

This is an amendment to 11.21.5 NMAC, Sections 6, 8, 9, 11, 12, 13 & 14, effective 7/1/2020.

Explanatory note: Statute citations were corrected throughout the rule to conform to current legislative styles.

11.21.5.6 OBJECTIVE: The objective of Part 5 Chapter 21 is to identify and process information necessary for a public employer other than the state to file an application with the public employee labor relations board ~~[to obtain approval for establishing and operating]~~ for continued operation of a local labor board conforming with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020). ~~[and post approval reporting requirements]~~
[11.21.5.6 NMAC - N, 3/15/2004, A; 7/1/2020]

11.21.5.8 APPLICATION FOR APPROVAL OF A LOCAL BOARD ORDINANCE, RESOLUTION OR CHARTER:

(A) Any public employer other than the state that ~~[wishes]~~ intends to [create a] maintain a local public employee labor relations board after January 1, 2021 shall file an application for approval with the state board within the time limits specified in Section 10-7E-10 NMSA 1978 (2020).

(B) Any local board approved pursuant to Subsection A above, shall submit the affirmation required by Subsection D of Section 10 of the Act between November 1, and December 31 of each odd numbered year.
[11.21.5.8 NMAC - N, 3/15/2004; A, 7/1/2020]

11.21.5.9 CONTENTS OF APPLICATION:

A. ~~[The application for approval shall include, at a minimum, the following: the name of the local public employer; the name, address and phone number of the local governing body; a complete and fully integrated copy of the proposed resolution, ordinance or charter amendment creating the proposed local board, along with an electronic document or compact disk containing the same information; and the evidence that the proposed resolution, ordinance or charter amendment has either been approved by the local governing body, or submitted for approval pursuant to local procedures.]~~ An application to maintain a local board shall include, at a minimum, the following:

(1) an affirmation by the public employer that it intends to maintain a local public employee labor relations board;

(2) evidence that such board existed and its enabling legislation was approved by the public employee labor relations board prior to July 1, 2020;

(3) written notice from each labor organization representing employees of the public employer wishing to maintain the local board expressing the union's intention to continue to operate under the local board;

(4) the name of the local public employer;

(5) the name, address and phone number of the local governing body;

(6) a complete and fully integrated copy of the resolution, ordinance or charter amendment creating the proposed local board conforming with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020).

B. All ~~[proposed]~~ resolutions, ordinances or charter amendments under Subsection A above shall follow the board approved templates provided at www.state.nm.us/pelrb; provided, however, that the public employer may propose variances to the templates where appropriate, pursuant to 11.21.5.10 NMAC.

C. Upon receipt of an application for approval seeking variance from the board approved templates, the director shall review the application for conformance with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020) and submit a recommendation to the PELRB for approval. If in the director's discretion it is desirable to hold a hearing or confer with the local public employer and any identified interested labor organizations before making a recommendation to the board a status and scheduling conference may be held.

[11.21.5.9 NMAC - N, 3/15/2004; Rn, 11.21.5.13 NMAC & A, 2/28/2005; A, 7/1/2020]

11.21.5.11 [ABATEMENT: The board shall abate, for a period of 45 calendar days, the processing of any matter filed with it subsequent to the application for approval that would come within the cognizance of the local board whose application is pending approval. All limitation periods, whether applicable to representation or

~~prohibited practice matters, shall be tolled during the pendency of any such application]~~ **SUBMISSION OF RULES:**

A. Each local board submitting an application pursuant to Rule 11.21.5.8, above, shall submit a verified copy of the procedural rules enacted by the applying local board necessary to accomplish its functions and duties under the ACT no later than April 30, 2021.

B. Any proposed changes to the procedural rules of a local board must be approved by the PELRB prior to being enacted by the local board.

[11.21.5.11 NMAC – Rp, 11.21.5 NMAC, N, 7/1/2020]

11.21.5.12 REVIEW OF LOCAL BOARD APPLICATIONS BY THE BOARD:

A. Upon receiving an application for approval of a local board ordinance, charter amendment, or resolution the board shall conduct an administrative review of the application and, at a properly noticed public meeting or hearing, shall formally approve or disapprove the application. Public notice of such meetings or hearings shall be provided as required by law.

B. In considering an application for approval of a local board ordinance, charter amendment, or resolution, the board shall review all applications for approval of such ordinance, charter amendment or resolution, in light of the requirements of Section 10 of the Act and 11.21.5 NMAC. The board shall require that the ordinance, resolution or charter amendment creating the local board be amended as necessary in order to meet the requirements of Section 10 of the Act and 11.21.5 NMAC.

C. Upon a finding that the application for the local board ordinance, charter amendment, or resolution meets statutory and regulatory requirements, the board shall approve such application ~~[and remand to the local board once it is duly appointed, any proceedings held in abeyance. The PELRB retains jurisdiction over all matters abated pursuant to 11.21.5.11 NMAC until such time as a local board created pursuant to an approved ordinance, resolution or charter amendment is duly appointed and functioning. If within 60 days following approval of an application under this rule the local board is not duly constituted or, if]~~ If after approval pursuant to this rule [being duly constituted fails to meet regarding any remanded issues or to promulgate rules necessary to accomplish and perform its functions as established in Section 11 of the Act, or if it] a local board fails to act on or respond to a filing by an employee organization or public employer or public employee within a reasonable time, or otherwise acts in a manner inconsistent with [the precedent of the public employee labor relations board, the board's approval shall be automatically revoked in accordance with] Section 10-7E-9 NMSA 1978 (2020) [and 11.21.5.14 NMAC below and this] the board shall exercise its jurisdiction over any matters ~~[that, but for the application, would be are subject to the Act.] then pending before the local board pursuant to Section 2 of the Act, [the PELRB The decisions and findings of the board in any such matter shall be binding on the local board, the public employer, the employee organization or public employee consistent with the provisions of Subsection A of Section 10 of the Act.]~~

D. In the event an application demonstrates that the local board ordinance, charter amendment, or resolution does not meet the standards of Section 10 of the Act and 11.21.5 NMAC, the application shall be rejected and returned to the public employer. Thereupon, the public employer shall have ~~[a period of the balance of the 45 calendar days, or an additional 10 days from receipt of notice of rejection, whichever is later,]~~ time available under Section 10-7E-10 NMSA 1978 (2020) in which to make such changes as are necessary to qualify for approval and resubmit its application. After the expiration of time in which [an application may be resubmitted] a local board may cure defects under the Act, any matters then pending before the board relevant to that public employer shall be processed in accordance with the board's procedures.

[11.21.5.12 NMAC - N, 3/15/2004; Rn, 11.21.5.14 NMAC & A, 2/28/2005; A, 2/11/2020; A, 7/1/2020]

11.21.5.13 POST APPROVAL REPORTING REQUIREMENTS: Following board approval of a local board, the local board or the public employer that created it shall file with the board ~~[and] any~~ amendments to the ordinance, resolution, or charter amendment, creating the local board, or any procedural rules, and timely respond to any inquiries by this board of its staff made pursuant to Section 9 of the Act. Upon a finding by the board that the local board no longer meets the requirements of Section 10 of the Act, the local board shall be so notified and be given a period of 30 days to come into compliance or prior approval shall be revoked.

[11.21.5.13 NMAC - N, 3/15/2004; Rn, 11.21.5.15 NMAC & A, 2/28/2005; A, 7/1/2020]

11.21.5.14 REVOCATION OF APPROVAL OF LOCAL BOARD: Upon the issuance of a final order of the board or judgment by a court of competent jurisdiction, finding that a local board is not in compliance with the Act, all matters theretofore pending before the local board shall be removed to and come under the jurisdiction of the board.

[11.21.5.14 NMAC - N, 3/15/2004; Rn, 11.21.5.16 NMAC & A, 2/28/2005; A, 7/1/2020]