

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

Local Government Ethics Law

Proposed Readoption: N.J.A.C. 5:35

Authorized By: Local Finance Board, Thomas H. Neff, Chair.

Authority: N.J.S.A. 40A:9-22.7.g.

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

Proposal Number: PRN 2013-149.

Submit written comments by December 20, 2013, to:

Patricia Parkin McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
P.O. Box 803
Trenton, New Jersey 08625-0803

Summary

The rules proposed for readoption at N.J.A.C. 5:35 set forth procedures for the filing of complaints, and rendering of advisory opinions, under the Local Government Ethics Law, P.L. 1991, c. 29 (N.J.S.A. 40A:9-22.1 et seq.). The authority for the Local Finance Board (Board) to promulgate rules concerning the procedures for complaints and advisory opinion requests filed under the Local Government Ethics Law is found at N.J.S.A. 40A:9-22.7.g.

Pursuant to N.J.S.A. 52:14B-5.1.c, the rules concerning the Local Government Ethics Law, N.J.A.C. 5:35, are scheduled to expire on September 19, 2013. However, as this notice of proposed readoption has been filed prior to September 19, 2013, the expiration date of this chapter is hereby extended 180 days to March 18, 2014, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Local Finance Board has reviewed the rules proposed for readoption and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules at N.J.A.C. 5:35 were originally adopted effective June 17, 1996, (see 27 N.J.R. 3151(a), 28 N.J.R. 3122(a)) having been amended and supplemented over the years. The Local Government Ethics Law (Ethics Law) grants the Local Finance Board original jurisdiction over ethics matters for all local government entities not otherwise regulated by a county or municipal code of ethics. Local ethics codes are promulgated by a county or municipal ethics board in accordance with the Ethics Law. Readoption of N.J.A.C. 5:35 is necessary to: maintain clear, consistent, and uniform Statewide standards of ethical conduct and financial disclosure for local government officers and employees; and provide a process by which the Board provides local officers and employees with advisory opinions concerning possible conflicts of interest in conducting their public duties.

The Local Government Ethics Law provides a method of assuring that standards of ethical conduct and financial disclosure for local government officers and employees shall be clear, consistent, uniform in their application, and enforceable on a Statewide basis. The Ethics Law provides for the Board to provide local officers and employees with advice and information, through the mechanism of an advisory opinion, concerning possible conflicts of interest that might arise in the conduct of their public duties. The Ethics Law also provides that the Local Finance Board shall have jurisdiction over all ethics matters that are not otherwise regulated by a county or municipal code of ethics promulgated by a county or municipal ethics board in accordance with the provisions of the Ethics Law. In order to continue to effectuate these provisions of the Ethics Law, the Local Finance Board proposes readoption of N.J.A.C. 5:35.

N.J.A.C. 5:35 contains one subchapter, Proceedings. The primary purpose of the subchapter is to establish the process for filing complaints under the Local Government Ethics Law and to provide the process for rendering advisory opinions on compliance with the Local Government

Ethics Law. Subchapter 1 contains rules pertaining to complaint filing, confidentiality, and advisory opinions. Additionally, Subchapter 1 contains procedures for the appeal of local and county ethics board determinations to the Local Finance Board, as well as procedures for the determination by the Local Finance Board of whether a local or county ethics board is conflicted from considering a complaint or issuing an advisory opinion on a particular matter. The following is a description of the rules contained within Subchapter 1.

N.J.A.C. 5:35-1.1, Complaints; procedure, outlines the manner in which a complainant files a complaint alleging a violation of the Ethics Law and outlines the Local Finance Board's procedures for processing a written complaint. The Board intends to continue these procedures as they currently exist.

N.J.A.C. 5:35-1.2, Confidentiality, describes the confidentiality of any complaints, statements, information, or documents obtained or prepared by the Board or by the Board staff. This rule further identifies the stage at which such information is subject to public disclosure. The Board intends to continue this rule without change.

N.J.A.C. 5:35-1.3, Local ethics boards; complaint conflicts, describes the process for the Board to take original jurisdiction over an issue filed with a county or municipal ethics board when the majority of the board has a conflict of interest or is otherwise precluded from acting due to other ethical considerations. The procedures outlined in this rule have been implemented efficiently and properly. Accordingly, the Board intends to continue this rule without change.

N.J.A.C. 5:35-1.4, Local ethics boards; appeals of complaints, describes the appeal process of a determination made by a local ethics board on a complaint filed locally. The Board intends to continue the appeal process set forth in this rule without change.

N.J.A.C. 5:35-1.5, Advisory opinions, describes the process of requesting an advisory opinion and the process of making such an opinion public. These procedures have served well and require no amendment or change.

N.J.A.C. 5:35-1.6, Local ethics boards; advisory opinion conflicts, describes the process for the Board to take original jurisdiction of an advisory opinion request from a local ethics board when a majority of the board has a conflict of interest or is otherwise precluded from acting due to other ethical considerations. The procedures outlined in this rule have served well and properly. Accordingly, the Board intends to continue this rule without change.

As the Local Finance 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 rules proposed for readoption will continue to have a positive impact on the general public. The rules enable citizens of the State to file a complaint against a local government officer or employee whose actions are considered to be in violation of the Ethics Law. The rules also allow citizens to request an advisory opinion from the Local Finance Board when a proposed activity is perceived to be in violation of the Ethics Law.

The readoption of this chapter would provide the Board with procedures for reviewing complaints filed against local government officers or employees and for rendering advisory opinions. These procedures ensure an orderly process for such reviews and opinions, thereby delivering a social benefit to the general public who may be adversely affected by ethical violations by public officials.

Economic Impact

The rules proposed for readoption would result in the Local Finance Board continuing to incur some costs in investigating and processing complaints, and in acting on requests for advisory opinions, for all local governments who are without a local ethics board. The Local Finance Board would also continue to incur costs in reviewing appeals of local board decisions and in reviewing matters that are referred to the Local Finance Board in instances where a local board is deemed to be in conflict with particular issues. Any such costs incurred by the Board since these rules were originally promulgated have been negligible. The costs are expected to remain modest over the next seven years.

Municipalities and counties will incur some costs if they choose to appoint a local ethics board and the board is presented with complaints and requests for advisory opinions. However, to date, there is no evidence to suggest that local governments have been overburdened by the costs incurred in responding to alleged ethical violations. No additional costs are anticipated as a result of the rules proposed for readoption.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption under the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption at N.J.A.C. 5:35 establish procedures for reviewing allegations of unwarranted ethical conduct by local government officials and for processing advisory opinions. These procedures are not labor intensive and have had no impact on the creation or loss of jobs. The Board does not anticipate that the rules proposed for readoption will result in the creation of new jobs or the loss of any existing ones.

Agricultural Industry Impact

The rules proposed for readoption at N.J.A.C. 5:35 would have no bearing on the State's agricultural industry.

Regulatory Flexibility Analysis

The rules proposed for readoption do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption affect all local government officers and employees as defined in the Regulatory Flexibility Act.

Housing Affordability Impact Analysis

The rules proposed for readoption are not anticipated to evoke a change in affordable housing or affect the average costs associated with housing as they are procedures for complaints and advisory opinions arising under the Local Government Ethics Law.

Smart Growth Development Impact Analysis

Inasmuch as the rules proposed for readoption would only affect procedures for complaints and advisory opinions arising under the Local Government Ethics Law, it is not anticipated that the rules proposed for readoption would evoke a change in housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:35.

ENVIRONMENTAL PROTECTION

(a)

LANDSCAPE IRRIGATION CONTRACTORS EXAMINING BOARD

Landscape Irrigation Contractors

Proposed Readoption with Amendments: N.J.A.C. 7:62

Proposed Recodifications with Amendments: N.J.A.C. 7:62-4.4 as 6.1 and 4.7 as 3.4

Authorized By: Landscape Irrigation Contractors Examining Board, George McCarthy, Chairman.

Authority: N.J.S.A. 45:5AA-1 et seq., particularly 45:5AA-6.m and n.

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

DEP Docket Number: 06-13-09.

Proposal Number: PRN 2013-148.

Submit written comments by December 20, 2013 electronically at <http://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 Landscape Irrigation Contractor's Examining Board (Board) encourages electronic submittal of comments. In the alternative, comments may be submitted on disk or CD, using Microsoft Word 6.0 or above, as well as on paper to:

Linda Cantwell
Attention: DEP Docket Number 06-13-09
Landscape Irrigation Contractors Examining Board
c/o Department of Environmental Protection, Licensing and Pesticide Operations
PO Box 420
Mail Code 401-04E
Trenton NJ 08625-0420

This proposed readoption with amendments may be viewed or downloaded from the Board's web site at <http://www.nj.gov/dep/exams/lic.htm>.

The agency proposal follows:

Summary

Pursuant to the Landscape Irrigation Contractor Certification Act, N.J.S.A. 45:5AA-1 et seq. (Act), the Landscape Irrigation Contractors Examining Board (Board) regulates persons who engage in the business of landscape irrigation contracting within the State of New Jersey and is authorized to promulgate and enforce rules, collect fees, and to effectuate the purposes of the Act. The Act was amended effective July 15, 2010 (see P.L. 2009, c. 229).

The rules are set forth at N.J.A.C. 7:62, Landscape Irrigation Contractors, and are commonly known as Chapter 62. The rules were previously amended effective on publication in the December 18, 2006, New Jersey Register (38 N.J.R. 5357(a)) and expire on May 19, 2014, in accordance with N.J.S.A. 52:14B-5.1.c(2).

Set forth below are proposed Board amendments to the rules consistent with the Act and its amendments. They include revising requirements to become and remain certified as a landscape irrigation contractor, to engage in the business of landscape irrigation contracting, and to enforce the Act and the rules. Included are proposed revisions the Board believes will further clarify and update certain rules for the benefit of the regulated community, landscape irrigation contracting, and the public. The Board has reviewed the extent of the proposed rules and has determined they successfully implement the statutory purposes of the Act.

The proposed amendments are explained in the summaries below by subchapter. In addition to definition amendments, if an amendment is proposed throughout the chapter, it will be indicated the first time it appears and so indicated, to avoid repetitiveness. Technical amendments to correct typographical and grammatical errors are also included.

Subchapter 1. General Provisions

Subchapter 1 contains general regulations, including definitions, words, and phrases, pertaining to the occupation of landscape irrigation contracting operative through the chapter.

N.J.A.C. 7:62-1.4 sets forth the rule definitions. The Board is proposing new and revising existing definitions for certain terms used throughout the chapter.

"Act" is being proposed for inclusion as shorthand reference for substitution to the statute entitled "the Landscape Irrigation Contractor Certification Act of 1991 as amended, N.J.S.A. 45:5AA-1 et seq.," whenever the statute is cited in the chapter.

The definition for "advertising" is being proposed. N.J.S.A. 45:5AA-3.a includes a person advertising the availability of its landscape irrigation services as engaging in the business of landscape irrigation contracting. Therefore, advertising landscape irrigation contracting is a regulated activity. It is not meant to include general advertisers, for example, a billboard company.

Accordingly, the definition "landscape irrigation contracting" is being proposed for amendment to include the advertising or contracting for