

across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

#### Job Impact Statement

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### Assessment of Public Comment

The agency received no public comment.

## State Board of Elections

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Disclosure of Independent Expenditures

I.D. No. SBE-08-12-00020-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 6200.10 of Title 9 NYCRR.

**Statutory authority:** Election Law, section 3-102; L. 2011, ch. 399 (Unconsolidated Law)

**Subject:** Disclosure of Independent Expenditures.

**Purpose:** Set requirements relative to disclosure of independent expenditures.

**Text of proposed rule:** Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by adding thereto a new Part, to be Part 6200.10 to read as follows:

#### § 6200.10 Disclosure of Independent Expenditures

##### (a) Purpose and Overview

The purpose of this Regulation is to set forth the requirements under existing law that individuals, organizations, corporations, political committees, or any entity making independent expenditures must follow to disclose independent expenditures.

The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election Law sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports. Those making independent expenditures must register a committee with the New York State Board of Elections (State Board), and/or a local board of elections as defined in Election Law section 1-104 (26), as appropriate, or with a village clerk as applicable, through which to report the activity.

##### (b) Definitions

(1) "Independent expenditure" means an expenditure made in support or opposition of a candidate:

(i) that expressly advocates for the election or defeat of a candidate; and

(ii) that the candidate or his/her agents or authorized political committee(s) did not authorize, request, suggest, foster or cooperate with in any way.

(2) "Express advocacy", a standard created by the United States Supreme Court in *Buckley v. Valeo*, 424 U. S. 1 (1976), means a communication that contains express words such as vote, oppose, support, elect, defeat, or reject, which call for the election or defeat of a candidate.

##### (c) Registration

(1) Election Law 14-100(1) requires that an independent expenditure be disclosed, and a political committee is the sole vehicle through which individual(s) or entities disclose an independent expenditure.

(2) Election Law 14-118 requires that before a political committee may receive any receipt or contribution, or make any expenditure or incur any liability, the treasurer of such political committee must register with the appropriate board of elections or village clerk, as applicable, pursuant to the procedures set forth by the State Board. Registration forms are available from the State Board.

(3) Election Law 14-110, 14-112, 14-118, and NYCRR 6200.1

determine the appropriate board(s) of elections or village clerk at which to register a committee. Where to register is determined by:

(i) whether the candidate being supported or opposed is running for a state office or a local office; and

(ii) the monetary level of the independent expenditure (s).

(4) Committees making independent expenditures supporting and/or opposing candidates running for state offices, which include: Governor, Lt. Governor, State Comptroller, Attorney General, State Senate, State Assembly, and State Supreme Court Justice, must register and file financial disclosure reports with the State Board pursuant to EL14-110.

(5) Committees making independent expenditures in support or opposition of Local candidates must register with the local board of elections or village clerk, as applicable:

(i) Committees making independent expenditures supporting and/or opposing candidates running for local offices must register and file financial disclosure reports with the appropriate local board of elections or village clerk, as applicable, pursuant to EL 14-110, NYCRR 6200.1.

(ii) Local filers should contact the appropriate local board of elections or village clerk, as applicable, for information about how to submit a report locally (i.e. paper or electronically) pursuant to EL 14-102.

(iii) Local filers, filing with a local board of elections, who raise or spend, or expect to raise or spend, more than \$1,000 in any calendar year are also required to register and file campaign financial disclosure reports with the State Board, in addition to filing with the appropriate local board of elections pursuant to EL 14-102 (4), NYCRR 6200.1(d).

(iv) Any local filer required to file with the State Board, and who actually does so, is not required to make a duplicate filing with their local board of elections. The State Board filing will satisfy the local filing obligation pursuant to NYCRR 6200.1(d). Election Law 14-110 requires that the filer will still be obligated to register the committee locally.

##### (d) Filing Financial Disclosure Statements

(1) Committees making independent expenditures are obligated, as are all political committees, to file campaign financial disclosure reports pursuant to and in the matter set forth in EL 14-102. For each election in which they support or oppose candidates, the committee must submit election reports (3 primary, and 3 general and/or special, as applicable), as well as campaign financial disclosure periodic reports, due on January 15 and July 15 of each year in accordance with EL 14-108, NYCRR 6200.2.

(2) A committee receiving a contribution or loan greater than \$1,000 during the period from the day after the cut-off date of the 11-day pre-election report but before election day, must within 24 hours of its receipt, file a 24 hour notice disclosure.

All contributions or loans that are required to be disclosed via a 24 hour notice filing must also be disclosed on the applicable post election financial disclosure report. EL 14-108.

(3) Campaign Materials Disclosure: Pursuant to EL 14-106, all filers whose activity requires the filing of primary, general and/or special election reports, must at the same time the applicable post-election campaign financial disclosure report is due and made, submit copies of all the filer's campaign materials associated with that election. These campaign materials include copies of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letter heads and other printed material.

##### (e) Resignation of a Treasurer

(1) To resign as treasurer of a registered political committee, the treasurer must comply with the provisions of NYCRR 6200.7.

##### (f) Termination of a Committee

(1) Termination ends a treasurer's obligation to file campaign financial disclosure reports for that committee. To terminate a committee, a treasurer must comply with the provisions of EL 14-108, 14-110, NYCRR 6200.2. All filing obligations continue until the termination process is finalized and approved by the State Board and/or local board(s) of elections, or village clerk, as applicable.

(2) Any post election report (if the filer is actively supporting or opposing candidates in that election) or a periodic report, can be designated as a termination report. At other times, a treasurer can submit an off-cycle campaign financial disclosure report. The termination report must include all transaction from the cut-off date of the last report filed, up to the date of the termination request.

(3) Terminations are subject to review and approval by the board(s) of elections or village clerk, as applicable, for compliance with the applicable statutes and regulations of the Board, and are not deemed final until appropriate processing has taken place. If all requirements are not met, the treasurer will receive a letter outlining remaining issues to be resolved to qualify for termination. A treasurer has a continuing obligation to file campaign financial disclosure reports with the applicable board(s) of elections or village clerk until the termination request is approved.

##### (g) Record Retention

Records shall be retained pursuant to the requirements of EL 14-118.

*(h) Non-compliance*

The State Board or a local board of elections may institute a judicial proceeding to obtain filing compliance, as well as a financial penalty, pursuant to EL 14-126, 16-114.

**Text of proposed rule and any required statements and analyses may be obtained from:** William J. McCann, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-2063, email: william.mccann@elections.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement**

## 1. Statutory Authority:

Election Law Section 3-102 provides for the State Board to promulgate rules and regulations relating to the disclosure of campaign finance receipts and expenditures in accordance with Article 14 of that law. Chapter 399 of the Laws of 2011 directs the Board to issue a regulation setting forth the requirements under existing law that all individuals, organizations, corporations, political committees, or any entity making independent expenditures must follow to disclose the independent expenditures.

## 2. Legislative Objectives:

Objectives stated at the time of the directive to issue this regulation were that in the aftermath of federal case law, it is becoming increasingly important that independent expenditures be disclosed. While the Election Law does mandate that entities making independent expenditures must register with the State Board and disclose the expenditures, there remain significant concerns that such expenditures are not being disclosed and that the problem will only increase over time. Accordingly, this regulation will not only clarify and publicize the requirements for registration and reporting of independent expenditures, but also help identify any gaps in existing law that can be filled in the future.

## 3. Needs and Benefits:

While the requirements of registration and disclosure of expenditures is set forth in Article 14 of the Election Law, there is concern that those making independent expenditures are not fully aware of the requirements. Therefore, while this regulation does not impose any new requirements on those making independent expenditures, it is intended to help those parties understand the requirements of existing law.

## 4. Costs:

The Board currently provides education and training regarding the requirements of Article 14, publishing a Filer Handbook, pamphlets, an annual filer update, and providing seminars to offer hands on assistance to those required to register and file with the State Board. While this regulation will become a reference component of these tools, the cost associated with the administrative implementation of the regulation will be minimal, with any specific cost unable to be determined at this time. Minimal cost is a common sense conclusion based on the part this regulation will play in the overall scheme of the Board's educational outreach.

The regulation does not impose any new costs on regulated parties, as they are already obligated to register with the State Board and report the financial activity that is the subject of this regulation.

## 5. Local Government Mandates:

There is no new government mandate imposed.

## 6. Paperwork:

No additional paperwork is required.

## 7. Duplication:

Article 14 of the Election Law does set forth the mandates as found in this regulation. However, the directive of Chapter 399 of the Laws of 2011 is that the regulation will clarify and publicize the requirements, resulting in an increased level of compliance.

## 8. Alternatives:

None applicable.

## 9. Federal Standards:

There are no federal standards pertaining to campaign finance disclosure in NY State elections.

## 10. Compliance Schedule:

There is no new mandate relative to compliance. The disclosure of independent expenditures is subject to the Filing Calendar published annually by the State Board, and this regulation does not change that disclosure schedule.

**Regulatory Flexibility Analysis**

The proposed rule does not have an adverse economic effect or impact on small businesses defined by Section 102(8) of the State Administrative Procedure Act or local governments. While the proposed regulation does deal with reporting compliance requirements relative to campaign finances, the proposed rule does not add additional requirements to those that are already longstanding in place.

There would be no change in the amount of expertise required to

complete the disclosures in question. There would be no change in the length or complexity of the reports. There would be no professional services required to be engaged to comply with the regulatory requirements. There would be no additional capital or costs for filers.

**Rural Area Flexibility Analysis**

This proposal does not have an adverse economic impact on public or private entities in rural areas and does not affect or impact rural areas as defined by Section 102(13) of the State Administrative Procedure Act. Furthermore, while the proposed regulation does deal with reporting compliance requirements relative to campaign finances, the proposed rule does not add additional requirements to those that are already longstanding in place.

**Job Impact Statement**

A job impact statement is not submitted because this proposal has no negative impact on jobs and employment opportunities. This proposal clarifies that all entities making independent expenditures are bound by Article 14 of the Election Law, and sets forth the requirements of these entities to make such disclosures to the fullest extent of existing law.

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## Department of Environmental Conservation

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### EMERGENCY RULE MAKING

**Sanitary Condition of Shellfish Lands**

**I.D. No.** ENV-48-11-00001-E

**Filing No.** 95

**Filing Date:** 2012-02-06

**Effective Date:** 2012-02-06

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 41 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 13-0307 and 13-0319

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** This rule making is necessary to protect the public health. Environmental Conservation Law (ECL) section 13-0307 requires the department to monitor bacteriological water quality in shellfish growing areas within the marine district. Recent bacteriological surveys of certain shellfish growing areas in the Towns of Islip, Brookhaven and Southold indicated that some areas do not meet the bacteriological criteria for certified shellfish lands. Areas that do not meet these criteria must be closed to prevent the harvest and subsequent consumption of shellfish from those areas. A Notice of Emergency Adoption and Proposed Rule Making was submitted to the Department of State on November 9, 2011 and the closure became effective that day. This original emergency rule will expire February 6, 2012, before the Notice of Adoption will be published and in effect. To protect public health this current emergency rule must be adopted to keep these shellfish lands closed to harvest until the regulation can be permanently adopted. Maintaining closures in areas that do not meet the criteria for certified shellfish lands prevents the harvest and consumption of potentially harmful shellfish and, therefore, protects public health.

Molluscan shellfish are filter feeders that consume plankton and other minute organisms and particulate matter found in the water column. They are capable of accumulating pathogenic bacteria, viruses and substances within their bodies. Consequently, shellfish harvested from areas that do not meet the bacteriological standards for certification have an increased potential to cause illness in shellfish consumers. Closures of shellfish lands that do not meet the water quality standards provide essential protection to public health. The promulgation of this regulation on an emergency basis is necessary because the original Notice of Emergency Adoption will expire before the normal rule making process can be completed and therefore would not prevent the harvest and consumption of potentially harmful shellfish.

**Subject:** Sanitary Condition of Shellfish Lands.

**Purpose:** To extend the original emergency adoption classifying certain shellfish lands as uncertified for the harvest of shellfish.