

2. An agency head shall file with the [Commissioner] **Chairperson or designee** two reports concerning an exceptional emergency as follows:

i.-ii. (No change.)

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal, or other related work in situations [which] **that** constitute unreasonable safety hazards to the public, employees, other persons, or property of the State. The [Commissioner] **Chairperson or designee** shall establish emergency condition rates for these circumstances.

(e) Eligibility for special project rate compensation shall be as follows:

1. If an employee works on a part time, occasional, or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the [Commissioner] **Chairperson or designee**.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the [Commissioner] **Chairperson or designee**.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the [Commissioner or his or her representative] **Chairperson or designee** for review and approval.

4A:3-5.9 Appointing authority responsibilities: State service

(a) (No change.)

(b) A copy of each department's procedures, written interpretations, and any subsequent changes are to be filed with the [Commissioner] **Chairperson** or [his or her] designee and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year, and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the [Commissioner or his or her representative] **Chairperson or designee**.

(d) (No change.)

(e) Upon demand, the appointing authority shall make available to the [Commissioner or his or her representative] **Chairperson or designee** all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Upon demand for reports of compensatory time off or comparable time off, the appointing authority shall make available to the [Commissioner or his or her representative] **Chairperson or designee** the following items:

1.-8. (No change.)

(g) (No change.)

4A:3-5.10 Appeal procedures: State service

(a) (No change.)

(b) Position designation appeals may be filed by an employee and shall be submitted, in writing, to the appointing authority through the personnel office.

1.-2. (No change.)

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, he or she may file an appeal, in writing, within 10 days from the final day

for the appointing authority's decision. All second level appeals shall be submitted to the [Department of Personnel] **Civil Service Commission**.

i. (No change.)

4. The appropriate section of the [Department of Personnel] **Civil Service Commission** shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the [Commissioner] **Chairperson or designee**.

5. All appeals to the [Commissioner] **Commission** must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter from the prior level in the [Department of Personnel] **Civil Service Commission**.

i. The [Commissioner] **Commission** shall render a decision based on the written record or such other procedures as he or she deems appropriate.

ii. The decision of the [Commissioner] **Commission** shall be the final administrative decision.

(c) Title designation appeals may be filed either by the appointing authority or an affected employee.

1. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4. Such appeals shall be submitted, in writing, to the [Department of Personnel] **Civil Service Commission**.

2. (No change.)

3. An appeal of the first level decision may be filed with the [Commissioner] **Commission** in accordance with (a)5 above.

(d) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

Bond Refundings Meeting Certain Conditions

Proposed Amendment: N.J.A.C. 5:30-2.5

Reproposed New Rule: N.J.A.C. 5:31-8.1

Authorized By: Local Finance Board, Timothy J. Cunningham, Chair.

Authority: N.J.S.A. 18A:24-61.5(b), 40A:2-51(c), and 40A:5A-6.

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

Proposal Number: PRN 2016-206.

Please submit written comments on the notice of proposal by February 17, 2017, via e-mail to dlgs@dca.nj.gov or by regular mail to:

Patricia Parkin McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
PO Box 803
Trenton, NJ 08625-0803

For comments submitted via e-mail, please include the subject heading "NJAC 5:30-2.5 and 5:31-8.1: Refunding of Bonds Meeting Certain Conditions."

The agency proposal follows:

Summary

At its March 9, 2016, meeting, the Local Finance Board (Board) voted to propose new N.J.A.C. 5:31-8.1, which would allow any local unit subject to the Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.) to issue refunding bonds without prior approval of the Local Finance Board where the issuance of said bonds realizes debt service savings on outstanding obligations and the following conditions are present: 1) the present value savings is at least three percent; 2) the

new debt service schedule shall be structured such that no annual debt service payment is more than it was under the original debt service schedule; 3) the final maturity of the refunding bond does not extend the maturity date of the refunded debt; 4) the debt savings are substantially level across the life of the refunding; and 5) the resolution allowing for the refunding is adopted by at least a two-thirds vote of the full membership of the governing body. Such issuers would be required to file, with the Local Finance Board, a comparison of the initial and refunding debt service schedule showing annual present value savings; a summary of the refunding; an itemized accounting of all costs of issuance; a certification from the chief financial officer, or equivalent, for the local unit, that all of the conditions of this section have been met; and a resolution that has been passed by at least two-thirds of the full membership of the governing body allowing for the refunding.

Examples of entities subject to the Local Authorities Fiscal Control Law include, but are not limited to, municipal utilities authorities, parking authorities, housing authorities, county improvement authorities, and fire districts. The proposed new rule is similar to N.J.A.C. 5:30-2.5, adopted by the Board effective in 2012, which applies to refundings by municipalities, counties, and boards of education.

The notice of proposal was published in the June 6, 2016, New Jersey Register at 48 N.J.R. 875(a). The Board received two comment submissions: one from the New Jersey League of Municipalities (League) and the other from Christopher Langart, Esq., on behalf of the law firm McManimon, Scotland and Baumann, LLC. The League's comment expressed support for the proposed rule, while Mr. Langart's comments proffered several changes for the Board's consideration.

Among Mr. Langart's suggested changes include amending N.J.A.C. 5:31-8.1(a)3, to permit authority refundings to be issued without Board approval when the final maturity of the refunding bond does not extend past the budget year in which such final maturity was originally scheduled. This change would allow refunding bonds issued through a county improvement authority to be refunded without Board approval, so long as all other conditions are met, if the final maturity date of the new refunding bonds were changed to later in the budget year for purposes of accommodating a pooled financing structure. The Board concurs with the proffered change because the refunding bonds will still mature in the same fiscal year and there would ultimately be no budget impact. As such, the Board will repropose N.J.A.C. 5:31-8.1 to incorporate the proposed change. Further, the Board will also propose to amend N.J.A.C. 5:30-2.5(a)3 to include similar language. This is necessary in order to avoid the inference that municipalities, counties, and boards of education issuing refunding bonds through county improvement authorities would have to seek Board approval individually if their final maturity dates were changed in this manner, so long as all other conditions are met. Both the proposed new rule and amendment to N.J.A.C. 5:30-2.5 will include minor amendments that will serve to clarify, but not alter their substance.

Additional changes offered by Mr. Langart included: 1) amending N.J.A.C. 5:31-8.1(a)1 to permit local authorities to meet the three percent present value savings threshold by aggregating the par amount of all series of refunded bonds, rather than require one series of refunding bonds to meet this threshold; and 2) permitting local authorities to issue refunding bonds not requiring Board approval by majority, rather than two thirds, vote. The Board ultimately rejects these proffered changes. Aggregating more than one series of bonds would create an exception so broad as to substantially negate the Board's oversight with respect to refunding bond issuances deserving Board scrutiny. The Board finds that the heightened threshold of two-thirds for governing body approval is necessary to serve as an added check in lieu of Board approval, generally required before authorities can issue debt; further noting that municipal and county bond ordinance adoptions generally do not require Board approval but do require two-thirds of the governing body's full membership.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment and repropose new rule would permit local units subject to the Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.) to refund bonds under certain circumstances without prior approval of the Local Finance Board. Permitting such refundings without having to file a Board application will allow entities, such as, but not limited to, county improvement authorities, municipal utilities authorities, parking authorities, housing authorities, and fire districts to move forward on a more timely basis with bond refundings that save money for taxpayers and/or ratepayers. The proposed amendment and repropose new rule would also grant similar benefits to municipalities, counties, and boards of education that issue refunding bonds through county improvement authorities.

Economic Impact

The Board anticipates that the proposed amendment and repropose new rule pertaining to refunding bonds would permit local units subject to the Local Authorities Fiscal Control Law to move forward more efficiently and effectively, achieving significant savings in interest costs on refunding and avoiding professional fees associated with unnecessary applications.

Eliminating the Board's approval role over authority debt refundings that have a history of routine Board approval will enable these local units to move more quickly to take advantage of favorable interest rates and market conditions. The proposed amendment and repropose new rule would also grant similar benefits to municipalities, counties, and boards of education that issue refunding bonds through county improvement authorities.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendment and repropose new rule are not proposed in order 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 that any jobs will be created or lost as a result of the proposed amendment and repropose new rule, as they would pertain to any local unit subject to the Local Authorities Fiscal Control Law issuing refunding bonds that meet conditions set by the Local Finance Board.

Agriculture Industry Impact

The Board does not anticipate that the proposed amendment and repropose new rule would have an impact on the agriculture industry, as they would pertain to any local unit subject to the Local Authorities Fiscal Control Law issuing refunding bonds that meet conditions set by the Local Finance Board.

Regulatory Flexibility Statement

The proposed amendment and repropose new rule would affect any local unit subject to the Local Authorities Fiscal Control Law issuing refunding bonds that meet conditions set by the Local Finance Board. The repropose new rule or proposed amendment would not impose any reporting, recordkeeping, or compliance requirements on "small businesses," as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the proposed amendment and repropose new rule would evoke a change in the average costs associated with housing nor would it have an impact on the affordability of housing. The repropose new rule and proposed amendment would allow any local unit subject to the Local Authorities Fiscal Control Law to issue refunding bonds where the issuance of refunding those bonds realizes debt service savings on outstanding obligations, without prior approval of the Local Finance Board, when certain conditions are present.

Smart Growth Development Impact Analysis

There is an extreme unlikelihood that the proposed amendment and repropose new rule would evoke a change in the housing production

within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendment and repropoed new rule would allow any local unit subject to the Local Authorities Fiscal Control Law to issue refunding bonds where the issuance of refunding those bonds realizes debt service savings on outstanding obligations, without prior approval of the Local Finance Board, when certain conditions are present.

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

CHAPTER 30
LOCAL FINANCE BOARD

SUBCHAPTER 2. LOCAL BOND LAW

5:30-2.5 Refunding of bonds meeting certain conditions

(a) Notwithstanding the approvals and consents required of the Local Finance Board in connection with the authorization, sale, and issuance of refunding bonds pursuant to N.J.S.A. 40A:2-51 et seq., or 18A:24-61 et seq., any municipality, county, or school district meeting all of the conditions set forth below, may authorize and issue refunding bonds, including by adoption of any refunding bond ordinance or resolution in connection therewith, to refund [long term] **long-term** debt without prior approval of the Local Finance Board, where the issuance of those refunding bonds realizes debt service savings on the outstanding obligations, provided all of the following conditions are present:

1. (No change.)
 2. The new debt service **schedule** shall be structured, such that no annual debt service payment is more than it was under the original debt service schedule;
 3. The final maturity of the refunding bond does not extend past the [maturity date of the refunded debt] **budget year in which such final maturity was originally scheduled to mature**; and
 4. (No change.)
- (b) (No change.)

CHAPTER 31
LOCAL AUTHORITIES

SUBCHAPTER 8. FINANCING

5:31-8.1 Refunding of bonds meeting certain conditions

(a) Any local unit subject to the Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.) meeting all of the conditions set forth below, may authorize and issue refunding bonds to refund long-term debt without prior approval of the Local Finance Board, where the issuance of said bonds realizes debt service savings on the outstanding obligations, provided all of the following conditions are present:

1. The present value savings is at least three percent;
2. The new debt service schedule shall be structured such that no annual debt service payment is more than it was under the original debt service schedule;
3. The final maturity of the refunding bond does not extend past the budget year in which such final maturity was originally scheduled to mature;
4. The debt savings are substantially level across the life of the refunding; and
5. The resolution allowing for the refunding is adopted by at least a two-thirds vote of the full membership of the governing body.

(b) The local unit shall, within 10 days of the closing on the refunding bond sale, file with the Local Finance Board a comparison of the initial and refunding debt service schedule showing annual present value savings; a summary of the refunding; an itemized accounting of all costs of issuance; a certification from the chief financial officer, or equivalent, for the local unit that all of the conditions of this section have been met; and a resolution that has been passed by at least two-thirds of the full membership of the governing body allowing for the refunding.

EDUCATION

(a)

STATE BOARD OF EDUCATION
Interdistrict Public School Choice

Proposed Readoption: N.J.A.C. 6A:12

Authorized By: New Jersey State Board of Education, Kimberley Harrington, Acting Commissioner, Acting Secretary.

Authority: N.J.S.A. 18A:36B-14 through 24.

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

Proposal Number: PRN 2016-202.

Submit written comments by February 17, 2017, to:

Diane Shoener, Director
State Board of Education Office
New Jersey Department of Education
100 River View Executive Plaza
PO Box 500
Trenton, New Jersey 08625-0500
E-mail: chapter12@doe.state.nj.us

The agency proposal follows:

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:12, Interdistrict Public School Choice, without amendments. The chapter is designed to assist school districts interested in applying to and implementing the Interdistrict Public School Choice program (choice program).

The choice program was originally established by the State Board of Education in October 1999 as a five-year pilot. The rules were amended in December 2000 to conform to N.J.S.A. 18A:36B-1 et seq., the Interdistrict Public School Program Act of 1999, which became effective January 18, 2000, and expired on June 30, 2005. The program continued under the rules that were amended again in December 2004. The chapter was readopted without amendment in 2009 with an expiration date of December 21, 2016. The Interdistrict Public School Choice Act was amended in 2010 to expand the program to additional school districts; accordingly, N.J.A.C. 6A:12 was amended in 2012. Pursuant to N.J.S.A. 52:14B-5.1, the rules were scheduled to expire on December 21, 2016. As the agency submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to June 19, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The choice program has been in operation for six years in its expanded form and has experienced tremendous growth in the number of participating school districts and student enrollments. The choice program has been successful in achieving its purpose: to increase options and flexibility for parents and students in selecting a school that best meets the needs of each student, thereby improving educational opportunities for New Jersey citizens.

The Department proposes at this time to readopt the chapter without amendment to continue the rules. The Department is continuing to assess the efficiency of the program and after a thorough review will propose any needed amendments.

The following Summary provides an overview of each subchapter and section.

Subchapter 1. General Provisions

N.J.A.C. 6A:12-1.1 Purpose

This section establishes the chapter's purpose, which is to provide students and parents with options and flexibility in selecting a school that best meets the needs of each student.

N.J.A.C. 6A:12-1.2 Scope

The section establishes the chapter's scope, which explains school district eligibility to participate in the Interdistrict Public School Choice program, prohibits choice districts from maintaining a tuition program and a choice program in the same grade levels open to choice students,