

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Ethics Law

Proposed Amendment: N.J.A.C. 5:35-2.1

Authorized By: Timothy J. Cunningham, Director, Division of Local Government Services.

Authority: N.J.S.A. 40A:9-22.3(g).

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

Proposal Number: PRN 2017-112.

Please submit written comments on the notice of proposal by September 1, 2017, via e-mail to digs@dca.nj.gov or by regular mail to:

Jason R. Martucci, Esq.
Administrative Practice Officer
Division of Local Government Services
Department of Community Affairs
PO Box 803
Trenton, NJ 08625-0803

For comments submitted via e-mail, please name the subject heading "NJAC 5:35-2.1: Managerial Executive Employees".

The agency proposal follows:

Summary

The Local Government Ethics Law (N.J.S.A. 40A:9-22.1 et seq.) requires those individuals defined as "local government officers" to annually file financial disclosure statements pursuant to N.J.S.A. 40A:9-22.6. N.J.S.A. 40A:9-22.3(g) defines "local government officer" as:

... any person whether compensated or not, whether part-time or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive employee of a local government agency, as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), but shall not mean any employee of a school district or member of a school board...

Financial disclosure statements are required to set forth information, such as sources of income, gifts, fees, and honorariums received by a local government officer or his or her immediate family, as well as disclose ownership stakes in any real property and business organizations. The Local Government Ethics Law establishes ethics

requirements to be followed by local government employees, as well as elected and appointed officials, and is meant to provide clear, consistent, and uniform standards for ethical conduct and financial disclosure on the local government level. Although the Local Government Ethics Law applies to local government officers and employees, only those local government employees that fall within the definition of "local government officer" are statutorily required to file financial disclosure statements.

The Director of the Division of Local Government Services (Division) proposes amending N.J.A.C. 5:35-2.1 to classify the following additional positions as "managerial executives" whom are, thus, local government officers under the Local Government Ethics Law: chiefs of staff, engineers for planning boards and zoning boards of adjustment, engineers in local government agencies other than municipalities and counties (which are listed elsewhere), chiefs or acting chiefs of part-paid fire departments (or officers in charge in lieu of said positions), deputy chiefs of part-paid fire departments, and assistant chiefs of part-paid fire departments. Individuals in the enumerated positions are responsible for formulating and directing the effectuation of management policies and practices. These individuals bear a high level of authority and independent judgment within local government agencies and exercise a significant degree of individual discretion concerning issues of public importance, requiring financial disclosure for the public's benefit.

Additionally, the Director also proposes deleting the position "special improvement district executive director/director and its members" referenced in existing paragraph (a)24. Special improvement districts (SIDs) are a unique class of entity that connects municipalities and local business owners to preserve, maintain, and revitalize commercial districts. SID executive directors and members were originally classified as managerial executives by virtue of the powers SIDs may be authorized to exercise in a municipality, as well as the role that a municipality plays in SID operations. However, after further analysis, the Director concluded that SIDs are not equivalent to authorities or commissions that are quasi-independent local government entities. Rather, they are more appropriately considered private non-profits acting in partnership with a municipality to provide benefits to their members. SIDs are run by district management corporations whose governing boards are composed of business and property owner stakeholders, and function as separate and distinct non-profit entities allowing community businesses to raise funds for activities that supplement municipal services and to organize and manage themselves to facilitate a more viable shopping/dining/commercial destination. In many instances, district management corporations are non-profit, community commerce, or beautification organizations that predated creation of the SID. In a sense, SIDs allow the business community to become self-governing: private resources from the stakeholders are assessed and used as determined by the businesses to fulfill what they see as the greatest needs of the downtown area. SIDs do not exercise authority outside of their boundaries, nor do SIDs control property tax dollars.

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 identifies positions within local government that the Division has determined require financial disclosure for the public benefit, providing constituents greater assurance that policy implementation and overall government administration is not being compromised by financial conflicts of interest.

Economic Impact

The proposed amendment, which adds five positions and removes one position from classification as “managerial executive” (and, thus, subject to mandatory filing of financial disclosure statements under the Local Government Ethics Law) will not impose additional administrative, enforcement, or oversight costs on local governments.

Federal Standards Statement

No Federal standards analysis is required because the amendment is not being 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 proposed amendment will not have an impact on the creation or loss of any jobs. N.J.S.A. 40A:9-22.11 states that an appointed local government officer or employee found guilty of violating the Local Government Ethics Law, or any validly authorized municipal or county code of ethics, may be subject to “removal, suspension, demotion or other disciplinary action by the officer or agency having the power of removal or discipline.” The proposed amendment does not modify the above-referenced provision.

Agriculture Industry Impact

The proposed amendment will not have an impact on the agriculture industry, as it pertains to which local government positions are defined as “local government officers” for purposes of being required to file a financial disclosure statement under the Local Government Ethics Law.

Regulatory Flexibility Statement

The proposed amendment would impact local governments and officials thereof. The proposed amendment 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.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the proposed amendment would evoke a change in the average costs associated with housing or affect the affordability of housing in New Jersey, as the proposed amendment pertains to which local government positions are defined as “local government officers” for purposes of being required to file a financial disclosure statement under the Local Government Ethics Law.

Smart Growth Development Impact Analysis

There is an extreme unlikelihood that the proposed amendment 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 would enumerate which local government positions are defined as “local government officers” for purposes of being required to file a financial disclosure statement under the Local Government Ethics Law.

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

SUBCHAPTER 2. LOCAL GOVERNMENT OFFICERS

5:35-2.1 Managerial executives

(a) Individuals with the following titles or responsibilities equivalent to such titles shall be considered managerial executives under the definition of “local government officer” set forth in N.J.S.A. 40A:9-22.3(g):

1. Chief of Staff;

Recodify existing 1.-6. as 2.-7. (No change in text.)

[7.] **8. Chief or acting chief of police, part-paid fire departments, and paid fire departments, or “officer in charge” in lieu of a chief or acting chief title;**

[8.] **9. Deputy chiefs and assistant chiefs of police, part-paid fire departments, and paid fire departments;**

Recodify existing 9.-13. as 10.-14. (No change in text.)

15. Planning board or zoning board of adjustment engineer;

[14.] **16. (No change in text.)**

17. Local government agency engineer;

Recodify existing 15.-23. as 18.-26. (No change in text.)

[24. Special improvement district executive director/director and its members;]

Recodify existing 25.-31. as 27.-33. (No change in text.)

ENVIRONMENTAL PROTECTION

(a)

AIR QUALITY, ENERGY, AND SUSTAINABILITY

DIVISION OF AIR QUALITY

Air Pollution Control

TBAC Emissions Reporting, Permitting, and Gasoline Transfer Operations

Proposed Amendments: N.J.A.C. 7:27-8.1, 8.2, 8.3, 16.1, 16.3, 22.1, 22.3, 22.5, 22.9, 22.11, 22.23, 22.24, and 22.33 and 7:27A-3.10

Proposed Repeals: N.J.A.C. 7:27-34

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 13:1D-134 et seq., and 26:2C-1 et seq., in particular 26:2C-9.22 and 9.4.

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

DEP Docket Number: 09-17-06.

Proposal Number: PRN 2017-118.

A **public hearing** concerning this notice of proposal and a proposed State Implementation Plan (SIP) revision represented by this notice of proposal, will be held on Thursday, August 24, 2017, at 10:00 A.M. at:

New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, New Jersey 08625

Directions to the hearing room may be found at the Department of Environmental Protection’s (Department’s) website address at www.nj.gov/dep/where.htm.

Submit comments by close of business on September 1, 2017, electronically at www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter’s name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.
Attention: DEP Docket No. 09-17-06
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, NJ 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.