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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
WORKFORCE DEVELOPMENT
STATE EMPLOYMENT AND TRAINING COMMISSION**

43 N.J.R. 1494(a)

Jointly Proposed New Rules: N.J.A.C. 12:42-4

[Click here to view Interested Persons Statement](#)

Local Workforce Investment Boards: Certification, Recertification and Decertification

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development and the State Employment and Training Commission, Dennis M. Bone, Chair.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e)* and *34:15C-15* and *29 U.S.C. §2832*.

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

Proposal Number: PRN 2011-141.

A **public hearing** on the proposed new rules will be held on the following date at the following location:

Monday, July 25, 2011
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by September 3, 2011 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
P.O. Box 110, 13th Floor
Trenton, New Jersey 08625-0110
Fax: (609) 292-8246

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The agency proposal follows:

Summary

The Department of Labor and Workforce Development (Department) and the New Jersey State Employment and Training Commission (SETC) are jointly proposing new rules at N.J.A.C. 12:42-4, so as to comply with [page=1495] 29 U.S.C. §2832 and N.J.S.A. 34:15C-15, which (1) require the Governor once every two years to certify a single local workforce investment board (local board) for each local workforce investment area (local area) in the State and (2) empower the Governor to decertify a local board at any time for certain enumerated reasons.

A summary of the proposed new sections follows:

N.J.A.C. 12:42-4.1 would set forth the purpose and scope of the new subchapter. The purpose would be to establish procedures for the certification, recertification and decertification of local boards in accordance with N.J.S.A. 34:15C-15 and 29 U.S.C. §2832. The subchapter would apply to all local areas and local boards throughout the State.

N.J.A.C. 12:42-4.2 would set forth definitions of the words and terms used within the proposed new subchapter.

N.J.A.C. 12:42-4.3 would set forth the procedure for initial certification of a local board.

N.J.A.C. 12:42-4.4 would set forth the procedure for biennial recertification of a local board.

N.J.A.C. 12:42-4.5 would set forth the procedure for decertification of a local board.

N.J.A.C. 12:42-4.6 would set forth the appeal rights of local boards and the procedures for exercise by local boards of those rights. Specifically, N.J.A.C. 12:42-4.6 would indicate that where a determination of the SETC or the Assistant Commissioner results in either the denial of a chief elected official's application for certification, the denial of a chief elected official's application for recertification of a local board or the decertification of a local board, the local area and/or board may file an appeal pursuant to the procedures set forth at N.J.A.C. 12:42-3.11. The later rule is contained within proposed new rules at N.J.A.C. 12:42-3, which pertain to local areas/local boards and performance, technical assistance, corrective actions and penalties. The new rules at N.J.A.C. 12:42-3 are the subject of a notice of proposal, which appeared in the November 15, 2010 edition of the New Jersey Register. See 42 N.J.R. 2715(a).

As the Department and the Commission have provided a 60-day comment period for 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 subchapter would have a positive social impact in that it would give local boards notice as to the procedures for certification, recertification and decertification. It would also give the local boards notice that there will be consequences, (1) for failing to ensure that the workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures, (2) for failing to satisfactorily carry out its functions under N.J.S.A. 34:15C-15e and 20 CFR 661.305, (3) for engaging in fraud or abuse, as those terms are used within 29 U.S.C. §2832(c)(3)(A) or (4) for engaging in any of the prohibited conduct listed as cause for corrective actions and penalties under N.J.A.C. 12:42-3.6 (proposed as a new rule at 42 N.J.R. 2715(a)). In addition, the proposed new subchapter would contain a description of the appeal rights of local boards and would set forth procedures for local boards to pursue those appeal rights, if necessary.

Economic Impact

The proposed new subchapter would have a positive economic impact in that it would assist the State in its efforts to ensure that the vast quantities of taxpayer monies being spent by local areas to achieve the objectives of the Statewide workforce investment system are being spent appropriately, which is to say, that those monies are being spent in such a way as to achieve meaningful, quantifiable local performance measures.

Federal Standards Statement

The proposed new subchapter would not exceed standards imposed by Federal law. Specifically, the subject rules are consistent with 29 U.S.C. §2832. Consequently, no Federal standards analysis is required.

Jobs Impact

The proposed new subchapter would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed new subchapter would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new subchapter would not impose any reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., since only local areas and local boards would be affected by the subchapter.

Smart Growth Impact

The proposed new subchapter would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact Analysis

The proposed new subchapter would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed new subchapter pertains to the State's oversight of local workforce investment boards and has nothing to do with housing.

Smart Growth Development Impact Analysis

The proposed new subchapter would not 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 basis for this finding is that the proposed new subchapter pertains to the State's oversight of local workforce investment boards and has nothing to do with housing production, either within Planning Areas 1 or 2, or within designated centers, or anywhere in the State of New Jersey.

Full text of the proposed new rules follows:

SUBCHAPTER 4. LOCAL WORKFORCE INVESTMENT BOARDS: CERTIFICATION, RECERTIFICATION AND DECERTIFICATION

12:42-4.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the certification, recertification and decertification of local boards in accordance with *N.J.S.A. 34:15C-15* and 29 U.S.C. §2832.

(b) This subchapter applies to all local areas and local boards throughout the State.

12:42-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Assistant Commissioner" means the Assistant Commissioner of Workforce Development within the New Jersey Department of Labor and Workforce Development or his or her designee.

"Commission" means the New Jersey State Employment and Training Commission.

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"Department" means the New Jersey Department of Labor and Workforce Development.

"Local area" means a local workforce investment area designated under 29 U.S.C. §2831.

"Local board" means a local Workforce Investment Board as described in 29 U.S.C. §2832(b).

"Local performance measures" means the same as defined at 29 U.S.C. §2871(c).

12:42-4.3 Certification required

(a) There shall be established in each local area and certified by the Commission a local board to set policy for the portion of the Statewide workforce investment system within the local area.

(b) Immediately following establishment of a local board by the chief elected official in a local area in accordance with N.J.S.A. 34:15C-15b and c, the chief elected official shall submit to the Commission a list of members of the newly established local board and such other documentation and/or information as may be required by the Commission.

(c) Not later than 30 days following receipt by the Commission of the list of members of the newly established local board and such other [page=1496] documentation and/or information as may be required under (b) above, the Commission shall either grant or deny the chief elected official's request for certification of the local board.

(d) Where the Commission determines that the composition of the local board membership is in compliance with 29 U.S.C. §2832 and N.J.S.A. 34:15C-15b, and where the Commission is satisfied with the sufficiency of all other documentation and/or information submitted with the application for certification, the Commission shall grant the chief elected official's application for certification of the local board.

(e) Where the Commission determines that the composition of the local board membership is not in compliance with 29 U.S.C. §2832 or N.J.S.A. 34:15C-15b, or where the Commission is not satisfied with the sufficiency of any other documentation and/or information submitted with the application for certification, the Commission shall deny the chief elected official's application for certification of the local board.

12:42-4.4 Recertification required

(a) Following certification of a local board under N.J.A.C. 12:42-4.3, the chief elected official of the local area shall once every two years thereafter apply to the Commission for recertification of the local board.

(b) The application for recertification submitted for review by the Commission under (a) above shall include:

1. A current list of local board members appointed by the chief elected official in a local area in accordance with N.J.S.A. 34:15C-15b and c;
2. The local board's budgets (required under N.J.S.A. 34:15C-15e(4)) for the extant and two preceding program years;
3. The local board's annual reports (required under N.J.S.A. 34:15C-15e(5)) for the extant and two preceding program years; and
4. Any other documentation and/or information as may be required by the Commission.

(c) Not later than 30 days following receipt by the Commission of the documentation and/or information required under (b) above, the Commission shall either grant or deny the chief elected official's application for recertification of the local board.

(d) Where the Commission determines that the local board has during the preceding two years ensured that the workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures, that the local board has satisfactorily carried out its functions under N.J.S.A. 34:15C-15e and 20 CFR 661.305,

that neither the local board, nor any of its members, has engaged in fraud or abuse, as those terms are used within 29 *U.S.C.* §2832(c)(3)(A), and that neither the local board, nor any of its members, has engaged in any of the prohibited conduct listed as cause for corrective actions and penalties under N.J.A.C. 12:42-3.6, the Commission shall grant the elected official's application for recertification of the local board.

(e) Where the Commission determines that the local board has during the preceding two years failed to ensure that the workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures, that the local board has failed to satisfactorily carry out its functions under N.J.S.A. 34:15C-15e and 20 *CFR* 661.305, that either the local board, or any of its members, has engaged in fraud or abuse, as those terms are used within 29 *U.S.C.* §2832(c)(3)(A), or that either the local board, or any of its members, has engaged in any of the prohibited conduct listed as cause for corrective actions and penalties under N.J.A.C. 12:42-3.6, the Commission shall deny the chief elected official's application for recertification of the local board.

12:42-4.5 Decertification

(a) Where the Commission denies a chief elected official's application for recertification of a local board under N.J.A.C. 12:42-4.4(e), the Commission may recommend in writing to the Assistant Commissioner that the local board be restructured, including decertification of the current local board and appointment of a new local board pursuant to a reorganization plan developed by the Assistant Commissioner in consultation with the chief elected official in the local area, and in accordance with the criteria established under 29 *U.S.C.* §2832 and N.J.S.A. 34:15C-15b.

(b) The Assistant Commissioner, within 30 days of receipt of the Commission's recommendation under (a) above, shall issue a determination as to whether it will initiate a restructuring of the local board.

(c) All determinations under (b) above shall be issued in writing to the local board's executive director or administrative officer, to the local board's chair, to the chief elected official of the local area, to the fiscal agent of the local area and to the Commission.

12:42-4.6 Appeals

Where a determination of the Commission or of the Assistant Commissioner under this subchapter results in either the denial of a chief elected official's application for certification, the denial of a chief elected official's application for recertification of a local board, or the decertification of a local board, the local area and/or local board may file an appeal pursuant to the procedures set forth at N.J.A.C. 12:42-3.11.