

Please note that the public comment for the following proposal has been extended to **December 28, 2015**, as there was a delay in delivery of the October 19, 2015 edition of the **New Jersey Register**.

OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

Sufficient Public Interest for Public Hearings

Lobbying Mandatory Electronic Filing and Other Filing Clarifications

Proposed New Rule: N.J.A.C. 19:25-2.6

Proposed Amendments: N.J.A.C. 19:25-20.4, 20.5, 20.7 through 20.9C, 20.16, 20.19, and 20.20

Authorized By: Election Law Enforcement Commission, Jeffrey M. Brindle, Executive Director.

Authority: N.J.S.A. 52:13C-23.2.

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

Proposal Number: PRN 2015-133.

The sitting New Jersey Election Law Enforcement Commission will conduct a **public hearing** concerning this notice of proposal on Tuesday, December 15, 2015, at 11:15 A.M. at:

Election Law Enforcement Commission

Edward J. Farrell Memorial Conference Room

28 West State Street, 12th floor

Trenton, New Jersey

Persons wishing to testify are requested to reserve time to speak by contacting Administrative Assistant Elbia L. Zeppetelli at (609) 292-8700 no later than Thursday, December 10, 2015.

Submit written comments by December 18, 2015, to:

Michelle R. Levy, Associate Legal Director

Election Law Enforcement Commission

PO Box 185

Trenton, New Jersey 08625-0185

E-mail written comments by December 18, 2015, to: elec.rulemaking@elec.nj.gov. Please put “Comment” in subject line.

The agency proposal follows:

Summary

Sufficient Public Interest for Public Hearings for Commission Rulemaking

Pursuant to N.J.S.A 52:14B-4(a)(3), the Commission is not required to hold a public hearing for rulemaking unless requested by a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the New Jersey Register. A proposing agency must determine “sufficient public interest” for granting a public hearing based upon definite standards adopted as part of its rules or practices required under N.J.S.A 52:14B-3(2). The Commission proposes new N.J.A.C. 19:25-2.6 to require a public hearing on a rulemaking notice of proposal if at least 20 individuals submit written requests to hold a public hearing, to present data, arguments, or views that raise a substantial issue as to the impact of the notice of proposal on the regulated community or the general public that has not been anticipated by the Commission.

Lobbying Mandatory Electronic Filing and Other Filing Clarifications

The Uniform Electronic Transactions Act (UETA), N.J.S.A. 12A:12-17 and 18, authorizes State agencies to accept reports filed in an electronic format. In 2004, the Commission adopted

rules (N.J.A.C. 19:25-3) authorizing electronically filed reports under the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. In 2005, the Commission extended electronic filing to require gubernatorial or legislative candidates who spend in excess of \$100,000 to file reports using the Commission's electronic filing program; see N.J.A.C. 19:25-3.3. Additionally, as part of the Commission's "pay-to-play" disclosure rules, business entities that file a business entity annual disclosure statement are required to file electronically; see N.J.A.C. 19:25-26.5.

The Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq., and the Commission's rules in Subchapter 20, require the filing of annual reports with the Commission by governmental affairs agents (GAAs), represented entities, and persons communicating with the general public; see N.J.S.A. 52:13C-22.1 and N.J.A.C. 19:25-20.9 and 20.9A. In 2012, the Commission instituted a voluntary electronic filing program for annual report filing obligations under Subchapter 20. As of December 17, 2012, the Commission required mandatory electronic filing of these reports; see 44 N.J.R. 2049(a), 3077(a), N.J.A.C. 19:25-20.9, 20.19.

The Commission believes that it is reasonable to require GAAs and represented entities to file quarterly reports, and other forms and reports electronically. Electronic filing of the annual report by GAAs has been required since December of 2012. Further, there is a trend towards electronic filing and the Commission has seen an increase in the use of computer programs to prepare reports under the New Jersey Campaign Contributions and Expenditures Reporting Act.

The Commission, therefore, proposes to amend N.J.A.C. 19:25-20.4, 20.5, 20.7 through 20.9C, 20.16, 20.19, and 20.20, to require GAAs and represented entities to file lobbying forms and reports electronically.

The Commission proposes to remove reference to signatures in N.J.A.C. 19:25-20.4(a), 20.5(a), 20.7(c), and 20.16(b), as the registration number and PIN supplied pursuant to N.J.A.C. 19:25-20.9B acts as an electronic signature and/or acknowledgement for forms and reports submitted electronically.

The Commission proposes to amend N.J.A.C. 19:25-20.4(b) to state that when a group of individuals, each registered by the Commission as a GAA, together represent more than one entity, they can file a notice of representation for a represented entity on behalf of the group, provided that the person filing indicates the involvement of the group or indicates the involvement of specific GAA(s). Correspondingly, the Commission proposes an amendment to N.J.A.C. 19:25-20.7(c)2 to require that the notice of termination filed by such a group indicate whether termination applies to the entire group or to specific GAA(s). The Commission also proposes to amend N.J.A.C. 19:25-20.4(c) to require any changes to the notice of representation be made by electronically filing an amendment.

The Commission proposes to delete N.J.A.C. 19:25-20.8(c), to remove an obsolete reference to “fees provided in N.J.A.C. 19:25-20.19.” N.J.A.C. 19:25-20.19, Nonresident governmental affairs agents or represented entities, does not require payment of any fees.

The Commission proposes to delete language referencing “software” in N.J.A.C. 19:25-20.9(c), 20.9A(c), 20.9B(a), and 20.16(e), as electronic filing may be accomplished through web-based or electronic filing programs rather than software packages provided to the regulated public.

The proposed amendment to N.J.A.C. 19:25-20.9C, Filing of an electronic report, changes the heading of the section to “Mandatory electronic filing,” and indicates that all Commission reports and forms required to be filed under Subchapter 20 are to be filed electronically, and sets forth the following exceptions to the mandatory electronic filing requirement in proposed new

subsection (a): an exemption pursuant to proposed new subsection (e), which allows an individual to obtain an exemption by certifying in writing that electronic filing poses undue hardships, and gives the Commission discretion to approve such exemption requests; application for registration and PIN under N.J.A.C. 19:25-20.9B; or a person filing for the first time as a GAA under N.J.A.C. 19:25-20.20(d). The Commission proposes to delete existing subsections (a) and (b). The Commission proposes to add new subsection (c), allowing the Commission to update methodology for electronic filing based on technological changes by providing notice on the Commission's website, and through other means that the Commission deems appropriate.

The Commission proposes to amend N.J.A.C. 19:25-20.20, by changing the heading to include registration, and specifying that an individual registering as a GAA for the first time must personally appear in Commission offices, and submit the annual fee and required identification photographs.

As the Commission has provided a 60-day comment period on 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

Sufficient Public Interest for Public Hearings for Commission Rulemaking

The proposed new rule defining "sufficient public interest" in a public hearing for Commission rulemaking as a minimum of 20 written requests has a positive social impact in providing clarification as to the prerequisite level of interest needed to require a public hearing, absent a request by a committee of the Legislature or a governmental agency or subdivision.

Lobbying Mandatory Electronic Filing and Other Filing Clarifications

The proposed amendments to Subchapter 20 have a positive social impact by establishing procedures for GAAs and represented entities to file statutorily required reports and forms with

the Commission electronically. The Commission's electronic filing program will enhance timely reporting and reduce reliance on hand-delivery or postal delivery of required documents. Further, the use of the electronic filing programs designed by the Commission will enhance disclosure because it specifically conforms to statutory and regulatory requirements for quarterly reporting. The Commission will provide training sessions and support through a help desk and a user-friendly website, which will ease the transition for GAAs and represented entities who are not currently filing electronically.

GAAs and represented entities must be able to determine with certainty whether they are required to file reports electronically. The Commission therefore anticipates that proposed amendments in Subchapter 20 serve the salutary purpose of providing clarity to the regulated population as to which reports are now required to be filed electronically. Further, the amendments to N.J.A.C. 19:25-20.9C(a) clearly identify the circumstances in which lobbying reports and notifications are not required to be submitted electronically, and proposed new subsection (e) provides instruction on applying for an exemption to mandatory electronic filing.

Proposed new N.J.A.C. 19:25-20.9C(c), allowing the Commission to inform GAAs and represented entities of any updates to its programs or methodology by notice on its website and through other means deemed appropriate, serves a progressive social purpose by availing itself of changes in technology without delay.

The Commission's proposed amendments to N.J.A.C. 19:25-20.4 and 20.7(c)2 have a positive social impact in clarifying the requirements for registering for the first time as a GAA, and filing notices of representation and termination for groups of GAAs who represent more than one entity.

Economic Impact

Sufficient Public Interest for Public Hearings for Commission Rulemaking

The proposed new rule regarding “sufficient public interest” for Commission public hearings is not anticipated to have any substantial economic impact. Individuals wishing a hearing need only submit a request in writing, indicating the basis for the request.

Lobbying Mandatory Electronic Filing and Other Filing Clarifications

The proposed amendments are not expected to impose any additional costs on GAAs and represented entities who file with the Commission, and may increase efficiency in the reporting process by requiring filing to be achieved electronically. Commission electronic filing programs are provided at no charge and are expected to reduce paperwork and simplify the reporting process. Any economic impact on the regulated community is outweighed by the considerable increase in the Commission’s efficiency, by eliminating the scanning of paper documents for public disclosure on the Commission’s website and the obligation to input data manually for computer analysis of reported information.

Federal Standards Statement

Sufficient Public Interest for Public Hearings for Commission Rulemaking

A Federal standards analysis is not required because the new rule regarding “sufficient public interest” for public hearings for Commission rulemaking is proposed in implementation of the New Jersey Administrative Procedure Act, and is not subject to Federal standards or requirements.

Lobbying Mandatory Electronic Filing and Other Filing Clarifications

A Federal standards analysis is not required because the proposed amendments concern New Jersey filing entities. The amendments are not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rule and amendments are not expected to result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed new rule and amendments are not expected to have any impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Analysis

Sufficient Public Interest for Public Hearings for Commission Rulemaking

The proposed new rule imposes no reporting, recordkeeping, or compliance requirements, as the new rule merely provides the procedure for determining sufficient public interest to require a public hearing for Commission rulemaking.

Lobbying Mandatory Electronic Filing and Other Filing Clarifications

The proposed amendments impose reporting, recordkeeping, and other compliance requirements on GAAs and represented entities concerning the electronic filing of lobbying reports with the Commission. Some of those subject to the requirements may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements are described in the Summary and Economic Impact statements above, and are not expected to impose any additional costs. It is not anticipated that any professional services will have to be employed in order to comply with the requirements. As the requirements are intended to simplify the reporting process and reduce paperwork to the benefit of both the Commission and those reporting, no differing compliance requirements are provided based upon business size.

Housing Affordability Impact Analysis

The proposed new rule and amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rule and amendments would evoke a change in the average costs associated with housing because the proposed new rule establishes rulemaking procedures and the proposed amendments concern electronic filing of reports by represented entities and GAAs.

Smart Growth Development Impact Analysis

The proposed new rule and amendments will have an insignificant impact on smart growth development and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rule establishes rulemaking procedures and the proposed amendments concern electronic filing of reports by represented entities and governmental affairs agents.

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

SUBCHAPTER 2. ADMINISTRATIVE

19:25-2.6 Public hearings for rulemaking

(a) The Commission shall hold a public hearing on a rulemaking notice of proposal at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest in a public hearing is demonstrated within 30 days of the publication

of the notice of proposal in the New Jersey Register, or whenever deemed appropriate by the Commission.

(b) Sufficient public interest in holding a public hearing for rulemaking shall be determined by the Commission based on written requests submitted to the addresses to which comments are to be sent contained in the notice of proposal. Public interest in holding a public hearing shall be sufficient if:

1. At least 20 persons submit written requests for a public hearing to present data, arguments, or views that raise a substantial issue as to the impact of the notice of proposal on the regulated community or the general public that has not been anticipated by the Commission. Such written submission shall include the basis for the hearing request;

2. Written comment submitted pursuant to N.J.A.C. 1:30-5.4 does not constitute a request for a public hearing for purposes of determining sufficient public interest in holding a public hearing, unless such comment specifically contains a request for a hearing pursuant to (b)1 above; and

3. No other public hearing on the notice of proposal has been scheduled or held by the Commission under this rule or other applicable law or rule.

(c) For the purposes of (b)1 above, a professional organization, law firm, corporation, partnership, association, or any other organization or groups of persons that submit(s) a request for a public hearing on behalf of a group of interested parties shall be considered one person.

(d) Any public hearing held under (a) above may be held in conjunction with an open public meeting of the Commission or as otherwise determined by the Commission, consistent with

the requirements of N.J.A.C. 1:30-5.5. The Commission shall not be required to hold more than one public hearing on any notice of proposal.

SUBCHAPTER 20. REPRESENTED ENTITIES AND GOVERNMENTAL AFFAIRS
AGENTS

19:25-20.4 Governmental affairs agent notice of representation

(a) Each **previously registered** governmental affairs agent shall **electronically** file with the Commission a [signed] notice of representation on a form prescribed by the Commission[, and] containing the information required by N.J.S.A. 52:13C-21.

(b) The notice of representation shall be filed prior to making any communication with, or the making of any expenditures providing a benefit to, a member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch, or prior to making any communication concerning a governmental process with an officer or member of the Executive Branch, or any authority, board, commission, or other agency or instrumentality in or of a principal department of the Executive Branch of State government, or shall be filed within 30 days of employment, retainer, or engagement as a governmental affairs agent, whichever occurs earlier. **A group of persons registered by the Commission as governmental affairs agents, that together represent more than one entity, shall be permitted to file a notice of representation particular to a represented entity on behalf of the group, provided the person filing indicates the involvement of the group or indicates the involvement of specific governmental affairs agent(s).**

(c) Each governmental affairs agent must notify the Commission in writing of any material change in the information supplied in the notice of representation within 15 days of the effective date of

such change, or not later than the filing date of the subsequent quarterly report, whichever occurs earlier, **by electronically filing an amendment to the notice of representation required under (a) above.**

(d) (No change.)

19:25-20.5 Governmental affairs agent quarterly report

(a) Each governmental affairs agent shall **electronically** file with the Commission a quarterly report containing the information required by N.J.S.A. 52:13C-22 [and signed by the governmental affairs agent].

(b) (No change.)

(c) Such report shall be **electronically** filed on a form prescribed by the Commission no later than the 10th day following the end of the calendar year quarter during which activities influencing legislation, influencing regulation, or influencing governmental processes occurred.

(d) - (e) (No change.)

19:25-20.7 Notice of termination

(a) Each governmental affairs agent shall **electronically** file with the Commission a notice of termination within 30 days after his or her activities influencing legislation, influencing regulation, or influencing governmental processes cease.

(b) Any person who has engaged a governmental affairs agent shall **electronically** file a notice of termination after that agent ceases to represent such person.

(c) The notice of termination shall be **electronically** filed on a form prescribed by the Commission. The completed form shall include:

1. (No change.)

2. The name of the **represented entity** or person from whom service was terminated, **and if filed by a group of governmental affairs agents, as described in N.J.A.C. 19:25-20.4(b), whether the termination applies to the entire group or to specific governmental affairs agent(s); and**

[3. The name and signature of the governmental affairs agent; and]

[4.] **3.** (No change in text.)

(d) (No change.)

19:25-20.8 Voluntary statements

(a) Governmental affairs agents filing pursuant to N.J.S.A. 52:13C-35 a voluntary notice of representation, a voluntary quarterly report, or a voluntary notice of termination shall [utilize] **file electronically, utilizing** the forms prescribed by the Commission.

(b) (No change.)

[(c) Voluntary filings pursuant to this section are exempt from the fees provided in N.J.A.C. 19:25-20.19.]

19:25-20.9 Annual report

(a) Any represented entity or governmental affairs agent who or which receives receipts of more than \$2,500 or makes expenditures of more than \$2,500 in any calendar year for the purpose of

communication with or providing benefits to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, for the purpose of influencing legislation, regulations or governmental processes, or for the purpose of communication with the general public, shall **electronically** file with the Commission, not later than February 15th of each year, an annual report of receipts and expenditures for the previous calendar year on forms supplied by the Commission.

(b) (No change.)

(c) A represented entity or governmental affairs agent shall **electronically** file an annual report as defined in (a) and (b) above [using electronic filing software supplied by the Commission pursuant to this subchapter].

19:25-20.9A Annual report of communication with the general public

(a) Any person other than a governmental affairs agent or represented entity who receives contributions or makes expenditures for the purpose of communication with the general public shall be required to **electronically** file and certify the correctness of an annual report of such contributions or expenditures in the same manner as governmental affairs agents, if the contributions or expenditures made, incurred, or authorized by the person for the purpose of communication with the general public exceed in the aggregate \$2,500 in any year.

(b) (No change.)

(c) A person communicating with the general public shall **electronically** file an annual report as defined in (a) above [using electronic filing software supplied by the Commission pursuant to this subchapter].

19:25-20.9B Application for registration number and personal identification number

(a) A governmental affairs agent, represented entity, or person communicating with the general public shall make a written application for a registration number and personal identification number (PIN) prior to its use of the Commission's electronic filing [software] **programs**. The written request shall include the name, address, and signature of the person applying for the registration number and PIN and such other information as may be required by the Commission.

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

19:25-20.9C **Mandatory electronic filing** [Filing of an electronic report]

[(a) The Commission will accept a report in an electronic medium from a governmental affairs agent, represented entity, or person communicating with the general public only if the report has been prepared using the computer software supplied to the governmental affairs agent, represented entity, or person communicating with the general public by the Commission.

(b) A governmental affairs agent, represented entity, or person communicating with the general public filing a report using computer software provided by the Commission shall use the most current version of the software.]

(a) All Commission reports and forms required to be filed under this subchapter shall be submitted electronically, except if:

- 1. Exempted pursuant to (e) below;**
- 2. An application for registration and PIN under N.J.A.C. 19:25-20.9B; or**
- 3. A person is filing as a governmental affairs agent for the first time, pursuant to N.J.A.C. 19:25-20.20(d).**

[(c)] **(b)** The Commission will accept a report in an electronic medium from a governmental affairs agent, represented entity, or person communicating with the general public only if the report has been completed according to the methodology in the Commission's [software] **electronic filing program** using the confidential registration and personal identification number (PIN) and any other means of identification required from the governmental affairs agent, represented entity, or person communicating with the general public.

(c) As a result of changes in technology, the Commission will determine which electronic filing methods satisfy the requirements imposed in this section. The Commission will provide notice as to any changes in authorized electronic filing methods by publication on the Commission's website and through other means as the Commission may deem appropriate.

(d) (No change.)

(e) An individual may obtain an exemption from the mandatory electronic filing requirement if he or she certifies, in writing, that electronic filing poses an undue hardship. The Commission shall review each such application and may grant its approval to such application, in its discretion.

19:25-20.16 Responsibilities for filing annual reports; certification

(a) The represented entity and the governmental affairs agent shall have the responsibility of **electronically** filing annual reports.

(b) Each organization which itself has a filing obligation as a represented entity pursuant to this subchapter is not relieved of that obligation by virtue of the fact that a governmental affairs agent engaged, designated, or employed by it has a filing obligation; except that a represented entity required to file an annual report pursuant to the Act may designate a governmental affairs agent in

its employ or otherwise engaged or used by it to **electronically** file the annual report on its behalf, provided such designation is made [in writing] **electronically** by the represented entity on a form prescribed by the Commission[, is acknowledged in writing by the designated governmental affairs agent] and is filed with the Commission on or before the date on which the annual report of the represented entity is due for filing, and further provided that any violation of the Act shall subject both the represented entity and the designated governmental affairs agent to the penalties provided by the Act and this subchapter.

(c) (No change.)

(d) Each report **electronically** filed with the Commission by a represented entity or governmental affairs agent shall be certified as to the correctness of the report by the governmental affairs agent or, in the case of a represented entity, by a governmental affairs agent employed by the represented entity or a responsible financial or [government] **governmental** affairs officer of the represented entity.

[(e) A represented entity and governmental affairs agent shall file the designation and acknowledgment as defined in (a) and (b) above using electronic filing software supplied by the Commission pursuant to this subchapter.]

19:25-20.19 Nonresident governmental affairs agents or represented entities

(a) Any governmental affairs agent or represented entity not a resident of this State, or not a corporation of this State or authorized to do business in this State, shall **electronically** file with the Commission, before attempting to influence legislation, influence regulation, or influence governmental processes, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

(b) Any person other than a governmental affairs agent or represented entity who receives contributions or makes expenditures for the purpose of communication with the general public and not a resident of this State, or not a corporation of this State or authorized to do business in this State, shall **electronically** file with the Commission, before engaging in communication with the general public, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

(c) For purposes of the annual report described in N.J.A.C. 19:25-20.9 and 20.9A, a nonresident governmental affairs agent, represented entity, or person communicating with the general public must **electronically** file the consent to service of process as defined by (a) and (b) above [using electronic filing software supplied by the Commission pursuant to this subchapter].

19:25-20.20 [Annual] **Registration and annual fee**

(a) Each governmental affairs agent who is an individual and whose activities are subject to the Act during any part of a 12-month period commencing on January 1 and ending on the following December 31 shall pay an annual fee of \$575.00[, and]. **Each governmental affairs agent** shall submit [with the agent's annual fee] two identical, two-by-two-inch, color photographs taken of the governmental affairs agent within six months showing a full-face, front view of the agent with a plain white or off-white background **every five years, upon receiving notification from the Commission that the photographs must be submitted.**

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

(d) [In the case of] **A person filing** as a governmental affairs agent [who files an initial notice of representation, the] **for the first time shall appear at the office of the Commission to register as a governmental affairs agent by completing a registration form prescribed by the**

Commission. Such person must present valid state-issued identification, and shall submit photographs pursuant to (a) above, in order to receive a name tag pursuant to N.J.A.C. 19:25-20.6. The annual fee shall be due upon [the filing of such initial notice of representation, and subsequent annual fees shall be due pursuant to (c) above] **registration.**

(e) (No change.)