

This is an amendment to 11.21.5 NMAC, Amending the Part Name and Sections 6, 8, 9, 10, 11, 12 & 13, effective 8/9/2022

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 21 LABOR UNIONS/LABOR RELATIONS
PART 5 ~~[APPROVAL OF]~~ LOCAL BOARDS

11.21.5.6 OBJECTIVE: The objective of Part 5 Chapter 21 is to ~~[identify and process information]~~ provide procedures necessary for a public employer other than the state to ~~[file an application with the public employee labor relations board]~~ comply with the provisions of Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020) for continued operation of a local labor board ~~[conforming with Sections 10-7E-9 and 10-7E-10 NMSA 1978 (2020)].~~

[11.21.5.6 NMAC - N, 3/15/2004, A; 7/1/2020; A, 8/9/2022]

11.21.5.8 ~~[APPLICATION FOR APPROVAL OF A LOCAL BOARD ORDINANCE, RESOLUTION OR CHARTER]~~ BIENNIAL AFFIRMATIONS:

~~A.~~ — Any public employer other than the state that intends to 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. Affirmations shall be filed with the board in accordance with NMAC 11.21.1.10 and shall substantially conform with the form created for that purpose and posted on the board's website.

[11.21.5.8 NMAC - N, 3/15/2004; A, 7/1/2020; A, 8/9/2022]

11.21.5.9 ~~[CONTENTS OF APPLICATION:~~

~~A.~~ — 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 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.] **[RESERVED]**

[11.21.5.9 NMAC - N, 3/15/2004; Rn, 11.21.5.13 NMAC & A, 2/28/2005; A, 7/1/2020; Repealed 8/9/2022]

11.21.5.10 CONTENTS OF APPLICATION FOR VARIANCE FROM BOARD APPROVED ~~[TEMPLATES]~~ ORDINANCE, RESOLUTION, OR CHARTER AMENDMENT:

A. In certain instances variances from the board approved ~~[templates]~~ ordinance, resolution or charter amendment may be required by the unique facts and circumstances of the relevant local public employer, to effectuate the purposes of the ~~[act]~~ Act.

B. In such instances, ~~[the]~~ an application for approval shall be submitted to the PELRB ~~[additionally specify]~~ which specifies the particular facts and circumstances requiring such variance, and inform the board of any ~~[incumbent]~~ exclusive ~~[representative under Subsection B of Section 10-7E-24 of the Act NMSA 1978, and 11.21.2.36 NMAC of these rules]~~ representing employees of the local public employer, and any other labor organizations believed by the public employer to be involved in attempting to organize any local public employees.

C. Upon receipt of an application for approval seeking variance from ~~[the]~~ a board approved ordinance, resolution or charter amendment ~~[templates]~~, the director shall hold a status conference with the local public employer or its representative and any identified interested labor organizations, to determine the issues and set a hearing date. Upon setting a ~~[rule-making]~~ hearing, the director shall cause notice of the hearing to be issued in accordance with Subsection B of 11.21.1.16 NMAC of these rules. In the event that the board determines that such variance is warranted, and the resolution, ordinance or charter amendment otherwise conforms to the requirements of the act and these rules, it shall authorize the director to proceed in processing the application pursuant to these rules.

[11.21.5.10 NMAC - N, 3/15/2004; Repealed 2/28/2005; N, 2/28/2005; A, 8/9/2022]

11.21.5.11 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]~~ Act.

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 using the procedure set forth in 11.21.5.9 NMAC for ordinances, resolutions, and charter amendments.

[11.21.5.11 NMAC – Rp, 11.21.5 NMAC, N, 7/1/2020; A, 8/9/2022]

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]~~ pursuant to 11.21.5.9 or 11.21.5.10 of these rules, 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 such 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. If after approval pursuant to this rule 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 Section 10-7E-9 NMSA 1978 (2020) the board shall exercise its jurisdiction over any matters then pending before the local board pursuant to Section 2 of the Act.

D. In the event an application demonstrates that the ~~[local board ordinance, charter amendment, or resolution]~~ proposed change 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 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 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; A, 8/9/2022]

11.21.5.13 ~~[POST-APPROVAL]~~ LOCAL BOARD REPORTING REQUIREMENTS:

A. Following board approval of a local board, the local board or the public employer that created it shall file with the board any amendments to the ordinance, resolution, or charter amendment, creating the local board, or any procedural rules within 30 days of such changes, and timely respond to any inquiries by this board of its staff made pursuant to ~~[Section]~~ Sections 9 and 10 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.]~~

B. Each local board shall inform the board of any changes to the membership of the local board within 30 days of the resignation or appointment of any member of the local board. Such communications shall be in writing and filed with the board in accordance with NMAC 11.21.1.10.

[11.21.5.13 NMAC - N, 3/15/2004; Rn, 11.21.5.15 NMAC & A, 2/28/2005; A, 7/1/2020; A, 8/9/2022]