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DIVISION OF LOCAL GOVERNMENT SERVICES**LOCAL FINANCE BOARD****Local Government Ethics Law****Local Government Officers****Proposed New Rule: 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 2016-137.

Please submit written comments by November 5, 2016, via e-mail to dLgs@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 "N.J.A.C. 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 their 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 proposed new rule sets forth titles, or responsibilities equivalent to such titles, that would be defined as "managerial executive employee" and, thus, be required to file an annual financial disclosure statement. N.J.S.A. 40A:9-22.3.g was recently amended, by Section 21 of P.L. 2015, c. 95, to grant the Director of the Division of Local Government Services authority to define by regulation who qualifies as a "managerial executive" for purposes of the definition of "local government officer."

The prior definition required any person defined as a managerial executive or confidential employee of a local government agency pursuant to Section 3 of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-3), a definition interpreted by the Public Employment Relations Commission (PERC), to file an annual financial disclosure statement. Applying this "PERC standard" in the Local

Government Ethics Law context has caused substantial confusion among local governments, and the definition renders the Division unable to promulgate rules on which local government employees are required to file financial disclosure statements. Such determinations have proven to be fact sensitive, subject to determinations made on a case-by-case basis by each local government in consultation with legal counsel. In applying the PERC standard, an official in one local unit may be required to file, while another official in a different local unit with the same title would not be. Examples of positions that have faced non-uniform treatment under the PERC standard include deputy police chief, deputy fire chief, and police captain. In certain instances, such uncertainty has also resulted in certain individuals completing a financial disclosure statement that may not have fallen under the PERC standard. Neither the Local Finance Board (Board) nor the Attorney General's Office have been in a position to examine myriad local positions on public bodies throughout the State to determine whether or not the PERC standard applies to same and, thus, are required to file a financial disclosure statement.

The proposed new rule implementing the Local Government Ethics Law's amended definition of "local government officer" seeks to provide clarity by identifying local government positions bearing a high level of authority and independent judgment directly affecting the policy and purposes of the local government agency, and are of such a nature as to require financial disclosure for the public's benefit. Individuals in the enumerated positions exercise a significant degree of individual discretion concerning issues of public importance. Many of the enumerated positions are comprised of those positions that have been deemed "managerial executive" by the Local Finance Board based on formal attorney general opinions, or by PERC decisions related to these positions. However, the Division has not been bound by these prior decisions, particularly those decisions issued by PERC, as the proposed new rule aims to address the ambiguity that manifested in applying the previously controlling PERC standard. For example, some PERC decisions have found that tax assessors and construction officials in some instances were not "managerial executive." By contrast, the proposed rule uniformly classifies tax assessors and construction officials as "managerial executive" as both positions exercise considerable independent authority and have broad duties implicating taxing and police powers, respectively. The Division is proposing a clear, consistent, and uniform standard that meets the express legislative intent of the Local Government Ethics Law and reduces the burden of compliance on local governments.

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 new rule 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. Certain individuals that may not have been obligated to file based on their local government's interpretation of the previous standard would be obligated to file financial disclosure statements under the proposed rule. Although the reaction may be negative from those individuals that would now be required to file, the constituents served by these positions are likely to welcome a more uniform standard for ensuring financial transparency.

Economic Impact

The proposed new rule will decrease administrative, enforcement, and oversight costs on local governments relating to the Local Government Ethics Law. By delineating the positions classified as "managerial executive" and thus subject to mandatory filing of financial disclosure statements under the Local Government Ethics Law, local governments will no longer face the administrative burden of conducting the position-by-position legal analysis often required by the prior standard; particularly the official charged with populating the roster of required files.

Federal Standards Statement

No Federal standards analysis is required because the new rule 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 new rule will not have an impact on 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 rule does not modify the above-referenced provision.

Agriculture Industry Impact

The proposed new rule 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 new rule would impact local governments and officials thereof. The proposed new rule 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

The proposed new rule would have an insignificant impact on the affordability of housing and there is an extreme unlikelihood that the proposed new rule would evoke a change in the average costs associated with housing, as the proposed new rule 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 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 and the new rule would not have an impact on smart growth. The proposed new rule 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 proposed new rule follows:

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. Business administrator;
2. Municipal or county manager;
3. Chief financial officer;
4. Treasurer;
5. Municipal clerk or clerk of governing body;
6. Department heads, including executive directors, division directors, deputy directors, and assistant directors;
7. Chief or acting chief of police and paid fire departments, or “officer in charge” in lieu of a chief or acting chief title;
8. Deputy chiefs and assistant chiefs of police and paid fire departments;
9. Chief or acting chief of a beach patrol;
10. Municipal and county engineer;
11. Health officer;
12. Municipal attorney and county counsel;
13. Planning board or zoning board of adjustment attorney;
14. Independent local government agency attorney;

15. Municipal and county emergency management coordinators;
16. Trustees on a library board of trustees;
17. Municipal prosecutor;
18. Municipal public defender;
19. County prosecutors;
20. County agriculture board members;
21. County college board of trustees;
22. Board of recreation commissioners;
23. Local ethics board members;
24. Rent leveling board members;
25. Special improvement district executive director/director and its members;
26. Special taxing district executive director/director and its commissioners;
27. Joint insurance fund executive director/director and its commissioners;
28. Local pension board commissioners;
29. Tax collector;
30. Qualified purchasing agent;
31. Construction official; and
32. Tax assessor.

EDUCATION

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STATE BOARD OF EDUCATION

Professional Development Educator Effectiveness

Proposed Amendments: N.J.A.C. 6A:9C-4.3, 4.4, and 5.1; and 6A:10-1.1, 1.2, 1.4, 2.2 through 2.5, 3.1, 3.2, 4.1, 4.2, 4.4, 5.1, 5.2, 5.3, 5.4, 6.1, 6.2, 7.2, 7.3, and 8.1

Authorized By: New Jersey State Board of Education, David C. Hespe, Commissioner, Secretary.
 Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-34 and 38, 18A:26-2.7 and 10, and P.L. 2012, c. 11.
 Calendar Reference: See Summary below for explanation of exception to calendar requirement.
 Proposal Number: PRN 2016-131.

Submit written comments by November 5, 2016, to:

Peter Shulman
 Deputy Commissioner
 New Jersey Department of Education
 100 River View Executive Plaza
 P.O. Box 500
 Trenton, New Jersey 08625-0500
 E-mail: chapter10@doe.state.nj.us

The agency proposal follows:

Summary

In schools, teachers and leaders have the greatest influence on student learning. For this reason, the Department of Education (Department) remains committed to the goal of providing every New Jersey student with a great teacher. While no one factor in isolation will ensure this goal is met, effective evaluation systems and high-quality performance feedback enhance teacher and leader development and practice, which then help to advance student achievement.

Since 2010, the Department has been working closely with educators to develop, adjust, and improve evaluation systems across New Jersey. The Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, P.L. 2012, c. 26, was signed into law on August 6, 2012. The corresponding rules for the initial implementation of evaluation systems were adopted on February 6, 2013, by the State Board of Education. The Department is committed to continually reviewing and improving the policies and practices established more than three years