  
25 such non-tenured teaching staff members have until June 22, 2020  
26 to accept such employment offers by such school districts; the terms  
27 of school board of education members whose terms were set to  
28 expire at the first organizational meeting following the postponed  
29 April 21, 2020 election shall be extended to the first organizational  
30 meeting following the May 12, 2020 election; and the terms of such  
31 school board of education members elected at the May 12, 2020  
32 election shall run as though they had taken office at the first  
33 organizational meeting following the original scheduled April 21,  
34 2020 election.

35 p. On April 7, 2020, the Governor issued Executive Order No.  
36 117, whereby the Governor, among other things, waived and  
37 cancelled the eighth-grade student assessment for the 2019-2020  
38 school year; waived and cancelled the twelfth-grade student  
39 assessment for any student who is expected to graduate in the class  
40 of 2020, but who had not as of March 18, 2020, met such  
41 graduation assessment requirement; waived the requirement that  
42 student growth data be used as a measure of educator effectiveness  
43 in the overall evaluation of any educator; and waived the  
44 requirement of three observations and evaluations for all non-  
45 tenured teaching staff for the 2019-2020 school year.

46 q. On April 7, 2020, the Governor issued Executive Order No.  
47 118, whereby the Governor ordered that all State parks and forests  
48 and all county parks be closed to the public.

1 r. On April 7, 2020, the Governor issued Executive Order No.  
2 119, whereby the Governor ordered that all executive orders, and all  
3 Executive Branch department and agency actions, including any  
4 administrative orders adopted in whole or in part based on the  
5 authority under the Emergency Health Powers Act, P.L.2005, c.222  
6 (C.26:13-1, et seq.), remain in full force in effect.

7 s. On April 8, 2020, the Governor issued Executive Order No.  
8 120, whereby the Governor ordered the federal and State primary  
9 elections scheduled for June 2, 2020, be postponed and rescheduled  
IO for July 7, 2020; and any other election scheduled for a date on or  
11 between May 13, 2020, and July 7, 2020, be postponed and  
12 rescheduled for July 7, 2020.

13 t. On April 8, 2020, the Governor issued Executive Order No.  
14 121, whereby the Governor authorized motor vehicles transporting  
5 relief supplies necessary for the response to the COVID-19.-  
6 Pandemic public health emergency and state of emergency via  
7 certain interstate highways and toll roads in the State to receive  
8 special permits from the Department of Transportation to increase  
19 the maximum motor vehicle weight on a vehicle with a minimum of  
20 five axles.

21 u. On April 8, 2020, the Governor issued Executive Order No.  
22 122, whereby the Governor ordered: (1) essential retail businesses  
23 that are permitted to maintain in-person operations pursuant to  
24 Executive Order No. 107, to limit occupancy to fifty percent of the  
25 stated maximum store capacity, establish hours of operation that  
26 permit access solely to high-risk individuals as defined by the  
27 Centers for Disease Control and Prevention, install physical barriers  
28 between customers and cashiers/baggers to ensure six feet of  
29 distance between those individuals, require infection control  
30 practices for employees and provide employees break time for  
31 repeated handwashing throughout the workday, arrange for  
32 contactless pay, pickup and delivery options, provide sanitization  
33 materials to staff and customers, require frequent sanitization of  
34 high-touch areas such as restrooms, credit card machines, keypads,  
35 counters and shopping carts, demarcate six feet of spacing in check-  
36 out lines, and require employees and customers to wear cloth face  
37 coverings while on premises; (2) all non-essential construction  
38 projects to cease; (3) all manufacturing businesses, warehousing  
39 businesses and businesses engaged in essential construction projects  
40 (as defined in the Executive Order) to limit the number of persons  
41 at the worksite concurrently and to adopt social distancing and  
42 infection control, mitigation and sanitization policies to prevent the  
43 spread of COVID-19; (4) all manufacturing businesses,  
44 warehousing businesses and businesses engaged in essential  
45 construction projects to adopt policies to address situations where  
46 an employee appears to demonstrate COVID-19 symptoms during  
47 the work day, to notify employees of potential exposure to COVID-  
48 19, to clean and disinfect worksite areas, and to maintain a clean

and safe workplace environment; and (5) businesses authorized to maintain in-person operations pursuant to Executive Order No. 107, to adopt certain cleaning protocols where operations are conducted.

2 v. On April 9, 2020, the Governor issued Executive Order No. 3  
4 123, whereby the Governor ordered certain insurance companies not  
5 to cancel policies during the emergency grace periods as a result of  
6 nonpayment of premiums; and authorized the Commissioner of  
7 Banking and Insurance to extend the emergency grace periods  
8 further as necessary to protect the interests of policyholders,  
9 beneficiaries and the public.  
10

11 w. On April 10, 2020, the Governor issued Executive Order No.  
12 124, whereby the Governor authorized a process for the release of  
13 inmates by means of parole or temporary emergency medical home  
14 confinement to reduce the threat to inmates posed by COVID-19 in  
15 a correctional setting.

16 x. On April 11, 2020, the Governor issued Executive Order No.  
17 125, whereby the Governor ordered New Jersey Transit private  
18 New Jersey Transit-affiliated motor carriers, private unaffiliated  
19 motor carriers, and private paratransit carriers to establish infection  
20 control, mitigation and sanitization policies to prevent the spread of  
21 COVID-19; restaurants, cafeterias, dining establishments, food  
22 courts, bars, and other holders of liquor licenses with retail  
23 consumption privileges that are continuing to offer food delivery  
24 and/or take-out services pursuant to Executive Order No. 107 to  
25 adopt social distancing and infection control, mitigation and  
26 sanitization policies to prevent the spread of COVID-19.

27 y. On April 13, 2020, the Legislature passed P.L.2020, c.19,  
28 whereby the Legislature: (1) extended the due date for the filing of  
29 quarterly and annual returns and the payment of tax due pursuant to  
30 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or  
31 the "Corporation Business Tax Act (1945)," P.L.1945, c.162  
32 (C.54:JOA-1 et seq.), from April 15, 2020 to July 15, 2020; and (2)  
33 for purposes of the State's general appropriation law, provided that  
34 the State fiscal year scheduled to end on June 30, 2020, shall end on  
35 September 30, 2020, and the subsequent fiscal year shall begin on  
36 October 1, 2020, and shall end on June 30, 2021.

37 z. On April 13, 2020, the Governor issued Executive Order No.  
38 126, whereby the Governor ordered that no cable or  
39 telecommunication provider that provides residential internet and  
40 voice services to State residents shall terminate such internet and  
41 voice services due to nonpayment during the public health  
42 emergency and state of emergency; authorized a cable or  
43 telecommunication provider to State residents to downgrade or  
44 reduce the quality of residential internet or voice services due to  
45 nonpayment only if acting according to a policy approved in writing  
46 by the New Jersey Board of Public Utilities; authorized a cable or  
47 telecommunication provider to State residents to collect a fee or  
48 charge imposed for late payments relating to residential internet

service or imposed for reconnection of voice services only if acting  
2 according to a policy approved in writing by the New Jersey Board  
3 of Public Utilities; and authorized reconnection of residential  
4 internet or voice services which were discontinued due to  
5 nonpayment after March 16, 2020, including where the  
6 disconnection was for unpaid bills incurred prior to March 16,  
7 2020, at no cost to the customer beyond the actual costs incurred by  
8 the provider.

9 aa. On April 14, 2020, the Governor issued Executive Order No.  
10 127, whereby the Governor ordered an extension of deadlines in  
11 contested cases and for filing of any recommended report or  
12 decision under the "Administrative Procedure Act." P.L.1968,c.410  
13 (C.52:14B-1, et seq.), unless the contested case is proceeding as  
14 emergent or is on appeal to the Civil Service Commission from  
15 certain adverse actions; ordered an extension of the deadline for  
16 notices of rule proposal if the rule proposal was published in the  
17 New Jersey Register on or after April 15, 2019, and the notice of  
18 rule proposal would otherwise expire without the benefit of such an  
19 extension; ordered an extension of the deadline for any Executive  
20 Branch department or agency to act on any currently pending  
21 petition for rulemaking or on any petition for rulemaking filed  
22 during the public health emergency, or any Executive Branch  
23 department or agency rule prescribing procedures for the  
24 consideration and disposition of petitions for rulemaking; ordered  
25 an extension of the expiration date of any rule scheduled to expire  
26 during the public health emergency; authorized the further  
27 extension of any deadline or expiration date upon request of the  
28 Executive Branch department or agency and upon written approval  
29 of the Governor; and extended the deadline by which any State  
30 officer or employee is required to file a financial disclosure  
31 statement pursuant to Executive Order No. 2 (Murphy 2018) or a  
32 conflict of interest form pursuant to Executive Order No. 14  
33 (Corzine 2006) to July 31, 2020.

34 bb. On April 24, 2020, the Governor issued Executive Order No.  
35 128, whereby the Governor authorized the use of security deposits.  
36 upon the request from a tenant, to pay or be credited against rent  
37 payments due or to become due from the tenant during the public  
38 health emergency or up to sixty days after the public health  
39 emergency terminates.

40 cc. On April 27, 2020, the Governor issued Executive Order No.  
41 129, whereby the Governor ordered the extension of all retired  
42 officer carry permits that expire during the public health emergency  
43 for a period of 90 days after the end of the public health emergency,  
44 provided that the permit holder submits a renewal application prior  
45 to the expiration of their existing permit or prior to May 4, 2020,  
46 which is later, and the permit holder submits proof of qualification  
47 on the use of their weapon.

dd. On April 28, 2020, the Governor issued Executive Order No. 130, whereby the Governor authorized the governing body of any municipality in the State to adopt a resolution instituting a grace period concluding on a date no later than June 1, 2020, for the payment of second-quarter property taxes for municipalities on a calendar year budget cycle and for the payment of fourth-quarter property taxes for municipalities on a State fiscal year (July 1 to June 30) budget cycle.

ee. On April 28, 2020, the Governor issued Executive Order No. 131, whereby the Governor established the Governor's Restart and Recovery Commission to provide advice and guidance to the Governor for reopening the State economy in a way that is consistent with the State's public health efforts to slow the spread of COVID-19.

ff. On April 29, 2020, the Governor issued Executive Order No. 132, whereby the Governor authorized electronic submission of initiative and referendum petitions to county clerks and municipal clerks in addition to hand delivery of such petitions; authorized county clerks and municipal clerks to also accept electronic signatures on such petitions via an online form; and suspended the statutory requirement for a notarized affidavit to be submitted attesting to the validity of signatures on such petitions.

gg. On April 29, 2020, the Governor issued Executive-Order No. 133, whereby the Governor ordered the reopening of State parks and forests for passive recreational activities in which social distancing can be readily achieved but ordered that certain other activities remain closed; set forth restrictions, recommendations and policies for social distancing at State parks and forests; ordered the opening of county parks; and ordered that social distancing restrictions, recommendations and policies be followed at county and municipal parks, and at golf courses that are opened to the public.

hh. The COVID-19 Pandemic has had a severe impact on the State's economy. The long-term and short-term capital markets have experienced significant deterioration in value and increased volatility, which can affect the liquidity and results of operations of businesses in the State and the State economy as a whole and which has significantly and materially adversely affected and continues to significantly and materially adversely affect the State's financial resources for Fiscal Year 2020 and Fiscal Year 2021.

ii. The impact of COVID-19 on the State, its economy, budget and finances is unpredictable and rapidly changing, but events surrounding COVID-19 will severely and negatively impact the State's economy and financial condition. Some of the negative impacts that the State has currently identified include:

(1) The State expects precipitous declines in revenues in Fiscal Year 2020 and Fiscal Year 2021, which include significant reductions in gross income tax revenues, corporation business tax

1 revenues, and sales and use tax revenues due to required business  
2 shutdowns; motor fuels taxes due to mandated "stay-at home"  
3 orders; casino-related taxes due to casino closures; and lottery sales  
4 which have already started to decline;

5 (2) The State expects that it will need to significantly revise the  
6 estimated revenues and projected appropriations for Fiscal Years  
7 2020 and 2021 contained in the Governor's Budget Message for  
8 Fiscal Year 2021 on February 25, 2020, which was delivered before  
9 the outbreak of COVID-19 within the State; and

10 (3) The State may encounter future increases in the State's  
11 actuarially recommended contributions to the State's pension plans  
12 to the extent that the valuation of pension plans is affected by the  
13 deterioration in value in the investment markets.

14 jj. Events surrounding COVID-19 have caused and will  
15 continue to cause severe and negative impacts on the economy and  
16 financial condition of the State's local government units and has  
17 increased and will continue to increase volatility in long-term and  
18 short-term capital markets on which local government units rely to  
19 meet operating expenses.

20 R.k. From April 29, 2020 to the present, the Legislature and the  
21 Governor have continued to seek ways to restart the State economy  
22 and recover from the financial problems resulting from the COVID-  
23 19 Pandemic.

24 II. It is necessary for the State to take action to ensure the  
25 continued viability of the State's and local government units'  
26 financial condition and to assist the State's population in dealing  
27 with the financial and economic problems resulting from the  
28 COVID-19 Pandemic through the issuance of general obligations  
29 bonds, and borrowings from the federal government pursuant to this  
30 act to provide financial resources for the State budget and for local  
31 government units' budgets.

32 mm. This act authorizes the issuance of bonds, and borrowing  
33 from the federal government in accordance with Article VIII,  
34 Section II, paragraph 3, subparagraph e. of the Constitution of the  
35 State to respond to the fiscal exigencies caused by the COVID-19  
36 Pandemic and to maintain and preserve the fiscal integrity of the  
37 State and its local government units.

38

39 3. The following words or terms as used in this act shall have  
40 the following meanings unless a different meaning clearly appears  
41 from the context:

42 "Bonds" means any bonds, notes or other obligations authorized  
43 to be issued under this act.

44 "COVID-19" means the SARS-CoV-2 novel coronavirus.

45 "COVID-19 Pandemic" means the outbreak of COVID-19  
46 throughout the world, declared to be a pandemic by the World  
47 Health Organization on March 11, 2020.

1 "Director" means the Director of the Division of Local  
2 Government Services in the Department of Community Affairs.

3 "Emergency Liquidity Notes" means bonds authorized to be  
4 issued pursuant to subsection d. of section 4 of this act.

5 ;<Federal Government' means the United States of America, any  
6 agency or instrumentality of the United States of America and any  
7 other entity, including, without limitation, any facility or special  
8 purpose vehicle, that is authorized to make loans to the State or to  
9 the State on behalf of local government units pursuant to any  
10 federal stimulus law. The term "Federal Government" is to be  
11 interpreted broadly with the intent that the State shall be authorized  
12 to borrow from such lenders as may be necessary or desirable to  
13 enable the State to receive loans under or pursuant to federal  
14 stimulus laws to the fullest extent possible.

15 "Federal stimulus laws" means any federal laws enacted to  
16 address the fiscal and economic crisis resulting from the COVID-19  
17 Pandemic, including but not limited to the Coronavirus Aid, Relief  
18 and Economic Security Act ("CARES Act"). Pub.L. 116-136,  
19 codified at 134 Stat. 281 or any other federal stimulus law related to  
20 the COVID-19 Pandemic, and any other federal laws that may  
21 authorize or support lending to the State or to the State on behalf of  
22 its local government units, including, but not limited to, Section  
23 13(3) of the Federal Reserve Act, which laws, among other things,  
24 provide for loans or grants to the State and to the State on behalf of  
25 its local government units to address the economic crisis.

26 "Financial assistance" means the provision of any loans to or the  
27 purchase of any local government securities from local government  
28 units for the purpose of providing monetary relief to local  
29 government units to address adverse fiscal impacts resulting from  
30 the COVID-19 Pandemic.

31 "Government securities" means any bonds or other obligations  
32 which as to principal and interest constitute direct obligations of, or  
33 are unconditionally guaranteed by, the United States of America,  
34 including obligations of any federal agency, to the extent those  
35 obligations are unconditionally guaranteed by the United States of  
36 America, and any certificates or any other evidences of an  
37 ownership interest in those obligations of, or unconditionally  
38 guaranteed by, the United States of America or in specified portions  
39 which may consist of the principal of, or the interest on, such  
40 obligations. Except for purposes of Sections 20 and 21 of this act,  
41 the term "government securities" shall also include local  
42 government securities.

43 "Local government unit" means a county, municipality, or other  
44 political subdivision of the State or any agency, authority, or other  
45 governmental entity thereof.

46 "Local government securities" means, securities, notes, warrants,  
47 bond anticipation notes, commercial paper, certificates of  
48 indebtedness, certificates of participation in any lease or sale, or



any other evidence of indebtedness that is a general obligation of, or an obligation guaranteed as to principal and interest by, an investment grade local government unit.

"New Jersey COVID-19 State Emergency Fund" means the fund by that name created and established pursuant to section 13 of this act.

"New Jersey COVID-19 State Emergency Liquidity Fund" means the fund by that name created and established pursuant to section 13 of this act.

"New Jersey COVID-19 State Stimulus Fund" means the fund by that name created and established pursuant to section 13 of this act.

"New Jersey COVID-19 Local Government Unit Emergency Fund" means the fund by that name created and established pursuant to section 13 of this act.

"Refund" or "Refunding" means providing for the payment of a bond on or prior to its maturity or upon redemption or prepayment prior to maturity, as authorized in this act.

"Refunding bonds" means any bonds issued under this act to refund bonds previously issued pursuant to this act.

"State" means the State of New Jersey.

4. a. Bonds of the State of New Jersey are authorized to be issued to address the State's financial problems that have arisen as a consequence of the COVID-19 Pandemic. The bonds authorized pursuant to this subsection a. of section 4 of this act are authorized to be issued in the aggregate principal amount of \$5,000,000,000.

b. In addition to bonds authorized pursuant to subsection a. of this section 4, notwithstanding any other law to the contrary, the State, acting through the Governor or through the State Treasurer with the consent of the Governor, is hereby authorized to borrow from the federal government for the benefit of the State in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law. Any such monies received shall be considered monies deposited with the State by the government of the United States for purposes of Article VII, Section II, paragraph 3, subparagraph e. of the Constitution of the State. Any such borrowing shall be treated as a bond for the purposes of sections 7, 23, and 24 of this act.

c. In addition to bonds authorized pursuant to subsections a. and b. of this section 4, the State, acting through the Governor or through the State Treasurer with the consent of the Governor, is hereby authorized to borrow from the federal government in such amounts and on such terms as the federal government sets forth in or pursuant to any federal stimulus law for the purpose of providing financial assistance to local government units, provided, however, that the State shall not borrow from the federal government pursuant to this subsection c. for the purpose of providing financial assistance to local government units that are eligible on their own

1 behalf to borrow from the federal government pursuant to any  
2 federal stimulus law.

3 Any such monies received shall be considered monies deposited  
4 with the State by the government of the United States for purposes  
5 of Article Vm, Section 11, paragraph 3, subparagraph e. of the  
6 Constitution of the State. Any such borrowing shall be treated as a  
7 bond for the purposes of sections 7.23 and 24 of this act.  
8 Applications from local government units for financial assistance  
9 shall be received by the Director. Such financial assistance shall be  
10 allocated where needed to assist a local government unit suffering  
11 from serious fiscal distress due to the COVID-19 Pandemic to meet  
12 immediate budgetary needs and regain financial stability. Evidence  
13 of severe financial distress may include, but shall not be limited to:  
14 limited ability to raise supplemental non-property tax revenues.  
15 5 extraordinary demands for public safety appropriations, difficulties  
16 making payments of debt service on obligations of the local  
17 government unit, and other factors indicating a constrained ability  
18 to raise sufficient revenues to meet budgetary requirements that  
19 substantially jeopardizes the fiscal integrity of the local government  
20 unit. The Director shall promulgate rules and regulations pursuant  
21 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:148-  
22 I, et seq.), setting forth the application process, the criteria by  
23 which applications shall be considered, the terms of securing local  
24 government repayment obligations, and the terms and conditions of  
25 the financial assistance. These rules and regulations shall be  
26 adopted on an emergency basis by the Director in consultation with  
27 the State Treasurer.

28 d. In addition to bonds authorized pursuant to subsections a.,  
29 b., and c. of this section 4, bonds are authorized to be issued in the  
30 form of short-term notes to provide effective cash flow management  
31 for revenues and expenditures of the General Fund and the Property  
32 Tax Relief Fund in the implementation of the annual appropriations  
33 acts for Fiscal Year 2020 and Fiscal Year 2021. Such short-term  
34 notes shall be issued in such amounts and at such times as the  
35 issuing officials herein named shall deem necessary for the above  
36 stated purposes and for the payment of related costs.

37 e. Refunding bonds are authorized to be issued to refund bonds  
38 previously issued under this act in whole or in part. Refunding  
39 bonds shall be issued in an amount not to exceed the amount  
40 necessary to pay or to provide for the payment of the principal of  
41 the outstanding bonds to be refunded, together with any redemption  
42 premium on the outstanding bonds, any interest accrued or to accrue  
43 on the outstanding bonds to be refunded to the date of payment of  
44 those outstanding bonds, the expenses of issuing the refunding  
45 bonds and the expenses, if any, of paying the outstanding bonds to  
46 be refunded. Refunding bonds may be issued hereunder without  
47 regard to the "Refunding Bond Act of 1985," P.L.1985 c.74, as  
48 amended by P.L.1992, c.182 (C.49:28-1 et seq.).