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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
NEW JERSEY STATE BOARD OF MEDIATION**

*45 N.J.R. 2539(a)*

**Proposed Readoption: N.J.A.C. 12:106**

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

**Elections**

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:13A-1 et seq., specifically, 34:13A-11.

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

Proposal Number: PRN 2013-159.

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

Tuesday, January 7, 2014  
10:00 A.M. to 12:00 Noon  
New Jersey Department of Labor and Workforce Development  
John Fitch Plaza  
2nd Floor 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 February 14, 2014, 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

The agency proposal follows:

### **Summary**

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 12:106, which addresses the use of the New Jersey State Board of Mediation (the Board) to conduct elections for the selection of an exclusive collective bargaining agent, is scheduled to expire on May 7, 2014. The chapter applies to employers and employees who voluntarily utilize the Board to conduct such elections and who voluntarily agree to abide by the rules of the chapter relative to such elections. It is explained within the chapter that the Board will conduct such elections only in those instances where the employer and the labor organization(s) involved enter into an agreement setting forth: (1) the appropriate unit, (2) the time and place of holding the election, and (3) the payroll to be used in determining which employees will be eligible to vote in the election. The remainder of the chapter sets forth procedures to be utilized, for example, filing a request for election, intervening in an election, stationing observers at election sites, and challenging ballots, when the employer and the labor organization(s) have agreed to use the services of the Board in conducting an election. The Department of Labor and Workforce Development and the New Jersey State Board of Mediation have reviewed these rules and have determined them to be necessary, reasonable, and proper for the [page=2540] purposes for which they were originally promulgated and are, therefore, proposing them for readoption at this time.

A summary of the subchapters of N.J.A.C. 12:106 follows:

N.J.A.C. 12:106-1 addresses the role of the Board in conducting elections for the selection of an exclusive collective bargaining agent.

N.J.A.C. 12:106-2 sets forth the election procedures, which include procedures for the submission of a request for election, the submission of a petition to intervene in an election, the conditions of election, the stationing of observers to an election, the challenging of election ballots, the filing of objections to the conduct of an election, establishing conditions for a second or runoff election, and the certification of an election.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules proposed for readoption have had and would continue to have a positive social impact in that they have assisted and would continue to assist employers and employees who choose to utilize the services of the Board for the holding of elections to select a collective bargaining agent.

### **Economic Impact**

The rules proposed for readoption have provided and would continue to provide procedures to be followed when the Board has been chosen to conduct an election for the selection of a collective bargaining agent by the employer and the labor organization(s) involved. The use of the Board and its streamlined procedures to conduct such elections may result in cost reductions where those involved in the elections have already reached agreement with regard to the appropriate unit, the time and place of holding the election, and payroll to be used in determining the pool of eligible voters.

### **Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption are not subject to any Federal requirements or standards.

### **Jobs Impact**

Neither the Department nor the Board anticipate an increase or decrease in jobs as a result of the rules proposed for readoption.

### **Agriculture Industry Impact**

The rules proposed for readoption would have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The rules proposed for reoption would not impose recordkeeping or reporting requirements on employers, including small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the rules proposed for reoption would impose the following compliance requirements on small businesses: (1) N.J.A.C. 12:106-2.1 would continue to require that when a request for an election is made by representatives of either an employer or a labor organization, the request must contain the name and address of the employer, the name and address of the labor organization or organizations concerned in the representation question, and other facts relevant to the controversy, and (2) N.J.A.C. 12:106-2.6 would continue to require that objections to the conduct of an election, when filed, must be filed within five days after closing of the polls and that copies of the objections so filed must be forwarded by the objecting party to each of the other parties. The former requirements (those pertaining to requests for election) are the minimum requirements that could be imposed by the Department and the Board of Mediation, since, in order to process a request for election, the Board of Mediation must, at a minimum, know the names and addresses of the parties to the election and the essential facts that are relevant to the controversy that is the subject of the election. Without that information, the Board would be unable to effectively perform its function under this regulatory scheme. The later requirements (those pertaining to the filing of objections) are also the minimum requirements that could be imposed by the Department and the Board of Mediation, since in order to effectively hear objections to the conduct of an election all parties must be apprised of the basis or bases for the objection and reasonable time limits for the receipt of objections must be established. There are no costs associated with these requirements.

The procedures established for elections conducted by the Board for the selection of an exclusive collective bargaining agent (see Summary above) would be applied to all businesses, regardless of size, when those businesses have chosen to use the Board to conduct such elections. This election process is implemented by choice and is designed to benefit all parties concerned. There would be no professional services required in order to comply with chapter proposed for reoption.

**Housing Affordability Impact Analysis**

The rules proposed for reoption would have no impact on affordable housing and would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for reoption pertain to representation elections conducted by the State Board of Mediation and have nothing to do with housing.

**Smart Growth Development Impact Analysis**

The rules proposed for reoption would not have any impact on smart growth and would not evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Re-development Plan. The basis for this finding is that the rules proposed for reoption pertain to representation elections conducted by the State Board of Mediation and have nothing to do with housing.

**Full text** of the rules proposed for reoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:106.