

FAQ
N.J.S.A. 40:54-15
Transfer of Excess Library Funds to the Municipality
December 2010

NOTE: Contact information and pertinent laws may be found at the end of this document.

General

Does this law apply to association and county libraries?

No. The law only applies to municipal and joint municipal libraries.

What steps must the trustees take to return funding to the taxpayers?

For guidelines, forms and steps necessary to apply to the State Librarian for the approval to transfer funding to the municipality see contact information below.

How long does it take NJSL to complete the review?

NJSL staff members make every effort to complete the process within 45 calendar days. To date, turnaround time has been under 3 weeks for those who submitted complete packets that met all minimum requirements.

When does the law take effect?

The law takes effect immediately. When you deliver your next annual report, you must identify any surplus over 20% of the last audited budget. This then becomes “excess” and must be returned to the municipality.

How do I calculate the amount, if any, to be returned to the municipality? If the amount of excess funds is not over 20% of the amount of the audited operating expenditures of the library for the most recent available year, does the library have to submit any forms to NJSL?

Obtain the “Proposed Transfer Form” (see contact information below). This form contains formulas that you will need to make the calculations. If there is no need for you to return funds, keep this form for your records. Do not send the form to NJSL unless it is part of the packet for the Proposed Transfer.

Identifying Excess Funds

FOR THE PURPOSES OF THIS ACT, and to help you determine excess funds, there are only 3 main categories for the Proposed Transfer form. (Your accountant will have different account names showing on the audit.) The three for the purposes of the Proposed Transfer Form are:

- Operating budget (whatever the library needs to operate including salaries and benefits)
- Restricted (current year funds to be restricted for capital projects and/or grants)

- Temporary restriction of fund balance (prior and/or current year funds to be restricted for an unanticipated expense - must be equal to 20% of last audited budget if the library is required to return funds)

What does the law mean by surplus?

NJSL is using the accounting term “*temporary restriction of fund balance*” instead of “*surplus*”. (NJSA 40:54-15a and c (1)).

What does “excess funds” mean?

“Excess funds” are the funds that will be transferred by the library trustees, with State Librarian approval, to the municipality (NJSA 40:54-15a, b(1) and d) to be used solely and exclusively by the municipality for the purposes of reducing the amount the municipality is required to raise by local property tax levy for municipal purposes (NJSA 40A:4-25.1(2.)) Excess funds are those funds not intended for use in the operating budget, or in restricted accounts for capital and grants, or the temporarily restricted account (equal to 20% of the last audited operating budget). The trustees must allocate at least 100% of the “audited operating expenditures of the library for the most recent available year” in the operating budget of the year in which the money is to be returned plus 20% in the temporarily restricted account for a total of 120%. Anything remaining, unless determined by your accountant or lawyer to be restricted by other laws (such as gifts or encumbered funds for future benefits) must be returned to the municipality.

Does the library have to maintain an amount equal to 20% of the last audited operating expenditures in the “temporary restriction of fund balance” account?

If the trustees are required to return funding to the municipality, an amount equivalent to exactly 20% of the last audited operating budget must be placed in this account.

The library has designated reserves set aside for accumulated sick leave to be paid out upon resignation or retirement and for Unemployment Insurance. How does the new law address these reserve funds?

You may want to discuss this issue with your accountant and lawyer as there may be other laws governing reserves for these benefits.

If it is determined that the municipality has to take reserves for accumulated sick leave and unemployment insurance back and does not want to, is there any recourse?

This is not addressed in NJSA 40:54-15. Your attorney may want to review NJSA 40:54-18, *Use of money paid by library to municipal treasury. The governing body of any municipality may appropriate in the annual budget for the use of the free public library of such municipality a sum equal to the amount of the money paid into the general treasury by the free public library in the preceding fiscal year. The sum so appropriated shall be available for expenditure by the board of trustees of the free public library of the municipality for library purposes, shall be in addition to sums otherwise appropriated by law for library purposes and shall be controlled by the same laws as other budget appropriations.*

How are gifts and endowments handled?

Whether or not gifts and bequests (NJSA 40:54-19.5 to 22) might qualify as excess is not addressed in NJSA 40:54-15. Small gifts might be anticipated and spent as part of the operating

budget. Large gifts or endowments often are given with restrictions. You may want to discuss this issue with your accountant and lawyer as there may be laws governing the treatment of gifts.

What if the Friends group just gave us a donation? Should we give it back?

You could expend it in the operating budget. If not, you may want to discuss this issue with your accountant and lawyer as there may be laws governing treatment of gifts.

FYI: It appears that libraries have no authority to give (or return) funds to any nonprofit. Please check with your attorney for a definitive answer.

Can gifts for the library given to separately incorporated groups such as the Friends or a Foundation be considered excess funds?

No. Funds not under the control of the trustees are not covered by this law.

How are fines, copy fees and non-resident fees handled?

Fines, copy fees and non-resident fees (if available to the trustees) unless part of the operating budget, in a restricted account for capital and grants or in the *temporary restriction of fund balance* category will be counted as excess funds. Fines, fees, interest and gifts may be included in the budget as anticipated income and expended in any of the categories available.

My library is planning a book sale. Might these funds considered excess?

If the Friends are not conducting the sale, it is generally considered appropriate to ask for a donation only. Libraries as public entities discard items according to law as the municipality does – either through auction or trash (although libraries have been donating materials and furnishings to other libraries and the Friend’s group for years). Donations may be included in the budget as anticipated income and expended in any of the categories available. You may want to discuss this issue with your accountant and lawyer as there may be laws governing the treatment of gifts.

Identifying Strategic Plan & Technology Plan Requirement

Are there any requirements that necessitate long-term planning?

Yes. A Strategic Plan of 3, 4 or 5-year duration, updated annually, as well as a 3-year Technology Plan, updated annually, is required. Whether a library is required to return funds or not, as a best practice, all libraries should have a Plan and update it annually. The State Library will provide links to sample Strategic Plans and more details upon request (see contact information below).

Does the Strategic Plan and Technology Plan need to be updated?

Yes. In both of these plans, indicate how frequently the Plan will be updated and by whom. Describe how the library will evaluate the success of library services that are implemented, when and how results will be reported and who will do the evaluation. Provide both qualitative and statistical evaluation data. Update the plan/s annually showing progress toward the specified goals. Make mid-course corrections in response to new developments and opportunities as they arise.

Annual Report & Audit

What items are included in the mandatory annual report to the municipality?

The board of trustees shall make an annual report to the chief financial officer and municipal governing body of the municipality which shall include:

- a statement setting forth in detail all public revenues received by the library,
- all State aid received by the library,
- all expenditures made by the library and the balance of funds available,
- an analysis of the state and condition of the library,
- if applicable, identification of excess funds that the board must, pending State Librarian approval, transfer to the municipality as miscellaneous revenue.

NOTE:

- The first 3 items above are contained in the library's audit. Full text of NJSA 40:54-15 is in the "Pertinent Laws" section at the end of this document.

Is it mandatory to say in the annual report that money will be transferred?

If the trustees have excess funds, they must be reported and returned.

Do we have to do an annual report? Do we have to do a Strategic Plan if we are required to return funds?

Yes. It is the law

What happens if a library does not conform to the law?

NJSL expects all boards of trustees to be in compliance with all applicable laws, and will not award any State Aid to those that are not. Please discuss with your attorney possible penalties should the trustees decide not to comply in good faith.

What should be reported in the analysis of the state and condition of the library?

Include in this section of the annual report anything you think the elected officials and CFO of your municipality should know. The municipality will want to plan for any capital items such as roof replacement or a new furnace. The annual report is also an excellent vehicle to describe to officials how well you are serving the community, and you may want to submit usage statistics, etc. Many libraries also present their NJ Public Libraries Survey to the municipality.

Is there a form available for the 'statement of library condition' and what should be included in that statement?

There is no form, but please see above.

What other reports must libraries produce each year?

NJAC 15:21-12.7, Annual municipal and joint free public library reports and audit, lists the reports (see Pertinent Laws at the end of this document). All municipal and joint libraries must have an annual audit and make an annual report to the municipality. In addition, each must make a report to the State Librarian. Those libraries participating in the NJ Public Library Survey meet this requirement through the annual survey. Those that do not participate in the survey should review NJAC 15:21-12.7(b).

Timing

We have not yet given our annual report for 2010 and have encumbered funds carried over into 2010 for 2009 payables. Do we include or exclude?

The *Transfer Form* does not require information regarding encumbered funds from a prior year.

The first part of NJSA 40:54-15 (a) is referring to a prior year, and you will be submitting your audit (which will show encumbered funds) as part of the annual report. The return of funds section is referring to the current year, and all that is required to be identified in the annual report is the amount of excess funds to be returned, pending State Librarian approval. If you are submitting your current year proposed budget at the same time as the annual report, you will show it (or not) in the proposed budget as the accountant recommends.

My audit for FY10 will be complete in 8 weeks —is that when my report is due, or do I use the FY09 audit?

Your annual report is due to the municipality whenever you normally make your annual report. Please have your lawyer and accountant review NJSA 40:54-15 in the “Pertinent Laws” section at the end of this document. If they advise you that the annual report should not be done until the prior year’s audit is complete and the trustees are reasonably sure that there will be excess funds, the trustees should begin the Transfer process. If the trustees have no Strategic or Technology plan in place (Capital plan if applicable), they should begin work on these immediately. Once these plans are adopted, the trustees should submit all the required elements to transfer funds to NJSL (except the prior year’s audit which may not be complete yet). Once the audit is complete and NJSL has received an amended Transfer Form and Transfer Resolution (if required) the process may be quickly finished.

Per Capita State Aid

How is PCSA handled?

PCSA is a grant and may only be used for library purposes. It may be used in the operating budget or for a capital project or held as grant income for no more than two years without submitting a plan to the State Librarian. It may not be considered excess funds or be given to the municipality (see NJSA18A:74-9 and NJAC 15:21-2.8 in Pertinent Laws section at the end of this document).

Capital Funding

What qualifies as a "Capital Account"?

Local definitions of capital expense may vary. For example, a library might define capital as “an article of property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.” Please check with your auditor before considering making your own definition as your auditor will best be able to tell you if it is reasonable in accounting terms.

For the purposes of the appropriate expenditure of the minimum funding provided by the municipality (1/3 mill), NJSL considers the following capital items based on use rather than cost:

NJAC15:21-12.3 *“Capital expense” means the funds appropriated to or required for furnishings, equipment (including computer hardware and software) and initial collections (print, non-print, electronic) for new buildings, building additions or building renovations; periodic major projects such as the upgrade of computer hardware and software and the replacement of roofs and heating, ventilation and air conditioning systems; and site acquisition, new buildings, and additions to or renovations of library buildings.*

Other items generally considered capital items are architect/engineer’s fees for new construction or renovations.

Do you have a sample resolution to reserve funds for capital projects?

Yes (see contact information below).

When may the Library Board pass a resolution reserving funds for capital?

The board may pass a resolution to reserve funds for capital at any open public meeting. It is highly recommended that documentation supporting this resolution be available at the time the resolution is made. At the very least, there should be a list of proposed capital expenditures and an anticipated timeline. Supporting documentation in the form of quotes or estimates should also be available as soon as possible. For large projects such as new buildings or additions, a capital plan should be in place.

Joint Libraries

How should Joint Libraries submit an application?

The easiest would be to submit one Transfer form that includes both towns. It may be noted at the bottom of the form and in the resolution how much each town will get. The percentage each town will get will be based on their joint library agreement.

Joint libraries by Statute must receive a minimum amount of 1/3 mill of the combined equalized valuation of the two participating towns. To determine this amount, the equalized valuation of both towns is added together and then multiplied by .000333333. The towns decide by agreement how much each will pay. They might each pay 1/3 mill on just their own town’s equalized valuation, or they may select some other arrangement. You may want an attorney to review NJSA 40:54-29.5 (in the Pertinent Laws Section) in case returning funds requires the rewording of the joint library agreement.

Municipal Restrictions

If the library returns funding to the municipality, are there any restrictions on what the municipality must do with the money?

Yes. The money must be used *solely and exclusively to reduce the amount required to be raised by the local property tax levy* (see NJSA 40A:4-25.1, *Use of library monies transferred to municipality*).

How does the municipality budget the returned funds?

NJSA 40A:4-25.1 states that it “may be anticipated by the municipality as miscellaneous revenue.”

If the transfer of library surplus is approved after the municipal budget has been adopted and the property tax rate approved by the County Board of Taxation, how is the money handled?

The municipality reserves the entire amount of the transfer to be anticipated in the following year’s budget.

Instead of the trustees returning funding to the municipality, may the municipality reduce the annual contribution?

No. It is a transfer from the trustees to the municipality (see NJSA 40A:4-25.1, *Use of library monies transferred to municipality*).

Contact Information Contact Michele Stricker, Deputy Director, Library Development Bureau of the New Jersey State Library (NJSL) at mstricker@njstatelib.org

Pertinent Laws

Transfer

NJSA 40:54-15 Annual report, identification of excess funds to municipality, transfer procedure.

a. The board of trustees shall make an annual report to the chief financial officer of the municipality which shall include a statement setting forth in detail all public revenues received by the library, all State aid received by the library, all expenditures made by the library and the balance of funds available. Notwithstanding the requirements of R.S.40:54-8 pertaining to the amount required to be raised and appropriated for library purposes, the annual report shall identify excess funds that the board is required to approve and transfer to the municipality as miscellaneous revenue. The excess funds transferred shall be any amount that exceeds the sum of the amount of the audited operating expenditures of the library for the most recent available year, plus an additional 20% of those operating expenditures, excluding funds restricted for capital projects and grants, to be maintained as surplus. The annual report shall also include an analysis of the state and condition of the library and shall be sent to the municipal governing body and to the State Library. The State Librarian shall prescribe by regulation the form of all such reports.

b. (1) Except as limited in paragraph (2) of this subsection, the board of trustees of a municipal free library shall adopt a resolution of its intent to transfer excess funds to the municipality, as identified in its annual report pursuant to subsection a. of this section.

(2) The board of trustees of a municipal free library established after the effective date of P.L.2008, c.8 shall not adopt a resolution of intent pursuant to this subsection before the eighth budget year following its establishment.

c. Once the board of trustees has adopted a resolution of intent pursuant to subsection b. of this section, it shall forward the resolution to the State Librarian for approval, along with any other information required by the State Librarian and in accordance with procedures and forms promulgated by the State Librarian in consultation with the Director of the Division of Local Government Services in the Department of Community Affairs. The State Librarian shall approve any resolution upon a determination that all of the following provisions are met:

(1) the municipal free library will still retain a sum equal to the amount of the audited operating expenditures of the library for the most recent available year plus an additional 20% of that amount, excluding funds restricted for capital projects and grants, to be maintained as surplus;

(2) the municipality and the municipal free library are in compliance with all conditions imposed by rule or regulation promulgated by the State Librarian for per capita library aid to public libraries according to the "state library aid law," N.J.S.18A:74-1 et seq., and pertaining to appropriations for the maintenance of a municipal free library according to R.S.40:54-8 or section 2 of P.L.1959, c.155 (C.40:54-29.4) in the case of a joint free public library;

(3) there are sufficient funds remaining in the municipal free library's operating budget for the maintenance of the library for the balance of the fiscal year in which the transfer of funds to the municipality occurs; and

(4) the library board of trustees has a written plan of at least three years that reflects that the long-term funding needs of the library will be met, and that any capital expense will contribute to the provision of efficient and effective library services, and that the written plan has been approved by the State Librarian.

d. Upon approval of its resolution of intent by the State Librarian pursuant to subsection c. of this section, the board of trustees shall cause the amount of the excess funds identified in its resolution to be transferred to the municipality.

Amended 1985, c.541, s.2; 2001, c.137, s.55; 2008, c.8, s.1; 2010, c.83, s.1.

NJSA 40A:4-25, Miscellaneous revenues.

"Miscellaneous revenues" shall include such amounts as may reasonably be expected to be realized in cash during the fiscal year from known and regular sources, or from sources reasonably capable of anticipation, and lawfully applicable to the appropriations made in the budget, other than dedicated revenues, revenues from taxes to be levied to support the budget, receipts from delinquent taxes, and surplus. Miscellaneous revenues stated in the budget shall be classified according to their respective sources. L.1960, c. 169, s. 1, eff. Jan. 1, 1962.

40A:4-25.1, Use of library monies transferred to municipality.

...

2. Monies approved by the State Librarian for transfer to a municipality by the board of trustees of its municipal free library, pursuant to subsection c. of R.S.40:54-15, may be anticipated by the municipality as a miscellaneous revenue; provided, however, that the monies shall be used solely

and exclusively by the municipality for the purposes of reducing the amount the municipality is required to raise by local property tax levy for municipal purposes. The director shall certify that each municipality has complied with this section. If the director finds that monies transferred to a municipality by its municipal free library pursuant to subsection d. of R.S.40:54-15 are not used by that municipality solely and exclusively to reduce the amount required to be raised by the local property tax levy, then the director shall correct the municipal budget, pursuant to N.J.S.40A:4-86, to ensure that the transferred funds are used for that purpose only. L.2008, c.8, s.2.

Holding Library Funds in Municipal budget

N.J.S.A. 40:54-18. Use of money paid by library to municipal treasury

The governing body of any municipality may appropriate in the annual budget for the use of the free public library of such municipality a sum equal to the amount of the money paid into the general treasury by the free public library in the preceding fiscal year. The sum so appropriated shall be available for expenditure by the board of trustees of the free public library of the municipality for library purposes, shall be in addition to sums otherwise appropriated by law for library purposes and shall be controlled by the same laws as other budget appropriations.

Joint Libraries

NJSA 40:54-29.4. Joint library agreement; contents

The governing bodies of such municipalities shall propose such an undertaking by a joint library agreement, which shall provide for the apportionment of annual and special appropriations therefor among such municipalities, for the initial annual appropriation for such library, for the abandonment or the continuance of such agreement in the event that it is not approved by all such municipalities as provided for in this act, and for such other matters as they shall determine. Such apportionment of appropriations may be based on the assessed valuations of the respective municipalities, their populations, or such factor or factors as the governing bodies shall agree.

Such an agreement shall provide that the combined minimum appropriation for the joint library shall annually be not less than one-third of a mill on every dollar of assessable property within the participating municipalities based upon the equalized valuation of such property within the combined municipalities as certified by the Director of the Division of Taxation in the Department of the Treasury.

L.1959, c. 155, p. 619, § 2. Amended by L.1988, c. 38, § 2.

NJSA 40:54-29.5. Joint library agreement, filing

After the introduction of an ordinance approving such Joint library agreement, which may be incorporated by reference therein, such agreement shall be and remain on file for public inspection in the municipal clerk's office from the time of introduction of such ordinance and such ordinance shall so state. A copy of such ordinance and of the Joint library agreement shall be filed with the State Librarian and the Director of the Division of Local Government. Subsequent amendments and supplements to such ordinance and agreement shall be filed in like manner.

L.1959, c. 155, p. 619, § 3. Amended by L.2001, c.137, § 56.

Reports and audit

NJAC 15:21-12.7 Annual municipal and joint free public library reports and audit

(a) Pursuant to N.J.S.A. 18A:74-11, each library receiving state aid shall annually make and transmit a report to the State Librarian on or before a date designated by the State Librarian and based on a fiscal year, the statute notwithstanding. Each library and municipality applying for per capita state aid will meet this requirement through the annual submission of the survey, application and certification. ... (annual New Jersey Public Library Survey)

(b) Pursuant to N.J.S.A. 40:54-15, the board of trustees shall make an annual report to the State Librarian. Each library and municipality applying for per capita state aid will meet this requirement through the annual submission of the survey, application and certification. All libraries not applying for per capita state aid shall report those elements as required in (a) 1-5, and shall annually submit to the State Librarian a certified audit of the prior year. (Submit an audit to NJSL only if not submitting the annual New Jersey Public Library Survey.)

(c) Pursuant to N.J.S.A. 40:54-15, the board of trustees shall make an annual report to the chief financial officer of the municipality which shall include a statement setting forth in detail all public revenues received by the library, all State aid received by the library, all expenditures made by the library and the balance of funds available. The annual report shall also include an analysis of the state and condition of the library and shall be sent to the municipal governing body. (You must also now include a statement identifying funds the library is required to return to the municipality.)

(d) A certified audit of the library board of trustees shall be performed annually as required by N.J.S.A. 40A:5-4 et seq. and described in N.J.A.C. 5:30-6.1. In some cases all budget appropriations, fines, fees and all other income of the library are retained in the custody of the municipal treasurer in an account reserved for the library and disbursed by the municipal treasurer after approval by the board of trustees of the free public library. If the municipal audit includes a thorough audit of the library's finances, including demonstration that the library board of trustees duly authorized all expenditures, then the municipal audit will meet this requirement.

Per Capita State Aid

N.J.S.A.18A:74-9. Application of benefits to library services

Benefits received pursuant to this chapter shall not be applied to any other purpose than library services maintained pursuant to chapters 33 and 54 of Title 40 of the Revised Statutes¹ and pursuant to this chapter. ¹Section 40:33-1 et seq., 40:54-1 et seq.

N.J.A.C. 15:21-2.8 Use of per capita aid; decision by public library board of trustees or county library officials

(a) State Aid must be used for library purposes. Upon receipt of State Aid checks pursuant to N.J.S.A. 18A:74-3, municipal and county treasurers shall make these funds immediately available to public library trustees, county library commissioners or, in counties which have reorganized the administrative structure of county government according to N.J.S.A. 40:41A-1 et

seq., the board of chosen freeholders as the case may be. Decisions on the use and expenditures of per capita State Aid rest with the board of trustees of municipal, joint and association libraries and with the county library commission of the county libraries or the county board of chosen freeholders. The State Librarian may require a certified audit if he or she deems necessary.

(b) State Aid funds must be expended within two years of the date of receipt of the funds. If not expended, the board of trustees, the county library commission or the board of chosen freeholders must submit to the State Librarian a plan for the use of the unspent balances at least 60 days before the deadline for expenditure. Failure to submit such a plan, or disapproval of the plan by the State Librarian, shall result in the withholding of State Aid payments.

Dec. 1, 2010