

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

Electronic Disbursement Controls for Payroll Purposes

Adopted Amendments: N.J.A.C. 5:30-17

Proposed: March 21, 2016, at 48 N.J.R. 481(a).

Adopted: November 9, 2016, by the Local Finance Board, Timothy J. Cunningham, Chair.

Filed: November 10, 2016, as R.2016 d.170, **without change**.

Authority: N.J.S.A. 52:27D-20.1.

Effective Date: December 5, 2016.

Expiration Date: January 15, 2023.

Summary of Public Comments and Agency Responses:

Public comments were submitted by Mr. Gene Sicilia of the Cape May County Purchasing Department, and by the Government Finance Officers Association of New Jersey.

COMMENT: Mr. Gene Sicilia asked whether local units are obligated to utilize a competitive contracting/request for proposal (RFP) process to select a third-party energy tracking and utility bill management system if the local unit does not utilize a New Jersey State Contract.

RESPONSE: Contracts with third-party entities for energy tracking and utility bill management and payment do not fall under any of the exceptions to public bidding set forth in the Local Public Contracts Law and Public School Contracts Law. As such, a local unit as defined by N.J.A.C. 5:30-17.2 shall either utilize the public bid process or, in the alternate, seek approval from the Director of the Division of Local Government Services pursuant to N.J.S.A. 40A:11-4.1k (N.J.S.A. 18A:18A-4.1k for school districts) to utilize competitive contracting for the service if the contract would exceed the local unit's bid threshold.

COMMENT: Mr. Gene Sicilia asked whether local units would be obligated to utilize a third-party organization to undertake energy tracking and utility bill payment on its behalf.

RESPONSE: No. It is entirely within a local unit's discretion to determine whether to utilize a third-party organization for energy tracking and utility bill management and payment.

COMMENT: The Government Finance Officers Association of New Jersey observes that the intent behind the Local Finance Board's proposed amendments appears to focus on saving taxpayer dollars by reducing potential utility bill errors. Recently enacted P.L. 2015, c. 177 exempts from the claimant certification requirement set forth in N.J.S.A. 40A:5-16, local unit payments for the following services regulated by the Board of Public Utilities: telecommunications, basic cable, electric, gas, water, or sewer utility service. In light of the Board's proposed regulatory amendments and the above-referenced statutory change, the Board should also consider eliminating the claimant certification requirement for any invoices issued by a third-party organization for reviewing utility invoices. Further, because N.J.S.A. 40A:5-16 empowers the Board to create further exceptions to the claimant certification requirement, the Board should consider promulgating regulations that significantly curtail the requirement for claimant certifications in local unit transactions.

RESPONSE: The Division of Local Government Services is presently undertaking a general review of Local Finance Board rules governing electronic disbursements by local units, in particular those rules contained in N.J.A.C. 5:30-9A. Included in that analysis will be whether amendments are required to existing Board rules on claimant certification. The Board will consider any recommendations that come out of the review process.

Federal Standards Statement

No Federal standards analysis is required because the rule amendments are not being 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:

SUBCHAPTER 17. ELECTRONIC DISBURSEMENT CONTROLS FOR PAYROLL PURPOSES

5:30-17.1 Purpose

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

5:30-17.2 Definitions

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

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

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

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

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

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

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

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

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

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

1.-2. (No change.)

5:30-17.4 Local unit requirements

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

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

2. Permissible tasks for payroll services can include and are not limited to data collection, agency report preparation, calculation of withholding, direct deposit of payroll disbursements, or local unit transfer of funds to the disbursing organization's account for subsequent payment.

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

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

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

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

4. (No change in text.)

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

5:30-17.5 Eligibility requirements for disbursing organizations

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

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

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

ii.-iii. (No change.)

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

5:30-17.6 Contract terms and conditions

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

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

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

1. (No change.)

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

3. (No change.)

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

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

(k) (No change.)

ENVIRONMENTAL PROTECTION

(a)

NATURAL AND HISTORIC RESOURCES

DIVISION OF FISH AND WILDLIFE

Marine Fisheries

Adopted Amendments: N.J.A.C. 7:25-18.5

Proposed: June 6, 2016, at 48 N.J.R. 876(a).

Adopted: November 3, 2016, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: November 10, 2016, as R.2016 d.169, **without change**.

Authority: N.J.S.A. 13:1B-30 et seq., 13:1D-9, 23:1-1 et seq., and 50:1-5 et seq.

DEP Docket Number: 06-15-05.

Effective Date: December 5, 2016.

Expiration Date: December 12, 2021.

This rule adoption can be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

The Department of Environmental Protection is adopting amendments to the Marine Fisheries rules at N.J.A.C. 7:25-18.5(g)5iii and 6iii regarding commercial gill net requirements in the Atlantic Ocean. The adopted amendments limit fishermen to the use of no more than two drifting or staked/anchored gill nets with a stretched mesh size of four inches or greater at one time between September 1 and December 15, as long as the nets are tended at all times. Tended means that a fisherman must be within one-half nautical mile (3,040 feet) of the nearest portion of the gill nets, and the nets must be fully brought into the boat within five hours of the initial set.

The use of gill nets with a stretched mesh size of four inches or greater targets certain species but inevitably results in non-target fish, including striped bass and Atlantic sturgeon, also being caught. The adopted amendments will minimize the capture and discard of striped bass and Atlantic sturgeon, the latter being an endangered species, in the fall when discard mortality tends to be higher due to warmer water temperatures.

Summary of Public Comments and Agency Responses:

The following persons timely submitted comments on the notice of proposal:

1. Gregory DiDomenico, Garden State Seafood Association
2. Karina Otero
3. Robert Swerida

A summary of the timely submitted comments and the Department's responses follows. The number(s) in parentheses after each comment identifies the commenter(s) listed above.

1. COMMENT: The commenter supports the proposed amendments. (1)

RESPONSE: The Department acknowledges the commenter's support of the rules.

2. COMMENT: Gill nets are a common fishing method used by commercial and artisanal fishermen in the ocean and in some freshwater and estuary areas. Gill nets are vertical panels of netting normally set in a straight line. Most often fish are caught in the nets by swimming into the net and passing only part way through the mesh. When a fish struggles to free itself, the twine slips behind the gill cover and prevents escape. Countless fish and other sea-life are lost through bycatch. Gill nets should be banned nationwide. (2)

RESPONSE: As explained in the notice of proposal Environmental Impact (48 N.J.R. at 877), the Department has determined that allowing only two gill nets with a mesh size of four inches or greater when stretched between September 1 and December 15 will significantly reduce the incidental catch and discard of non-targeted species. Under the adopted amendments, gill nets must be tended at all times. If a gill net is tended, a fisherman can quickly identify, remove, and release any ensnared non-targeted fish while it is still alive. This requirement reduces the likelihood of mortality. The Department has determined that the restriction in the number of gill nets allowed to be used and the