(C)

Melissa Velez-Morales

From: Masser, Michelle
Sent: Tuesday, March 22, 2016 11:22 AM
To: Harris, Laura
Cc: Gouveia, Susan; Melissa Velez-Morales
Subject: FW: Proposed Amendments to N.J.A.C. 5:30-17.1 through 17.6

CORRESPONDENCE

Michelle Masser
Township Clerk
Mount Olive Township
PO Box 450
204 Flanders Drakestown Road
Budd Lake, NJ 07828
clerk@mtolivetwp.org
973-691-0900 X7291

-----Original Message-----
From: egg@dca.state.nj.us [mailto:egg@dca.state.nj.us]
Sent: Tuesday, March 22, 2016 10:58 AM
To: Masser, Michelle <clerkmichelle@mtolivetwp.org>
Subject: Proposed Amendments to N.J.A.C. 5:30-17.1 through 17.6

Dear Municipal Clerk:

The Local Finance Board seeks public input on proposed amendments to rules governing electronic disbursement controls for local units. The proposed amendments, approved for promulgation by the Board at its February 10, 2016 meeting, would expressly authorize a third-party organization to audit, consolidate, and pay energy and utility bills on a local unit's behalf. Under the current rules, third-party disbursement is only permitted for payroll purposes. The term "local unit" refers to a municipality, county, authority subject to the "Local Authorities Fiscal Control Law," P.L. 1983, c. 313 (N.J.S.A. 40A:5A-1 et seq.), or a school district as defined in N.J.S.A. 18A:18A-2.d.

The proposed rule amendments to N.J.A.C. 5:30-17.1 through 17.6 have been published in the March 21, 2016 New Jersey Register, and are accessible by clicking http://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/PRN%202016-039%20(48%20NJR%20481(a)).pdf. Comments on the proposed rule amendments are due no later than May 20, 2016 and may be submitted via email to dlgs@dca.nj.gov with the subject heading "N.J.A.C. 5:30-17 Electronic Disbursement Controls" or by regular mail addressed as follows:

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

THIS NOTICE HAS BEEN SENT TO THE FOLLOWING OFFICIALS: Municipal Clerk, Chief Financial Officer / County Freeholder Board Clerk, Chief Financial Officer / Procurement Officials

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES
LOCAL FINANCE BOARD
Electronic Disbursement Controls for Payroll Purposes
Proposed Amendments: N.J.A.C. 5:30-17

Authorized By: Local Finance Board, Timothy J. Cunningham, Chair.
Authority: N.J.S.A. 52:27D-20.1.
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2016-039.

Please submit written comments on the proposal by May 20, 2016, via e-mail to dlgs@dca.nj.gov or by regular mail to:

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

For comments submitted via e-mail, please place in the subject heading "NJAC 5:30-17 Electronic Disbursement Controls".

The agency proposal follows:

Summary

The Local Finance Board seeks public input on proposed amendments to rules governing electronic disbursement controls for local units. For purposes of the within rules, the term "local unit" refers to a municipality, county, authority subject to the "Local Authorities Fiscal Control Law," P.L. 1983, c. 313 (N.J.S.A. 40A:5A-1 et seq.), or a school district as defined in N.J.S.A. 18A:18A-2.d. The amendments would permit a third-party organization to make disbursements on the local unit's behalf for energy and utility bills. Under the current rules, third-party disbursement is only permitted for payroll purposes.

The Board is promulgating amendments to N.J.A.C. 5:30-17.1 through 17.6 in response to a rulemaking petition submitted by Mr. Anthony Cancro, Business Administrator for Plainsboro Township. The Division of Purchase and Property in the New Jersey Department of Treasury has awarded a contract (State Contract T-2605) for such services that local units are permitted to utilize, and a number of local units in fact do so.

Pursuant to N.J.S.A. 52:27D-20.1, the Board consulted with the Commissioner of Education in promulgating the proposed amendments. The proposed amendments are discussed below.

N.J.A.C. 5:30-17.1 sets forth the purpose of the rules governing electronic disbursement controls. The Board proposes amending this section to extend the purpose to third-party disbursements for utility bills.

N.J.A.C. 5:30-17.2 sets forth definitions of key terms. The Board proposes amending this section to define the term "energy tracking and utility bill management systems" and expand the definition of "third-party disbursement service" to include same.

N.J.A.C. 5:30-17.3 sets forth the extent to which use of a third-party service organization is authorized to make disbursements on a local unit's behalf. The Board proposes amending this section to expressly authorize outside organizations to audit, consolidate, and pay utility bills on a local unit's behalf.

N.J.A.C. 5:30-17.4 sets forth the terms and conditions that local units must meet prior to executing contracts with disbursing organizations. Proposed amendments to this section describe the permissible tasks for energy tracking and utility bill payment services.

N.J.A.C. 5:30-17.5 sets forth eligibility requirements for disbursement organizations. The proposed amendments to this section reflect the updated auditing standards promulgated by the American Institute of Certified Public Accountants, pursuant to which the disbursing organization's Report on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness is performed, and expressly limit to payroll services the requirement that the offices of the third-party disbursement organization be within a proximity to the local unit acceptable to the local unit's Chief Financial Officer (CFO).

N.J.A.C. 5:30-17.6 sets forth mandatory terms and conditions of contracts between disbursing organizations and local units. Proposed amendments to this section: 1) limit the requirement that the contract address service of process to the disbursing organization in New Jersey to third-party disbursement of payroll and related funds; and 2) clarifying that the requirement for all contracts entered into between local units and disbursing organizations for the provision of third-party disbursement services to be in writing and executed by all parties shall not be construed to prevent local units from utilizing a contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the Department of Treasury whose terms have been extended to local units.

The proposed amendments, based on recommendations made by Division of Local Government Services staff, are in response to a petition for rulemaking submitted by Mr. Anthony Cancro, Business Administrator for the Township of Plainsboro, and published in the August 3, 2015, New Jersey Register at 47 N.J.R. 2004(b). The Board referred the matter to Division of Local Government Services staff for further deliberation and recommendation. This referral was published in the September 21, 2015, New Jersey Register at 47 N.J.R. 2395(a). After the deliberation process, the Board resolved to grant the petition and initiate rulemaking. The Board's notice of action on the petition was published in the January 19, 2016, New Jersey Register at 48 N.J.R. 141(a). Pursuant to N.J.A.C. 1:30-4.2(a)3, the deadline for initiating a rulemaking is 90 days from the conclusion of deliberations unless the petitioner agrees to an extension of this period. Whereas the deadline for initiating the rulemaking would have been February 9, 2016, petitioner agreed to extend this deadline by an additional 45 days to March 25,

2016. This extension is also referenced in the Board's January 19, 2016, notice.

This rule proposal provides for a comment period of 60 days and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments have a positive social impact by expressly authorizing local units to utilize a tool that could reduce energy usage and improve energy efficiency, thereby reducing the environmental impact of a local unit's operations. Applying such systems in the context of water supply could spur more efficient water usage, thereby reducing pressure on a most precious natural resource. The proposed amendments could motivate additional local units to investigate such systems, thereby potentially expanding their beneficial application to local units (and the citizens they serve) across the State.

Economic Impact

The Board anticipates that the proposed rule amendments will have a positive fiscal impact. Expressly authorizing local units to utilize an energy tracking and utility bill management system could potentially result in a larger number of contracting units investigating and employing such systems as a means to reduce energy costs and better monitor their utility accounts. An energy tracking and utility bill management system could save taxpayer dollars by addressing billing errors, particularly where a substantial number of utility accounts may make such tracking more difficult for finance and purchasing offices with limited staff resources, as well as by reducing exposure to energy market volatility (for example, price increases for oil and natural gas). The proposed rule amendments also incentivize competition by clarifying the regulatory landscape for local unit utilization of energy management and utility billing systems. This could encourage additional vendors of such systems to market to local units in New Jersey, thereby having a potential downward impact on the prices charged to local units.

Federal Standards Statement

No Federal standards analysis is required because the proposed rule amendments are not being proposed 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 Board does not anticipate the creation or loss of any private sector jobs as a result of the proposed rule amendments, as they pertain to expressly authorizing outside organizations to audit, consolidate, and pay utility bills on a local unit's behalf.

Agriculture Industry Impact

The Board does not anticipate that the proposed rule amendments will have an impact on the agriculture industry, as they pertain to expressly authorizing outside organizations to audit, consolidate, and pay utility bills on a local unit's behalf.

Regulatory Flexibility Statement

The proposed rule amendments 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. While the amendments pertain to expressly authorizing outside organizations to audit, consolidate, and pay utility bills on a local unit's behalf, the amendments do not impose additional requirements on such organizations, some of which may be small businesses.

Housing Affordability Impact Analysis

The proposed rule amendments are not anticipated to have an impact on housing affordability as they pertain to expressly authorizing outside organizations to audit, consolidate, and pay utility bills on a local unit's behalf.

Smart Growth Development Impact Analysis

The proposed rule amendments pertain to expressly authorizing outside organizations to audit, consolidate, and pay utility bills on a local unit's behalf. As such, the proposed rule amendments will have no anticipated impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan, despite the rule amendments' applicability Statewide.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 17. ELECTRONIC DISBURSEMENT CONTROLS FOR PAYROLL PURPOSES

5:30-17.1 Purpose

This subchapter sets forth standards for local governments to follow when contracting with an organization to make disbursements on the local unit's behalf, as permitted by N.J.S.A. 52:27D-20.1. The subchapter is intended to ensure that local units understand the risks associated with electronic disbursements and implement sound fiscal and control practices governing such disbursements. This subchapter is limited in application to third-party preparations and calculations for and the disbursement of salaries and wages, all withholdings, and additional related liabilities**, as well as disbursements for utility bills.**

5:30-17.2 Definitions

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

. . .

"Energy tracking and utility bill management systems" mean systems that provide energy bill auditing, bill consolidation, and bill payment services for the consumption of electricity, heating fuel, natural gas, propane, cogeneration (chilled water, steam, and hot water), water supply, and wastewater service bills.

. . .

"Third-party disbursement service" means such service or services of the type described in these rules. Such service or services may include the processing and disbursing of payroll and payroll agency obligations **and energy tracking and utility bill management systems.**

. . .

5:30-17.3 Authorization to use a third-party disbursement service organization for payroll **and other specified purposes**

(a) The governing body of a local unit may enact policies for contracting with a disbursing organization to process payroll **and utility bill** disbursements on its behalf. Such policies shall be formally authorized by ordinance or resolution of the governing body, as appropriate to the form of government and shall specify the tasks that may be performed by a disbursing organization. Such policies may involve the use of a disbursing organization:

1. To prepare the necessary **payroll** payment documentation and execute disbursements from the local unit's bank account on behalf of the local unit;

2. To audit, consolidate, and pay utility bills to ensure compliance with tariffs and usage records;

[2.] **3.** To prepare payment documentation, take possession of local unit funds, and make such disbursements itself on behalf of a local unit **for (a)1 and/or 2 above**; or

[3.] **4.** Any combination of paragraphs (a)1 and/**or** 2, **and 3,** above.

(b) This subchapter applies to disbursing organizations and local units who contract with one another for the determination and disbursement of: payroll and related funds, **and energy tracking and utility bill management systems.**

1.-2. (No change.)

5:30-17.4 Local unit requirements

(a) Local units shall meet the following terms and conditions prior to executing contracts with disbursing organizations:

1. Prior to the execution of a contract with a disbursing organization, the governing body shall approve the use of disbursing organizations for the payment of claims pursuant to N.J.A.C. 5:30-17.3(a). Such approval shall describe those tasks to be performed by a disbursing organization to meet the governing body's objectives, including specific authorization to use electronic means for the disbursing of funds.

2. Permissible tasks **for payroll services** can include and are not limited to data collection, agency report preparation, calculation of withholding, direct deposit of payroll disbursements, or local unit transfer

of funds to the disbursing organization's account for subsequent payment.

3. Permissible tasks for energy tracking and utility bill paying services can include:

i. Auditing, consolidation, and payment of utility accounts to ensure the proper account type and appropriate tariffs are being applied and usage is accurately recorded;

ii. Upon approval and transfer of funds by the local unit, payment of utility bills on the local unit's behalf; and

iii. Services related to (a)3i and ii above.

[i.] **4.** (No change in text.)

Recodify existing 2. and 3. as **5. and 6.** (No change in text.)

5:30-17.5 Eligibility requirements for disbursing organizations

(a) Disbursing organizations shall meet the following conditions and/or requirements:

1. The disbursing organization shall provide evidence of satisfactory internal control, evidence of which shall be required by the CFO. Such evidence may be:

i. The disbursing organization's Report on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness, performed pursuant to AICPA (American Institute of Certified Public Accountants) Statement on [Auditing] Standards **for Attestation Engagements** No. [70] **16**;

ii.-iii. (No change.)

2. **For third-party disbursement of payroll and related funds,** [All] **all** disbursing organizations shall have offices within a distance acceptable to the CFO of the local unit such that the physical delivery and receipt of documents and records can occur in a manner that assures the delivery of paychecks on regularly scheduled paydays.

5:30-17.6 Contract terms and conditions

(a)-(b) (No change.)

(c) Upon reasonable notice, the disbursing organization shall allow an independent auditor compensated by the local unit to examine its internal controls applying [SAS 70] **SSAE 16** standards, SysTrust™ standards or other standards and procedures mutually agreed upon to ensure accurate, complete, and timely work product. Upon completion, the independent auditor's report shall be provided to the CFO and governing body and shall be for internal use only.

(d) All disputes between the parties and disputes concerning the contract or its operation shall be in writing and forwarded to the other party via registered mail. All contracts shall have appropriate provisions for:

1. (No change.)

2. **In the case of third-party disbursement of payroll and related funds,** [The] **the** service of process to the disbursing organization in New Jersey; and

3. (No change.)

(e)-(i) (No change.)

(j) All contracts entered into between local units and disbursing organizations for the provision of third-party disbursement services shall be in writing and executed by all parties, including intermediaries, such as banks providing payroll services as part of a compensating balance agreement. **This subsection shall not be construed to prevent local units from utilizing a contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the Department of Treasury whose terms have been extended to local units.**

(k) (No change.)

LAW AND PUBLIC SAFETY

(a)

JUVENILE JUSTICE COMMISSION

Secure Facilities; Classification Assignment Process for Juveniles; Juvenile Discipline; Community Programs

Proposed Amendments: N.J.A.C. 13:95-1.3, 5.11, 7.2, 13.3, 13.6, 13.7, 13.11, 13.12, 13.13, 13.18, 13.19, and 14.4; 13:100-1.2 and 1.3; 13:101-1.2, 1.3, 5.3, 6.6, 6.7, 6.16, 7.3, and 7.6; and 13:103-1.3

Proposed New Rule: N.J.A.C. 13:95-11.10

Proposed Repeals: N.J.A.C. 13:101-6.17 and 8

Take notice that the Juvenile Justice Commission (Commission) discovered an error in proposed amendments to N.J.A.C. 13:101-5.3(a)3 set forth in the above notice of proposal, published in the March 7, 2016, New Jersey Register at 48 N.J.R. 378(a).

The notice of proposal submitted to the Office of Administrative Law (OAL) inadvertently omitted a provision in the proposed new text for N.J.A.C. 13:101-5.3(a)3 as approved by applicable oversight authorities. The Commission intended to delete existing N.J.A.C. 13:101-5.3(a)3 and replace it with "up to four hours in a secure environment under observation," however, only the deletion was submitted for publication to the OAL.

Take further notice that the Department is extending the deadline for the submission of written comments on the notice of proposal by 14 days, to May 20, 2016, to allow the public the full 60 days to comment on the notice of proposal as it should have been published.

Full text of the corrected proposed amendment follows (additions to existing rule text indicated in boldface **thus**; deletions from existing rule text indicated in brackets [thus]):

13:101-5.3 Authorized immediate corrective actions

(a) The following are authorized immediate corrective actions:

1. Withdrawing a privilege or an individual or group activity, for example, recreation, television or radio privileges, for no more than five days; meals and snacks provided by the facility are not permitted to be used as a sanction;

2. Requiring a juvenile to pay for repair of damaged property; to repair the damage, or to complete a work task;

[3. Room restriction not to exceed four hours;

i. Room restriction in other than a secure facility may take place only in an unlocked room; in a secure facility room restriction may take place either in an unlocked or a locked room;

ii. Staff shall visually make contact every 30 minutes with a juvenile on room restriction unless the circumstances require more frequent contact. Juveniles shall be within sight or sound at all times;

iii. Juveniles who receive room restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and

iv. Room restriction not issued as a sanction under N.J.A.C. 13:101-6.16 shall be entered in the housing unit log book;]

3. Up to four hours in a secure environment under observation;

4.-6. (No change.)