

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
INFORMATIONAL STATEMENT AS REQUIRED BY NRS 233B.066**

LCB File No. R002-16P

The following statement is submitted by the State of Nevada, Department of Business and Industry, Division of Financial Institutions (“Division”) for adopted amendments to Nevada Administrative Code (“NAC”) Chapter 628B.

1. A clear and concise explanation of the need for the adopted regulation.

Proposed regulation R002-16P is needed to establish provisions relating to the licensing of persons engaging in the business of a Private Professional Guardian (PPG); establishing certain fees; and providing other matters properly relating thereto.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) A description of how public comment was solicited:

Public comment was solicited by e-mailing the proposed regulation, request for small business impact statement (See Exhibit A), notice of workshop, notice of intent to act upon the regulation and adoption hearing to all persons on the Nevada Financial Institutions Division (NFID) mailing list requesting notification of the proposed regulations. The documents were also made available on the website of the Division, <http://fid.nv.gov>, mailed to the main library for each county in Nevada, and posted at the following locations:

Department of Business & Industry
Las Vegas Director’s Office
555 E. Washington Avenue
Suite 4900
Las Vegas, NV 89101

Department of Business & Industry
Carson City Director’s Office
1830 College Parkway,
Suite 100
Carson City, NV 89706

Office of the Commissioner
2785 E. Desert Inn Rd.
Suite 180
Las Vegas, Nevada 89121

Northern Nevada Examination Office
1755 East Plumb Lane
Suite 243
Reno, Nevada 89502

The Division distributed drafts of the regulation with each proposed change from the initial announcement of the regulation in November 2015, until the adoption hearing scheduled to be held on April 8, 2016. Public comment was solicited at workshops held on December 18, 2015 and April 1, 2016, and also at the Public Hearing for Comment/Adoption of the Regulation Hearing held on April 8, 2016. The first public meeting (first workshop) took place at the Grant Sawyer Office Building in Las Vegas, Nevada and by video conference at the Gaming Control Board Offices in Carson City, Nevada. The second public meeting (second workshop) took place at the Grant Sawyer Office Building in Las Vegas, Nevada and Legislative Building in Carson City, Nevada. The third public meeting (Public Hearing and the Adoption Meeting) took place at the Grant Sawyer Office Building in Las Vegas, Nevada and Legislative Building in Carson City, Nevada.

(b) A summary of the public response:

The Division received 15 specific/individual written comments and a total of 12 persons testified at the workshops/public hearing regarding NAC 628B (LCB File No. R002-16P). The comments and testimony addressed the following primary issues:

1. Question from several PPGs asking if the business is a sole proprietor and the entity is the same as the individual do you need to have two licenses, one license for individual PPG and one license for the entity.
2. The PPG industry had issues with the definition of being licensed independently because individual PPGs work for an entity and the entity is appointed by the courts, and not the specified individual guardian. The PPG Industry stated that the NFID presumption that individual PPGs are appointed by the courts is incorrect. The individual PPGs are representatives or principals of that company (entity) and are not appointed as the specific guardian by the courts. NFID stated it would be beneficial in helping to get this clarified because that is one of the things that was investigated very closely and NFID did not want to get into talking about specifics contained in NRS 159, because it is not in his Division's purview.
3. The PPG Industry questioned NFID on where/how the amounts for the licensing fees were determined and why were the amounts set as they are. NFID replied that the fees were set to be the actual cost of the Division and that the Division is only funded by these fees. NFID mentioned that the statute allows for higher fee amounts, but NFID decided the proposed amounts will be lower than what is allowed. In addition, there are costs to the Division that it will not be charging. Such as background checks, no charge for when examiners are going and returning from an exam, and in closing NFID asked the PPG Industry what they believe would be reasonable. NFID stated that if there are any suggestions to submit them in writing. The purpose of licensure is to give legitimacy to the profession, that those who are legitimate are operating properly, and those that are not operating properly to allow supervision of them and put them in compliance or enforcement. NFID discussed the overall cost of this, that there are number of things which are taking place. Such as pursuing unlicensed activities and that there is no recuperating this cost other than the initial licensing fee. In addition, one of the other items that will be provided is the complaint process, which will be more efficient and may lower the cost for licensees. NFID in closing asked the PPG Industry to submit what is believed to be reasonable and that NFID would do its best to get as close as possible to cover the costs and to provide the level of support that is expected for licensure process.
4. One PPG entity/sole proprietor stated that it is a home based business and that the proposed regulation barring home based business will also affect others from trying to start-up this type of business and the company objected to this. NFID stated the reason for this regulation is for professionalism and security regarding examiners having to go to a personal resident to conduct an examination. NFID feels that this is not professional and can produce a security concern for the examiners.

5. The PPG Industry had a question regarding the trust account that is required for each ward. The PPG Industry gave an example with wards that cannot obtain an account due to not having a social security number. NFID stated the intent for a separate trust account is for the accounting of all the debits and credits going into the wards account and also to identify what goes in and what went out during the examination process. NFID then stated that it is not familiar with anyone unable to establish a trust account for any individual. During the examination process, it will be sorted out if the trust accounts that are established meet the requirements of the statute. The PPG Industry stated if it is possible to have exemptions so PPGs would not be in violation of the statute. NFID stated that it is not possible and NFID cannot make a regulation that is counter to the plain language of the statute.

6. The PPG Industry wanted clarification on “Confidentiality of Records” and does this apply to the ward’s account or if it is the business records of the entity. NFID stated it is all of it. NFID is very conscious of the confidentiality of client records and also of the licensee, so they are able to maintain confidentiality without a subpoena. The PPG Industry stated that they want to make sure there are no conflicting issues due to the accounts of the ward as public information. NFID stated from its point of view, it is the court procedures and law that establishes confidentiality at their level, but from the NFID view, it is confidential.

(c) An explanation of how other interested persons may obtain a copy of the summary:

The summary in part 2(b) above reflects the comments and testimony that transpired with regard to regulation 628B (LCB File No. R002-16P). A copy of the summary may be obtained by contacting Leonard Esterly, Deputy Commissioner, Financial Institutions Division, at (702) 486-4120 or lesterly@fid.nv.gov. This summary will also be made available by e-mail request to FIDMaster@fid.state.nv.us.

3. The number of persons who:

(a) Attended each workshop/hearing:

December 18, 2015: 17

April 1, 2016: 14

April 8, 2016: 9

(b) Testified at each workshop/hearing:

December 18, 2015: 9

April 1, 2016: 2

April 8, 2016: 1

(c) Submitted to the agency written statements: 6

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3 (b) and (c), as provided to the agency:

See Exhibit B.

5. A description of how comment was solicited from affected businesses, a summary of their responses, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Please see the description, summary and explanation provided above in response to question #2. Also see Exhibit A.

6. If after consideration of public comment the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The original draft of the regulation was amended, incorporating comments and testimony received from the workshop and hearings that were considered essential for the regulation. Each comment was considered in the drafting of the regulation; however, comments that were not incorporated into NAC 628B (LCB File # R002-16P) were not germane to the issue addressed by the proposed regulation.

7. The estimated economic effect of the adopted regulation on:

(a) The business which it is to regulate:

(1) Both adverse and beneficial effects:

(i) Adverse: A plurality of PPG small businesses have stated that any new or additional fees that did not exist previously will have a large direct impact on PPG small business and there will be some impact to the client (ward) in some financial manner or form. The PPG small business community also stated that regardless of any NFID efforts to directly lessen the impact on small business by establishing a equitable fee schedule to moderate the costs to regulate the industry, PPG small businesses consider the new application and licensing fees excessive and PPG service fees will increase to cover the additional cost of doing business. It appears to be conclusive that the clients (wards) will see an increase in costs which PPG small businesses state “is beyond the control of PPG small business entities and directly attributable to the passage of the PPG legislation”. Based on the feedback received the new “unknown financial burdens” (costs and fees) may also cause loss of some individually owned PPG small businesses due to increased regulatory costs, thus giving the public less choices.

(ii) Beneficial: Upon consideration of all the small business impact study, workshop, and hearing comments, the NFID has concluded that the proposed regulations will result in some economic impact upon small business and the proposed regulations could affect the formation, operation or expansion of a small business seeking to provide these services. However, this is not a direct result of the proposed regulations, nor to the NFID efforts to regulate this industry, but because of the passage of this new legislation that will require small businesses to pay state mandated yearly application fees, licensing fees, hourly examination fees, along with pre-existing required Center for Guardianship Certification fees per NRS 159. It must also be noted that the legislation only lists the maximum amount

that the NFID can charge. Only through well thought out and coordinated administrative language (NAC) with the PPG small businesses can NFID directly lessen the impact by establishing a cost based equitable fee schedule to moderate the costs to regulate the industry per this new law.

The NFID average initial non-depository company application and licensing fee is approximately \$1360.00. The revised individual PPG application and licensing fee is \$1250.00 based on consideration of the comments received from the 1st Workshop. Originally NFID proposed an individual PPG application and licensing fee totaling \$1600.00.

(2) Immediate and long-term effects:

Although it is noted that there are very few if any PPG small businesses in the rural counties (not within close proximity to Reno, Carson City, or Las Vegas metros), NFID has done everything possible to address the economic impact to prevent the loss of and reduce undue hardship upon PPG small businesses in these more rural counties to continue their necessary duties for wards they serve.

Three PPG small businesses indicated (original small business impact statement) that the “cost of fidelity bonds on all employees” was a major concern. According to Chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, Section 33, page 2354, “a private professional guardian company shall obtain suitable surety bonds in accordance with NRS 159.065 as applicable. NFID has not proposed any regulatory language to expand what is contained in NRS 628B with regards to “surety bonds” other than reporting any changes to the Commissioner within 10 days.

NFID’s primary role deals with monitoring the fiduciary responsibilities of private professional guardians through licensing and examinations. In the past when a problem was identified and family members realized there was a need to act because something is being done inappropriately, the process to address the problem had to go back to the courts which is time consuming, costly, and very burdensome on the courts and PPGs. NFID’s role is designed to alleviate most of that burden (financial and regulatory) through a more streamline avenue for complaints to be registered, reviewed, and resolved and not just another layer of government oversight. It is believed that this streamlined process could reduce attorney fees which are identified from the PPG industry to be the root cause of most expenses to the wards.

It is noted that a common concern from PPG small businesses regarding the new regulations is the resulting unlimited extra hours of work to support the NFID requirements to carry out the new law which may cause more time away from wards and could cause some harm to the wards physical/mental well being.

(b) The public:

(1) Both adverse and beneficial effects:

(i) Adverse: None

(ii) Beneficial: NFID has determined the most prominent positive direct effects from the adoption of NAC 628B (LCB File # R002-16P) will be the ability to ensure consistency in the PPG industry as well as reduce any potential financial abuse of wards. This in turn will also establish a general public perception of PPG small businesses as ethical, honest, and credible. With each individual PPG averaging approximately 20 clients, the new regulations provide the necessary oversight to reduce financial fraud/abuse, and enhance checks/balances of how the ward's assets are being handled through regular examination.

The examination fee is a cost based amount to cover the time to conduct the examination and prepare the report. Private Professional Guardians will be required to maintain separate accounts for each ward and account for all transactions which could be an additional expense; however this added task/expense protects both the licensee and the ward by providing segregated detailed accounting.

Another positive attribute is any concerned party will be able to call NFID and verify the license is current and all the required examining has been accomplished and documented which could reduce attorney fees and expedite problem/complaint resolution.

(2) Immediate and long-term effects:

It was also noted from PPG small businesses the concern that frivolous and unsubstantiated complaints will take away time with clients (wards) and especially in a solely owned PPG Small Business. This possible situation may be reduced with the increased role of the NFID to resolve complaints at the lowest level possible rather than be resolved through the court system. All complaints made to the NFID must be in writing and verified by signature under the penalty of perjury.

8. The estimated cost to the agency for enforcement of the adopted regulations.

The estimated cost to NFID for enforcement of the proposed regulation should be covered by the proposed fees to be collected by NFID. It is estimated NFID will not need any additional funding beyond the fee revenue established by the regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulations overlap or duplicate a federal regulation provide the name of the regulating federal agency.

To NFID's knowledge the proposed regulations do not duplicate any existing federal, state, or local standards regulating the same activity, with the possible exception of reporting under NRS 159.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.

To the NFID's knowledge there are no federal regulations that apply.

11. If the regulation establishes a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation provides new fees established by the passage of the legislation and the total amount NFID expects to collect based on the recent data from 2015 Legislative Session

testimony (indicating there are approximately 20 Individual PPGs and 11 PPG entities in Nevada) is approximately:

- 1) **The 1st Year Best Case**→ **Approximately \$38,750** based on the application fee of \$500 and initial licensing fee of \$750 (total of \$1250) for 20 Individual PPGs and 11 PPG entities.
- 2) **The 2nd Year Best Case**→ **Approximately \$25,400** based on yearly renewal fee of \$500 (20 individual PPGs and 11 PPG entities = \$15,500) and an hourly examination fee of \$75 (with the average exam projected to take approximately 12 hours to complete (\$900) x 11 = \$9,900). It is also expected that the following yearly exams will not take 12 hours to complete thus lowering this cost in future years.

The fees collected will be used by NFID to regulate the industry at the most economical method possible with the Division's established objective to maintain all fees at the lowest level possible to cover only agency costs to implement/operate/enforce and not to over burden small business with high and unnecessary fees. To further facilitate the goal of maintaining fees at the lowest level possible, NFID volunteered to take the regulatory responsibility without any additional state funding or staff.