

**PROPOSED REGULATION OF THE
COMMITTEE ON LOCAL GOVERNMENT FINANCE**

LCB File No. R042-09

November 16, 2009

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-31, NRS 354.107; §§32 and 33, NRS 233B.120.

A REGULATION relating to local governmental financial administration; establishing the practice and procedure for certain proceedings before the Committee on Local Government Finance; and providing other matters properly relating thereto.

Section 1. Chapter 354 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 33, inclusive, of this regulation, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Day” means a calendar day.*

Sec. 4. *“Director” means the Executive Director of the Department.*

Sec. 5. *“Hearing officer” means any person the Committee may designate to hear a matter on behalf of the Committee.*

Sec. 6. *“Intervener” means a person or local government, other than an original party to a proceeding, who has secured an order from the Committee, Director or hearing officer granting leave to intervene in the proceeding.*

Sec. 7. *“Party” means a person or local government entitled or required to appear in a proceeding before the Committee. The term includes an intervener.*

Sec. 8. *“Staff” means the staff of the Department. The term includes the Attorney General and his or her duly appointed deputies when acting as legal advisers to the Committee pursuant to NRS 228.110.*

Sec. 9. *1. The provisions of sections 2 to 33, inclusive, of this regulation:*

(a) Govern the practice and procedure for proceedings before the Committee to carry out the provisions of NRS 354.655 to 354.725, inclusive.

(b) Must be liberally construed to secure the just, speedy and economical determination of all issues presented to the Committee to carry out the provisions of NRS 354.655 to 354.725, inclusive.

2. In special cases, where good cause appears, not contrary to statute, deviation from the provisions of sections 2 to 33, inclusive, of this regulation, if stipulated to by all parties of record, will be permitted.

Sec. 10. *1. The Committee may hold a hearing on any issue presented to the Committee to carry out the provisions of NRS 354.655 to 354.725, inclusive, or assign a hearing officer to hear the matter on behalf of the Committee and propose a decision for its consideration. Except as otherwise provided in subsection 2, the provisions of sections 11 to 31, inclusive, of this regulation apply to all such proceedings.*

2. If the Committee:

(a) Does not assign a hearing officer to hear a matter and propose a decision, the provisions of sections 26 to 29, inclusive, of this regulation do not apply to the proceedings.

(b) Assigns a hearing officer to hear a matter and propose a decision, the provisions of sections 30 and 31 of this regulation do not apply to the proceedings.

Sec. 11. 1. *All pleadings, including, without limitation, any complaints, petitions, answers, briefs, motions, affidavits and applications, must be addressed to the Department and not to individual members of the Committee or staff. All pleadings shall be deemed to be officially received by the Department when a true copy of the paper or document, properly addressed and stamped, is deposited in the United States mail.*

2. Informal communications may be made with individual members of the staff, and these communications and documents shall be deemed to be officially received by the Department when they are properly addressed and stamped and deposited in the United States mail.

3. Informal communications from the Department or Committee must be signed by the responsible staff member or the Chair of the Committee.

4. Each communication must be limited to one subject and contain the name and address of the person originating the communication.

Sec. 12. 1. *If a party desires a transcript of any hearing held by the Committee or a hearing officer, the party must furnish the reporter, pay for the transcript and deliver a copy of the transcript to the Director within 20 days after filing an appeal or petition for reconsideration of the matter.*

2. If a party prepares a transcript from a tape recording provided by the Department and desires to use the transcript in any subsequent hearing or appeal of the matter, the party must deliver a copy of the transcript to the Department within the time required by subsection 1.

Sec. 13. 1. *A person or local government, other than an original party to a proceeding, who is directly and substantially affected by the proceeding and wishes to participate in the proceeding must secure an order from the Committee, Director or hearing officer granting leave to intervene before being allowed to participate. The granting of leave to intervene in any*

proceeding is not a finding or determination of the Committee, Director or hearing officer that the party will or may be a party aggrieved by any ruling or decision of the Committee or the hearing officer for the purposes of any review or appeal.

2. A petition for leave to intervene must:

(a) Be in writing;

(b) Clearly identify the proceeding in which intervention is sought;

(c) Set forth the name and address of the petitioner;

(d) Contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding, stating the manner in which the petitioner will be affected by the proceeding and the matters relied upon by the petitioner as a basis for the request to intervene; and

(e) If the petitioner is seeking affirmative relief, contain a clear and concise statement of the relief sought and the basis for that relief, together with a statement as to the nature and quantity of evidence the petitioner will present if the petition is granted.

3. A petition for leave to intervene must not be considered unless the petitioner:

(a) Files the petition and proof of service of copies of the petition on all other parties of record not less than 15 days before the commencement of the hearing; or

(b) States a substantial reason for the delay.

4. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding or any part thereof and does not unduly broaden the issues, the Committee, Director or hearing officer may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the petition, subject to such reasonable conditions as may be prescribed.

5. If it appears during the course of a proceeding that an intervener has no direct or substantial interest in the proceeding and that the public interest does not require the intervener's participation in the proceeding, the Committee may dismiss the intervener from the proceeding.

Sec. 14. *At any evidentiary hearing, the parties and staff may:*

- 1. Call and examine witnesses.*
- 2. Introduce exhibits relevant to the issues of the proceeding.*
- 3. Cross-examine opposing witnesses on any matter relevant to the issues of the proceeding, even though that matter was not covered in the direct examination.*
- 4. Impeach any witness, regardless of which party first called the witness to testify.*
- 5. Offer rebuttal evidence.*
- 6. Call any person who may be an adverse witness because of his or her relationship to any party, and examine the person as an adverse witness.*

Sec. 15. *1. A party may appear in person or as provided in subsection 2, or may be represented by an attorney, accountant or authorized representative.*

- 2. A party, if other than a natural person, may appear:*
 - (a) If a partnership, by a partner.*
 - (b) If a corporation, by an officer or other authorized representative or regular employee.*
 - (c) If a local government, by an authorized officer, agent or employee.*
 - (d) If an unincorporated association, by an authorized representative, officer or employee.*
- 3. If a party chooses to be represented by an attorney, the attorney must be admitted to practice and in good standing before the highest court of any state of the United States. If the attorney is not admitted to practice and in good standing before the Supreme Court of Nevada,*

an attorney so admitted and in good standing must be associated with the attorney appearing before the Committee or hearing officer.

Sec. 16. 1. *Except as otherwise provided in subsection 5, not less than 10 days before the date set for a hearing, the staff shall serve notice of the place, date and time of the hearing on each party or the authorized agent of a party at the address of the party or authorized agent as it appears in the records of the Department.*

2. The staff shall notify the appropriate representative of a party regarding a hearing which may have a direct effect upon a matter within the representative's scope of authority.

The representative shall:

(a) Attend any hearing specified in this subsection, unless otherwise directed by the Committee; and

(b) Make any presentation prescribed by the Committee, Director or hearing officer.

3. Hearings will be held at the offices of the Department in Carson City, Nevada, or at such other place in the State as may be designated in the notice of hearing.

4. The Committee may conduct a hearing or any part thereof by means of a telephone conference so long as it complies with the applicable provisions of chapter 241 of NRS.

5. In all hearings held by the Committee or hearing officer, the hearing date may be set with less than 10 days' notice if the parties and staff agree in writing.

6. A person appearing in a proceeding shall conform to the recognized standards of ethical and courteous conduct.

Sec. 17. 1. *Upon the motion of the Committee, the hearing officer or a party, the Committee or hearing officer may hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact or documents which will*

avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, establishing any hearing procedure or determining any other matters which may expedite the orderly conduct and disposition of the proceeding or settlement of the proceeding.

2. The action taken at a prehearing conference and the agreements, admissions or stipulations made by the parties concerned must be made a part of the record and must be approved by the parties. When approved, the action will control the course of subsequent proceedings, unless otherwise stipulated to by all the parties of record with the consent of the Committee or hearing officer.

3. In any proceeding, the Committee or hearing officer may, at the discretion of the Committee or hearing officer, call all of the parties together for a conference before the taking of testimony. The Committee or hearing officer shall state on the record the results of the conference.

Sec. 18. *The Committee or hearing officer may, at the discretion of the Committee or hearing officer, either before or during a hearing, grant continuances or recesses.*

Sec. 19. *At the time and place set for a hearing, if a party fails to appear, the Committee or hearing officer may, at the discretion of the Committee or hearing officer, dismiss the proceeding with or without prejudice or may recess the hearing for a period of time to be set by the Committee or hearing officer to enable the party to attend.*

Sec. 20. *Any party required to appear before the Committee pursuant to:*

1. NRS 354.665 to explain the reason that a document has not been filed has the burden of proving that the document was filed as required or providing an explanation satisfactory to the Committee of the reason that the document was not filed as required.

2. NRS 354.671 to explain the reason that a payment has not been made has the burden of proving that the payment was made as required or providing an explanation satisfactory to the Committee of the reason that the payment was not made as required.

Sec. 21. *Evidence may be received in any manner ordered by the Committee or hearing officer, but will ordinarily be received from the parties in the following order:*

- 1. Brief orientation by the staff;*
- 2. Each party;*
- 3. The staff;*
- 4. Interveners; and*
- 5. Rebuttal by each party.*

Sec. 22. *1. In conducting a hearing, the Committee or hearing officer is not bound by technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.*

2. Oral evidence may be taken only upon oath or affirmation administered by the hearing officer, the Director, a Deputy Attorney General or a member of the Committee. Before taking the witness stand, each person must swear or affirm that the testimony the person is about to give will be the truth, the whole truth and nothing but the truth.

3. Hearsay evidence, as that term is used in civil actions, may be admitted for the purpose of supplementing or explaining other evidence, but it is not sufficient to support findings of fact unless it would be admissible over objection in civil actions.

4. The rules of privilege must be applied as they are applied in civil actions.

5. *Irrelevant, cumulative and unduly repetitious evidence is not admissible, nor is incompetent evidence, as that term is used in civil actions, with the exception of hearsay evidence as provided in subsection 3.*

6. *The parties or their counsel may by written stipulation agree that certain specified evidence may be admitted, even though the evidence would otherwise be subject to objection.*

7. *The Committee, the hearing officer or any party to a proceeding may cause the depositions of witnesses to be taken in such a manner as the Committee or hearing officer may prescribe which is consistent with the rules of the court for depositions in civil actions in the district courts.*

8. *The affidavit of any person may be admitted in evidence if all the parties stipulate and consent to its admission.*

Sec. 23. *The Committee or hearing officer may take official notice of the following matters:*

1. *Rules, regulations, official reports, decisions and orders of the Committee and any regulatory agency of the State.*

2. *Matters of common knowledge and technical or scientific facts of established character.*

3. *Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference, if proper and definite reference to the document is made by the party offering it and it is published and generally circulated so that all of the parties of interest at the hearing have an opportunity to examine it and present rebuttal evidence.*

4. *Matters which may be judicially noticed by the courts of the State.*

Sec. 24. 1. *In any proceeding, the Committee, Director or hearing officer may order briefs filed within such time as the Committee, Director or hearing officer allows.*

2. *Briefs must be filed with the Director or hearing officer and be accompanied by an acknowledgment of or an affidavit showing service on all other parties of record.*

Sec. 25. *The Committee may order any information it deems necessary to determine the matters before it.*

Sec. 26. 1. *Not later than 60 days after the close of a hearing conducted by a hearing officer, the hearing officer shall file with the Committee a proposed decision that sets forth the findings and conclusions of the hearing officer and the reasons and bases for those findings and conclusions. The proposed decision must be served on each party.*

2. *The findings and conclusions of a hearing officer are not required to be included in a stipulated agreement.*

Sec. 27. 1. *Except as otherwise provided in this subsection, a party may file with the Committee a written objection to the proposed decision of a hearing officer not later than 20 days after receipt of the proposed decision. The written objection must state with particularity the issues presented, the points of law or fact on which the party relies and the relief requested by the party. The Committee may, upon good cause shown, allow a party to file a written objection with the Committee more than 20 days after receipt of a proposed decision.*

2. *A party who files a written objection shall serve a copy of the written objection on all parties.*

3. *Except as otherwise provided in this subsection, a party may reply to a written objection not later than 15 days after receipt of the written objection. A party replying to a written*

objection must serve the reply on all parties. The Director may, upon good cause shown, grant an extension of time for a party to file a reply to a written objection.

4. If no party files a written objection pursuant to subsection 1, the Committee will place the proposed decision on the agenda for its next scheduled meeting for action by the Committee.

5. If a party files a written objection pursuant to subsection 1 within 20 days after receipt of the proposed decision or if the Committee chooses to take any action concerning the review of the proposed decision, other than to remand the proposed decision to the hearing officer for clarification of the decision, the Committee will hold a hearing on the proposed decision. The Committee will provide notice of the hearing to the parties not later than 15 days before the hearing, unless the parties waive the notice in writing or on the record before the Committee.

Sec. 28. The hearing held before the Committee pursuant to section 27 of this regulation must be based on the record made before the hearing officer. If the Committee determines the record is inadequate, the Committee may remand the matter to the hearing officer for further proceedings or open the record and hear new evidence.

Sec. 29. 1. After the close of oral argument, the Committee will:

(a) Make a final decision that adopts, reverses or modifies, in whole or in part, the proposed decision of the hearing officer; or

(b) Remand the matter to the hearing officer for further proceedings.

2. The Director shall issue the written decision on behalf of the Committee not later than 60 days after the final decision is made or the matter is remanded pursuant to subsection 1.

Sec. 30. 1. The staff shall, pursuant to the direction and with the approval of the Committee, prepare the Committee's final decision on the issues presented in a hearing

conducted by the Committee. The draft of each decision must be approved by the Chair of the Committee before being issued.

2. The Committee's final decision will be written and will include separate findings and conclusions based upon substantial evidence or matters officially noticed. After the hearing is completed, the Committee may request a party to prepare proposed findings and conclusions.

3. The staff shall serve a copy of the Committee's final decision on each party of record.

Sec. 31. *1. A party who believes that a decision of the Committee, or any portion thereof, is:*

(a) Unlawful;

(b) Unreasonable; or

(c) Based on findings or conclusions that are erroneous,

↪ may file a petition for reconsideration. The petition must be filed with the Committee and served on all parties within 15 days after the date of service of the decision.

2. A petition for reconsideration must:

(a) Identify with precision each portion of the decision that the party alleges is unlawful, unreasonable or erroneous.

(b) Cite with specificity those portions of the record, the statutes or the regulations that support the allegations in the petition. The petition must not include additional evidence or request the submission or taking of new evidence.

3. A party may submit an answer in opposition to a petition for reconsideration. The answer must be filed with the Committee and served on all other parties within 5 days after the date of service of the petition for reconsideration. The answer must be limited to the issues raised in the petition for reconsideration.

4. *The Committee may grant or deny, in whole or in part, a timely filed petition for reconsideration within 60 days after the date of service of the final decision. If the Committee takes no action within that period, the petition shall be deemed to be denied.*

5. *Unless otherwise provided by the Committee, the filing of a petition for reconsideration or the granting of such a petition by the Committee does not excuse compliance with or suspend the effectiveness of the challenged decision.*

6. *If the Committee grants a petition for reconsideration, it will reexamine the decision and the record with regard to the issues on which it granted reconsideration. After this reexamination, the Committee will issue a modified final decision or reaffirm its original decision.*

7. *A modified final decision incorporates all portions of the original decision not modified. A modified final decision, or the original decision if reaffirmed, is the final decision of the Committee.*

Sec. 32. 1. *Any person may petition for an advisory opinion concerning matters within the jurisdiction of the Committee.*

2. *All petitions must be in writing, be addressed to the Director and set forth at least the following:*

(a) *A statement that an advisory opinion is requested;*

(b) *A succinct statement of all the facts and circumstances necessary to dispose of the petition;*

(c) *A clear, simple statement of the issue or question to be resolved;*

(d) *A statement of all statutes, rules, agency decisions or other authorities which the petitioner believes may be relevant in disposing of the petition; and*

(e) A statement with supporting arguments and authorities of the petitioner's opinion of a proper disposition of the petition.

Sec. 33. 1. Advisory opinions must:

(a) Be written;

(b) Include a statement of facts, question, analysis and opinion;

(c) Be issued by the Director within 45 days after the filing of the petition unless the Director in writing orders an extension of time up to a maximum of 60 days after filing; and

(d) Be delivered to the petitioner in person or by certified mail.

2. Advisory opinions issued by the Director are appealable to the Committee. An appeal of an advisory opinion issued by the Director must be filed not later than 20 days after receipt of the advisory opinion and state with particularity the issues presented, the points of law or fact on which the party relies and the relief requested.

3. If a person files an appeal of an advisory opinion pursuant to subsection 2, the Committee will hold a hearing on the advisory opinion. The Committee will provide notice of the hearing to the person who filed the appeal not later than 15 days before the hearing.

4. After the close of a hearing held pursuant to subsection 3, the Committee will issue an order that adopts, reverses or modifies, in whole or in part, the advisory opinion issued by the Director. The Director shall issue the written order and an advisory opinion that reflects the order not later than 60 days after the order is made.