

58 N.J.R. 1875(a)

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RULE PROPOSALS

Reporter

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Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

LABOR AND WORKFORCE DEVELOPMENT > INCOME SECURITY

Administrative Code Citation

Proposed Amendments: N.J.A.C. 12:20-1.1, 1.2, 1.3, and 1.4

Text

Organization of the Board of Review

Authorized By: Kevin D. Jarvis, Acting Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 43:21-1 et seq.; specifically, N.J.S.A. 43:21-7.g and 43:21-10.

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

Proposal Number: PRN 2026-044.

Submit written comments by October 16, 2026, to:

David Fish, Executive Director
Office of Legal and Regulatory Services
PO Box 110, 13th Floor
Trenton, New Jersey 08625-0110

Email: david.fish@dol.nj.gov

The agency proposal follows:

Summary

The Department of Labor and Workforce Development (Department) is proposing amendments at N.J.A.C. 12:20-1.1 and 1.4 to implement P.L. 2024, c. 77, sections 2 and 3 (the Act), which allow the Commissioner of the Department (Commissioner) to appoint temporary additional members to the Board of Review. The Department also proposes amendments at N.J.A.C. 12:20-1.2 and 1.3, which are technical changes that would ensure alignment between the rules and the relevant statutes; N.J.S.A. 34:1A-19, 43:21-6, and 43:21-10. The Board of Review consists of three members, each appointed to their position pursuant to the State's Civil Service law, N.J.S.A. Title 11A. The Board of Review is responsible for acting as the final administrative appeals board in cases of unemployment compensation benefit, temporary disability insurance benefit, and family leave insurance benefit disputes. See N.J.S.A. 43:21-10.d.

Specifically, the Act empowers the Commissioner, at the Commissioner's discretion, to appoint three additional members to the Board of Review on a temporary basis. The Act specifies the methods that may be used by the Commissioner to make the temporary appointments to the Board of Review. The Act also states that if three additional members of the Board of Review are appointed by the Commissioner on a temporary basis, thereby increasing the number of Board members from three to six, the Commissioner shall designate two separate panels from among the six members of the Board of Review; and indicates that each of the two panels shall be empowered to act independently of the other as a final appeals board in cases of benefit disputes. Finally, the Act states that the Commissioner may interchange panel members from among the six members of the Board of Review as operational needs dictate. Proposed new N.J.A.C. 12:20-1.1(b), (c), and (d) implement the statutory changes.

New N.J.A.C. 12:20-1.4(b) would state that during a period when, pursuant to N.J.A.C. 12:20-1.1(b), the Commissioner has, on a temporary basis, appointed three additional members of the Board of Review, a quorum of each three-member panel of the Board of Review shall consist of two members of that panel, adding that no decision, determination, opinion, or other official duty shall be rendered or taken by either of the two panels of the Board of Review except with the approval of a majority of that panel.

As to the technical amendments, N.J.A.C. 12:20-1.3, Duties, currently states that the Board of Review shall: (1) act as a final appeals board in hearing and deciding cases of benefit disputes, including appeals from determinations with respect to demand for refunds of benefits pursuant to N.J.S.A. 43:21-16.d of the Unemployment Compensation Law; (2) determine all matters of policy in the Board of Review; (3) supervise the work of appeal tribunals; and (4) issue rules and regulations governing the conduct of hearings and the presentation of appeals to the appeal tribunals and to the Board of Review. However, N.J.S.A. 34:1A-19, 43:21-6, and 43:21-10, which enumerate the duties of the Board of Review, indicate that those duties are limited to the following: (1) to act as a final appeals board in cases of benefit disputes, including appeals from determinations with respect to demands by the deputy for

refunds of benefits pursuant to N.J.S.A. 43:21-16.d; (2) to supervise the work of appeal tribunals; and (3) to prescribe rules governing the conduct of hearings and the presentation of appeals to the appeal tribunals and to the Board of Review. That is, the Unemployment Compensation Law says nothing whatsoever about the Board of Review "determining all matters of policy in the Board of Review." Thus, the proposed amendment at N.J.A.C. 12:20-1.3 is necessary to ensure consistency between the Department rule and the relevant statutes.

Furthermore, neither N.J.S.A. 34:1A-19, 43:21-6, nor 43:21-10, specify an election by the Board of Review of one of its members as "chairperson" or "vice-chairperson." Pursuant to the law, each member of the Board of Review has equal status. Thus, the Department proposes to amend N.J.A.C. 12:20-1.2 to delete subsection (a), which currently requires the Board of Review to elect one of its members as chairperson and one as vice-chairperson, as this is unnecessary.

Finally, the Department proposes to amend N.J.A.C. 12:20-1.3 to delete subsections (b) and (c), which state that the chairperson of the Board of Review shall convoke and preside at all meetings of the Board of Review, and that the vice-chairperson shall perform the duties of the chairperson during any period of the latter's absence or incapacity. If the Department eliminates the "chairperson" and "vice-chairperson" [page=1876] designations to ensure equal status for each Board member consistent with governing law, N.J.A.C. 12:20-1.3(b) and (c), as described above, are unnecessary.

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

Social Impact

The vast majority of the proposed amendments at N.J.A.C. 12:20-1.1 and 1.4, mirror P.L. 2024, c. 77, or are necessitated by the enactment of P.L. 2024, c. 77. Therefore, whatever positive or negative social impact might be felt would derive in the first instance from the law and not the proposed amendments. That said, P.L. 2024, c. 77, sections 2 and 3, and this rulemaking should have a positive social impact in that they empower the Commissioner to add three members to the Board of Review on a temporary basis, creating a separate and independent second panel of the Board. This would permit the Board of Review to double its output in times when the number of appeals to the Board has increased dramatically, as it did during and immediately following the COVID-19 pandemic.

As to the proposed amendments at N.J.A.C. 12:20-1.2 and 1.3, these are technical amendments regarding the duties of the Board of Review and the members of the Board of Review that would simply align the rules with the relevant statutes. These amendments should have no impact, social or otherwise, on any party outside of the Department.

Economic Impact

As indicated in the Social Impact above, the vast majority of the proposed amendments at N.J.A.C. 12:20-1.1 and 1.4, mirror P.L. 2024, c. 77, or are necessitated pursuant to P.L. 2024, c. 77. Therefore, whatever positive or negative economic impact might be felt would derive in the first instance from the Act and not the proposed amendments. That said, P.L. 2024, c. 77, sections 2, and 3, should have a positive economic impact in that they empower the Commissioner to add three members to the Board of Review on a temporary basis, creating a separate and independent second panel of the Board of Review. This would permit the Board of Review to double its output in times when the number of appeals to the Board has increased dramatically, as it did during and immediately following the COVID-19 pandemic. When the final adjudication of benefit appeals is delayed, claimants and businesses can often suffer economically while waiting for decisions. Increasing the efficiency of the Board of Review during periods of high appeal volume, should result in claimants with meritorious appeals receiving the benefits to which they are entitled more quickly, and quicker adjudication of all appeals.

As to the proposed amendments at N.J.A.C. 12:20-1.2 and 1.3, these are technical amendments regarding the duties of the Board of Review and its members that would simply align the rules with the relevant statutes. These amendments should have no impact, economic or otherwise, on any party outside of the Department.

Federal Standards Statement

The proposed amendments do not exceed standards or requirements imposed by Federal law or regulation. Specifically, the proposed amendments are consistent with the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq., and the regulations promulgated in accordance therewith, 20 CFR Part 601. Consequently, no Federal standards analysis is required.

Jobs Impact

The proposed amendments would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments would impose no reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed amendments would not evoke a change in the affordability or the average costs associated with housing because the basis for this finding is that the proposed amendments pertain to the organization of the Board of Review. The proposed amendments have nothing to do with housing.

Smart Growth Development Impact Analysis

The proposed amendments would not evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments pertain to the organization of the Board of Review. Therefore, the proposed amendments have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated this rulemaking and determined that it would 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 1. ORGANIZATION OF BOARD OF REVIEW

12:20-1.1 Membership

(a) The Board of Review shall consist of three members appointed by the Assistant Commissioner who is responsible for the administration of the Unemployment Compensation Law and subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Civil Service Commission eligible lists.

(b) The Commissioner, at the Commissioner's discretion, may, on a temporary basis, appoint three additional members to the Board of Review using either, or a combination of both, of the following two methods:

1. Interim appointment, pursuant to N.J.A.C. 4A:4-1.6(d)3, of State employees who hold full-time primary employment in State service; or

2. Appointment, pursuant to N.J.A.C. 4A:3-3.8, of individuals who do not hold full-time primary employment in State service to an intermittent title.

(c) If three additional members of the Board of Review have been appointed by the Commissioner on a temporary basis, increasing the membership of the Board of Review from three to six, the Commissioner shall designate two separate panels from among the six members of the Board of Review, and each of the two panels shall be empowered to act independently of the other as a final appeals board in cases of benefit disputes, including appeals from determinations with respect to demands by the deputy for refunds of benefits pursuant to N.J.S.A. 43:21-16.

(d) The Commissioner may interchange panel members from among the six members of the Board of Review as operational needs dictate.

12:20-1.2 Officers

[(a) The Board of Review shall elect one of its members as chairperson and one as vice-chairperson to serve at the pleasure of the Board.]

[(b)] The Board of Review may appoint a secretary to serve at the pleasure of the Board.

12:20-1.3 Duties

(a) It shall be the duty of the members of the Board of Review to act as a final appeals board in hearing and deciding cases of benefit disputes, including appeals from determinations with respect to demands for refunds of benefits [under] **pursuant to N.J.S.A. 43:21-[16(d)] 16.d** of the Unemployment Compensation Law, [to determine all matters of policy in the Board of Review,] to supervise the work of appeal tribunals, and to issue rules and regulations governing the conduct of hearings and the presentation of appeals to the appeal tribunals and to the Board of Review.

[page=1877] [(b) The chairperson of the Board of Review shall convoke and preside at all meetings of the Board of Review.

(c) The vice-chairperson shall perform the duties of the chairperson during any period of the latter's absence or incapacity.]

Recodify existing (d)-(e) as **(b)-(c)** (No change in text.)

12:20-1.4 Quorum

(a) A quorum of the Board of Review shall consist of two members of the Board. No decision, determination, opinion, or other official duty shall be rendered or taken by the Board of Review, except with the approval of a majority thereof.

(b) During a period when, pursuant to N.J.A.C. 12:20-1.1(b), the Commissioner has, on a temporary basis, appointed three additional members of the Board of Review, a quorum of each three-member panel of the Board of Review shall consist of two members of that panel. No decision, determination, opinion, or other official duty shall be rendered or taken by either of the two panels of the Board of Review, except with the approval of a majority of that panel.