

**PUBLIC NOTICE**

**COMMUNITY AFFAIRS**

**LOCAL FINANCE BOARD**

**Notice of Action on Petition for Rulemaking**

**Certification of Available Funds**

**N.J.A.C. 5:30-5.4**

Petitioner: Mr. John Paff, Chairman, Open Government Advocacy Project, New Jersey Libertarian Party.

**Take notice** that on August 5, 2014, the Local Finance Board received a petition for rulemaking from the above petitioner requesting that the Board amend N.J.A.C. 5:30-5.4(a) to require that all Certifications of Available Funds explicitly set forth the maximum dollar amount of the contract to be awarded. A notice acknowledging receipt of the petition and summarizing its contents was published in the September 15, 2014, New Jersey Register at 46 N.J.R. 1977(b).

**Take further notice** that this petition was considered by the Local Finance Board at its public meeting on September 10, 2014. At that time, the Board determined to refer the matter to Division of Local Government Services staff for further deliberation and recommendation on further action within 90 days. A notice of action on the petition for rulemaking was published in the November 3, 2014, New Jersey Register at 46 N.J.R. 2199(a).

**Take further notice** that Division of Local Government Services staff recommended that the Board propose an amendment to N.J.A.C. 5:30-5.4 that would require that: 1) the certification of available funds set forth the maximum dollar amount of the contract

pending approval by the governing body; 2) the certifying financial officer cannot issue a certification of funds unless the maximum dollar value of the contract pending approval by the governing body is provided; and 3) the resolution awarding the contract set forth the maximum dollar amount of the contract. At its December 10, 2014, meeting, the Local Finance Board upon due consideration voted to propose an amendment to N.J.A.C. 5:30-5.4 with the above-referenced requirements in the interest of obtaining public comment. The notice of proposal is published elsewhere in this issue of the New Jersey Register.

A copy of this public notice has been mailed to the petitioner.

**COMMUNITY AFFAIRS**

**DIVISION OF LOCAL GOVERNMENT SERVICES**

**LOCAL FINANCE BOARD**

**Certification of Available Funds**

**Proposed Amendment: N.J.A.C. 5:30-5.4**

Authorized By: Local Finance Board, Thomas H. Neff, Chair.

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

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

Proposal Number: PRN 2015-007.

Submit comments by March 21, 2015, to:

Patricia Parkin McNamara, Executive Secretary

Local Finance Board

Department of Community Affairs

P.O. Box 803

Trenton, New Jersey 08625-0803

[dlgs@dca.nj.gov](mailto:dlgs@dca.nj.gov)

For comments submitted via e-mail, please name the subject heading "NJAC 5:30-5.4 Certification of Available Funds".

**Summary**

When the governing body of a local unit governed by the Local Budget Law or Local Authorities Fiscal Control Law (N.J.S.A. 4A:4-1 et seq. and 40A:5A-1 et seq., respectively) awards any contract, the chief financial officer or another certifying financial officer must certify

to the availability of funds in writing to the governing body pursuant to N.J.A.C. 5:30-5.4 and, for certain special situations, N.J.A.C. 5:30-5.5. N.J.A.C. 5:30-5.4(a)1 and 2 require that the certification of available funds and the governing body resolution awarding the contract set forth the budget line item appropriation or appropriations to which the contract will be charged.

The Local Finance Board proposes amending N.J.A.C. 5:30-5.4(a)1 and 2 to require that 1) the certification of available funds sets forth the maximum dollar amount of the contract pending approval by the governing body; 2) the certifying financial officer cannot issue a certification of funds unless the maximum dollar value of the contract pending approval by the governing body is provided; and 3) the resolution awarding the contract sets forth the maximum dollar amount of the contract.

In response to a petition for rulemaking submitted Mr. John Paff, Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, and published in the September 15, 2014, New Jersey Register as 46 N.J.R. 1977(b), the Board referred the matter to Division of Local Government Services staff for further deliberation and recommendation. A notice regarding this referral was published in the November 3, 2014, New Jersey Register at 46 N.J.R. 2199(a). The Board is proposing the within amendments based upon the recommendations of Division staff.

This rule proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:20-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed amendments increase transparency by requiring that documents accessible to the public, the certification of available funds and the contract award resolution, display the

maximum dollar value of the contract. Ensuring access to this information improves the public's ability to monitor how tax dollars are being spent.

### **Economic Impact**

The Board anticipates that the proposed rule amendments will have a positive fiscal impact by enhancing local government fiscal accountability. Expressly requiring the governing body to provide the maximum dollar value of a contract pending approval before a certifying financial officer can certify that funds are available ensures that the certification of available funds is a viable control against overexpenditure. The certification of available funds is of limited value unless the certifying officer knows the maximum amount of the contract.

Even in cases such as contracts with hourly billing, a maximum value can still be reasonably estimated. For example, a governing body can estimate the maximum that will be expended on an hourly billing contract based on some metric, such as how much was spent on similar services during the prior budget year or, in the case of a specific project, how many hours it is expected to take for completion.

### **Federal Standards Statement**

No Federal standards analysis is required because the proposed rule amendments are not being proposed to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

### **Jobs Impact**

The Board does not anticipate the creation or loss of any private sector jobs as a result of the proposed rule amendments, as they pertain to the display of certain fiscal information on the financial documents of local units.

### **Agriculture Industry Impact**

The Board does not anticipate that the proposed rule amendments will have an impact on the agriculture industry, as they pertain to the certification of available funds for the award of a contract by a local unit.

### **Regulatory Flexibility Statement**

The proposed rule amendments would not impose any reporting, recordkeeping, or compliance requirement on “small businesses” as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they pertain to the certification of available funds for the award of a contract by a local unit.

### **Housing Affordability Impact Analysis**

The proposed rule amendments are not anticipated to have an impact on housing affordability as they pertain to the certification of available funds for the award of a contract by a local unit.

### **Smart Growth Development Impact Analysis**

The proposed rule amendments pertain to the certification of available funds for the award of a contract by a local unit. As such, the amendments will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the

State Development and Redevelopment Plan despite the rule amendments' applicability Statewide.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 5. CERTIFICATIONS OF AVAILABILITY OF FUNDS, AND  
ACCOUNTING SYSTEM REQUIREMENTS FOR LOCAL UNITS

5:30-5.4 Procedure

(a) The following procedure shall be utilized for the certification of funds when a contract is to be awarded by the governing body of the local unit:

1. The chief financial officer or certifying finance officer, as appropriate, charged with the responsibility of maintaining the financial records of the contracting unit shall certify in writing to the governing body the availability or lack thereof of adequate funds for each contract which is pending approval by the governing body. Said certification shall designate specifically the line item appropriation(s) of the official budget to which the contract will be properly charged **and the maximum dollar value of the contract pending approval by the governing body**, ensuring that the same funds shall not be certified as available for more than one pending contract. Said officer shall be solely responsible for the accuracy of the certification. **No chief financial officer or certifying finance officer shall issue a certification of available funds unless the governing body provides the maximum dollar value of the contract.**

2. No resolution authorizing the entering into of any contract pursuant to N.J.S.A. 40A:11-1 et seq. or any other law for the expenditure of public funds to a vendor shall be enacted unless it shall recite that such a certificate showing availability of funds has been provided. The resolution shall specify the exact line item appropriation(s) or ordinance which shall be charged, **and the maximum dollar value of the contract.**

3.-6. (No change.)

(b) (No change.)





# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

*Phone: 732-873-1251 - Fax: 908-325-0129*

*Email: paff@pobox.com*

August 1, 2014

Office of the Commissioner  
Department of Community Affairs  
PO Box 800  
Trenton, NJ 08625-0800

RE: Petition for Rulemaking

Dear Sir or Madam:

Please accept the enclosure as our Petition for Rulemaking pursuant to N.J.A.C. § 5:2-2.2.

Thank you for your attention to this matter. We look forward to your reply.

Sincerely,

John Paff

**PETITION FOR RULEMAKING  
TO THE DEPARTMENT OF COMMUNITY AFFAIRS**

**1. The full name and address of the petitioner;**

John Paff, Individually, and  
New Jersey Libertarian Party  
P.O. Box 5424, Somerset, NJ 08875-5424

**2. The substance or nature of the rulemaking that is requested;**

An amendment to N.J.A.C. § 5:30-5.4(a) to require all Certifications of Available Funds to explicitly set forth the maximum dollar amount of the contract to be awarded.

**3. The reasons for the request;**

A July 9, 2014 article in the Parsippany Focus (copy attached) indicates that after Parsippany-Troy Hills Township Chief Financial Officer Joseph A. Kovalick, Jr. resigned from his position, he took a job with Morris County. Then, according to the article, the Township Council passed a resolution to award a no-bid contract to EPIC Solutions, LLC "to provide day-by-day financial consulting services as directed by the municipality's [new] Chief Financial Officer." The article states that that Kovalick is "one of the principals of Epic Solutions, LLC.

The Focus article goes on to relate that the Township refused to release salient details, such as "how many hours the consultant will be working in Parsippany [or] at what rate the consultant will be paid." According to the article, the Focus sought a copy of the contract but was told that it "hasn't been signed by the Administration (meaning Mayor James Barberio) and given to the Clerk's Office yet. That could take up to 30 days."

On July 10, 2014, Petitioner John Paff requested "immediate access" to the contract and Township Clerk Yancy Wazirmas responded on July 11, 2014 that:

*We are in receipt of your OPRA request for "the Professional Service Agreement with EPIC Solutions, LLC." The document you are seeking is not in the possession of the Custodian of Records. The resolution adopted by the Township Council at their meeting on July 8th states: "That the Township Council hereby authorizes execution by the Mayor and witness by the Township Clerk of a professional services agreement with EPIC Solutions, LLC, in a form acceptable to the Township Attorney." Until such time that the completed document is received by this office, it remains as an exemption under N.J.S.A. 47:1A-1.1: "Inter-agency or intra-agency advisory, consultative or deliberative material."*

(Paff's July 10, 2014 request and Wazirmas' response are attached to this Petition.)

Paff then checked the Notice of Contract Awarded that was published in the Daily Record on July 11, 2014. That published notice, copy attached, states that the amount of the contract "will exceed \$17,500."

On July 11, 2014, Paff submitted an additional public records request to Wazirmas for the "certification of fund availability, as required by N.J.A.C. § 5:30-5.4(a)(1), related to the award of the contract to EPIC Solutions, LLC." On August 1, 2014, Wazirmas responded with the attached document, which, like the newspaper publication, provided information no more detailed than that the contract with EPIC Solutions, LLC. "will exceed \$17,500."

**4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest; and**

Petitioner Paff chairs the New Jersey Libertarian Party's Open Government Advocacy Project which seeks to maximize the amount of information available to citizens from government agencies. We believe that without prompt and meaningful access to governmental information, citizens and taxpayers are unable to effectively fulfill their vital role in monitoring government and seeking redress for governmental excesses and abuses.

Here, it appears that Parsippany-Troy Hills Township, perhaps intentionally, is keeping the public from knowing the "up to" dollar amount that EPIC Solutions, LLC. will be able to receive under this contract. Given EPIC's relationship to the Township's former Chief Financial Officer, the public has an extraordinarily strong interest in knowing the amount of taxpayer money that EPIC Solutions, LLC may receive.

Yet, nothing in N.J.A.C. § 5:30-5.4 expressly requires the "up to" dollar amount of a contract to appear in the certification of fund availability or elsewhere. Petitioners seek rulemaking that will close this loophole so that taxpayers in Parsippany-Troy Hills as well as those in other communities can promptly obtain accurate and complete information concerning public fund expenditures.

Even if Parsippany-Troy Hills discloses the amount of EPIC's contract during the pendency of this Petition, we believe that the requested rule amendment is necessary to ensure that similarly situated residents and taxpayers will, going forward, have prompt access to complete financial information regarding government contracts.

**5. The statutory authority under which the Department may take the requested action.**

N.J.S.A. 40A:4-83, N.J.S.A. 52:27BB-10 and N.J.S.A. 52:27BB-32

<http://www.parsippanyfocus.com>

Kovalick's company hired to perform financial consulting services

Posted By: Frank Cahill Posted date: July 09, 2014

The Parsippany-Troy Hills Administration requested the Township Council to approve a resolution (2014-07) authorizing and awarding a professional services agreement with a company, EPIC Solutions, LLC.

The resolution was passed 4-1, with Council Vice President Robert Peluso voting against the resolution.

EPIC Solutions, LLC., is owned wholly or partly by former Parsippany-Troy Hills Chief Financial Officer, Treasurer, Comptroller & Director of Finance, Joseph A. Kovalcik, Jr.

Parsippany Focus first learned Kovalcik was resigning on May 5, although it was adamantly denied by Mayor James Barberio's office at the time.

Kovalcik resigned on Friday, June 20 and started with the County of Morris on Monday, June 23. Kovalcik's company submitted a proposal to the Township Administration to provide day-by-day financial consulting services on June 24.

The resolution did not require competitive bidding because it was stated "for extraordinary unspecifiable services, including skilled financial consulting services requiring high level of experience and expertise."

The Business Administrator, Ellen Sandman, also determined and certified in writing that the value of the services will exceed \$17,500.00.

The term of the contract is for an anticipated term of six months.

The resolution also states that the Township wishes to retain EPIC Solutions as a financial consultant to provide day-by-day financial consulting services as directed by the municipality's Chief Financial Officer. Ellen Sandman, the newly appointed Business Administrator, was named temporary acting Director of Finance, Treasurer and Comptroller, and as Acting Chief Financial Officer beginning on Saturday, June 21 until the appointment and qualification of a successor.

Kovalcik first started in Parsippany in September 2013. Kovalcik's base salary, in the Tentative 2014 Budget was listed as \$147,900.00 including the annual proposed increase. His base salary for 2013 was \$145,000.00.

The resolution did not specify how many hours the consultant will be working in Parsippany, nor at what rate the consultant will be paid.

When Parsippany Focus asked Leslie Miller, an employee in the Township Clerk's Office, for a copy of the "Professional Services Agreement" with Epic Solutions, LLC., as stated in the resolution, she said it hasn't been signed by the Administration (meaning Mayor James Barberio) and given to the Clerk's Office yet. That could take up to 30 days.

Under the OPRA act, Section C.47:1A-5 states "Times during which records may be inspected, examined, copied; access; copy fees. (e)Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information."

Parsippany Focus will continue to request copies of the agreement.



John Paff &lt;opengovtissues@gmail.com&gt;

**RE: OPRA Request Township of Parsippany-Troy Hills**

1 message

Yancy Wazirmas &lt;YWazirmas@parsippany.net&gt;

Thu, Jul 10, 2014 at 1:05 PM

To: John Paff &lt;paff@pobox.com&gt;

Dear Mr. Paff,

We are in receipt of your OPRA request for "the Professional Service Agreement with EPIC Solutions, LLC." The document you are seeking is not in the possession of the Custodian of Records. The resolution adopted by the Township Council at their meeting on July 8th states: "That the Township Council hereby authorizes execution by the Mayor and witness by the Township Clerk of a professional services agreement with EPIC Solutions, LLC, in a form acceptable to the Township Attorney." Until such time that the completed document is received by this office, it remains as an exemption under N.J.S.A. 47:1A-1.1: "Inter-agency or intra-agency advisory, consultative or deliberative material."

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Township of Parsippany-Troy Hills to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at [866-850-0511](tel:866-850-0511), by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Regards,

Yancy Wazirmas, RMC/CMR  
Township Clerk/ Registrar of Vital Statistics  
1001 Parsippany Blvd.  
Parsippany, NJ 07054  
[973-263-4358](tel:973-263-4358)  
[973-299-7985](tel:973-299-7985) (Fax)

-----Original Message-----

From: John Paff [<mailto:paff@pobox.com>]  
Sent: Thursday, July 10, 2014 10:13 AM  
To: Yancy Wazirmas; [paff@pobox.com](mailto:paff@pobox.com)  
Subject: OPRA Request Township of Parsippany-Troy Hills

Township of Parsippany-Troy Hills

Please accept this e-mail/fax as my request for government records in accordance with the Open Public Records Act (OPRA) and the common law right of access. Please respond and send all responsive documents to me via e-mail at [paff@pobox.com](mailto:paff@pobox.com). If e-mail is not possible, please fax responses and responsive records to me at [908-325-0129](tel:908-325-0129). Also, I would appreciate it if you would acknowledge your receipt of this e-mail.

Records requested:

The "Professional Services Agreement" with Epic Solutions, LLC. I would like immediate access to this record in accordance with N.J.S.A. 47:1A-5(e). Please e-mail it to me by the end of today. And, I don't care if it's fully signed by all parties. I'd like it in the form in which it currently exists.

Thank you.

John Paff  
(voice - [732-873-1251](tel:732-873-1251))

Attachment: This request as a text file.

The newspapers of **New Jersey** make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web ([www.PublicNoticeAds.com](http://www.PublicNoticeAds.com)), not scattered among thousands of government web pages.

**County:** Morris

**Printed In:** Daily Record, Parsippany

**Printed On:** 2014/07/11

TWP OF PARSIPPANY-TROY HILLS

**NOTICE OF CONTRACT AWARDED**

The Township of Parsippany-Troy Hills has awarded a Contract for professional services, without competitive bidding in accordance with the N.J.S.A. 19:44A-20.4 et seq. and N.J.S.A. 40A:11-5 et seq. The Contract and Resolution awarding it are available for public inspection at the Office of the Township Clerk, Township of Parsippany-Troy Hills, 1001 Parsippany Blvd. New Jersey 07054.

Awarded to: EPIC Solutions, LLC

10 Kentwood Road

Succasunna, NJ 07785

Services: Financial Consultant

Compensation: Services Will

Exceed \$17,500

Time Period: 6 months starting from

June 24, 2014

(\$11.44) 101121

**Public Notice ID: 21529745**

**Township of Parsippany-Troy Hills**

**Certificate**

of

**Availability of Funds**

This is to certify to the Township Council of the Township of Parsippany-Troy Hills that with respect to the pending agreement with:

EPIC Solutions, LLC

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Adequate funds are available. The specific line item appropriation of the Budget, Capital Ordinance, or other source where the funds are available is:

2014 Budget: Current Fund - Division of Finance - 070

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The above is hereby certified this 8th day of July, 2014

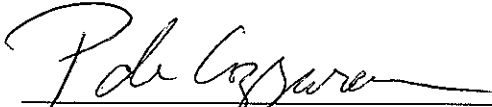


Ellen M. Sandman  
Chief Financial Officer

# Certification of Value

In accordance with N.J.S.A. 19:44A-2.05 this is to certify that the estimated value of the proposed contract with the following firm will exceed \$17,500:

Firm Name	Address	Services Provided
EPIC Solutions, LLC	10 Kentwood Road Succasunna, NJ 07785	Financial Consulting



Paula Cozzarelli  
Asst. Business Administrator

7/8/2014

Date