

**PROPOSED REGULATION OF
THE OFFICE OF ECONOMIC DEVELOPMENT**

LCB File No. R113-16

January 3, 2017

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

AUTHORITY: §1, 2, 4, 6-14 and 17, NRS 231.152; §§3, 5, 15 and 16, NRS 231.0545 and 231.152; §18, NRS 231.139 and 231.152.

A REGULATION relating to economic development; establishing requirements for certain allocations, grants or loans of money or other incentives for economic development provided by the Office of Economic Development; adopting provisions governing certain nonprofit entities formed by the Executive Director of the Office to promote economic development in this State; establishing certain application requirements for authorized providers applying to the Office for approval of programs of workforce recruitment, assessment and training; requiring certain authorized providers of programs of workforce recruitment, assessment and training to submit periodic reports to the Executive Director; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Executive Director of the Office of Economic Development to cause the formation of a nonprofit corporation for certain economic development purposes upon approval by the Board of Economic Development, and requires the Office to adopt regulations that establish the means by which the Office will verify and ensure that such a nonprofit corporation will further the public interest in economic development. (NRS 231.0545) **Section 5** of this regulation requires the nonprofit corporation formed by the Executive Director to submit an annual report to the Office detailing the corporation’s activities for the immediately preceding year, including, without limitation, the corporation’s: (1) compliance with provisions relating to the confidentiality of records; (2) due diligence in making any loans or investments; (3) annual audit of its financial records; and (4) verification that the nonprofit corporation avoided any conflicts of interest.

Section 6 of this regulation establishes general requirements for an agreement entered into between the Office or Executive Director, as applicable, and an entity seeking an allocation, grant or loan of money or another economic development incentive from the Office. **Section 7** of this regulation imposes general limitations and prerequisites on the disbursement by the Office or Executive Director of any money from an allocation, grant or loan of money or other economic development incentive to an approved entity.

Existing law authorizes a person who wishes to provide a program of workforce recruitment, assessment and training to apply to the Office for approval of the program, and provides that any program of workforce recruitment, assessment and training approved by the Office must: (1) include a workforce diversity action plan approved by the Office; and (2) to the extent practicable, be provided on a statewide basis to support the industrial and economic development of all geographic areas of this State. Existing law further provides that a person approved to provide such a program may apply to the Office for an allocation, grant or loan of money to pay all or part of the cost of the program. Under existing law, a person who operates or will operate a business in this State may apply to the Office to participate in such a program. (NRS 231.1467) **Sections 8-14** of this regulation adopt regulations to govern the approval of programs of workforce recruitment, assessment and training, and the award of allocations, grants or loans of money for such programs. **Section 8** sets forth application requirements for a person wishing to apply to the Office for approval of a program of workforce assessment, recruitment and training. **Section 9** establishes a procedure by which a person who operates or will operate a business in this State may submit a preapplication for participation in a program of workforce recruitment, assessment and training. **Section 10** sets forth the procedure for the review and approval of applications for allocations, grants and loans of money to pay all or part of the cost of a program of workforce recruitment, assessment and training. **Section 11** requires any equipment by an authorized provider of a program of workforce recruitment, assessment and training to be purchased from the Nevada System of Higher Education. **Section 12** requires an entity that receives an allocation, grant or loan of money from the Office to submit a quarterly report to the Executive Director on the progress and success of the program. **Section 13** prohibits exclusion from participation in a program of workforce recruitment, assessment and training to be based on nonmembership in a labor organization. **Section 14** authorizes the Office to cease disbursement of any allocation, grant or loan of money to an entity if the Executive Director determines that the entity is noncompliant with the agreement entered into between the Office and the entity.

Under existing law, if a business with a new industrial load has been certified by the Office, the Public Utilities Commission of Nevada may authorize a public utility that furnishes electricity for the business to purchase or transmit a portion of the electricity provided to the business to reduce the overall cost of the electricity to the business. (NRS 704.223) Existing law requires the Office to certify a business if the business meets certain criteria, including, without limitation, a requirement that the business be engaged in the primary trade of preparing, fabricating, manufacturing or otherwise processing raw material or an intermediate product through a process in which at least 50 percent of the material or product is recycled on-site. (NRS 231.139) **Section 18** of this regulation revises the definition of “raw material” in existing regulations to provide that “raw material” may include material before it is manufactured into an intermediate product.

Section 1. Chapter 231 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *“Authorized provider” has the meaning ascribed to it in NRS 231.1415.*

Sec. 3. *“Client” means a person, company or representative of a company with whom the Office is in contact concerning the potential to create a business in, relocate a business to or expand its workforce in Nevada.*

Sec. 4. *“State Plan for Economic Development” means the State Plan for Economic Development developed by the Executive Director pursuant to subsection 2 of NRS 231.053.*

Sec. 5. 1. *On or before October 31 of each year, each nonprofit corporation formed by the Executive Director pursuant to NRS 231.0545 must submit to the Office a report of the activities of the nonprofit corporation during its immediately preceding fiscal year. The report must include:*

(a) A summary of the policies and procedures of the nonprofit corporation for keeping confidential any record or other document of a client that is in the possession of the nonprofit corporation and required to be kept confidential pursuant to subsection 10 of NRS 231.0545;

(b) A summary of the policies and procedures of the nonprofit corporation for the performance of due diligence before making a loan guarantee or an investment or loan of money to a business;

(c) A summary of an annual audit of the financial records of the nonprofit corporation;

(d) A summary of the policies and procedures of the nonprofit corporation for the avoidance of conflicts of interest;

(e) Evidence satisfactory to the Office that each member of the board of directors of the nonprofit corporation, each member of any advisory committee to the board of directors, each member of the staff of the nonprofit corporation and any consultants of the nonprofit corporation do not have a personal financial interest in any:

(1) External asset manager or venture capital or private equity investment firm contracting with the nonprofit corporation; or

(2) Business to which the nonprofit corporation makes a loan guarantee or an investment or loan of money; and

(f) A review of the progress reports provided by any business to which the nonprofit corporation makes a loan guarantee or an investment or loan of money.

2. The Executive Director shall evaluate the information in the report submitted by the nonprofit corporation pursuant to subsection 1 and may create an assessment of the overall performance of the nonprofit corporation. The assessment may include, without limitation:

(a) An evaluation of the return on investment from any loan guarantee or investment or loan of money made by the nonprofit corporation;

(b) The number of jobs created or retained as a result of loan guarantees or investments or loans of money made by the nonprofit corporation;

(c) A projection of the increase in tax revenue as a result of the creation, retention or expansion of businesses because of loan guarantees or investments or loans of money made by the nonprofit corporation;

(d) The number of businesses created, retained or expanded because of loan guarantees or investments or loans of money made by the nonprofit corporation; and

(e) Any other information relevant to the economic development of this State as determined by the Executive Director.

3. Based on his or her evaluation of the information in the report submitted by the nonprofit corporation pursuant to subsection 1, the Executive Director must, on or before

December 1 of each year, verify whether the nonprofit corporation formed pursuant to NRS 231.0545 furthers the public interest in economic development.

4. Information in a report submitted pursuant to subsection 1 may be deemed confidential pursuant to NRS 231.069.

5. Except as otherwise provided in subsection 4, the Office will post on its Internet website any report or assessment received or created pursuant to this section.

Sec. 6. Unless a specific statute or regulation applies to a particular allocation, grant or loan of money or other incentive for economic development, if the Office or Executive Director approves an application for an allocation, grant or loan of money or other incentive for economic development, the recipient must enter into an agreement with the Office and the agreement must include, without limitation:

1. The amount of the allocation, grant or loan of money or other incentive for economic development;

2. The proposed use of the allocation, grant or loan of money or other incentive for economic development;

3. The date on which the Office or Executive Director approved the allocation, grant or loan of money or other incentive for economic development;

4. The objective benchmarks of performance by which the Office or Executive Director and the recipient of the allocation, grant or loan of money or other incentive for economic development will measure the progress and completion of the project for which the allocation, grant or loan of money or other incentive for economic development is provided;

5. *A requirement that the recipient of the allocation, grant or loan of money or other incentive for economic development report to the Office periodically, and that the report include a statement of:*

(a) The progress that the recipient has made toward the completion of the benchmarks of performance established pursuant to subsection 4;

(b) The expected dates by which the recipient will complete the benchmarks of performance established pursuant to subsection 4; and

(c) Any other information deemed necessary by the Executive Director;

6. *The right of the Office or Executive Director, or his or her designee, to review any document which the Office or Executive Director determines is necessary for the appropriate fiscal oversight of the project for which the allocation, grant or loan of money or other incentive for economic development is provided;*

7. *The date on or the circumstances under which the allocation, grant or loan of money or other incentive for economic development will end; and*

8. *Any additional terms, requirements or information deemed necessary by the Office or Executive Director.*

Sec. 7. 1. *Unless a specific statute or regulation applies to a particular allocation, grant or loan of money or other incentive for economic development, the Office or the Executive Director, as applicable, may not disburse any money from an allocation, grant or loan of money or other incentive for economic development until:*

(a) The recipient of the allocation, grant or loan of money or other incentive for economic development and the Executive Director sign the agreement required by section 6 of this regulation;

(b) The recipient submits a request to draw money from the allocation, grant or loan of money or other incentive for economic development; and

(c) The Executive Director or his or her designee approves the request.

2. The recipient of an allocation, grant or loan of money or other incentive for economic development must make a request to draw money from the allocation, grant, loan or other incentive for economic development on a form prescribed by the Executive Director. The request must include:

(a) The amount of money the recipient wants to draw from the allocation, grant, loan or other incentive for economic development;

(b) The dates on which the recipient wants to draw money from the allocation, grant, loan or other incentive for economic development;

(c) A statement identifying the progress towards completion of the agreement using the objective benchmarks established pursuant to subsection 4 of section 6 of this regulation where appropriate; and

(d) Any other information deemed necessary by the Executive Director.

3. The Executive Director must review and either approve, modify or deny a request to draw money from the allocation, grant or loan of money or other incentive for economic development within 15 working days after the date on which the Executive Director receives the request.

4. If the Executive Director approves a request to draw money from the allocation, grant or loan of money or other incentive for economic development, the Executive Director must cause payment to be issued to the recipient of the allocation, grant, loan or other incentive for

economic development in the amount requested by the recipient or in the modified amount approved by the Executive Director.

5. If the Executive Director denies or modifies a request to draw money from the allocation, grant or loan of money or other incentive for economic development, the Executive Director must provide the recipient who made the request with a written statement:

(a) Stating the reason for the denial or modification of the request; and

(b) Describing any actions the recipient must take to receive full approval of the request from the Executive Director.

Sec. 8. 1. A person who wishes to provide a program of workforce recruitment, assessment and training may apply to the Office for approval of the program pursuant to NRS 231.1467. In addition to the information required to be included in the application pursuant to NRS 231.1467, the application must include:

(a) The electronic mail address of the applicant;

(b) The primary economic sector that will be served by the program for which the applicant is seeking approval;

(c) A statement demonstrating the past performance of the applicant in providing workforce development programs, including, without limitation:

(1) The number and type of credentials and certifications issued by workforce development programs provided by the applicant; and

(2) The number of businesses successfully served by workforce development programs provided by the applicant;

(d) A proposed plan for the provision of the program for which the applicant is seeking approval on a statewide basis;

(e) A list of existing equipment or facilities that will be used by the program for which the applicant is seeking approval;

(f) The industries that will be developed by the program for which the applicant is seeking approval;

(g) A proposed payment schedule for the program for which the applicant is seeking approval;

(h) A projection of the number of primary jobs that will be served by the program for which the applicant is seeking approval and the wages for those jobs;

(i) A projection of the amount of capital investment in this State that is associated with primary jobs served by the program for which the applicant is seeking approval;

(j) For each business to be served by the program for which the applicant is seeking approval, a statement of the amount of materials used to create the products of that business that are produced or bought in this State;

(k) Evidence satisfactory to the Office that the program is consistent with the unified state plan submitted by the Governor to the Secretary of Labor pursuant to 29 U.S.C. § 3112; and

(l) Any other information requested by the Executive Director.

2. Upon approval of an application submitted pursuant to subsection 1, the Office will add the name and contact information of the authorized provider to the list of authorized providers maintained on the Internet website of the Office.

3. The Executive Director may require any approved authorized provider to update the information included in an application submitted pursuant to subsection 1 if the authorized provider changes the program as originally approved. Within 60 days after receipt of such updated information, the Executive Director shall review the updated information and make a

determination to maintain the approval of the program of workforce recruitment, assessment and training.

Sec. 9. 1. A person who operates or will operate a business in this State may apply to the Office to participate in a program of workforce recruitment, assessment and training provided pursuant to NRS 231.1467. To apply to participate in such a program, the person must submit a preapplication to the Office on a form prescribed by the Executive Director. A preapplication must include:

(a) A description of the program, including, without limitation, the skills proposed to be taught through the program;

(b) A projection of the number of primary jobs to be created by the business of the applicant and the wages and benefits for those primary jobs;

(c) A projection of the amount of the capital investment that will be made in this State by the business of the applicant;

(d) A statement explaining the relevance and impact of the business of the applicant on the economic sectors that are targeted by the State Plan for Economic Development;

(e) A statement of the amount of materials used to create the products of the applicant's business that are produced or bought in this State;

(f) Evidence satisfactory to the Office that the program is consistent with the unified state plan submitted by the Governor to the Secretary of Labor pursuant to 29 U.S.C. § 3112;

(g) A plan to develop and implement a workforce diversity action plan; and

(h) Any other information deemed necessary by the Executive Director.

2. Within 45 days after receiving a completed preapplication pursuant to subsection 1, the Executive Director shall review the preapplication and shall approve, modify or deny the

preapplication. The Executive Director may approve the applicant if he or she determines that the applicant's participation in the program of workforce recruitment, assessment and training will promote the economic development of this State and aid the implementation of the State Plan for Economic Development. In making such a determination, the Executive Director shall consider:

(a) The projected number of primary jobs to be created by the business of the applicant and the wages for those primary jobs;

(b) The projected amount of capital investment that will be made in this State by the business of the applicant; and

(c) Any additional criteria deemed necessary by the Executive Director.

Sec. 10. 1. *If, pursuant to subsection 5 of NRS 231.1467, an authorized provider that provides a program of workforce recruitment, assessment and training approved by the Office pursuant to NRS 231.1467 or the governing body of a local government within the jurisdiction of which the authorized provider will provide the program is requesting an allocation, grant or loan of money in an amount of \$100,000 or less, within 45 days after receipt of the application submitted by the authorized provider or governing body, as applicable, the Executive Director must:*

(a) Review the application in consultation with the Nevada System of Higher Education, the Department of Employment, Training and Rehabilitation, the Department of Education and any other person or governmental entity which the Executive Director determines is appropriate to consult; and

(b) Approve, modify or deny the application.

2. If, pursuant to subsection 5 of NRS 231.1467, an authorized provider that provides a program of workforce recruitment, assessment and training approved by the Office pursuant to NRS 231.1467 or the governing body of a local government within the jurisdiction of which the authorized provider will provide the program is requesting an allocation, grant or loan of money in an amount greater than \$100,000, within 45 days after receipt of the application submitted by the authorized provider or governing body, as applicable, the Executive Director must:

(a) Review the application in consultation with the Nevada System of Higher Education, the Department of Employment, Training and Rehabilitation, the Department of Education and any other person or governmental entity which the Executive Director determines is appropriate to consult; and

(b) Make a recommendation to the Board for the approval, modification or denial of the application at the next meeting of the Board.

3. In addition to the considerations required by subsection 6 of NRS 231.1467, the Executive Director or Board, as applicable, shall consider the availability of money when considering whether to approve an application for an allocation, grant or loan of money pursuant to subsection 5 of NRS 231.1467.

4. If the Executive Director or the Board, as applicable, have approved multiple applications for an allocation, grant or loan of money pursuant to subsection 6 of NRS 231.1467 but sufficient money is not available to distribute each allocation, grant or loan of money, the Board must determine the priority for distributing the allocations, grants or loans of money and the Office will notify each authorized provider or governing body whose distribution of an allocation, grant or loan is deferred. When sufficient money is available to

distribute the allocation, grant or loan of money, the Board, in its discretion, may distribute each allocation, grant or loan of money in the order of priority determined by the Board.

Sec. 11. 1. *Any recipient of an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation must not use the allocation, grant or loan of money to supplant money received from another federal, state or other public or private entity that would otherwise be used in the absence of the allocation, grant or loan of money.*

2. Any equipment purchased by the recipient of an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation must be purchased from the Nevada System of Higher Education. If the authorized provider is a private for-profit or nonprofit entity, at the conclusion of the program provided by the authorized provider, the authorized provider must return any equipment to the Nevada System of Higher Education if the System requests the return of the equipment and agrees to provide assistance in returning the equipment to the System.

3. Any private for-profit or nonprofit entity that is an authorized provider and that purchases equipment from the Nevada System of Higher Education with an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation must agree to accept all liability and hold harmless this State and the Nevada System of Higher Education for any claim resulting from the installation, maintenance or operation of any such equipment.

Sec. 12. 1. *An authorized provider that receives an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation must submit a quarterly report to the Executive Director on the progress of the program of*

workforce recruitment, assessment and training, the cost of which was paid in whole or in part with the allocation, grant or loan of money. The report must include, without limitation:

(a) The number of persons who:

(1) Applied to participate in the program;

(2) Were accepted into the program; and

(3) Successfully completed the program;

(b) The type and number of credentials or certifications issued through the program;

(c) The average number of hours of training received by each person participating in the program;

(d) The number of persons currently enrolled in the program;

(e) The number of persons who successfully completed the program and are employed by a business participating in the program;

(f) The average wage of the employees who successfully completed the program;

(g) The number of persons who successfully completed the program who are employed or participating in another job training or apprenticeship program not identified in the initial program application;

(h) An evaluation of the efficacy of the program's workforce diversity action plan; and

(i) Any other information deemed necessary by the Executive Director.

2. In addition to the quarterly report required pursuant to subsection 1, not later than December 15 of each year, an authorized provider must also submit an annual report to the Office that summarizes the information provided in the four previous quarterly reports submitted to the Office pursuant to subsection 1.

3. *The Office and the Department of Employment, Training and Rehabilitation may provide assistance and information for the long-term employment of persons who successfully completed a program of workforce recruitment, assessment and training, the cost of which was paid in whole or in part with an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation.*

Sec. 13. *A person must not be denied the opportunity to participate in a program of workforce recruitment, assessment and training approved by the Office pursuant to NRS 231.1467 because of nonmembership in a labor organization, nor shall an authorized provider enter into any agreement, written or oral, which excludes any person from participating in such a program because of nonmembership in a labor organization.*

Sec. 14. 1. *If the Executive Director has reason to believe that a recipient is not using an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation in accordance with the agreement entered into by the recipient and the Office pursuant to section 6 of this regulation, the Office may refuse to make a disbursement from the allocation, grant or loan to the recipient.*

2. *If, pursuant to subsection 1, the Executive Director refuses to make a disbursement from an allocation, grant or loan of money, the Executive Director must provide written notice of the refusal to the recipient of the allocation, grant or loan. The notice must set forth the reasons that the Executive Director found the recipient not to be in compliance with the agreement entered into by the recipient and the Office pursuant to section 6 of this regulation.*

3. *After receiving a written notice pursuant to subsection 2, the recipient must:*

(a) Within 30 days after receipt of the notice, cure all areas of noncompliance and notify the Executive Director that it has cured such noncompliance; or

(b) Provide information to the Executive Director detailing the recipient's compliance with the agreement entered into by the recipient and the Office.

4. Upon receiving the information required by subsection 3, the Executive Director must make a determination as to whether the recipient is in compliance with the agreement entered into by the recipient and the Office pursuant to section 6 of this regulation and notify the recipient of his or her determination.

5. If the Executive Director determines that the recipient is not using an allocation, grant or loan of money approved pursuant to subsection 6 of NRS 231.1467 and section 10 of this regulation in accordance with the agreement entered into by the recipient and the Office pursuant to section 6 of this regulation, the Executive Director may require the recipient to refund to the Office all or part of the allocation, grant or loan of money. The Executive Director may require that the allocation, grant or loan of money be refunded with interest thereon at the rate set forth in NRS 99.040.

Sec. 15. NAC 231.001 is hereby amended to read as follows:

231.001 As used in NAC 231.001 to 231.240, inclusive, *and sections 2 to 14, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 231.011, 231.015 and 231.021 *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 16. NAC 231.011 is hereby amended to read as follows:

231.011 "Economic development" means the ~~process of furthering the development of regional economies in the State of Nevada through the use, singularly or in combination, of the methods that practitioners of economic development generally accept.~~ *business activities and governmental policies that improve the economic status of this State or a region of this State.*

These ~~{methods}~~ *activities and policies* include, without limitation, the diversification of the economy ~~{}~~ *of this State*, the development and support of entrepreneurs, the development and support of business leaders, *the development and support of global trade and investment and* the education and training of the workforce ~~{and the establishment of programs for the development of a community.}~~ *in this State.*

Sec. 17. NAC 231.053 is hereby amended to read as follows:

231.053 ~~{For the purposes of NRS 231.139, a}~~ *The Executive Director, the Office or the Board, as applicable, will determine that a* business is ~~{“consistent}~~ *consistent* with the State Plan for Economic ~~{Development”}~~ *Development* if:

1. The business ~~{being considered for the benefits provided pursuant to NRS 704.223}~~ is ~~{the type}~~ *part* of ~~{business}~~ *an industry* that is consistent with the ~~{current goals of the Office concerning industrial development and diversification, as evidenced by the Office’s certification of the business.}~~ *State Plan for Economic Development;*

2. The average hourly wage paid by the business to its employees in this State ~~{is at least equal to the average statewide industrial hourly wage as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year.}~~ :

(a) Meets the standards set forth in NRS 360.750 or the statute or regulation governing the particular allocation, grant or loan of money or other incentive for economic development for which the business is applying; or

(b) Is determined by the Board to promote the economic development of this State and aid the implementation of the State Plan for Economic Development.

3. The business provides a health insurance plan for all employees that includes, without limitation, an option for health insurance coverage for dependents of employees;

4. The business is registered pursuant to the laws of this State or the applicant commits to obtain a valid business license and any other permit required by the state, county, city or town in which the business operates ~~{;}~~ *or will operate;*

5. ~~The business has:~~

~~—(a) Obtained a statement from the governing body of the affected county, school district and city, if applicable, that is signed and dated, indicating that the county, school district or city acknowledges the possibility of the business obtaining the benefits provided pursuant to NRS 704.223 if the Office certifies the business; and~~

~~—(b) Provided a copy of the statement described in paragraph (a) to the Office;~~

~~—6.}~~ If the business is applying for an abatement pursuant to paragraph (a) of subsection 1 of NRS 701A.210, the business agrees to provide the Office, at its request, with proof that the business is in compliance with the provisions of that paragraph; and

~~{7. The}~~

6. If the business is being considered for the benefits provided pursuant to NRS 704.223, the business has executed an agreement with the Office that grants the Office the right to review any document which the Office determines is necessary to verify the eligibility of the business for the benefits provided pursuant to ~~{NRS 704.223.}~~ *that section.*

Sec. 18. NAC 231.055 is hereby amended to read as follows:

231.055 As used in NRS 231.139:

1. “Intermediate product” means any product that has been processed from its initial raw material stage, but has not yet been made into its final form;

2. “Raw material” means material before it is manufactured into a final form ~~or~~ *or* *intermediate product;* and
3. “Recycle on-site” means to take a raw material or an intermediate product and physically transform that material or product into its final form on the manufacturing site.