

application shall be filed with the Division at least 30 calendar days prior to the date of examination, and shall be accompanied by a fee in the amount of \$50.00, payable to the Treasurer, State of New Jersey.

(f) The Director shall determine the content of the examination, which shall be of such character as to fairly test and determine the ability to perform the duties of a registered municipal clerk. Examinations shall be written, unless the Director determines that an applicant's qualifications are better evaluated with an exam containing both written and oral components.

(g) Upon a finding by the Director that a candidate has successfully completed the examination, a registered municipal clerk certificate shall be issued to the applicant, upon a payment of a fee of \$50.00 payable to the Treasurer, State of New Jersey.

5:32-5.2 Renewal of registered municipal clerk certificates

(a) Renewal of a registered municipal clerk certificate shall be required every two years, subject to the applicant's fulfillment of continuing education requirements, the submission of an application for renewal, and payment of a \$50.00 fee payable to the Treasurer, State of New Jersey. Renewal of registered municipal clerk certificates shall be requested on a renewal form approved by and submitted to the Director.

1. Applicants shall obtain a minimum of 20 continuing education contact hours in the subject areas of elections, finance, licensing, records, ethics, and professional development. Said credits shall be approved by the Director as relevant to the subject matter area and the duties of a registered municipal clerk pursuant to N.J.S.A. 40A:9-133(e), with the following minimum contact hours for each subject area:

- i. Two contact hours in the subject area of elections;
- ii. Two contact hours in the subject area of finance;
- iii. Three contact hours in the subject area of ethics;
- iv. Two contact hours in the subject area of licensing;
- v. Two contact hours in the subject area of records; and
- vi. Two contact hours in subject area of professional development.

2. If an applicant has earned at least 20 continuing education contact hours within the renewal period, but has not achieved the minimum number of contact hours in a given subject area, the Director has discretion to waive the required minimum upon written application and good cause shown, provided that the applicant has earned at least one contact hour in the given subject area.

3. At the option of the applicant, contact hours in the subject area of information technology approved by the Director for relevance to the subject matter area and the duties of a chief financial officer may be applied toward the 20 continuing education contact hours, required under (a)1 above, in addition to the required minimum contact hours.

4. An individual who holds a registered municipal clerk certificate and allows such certificate to lapse by failing to renew shall be required to apply to take the qualifying examination required pursuant to N.J.S.A. 40A:9-133.2, and pay the requisite fee for such application and certificate in order to obtain a new registered municipal clerk certificate, except that, when an individual applies within six months after the expiration of the certificate, the application may be made in the same manner as a renewal but the application shall be accompanied by the fee required for a new application.

5. Within 12 months after the expiration of the certificate, an application may be made in the same manner as renewal only if the Director determines that a certificate holder is prevented from earning the required continuing education units within six months of the expiration of the certificate. The applicant must demonstrate a good faith effort to earn the required continuing education units within six months after the expiration of the certificate, and that either or both of the above conditions in (a)5i and ii below made it impossible to obtain the requisite continuing education units. The circumstances preventing renewal that qualify under this paragraph are:

- i. A flood, hurricane, superstorm, tornado, or other natural disaster, and a state of emergency has been declared as a result thereof by the Governor; or
- ii. A medical event or condition.

5:32-5.3 Vacancy in the office of municipal clerk by reason of departure of a registered municipal clerk

(a) When a vacancy occurs in the office of municipal clerk by reason of departure of a registered municipal clerk, the municipality's governing body may appoint, for a period not to exceed one year commencing from the date of the vacancy, a person who does not possess a registered municipal clerk certificate to serve as acting municipal clerk. Any person so appointed may, with the approval of the Director, based on (a)2 and 3 below, be reappointed as an acting municipal clerk for up to two additional one-year terms following the end of the first temporary appointment. No municipality shall have an acting municipal clerk for more than three consecutive years.

1. Prior to the end of the first-year appointment of an acting municipal clerk, the governing body shall request, in writing, permission from the Director to reappoint an acting municipal clerk for an additional one-year term. A questionnaire approved by the Director shall be completed and included with the written request. A request for Director approval of a third one-year term shall follow the same procedure. The completed questionnaire and any documents submitted in support of said questionnaire shall be exempt from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

2. Before granting approval to reappoint an acting municipal clerk for a second or third consecutive one-year term, the Director shall be satisfied that the individual is of good moral character and can satisfactorily fulfill the duties of a municipal clerk. Any request to the Director shall provide the following information:

i. The candidate's efforts to seek a registered municipal clerk certificate;

ii. Whether, as a condition of hiring, the municipality performed a criminal background check, credit check, and judgement search, along with the results thereof. For requests to reappoint the same individual to another one-year term, any updates to such information shall be disclosed;

iii. An explanation of any repeat comments on the most recent annual audit, attributable to the office of municipal clerk;

iv. An explanation of any Open Public Records Act complaints involving the acting municipal clerk; and

v. An explanation of any complaints against the office of municipal clerk from a member of the public or other persons that are of a serious nature, such as those involving potential, ongoing, or prior litigation.

3. The Director may request from the municipality's governing body such other information as may be necessary to determine the individual's good moral character and ability to fulfill the duties of a municipal clerk.

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Ethics Law

Adopted Amendment: N.J.A.C. 5:35-2.1

Proposed: July 3, 2017, at 49 N.J.R. 1761(a).

Adopted: October 27, 2017, by Timothy J. Cunningham, Director, Division of Local Government Services.

Filed: October 31, 2017, as R.2017 d.208, **without change**.

Authority: N.J.S.A. 40A:9-22.3.g.

Effective Date: December 4, 2017.

Expiration Date: March 13, 2021.

Summary of Public Comments and Agency Responses:

COMMENT: Dina Zwadski, President of the Municipal Clerk's Association of New Jersey, expresses support on behalf of the Association for the proposed amendments to N.J.A.C. 5:35-2.1. Although the proposed amendments would increase the administrative burden on municipal clerks with respect to financial disclosures, said amendments, nonetheless, represent a positive change for municipal clerks by further defining which local government offices need to file financial disclosure statements.

RESPONSE: The Director appreciates the support expressed by the Municipal Clerks Association of New Jersey for the amendments to N.J.A.C. 5:35-2.1.

COMMENT: On behalf of Downtown New Jersey, Robert S. Goldsmith, Esq., expresses support for the amendment that would remove special improvement district (SID) directors and members from the definition of “managerial executive employees.” The proposed rule is consistent with case law and the legislative intent that special improvement districts be a partnership with the local business community to “achieve privately what municipal government has struggled unsuccessfully to do.” *2nd Roc Jersey Assocs. v. Town of Morristown*, 158 N.J. 581 (1999). Further, as noted in the Summary of the notice of proposal, SIDs do not exercise authority outside of their boundaries, nor do SIDs control property tax dollars.

RESPONSE: The Director appreciates the support expressed by Downtown New Jersey for the amendments to N.J.A.C. 5:35-2.1.

COMMENT: Sean P. Canning, Qualified Purchasing Agent for the Town of Boonton, states that the town has no objection to the proposed changes and expansion of those titles considered managerial executives within local government.

RESPONSE: The Director appreciates the support expressed by the Town of Boonton for the amendments to N.J.A.C. 5:35-2.1.

COMMENT: Michelle Seigfried, Robbinsville Township Municipal Clerk, seeks clarification on the obligations of engineers and attorneys to file financial disclosure statements. With respect to engineers, does the rule only apply to in-house engineers or engineers that are hired via professional services agreements (that is contractors)? If it does include contractors, is it all engineers in the firm or only the one dealing the most with the town? Also, the commenter asks which attorneys should be filing financial disclosure statements; Robbinsville Township has contracts with multiple firms for multiple reasons. Are only those attorneys doing most of the work required to file, or rather all attorneys in a firm?

RESPONSE: The financial disclosure statement filing requirement for an attorney and engineer for a municipality, county, or other local government agency, along with attorneys or engineers for planning boards and zoning boards of adjustment, would apply to both in-house, as well as independent contractors. In the context of an independent contractor, the attorney and engineer who is appointed to represent the entity as its attorney or engineer must file, along with any other attorneys or engineers in the same firm as those named appointments who regularly provide professional services to the entity. Alternate, special, and conflict attorneys or engineers would not be required to file financial disclosure statements because such positions have a comparatively more limited role within a local government agency. This rule remains consistent with the interpretation set forth in Attorney General Formal Opinion 91-002.

COMMENT: Daniel Hornickel, Esq., Human Resources Manager for the Middlesex County Utilities Authority, states that while engineers beneath the level of chief engineer at a local government agency regularly utilize professional and independent decision making in the course of their regular duties, the responsibilities of said engineers are not related to either developing public policy or directing the implementation thereof. Such responsibilities generally belong to the agency’s governing body, executive director, division managers, and/or chief engineer. The Authority recommends that the proposed definition at N.J.A.C. 5:35-2.1(a)17 be modified to read “chief engineer of a local government agency or the highest ranking engineer overseeing the practice of engineering on behalf of the local government agency.” This change would differentiate between engineers who exercise the role of a managerial executive and engineers whose duties are professional in nature, akin to planners, architects, and project managers, who are not considered to be managerial executives under N.J.S.A. 34:13A-3 of the Employer-Employee Relations Act and are not required to complete financial disclosure statements.

RESPONSE: When a municipality, county, or other local government agency directly employs an engineer, only the individual named as the engineer would be required to file a financial disclosure statement (FDS). For engineering departments within a municipality, county, or other local government agency, the individual designated as the chief

engineer or head of a department or division of engineering would be required to file an FDS; staff engineers would not be required to file. The Director finds that the current provision is sufficiently clear, but notes that an annual Local Finance Notice is distributed to local government entities explaining the FDS filing requirement and any changes thereto. It is also noted that P.L. 2015, c. 95 amended N.J.S.A. 40A:9-22.3.g, such that the managerial executive definition is no longer exclusively tied to N.J.S.A. 34:13A-3 of the Employer-Employee Relations Act.

Federal Standards Statement

No Federal standards analysis is required because the amendment is not adopted 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.

Full text of the adopted amendment 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. Chief of Staff;

Recodify existing 1.-6. as 2.-7. (No change in text.)

8. Chief or acting chief of police, part-paid fire departments, and paid fire departments, or “officer in charge” in lieu of a chief or acting chief title;

9. Deputy chiefs and assistant chiefs of police, part-paid fire departments, and paid fire departments;

Recodify existing 9.-13. as 10.-14. (No change in text.)

15. Planning board or zoning board of adjustment engineer;

16. (No change in text.)

17. Local government agency engineer;

Recodify existing 15.-23. as 18.-26. (No change in text.)

Recodify existing 25.-31. as 27.-33. (No change in text.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Career and Technical Education Programs and Standards

Adopted Amendments: N.J.A.C. 6A:19-7.1, 7.2, and 7.3

Proposed: August 7, 2017, at 49 N.J.R. 2357(a).

Adopted: November 1, 2017, by the New Jersey State Board of Education, Kimberley Harrington, Commissioner, Department of Education, Secretary, State Board of Education.

Filed: November 1, 2017, as R.2017 d.216, **without change**.

Authority: N.J.S.A. 18A:35-4.2 and 18A:59-5.

Effective Date: December 4, 2017.

Expiration Date: October 7, 2020.

Summary of Comment and Agency Response:

No comments were received.

Federal Standards Statement

There is no Federal law that pertains to the licensing of private career schools, therefore, no Federal standards analysis is required.

Full text of the adoption follows: