

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

LCB File No. R012-10

Effective June 30, 2010

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

AUTHORITY: §§1-17, NRS 353.203 and 354.5943.

A REGULATION relating to governmental financial administration; establishing procedures for transferring functions between state agencies and local governments and between local governments; 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 17, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affected entity” means a state agency or local government from which a function is proposed to be transferred and a state agency or local government to which a function is proposed to be transferred.*

Sec. 4. *“Function” has the meaning ascribed to it in NRS 354.529 and includes, without limitation, any administrative activities and responsibilities associated with a function, including, without limitation, those relating to budgeting, contracting, finances, personnel, office facilities, information technology and communications.*

Sec. 5. *“Interested person” means a person, government, governmental agency or political subdivision of a government, other than an affected entity, who is directly and*

substantially affected by the transfer of a function from a state agency to a local government, from a local government to a state agency or from a local government to another local government.

Sec. 6. *“Intergovernmental agreement” means a written agreement between the affected entities for the implementation of the transfer of a function from a state agency to a local government, from a local government to a state agency or from a local government to another local government.*

Sec. 7. *“Lead entity” means the affected entity who is designated to act as the lead entity pursuant to subsection 2 of section 12 of this regulation.*

Sec. 8. *“State agency” means an agency, a bureau, a board, a commission, a department, a division or any other unit of the Executive Branch of the State Government, other than such an entity which is administered by an elected officer of the State.*

Sec. 9. *“Transfer plan” means a written plan for the implementation of the transfer of a function from a state agency to a local government, from a local government to a state agency or from a local government to another local government.*

Sec. 10. 1. *Except as otherwise provided in subsection 2, the provisions of sections 2 to 17, inclusive, of this regulation apply to the transfer of a function from a state agency to a local government, from a local government to a state agency or from a local government to another local government.*

2. *The provisions of sections 2 to 17, inclusive, of this regulation do not apply to the transfer of a function as a result of:*

(a) The creation of a new governmental entity; or

(b) The detachment of any territory from a taxing district and its annexation to another taxing district.

Sec. 11. *Before transferring a function from a state agency to a local government, from a local government to a state agency or from a local government to another local government:*

1. Except as otherwise provided in this subsection, notice of the intent to transfer the function must be provided to the affected entities:

(a) If the transfer is from a state agency to a local government or from a local government to a state agency, not less than 30 days before September 1 of an even-numbered year, unless a different period of notification is required by a statute or by contractual agreement; or

(b) If the transfer is from a local government to another local government, not less than 180 days before the effective date of the transfer, unless a different period of notification is required by a statute or by contractual agreement.

↪ The affected entities may, by mutual agreement, waive the notice otherwise required by this subsection.

2. If the affected entities:

(a) Do not agree to waive the notice required by subsection 1, the affected entities must jointly prepare a transfer plan for the transfer in accordance with the provisions of sections 12 to 16, inclusive, of this regulation; or

(b) Agree to waive the notice required by subsection 1, the affected entities must jointly prepare an intergovernmental agreement for the transfer in accordance with the provisions of sections 14, 15 and 16 of this regulation.

3. *Each of the affected entities must approve the transfer plan or intergovernmental agreement at a public hearing held in accordance with the provisions of section 16 of this regulation.*

Sec. 12. 1. *If the affected entities are required to prepare a transfer plan for the transfer of a function, one of the affected entities must act as the lead entity to be responsible for:*

(a) *Collecting data pertaining to the function proposed to be transferred;*

(b) *Identifying any interested persons;*

(c) *Preparing a tentative draft of the transfer plan; and*

(d) *Carrying out any other duties prescribed for the lead agency by sections 2 to 17, inclusive, of this regulation.*

2. *If the proposed transfer is from:*

(a) *A state agency to a local government or from a local government to a state agency, the affected entities must, by mutual agreement, designate one of the affected entities to act as the lead entity; or*

(b) *A local government to another local government, the affected entities may, by mutual agreement, designate one of the affected entities to act as the lead entity. In the absence of such a designation, the affected entity who initially proposed the transfer shall be deemed to be designated to act as the lead entity.*

3. *The lead entity may request from the other affected entity and any interested person such information relating to the function proposed to be transferred as may be necessary for the lead entity to prepare a tentative draft of the transfer plan, including, without limitation, a description of the function and information concerning the property and other assets used in*

the performance of the function, the operating costs for the function, contracts relating to the performance of the function, liabilities and pending claims relating to the function, and mechanisms for funding the performance of the function. An affected entity or interested person shall, not later than 30 days after receiving a written request for such information from the lead entity, provide the requested information to the lead entity.

Sec. 13. 1. *Upon completing a tentative draft of a transfer plan, the lead entity shall:*

(a) Provide the notice required by subsection 1 of section 11 of this regulation; and

(b) Provide a copy of the draft to the other affected entity and any interested persons identified by the lead entity.

2. The affected entity or any of the interested persons to whom a copy of the tentative draft is provided pursuant to subsection 1 may, within 45 days after the affected entity or interested person receives the copy of the draft, object to any of the provisions contained in the draft by providing to the lead entity a written statement of its objections. The statement may include any alternative provisions which the affected entity or interested person desires to be included in the proposed transfer plan. The failure of an affected entity or interested person to object to any of the provisions of a tentative draft of a transfer plan as provided in this subsection does not affect the right of the affected entity or interested person to object to any of the provisions of the transfer plan at any time before the approval of the transfer plan by both of the affected entities in accordance with subsection 3 of section 11 of this regulation.

3. If the lead entity:

(a) Does not receive any objections pursuant to subsection 2, the tentative draft constitutes a proposed transfer plan for the purposes of section 16 of this regulation.

(b) Receives any objections pursuant to subsection 2:

(1) The affected entities shall review the objections and may consider any alternative provisions contained in each written statement of objections and any other alternative provisions proposed by the affected entities. If the affected entities are unable to agree on the provisions of a proposed transfer plan within 30 days after the date the last written statement of objections is provided to the lead entity pursuant to subsection 2, the affected entities may submit to the Committee, jointly or individually, a written request for assistance from the Committee in resolving any disagreements concerning those provisions. Upon the receipt of such a request, the Chair of the Committee shall appoint a subcommittee of the Committee to provide the requested assistance. Not later than 15 days after the receipt of the request, the subcommittee shall meet with representatives of the affected entities and provide any recommendations regarding those provisions as the subcommittee determines to be appropriate. The affected entities are not required to follow any recommendations of the subcommittee.

(2) Upon the agreement of the affected entities to the provisions of a proposed transfer plan, the lead entity shall:

(I) Prepare the proposed transfer plan in accordance with that agreement; and

(II) Provide a copy of the proposed transfer plan to the other affected entity and to any interested persons identified by the lead entity.

Sec. 14. A transfer plan or intergovernmental agreement:

1. Must include:

(a) Such information as is necessary to complete the transfer of the function, including, without limitation, a complete description of:

(1) The function being transferred; and

(2) The mechanism to be used to pay for the performance of that function; and

(b) The effective date of the transfer of the function. If the transfer is from a state agency to a local government or from a local government to a state agency, and the affected entities have not agreed to waive the notice required by subsection 1 of section 11 of this regulation, the effective date of the transfer must not be any earlier than July 1 of the year after the year in which that notice is given, except that the affected entities, by mutual agreement, may specify an earlier effective date.

2. May include, without limitation, one or more of the following:

(a) The statutory authority for the performance of the function being transferred.

(b) A description of the reasons for the transfer of the function, such as, without limitation, any improvements in the management or delivery of governmental services, in the implementation of the laws of this State or in the efficiency of governmental operations which are expected to result from the transfer.

(c) A description of any potential financial effect of the transfer of the function on the affected entities, such as, without limitation, any potential effect of the transfer on the amount an affected entity will receive from the Local Government Tax Distribution Account or will be allowed to receive from taxes ad valorem.

(d) A detailed description of the transfer or other disposition, including the timing thereof, of any records, property or personnel affected by the transfer of the function.

(e) An analysis of the effect of the transfer of the function on the employees who were administering the function before the transfer and the status of those employees upon the completion of the transfer.

(f) Information concerning the payment of any outstanding obligations relating to the function being transferred, such as, without limitation, the affected entity responsible for the outstanding obligations, the manner and timing of the payment of the outstanding obligations, and methods to ensure the sufficiency of assets to satisfy the outstanding obligations.

(g) Information concerning the affected entity responsible for prosecuting, defending or conducting any proceedings relating to the function being transferred which are pending on the effective date of the transfer of the function.

(h) A description of any conditions under which the transfer of the function may be terminated or rescinded and of any procedure for terminating or rescinding the transfer.

(i) Any procedure for resolving any disputes between the affected entities regarding the transfer of the function which arise after the transfer.

Sec. 15. 1. No transfer plan or intergovernmental agreement may authorize:

(a) A local government or state agency to perform a function that it is not expressly authorized by law to perform on the effective date of the transfer of the function; or

(b) The continuation of a function beyond the period authorized by law for the performance of the function or beyond the date on which the performance of the function would have terminated if the function had not been transferred.

2. Except as otherwise specifically provided in a transfer plan or an intergovernmental agreement, the provisions thereof do not:

(a) Limit or alter the effect of any regulation or ordinance adopted by an affected entity or any other action taken by an affected entity before the effective date of the transfer of the function; or

(b) Abate any proceedings:

(1) Commenced by an affected entity before the effective date of the transfer of the function; or

(2) Pending before an affected entity on the effective date of the transfer of the function.

Sec. 16. 1. *Before approving a transfer plan or an intergovernmental agreement, the affected entities:*

(a) May jointly hold one or more workshops in accordance with the provisions of subsection 2 to solicit comments regarding one or more general topics to be addressed in a proposed transfer plan or intergovernmental agreement; and

(b) Shall, jointly or individually, hold a public hearing in accordance with the provisions of subsection 3 to approve or disapprove the proposed transfer plan or intergovernmental agreement.

2. *If the affected entities hold one or more workshops pursuant to paragraph (a) of subsection 1:*

(a) Each such workshop must be held:

(1) At a location within an area where the function proposed to be transferred is provided; and

(2) Not later than 90 days before the effective date of the transfer of the function pursuant to the transfer plan or intergovernmental agreement; and

(b) Not less than 15 days before each such workshop, the affected entities shall provide notice of the time and place set for the workshop:

(1) In writing to each person who has requested to be placed on a mailing list for the provision of such notice; and

(2) In any other manner reasonably calculated to provide such notice to the general public and any interested persons.

3. Except as otherwise provided in this subsection, each public hearing required by paragraph (b) of subsection 1 must be conducted in accordance with the provisions of chapter 241 of NRS. If the affected entities:

(a) Hold one or more workshops pursuant to paragraph (a) of subsection 1 regarding the proposed transfer plan or intergovernmental agreement or do not agree to waive the notice required by subsection 1 of section 11 of this regulation, the public hearing must be held not less than 30 days after the date on which:

(1) The last such workshop is held; or

*(2) The notice is provided pursuant to subsection 1 of section 11 of this regulation,
↪ whichever occurs later; or*

(b) Do not hold any workshops pursuant to paragraph (a) of subsection 1 regarding the proposed transfer plan or intergovernmental agreement and agree to waive the notice required by subsection 1 of section 11 of this regulation, the public hearing must be held not less than 30 days after public notice of the hearing has been given.

Sec. 17. 1. *The approval of a transfer plan or an intergovernmental agreement by an affected entity shall be deemed to expire 1 year after the date of that approval unless:*

(a) The transfer of the applicable function has been completed within that period;

(b) The transfer plan or intergovernmental agreement specifies a different period for the expiration of that approval; or

(c) The affected entities, by mutual agreement, agree to extend the applicable period for the expiration of that approval.

2. If a local government or state agency disapproves a transfer plan or an intergovernmental agreement, the governing body of that local government or the chief administrative officer of that state agency shall notify the affected entities and interested persons of the disapproval and of the reasons for the disapproval.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

LCB FILE R012-10

**Procedures for the transfer of functions between state agencies and local governments and
between local governments**

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) Chapter 354 adopted by the Committee on Local Government Finance (CLGF), establishing the procedures for transferring functions between state agencies and local governments and between local governments; and providing other matters properly relating thereto.

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

The Department of Taxation, as staff to CLGF, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Hearing/ Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
Permanent Regulation				
10-16-09	Workshop	11-4-09	534	182
11-24-09	Workshop	12-15-09	534	182
3-18-10	Hearing	4-19-10	534	182

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Many oral comments were received at the workshops and hearing. A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at srains@tax.state.nv.us.

The Legislative Counsel Bureau completed its review and revisions on March 18, 2010.

- 2. The number of persons who:**

- (a) Attended and testified at each workshop:**

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
11-4-09	20	5
12-15-09	14	4

(b) Attended and testified at each hearing:		
<u>Date of Hearing</u>	<u>Commission/ Public Attended</u>	<u>Public Testified</u>
4-19-10	15	2

(c) Submitted to the agency written comments:
Date of Workshop / Hearing Number Received

No written comments were received for workshops or hearings.

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

Comments were solicited from affected and interested businesses, local governments, and persons, by notices posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct mail to assessors and the interested parties list maintained by the Department. Approximately 34% of the approximately 534 direct mail or email notices were sent to individuals or associations representing business.

Members of the CLGF, officials of the Nevada Department of Taxation, local government officials, and members of the general public commented on some or all of the proposed language changes during the workshop process and during the Adoption Hearings.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at srains@tax.state.nv.us.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted with changes reflecting the verbal comments submitted to, or received by, the Department of Taxation primarily from government entities and CLGF members during the workshops and hearings listed above. CLGF adopted the permanent regulation as revised in a workshop and at the adoption hearing; and believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

CLGF found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada. The regulation provides procedures for affected local governments and state agencies to jointly prepare a Plan for Transfer of Function (Transfer Plan). The regulations also provide a process by which affected local governments or state agencies may object to any component of the Transfer Plan within 45 days of receipt of the Transfer Plan; guidelines on the elements that may be included in the Transfer plan; and a process of adoption of the transfer plan or intergovernmental agreement proposing to transfer functions.

The regulations present no reasonably foreseeable or anticipated immediate or long-term negative economic effects to businesses. The immediate and long-term effects of the regulation are to provide uniform procedures when local governments and state agencies determine a need for the transfer of a function.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The Department anticipates some additional cost for local governments to administer the regulation.

7. 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 regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

CLGF is not aware of any provision in this regulation which is also governed by federal regulation.

9. If the regulation provides 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.

CLGF is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restricted the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Director has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Director considered the fact that the proposed amendment only applies to activity by local and state government officials and imposes no direct requirements on any private businesses.