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Local Finance Notice

Philip D. Murphy
Governor

Lt. Governor Sheila Y. Oliver
Commissioner

Melanie R. Walter
Director

Contact Information

Director's Office

V. 609.292.6613
F. 609.633.6243

Legislative and Regulatory Affairs

V. 609.292.6110
F. 609.633.6243

Financial Regulation and Assistance

V. 609.292.4806
F. 609.984.7388

Local Finance Board

V. 609.292.0479
F. 609.633.6243

Mail and Delivery

101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

Web:

www.nj.gov/dca/divisions/dlgs

E-mail: dlgs@dca.nj.gov

Distribution

Local Elected Officials
Authority Officials
Fire District Officials
Freeholder Board Clerks
All DLGS-Licensed Officials

DLGS Certification Unit Update

This Notice describes recently adopted regulations pertaining to certain positions licensed by the Division of Local Government Services. [N.J.A.C. 5:32](#) codifies and clarifies the Division's policies regarding Chief Financial Officers, Tax Collectors, Municipal Clerks, and Qualified Purchasing Agents. In addition, this Notice elucidates the rules governing 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 addressed in [N.J.A.C. 5:32](#) but remain subject to existing law and Division certification policy.

[N.J.A.C. 5:32](#) 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; and 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. 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 failed that 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 submitted in writing and must take place within 60 days of the date that appears on the mailed examination results notice. The individual requesting review must propose at least three alternative dates and times for the review. Only a Division representative and the unsuccessful applicant for whom the review is being conducted shall be permitted at the examination review. No notes may be taken and no copies of any questions or answers may be made.

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 details these requirements for each Division-licensed position. The Division's waiver authority is also codified. Upon written application and for good cause shown, the Division may waive the minimum contact hours in a required subject area if the applicant has accrued 1) at least the required minimum of total continuing education contact hours and 2) at least one contact hour in the subject area for which the waiver is being sought.

The regulations also authorize 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 applies only if the Director determines that a certificate holder was prevented from earning the required continuing education units due to:

- A medical event or condition; and/or
- A flood, hurricane, superstorm, tornado, or other natural disaster, for which the Governor has declared a state of emergency

Further, an applicant for a grace period extension must demonstrate a good faith effort to earn the required continuing education units prior to the expiration of the initial 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 the duties of the chief financial officer (municipal and county) and tax collector positions. The duties of a municipal and county chief financial officer include, but are 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 assigned 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 statutory compliance.

Temporary Appointments In Lieu of Appointing Licensed Official

When a vacancy occurs, unlicensed individuals may be appointed to the positions of chief financial officer, qualified purchasing agent, and municipal clerk for up to one year 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, or as an acting municipal clerk or temporary chief municipal finance officer for up to two additional one-year terms, contingent upon 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 available 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 fulfill the duties of the position.

When a vacancy occurs in a principal public works manager position, an individual without a certified public works manager certificate may be appointed to fulfill the role 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 the office of chief financial officer becomes vacant following the appointment of a licensed CMFO to that office, [N.J.A.C. 5:32-2.5](#) authorizes municipalities 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. **A municipality cannot otherwise appoint a private entity to serve as chief financial officer (designated as "acting" or otherwise) under any circumstances.**

Any work the private entity performs on behalf of the municipality shall be supervised by at least one employee of the private entity who is a licensed CMFO, and any documents requiring the chief municipal financial officer's signature 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 municipality appoints a licensed individual as 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, that individual shall be considered an agent of the private entity; subjecting both the appointed individual and the private entity 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 retain 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 standard provisions set forth in [N.J.A.C. 5:32-2.5](#). These address 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 who 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:9-22.6](#).

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, may 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 specify a duration, the default term is ten (10) years. Shared services agreements for positions subject to a State license or certification requirement shall provide for the payment of a salary to the officer or employee, and for purposes of determining that individual's tenure rights (if any) shall designate one of the local units as the primary employer with the local unit - with the largest population deemed the primary employer if the agreement fails to designate one of the local units as the primary employer.

The Common Sense Shared Services Pilot Program Act ([P.L. 2013, c. 166](#); [P.L. 2018, c. 140](#)) permits the dismissal of the following tenured officials in municipalities located within Atlantic, Camden, Monmouth, 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 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 specified, but shall have a duration of no less than two (2) years.

For example, if pilot municipality X contracts with pilot municipality Y to provide the services of a chief financial officer, and both municipalities have 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. Its chief financial officer would therefore only possess tenure rights with pilot municipality "Y".

Any such shared service agreement shall delineate the proportion of work hours that the selected official shall dedicate towards each pilot municipality, and any additional compensation that the selected official may receive for assuming additional duties under the agreement. If the selected official receives additional compensation for assuming additional duties under the agreement, the additional compensation shall not be reduced during the term of the agreement without good cause.

At least two weeks prior to each pilot municipality adopting resolutions entering into the agreement, copies of the proposed shared services agreement shall be provided to all affected officials in each pilot municipality and made available for public inspection at the respective municipal offices.

Each pilot municipality must hold a hearing on the proposed agreement at which the public is given an opportunity to present comments on or objections to 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 to continue in the office can be dismissed. Dismissal is effectuated by providing the individual with a written copy of the agreement and a letter stating that his or her position is being eliminated for reasons of economy or efficiency as the result of the agreement. The agreement shall be filed with the Division, together with an estimate of the cost savings anticipated to be achieved by the pilot municipalities. If the shared service agreement is cancelled or expires within the two-year period immediately following the tenured official's dismissal, the dismissed official shall be shall be reappointed to his or her former position, regain any accrued tenured status, and is entitled to the same salary or wages received at

the time of the dismissal, augmented by any increases in salary granted to all other tenured officials by ordinance while the shared service agreement was in effect.

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 by 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

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: Melanie R. Walter, 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. 2018, c. 140	https://www.njleg.state.nj.us/2018/Bills/PL18/140_.PDF
P.L. 2013, c. 166	http://www.njleg.state.nj.us/2012/Bills/PL13/166_.PDF