**COMMUNITY AFFAIRS**

**DIVISION OF LOCAL GOVERNMENT SERVICES**

**Licensure of Certain Local Government Officers**

**Adopted Amendments: N.J.A.C. 5:32-1.1, 2.5, 2.6, 4.2, 4.4, and 5.3**

**Adopted New Rule: N.J.A.C. 5:32-1.2**

Proposed: February 22, 2022, at 54 N.J.R. 324(a).

Adopted: July 1, 2022, by Jacquelyn A. Suárez, Director, Division of Local Government Services.

Filed: July 1, 2022, as R.2022 d.098, **with non-substantial changes** not requiringadditional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 40A:9-28.7, 40A:9-133.11, 40A:9-140.16, 40A:9-145.3.c, 40A:11-9.i, and 52:27D-18.5.

Effective Date: August 1, 2022.

Expiration Date: December 4, 2024.

 **Take notice** that on February 22, 2022, the Director (Director) of the Division of Local Government Services (Division) in the New Jersey Department of Community Affairs proposed various amendments at N.J.A.C. 5:32 which, together with new N.J.A.C. 5:32-1.2, pertain to the licensure of certain local government officers by the Division.

The commenters listed below submitted comments, which are summarized and responded to by the Director.

**Peggy Gallos, Executive Director, Association of Environmental Authorities**

1. COMMENT: Increasing the number of continuing education units (CEU) requirements from 20 to 25 will require qualified purchasing agents (QPAs) to invest more time in continuing education, which, in itself, is beneficial; however, N.J.A.C. 5:32-4.2(a)1 does not need to specify the appropriate distribution of continuing education credits across specific proficiency areas. Ensuring that the continuing education credits earned cover the specified proficiency areas can be accomplished by improving communications about these requirements, such as explaining the requirements and reminding QPAs about them often and/or with greater emphasis and visibility across Department of Community Affairs’ communication platforms.

RESPONSE: The Division finds that requiring a minimum number of continuing education credits in specific categories helps ensure that the officials it licenses are keeping up to date on key aspects of their responsibilities. Moreover, the Division’s continuing education rules offer flexibility by allowing licensed officials to seek approval to waive the minimum contact hour requirement for a particular subject area for good cause, so long as a licensed official can demonstrate earning at least one credit hour in that subject area.

2. COMMENT: Imposing a requirement that the auditor be notified when a QPA vacates a position is a reasonable change at N.J.A.C. 5:32-4.4(b). However, we note that, in our experience, this notification is already occurring. Local units need to notify auditors conducting the annual audit about the departure of a QPA. Auditors routinely ask the authority to confirm whether it has an auditor and ask us to identify that person.

RESPONSE: Upon adoption, the Division agrees to modify the amendment at N.J.A.C. 5:32-4.4(b) to waive the affirmative notification requirement if the auditor inquires on an annual basis whether the contracting unit has a QPA-certified individual designated as its purchasing agent or, in lieu of a QPA, has designated a temporary purchasing agent pursuant to N.J.A.C. 5:32-4.4.

3. COMMENT: The commenter respectfully requests that the Division address two issues of long-standing concern to QPAs at authorities. First, we urge the Division to propose a new rule aligning the Fair and Open Limit under the Pay-to-Play Law, currently still $17,500, with the current level of the bid threshold. When these rules were originally promulgated, the limit amount was the same as the bid threshold. While the latter has been raised, at times, over the years, the limit has not been. Likewise, the Division should change the prevailing wage threshold for authorities, which remains at $2,000, in future rulemaking.

RESPONSE: The pay-to-play threshold, along with the prevailing wage threshold for authorities and all other local government entities, are statutory and, thus, the Division is unable to increase these thresholds through rulemaking.

**Susan Young, Executive Director, New Jersey Association of School Business Officials**

4. COMMENT: The proposed amendment at N.J.A.C. 5:32-4.4(b), requiring a contracting unit to notify its auditor upon a Qualified Purchasing Agent (QPA) vacating their purchasing agent position, should not be adopted. It should simply be an expectation of the auditor’s review, or part of the year-end audit questionnaire. Practically speaking, who is going to remember to inform the auditor of the QPA’s departure?

RESPONSE: Upon adoption, the Division agrees to modify the amendment at N.J.A.C. 5:32-4.4(b) to waive the affirmative notification requirement, if the auditor inquires on an annual basis whether the contracting unit has a QPA-certified individual designated as its purchasing agent or, in lieu of a QPA, has designated a temporary purchasing agent pursuant to N.J.A.C. 5:32-4.4.

**Jim Jorgensen, Qualified Purchasing Agent, City of Clifton**

5. COMMENT: A public entity should also be permitted to appoint a third-party service provider that is a licensed QPA, to serve as a public entity’s purchasing agent.

RESPONSE: N.J.S.A. 40A:11-9.a already permits a contracting unit to appoint an independent contractor possessing a QPA certificate to serve as its purchasing agent.

6. COMMENT: Increasing to 25, the total number of hours for renewal of a QPA certification, makes sense; however, N.J.A.C. 5:32-4.2 should also be amended to increase the minimum number of contact hours for ethics from three hours to five hours. Ethics is an ongoing consideration in all facets of local government including procurement.

RESPONSE: The Division finds the current three-hour minimum for ethics to be proportionate to the minimum number of ethics contact hours for other licenses the Division administers. As such, the minimum number of ethics contact hours that a QPA must obtain for continuing education will remain unchanged.

7. COMMENT: With respect to the appointment of a temporary purchasing agent, N.J.A.C. 5:32-4.4 should be amended to state that a public entity arbitrarily seeking to not appoint or not reappoint an individual with a QPA certificate as purchasing agent does not get to enjoy the higher bid threshold.

RESPONSE: Unlike positions, such as chief municipal finance officer, tax collector, or municipal clerk, an individual with a QPA certificate that is designated as a contracting unit’s purchasing agent is not appointed to a set term. Neither does N.J.S.A. 40A:11-9 give a QPA designated as a contracting unit’s purchasing agent the right to tenure. As such, regardless of the potential merits of the commenter’s proposed amendment, which the Division does not take a position on, the Division does not possess the statutory authority to enact a rule prohibiting, or otherwise restricting, a contracting unit from removing the purchasing agent designation from a QPA-certified individual.

**Robert J. Maikis, Jr., Director, Division of Fiscal Management, County of Sussex**

8. COMMENT: There should be a provision allowing holders of multiple licenses, or certifications, that have varying renewal dates to place those renewals on the same cycle. For example, I hold Certified Municipal Finance Officer (CMFO) and Certified County Finance Officers (CCFO) certifications. My CMFO certification renews on June 30, while my CCFO certification renews on January 31. It would be more effective and efficient to have both certifications on the same renewal cycle.

RESPONSE: Although the Division understands the desire to align varying certification expiration dates, this change would not be administratively feasible. Expiration dates for the Certified Tax Collector and Certified Public Works Manager licenses are established by statute as either June 30 or December 31. Even where dates are not specified, as is the case for the Registered Municipal Clerk, Qualified Purchasing Agent, Certified Municipal Finance Officer and Certified County Finance Officer licenses, the corresponding statutes specify varying renewal timeframes that are measured based on the month that the Division administers the initial licensure exam.

The Chief Municipal Finance Officer (CMFO) exam is administered biannually in June and December, resulting in corresponding license expiration dates of June 30 and December 31.  As all current CCFOs have received their licenses by virtue of the examination exemption at N.J.S.A. 40A:9-28.2.e, there is no examination date upon which to base the expiration of a CCFO license.  CCFO applications are reviewed on a rolling basis monthly and the license expiration date is at the end of the month when the Division awarded the CCFO certification. Because the CMFO and CCFO certifications both have a statutory six-month grace period for renewal, and the Division has historically allowed licensed officials to renew their certifications early, the commenter could arrange to renew both licenses at the same time without penalty.

**Maria K. Mento, City Administrator, City of Ventnor City**

9. COMMENT: The extension should be optional, as it is not needed by everyone.  Those who received more than 50 percent of total number of continuing education credits required are being penalized for attaining approved CEUs during the COVID year.  To a certain extent, it is a financial loss to the individual or governing entity who funded these classes.

RESPONSE: As proposed, N.J.A.C. 5:32-1.2 offers Division-licensed officials to bank up to 50 percent of the continuing education credits earned during the renewal period extended pursuant to Section 2 at P.L. 2020, c. 34 (N.J.S.A. 52:27D-18.5). This provision incentivizes a Division-licensed official to continue earning continuing education credits, even if the official has completed the mandatory minimum number of credits earlier in the extended term. The Division finds that allowing Division-licensed officials to bank greater than 50 percent of continuing education credits earned during the extended term would risk disincentivizing continuing education in the following renewal period and, thus, the incentive to stay current on new legislative and regulatory developments. As such, the Division will adopt N.J.A.C. 5:32-1.2, as proposed.

**Sincerrae Ross**

10. COMMENT: State-certified individuals should be given the opportunity for employment prior to private entities.  Why is the Department of Community Affairs (Department) going to outsource individuals who may potentially become certified, when there are plenty who are certified, but the same organization believes those candidates do not have enough experience for the position? Is the Department going to now allow people with experience on paper, but who lack certification to act in said positions for longer time periods? We have several people who are in lieu of certification, and most enjoy two years and fail to secure said position, thus wasting time and taxpayer money. It would be conducive and cost effective to populate a list of State-certified municipal finance officers who they can pool from prior to outsourcing professionals with taxpayer dollars. One may argue they don't have the experience for the position, but they had enough wherewithal to pass the State exam.

RESPONSE: N.J.S.A. 40A:140.10.b authorizes municipalities to appoint a private entity to temporarily fulfill the duties of a chief financial officer for no more than two consecutive years when a licensed chief municipal finance officer vacates the position. The appointment and reappointment of a private firm in such circumstances is subject to Division approval, and the statute requires a municipality seeking such approval to demonstrate having made a good faith effort to hire, as its chief financial officer, an individual licensed as a chief municipal finance officer by the Division. All work performed by the private entity must be performed or supervised by a licensed chief municipal finance officer, and all documents required to be signed by a chief municipal finance officer must be executed by a licensed chief municipal finance officer.

The originally proposed amendment at N.J.A.C. 5:32-2.5(c) would expand the private entity exception to be permitted in instances where a temporary (that is, unlicensed) chief municipal finance officer vacates the position of chief municipal finance officer. At this point in time, the Division is not adopting the above-referenced proposed amendment. Although N.J.A.C. 5:32-2.5(b), (c), (d), and (e) aim to provide a comprehensive regulatory framework governing a municipality’s appointment of a private entity to temporarily fulfill the duties of a chief financial officer, the Division has determined that there is a need to further study the extent to which municipalities and private entities are complying with existing law, along with whether additional measures are required to ensure private entities temporarily performing the duties of a chief municipal finance officer are satisfactorily fulfilling those duties. At this time, the potential benefits of providing additional flexibility to municipalities experiencing temporary difficulty in hiring a licensed municipal finance officer is outweighed by the Division’s need to ensure the fiscal integrity of New Jersey municipalities that wish to retain a private entity on a temporary basis. Further, the Division will consider what measures may be needed to increase the number of individuals undertaking the process of becoming licensed chief municipal finance officers.

11. COMMENT: If an acting chief municipal finance officer or acting municipal clerk leave their position, and a municipality was able to appoint a different unlicensed individual to serve in that same acting capacity, this would decrease the incentive for municipalities to appoint a licensed official into those positions. How many municipalities can this person act as a professional and be appointed in another municipality, to act in the same capacity, without being certified?  When will this unlicensed individual be required be licensed, or at least be required to produce a test score? Will the Department limit how many times a candidate can serve in an acting capacity before demanding that person become State certified?

RESPONSE: The Division disagrees with the commenter’s assertion that allowing a different unlicensed individual to serve in an acting role will reduce the incentive for a local unit to appoint a licensed official to a role, such as a chief financial officer or municipal clerk. The total number of years that an unlicensed individual may be appointed in an acting capacity is statutory and remains unchanged, as is the Division’s responsibility to approve the subsequent appointment of an unlicensed individual to the position. The rules also require a local unit applying to appoint or reappoint an unlicensed individual to a subsequent term to provide, among other information, details on the candidate’s efforts to obtain licensure. The Division reminds municipalities that there is no statutory authorization to appoint an unlicensed individual to temporarily serve as a tax collector.

**Summary** of Agency-Initiated Changes:

N.J.A.C. 5:32-4.2(a)2 has been changed upon adoption to add “public works compliance” as a non-mandatory continuing education subject area for renewal of the qualified purchasing agent certifications. This subject area focuses on compliance matters relevant to public works projects, such as those involving New Jersey and Federal prevailing wage laws, along with equal employment opportunity and affirmative action (EEO/AA) laws pertaining to public works contracts, that do not fit squarely within the scope of the “procurement procedures” subject area required for qualified purchasing agent certification renewal.

**Federal Standards Statement**

 No Federal standards analysis is required because the adopted new rule and amendments are 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 adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

SUBCHAPTER 4. QUALIFIED PURCHASING AGENTS

5:32-4.2 Continuing education requirements

(a) Renewal of a qualified purchasing agent certificate shall be required every three years, subject to the applicant's fulfillment of continuing education requirements, the submission of an application for renewal, and payment of a $35.00 fee payable to the order of the Treasurer, State of New Jersey.

1.For certificate renewal cycles commencing before \*[(the effective date of this rulemaking)]\* **\*August 1, 2022\***, applicants shall obtain 20 continuing education contact hours in the subject areas of procurement procedures, office administrative/general duties, ethics, and green purchasing. For certificate renewal cycles commencing on or after \*[(the effective date of this rulemaking)]\* **\*August 1, 2022\***, applicants shall obtain 25 continuing education contact hours in the subject areas of procurement procedures, office administrative/general duties, ethics, and green purchasing. Said credits shall be approved by the Director as relevant to the subject matter area and the duties of a QPA pursuant to N.J.S.A. 40A:11-9 and this chapter, with the following minimum contact hours for each subject area:

i. Two contact hours in the subject area of procurement procedures for certificate renewal cycles commencing before \*[(the effective date of this rulemaking)]\* **\*August 1, 2022\***, or for certificate renewal cycles commencing on or after \*[(the effective date of this rulemaking)]\* **August 1, 2022\***, five contact hours in the subject area of procurement procedures;

ii.-iv. (No change.)

 2. At the option of the applicant, contact hours in the subject area**\*s\*** of information technology **\*and** **public works compliance, as\*** approved by the Director for relevance to the subject matter area and the duties of a QPA pursuant to N.J.S.A. 40A:11-9 and this chapter, may be applied toward the number ofcontinuing education contact hours required pursuant to (a)1 above, in addition to the required minimum contact hours.

3.-7. (No change from proposal.)

5:32-4.4Vacancy in the office of purchasing agent

(a) (No change from proposal.)

(b) During the term of appointment of a temporary purchasing agent, a contracting unit's bid threshold may remain at an amount up to the maximum allowed for a contracting unit having appointed a person possessing a qualified purchasing agent certificate to serve as the purchasing agent, so long as the governing body has adopted a resolution authorizing such amount. Contracts awarded after a vacancy occurs in the office of a purchasing agent shall be subject to a bid threshold of $17,500, or in the case of boards of education, the bid threshold established by the State Treasurer pursuant to N.J.S.A. 18A:18-3(b), until either the subsequent appointment of a person possessing a qualified purchasing agent certificate to serve as the purchasing agent or the appointment of a temporary purchasing agent pursuant to this section.A contracting unit shall notify its auditor upon a vacancy occurring in the office of a purchasing agent**\*, unless the contracting unit’s auditor inquires, on an annual basis, whether the contracting unit has appointed either a purchasing agent or, in lieu of having appointed a purchasing agent, a temporary purchasing agent pursuant to this section\***.