

tranche of the Competitive Solar Incentive Program, pursuant to N.J.A.C. 14:8-11.10(b)3 are exempted from mandatory compliance with the pollinator standards.

1. Entities proposing CSI-eligible facilities that require compliance with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities" (Standards) shall demonstrate said compliance by submitting to the Board or program administrator duly retained by the Board, a vegetation management plan consistent with the requirements outlined in the referenced standards as part of the post-construction certification package.

i. CSI-eligible facilities shall successfully implement and maintain the site in accordance with the vegetative management plan. Successful implementation is determined by a minimum 80 percent survival rate of vegetation planted.

ii. CSI-eligible facilities shall comply with monitoring requirements.

(1) The Board may audit CSI-eligible facilities for compliance with the vegetative management plan. The Board, or its designee shall, within 60 days of the audit:

(A) Certify that the facility is in compliance with its vegetation management plan, with no additional actions required; or

(B) Notify the facility that it is in noncompliance with the required vegetation management plan.

(2) If the Board finds that the facility is in noncompliance with the required vegetation management plan, the Board, or its designee, shall:

(A) Specify the areas of noncompliance;

(B) Identify corrective actions required; and

(C) Identify the timeframe within which noncompliance must be addressed to avoid suspension of incentives pursuant to the CSI Program.

iii. Approved CSI facilities that are found to be in non-compliance with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities," and that have failed to take the corrective actions identified at (f)1ii(2) above within the timeframes specified, shall be notified by the Board or a program administrator duly retained by the Board of their suspension of incentives pursuant to the CSI Program, and conditions for restoration of the incentive.

(g) All CSI-eligible facilities located on covered agricultural lands, other than those mounted on the built environment, shall:

1. Prepare a plan identifying the following:

i. The location of proposed above- and below-ground facility infrastructure;

ii. The sequence for facility infrastructure removal and site restoration to prior agricultural conditions in the event that solar installations will be removed; and

iii. Pre-construction soil quality characteristics across the site on a 100-foot by 100-foot grid by a qualified soil scientist or geotechnical engineer, including:

(1) Soil map unit;

(2) Soil textural classification;

(3) Hydrologic soil group;

(4) Organic matter content;

(5) Salinity; and

(6) Macro nutrient content (N, P, K);

iv. Tabulate and correlate to the grid, mapped characteristics to enable potential future restoration of pre-grid installation conditions;

2. Indicate what party is responsible for removal and restoration back to prior agricultural conditions in the event that solar installations will be removed;

3. Have an assigned "environmental inspector," with experience in solar construction methods on land in agricultural use and agricultural production methods common to the area, who shall be responsible for ensuring compliance with all applicable mitigation, construction, and restoration procedures identified in Federal, State, and county permits, State rules, and the project plan;

4. Be installed by a screw, piling, or similar system that does not require a concrete footing or other permanent mounting. In the event these methods of mounting are not practicable, written justification shall be required by a licensed professional engineer responsible for designing the installation, that permanent ground mounting is necessary to conform with

Federal or State laws, rules, or regulations and that the permanent mounting requires footings, concrete, or other permanent methods;

5. Retain stripped topsoil onsite for potential future return to agricultural use. All retained topsoil shall be permanently stabilized in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, N.J.A.C. 2:90-1.3; and

6. Prevent topsoil within inter-panel row travel lanes from becoming compacted or otherwise co-mingled with subsoil layers by construction traffic.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Super Conciliation—Health Benefits Plan Design and Pension Committees

Adopted New Rules: N.J.A.C. 19:12A

Proposed: April 17, 2023, at 55 N.J.R. 657(a).

Adopted: August 24, 2023, by the Public Employment Relations Commission, Joel M. Weisblatt, Chair.

Filed: August 24, 2023, as R.2023 d.111, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 43:3C-17 and 52:14-17.27b.

Effective Date: September 18, 2023.

Expiration Date: September 18, 2030.

Take notice that the Public Employment Relations Commission (Commission) proposed new rules at N.J.A.C. 19:12A on April 17, 2023, at 55 N.J.R. 657(a) to implement Sections 33 and 55 of P.L. 2011, c. 78 (Chapter 78). These rules provide the procedures for resolving, through super conciliation, impasses resulting from the failure of a health benefits plan design or pension committee's failure to render a decision on a matter before it.

Summary of Public Comments and Agency Responses:

Comments on the notice of proposal were received from Craig S. Gumpel, Esq., on behalf of the New Jersey State Firefighters' Mutual Benevolent Association (FMBA).

N.J.A.C. 19:12A-1.3(a)

COMMENT: Referring to proposed N.J.A.C. 19:12A-1.3(a), which notes that the executive secretary of a health benefits plan design or pension committee may file a petition for appointment of a super conciliator, the FMBA suggests that where the executive secretary fails, refuses, or is unable to act, any member of the committee may initiate a petition. Further, the FMBA suggests that the committee member who files a petition shall then be responsible for signing, dating, and certifying the petition, in accordance with N.J.A.C. 19:12A-1.3(d)6.

RESPONSE: Although the Commission has not previously had any issues with the requirement that the executive secretary of a committee files a petition for appointment of a super conciliator, the Commission finds that it is reasonable to add language to N.J.A.C. 19:12A-1.3(a) and (d)6 to provide that a designee on the committee may act to file a petition and perform other requirements pursuant to the rules in the absence of the executive secretary.

N.J.A.C. 19:12A-1.5

COMMENT: Referring to proposed N.J.A.C. 19:12A-1.5, which provides that the super conciliator shall be paid at their grievance arbitration/mediation rate for each eight-hour session, the FMBA suggests that the super conciliator's fee be based on a flat per diem rate, including administrative costs and the cost associated with the preparation of a final report, rather than their rate for each eight-hour session. The FMBA is also concerned that there is no standard arbitration/mediation rate and that it may vary.

RESPONSE: The Commission finds that the super conciliator fee language is appropriately stated as every eight-hour session, as the statute and rules provide that 24-hour per day negotiations may be required. The Commission finds that it is reasonable to modify the fee language to be paid at the super conciliator's arbitration/mediation rate for each eight-hour session, or part thereof. The Commission further notes that all super conciliator resumes, including their grievance arbitration/mediation rates, are posted on the Commission website.

Super Conciliation Panel (N.J.A.C. 19:12A-1.2)

COMMENT: The FMBA notes that the Commission website lists the names and contains the resumes of the super conciliators, but requests that the rules be modified to require that the Commission post the super conciliators' names and resumes, including the rate for super conciliation, on the Commission website.

RESPONSE: The Commission finds that it is reasonable to add a requirement to the rule to reflect what the Commission has already been doing in practice: listing all of the super conciliators' names and posting their resumes on the Commission's website. Regarding including a super conciliation rate on the resumes, please note the Commission's response to the FMBA's comment regarding fees and N.J.A.C. 19:12A-1.5, in which the Commission explains that the grievance arbitration/mediation rate listed on the super conciliator's resume is to be used for each eight-hour super conciliation session, or part thereof.

Summary of Agency's Changes Upon Adoption:

At N.J.A.C. 19:12A-1.3(a) and (d)6, a change is made to provide that, in the absence of the executive secretary, a designee on the committee may act to file a petition and perform other requirements pursuant to the rules.

At N.J.A.C. 19:12A-1.5(b), a change is made to add "or part thereof" concerning a super conciliator's pay rate for each eight-hour session.

At N.J.A.C. 19:12A-1.2(e), a change is made to add that the names and resumes of all super conciliators appointed to the Health Benefits Plan Design and Pension Committees Super Conciliation Panel shall be posted on the Commission's website.

Federal Standards Statement

The new rules are adopted pursuant to the authority at N.J.S.A. 43:3C-17 and 52:14-17.27b. There are no Federal statutes, regulations, or standards governing the use of super conciliation in these contexts. Therefore, a Federal standards analysis is not required.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisk ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

CHAPTER 12A

SUPER CONCILIATION—HEALTH BENEFITS PLAN DESIGN AND PENSION COMMITTEES

SUBCHAPTER 1. SUPER CONCILIATION—HEALTH BENEFITS PLAN DESIGN AND PENSION COMMITTEES

19:12A-1.1 Purpose of procedures

The procedures in this chapter implement P.L. 2011, c. 78, sections 33 and 55 (N.J.S.A. 43:3C-17 and 52:14-17.27b, respectively), effective June 28, 2011. These laws provide for super conciliation to assist in the resolution of disputes among members of committees created pursuant to P.L. 2011, c. 78, that are charged with reviewing and modifying public employee health benefits and pension plans. The Public Employment Relations Commission (Commission) will create and administer a Health Benefits Plan Design and Pension Committees Super Conciliation Panel. A super conciliator will be appointed to resolve any impasses resulting from a committee's failure to render a decision on a matter before the committee because it has not received a vote of the majority of the committee members after 60 days have passed following the initial consideration of the matter. Super conciliation, pursuant to these procedures, is limited to investigatory proceedings involving disputes emanating from committees established pursuant to P.L. 2011, c. 78.

19:12A-1.2 Health Benefits Plan Design and Pension Committees Super Conciliation Panel

(a) The Public Employment Relations Commission (Commission) shall maintain a Health Benefits Plan Design and Pension Committees Super Conciliation Panel (Panel) to resolve disputes emanating from health benefits plan design and pension committees. Members of the Panel must have experience and expertise in dispute resolution. Following a screening process as set forth in this section, they shall be appointed for three-year terms.

(b) To be eligible for appointment to the Panel, an applicant for Panel membership shall:

1. Have experience mediating or adjudicating issues involving health insurance and/or pension matters;
2. Serve in a neutral/mediatory capacity for a minimum of three years;
3. In the three years before applying for Panel membership, not have served as an advocate for private or public sector labor or management;
4. Have an impeccable reputation for professional competence, ethics, and integrity, and have complied with all applicable codes of conduct; and
5. Demonstrate:
 - i. The ability to write a well-reasoned decision, consistent with the parameters of assignments;
 - ii. Knowledge of government finance and fiscal principles; and
 - iii. Substantial experience in dispute resolution.

(c) Every applicant shall complete an application form prepared by the Director of Conciliation and Arbitration. An applicant shall submit at least three writing samples that are well-reasoned and cogent. An applicant will also have the opportunity to submit any other relevant information.

(d) The Director of Conciliation and Arbitration shall review all applications and make a recommendation to the Commission regarding each one. The Commission shall notify an applicant, in writing, of any action taken upon an application. ***The names and resumes of all super conciliators appointed to the Panel shall be posted on the Commission's website.***

(e) Members of the Panel shall be guided by the objectives and principles set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" of the National Academy of Arbitrators, the American Arbitration Association, and the Federal Mediation and Conciliation Service, and any other applicable code of conduct.

(f) A super conciliator who fails to carry out assignments in accordance with the requirements of an appointment may be subject to discipline including suspension or removal from the Panel.

19:12A-1.3 Appointment of a super conciliator

(a) The executive secretary of a committee established pursuant to P.L. 2011, c. 78*, **or in the absence of the executive secretary, a committee designee,*** may file a petition seeking the appointment of a super conciliator pursuant to N.J.S.A. 52:14-17.27b, applicable to health benefits plan design committees, or N.J.S.A. 43:3C-17, applicable to pension committees where:

1. The committee fails to render a decision on a matter before it because it has not received a vote of the majority of the committee members; and
2. Sixty days have passed following the initial consideration of the matter by the committee.

(b) The petition to invoke super conciliation is available on the Public Employment Relations Commission's (Commission) website at www.state.nj.us/perc or may be supplied upon request.

(c) A petition for super conciliation shall be filed with the Director of Conciliation and Arbitration, Public Employment Relations Commission, PO Box 429, Trenton, NJ 08625-0429. The petition and any supporting documents may be filed by electronic mail sent to mail@perc.state.nj.us or by facsimile to (609) 777-0089, provided that a petition containing original signatures is filed with the Commission within five days after electronic filing.

(d) The petition shall include the following information:

1. The name of the committee;
2. The name and contact information (address, phone, fax, and email) of the committee's executive secretary;
3. The names of all committee members;

4. A clear description of the unresolved issue(s) that shall include:

- The initial date each matter was first considered;
- Copies of resolutions or motions pertinent to each matter in dispute;
- The record of the vote on each matter in dispute; and
- Copies of the minutes of meetings at which the matters were considered;

5. If tentative agreements have been reached, copies of such agreements shall be attached; and

6. The committee's executive secretary*, **or in the absence of the executive secretary, a committee designee,*** shall sign and date the petition and shall make the following certification:

I certify that this request for the appointment of a super conciliator is being submitted pursuant to N.J.S.A. 52:14-17.27b, or N.J.S.A. 43:3C-17, as applicable, because a majority vote of committee members has not been received following 60 days of the initial consideration of the matter(s) listed above.

(e) Upon receipt of a petition to invoke super conciliation, a super conciliator shall be randomly selected from the Health Benefits Plan Design and Pension Committees Super Conciliation Panel.

(f) Super conciliators shall be considered officers of the Commission while assisting a committee to affect a voluntary settlement and while writing a final report.

(g) If a super conciliator is unable to serve, electronic or written notice shall be provided to the Director of Conciliation and Arbitration within three days of receipt of the notice of appointment.

(h) If an appointed super conciliator cannot carry out the assignment, another super conciliator shall be appointed by random selection. The committee's executive secretary will be advised of the withdrawal of the appointed super conciliator and will be notified when a replacement super conciliator has been appointed.

(i) The appointment of a super conciliator is not reviewable.

19:12A-1.4 Powers and duties of super conciliators

(a) Super conciliators appointed from the Health Benefits Plan Design and Pension Committees Super Conciliation Panel shall have the authority to exercise the powers granted at N.J.S.A. 52:14-17.27b, applicable to health benefits plan design committees, and N.J.S.A. 43:3C-17, applicable to pension committees, to institute non-binding procedures deemed appropriate to resolve committee disputes.

(b) The super conciliator shall contact the committee's executive secretary to arrange for a mutually satisfactory date, time, and place for an investigatory proceeding. In the absence of an agreement, the super conciliator shall have the authority to set the date, time, and place for the

meeting. The super conciliator shall send a notice to the executive secretary containing arrangements for a proceeding within a reasonable time period before the meeting.

(c) The purpose of the proceedings conducted by a super conciliator shall be to:

1. Investigate and acquire all relevant information regarding a committee's failure to render a decision;

2. Discuss with the members of the committee their differences, and utilize means and mechanisms, including, but not limited to, requiring 24-hour per day negotiations, until a voluntary settlement is reached, and provide recommendations to resolve the members' differences; and

3. Institute any other non-binding procedures deemed appropriate by the super conciliator.

(d) If the super conciliator is unable to resolve the dispute, the super conciliator shall issue a final report, which shall be promptly provided to the committee's executive secretary and the Director of Conciliation and Arbitration and made available by the committee's executive secretary to the public within 10 days after it is received by the executive secretary.

(e) For the purposes of such investigatory proceedings, the super conciliator shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, issue subpoenas *duces tecum*, and require the production and examination of any other books or documents, including records that are stored or exist in electronic form, relating to any matter under investigation by, or in issue before, the super conciliator.

(f) The super conciliator, while functioning in a mediatory capacity, shall not be required to disclose any files, records, reports, documents, or other papers classified as confidential which are received or prepared by the super conciliator or to testify with regard to mediation or other proceedings conducted pursuant to N.J.S.A. 52:14-17.27b, applicable to health benefits plan design committees, and N.J.S.A. 43:3C-17, applicable to pension committees. Nothing contained in this section shall exempt an individual from disclosing information relating to the commission of a crime.

19:12A-1.5 Cost of super conciliation/super conciliator's fee

(a) The cost of super conciliation shall be borne by the Department of the Treasury, Division of Pensions and Benefits and not by the Public Employment Relations Commission.

(b) The super conciliator shall be paid at their grievance arbitration/mediation rate for each eight-hour session ***or part thereof***.