

16:38-[3.2]5.1 Removal of objects from highway

(a)-(e) (No change in text.)

(f) If a vehicle is legally [parking, stopping] **parked, stopped** or is standing off of the traveled portion of the highway where not prohibited or restricted by statute or regulation, but the vehicle appears to be abandoned or otherwise poses a hazard, the Department [shall] **will** contact the State, county and municipal police, and ask the police authority with primary patrol responsibility over the highway to cause the removal of the vehicle. If the police authority with primary patrol responsibility declines to remove the vehicle, the Department may affix a notice on the vehicle advising that if the vehicle is not removed by a specified time, the Department will cause the vehicle's removal. If the vehicle has not been removed by the time specified in the notice, the Department may ask the police authority with primary patrol responsibility to cause its removal, or the Department may cause the vehicle's removal.

(g) In the event the owner is not present at the location of the object, the Department [shall] **will** attempt to notify the owner as soon as practicable after the Department receives notification of the object on the highway and, if possible, prior to removal of the object. **The Department will attempt to cooperate with the owner whenever possible regarding removal of the object.** In no event, however, [shall] **will** the immediate removal of an object authorized by (c) or (d) above be delayed pending the Department's attempt to notify the owner.

[h] The Department should attempt to cooperate with the owner whenever possible regarding removal of the object. In no event, however, shall the immediate removal of an object authorized by (c) or (d) above be delayed pending the Department's attempt to cooperate with the owner.]

[i] (h) Once an object has been removed by Department employees or by private contractors at the request of the Department, the Department [shall] **will**, as soon as practicable, provide the municipal, county, and State police, with a description of the object, the location from which it was removed, and the location to which it was taken. The Department [shall] **will** then attempt to notify the owner as soon as practicable of the location to which the object was taken, and provide the owner with information as to how the object may be retrieved.

[j] (i) If an object is removed by the police at the request of the Department, the Department [shall] **will**, as soon as practicable, attempt to notify the owner of the telephone number and location of the police station with information regarding retrieval of the object.

Recodify existing (k) and (l) as (j) and (k) (No change in text.)

16:38-[3.3]5.2 Removal of hazardous substances regulated by the Department of Environmental Protection

Notwithstanding N.J.A.C. 16:38-[3.2]5.1, the Department [shall] **will** handle hazardous substances set forth in N.J.A.C. 7:1E, Appendix A, in accordance with Department of Environmental Protection [regulations] **rules**.

Division of Pensions and Benefits  
PO Box 295  
Trenton, NJ 08625-0295

The agency proposal follows:

**Summary**

The Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) proposes to amend N.J.A.C. 17:3-1.4, Election of member-trustee. Each year a convention is held to elect a member-trustee to the Board. The current process involves mailing packets to and from the County Superintendents, as well as the membership. This process is paper intensive. The proposed amendment to the rule will establish procedures that permit the Board Secretary to electronically provide information to both the County Superintendents and the membership.

In an effort to decrease administrative costs, the Board proposes to amend the current rule and establish procedures that will permit the Division to streamline the process and utilize technology wherever possible. For example, the annual report that was included in the convention packet is now available on the Division's website for review. The proposed amendment will provide the Board Secretary with the flexibility to distribute information much faster and the Division will save on the printing and postage costs. The Division has been providing information electronically to employers, including certifying officer letters, since July 2006. Employers have been receptive to this form of communication and have been compliant with Division requests.

Throughout this subsection the TPAF Board of Trustees is addressed as the Board and technical amendments are proposed to establish consistency and conformity in the language.

N.J.A.C. 17:3-1.4(a) and paragraph (a)1 remain unchanged. Paragraph (a)2 is deleted since the annual report will no longer be presented at the convention, instead it is available on the Division's website and can be obtained prior to the actual meeting date. Paragraph (a)3 is recodified as paragraph (a)2 and is amended to delete the discussion period "on any questions concerning the report or matters pertaining to the Fund." This language is no longer necessary as the membership is provided a general discussion period. Subsection (b) is amended to include that the time and location designated by the Board shall be at the recommendation of the Secretary of the Board. Subsection (e) is amended to clarify that the alternates attending the convention must be active or retired members of the Fund. Subsection (f) is amended to also include that alternates attending the convention shall be selected from the membership. Also, the word "Board" is being deleted and replaced with "County Superintendent," to eliminate confusion as to who determines the county meeting date. Paragraph (f)2 is amended to clarify that the County Superintendent will electronically forward to the Secretary of the Board, membership information including the street and email address of the delegates and alternates.

Subsection (g) has a minor technical change. Subsection (i) is deleted and replaced with a new subsection, which clarifies that members wishing to be nominated as a candidate for a trustee position are required to send a letter of interest to the Secretary of the Board at least 45 days prior to the convention meeting date. This is necessary to provide sufficient time for the Division to verify candidates' eligibility pursuant to N.J.S.A. 18A:66-56. Subsection (k) is deleted and replaced with a new subsection which includes a complete list of the convention materials that will be provided to the eligible delegates and alternates by the Secretary of the Board.

Subsection (o) is amended with new paragraphs (o)1 and 2. New paragraph (o)1 clarifies the procedure for the election of a trustee whereby only one candidate registers with the Board Secretary and an election will not be required. New paragraph (o)2 clarifies the procedure when multiple candidates register for the position as trustee with the Board Secretary and an election will be required. Subsection (p) is amended to remove an incorrect cross-reference to a statute. Subsection (q) is amended to delete reference to "the main floor" since the convention may be held at a facility with a different floor plan. Subsection (r) is amended to add "delegates" since they are also seated at a specified area at the convention. Paragraph (s)1 is deleted since the subject is addressed in subsection (o) as proposed for amendment.

**TREASURY — GENERAL**

**(a)**

**DIVISION OF PENSIONS AND BENEFITS  
TEACHERS' PENSION AND ANNUITY FUND**

**Election of Member-Trustee**

**Proposed Amendment: N.J.A.C. 17:3-1.4**

Authorized By: Teachers' Pension and Annuity Fund Board of Trustees, Mary Ellen Rathbun, Secretary.

Authority: N.J.S.A. 18A:66-56.

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

Proposal Number: PRN 2011-029.

Submit comments by April 8, 2011 to:

Susanne Culliton, Assistant Director

As the Division 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

The rules involving the Teachers' Pension and Annuity Fund affect and work to the benefit of the past, present and future employees of public education. The retirees, survivors of retirees and members, rely on the efficient operation of the retirement system to provide them with monthly retirement benefits, with proper crediting of service, with death benefits and with the information they need regarding their individual accounts. The members rely upon the presence and predictability of the rules that guide the administration of their benefits. The protections and guarantees that these rules afford its members mandate their continued existence.

The proposed amendment to N.J.A.C. 17:3-1.4 will clarify the Board's position regarding the election of member-trustee to the TPAF Board. In the current economic climate, it is important to determine how the election process can be streamlined in consideration of staffing limitations and decreasing administrative budgets. The proposed amendment to the election procedures will reduce the costly paper reproduction of the TPAF annual report and certain mailings that are associated with the convention.

The social benefits of the proposed amendment outweigh any negative effect that this amendment may impose on members or employers. Providing proper interpretation of the Board election process will provide members and employers with a better understanding of this administrative practice. The taxpaying public may be affected by these rules, since public monies are used to fund the benefits and they, too, benefit from the proper and efficient administration of the retirement system, which the rules require.

#### Economic Impact

The proposed amendment will have a positive economic impact on the Teachers' Pension and Annuity Fund, since it will reduce the administrative costs of the Board elections for member-trustee. The TPAF convention for a member-trustee involves notifying the 21 County Superintendents and the delegates and alternates for each county. The proposed change to the rule will permit the Board Secretary to electronically send convention information to the interested parties. This will result in the Division saving the costs associated with the printing and postage of the election materials. The Division will continue to monitor the impact of the proposed amendment.

#### Federal Standards Statement

A Federal standards analysis is not required because N.J.S.A. 52:14-15.1a (P.L. 1996, c. 8) and 52:18A-96 et seq. governs the subject of this rulemaking, and there is no Federal requirement or standard that affects the subject of this rulemaking.

#### Jobs Impact

The operation of the proposed amendment will not result in the generation or loss of jobs. The Board invites any interested parties to submit any data or studies concerning the jobs impact of this proposed amendment along with their written comments.

#### Agriculture Industry Impact

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

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment has no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., and only affects members and retirees of the Teachers' Pension and Annuity Fund in New Jersey.

#### Smart Growth Impact

The proposed amendment will not have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

#### Housing Affordability Impact

The proposed amendment will not have an impact on affordable housing in New Jersey since the amendment applies to the election of a

member-trustee to the Teachers' Pension and Annuity Fund and it will have no impact on the average cost of housing in New Jersey.

#### Smart Growth Development Impact

The proposed amendment will not 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 rule only applies to the election of a member-trustee to the Teachers' Pension and Annuity Fund.

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

#### SUBCHAPTER 1. ADMINISTRATION

##### 17:3-1.4 Election of member-trustee

(a) The Board shall hold an annual convention of delegates of the membership of the Fund each year for the purpose of:

1. Electing a member-trustee to the Board; **and**

[2. Presenting its annual report; and]

[3.] **2.** Conducting a general discussion period [on any questions concerning the report or matters pertaining to the Fund].

(b) [Such] **The** convention shall be held annually at a time and location designated by the Board **and at the recommendation of the Secretary of the Board.**

(c)-(d) (No change.)

(e) The delegates [to] **and alternates attending** the convention must be active [members of or former members receiving a retirement allowance from] **or retired members of** the Fund.

(f) The delegates **and alternates attending** shall be selected from the membership of each county. The selection date shall be determined by the [Board] **County Superintendent.**

1. (No change.)

2. The County Superintendent, within five days after the meeting, shall **electronically** forward to the Secretary of the Board [a certificate] **information** containing the membership numbers, retirement numbers, names, **street and email** addresses and school districts of the delegates and alternates.

(g) Each county shall be entitled to one delegate for each 550 members employed in or retired from the county [or major fraction thereof].

(h) (No change.)

(i) The Secretary of the Board shall forward to each delegate and alternate his or her identification for admission to the convention, a copy of the election rule, convention agenda, annual report of the Board of Trustees for the preceding fiscal year and the name of the trustee whose term is expiring.]

**(i) Members wishing to be nominated are required to send a written letter of interest to the Secretary of the Board at least 45 days prior to the convention meeting date.**

(j) (No change.)

[(k) The Secretary of the Board shall also notify each delegate and alternate of the names of the candidates to be nominated for trustee that have been registered.]

**(k) The Secretary of the Board shall provide by mail or electronically to each eligible delegate and alternate the following:**

**1. Identification for admission to the convention;**

**2. A copy of the election rules;**

**3. Convention agenda;**

**4. Division's web address for the annual report of the Board of Trustees for the preceding fiscal year;**

**5. Proposed minutes of the prior year's convention; and**

**6. Name(s) of the candidate(s) to be nominated for trustee who have registered with the Secretary of the Board.**

(l)-(n) (No change.)

**(o) The following procedure will be followed for the election of a member-trustee.**

**1. If only one candidate has registered with the Board Secretary in accordance with (j) above, for the position of trustee, the candidate shall be deemed elected without ballot.**

**[(o)] 2. [A] In the event that more than one candidate has registered with the Board Secretary in accordance with (j) above, the**

candidate to be elected must receive a majority of the total votes cast by the seated delegates or their alternates **to be elected**. In the event no candidate receives a majority, the candidate who has received the least number of votes shall be eliminated. This procedure shall be repeated on each succeeding ballot until one candidate has received a majority of the total vote.

(p) The trustee must be employed in or retired from a county in Group A, Group B or Group C. Members elected shall serve three-year terms. In the event an active or retired trustee elected by the membership is unable to finish the term, the vacancy shall be filled in the same manner and in the same group as the departing trustee[, as set forth in N.J.S.A. 18:66-56]. The term of this position shall be the remainder of the unexpired term.

(q) Only delegates with proper identification will be admitted to [the main floor of] the convention.

(r) [Alternates] **Delegates, alternates** and visitors shall be seated in a specified area.

(s) The secretary of the convention will conduct a roll call of the delegates. Alternates will be seated in the place of respective county absentee delegates in the order in which they are listed by the secretary of the county meeting[;].

[1. The election of the member-trustee shall require a majority vote among the delegates actually seated in the convention.]

(t)-(w) (No change.)

## TREASURY — TAXATION

### (a)

#### DIVISION OF TAXATION

#### Organization of the Division of Taxation Relaxation of Rules

#### Proposed New Rule: N.J.A.C. 18:1-2.6

Authorized By: Michael Bryan, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

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

Proposal Number: PRN 2011-039.

Submit comments by April 8, 2011 to:

Mitchell Smith  
Assistant Chief, Regulatory Services Branch  
Division of Taxation  
50 Barrack St  
PO Box 269  
Trenton, NJ 08695-0269

The agency proposal follows:

#### Summary

Proposed new N.J.A.C. 18:1-2.6 offers a procedure to allow for the relaxation, in certain instances, of the requirements of Division of Taxation regulations. Proposed subsection (a) provides that the Director of the Division of Taxation may, in his or her discretion, and if consistent with taxation laws, relax the strict application of any administrative or procedural requirements of Title 18 of the New Jersey Administrative Code when necessary and in the public interest, upon a showing of undue hardship, if the upon a finding that strict adherence to such requirements would result in unfairness or injustice, and that the granting of a waiver is consistent with the purposes and objectives of the applicable sections of Title 54 of the New Jersey Statutes Annotated, or with the core objectives of the Division. Proposed subsection (b) provides that the Director of the Division of Taxation shall not relax any administrative or procedural requirements if such requirements are imposed by applicable State or Federal statutes, or by applicable decision, or decree of a court of competent jurisdiction. Proposed subsection (c) provides that a request for a waiver must be submitted in writing to the Director and shall

include a statement of the type and degree of hardship that would occur if a waiver is not granted and supporting documentation.

Because the Division 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

Pursuant to Executive Order No. 2 (2010), paragraph c., State agencies have been called upon to adopt procedures to allow strict compliance waivers. Specifically, agencies are to prepare and publish policies describing the circumstances under which waivers from strict compliance with agency rules would be granted. This policy, as explained in the Executive Order, is intended to recognize that “rules can be conflicting or unduly burdensome.” The proposed new rule will comply with this request by allowing for a waiver, or “relaxation,” of a rule, provided that granting a waiver would not conflict with State or Federal statutes or court decrees or the core mission of the Division. The intent of the proposed new rule is to contribute to improving the business climate while at the same time improving compliance with tax procedures in general.

#### Economic Impact

The proposed new rule is not anticipated to have an immediate specific economic impact. However, the proposed new rule to adopt a procedure for relaxation of rules is derived from Governor Christie’s Administration “Common Sense Principles” as specified in Executive Order No. 2 (2010). As explained in Executive Order No. 2 (2010), the Common Sense Principles are intended to create “an environment that is an attractive venue for entities doing, or seeking to do, business in the State.” At the same time, the Executive Order suggests that any relaxation of rules should not conflict with the core mission of the agency. Since the core mission of the Division of Taxation is to collect taxes properly owing to the State, the Division anticipates that the proposed new rule would apply only in rare instances, as specified in the proposed new rule, where tax collections would not be jeopardized.

#### Federal Standards Statement

The proposed new rule does not contain any requirement that exceeds those imposed by Federal law. The proposed new rule represents an administrative policy of the Division of Taxation that is not subject to any Federal regulatory requirements or standards.

#### Jobs Impact

The proposed new rule is not expected to have any effect on jobs in the State.

#### Agriculture Industry Impact

The proposed new rule will have no impact on the agriculture industry in New Jersey.

#### Regulatory Flexibility Statement

The proposed new rule will apply to small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to businesses employing more than 100 people full-time. However, the proposed new rule does not impose any new reporting, recordkeeping or other compliance requirements on small businesses. To the contrary, the proposed new rule provides a mechanism to relieve taxpayers in some instances from regulatory tax compliance requirements. Taxpayers will not require professional services to comply with the proposed new rule; however, taxpayers may wish to utilize professional services to ascertain whether the proposed new rule would be relevant to their own situation.

#### Smart Growth Impact

The Division anticipates that the proposed new rule will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

#### Housing Affordability Impact

The proposed new rule would not result in a change in the average costs associated with housing. The proposed new rule would have no impact on any aspect of housing because the proposed new rule deals with the relaxation of Division of Taxation rules.