

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

SUBCHAPTER 10. SPOTTED LANTERNFLY

2:20-10.4 Quarantine area

(a) By order of the State Board of Agriculture, and pursuant to N.J.S.A. 4:1-21.5, in order to control the spread of the dangerously injurious insect, the Spotted Lanternfly, a menace to the State’s agricultural industries, environment, and residential areas of New Jersey, the following New Jersey counties are hereby quarantined in their entirety:

1. Warren;
 2. Hunterdon; [and]
 3. Mercer[.];
 4. **Burlington;**
 5. **Camden;**
 6. **Gloucester;**
 7. **Salem; and**
 8. **Somerset.**
- (b) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Planned Real Estate Development Full Disclosure Act Regulations

Proposed Amendments: N.J.A.C. 5:26-1.3, 8.1, 8.2, and 8.4

Proposed New Rules: N.J.A.C. 5:26-8.8 through 8.14

Proposed Repeals: N.J.A.C. 5:20 and 5:26-8.3

Authorized By: Lieutenant Governor Sheila Y. Oliver,
Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-21.

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

Proposal Number: PRN 2019-065.

Submit written comments by August 2, 2019, to:

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The agency proposal follows:

Summary

The Department of Community Affairs (Department) proposes to amend the Planned Real Estate Development (PRED) Full Disclosure Act Regulations, N.J.A.C. 5:26, to implement P.L. 2017, c. 106, which amended the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-43 et seq., to enhance resident voting participation rights in common interest community associations. The effective date of PREDFDA was July 13, 2017, except that certain sections of the act concerning notices and voting practices were effective October 13, 2017. This rulemaking establishes that unit owners and voting eligible tenants living in community associations have the right to nominate and elect candidates, as well as run for and be elected to the executive boards that govern the communities. A section-by-section summary of the proposed amendments, new rules, and repeals follows.

1. N.J.A.C. 5:20, Meetings of Governing Boards of Associations of Condos and Other Planned Real Estate Developments, would be repealed. The text from the chapter would be incorporated as amended at N.J.A.C. 5:26-8.12, Open meetings, which is summarized as items 31 through 37, below. Because the rules contained in this chapter are applicable solely to

Planned Real Estate Developments, the Department found that it would be more appropriate to codify these requirements in the PRED rules.

2. At N.J.A.C. 5:26-1.3, Definitions, the following terms relevant to community associations would be added and defined: association, association member, bylaws, condominium, condominium property, executive board, master association, umbrella association, unit, and voting eligible tenants. Also, pursuant to the Office of Administrative Law’s standards, the definition of “State” is proposed for deletion.

3. At N.J.A.C. 5:26-8.1, the section heading would be amended to “Formation of the association,” and the text of the rule would split into two separate subsections for clarity, with no change in the technical requirements.

4. At N.J.A.C. 5:26-8.2, the section heading would be amended to “Association powers and responsibilities,” and would consolidate existing sections N.J.A.C. 5:26-8.2 and 8.3 with amendments to allow for reproduction of the annual audit of association funds. N.J.A.C. 5:26-8.3 is, thus, proposed for repeal.

5. At N.J.A.C. 5:26-8.4, proposed new subsection (a) would be added to state that developers who retain at least one unit as a rental unit are not automatically entitled to a seat on the executive board. This ensures that the developer does not maintain unwarranted influence on the board. Proposed new subsection (b) would also be added to clarify that a developer cannot be prevented from running for a position on the executive board.

Proposed new N.J.A.C. 5:26-8.8, Membership in the association, would include the following.

This section would incorporate the requirements as set forth in P.L. 2017, c. 106, specifically the requirements at N.J.S.A. 45:22A-43, Organization of the association. This would establish that all unit owners are members of the association and provide basic election participation rights. Because of the significant influence community associations have over residents’ lives, these participation rights seek to ensure that the executive board is governed fairly.

6. N.J.A.C. 5:26-8.8(a) would specify that an owner is a member of the association for as long as he or she holds the title to the unit.

7. N.J.A.C. 5:26-8.8(b) would grant the developer one membership in the association for each unit registered pursuant to this chapter that has not yet been conveyed to an individual purchaser. This section would further clarify that this does not provide the developer a different transition obligation than that required by statute.

8. N.J.A.C. 5:26-8.8(c) would establish the provisions for an association member to be in good standing. Association members must be in good standing in order to vote in executive board elections, amend bylaws, nominate someone, or run for a position on the executive board. The provision of good standing is also intended to serve as the sole standard for candidacy on the board. To be in good standing, the association member must be current in the payment of common expenses or other fees lawfully assessed; be in compliance with a judgement for common expenses or other fees lawfully assessed; be in full compliance with a settlement agreement with respect to the payments of assessments; and/or have requested or is participating in Alternative Dispute Resolution (ADR) or in a court proceeding over a matter that applies to the member’s standing.

9. N.J.A.C. 5:26-8.8(d) would allow for tenant voting in executive board elections and tenant membership in the association subject to the owner’s consent. The section would further clarify that the voting eligible tenant’s voting rights would be in place of, and not in addition to, the rights of the owner of the leased unit.

Proposed new N.J.A.C. 5:26-8.9, Executive board elections, would include the following.

This section would incorporate the requirements as set forth in P.L. 2017, c. 106, specifically those at N.J.S.A. 45:22A-45.2, concerning executive board elections. This section would ensure that elections are conducted in a fair and open matter. This section would enhance the voting rights of members in good standing and ensure that election meetings are held and ballots are counted in a non-fraudulent way. This section contains overarching requirements, including the establishment of an executive board where there is none, the use of proxies, powers of attorney, and absentee ballots, and the allocation of votes. Further

requirements would break down how elections are to be held in small associations and in large associations.

10. N.J.A.C. 5:26-8.9(a) would require that the executive board be elected by association members and voting eligible tenants. The section further clarifies that the developer is not entitled to cast votes in any executive board elections while the developer maintains any seat or seats on the board.

11. N.J.A.C. 5:26-8.9(b) would require elections to be held in accordance with the bylaws of the association. The section would also set an interval for elections, which is not to exceed four years. Associations must also set the term of an executive board member for a maximum of four years. The section would further clarify that the executive board may stagger elections, so as to provide for a continuum of experienced members on the board. This section would also allow for owners to submit a petition to compel an election in the event that an association has not held an election in compliance with its bylaws.

12. N.J.A.C. 5:26-8.9(c) would grant owners the ability to petition a court with jurisdiction to act temporarily in the interests of the association and hold an election in the event that the association has no executive board members and association members fail to act on the petition or by majority to hold an election. This may be done at common expense. This subsection would allow association members to establish an executive board where there is none.

13. N.J.A.C. 5:26-8.9(d) would establish the requirements for the use of proxies and absentee ballots. This subsection would clarify that any proxies used by an association must contain a clear and prominent notice that the use of such proxy or power of attorney is voluntary and state that the proxy may be revoked at any time before the holder casts a vote; the section further requires that any association allowing the use of proxies or powers of attorney also make absentee ballots available.

14. N.J.A.C. 5:26-8.9(e) would require that each unit be allocated either one vote or an equal number of votes unless the bylaws of the association allow for voting proportional to a unit's size or value. The section would further require that these allocations be applied on an equal basis consistent with each unit's value or size. For example, all members living in a unit that is greater than 1,000 square feet may be entitled two votes and all members living in a unit that is less than 1,000 square feet may be entitled one vote.

15. N.J.A.C. 5:26-8.9(f) would state that an association may not prohibit, limit, impede, or restrict participation by residents of low- or moderate-income housing units.

16. N.J.A.C. 5:26-8.9(g) would state that the association shall not prohibit members in good standing, proxy or power-of-attorney holders, or voting eligible tenants from voting for any candidate in an executive board election. The subsection would further clarify that the association shall not prohibit anyone acting pursuant to a valid power of attorney from voting, and that if the bylaws permit electronic voting, anyone eligible to vote is permitted to cast votes electronically.

17. N.J.A.C. 5:26-8.9(h) would establish the requirements for ballot collection and counting. This section would ensure that ballots are cast anonymously, kept in a secure depository, counted publicly, and available for inspection by association members. This section would also allow ballots to be cast electronically if administered by a neutral third party and anonymity is maintained. N.J.A.C. 5:26-8.9(i) would clarify that initial executive board elections in condominium associations governed under the "Condominium Act," P.L. 1969, c. 257 (N.J.S.A. 46:8B-1 et seq.) are not subject to this section.

18. N.J.A.C. 5:26-8.9(j) would clarify the requirement for master or umbrella association members to be elected in accordance with this section unless individual association governing documents provide for the association to appoint a member to the master or umbrella association board.

19. N.J.A.C. 5:26-8.9(k) would contain the provisions for executive board elections specific to associations with fewer than 50 units. Such associations would be required to provide written notice of the election at least 14 calendar days prior to the date of the election meeting and provide information on when and how to vote. The association would also be required to give its members the ability to nominate and vote for any association member in good standing and provide its members the opportunity to review candidacy qualifications for all candidates for

election to the board. The association would be responsible for notifying its residents who are not in good standing a minimum of 14 days prior to the election to allow for residents to contest the determination through Alternative Dispute Resolution. Associations would also be required to verify the eligibility of all voters and count the ballots in a nonfraudulent way.

20. N.J.A.C. 5:26-8.9(l) would contain the provisions for executive board elections specific to associations with 50 or more units. The provisions include timing mandates, ballot requirements, and election integrity requirements. Such associations would be required to provide written notice to all members at least 30 calendar days, but not more than 60 calendar days, prior to mailing the election meeting notice to inform them of the right to nominate themselves or other members in good standing as candidates for the executive board and establish a timeframe for the receipt of nominations. Following the nomination period, associations would be required to announce the election meeting through a written notice to all association members at least 14 days prior to the date of the meeting. Such election notice would be required to contain a copy of the ballot that must meet the following requirements: ballots must contain the names of all persons nominated as candidates for the executive board in alphabetical order, in the same font, same font size, and same font color, indicate what office and term each candidate is seeking, and include space for write-in candidates. All ballots, including those cast electronically, would have to maintain the anonymity of voters. To protect the integrity of the voting process, associations would also be required to verify the eligibility of all voters and count the ballots in a nonfraudulent way.

Proposed new N.J.A.C. 5:26-8.10, Representation, would include the following.

This section would incorporate the requirements as set forth in P.L. 2017, c. 106, specifically those at N.J.S.A. 45:22A-45.2, concerning representation on the executive board. This section is intended to allow for representation of different unit types on the board, thus, ensuring no unit type is overlooked in the governance of the association.

21. N.J.A.C. 5:26-8.10(a) would allow the association's bylaws to provide for representation on the board for owners with different types of units. This would allow owners to nominate some members of the executive board to ensure representation of their unit types on the board. Unit types include units of different value, size, nature, or geographical area within the development. This would require associations to reserve a seat or seats on the executive board for election by owners of affordable units that represent a minority of the units in the development and provide that owners of commercial units in the development cannot hold a majority of the board.

22. N.J.A.C. 5:26-8.10(b) would require that not more than one resident from a single unit can serve on the board simultaneously with a resident of the same unit unless the executive board members are serving as representatives of the developer during the period prior to surrender of control to owners.

23. N.J.A.C. 5:26-8.10(c) would prohibit a person or an owning entity from holding more than one seat on the executive board. This would prevent a majority owner from controlling the association board such that none of the individual owners have a seat.

Proposed new N.J.A.C. 5:26-8.11, Appointments, removals, and executive board vacancies, would include the following.

24. N.J.A.C. 5:26-8.11(a) would require that an association ensure that any board member is elected through a process that is in accordance with the applicable State laws and the bylaws of the association.

25. N.J.A.C. 5:26-8.11(b) would provide that once elected by voters, an elected member shall be removed only in accordance with the bylaws or by the board for good cause directly impacting the member's ability to serve. This subsection would also prohibit the board from removing an elected member for disagreeing with the majority or for violating any confidentiality agreement without affording the elected member Alternative Dispute Resolution.

26. N.J.A.C. 5:26-8.11(c) would state that in associations with 50 or more units, a person may not take an executive position through appointment. The subsection would clarify that an extension of an existing term is considered equivalent to an appointment by the board, and, thus,

is prohibited. This subsection would not apply to any permissible appointment made by the developer and would not prevent an association from filling a vacancy in the executive board created by resignation, death, failure to maintain any reasonable qualification to be an executive board member, or following a vote in favor of removal open to all association members. The subsection would require that any executive board position that has been filled by an appointee in such instances shall be subject to election within a year following such appointment.

27. N.J.A.C. 5:26-8.11(d) would allow for a petition requesting removal of a board member to be signed and submitted by 51 percent of the association members. The subsection would further require that a special election of the association membership occur within 60 days of receipt of such petition; if the annual meeting of the association membership is scheduled to occur within 60 days of the submission of the petition, then the election must be held at that meeting.

28. N.J.A.C. 5:26-8.11(e) would require notice of the special election meeting to be provided to all association members and voting eligible tenants at least 14 days prior to the meeting, which must be scheduled at a reasonable time to allow most association members to attend. It also would require that the ballot be mailed with the notice of the meeting.

Proposed new N.J.A.C. 5:26-8.12, Open meetings, would include the following.

This section incorporates the requirements proposed for repeal from N.J.A.C. 5:20, Meetings of Governing Boards of Associations of Condos and Other Planned Real Estate Developments. The technical requirements remain largely the same, with clarification on the content of minutes, the provisions for emergency meetings, and an additional subsection that would create provisions for cancelled open meetings. These additional requirements are not expected to be burdensome and are intended to clarify the open meeting process for associations.

29. N.J.A.C. 5:26-8.12(a) would require that the bylaws of the association include that in order for a binding vote of the executive board to occur, the vote must be taken during a meeting that is open to attendance by all association members and voting eligible tenants, as applicable. This subsection would clarify that a binding vote is a vote made by a quorum and would require that the board provide a brief explanation of the basis for, and cost entailed in, any binding vote and that such explanation be included in the minutes for the meeting. This subsection would also allow associations to adopt a uniformly applied policy for comments from association members and voting eligible tenants during meetings. These requirements are no different than those proposed for repeal in N.J.A.C. 5:20, except that the definition of binding vote is added for clarity and the requirement that the board explain a cost associated with a binding vote is added to ensure association members are informed of the impact of any vote.

30. N.J.A.C. 5:26-8.12(b) would require the association to hold an annual meeting. Within seven days following the annual meeting, the association must post, and maintain posted throughout the year, an open meeting schedule of the executive board. The subsection would specify that the open meeting schedule, which must contain the time, date, and locations of each meeting, must be posted at the place or places at which notices are posted and placed on file with the board member designated for administering association business. Any changes to the open meeting schedule must be made at least seven days prior to the scheduled date and posted in the same manner as the original schedule. These requirements are no different than those proposed for repeal in N.J.A.C. 5:20.

31. N.J.A.C. 5:26-8.12(c) would require that, in addition to the posted open meeting schedule, adequate notice of at least seven days prior to any meeting be given to all association members and voting eligible tenants. The former provisions of N.J.A.C. 5:20 required adequate notice of at least 48 hours; however, seven days is a more adequate timeframe to provide owners the opportunity to attend the open meeting. The notice can be provided by posting prominently in at least one place on the property that is accessible at all times, by posting on the association's website and being included in any association newsletter, or by personally providing to each member or designee by mail, hand-delivery, or electronic means. The notice must be filed with the board member responsible for administering association business and maintained by the executive board for a period of two years. The notice must include the time, date, and

location of the meeting, as well as any agenda items, which include items for discussion, items for action, and reoccurring items, as applicable. The subsection also allows an individual association member or designee to provide written notice to the board waiving any personal delivery of meeting notices. Such waiver does not operate as a waiver of that person's right to receive open meeting minutes. The member or designee may rescind the waiver at any time.

32. N.J.A.C. 5:26-8.12(d) would require that every elected board member be provided an equal opportunity to participate in any meeting of board members.

33. N.J.A.C. 5:26-8.12(e) would allow the executive board to exclude attendance of all association members and voting eligible tenants at meetings, or portions thereof, at which they discuss any of the following matters:

- i. Those in which disclosure would constitute an unwarranted invasion of individual privacy;
- ii. Those involving pending or anticipated litigation or contract negotiations;
- iii. Those involving employment, promotion, discipline, or dismissal of a specific employee or officer of the association; or
- iv. Those falling within attorney-client privilege to the extent that confidentiality is required in order for the attorney to exercise his or her ethical duties as a lawyer.

This subsection would further state that no binding votes shall be taken at such meetings, and that if the closed portion of the meeting is to be part of an open meeting, it shall be convened either before the open portion or at the end of the open meeting portion of the agenda. These requirements are no different than those proposed for repeal at N.J.A.C. 5:20, except for the requirement that a closed meeting must be either before or after the open meeting.

34. N.J.A.C. 5:26-8.12(f) would require that minutes for the open sessions of meetings be taken for each meeting. The minutes would be required to be legible, to include the board members present and their titles, to clearly identify any matters addressed, and to include clear identification of any matters voted on at the meeting with a record of the votes. This subsection would require that minutes be made available to association members in a timely manner before the next meeting and may be identified as "draft" or "unapproved" minutes. This subsection would require that for any meeting recorded electronically, a written record must be taken of the matters addressed and the matters voted on, and that association members have access to the electronic recording, as well as the written record. These requirements were also at N.J.A.C. 5:20, which is proposed for repeal, but this subsection updates those provisions to include the necessary content in the minutes.

35. N.J.A.C. 5:26-8.12(g) would require that when a meeting of the executive board is required to deal with matters of such urgency and importance that delay for the purpose of providing the seven-day notice would be likely to result in substantial harm to the interests of the association, notice of the emergency meeting shall be deemed to be adequate if it is provided as soon as possible following the calling of the meeting by posting in accordance with subsection (c) (discussed in paragraph 31 above). Such emergency meetings must be limited to discussion of and acting with respect to matters of urgency and importance. The executive board would be required to maintain on record the facts establishing the emergency and any prior knowledge of the condition; minutes would be required to be taken and made available in accordance with subsection (f) (discussed in paragraph 34 above). These requirements also existed at N.J.A.C. 5:20, but they are updated in this recodification for clarity.

36. N.J.A.C. 5:26-8.12(h) would require that the board shall post notice when it has determined to cancel a scheduled open meeting. The executive board would be required to post the notice of cancellation at the meeting site by the time the meeting is scheduled to begin, at the location on the property where notices are posted, and, if applicable, on its website. The notice must state when the meeting will be held and the reason for the cancellation. If the reason is not included in the notice, it must be placed on the record at the start of the next open meeting. If the start time of the meeting is delayed, notice shall be posted at the meeting site to provide notice of the delay to those attending. These requirements were not in

N.J.A.C. 5:20, but are practical in order to provide residents with the most up-to-date information regarding meetings.

Proposed new N.J.A.C. 5:26-8.13, Amendments to the bylaws, would include the following.

This section would incorporate the requirements as set forth in P.L. 2017, c. 106 (N.J.S.A. 45:22A-46) and establishes the process through which the executive board may amend association bylaws. Because members of these communities are required to pay assessments and fees in addition to the State and local taxes and are required to comply with property regulations that may be more stringent than those required by municipal governments, it is vital that members are given the opportunity to vote on amendments that may have an effect on these requirements. The specific procedures address different potential approaches for amending the bylaws, all of which are intended to maximize member engagement in the amendment process.

37. N.J.A.C. 5:26-8.13(a) would require that the association's bylaws detail the method by which the bylaws may be amended.

38. N.J.A.C. 5:26-8.13(b) would require that no amendments to the bylaws would be effective until they are recorded in the same county recording office as existing bylaws. The section would further state that the bylaws must be recorded in a timely manner, and, if the bylaws have not previously been recorded, they must be recorded in the Clerk's Office of the county in which the property is located. The association would also be required to maintain a record of the filing that must be available to any owner or designee upon request.

39. N.J.A.C. 5:26-8.13(c) would allow for association members to amend the bylaws by a vote of the majority of the total authorized votes in the association in the event that the bylaws do not provide an amendment method by a vote of association members that is open to all members or if the bylaws provide for an amendment by more than a two-thirds majority.

40. N.J.A.C. 5:26-8.13(d) would clarify that the majority is determined based on association membership in good standing at the time of the vote.

41. N.J.A.C. 5:26-8.13(e) would provide a method through which association members may call a meeting to conduct a bylaws amendment vote or a vote concerning any matter covered by N.J.A.C. 5:26-8.10, 8.11, or 8.12 in the event that the bylaws do not provide such a method. This ensures that association members are aware of their right to call a meeting and have a clear method for calling such meeting in the event that the bylaws of the association do not address such. This subsection would require that a petition be signed and submitted to the board by not less than 15 percent of the association members to request a special meeting. The special meeting of the association membership is to occur within 60 days of the receipt of the request. If the annual meeting of the association membership is scheduled to occur within 60 days of the request, then the amendment vote shall be held at that meeting.

42. N.J.A.C. 5:26-8.13(f) would provide the rules for notice of the meeting to amend the bylaws. At least 14 days prior to the date of the meeting, notice would be required to be provided to all association members and voting eligible tenants. The notice shall be delivered through the mail, by hand, or electronically. Such notice must also prominently state that it is for a proposed amendment to the bylaws and include a copy of the proposed language. The meeting must be scheduled at the time of day reasonably determined to allow the most association members to attend. The amendment must be drafted in clear language and in a manner that is consistent with association bylaws and applicable State laws. If permitted by the bylaws, the notice shall include a proxy ballot and/or an absentee ballot and allow for the return of such ballots by facsimile or electronic means.

43. N.J.A.C. 5:26-8.13(g) would require that the meeting be adjourned for 30 days or longer, as approved by the association membership, if an insufficient number of ballots or proxies are received at the special meeting to determine whether the proposed amendment has been approved or rejected. The subsection would further require the bylaws of the association to provide for the percentage of association members required to determine the period of adjournment, which cannot exceed 11 months from the date the notice was sent. If the proxies and ballots received prior to the extension date are valid under the bylaws, then they

would remain valid for the upcoming special meeting. This would ensure that no valid ballot is invalidated before the next meeting.

44. N.J.A.C. 5:26-8.13(h) would consider an amendment defeated if, when the association board provided notice to all association members of the proposed amendment, a ballot to reject the amendment was included and at least 10 percent of the association members voted to reject the amendment within 30 days of the mailing. The subsection would require that the notice state that the amendment will fail only if 10 percent vote to reject the amendment.

45. N.J.A.C. 5:26-8.13(i) would require that when an amendment is approved, a copy must be provided to all association members and must be recorded in the county recording office where the bylaws were originally recorded or in the county recording office where the property is situated where the bylaws have not been previously recorded.

46. N.J.A.C. 5:26-8.13(j) would prohibit an executive board from amending the bylaws without a vote open to all association members, except to the extent necessary to render the bylaws consistent with State, Federal, or local law.

Proposed new N.J.A.C. 5:26-8.14, Complaints and penalties, would include the following.

This section would establish a method through which N.J.A.C. 5:26-8.8 through 8.13 will be enforced. The complaint system will allow for members of common interest communities to provide the Department with information on any executive board activity that does not comply with these rules and allows the Department to levy and collect penalties or seek relief through its authority in Subchapter 11, Administration and Enforcement, of the PRED rules.

47. N.J.A.C. 5:26-8.14(a) would allow any unit owner to file a complaint with the Department concerning any matter subject to the rules at N.J.A.C. 5:26-8.8 through 8.13. Such complaint must be in writing on a form approved by the Department for such purpose and may be submitted electronically through the Bureau of Homeowner Protection's website, by mail, or by fax. The complaint must include a factual statement of the issue and any applicable documentation to support the statement.

The subsection would also require that the complaint be submitted at least 10 business days prior to any upcoming election for the Department to consider taking action as to that election. Because the statute, as amended by P.L. 2017, c. 106, sets a minimum notice provision of 14 days, the Department must accept complaints that are filed after receipt of the election notice; however, realistically, the Bureau of Homeowner Protection will not be able to take action, except in the case of a de minimus matter, in the 10 days prior to an election. The Department's response to most complaints would apply to the election following the upcoming election. This provision does not require the Department to act as to the immediately upcoming election, as section (b) would allow the Department to determine if relief will be enacted for prospective elections.

48. N.J.A.C. 5:26-8.14(b) would clarify the Department's role by stating that the Department will evaluate the complaint to ensure compliance with the rules. It states that the Department may contact the association or unit owners for clarification of any matter disclosed in the complaint. This subsection would require the Department to make a determination as to whether relief may be enacted for the immediate upcoming election or will apply to prospective elections. This section would further require that the Department provide a report to the complainant as to the actions taken in regard to the complaint.

49. N.J.A.C. 5:26-8.14(c) would provide that nothing in this section shall prevent the Department from instituting an investigation on its own initiative.

50. N.J.A.C. 5:26-8.14(d) would serve to remind unit owners who believe that the association is acting contrary to this chapter or any other applicable law of their right to petition a court of competent jurisdiction for relief at any time without filing a complaint with the Department. This subsection would clarify that if a complaint is filed in court, the Department must be provided with a filed copy and then the Department will hold its action in abeyance pending the court determination.

51. N.J.A.C. 5:26-8.14(e) would allow the Department to levy and collect penalties as set forth in N.J.A.C. 5:26-11, Administration and Enforcement, and lists the remedies available to the Department pursuant

to PREDFDA for associations that are controlled by unit owners in addition to associations that are controlled by the developer. This subsection is intended to clarify the Department’s enforcement mechanisms. While injunctive relief is one enforcement mechanism available to the Department, most, if not all, complaints will be handled through the other available mechanisms.

As the Department 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

These proposed amendments, new rules, and repeals are expected to have a positive social impact and address the rights of residents living in community associations, most notably, the right to vote. Because of the significant influence community associations have over the lives of their residents, this rulemaking ensures that elections are held in a fair and open manner in these communities, thus, preventing unfair and unjust governance by appointed trustees.

Economic Impact

The proposed amendments, new rules, and repeals address the rights of residents living in community associations. The Department does not anticipate that the proposed amendments, new rules, and repeals will have any economic impact.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendments, new rules, and repeals are not being proposed under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or a State statute that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

These proposed amendments, new rules, and repeals, address the rights of residents living in community associations and are not expected to have an impact on jobs. Community association executive boards are positions that are held voluntarily.

Agricultural Industry Impact

The Department does not anticipate that the proposed amendments, new rules, and repeals, which address the rights of residents living in community associations, would have any effect on the agricultural industry.

Regulatory Flexibility Statement

The proposed amendments, new rules, and repeals do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments, new rules, and repeals clarify the rights of residents living in community associations. The intent of this rulemaking is to provide residents with access to fair and open elections in the association. As community associations are not considered to be a type of business, no regulatory flexibility analysis is required for this rulemaking.

Housing Affordability Impact Analysis

The proposed amendments, new rules, and repeals are applicable to residents living in community associations. The rules would not likely have an impact on the average costs associated with housing or affect the affordability of housing.

Smart Growth Development Impact Analysis

These proposed amendments, new rules, and repeals address the rights of residents living in community associations and would not be likely to have any impact upon housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:20 and 5:26-8.3.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

**CHAPTER 20
(RESERVED)**

**CHAPTER 26
PLANNED REAL ESTATE DEVELOPMENT FULL DISCLOSURE
ACT REGULATIONS**

SUBCHAPTER 1. GENERAL PROVISIONS

5:26-1.3 Definitions

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

...
“Association” means an association for the management of common elements and facilities, organized pursuant to Section 1 of P.L. 1993, c. 30 (N.J.S.A. 45:22A-43).

“Association member” means the owner of a unit within a planned real estate development, or a unit’s tenant to the extent that the bylaws of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to Section 1 of P.L. 1993, c. 30 (N.J.S.A. 45:22A-43).

...
“Bylaws” means the governing documents adopted under this chapter for the administration and management of the property.

...
“Condominium” means the form of ownership of real property under a master deed providing for ownership by one or more owners of units or improvements together with an undivided interest in common elements appurtenant to each such unit.

“Condominium property” means the land covered by the master deed, whether or not contiguous, and all improvements thereon, all owned either in fee simple or under lease, and all easements, rights, and appurtenances belonging thereto or intended for the benefit thereof.

...
“Executive board” means the executive board of an association, as provided for in Section 3 of P.L. 1993, c. 30 (N.J.S.A. 45:22A-45).

...
“Master association” means a type of association in a development that is made up of representatives from other associations developed and established to cover specific areas within that development.

...
 [“State” means the State of New Jersey.]

“Umbrella association” means a type of association that is made up of representatives across multiple associations established for the governance, management, and oversight of the common elements and facilities of multiple developments.

“Unit” means any lot, parcel, unit, or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof.

“Voting eligible tenants” means a tenant of a unit within a planned real estate development in which the bylaws of the development permit the tenant’s participation in the executive board elections or the development has allowed tenant participation in executive board elections as a standard practice prior to the effective date of P.L. 2017, c. 106 (N.J.S.A. 45:22A-45.1 et seq.). In either instance, the owner shall affirmatively acknowledge the right of the tenant to vote through a provision of a written lease agreement or a separate document. “Voting eligible tenants” shall not be construed to affect voting as an agent of the owner through a proxy or power of attorney.

SUBCHAPTER 8. COMMUNITY ASSOCIATIONS

5:26-8.1 [Creation] Formation of the association

(a) [A] The developer shall [organize] form, or cause to be [organized] formed, an association whose obligation it shall be to manage the common elements and facilities.

1. An association may be formed as a for-profit or nonprofit corporation, unincorporated association, or any other form allowed by law.

(b) [The] An association shall be formed on or before the filing of the master deed or declaration of covenants and restrictions [and may be formed as a profit or nonprofit corporation, unincorporated association, or any other form permitted by law].

5:26-8.2 [Powers] Association powers and [duties] responsibilities

(a) Subject to the master deed, declaration of covenants, bylaws, and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization. The executive board of the association may act in all instances on behalf of the association.

(b)-(d) (No change.)

(e) Members of the executive board appointed by the developer shall be liable as fiduciaries to the unit owners for their acts or omissions.

(f) During control of the executive board of the association by the developer, copies of the annual audit of association funds shall be available onsite for inspection and reproduction by owners and/or their authorized representatives.

5:26-8.3 (Reserved)

5:26-8.4 Administration and control

(a) A developer who retains at least one unit as a rental unit shall not be entitled to an automatic seat on the executive board.

(b) A developer who has stopped selling units in the regular course of business shall not be entitled to an automatic seat on the executive board.

1. This shall not be construed to prevent a developer from being a candidate for a position on the executive board.

Recodify existing (a)-(h) as (c)-(j) (No change in text.)

5:26-8.8 Membership in the association

(a) Upon acceptance of a deed to the unit, each owner shall be an association member for so long as he or she holds title to the unit.

(b) The developer shall have one membership in the association for each unit registered pursuant to this chapter that has not been conveyed to an individual purchaser.

1. This subsection shall not be construed to provide the developer a different transition obligation than that required pursuant to Section 5 of P.L. 1993, c. 30 (N.J.S.A. 45:22A-47).

(c) An association member shall be considered to be in good standing with respect to eligibility to vote in executive board elections, vote to amend bylaws, and nominate or be a candidate for a position on the executive board when the association member:

1. Is current in the payment of common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed;

2. Is in compliance with a judgement for common expenses, late fees, interest on unpaid assessments, legal fees, or other charges lawfully assessed;

3. Is in full compliance with a settlement agreement with respect to the payments of assessments, legal fees, or other charges lawfully assessed; or

4. Has requested or is participating in Alternative Dispute Resolution (ADR) or in a court proceeding for a dispute over a matter that affects the owner's good standing.

(d) The bylaws may allow tenants to vote in executive board elections and may allow tenant membership in the association, but to do so, the bylaws shall provide that the tenant can vote or be a member in the association only with the consent of the owner of the unit the tenant is leasing.

1. When the association has allowed tenant voting as a standard practice, such practice may continue, subject to the consent of the owner from whom the tenant is leasing a unit.

2. The bylaws may allow the owner to designate the tenant as a voting eligible tenant. Such designation shall be in writing and may include a clause in the written lease agreement or another written document. An owner may allow the tenant to vote as the owner's agent through a proxy or power of attorney.

3. A voting eligible tenant shall have the same voting rights as the owner of the unit that the tenant leases. Such voting rights shall be in place of, and not in addition to, the rights of the owner of the leased unit.

4. An owner who is not in good standing is not allowed to empower a tenant or any other person to vote in his or her stead.

5:26-8.9 Executive board elections

(a) The executive board shall be elected by association members and voting eligible tenants.

1. The developer shall not be entitled to cast votes in any executive board elections while the developer maintains a seat or seats on the board pursuant to Section 5 of P.L. 1993, c. 30 (N.J.S.A. 45:22A-47).

(b) The association shall hold executive board elections in accordance with the provisions of its bylaws, including validly adopted executive board rules.

1. Elections shall be held every two years, unless the association bylaws set a different time or interval for elections, which shall not exceed four years.

2. Associations shall set the term of an executive board member for a maximum of four years. This section shall not prohibit the association from staggering elections, so as to provide for a continuum of experienced members on the board.

3. If the association has not held an election in compliance with its bylaws, owners may submit a petition to any board member to compel an election.

i. Such petition shall be signed by a minimum of 25 percent of association members in good standing, unless the governing documents designate a larger percentage as the quorum for elections.

ii. The executive board shall hold an election within 90 days upon receipt of such petition.

(c) If the association has no executive board members and association members fail to act on petition or by majority, any association member or group, at common expense and upon written notice to all owners, may petition a court with jurisdiction for authority to act temporarily in the interests of the association and to organize and hold an election within 90 days of the court order.

(d) The use of proxies and absentee ballots for executive board elections shall be governed by this subsection.

1. Any proxies used by the association shall contain a clear and prominent notice that use of the proxy is voluntary on the part of the granting owner.

2. The proxy may be revoked at any time before the proxy holder casts a vote.

3. If the association allows the use of proxies, it shall also make absentee ballots available.

(e) Each unit shall be allocated either one vote or an equal number of votes per unit, unless the bylaws of the association allow for voting proportional to a unit's value or size. These allocations shall be consistent such that all owners of units of the same value or size shall have the same number of votes.

(f) The association shall not prohibit, limit, impede, or restrict participation by residents of low- or moderate-income housing units. No association election procedure shall impose any requirement for voting on low- or moderate-income housing owners that would interfere with their right to vote.

(g) The association shall not prohibit members in good standing, proxy holders, individuals acting pursuant to a valid power of attorney, or voting eligible tenants, as applicable, from voting for any candidate in an executive board election.

1. If allowed by the bylaws of the association, a voting eligible tenant shall not be prohibited from voting.

2. If electronic voting is permitted, anyone eligible to vote shall be permitted to cast votes electronically, so long as the electronic ballot is administered in accordance with (h) below.

(h) The association shall verify the eligibility of the voters and count the ballots in a non-fraudulent and verifiable way.

1. Any depository for physical ballots shall be secured.

2. All ballot tallying shall occur publicly, and the ballots shall be open to inspection by any member of the association for a period of 90 days from the date of the election.

3. All ballots shall be cast in an anonymous manner.

4. If the bylaws permit, and the association member consents, a ballot may be cast electronically if it is administered by a neutral third party and anonymity is maintained.

(i) Initial executive board elections in condominium associations governed under the Condominium Act, P.L. 1969, c. 257 (N.J.S.A. 46:8B-1 et seq.), shall follow the notice timeline under Subsection b. of Section 2 of P.L. 1979, c. 157 (N.J.S.A. 46:8B-12.1), and shall not be subject to this section.

(j) When independent associations with residential units share facilities or obligations that require them to be members of a master or umbrella association board to oversee those facilities or obligations, the members of the independent association shall, unless the independent associations' governing documents provide for such association to appoint a member to the master or umbrella association, elect representatives to the master or umbrella association in accordance with this section.

(k) Associations with fewer than 50 units shall be governed by (a) through (j) above and by the following:

1. The association shall provide written notice of the election not fewer than 14 calendar days and not more than 30 calendar days prior to the date of the election. Such notice shall provide access to information on when and how to vote.

2. All association members may nominate any member for candidacy, including self-nomination. The association shall ensure that all nominees are in good standing. Good standing shall be the sole criterion for the eligibility of a nominee.

3. The association shall provide its members the opportunity to review the qualifications of the candidates who are running for election to the board.

i. Provisions for write-in candidates may be established in the bylaws of the association. In the event a write-in candidate receives sufficient votes to be elected but is not eligible, such candidate shall not be deemed to have been elected. If this results in a vacancy on the board, the eligible candidate receiving the next highest number of votes shall be deemed to have been elected.

4. A minimum of 14 days prior to the election, the association shall notify any resident who is not in good standing. The notice shall state the reason the resident is not in good standing. The notice shall state that the resident has the right to contest the board's determination by requesting Alternative Dispute Resolution.

(l) Associations with 50 or more units shall be governed by (a) through (j) above and by the following:

1. Any election meeting held by the executive board shall require both a notice calling for nominations and a notice of election.

i. The association shall provide written notice calling for nominations to all members not fewer than 30 calendar days and not more than 60 calendar days prior to mailing the election meeting notice informing them of the right to nominate themselves or other members in good standing as candidates for the executive board. Such notice shall specify the process for submitting nominations.

ii. Association members shall have a minimum of 14 days from the mailing of the request for nomination during which they may submit their nominations to the board president or otherwise as provided in the association's bylaws. The deadline shall be provided in the notice.

(1) When the association has not set a deadline, nominations of members in good standing shall be deemed valid until one business day prior to the mailing of the notice of election. Good standing shall be the sole criterion for the eligibility of a nominee.

(2) The association shall not mail out ballots or proxies until the day following the expiration of the nomination period.

(3) Nothing in this subsection shall prevent members in good standing from writing in eligible candidates on the day of the election pursuant to (l)iv(6) below.

iii. Following the nomination period, a notice of election shall be sent to all association members. This notice shall be in writing and may be made by personal delivery, by mail, or electronically. It shall

be sent not fewer than 14 days and not more than 60 days prior to the date of the election.

(1) In the case of mailing, the notice shall be effective when deposited in the mailbox with proper postage.

(2) In the case of personal delivery, the notice shall be effective the date it is delivered. The executive board shall sign and maintain a record attesting to the date the notice was delivered.

(3) In the case of electronic delivery, the notice shall be effective the date of the electronic record. The notice may only be sent by electronic means when the affected association member or voting eligible tenant has agreed in writing to accept the notice by electronic means or when the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.

iv. The election meeting notice shall contain a copy of the ballot.

(1) If the bylaws permit, the notice shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included.

(2) The ballot shall contain the names of all persons nominated and found to be in good standing as candidates for the executive board in alphabetical order by last name.

(3) The ballot shall not indicate incumbent board members.

(4) The ballot shall list each candidate's name in the same font, in the same size, and in the same font color.

(5) When an election is for a specific board position, the ballot shall indicate what office and term each candidate is seeking.

(6) The ballot shall include space for write-in candidates for as many seats as are up for election. In the event a write-in candidate receives sufficient votes to be elected but is not eligible, such candidate shall not be deemed to have been elected. If this results in a vacancy on the board, the eligible candidate receiving the next highest number of votes shall be deemed to have been elected.

v. A minimum of 30 days prior to the election, the association shall notify residents who are not in good standing. Such notice shall state the reason why the resident is not in good standing. The notice shall state that residents have the right to contest the board's determination by requesting Alternative Dispute Resolution. Residents shall be allowed to rectify their standing up until five business days prior to the election date.

5:26-8.10 Representation

(a) The association bylaws may provide for representation on the executive board for owners with different types of units. Such owners shall be afforded the right to nominate members of the executive board to ensure representation of their unit types on the board.

1. Different unit types shall include units of different value, size, nature, or geographical area within the development, based on the number of units in a category to ensure representation on the board for that type.

2. When affordable units represent a minority of units in the development, the bylaws shall reserve a seat or seats on the executive board for election by owners of affordable units.

3. Regardless of their number or value, owners of commercial units in the development shall not constitute a majority of the executive board.

(b) Unless executive board members are serving as representatives of the developer during the period prior to surrender of control to the owners, not more than one resident from a single unit shall serve on the executive board simultaneously with another resident of the same unit.

(c) A person or owning entity shall not hold more than one seat on the executive board.

5:26-8.11 Appointments, removals, and executive board vacancies

(a) Elections shall comply with State laws and the bylaws of the association.

(b) A board member shall be removed only in accordance with the bylaws or by the board for good cause directly impacting the member's ability to serve.

1. The board shall not remove an elected member for disagreeing with the majority or for violating any confidentiality agreement

without affording the elected member Alternative Dispute Resolution (ADR) in which the ADR provider concludes from substantial credible evidence that there was a breach that adversely affected the interests of the association members as opposed to that of the executive board.

(c) In associations with 50 or more units, the board shall not appoint, and a designee shall not accept, an executive position through appointment except as provided in (c)3 below.

1. An extension of an existing term by the board shall be deemed equivalent to an appointment and shall be prohibited.

2. This subsection shall not apply to any permissible appointment made by the developer pursuant to Section 5 of P.L. 1993, c. 30 (N.J.S.A. 45:22A-47).

3. This subsection shall not prevent the association from filling a vacancy in the executive board created by resignation, death, or failure to maintain reasonable qualification to be an executive board member, including maintaining good standing, or following a vote in favor of removal open to all association members in accordance with the terms of the bylaws. Any executive board position that has been filled by an appointee in such instances shall be subject to election within a year following such appointment.

(d) Association members may initiate removal of a board member by submitting to the board a petition signed by 51 percent of association members for removal of that board member.

1. A special election of the association membership shall be held within 60 days of receipt of the petition.

2. When the annual meeting of the association membership is scheduled to occur within 60 days of the submission of the petition, then the election shall be held at the annual meeting.

(e) Notice of the special election meeting shall be provided to all association members and voting eligible tenants at least 14 days prior to the date of the meeting.

1. The meeting shall be scheduled at a reasonable date and time of day to allow most association members to attend.

2. The ballot shall be drafted in accordance with N.J.A.C. 5:26-8.9(l)iv.

3. At least 14 days prior to the meeting, the ballot shall be mailed, hand delivered, or if bylaws permit, and the owner consents, electronically delivered to all association members together with the notice of the meeting.

4. If the bylaws permit, the notice of the meeting shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included.

i. The instructions shall allow return of the proxy or absentee ballot by facsimile or electronic means and shall not require receipt of the ballot more than one business day prior to the meeting.

5:26-8.12 Open meetings

(a) The bylaws of the association shall include a requirement that meetings of the executive board where a binding vote of the executive board is to be taken shall be open to attendance by all association members and voting-eligible tenants, as applicable.

1. A binding vote is a vote made with a quorum of the executive board members present.

2. The board shall provide a brief explanation of the basis for and cost entailed in the matter that is the subject of any binding vote and include the explanation in the minutes for the meeting.

3. Associations may adopt a policy for comments by association members and voting eligible tenants during meetings. Such policy shall be applied uniformly.

(b) The association shall hold an annual meeting. Within seven days following the annual association meeting, the association shall post, and maintain posted throughout the year, an open meeting schedule of the executive board.

1. Such open meeting schedule shall be posted at the place or places at which notices are posted pursuant to (c) below and filed with the board member designated for administering association business.

2. The open meeting schedule shall contain the time, date, and locations of such meetings.

3. Any changes to the posted open meeting schedule shall be made at least seven days prior to the scheduled date and posted and maintained in the same manner as the original schedule.

(c) In addition to the posted open meeting schedule, adequate notice of at least seven days prior to any such meeting shall be given to all association members and voting eligible tenants, as applicable.

1. Such notice shall be provided as follows:

i. The notice shall be prominently posted in at least one place on the property that is accessible to all owners at all times;

ii. The notice shall be posted on the association's website and included in any association newsletter; or

iii. The notice shall be personally provided to each member or designee by mail, hand-delivery, or electronic means.

2. The notice shall be filed with the board member designated as responsible for administering association business. It shall be maintained by the executive board for a period of two years.

3. The notice shall include the following details:

i. The time, date, and location of the meeting;

ii. Agenda items, which shall include items for discussion, items for action, and reoccurring items, such as passage of a budget.

4. An individual association member or designee may provide written notice to the board waiving any personal delivery of meeting notices. Such member or designee may rescind such waiver at any time by written notification to the board. Notwithstanding the meeting notice waiver, the member or designee shall be entitled to open meeting minutes as provided in (f) below.

(d) Every elected board member shall be provided equal opportunity to participate in any meeting of board members.

(e) The executive board may exclude attendance of all association members and voting eligible tenants at meetings, or portions of a meeting.

1. The exclusion under (e) above shall only be for discussion of any matters listed in this paragraph:

i. Those in which disclosure would constitute an unwarranted invasion of individual privacy;

ii. Pending or anticipated litigation or contract negotiations;

iii. Those involving employment, promotion, discipline, or dismissal of a specific employee or officer of the association; and/or

iv. Those falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his or her ethical duties as a lawyer.

2. A vote taken at a closed meeting shall not be binding. If the matter requires a binding vote, it shall be taken at a subsequent open meeting in a manner that does not disclose any confidences.

3. If the closed meeting is to be part of an open meeting, the closed portion shall be convened either before the open portion or at the end of the open meeting portion of the agenda.

(f) Minutes for the open sessions of meetings shall be taken for each meeting.

1. The minutes shall be legible.

2. The minutes shall include the board members present and their titles.

3. The minutes shall include clear identification of any matters addressed.

4. The minutes shall include clear identification of any matters voted on at the meeting, a record of the votes, and a brief explanation of the basis for and cost entailed in the matter which is the subject of the vote.

5. The minutes shall be made available to association members in a timely manner before the next meeting and may be identified as "draft" or "unapproved."

6. If a meeting is recorded electronically, a written record shall be taken of the matters addressed and the matters voted on. Association members shall have access to the electronic recording, as well as the written record, including the right to make a copy of electronic or written records.

(g) When a meeting of the executive board is required to deal with matters of such urgency and importance that delay for the purpose of providing seven days advance notice would be likely to result in substantial harm to the interests of the association and provided that

the meeting is limited to discussion of, and acting with respect to, such matters of urgency and importance, notice of the emergency meeting shall be deemed to be adequate if it is provided as soon as possible following the calling of the meeting by posting in accordance with (c) above.

1. The executive board shall maintain, on the record, the facts establishing the emergency and any prior knowledge of the condition.

2. Minutes for emergency meetings shall be taken and made available to members of the association in accordance with (f) above.

(h) When the board has determined to cancel a scheduled open meeting, it shall post notice of the cancellation at the meeting site by the time the meeting is scheduled to begin. The Board shall promptly post the notice of cancellation at the location on the property where notices are posted and, if applicable, its website.

1. The notice shall state when the meeting will be held and the reason for the cancellation.

2. If the start time is delayed, notice of the new time shall be posted at the meeting site to provide notice of the delay to those attending.

5:26-8.13 Amendments to the bylaws

(a) The bylaws shall detail the method in which the bylaws may be amended.

(b) No amendments to the bylaws shall be effective until they are recorded in the same county Clerk's Office as the existing bylaws.

1. The amendments to the bylaws shall be recorded in the same county Clerk's Office as the existing bylaws in a timely manner.

2. In order to enforce the bylaws and any amendments thereto, any association that has not previously recorded its bylaws, shall record the bylaws and any amendments in the Clerk's Office of the county in which the property is located.

3. The association shall maintain a record of the filing, which shall be available to any owner, or designee, upon request.

(c) If the bylaws do not provide an amendment method by a vote of association members that is open to all association members, or if they provide for an amendment by more than a two-thirds majority, the association members may amend the bylaws by a vote of the majority of the total authorized votes in the association.

(d) The majority shall be determined based on association membership in good standing at the time of the vote.

(e) If the bylaws do not provide a method through which association members may call a meeting of association members to conduct a bylaws amendment vote or a vote concerning the provisions of N.J.A.C. 5:26-8.10, 8.11, and 8.12, the method shall be as follows:

1. A petition shall be signed and submitted to the executive board by not less than 15 percent of the association members to request a special meeting;

2. A special meeting of the association membership shall be held within 60 days of receipt of the request; and

3. If the annual meeting of association membership is scheduled to occur within 60 days of the request, the amendment vote shall be held at that meeting.

(f) Notice of the meeting to amend the bylaws, as set forth in this subsection, shall be provided to all association members and voting eligible tenants at least 14 days prior to the date of the meeting.

1. Such notice shall prominently state that it is for a proposed amendment to the bylaws and include a copy of the proposed language.

2. The amendment shall be drafted in clear language and in a manner that is consistent with the association's bylaws and applicable laws.

3. The amendment shall be mailed, hand delivered, or if bylaws permit, electronically delivered together with the notice of the meeting at least 14 days prior to the meeting.

4. If the bylaws permit, the notice of the meeting shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included. The instructions shall allow return of the proxy or absentee ballot by facsimile or electronic means provided that such return protects the anonymity of the voter. The association shall not require receipt of the ballot more than one business day prior to the meeting.

(g) If an insufficient number of ballots or proxies are received at the special meeting to determine whether the proposed amendment has been approved or rejected, then the meeting shall be adjourned for 30 days or longer as approved by the association membership.

1. The bylaws of the association shall provide for the percentage of association members required to determine the period of adjournment.

2. The period between the original special meeting and the next special meeting for the amendments to the bylaws shall not be longer than 11 months from the date the notice of the meeting was sent.

3. If the proxies or ballots received prior to the extension date are valid under the bylaws, then they remain valid for the upcoming special meeting.

(h) An amendment proposed by the association board shall be considered defeated if, when the association board provided notice to all association members of the proposed amendment, a ballot to reject the amendment was included and at least 10 percent of the association members in good standing voted to reject the amendment within 30 days of the mailing.

1. The board's proposed amendment shall include a notice that the amendment will fail only if at least 10 percent of the association members in good standing vote to reject the amendment.

(i) When an amendment is approved, a copy shall be provided to all association members and the association shall record it in the county recording office where the bylaws were originally recorded, or in the county recording office where the property is situated where the bylaws have not been previously recorded.

(j) An executive board shall not amend the bylaws without a vote open to all association members or as detailed above except to the extent necessary to render the bylaws consistent with State, Federal, or local law.

5:26-8.14 Complaints and penalties

(a) Any unit owner may file a complaint with the Department concerning any matter subject to the rules at N.J.A.C. 5:26-8.8 through 8.13.

1. Such complaint shall be in writing and shall be on a form approved by the Department for this purpose. It may be submitted electronically through the Bureau's website, mailed to the address below, or submitted by fax. Physical copies of the required complaint form may be downloaded at (website to be added upon adoption) or requested through the Department at:

Association Regulation Unit
101 South Broad Street
Post Office Box 805
Trenton, New Jersey 08625
Telephone: 609-984-7574
Fax: 609-292-2839

2. The complaint shall include a clear, factual statement of the issue and shall include any applicable documentation to support such statement. The Department shall not conduct a review until the complaint is complete.

3. The complaint must be submitted at least ten business days prior to any scheduled upcoming election in order for the Department to issue any relief as to that election. Upon receipt of the complaint, the Department shall complete a review of the complaint and make a determination of the appropriate action as set forth in (e) below.

(b) The Department shall review and evaluate the complaint to ensure compliance with this subchapter. The Department may be in contact with the association and unit owners for clarification of any matter disclosed in the complaint.

1. Upon receipt of the complaint, the Department shall make a determination as to whether relief may be enacted for the immediate upcoming election or will apply to prospective elections. The Department shall so inform the complainant.

2. Upon completion of the review, the Department shall provide a report to the complainant as to the actions taken in regard to the complaint.

(c) Nothing in this section shall prevent the Department from instituting an investigation on its own initiative.

(d) Unit owners who believe that the association is acting contrary to this chapter or any applicable law, may petition a court of competent jurisdiction for relief at any time without filing a complaint with the Department.

1. When a complaint is filed in a court of competent jurisdiction, the Department shall be provided with a filed copy and then the Department shall hold its action in abeyance pending the court decision.

(e) The Department may levy and collect fines and may issue penalties as set forth in N.J.A.C. 5:26-11.

1. For associations that are controlled by unit owners, the Department may issue cease and desist orders, may issue a monetary penalty, may transmit the case to the Office of Administrative Law, or may file an action in the Superior Court.

2. In addition to the penalties listed above, for associations that are controlled by the developer, the Department may issue a revocation of registration.

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Work First New Jersey General Assistance WFNJ/GA Eligibility for Applicants and Recipients Claimed as Dependents

Proposed Amendment: N.J.A.C. 10:90-2.8

Authorized By: Carole Johnson, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12.

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

Proposal Number: PRN 2019-066.

Submit comments by August 2, 2019, to:

Miguel Mendez, Administrative Practice Officer
Division of Family Development
PO Box 716
Trenton, New Jersey 08625-0716
or via email to: DFD-Regulations@dhs.state.nj.us

The agency proposal follows:

Summary

As the Department of Human Services (Department) is providing 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.

The proposed amendment at N.J.A.C. 10:90-2.8(a)15 is designed to improve access to Work First New Jersey/General Assistance (WFNJ/GA) by removing a presumption of financial dependence imposed upon applicants or recipients who are claimed as dependents on their parents' or other relatives' U.S. Individual Income Tax Return but are not receiving financial or other assistance from those parents or relatives. Currently, applicants or recipients between the ages of 18 and 26, who are claimed as dependents, are prohibited from receiving WFNJ/GA, unless their circumstances have changed since being claimed as a dependent. The Division of Family Development (Division) understands that requiring an applicant or recipient to demonstrate a change in circumstances has proven arbitrarily prohibitive.

Social Impact

The proposed amendment will have a positive social impact on WFNJ/GA applicants and recipients between the ages of 18 and 26 who are claimed as dependents but are otherwise eligible for assistance. The proposed amendment will make WFNJ/GA benefits more accessible for these individuals.

Economic Impact

The proposed amendment is likely to have a minimal economic impact on the State due to a small increase in the number of WFNJ/GA recipients. There will be a significant economic impact to those individuals who will become eligible for WFNJ/GA financial assistance.

Federal Standards Statement

The proposed amendment is not subject to any Federal requirements or standards; therefore, a Federal standards analysis is not applicable to this rulemaking.

Jobs Impact

The proposed amendment will not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment imposes no reporting, recordkeeping, or other compliance requirements on small businesses and, thus, a regulatory flexibility analysis is not required. The proposed amendment expands WFNJ/GA eligibility.

Housing Affordability Impact Analysis

The proposed amendment will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendment would evoke a change in the average costs associated with housing because the proposed amendment expands access to WFNJ/GA.

Smart Growth Development Impact Analysis

The proposed amendment will have no impact on smart growth and there is an extreme unlikelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment expands access to WFNJ/GA.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Human Services has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 2. NON-FINANCIAL ELIGIBILITY REQUIREMENTS

10:90-2.8 Individuals ineligible for WFNJ TANF/GA

(a) The following persons shall not be eligible for assistance and shall not be considered to be members of the WFNJ/TANF or WFNJ/GA assistance units:

1.-13. (No change.)

14. A person who is seeking legal guardianship of an unrelated child[.];

i. Although ineligible for TANF benefits, when needed, the WFNJ agency shall provide contact information to these cases for assistance in obtaining guardianship[.]; **and**

[15. A WFNJ/GA applicant or recipient between the ages of 18 and 26 who is claimed as a dependent on his or her parent(s)' or other relative's U.S. Individual Income Tax Return (1040 forms) regardless of whether or not he or she is residing in the same household.

i. If the individual's circumstances have changed since being claimed as a dependent, then he or she shall be reevaluated for WFNJ/GA eligibility; and]

[16.] **15.** (No change in text.)

(b)-(c) (No change.)