

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

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

AUTHORITY: §1, NRS 354.107; SB 457, Section 3

A REGULATION relating to local government finance; establishing certain requirements for the establishment of a trust fund by a local government for the purpose of funding future retirement benefits of retired employees, including procedures for making the investment; treatment of the trust account; composition of the trust fund board; powers, rights and duties of the trust fund board of trustees; accounting and auditing functions; and other matters properly relating thereto.

Chapter 354 of NAC is hereby amended by adding thereto sections 1-10 to read as follows:

Section 1. Local Government Trust Retirement Account: Creation; administration; permissible investments; assessment of costs; transfer of monies to pay for retirement benefits.

1. The Local Government Retirement Trust Fund Account (Trust Fund) must be created by resolution of the governing body, pursuant to the requirements of Section 2 of these regulations.

2. In accordance with the purpose of the Trust Fund stated in Section 3(2)(a), Chapter 253, Statutes of Nevada, 2007, the Trust Fund shall invest monies for the purpose of funding all or a portion of the unfunded actuarial accrued liabilities associated with future retirement benefits. The Trust Fund may be used to pay current retirement benefits.

3. If the market value of the portfolio in the Trust Fund Account at the end of the fiscal year is \$100,000,000 or less, the investment of the assets of the Trust Fund is limited to:

(a) The Retirement Benefits Investment Fund provided in Section 5 of Chapter 253, Statutes of Nevada, 2007; and

(b) Any investment authorized for a local government pursuant to NRS 355.170.

4. If the market value of the portfolio in the Trust Fund Account at the end of the fiscal year is greater than \$100,000,000, the assets of the Trust Fund may be invested in:

(a) The Retirement Benefits Investment Fund provided in Section 5 of Chapter 253, Statutes of Nevada, 2007;

(b) Any investment authorized for a local government pursuant to NRS 355.170; and

(c) Equity securities or bonds or other debt securities which meet the requirements of Section 3(2)(g) of Chapter 253, Statutes of Nevada, 2007, and these regulations.

5. A trust fund once qualified for investment in equity securities, bonds, or other debt securities pursuant to subsection 4 of these regulations shall not be required to liquidate the investment in equity securities, bonds, or other debt securities if the market value of the assets falls below \$100,000,000 at the end of any subsequent fiscal year. Investments made after the market value of the assets falls below \$100,000,000 must be limited to those authorized in subsection 3 of these regulations until the market value of the portfolio is more than \$100,000,000.

6. The Trust Fund must be administered by a board of trustees appointed by the governing body, pursuant to the requirements of Section 3 of this regulation.

7. All interest, earnings, dividends and distributions with respect to the investment of the fund moneys, less expenses charged with respect to such investments, must be deposited to the Fund.

8. No other funds shall be co-mingled with the funds in the trust fund account. The trust fund shall be maintained as a separate account.

9. Trust fund monies shall not be used to finance debt and shall not be available for interfund loans.

10. Reasonable charges may be assessed to the Trust Fund for reimbursement of the direct expenses which are incurred in administering the Trust Fund.

11. The board of trustees must transfer funds from the Trust Fund to the account designated by the local government upon the request of the local governing body no later than ten (10) business days after the first day of the month following receipt of the request. The request must include:

(a) An explanation of how the proposed transfer will be used to fulfill the requirements of the benefits plan of the local government as defined in Section 3(4)(b), Chapter 253, Statutes of Nevada, 2007;

(b) A copy of the local government approved budget showing expenditures for retirement benefits are authorized;

(c) Minutes of the meeting of the local government governing body during which the expenditure was proposed; and

(d) The signature of the chairperson of the governing body.

If the request and supporting documentation do not meet the criteria of Section 1(11) of these regulations, the board of trustees may delay transfer until the local government corrects the request.

Sec. 2. Contents and filing of resolution adopted to create retirement trust fund.

1. The resolution adopted by a local government to create a retirement trust fund pursuant to the Section 3 of Chapter 253, Statutes of Nevada, 2007, must contain:

(a) A statement regarding the purpose of the trust fund;

(b) A statement providing that all contributions to the fund, including any interest and income earned on the money in the trust fund, are held in trust, are irrevocable in nature, and must only inure to the benefit of the designated retiree beneficiaries according to the benefits plan of the local government;

(c) The sources of money expected to be deposited in the fund;

(d) A statement authorizing the appointment of a board of trustees, including the number of trustees and the terms of office;

(e) A statement that the powers, duties, rights, and obligations of the board of trustees will conform to the requirements of Section 3 of Chapter 253, Statutes of Nevada, 2007 and these regulations;

(f) A statement that affirms no other funds shall be co-mingled with the funds in the trust fund account and that the trust fund shall be maintained as a separate account; and

(g) A statement that the trust fund monies shall not be used to finance debt and shall not be available for interfund loans.

2. A copy of the resolution must be filed with the Department of Taxation within 30 days of adoption. The Department shall report no less than annually on the status of trust funds to the Committee.

3. Resolutions adopted by multiple local governments to create a retirement trust fund pursuant to Section 3(h) of Chapter 253, Statutes of Nevada, 2007, may include common board members with other trusts for governance purposes only.

Sec. 3. Board of Trustees; composition; term of office

1. Each local government that creates a retirement trust fund shall appoint a board of trustees to act in a fiduciary capacity for the beneficiaries of the trust, pursuant to Section 3 (2)(e) of Chapter 253, Statutes of Nevada, 2007 . No member of the governing body that creates the trust fund may be appointed to the board of trustees.

2. If the assets of the Trust Fund are limited to investment in the Retirement Benefits Investment Fund provided in Section 5 of Chapter 253, Statutes of Nevada, 2007, the governing body of the local government may appoint at least three but no more than five members to the board of trustees which must include:

(a) One or more members who shall each have a combination of education and experience of at least 5 years in finance or economics;

(b) A public officer or employee of the local government who manages the fiscal affairs of the local government; and

(c) A beneficiary of the retirement plan.

3. If any of the assets of the Trust Fund are investments authorized for a local government pursuant to NRS 355.170, the governing body of the local government may appoint at least three but no more than five members to the board of trustees which must include:

(a) One or more members of the public-at-large who shall each have a combination of education and experience of at least 5 years in finance or economics;

(b) A public officer or employee of the local government who manages the fiscal affairs of the local government; and

(c) A beneficiary of the retirement plan who shall have a combination of education and experience of at least 5 years in finance or economics .

4. If the assets of the Trust Fund qualify for investment pursuant to Section 1(4) of these regulations, the governing body of the local government shall appoint five members to the board of trustees which must include:

- (a) Two members who are versed in the securities exchange market;*
- (b) A public officer or employee of the local government who manages the fiscal affairs of the local government;*
- (c) A representative of the public at large who shall have a combination of education and experience of at least 7 years in finance or economics; and*
- (d) A beneficiary of the retirement plan who shall have a combination of education and experience of at least 7 years in finance or economics.*

5. A person appointed as a member of the board of trustees shall not have a substantial financial interest in the ownership or negotiation of securities or other financial instruments in which monies in the fund are invested.

6. Each member of the board of trustees must be appointed for a term of at least two years but not to exceed 4 years. The governing body may renew the term of any member of the board.

7. The members of the board of trustees shall select a chairman and vice chairman from among their membership.

8. The Chairman of the board shall preside at all meetings of the board. In case of the absence of the Chairman from any meeting of the Board or in case of the inability of the Chairman to act, the Vice Chairman shall perform the duties and acts authorized or required by the Chairman to be performed, as long as the inability of the Chairman to act may continue.

Sec. 4. Board of Trustees; powers; duties; obligations; rights

1. The board of trustees shall be responsible for the management and control of the Fund. The board shall formulate and execute appropriate investment policies to govern the investment program of the Fund consistent with the requirements of Section 3 of Chapter 253, Statutes of Nevada, 2007 and Section 1(3) or (4) of these regulations.

2. Fiduciary responsibility for assets of the Trust Fund invested in the Retirement Benefits Investment Fund remains with the board of trustees. The Retirement Benefits Investment Board acts in the capacity of fund manager and not as the fiduciary of the Trust Fund.

3. The board of trustees has no authority to negotiate or otherwise determine the benefits afforded the beneficiaries of the Fund.

4. No member of the board of trustees can bind the board by word or action unless the board has, in its corporate capacity, designated such member as its agent for some specific purpose and for that purpose only.

5. Any member of the board may request a roll call vote of record.

6. None of the earnings of the Fund shall inure to the benefit of any board member, except that a board member may be a beneficiary of the trust through participation in his or her employer's health and welfare plan. A member of the board of trustees shall not be interested, directly or indirectly, as principal, partner, agent or otherwise, in any contract or expenditure created by the board of trustees, or in the profits or results thereof.

7. The board of trustees shall meet quarterly or at the call of the chairman whenever business is presented.

8. No item of business shall be considered at a meeting of the board unless it shall first have been entered upon the agenda for that meeting, provided, however, that items not appearing on the agenda may be taken up with the approval of a majority of the members present when it has been determined that the matter is an emergency as permitted under NRS Chapter 241.

9. The local government governing body may remove a member of the board of trustees if the member fails to attend two consecutive meetings or three meetings during a calendar year.

10. A majority of the members constitutes a quorum for all purposes.

11. The governing body of the local government may provide for the payment to members of the board of trustees who serve as non-governmental representatives:

(a) Compensation of not more than \$80, as fixed by the governing body, for each day or portion of a day actually employed on the work of the board;

(b) While engaged in the business of the board, the per diem allowance and travel expenses generally provided for officers and employees of the local government, if any.

Sec. 5. Retirement Trust Fund Account; Board of Trustees; powers; duties; obligations; rights.

1. The local government governing body annually must consider the level of funding of the Trust Fund. The appropriate level of funding may be based on actuarial studies or alternative calculation methods permitted by generally accepted accounting principles performed or commissioned by the local governing body.

2. The local government may annually commission actuarial studies that estimate the liabilities of the benefit plan of the local government for the ensuing five fiscal years. The results of the actuarial studies or alternative calculation methods must be completed prior to March 1 each year so that the level of funding required is known prior to completion of the tentative budget. The local government must inform the board of trustees of the level of funding it expects to contribute to the Trust Fund.

3. The board of trustees shall submit a budget incorporating the level of funding to the Trust Fund to the governing body for its consideration, approval, and inclusion in the overall tentative and final budgets of the governing body. The governing body may modify the budget at its discretion.

4. The governing body of the local government shall provide the staff necessary to organize and notice meetings of the board of trustees, take the minutes of the meetings, receive and disseminate financial reports of financial managers to the board, and prepare financial reports and budgets for the board.

5. The books and records of the Trust Fund may be audited by the same person or firm that audits the books and records of the local government. The results of the Fund audit shall be incorporated in the annual audit report of the local government.

6. The governing body of the local government shall be responsible for the payment of the audit and the necessary and reasonable expenses of the board of trustees.

Sec. 6. Approval of Investment Plan.

1. An investment plan is not required if the investments are limited to the Retirement Benefits Investment Fund provided in Section 5 of Chapter 253, Statutes of Nevada, 2007. If the assets of the Trust Fund qualify for investment pursuant to Section 1(3)(b) or Section 1(4) of these regulations, the board of trustees shall develop an investment plan in consultation

with investment management experts which must be approved as to conformity with these regulations by the Committee on Local Government Finance prior to investment of the assets. The plan must:

(a) Adopt formal investment policies governing the objectives of the program, the risks that are acceptable and diversification requirements, and the fundamental processes for regulating the investment program;

(b) Assure that the processes governing the selection and monitoring of the staff and advisers assisting the board of trustees in the administration of the trust fund are sufficient to ensure such staff and advisors have appropriate expertise and exhibit appropriate fiduciary behavior for such position;

(c) Assure appropriate investment training for trustees and assure that the plan's professional investment selection staff remains current in prevailing investment practices;

(d) Assure travel policies in support of participation in such events are developed and defensible in the context of the interests of the public and the plan participants;

(e) Establish an organizational plan for the selection and retention of competent investment expertise among the professional staff and through independent advisors, consultants and portfolio managers, incorporating a competitive selection process when selecting outside service providers;

(f) Provide for the development and no less than annual review of the plan's asset allocation strategy and the positioning of asset classes in the fund's portfolio in light of general market trends and valuations;

(g) Evaluate formally and no less than annually the role or potential role of passive or indexed investment strategies applicable to the portfolio, and appropriate strategies to minimize the costs of transactions, portfolio management and consultants;

(h) Provide for the careful review of investment-related practices that could be questioned, such as soft-dollar services, brokerage-related or -compensated services, and unconventional investment strategies, in the context of fiduciary standards and the interests of economy;

(i) Establish formal benchmarks for portfolio and managed account performance that are specific to the assigned role of the portfolio or the portfolio manager;

(j) Provide for the regular evaluation of performance using consistent, documented and reliable disciplines, and establish clear criteria and procedures for portfolio manager watchlists and terminations;

(k) Provide and facilitate regular communications on investment results, clearly and intelligibly, to plan sponsors.

2. Approval of the investment plan by the Committee on Local Government Finance does not mean and shall not be interpreted to mean the Committee is establishing any fiduciary responsibility for the plan or to its beneficiaries.