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DLGS Certification Unit Update

This Notice discusses the recent adoption of regulations pertaining to certain positions licensed by the Division of Local Government Services. Set forth at [N.J.A.C. 5:32](#), these regulations codify and clarify the Division's policies relating to Chief Financial Officers, Tax Collectors, Municipal Clerks, and Qualified Purchasing Agents. In addition, this Notice discusses temporary appointments, the use of shared services agreements to fill certain positions, and the statutory prohibition on leaving licensed officials otherwise eligible for tenure on holdover status.

Provisions of [N.J.A.C. 5:32](#)

Effective December 4, 2017, the Division of Local Government Services adopted a new chapter setting forth rules regarding municipal and county chief financial officers, municipal clerks, tax collectors, and qualified purchasing agents. The subchapters are set forth as follows:

[N.J.A.C. 5:32-1](#): General Provisions

[N.J.A.C. 5:32-2](#): Chief Financial Officers

[N.J.A.C. 5:32-3](#): Tax Collectors

[N.J.A.C. 5:32-4](#): Qualified Purchasing Agents

[N.J.A.C. 5:32-5](#): Municipal Clerks

[N.J.A.C. 5:34-5](#) (Qualified Purchasing Agents) has been recodified as [N.J.A.C. 5:32-4](#). Much of the substance of former [N.J.A.C. 5:33-2.2](#) (Tax Collector Certification) has been relocated to [N.J.A.C. 5:32-3.2](#). Certified Public Works Managers are not currently covered by [N.J.A.C. 5:32](#) but remain subject to existing law and Division certification policy.

[N.J.A.C. 5:32](#) largely codifies existing Division policy concerning coursework, examination, certification, continuing education, and certification renewal requirements. The rules also address requirements for appointing and reappointing a temporary chief financial officer, temporary purchasing agent or acting municipal clerk; as well as the appointment and reappointment of a private entity under [N.J.S.A. 40A:9-140.10\(b\)](#) to temporarily perform the duties of a chief financial officer. Key highlights are summarized below.

Codification of Examination Review Policy (N.J.A.C. 5:32-1)

The Director, at his or her discretion and as staffing permits, may authorize review of a particular examination by applicants who were not successful in passing an examination. If authorized by the Director, examination reviews shall be conducted at the Division office by a representative thereof.

Requests for examination reviews must be made in writing and must take place within 60 days of the date that appears on the notice of the mailing of the examination results; the individual must propose at least three alternative dates and times for the review. No one other than a Division representative and the unsuccessful applicant for whom the review is being conducted shall be present at the examination review. No applicant will be permitted to take any notes or copy any questions or answers.

Certification, Examination, Continuing Education & License Renewal

The adopted regulations codify existing Division policy concerning certification, examination and eligibility therefor, continuing education, and license renewal. The [Professional Certification](#) section of the Division's website detail these requirements for each Division-licensed position. Also codified is the Division's ability to waive, upon written application and good cause shown, the minimum number of contact hours in a subject area if an applicant has earned at least the overall minimum number of continuing education contact hours; provided that the applicant has earned at least one contact hour in the given subject area.

One noteworthy addition is regulatory implementation of an up to six-month extension of the existing six-month grace period for earning the minimum number of continuing education credits for licensure renewal (established by [P.L. 2015, c. 95](#)). The grace period extension only applies if the Director determines that a certificate holder was prevented from earning the required continuing education units due to either or both of the following conditions:

- A medical event or condition; and/or
- A flood, hurricane, superstorm, tornado, or other natural disaster, and a state of emergency has been declared as a result thereof by the Governor

Further, an applicant for a grace period extension must demonstrate a good faith effort to earn the required continuing education units by no later than expiration of the existing six-month grace period.

Codification of Duties: Chief Financial Officers and Tax Collectors

[N.J.A.C. 5:32-2.1](#) and [5:32-3.1](#) set forth in detail the respective duties of the chief financial officer (municipal and county) and tax collector positions. The duties of a municipal and county chief financial officer include items such as, but not limited to, being the custodian of public funds, assisting in preparing the annual budget and developing fiscal policy, implementing internal controls, and ensuring the accurate maintenance and regular reconciliation of all books and ledgers. In addition to such other duties as are required by law or may be given by the governing

body, [N.J.A.C. 5:32-3.1](#) details the responsibilities of a tax collector as they pertain to billing, collection, reporting, and ensuring compliance.

Temporary Appointments In Lieu of Appointing Licensed Official

When a vacancy occurs, unlicensed individuals may be appointed for up to one year to the positions of chief financial officer, qualified purchasing agent, and municipal clerk without prior Director approval. An unlicensed individual may be consecutively reappointed as a temporary county finance officer or a temporary purchasing agent for up to one additional year, and as an acting municipal clerk or temporary chief municipal finance officer for up to two additional one-year terms, upon receiving Director approval. Please note that local units must request reappointment approval before the end of the unlicensed individual's current term.

Applications for Director reappointment approval must utilize the form corresponding to the position which can be found on the [Professional Certification](#) section of the Division's website. The local unit must provide thorough responses to each question as well as any other requests for information from the Director. The application, and any documentation submitted in support of the answers therein, are exempt from disclosure under the Open Public Records Act ([N.J.S.A. 47-1A-1 et seq.](#)). Before granting approval to reappoint, the Director shall be satisfied that the individual is of good moral character and can satisfactorily fulfill the duties of the position.

When a vacancy occurs in a position which the duties of a principal public works manager are performed, an individual without a certified public works manager certificate may be appointed for no more than two consecutive one-year terms; no Director approval is required for the first or second one-year appointment.

Appointment of Private Entity In Lieu of Licensed Chief Municipal Finance Officer

When a vacancy occurs in the office of chief financial officer following the appointment of a licensed CMFO to that office, [N.J.A.C. 5:32-2.5](#) gives municipalities the option to seek Director approval to appoint a private entity to temporarily perform the duties of a chief financial officer. The municipality may seek Director approval to appoint a private entity to fulfill chief financial officer duties for no more than two consecutive one-year terms, after which a licensed CMFO must be appointed. **Outside of this limited provision, a municipality cannot appoint a private entity to serve as chief financial officer (designated as "acting" or otherwise).**

Any work performed by the private entity on behalf of the municipality shall be supervised by at least one employee who is a licensed CMFO, and any documents requiring the signature of the chief financial officer shall likewise be executed by a private entity employee licensed as a CMFO. The private entity must have an office physically located in New Jersey. If a licensed individual is appointed by a municipality as a chief financial officer at a nominal salary, and that individual is affiliated with a private entity that is fulfilling the duties of a chief financial officer, the private entity will be deemed as temporarily fulfilling the duties of a chief financial officer with both the appointed individual and the private entity being subject to [N.J.A.C. 5:32-2.5](#).

In order to obtain approval to appoint or reappoint a private entity, the Director must be satisfied that the private entity can fulfill the duties of a chief financial officer, and the municipality must demonstrate a good faith effort to obtain a licensed CMFO through avenues such as direct hiring

and pursuing a shared service agreement with a neighboring municipality. The municipality must utilize the [application form](#) located on the [Professional Certification](#) section of the Division's website, and provide thorough responses to each question as well as any other requests for information from the Director. The application, and any documentation submitted in support of the answers therein, are exempt from disclosure under the Open Public Records Act ([N.J.S.A. 47-1A-1 et seq.](#)). A private entity must thoroughly cooperate with the municipality in providing all required information.

Contracts with private entities temporarily fulfilling the duties of a chief financial officer shall contain certain standard provisions that are set forth in [N.J.A.C. 5:32-2.5](#) and cover areas such as insurance, indemnification, and dispute resolution. The professional services exception to public bidding under the Local Public Contracts Law can be utilized for contracts with such private entities, but no contract to fulfill chief financial officer duties shall have a duration of greater than one year; any contract with a private entity shall be conditioned upon Director approval of appointment or reappointment of the firm. The regulations also detail a cybersecurity framework that these private entities shall make best efforts to follow; however, the municipality bears ultimate responsibility for establishing appropriate security and access control protocols with respect to use of the municipality's systems.

All private entity officers and employees temporarily fulfilling the duties of chief financial officer on behalf of a municipality shall be subject to the Local Government Ethics Law ([N.J.S.A. 40A:9-22.1 et seq.](#)). Prior to the municipality seeking Director approval to contract with the private entity, the private entity shall disclose to the municipality any known or potential conflicts of interest arising under the Local Government Ethics Law. The private entity's disclosure obligation shall continue through the term of the contract. Any licensed municipal finance officer that is supervising the temporary fulfillment of chief financial officer duties for a municipality shall be considered a "chief financial officer" pursuant to [N.J.A.C. 5:35-2.1](#), and thus required to complete and submit an annual financial disclosure statement pursuant to [N.J.S.A. 40A:9-22.3](#).

Utilizing a Shared Services Agreement in Filling Certain Local Government Positions

Each of the positions licensed by the Division of Local Government Services, along with the positions of tax assessor and municipal superintendent of public works, are authorized to be provided under a shared services agreement subject to the Uniform Shared Services Act ([N.J.S.A. 40A:65-1 et seq.](#)). If the shared services agreement does not set forth a duration, the default term is ten (10) years. Pursuant to [N.J.S.A. 40A:65-6](#), a shared services agreement for positions subject to a State license or certification requirement shall provide for the payment of a salary to the officer or employee, and shall designate one of the local units as the primary employer of said individual for purposes of their tenure rights (if any). If the agreement fails to designate one of the local units as the primary employer, then the local unit having the largest population shall be deemed the primary employer for purposes of that individual's tenure rights.

The Common Sense Shared Services Pilot Program Act ([P.L. 2013, c. 166](#)) contains provisions which permit the dismissal of the following tenured officials in municipalities located within Camden, Morris, Ocean, Sussex, and Warren Counties (hereinafter known as "pilot municipalities"):

- Chief municipal finance officer;
- Municipal clerk;
- Tax collector;
- Tax assessor;
- Municipal treasurer; and
- Municipal superintendent of public works.

The Act permits pilot municipalities to enter into a shared services agreement for the services of one of the above-referenced positions utilizing a procedure by which the pilot municipality designated as the agent-party providing the service can select one of the tenured officials in either municipality to serve in said position. The remaining tenured official(s) could then be dismissed in the interest of economy and efficiency. Shared services agreements subject to the Act shall have a default term of ten (10) years unless otherwise stated, but shall have a duration of no less than two (2) years.

For example, take a scenario where pilot municipality X contracts with pilot municipality Y to provide the services of a chief financial officer, with both municipalities having tenured CMFOs. Pilot municipality "Y" could designate one of the two current CMFOs to serve as its CFO, with the other CMFO being dismissed to effectuate the agreement. The agreement should designate pilot municipality "Y" as the primary employer with its chief financial officer only possessing tenure rights with pilot municipality "Y".

Copies of the proposed shared services agreement shall be provided to all affected employees in each pilot municipality, as well as available for public inspection at the respective municipal offices at least two weeks prior to each pilot municipality adopting resolutions entering into the agreement. Each pilot municipality must hold a hearing on the proposed agreement where the public is given an opportunity to present comments or objections on the content and effect of the agreement. A joint public hearing can be held in lieu of separate hearings. An overview of the agreement's terms, along with an estimate of the cost savings anticipated to be achieved by the respective pilot municipalities as a result thereof, shall be provided at the public hearing. The resolutions adopting the agreement shall clearly identify the agreement by reference but need not set forth the agreement's terms in full.

Upon final adoption and execution of the underlying shared services agreement, the official not selected by the pilot municipality providing the service can be dismissed by being provided a written copy of the agreement and a letter stating that their position is being eliminated for reasons of economy or efficiency as the result of the agreement. A tenured official dismissed under the Act shall be reappointed to their former position, regaining their tenured status, if the shared service agreement is cancelled or expires within the two-year period immediately following their dismissal.

Options for Municipality to Fill Certain Required Positions Following a Vacancy & Prohibition on Leaving DLGS-Licensed Officials Eligible for Tenure on Holdover Status

The Division has become aware of instances where municipalities have failed to fill the positions of chief financial officer, tax collector, or municipal clerk following a vacancy as required pursuant

to law. Summarized below are options available to a municipal governing body experiencing difficulty in hiring a licensed individual for any of these statutorily-required positions:

Licensed Position	Shared Services Agreement	Appoint Unlicensed Individual on Temporary Basis	Appoint Private Entity On Temporary Basis
Certified Tax Collector	YES	NO	NO
Registered Municipal Clerk	YES	YES	NO
Licensed Municipal Finance Officer	YES	YES	YES

For further details on temporary appointments of unlicensed individuals and private entities, as well as the use of shared services agreements, please review the relevant sections of this Notice.

Finally, the Division reminds municipalities that licensed municipal clerks, tax collectors, and chief financial officers must be either reappointed or replaced upon expiration of their initial term. When initially appointed, municipal clerks serve a three-year term. The initial term of appointment for tax collectors and chief financial officers is four years. **Municipal governing bodies are not permitted to keep a licensed municipal clerk, tax collector, or chief financial officer on indefinite holdover status.** Governing bodies that fail to comply with an order from the Director to act on a position risk being subject to enforcement actions such as, but not necessarily limited to, personal fines.

Approved: Timothy J. Cunningham, Director

Document	Internet Address
5:32 Adoption	http://www.nj.gov/dca/divisions/dlgs/resources/rules_reg.html
N.J.A.C. 5:32-1	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_32/NJAC%205_32-1.pdf
N.J.A.C. 5:32-2	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_32/NJAC%205_32-2.pdf
N.J.A.C. 5:32-3	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_32/NJAC%205_32-3.pdf
N.J.A.C. 5:32-4	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_32/NJAC%205_32-4.pdf
N.J.A.C. 5:32-5	http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_32/NJAC%205_32-5.pdf
DLGS Professional Certification	http://www.nj.gov/dca/divisions/dlgs/programs/certification.html
CFO Qualifications & Duties	http://www.nj.gov/dca/divisions/dlgs/programs/certification_docs/cmforeqs.pdf
Tax Collector Qualif. & Duties	http://www.nj.gov/dca/divisions/dlgs/programs/certification_docs/ctcreqs.pdf
Application: Private Entity to Temporarily Fulfill CMFO Duties	http://www.nj.gov/dca/divisions/dlgs/programs/certification_docs/Priv%20Ent%20CFO%20Application%20Form.pdf
P.L. 2013, c. 166	http://www.njleg.state.nj.us/2012/Bills/PL13/166_.PDF