

**ADOPTED REGULATION OF THE COMMITTEE TO
ADMINISTER THE PUBLIC EMPLOYEES' DEFERRED
COMPENSATION PROGRAM**

LCB File No. R066-13

Effective December 23, 2013

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

AUTHORITY: §§1-7, NRS 287.330.

A REGULATION relating to public employees; revising provisions concerning the Public Employees' Deferred Compensation Program; and providing other matters properly relating thereto.

Section 1. NAC 287.700 is hereby amended to read as follows:

287.700 As used in NAC 287.700 to 287.735, inclusive, unless the context otherwise requires:

1. ~~“Administrator” means a person who offers services which are necessary to the administration of the Program and to the proper investment of the money of the employees who are participants in the Program.~~

~~—2.†~~ “Committee” means the Committee established to administer the Program.

2. *“Investment consultant” means a private person, corporation, institution or other entity that provides advice on investments and operations of the Program, including, without limitation, advice provided for the purposes of paragraph (a) of subsection 3 of NRS 287.330 and NAC 287.735.*

3. “Program” means the Public Employees' Deferred Compensation Program authorized by NRS 287.250 to 287.370, inclusive.

4. ~~“Provider” means a person who offers investment options to participants in the Program.~~ *“Recordkeeper” means a corporation, institution or other entity that offers investment options and other services which are necessary to the administration of the Program and to the proper investment of the money of the employees who are participants in the Program. The term does not include a private person.*

Sec. 2. NAC 287.705 is hereby amended to read as follows:

287.705 The purpose of NAC 287.705 to 287.735, inclusive, is to set forth ~~the qualifications and~~ the procedures for the selection of ~~administrators and providers~~ *investment consultants and recordkeepers* for the Program.

Sec. 3. NAC 287.710 is hereby amended to read as follows:

287.710 1. The Committee will select ~~administrators and providers~~ *recordkeepers* for the Program. ~~One person may be selected to serve in both capacities.~~ The Committee will contract with more than ~~two providers if it deems it necessary to offer the participants in the Program superior investment options.~~ *one recordkeeper if the Committee deems it necessary and in the best interests of the participants.*

2. The selection *of recordkeepers* will be made as often as the Committee deems necessary, but not less frequently than ~~in September of~~ every fifth year.

3. ~~Administrators and providers~~ *Recordkeepers* serve at the pleasure of the Committee and are subject to removal at any time by a majority vote of the Committee.

Sec. 4. NAC 287.715 is hereby amended to read as follows:

287.715 ~~The~~ *In selecting a recordkeeper, the* Committee will ~~base its selection, as applicable, of administrators and providers on:~~
~~—1.— The criteria set forth in NAC 287.720;~~

- ~~—2. The answers to the questionnaire provided pursuant to NAC 287.725;~~
- ~~—3. Any interviews conducted by the Committee;~~
- ~~—4. The variety and quality of any investment options offered to participants; and~~
- ~~—5. The projected costs submitted by each applicant.]~~

↪ ~~[The Committee will not select an applicant who submits the least expensive proposal if another applicant is better qualified.]~~ *follow the procedures set forth in chapter 333 of NRS, the applicable regulations and the State Administrative Manual.*

Sec. 5. NAC 287.730 is hereby amended to read as follows:

287.730 1. The Chair shall, if he or she deems it appropriate, appoint a subcommittee to review the proposals *from applicants for the position of recordkeeper* and make recommendations to the full Committee.

2. The Chair shall call a general meeting of the Committee to:

- (a) Accept information from appropriate sources pertaining to any applicant.
- (b) Conduct interviews of the applicants.
- (c) Select ~~[two]~~ *one* or more of the applicants for appointment as ~~[administrators and providers.]~~ *a recordkeeper.*

3. Acceptance of an applicant's proposal does not preclude the Committee from negotiating specific changes to the proposal which are in the best interests of the State of Nevada.

Sec. 6. NAC 287.735 is hereby amended to read as follows:

287.735 1. The Committee will select such *investment* consultants as are necessary to provide services needed for the selection of ~~[administrators and providers]~~ *recordkeepers* and for the administration of the Program and the investment of the money of the participants.

2. Such ~~to~~ *an investment* consultant serves at the pleasure of the Committee and may be removed from the position at any time by a majority vote of the Committee.

Sec. 7. NAC 287.720 and 287.725 are hereby repealed.

TEXT OF REPEALED SECTIONS

287.720 Administrators and providers: Criteria for selection.

In selecting an applicant, the Committee will consider:

1. The experience of the applicant in providing services to deferred compensation and similar programs and the rate of return of any investments offered by the applicant;
2. The amount of money the applicant is currently managing and the general financial condition of the applicant;
3. Whether the applicant is qualified to do business in this State; and
4. Whether the applicant employs a sufficient number of employees and possesses sufficient equipment to offer timely and efficient communication and service to the participants in the Program.

NAC 287.725 Administrators and providers: Notice of intended selection; questionnaires and request for proposals.

1. The Committee will cause to be published a notice of the intended selection in one or more newspapers in the State. The notice will be published three times not more than 30 days before the date by which applications must be returned.

2. The notice will set forth:

- (a) The date on which the Committee will select administrators and providers and the date and time by which the Committee must receive the completed application;
- (b) The qualifications required of administrators and providers; and
- (c) The manner in which an applicant may obtain a questionnaire and a request for proposal.

3. The Chair may, if he or she deems it appropriate, send copies of the notice to state and national trade associations concerned with the business of deferred compensation or similar programs for inclusion in their publications or for dissemination among their members.

4. The Chair shall prepare a questionnaire and a request for proposal and make them available to each applicant at least 30 days before the date on which they must be received by the Committee.

**INFORMATIONAL STATEMENT OF LEGISLATIVE REVIEW
OF ADOPTED REGULATIONS AS REQUIRED BY NRS 233B.066
LCB File No. RO66-13**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 287.

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

The existing language in NAC 287.700 – 287.735 in its current form contradicts the language in NRS 287.339.

Specifically, NRS 287.330 subsection 3(d) states:

(d) [. . .the Committee has] Selected at least one plan for the use of the participants in the Program, except that if the Committee has selected two or more plans from which the participants in the Program may choose, the Committee has selected the plans from separate and distinct providers.

NAC 287.710 subsection 1 states:

1. The Committee will select administrators and providers for the Program. One person may be selected to serve in both capacities. The Committee will contract with more than two providers if it deems it necessary to offer the participants in the Program superior investment options.

Therefore, it is the intention to amend the regulations to allow the Committee to select at least one plan for use by participants, but that two or more providers may be chosen if deemed in the best interests of the participants; the definitions used in NAC 287 are outdated and have been amended to clarify the definition of “Recordkeepers” and “Investment Consultants;” and when the Committee conducts the Request for Proposal process and award of contracts, the process will be conducted according to the provisions of NRS Chapter 333, thereby eliminating language in NAC 287.720, 287.725, which duplicates and/or overlaps the language in NRS Chapter 333.

2. 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.

Copies of the proposed regulations, Notices of Workshop and Notices of Intent to Act Upon the Regulation were sent by US mail and email to persons who were known to have an interest in the subject of the Nevada Public Employees Deferred Compensation Program (NDC) as well as any persons who had specifically requested such notice. These documents were also made available at the website of the NDC <http://defcomp.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

- Nevada State Capitol Building, 101 N. Carson Street, Carson City, Nevada
- Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada
- Legislative Counsel Bureau, 401 South Carson Street, Carson City, Nevada

- Nevada State Library and Archives, 100 North Stewart Street, Carson City, Nevada

A workshop was held to provide an opportunity for input on the proposed regulations on September 24, 2013, and the minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed amendments.

Thereafter, on October 11, 2013, the Deferred Compensation Committee issued a Notice of Intent to Act Upon a Regulation which incorporated the proposed amendments, the suggestions of the parties attending the September 24th workshop, as well as the recommendations of the Deferred Compensation Committee.

3. The number of persons who:

- | | |
|---|-------------------------|
| a. Attended workshop: | September 24, 2013 - 15 |
| b. Testified at workshop: | September 24, 2013 - 5 |
| c. Submitted to the Committee written comments: | September 24, 2013 – 2 |
| d. Attended adoption hearing: | November 14, 2013 – 25 |
| e. Testified at adoption hearing: | November 14, 2013 – 1 |
| f. Submitted to the Committee written comments: | November 14, 2013 - 1 |

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing: (a) Name; (b) Telephone number; (c) Business address; (d) Business telephone number; (e) Electronic mail address; and (f) Name of entity or organization represented:

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5. 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.

The affected businesses are deferred compensation retirement savings plans, of which two are currently providing services to Nevada participants. Notice of the workshop was emailed directly to representatives, posted on the NDC website and emailed to other interested parties upon request. Neither plan chose to submit written comments, but spoke at the workshop, though not at the adoption hearing. Their recommendations were incorporated into the amended regulation. Minutes of that workshop, adoption hearing, and copies of the written testimony are available on the NDC website.

6. 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 on November 14, 2013 and included all of the changes suggested at the workshop held on September 24, 2013, with addition of one more.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

(a) Estimated economic effect on the businesses which they are to regulate. The revised regulation will have no or nominal economic impact on business. It does not regulate business, rather it changes the request for proposal process to that set out in the State Purchasing Statute, NRS Chapter 333. The benefit of this change will be to offer more uniformity and clarity to the bid process for deferred compensation record-keepers. There will be no adverse impacts on business. There will be no immediate or long-term effects on business.

(b) Estimated economic effect on the public which they are to regulate. The revised regulation will have no economic impact on the public. It does not affect the public, rather it changes the request for proposal process to that set out in the State Purchasing Statute, NRS Chapter 333. There will be no adverse or beneficial impacts on public. There will be no immediate or long-term effects on the public.

8. The estimated cost to the agency for enforcement of the proposed regulation:

The regulation will cost the agency \$50,000 every fifth year but that amount is unchanged from the cost of the previous regulation which was replaced with this updated version.

9. A description of any regulations of other state or governmental 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 governmental agency regulations that the proposed amendments duplicate.

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

Not applicable.

11. 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.

Not applicable.