

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

LCB File No. R082-13

Effective December 23, 2013

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

AUTHORITY: §§1-7, NRS 354.107, 354.594 and section 1 of Assembly Bill No. 503, chapter 461, Statutes of Nevada 2013, at page 2710 (NRS 354.6135).

A REGULATION relating to local financial administration; establishing the process by which the governing body of a local government may apply for approval of certain loans and transfers from enterprise funds; 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 6, inclusive, of this regulation.

Sec. 2. *The governing body of a local government may, pursuant to NRS 354.6135, submit an application to the Committee for approval of a loan or transfer of money from an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned on money in an enterprise fund. An application for approval of a loan or transfer submitted pursuant to this section must be made on a form prescribed by the Committee and include the following information:*

1. A copy of the resolution of the local government which sets forth:

(a) The amount of the loan or transfer and the repayment period;

(b) A description of the purpose for which the loan or transfer will be used; and

(c) A description of the service or services previously provided by the local government that will be restored if the loan or transfer is approved, and the effect such approval will have on service levels in future years.

2. A written declaration by the governing body of the local government stating that:

(a) Approval of the loan or transfer will not harm the financial viability of the enterprise fund from which the loan or transfer will be made;

(b) The governing body will take whatever action is necessary to preserve the financial viability of the enterprise fund from which the loan or transfer will be made; and

(c) The governing body will only use the money from the loan or transfer for the specific purpose described in the resolution required by subsection 1, unless a change in the purpose is first approved by the Committee.

3. A description of all accounts and records relating to the purpose for which the loan or transfer will be used, including the actual proposed use of the money from the loan or transfer if the loan or transfer is approved, and how such accounts and records will be maintained separately from other funds for auditing purposes.

4. A copy of the report of the annual audit prepared pursuant to NRS 354.624 for the fiscal year immediately preceding the year in which the application for approval of the loan or transfer is made.

5. An analysis showing whether the ending fund balance of the general fund of the local government at the end of the immediately preceding fiscal year was less than 9 percent of the total expenditures of the local government from the general fund during that fiscal year. The analysis must not include, as the total expenditures of the local government, any transfers of money from the general fund except such transfers made for the payment of debt service or

any grant match in the exact amount requested to satisfy known obligations in the fund to which the transfer was made.

6. Documentation showing that the local government has, during each of the 5 fiscal years immediately preceding June 10, 2013, loaned or transferred money from an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned on money in an enterprise fund. The documentation must include, at a minimum, records showing the amount of each individual loan or transfer from an enterprise fund in each of the 5 fiscal years, along with the cumulative total of the amounts loaned or transferred within that time.

7. For each fiscal year through June 30, 2021, projections of all revenues, expenditures, sources, uses and liabilities, including, without limitation, liabilities resulting from loans and transfers, associated with:

(a) Any enterprise fund;

(b) Any governmental fund that is authorized to receive taxes under the laws of this State;
and

(c) Any other fund for which there are long-term liabilities.

8. A list of all assumptions on which the projections described in subsection 7 are based.

9. A statement showing how the local government will inform the public about the effects of the loan or transfer on the enterprise fund, including, without limitation, any changes in rates, the fund balance and future capital expenditures. The information described in this subsection is subject to public disclosure and must also be separately provided in the form of a notice which is transmitted directly to each person known by the local government to be affected by the enterprise fund.

10. A copy of the resolution establishing the enterprise fund from which the loan or transfer will be made, including any amendments thereto.

11. A copy of the fee schedule for the enterprise fund from which the loan or transfer will be made.

12. A copy of the most recent report of indebtedness required to be submitted by the local government pursuant to NRS 354.6025, updated to the current quarter and separately identifying the indebtedness of the enterprise fund from which the loan or transfer will be made.

13. A list showing any bonds that have been issued for the enterprise fund from which the loan or transfer will be made and indicating whether the bonds are general obligation bonds or revenue bonds, the amounts, the issue dates, the schedules of payment and payment terms, including whether any balloon payments are required.

14. Any additional information the Committee may require.

Sec. 3. An application for approval of a loan or transfer of money from an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned on money in an enterprise fund must include, in addition to the information required pursuant to section 2 of this regulation:

1. A statement indicating whether the local government has made a transfer pursuant to subsection 1 of NRS 354.613 and, if so, documentation showing that any transfer from an enterprise fund to the general fund of the local government for the purpose of subsidizing the general fund of the local government did not result in a violation of paragraph (a) or (b) of subsection 9 of NRS 354.613.

2. If applicable, a copy of the plan required to be filed with the Department pursuant to subsection 10 of NRS 354.613, revised to show the manner in which:

(a) All transfers from an enterprise fund, including any transfer applied for pursuant to section 2 of this regulation, will be eliminated on or before the fiscal year beginning on July 1, 2021; and

(b) Any expenditures of the general fund that are intended to be paid by any transfer applied for pursuant to section 2 of this regulation will be funded upon the elimination of such transfer on or before the fiscal year beginning on July 1, 2021.

Sec. 4. The Committee will, before approving an application submitted pursuant to section 2 of this regulation, consider whether:

1. The governing body of the local government is eligible for approval pursuant to the requirements set forth in section 1 of Assembly Bill No. 503, chapter 461, Statutes of Nevada 2013, at page 2710 (NRS 354.6135).

2. The governing body of the local government has not previously been in noncompliance of any provision of NRS 354.613, 354.626 or section 1 of Assembly Bill No. 503, chapter 461, Statutes of Nevada 2013, at page 2710 (NRS 354.6135).

3. The governing body of the local government has reduced levels of service, caused layoffs or closed any public facility.

4. Any special revenue fund has experienced a materially adverse condition, including, without limitation:

(a) A substantial decline in major sources of tax revenue, including, without limitation, property tax or allocations from the Local Government Tax Distribution Account; or

(b) An inability to repay debt or insufficient cash to meet required payments for payroll, workers' compensation, payroll taxes or contributions to the Public Employees' Retirement System in a timely manner.

5. The financial viability of the enterprise fund from which the loan or transfer will be made would be adversely affected.

6. The local government has the ability to repay a loan or eliminate a transfer and thereafter continue to maintain its functions and activities.

Sec. 5. 1. The Committee may deny or withhold approval of an application submitted pursuant to section 2 of this regulation if it makes any of the following findings:

(a) The financial viability of the enterprise fund from which the loan or transfer will be made or the local government, as a whole, would be materially harmed by the loan or transfer;

(b) The governing body of the local government has previously been in noncompliance of any provision of NRS 354.613, 354.626 or section 1 of Assembly Bill No. 503, chapter 461, Statutes of Nevada 2013, at page 2710 (NRS 354.6135);

(c) The governing body of the local government has demonstrated an inability to properly control or manage its finances; or

(d) The application is based on unlikely assumptions or contains information that is incomplete, inaccurate, unreliable or unverifiable.

2. Upon written request from the governing body of a local government, the Committee will schedule a hearing on the application at the next meeting of the Committee, but in any event not later than 45 days after receipt of the request by the Committee.

3. The approval of an application by the Committee will be contingent upon a budget augmentation by the local government pursuant to NAC 354.400 to 354.490, inclusive, and the submission of the following information:

(a) A description of the source and amount of new revenue to be augmented or the underperforming revenue source that the loan or transfer is intended to replace; and

(b) A description of how the money from the loan or transfer will be used.

Sec. 6. 1. The governing body of a local government that loans or transfers any money after obtaining approval of an application submitted pursuant to section 2 of this regulation shall submit a quarterly report to the Committee. Each report must be submitted within 45 days after the end of each calendar quarter and include, at a minimum, the following information:

(a) A statement indicating whether the transaction on which the report is based is a loan or a transfer and, if the transaction is a loan, a copy of the loan agreement;

(b) The date on which the loan or transfer was made;

(c) The amount of the loan or transfer;

(d) A description of the fund into which the proceeds of the loan or transfer are placed;

(e) The purpose of the loan or transfer and a description of the service to be funded or claim to be paid from the proceeds of the loan or transfer;

(f) A summary description of any increase in a fee imposed by the local government for the benefit of the enterprise fund during the immediately preceding fiscal year or the prior reporting period, whichever is applicable, and in any preceding year if the increase becomes effective in the current fiscal year, including the amount of the increase and a copy of the resolution approving the increase;

(g) A summary description of any change in salaries or benefits paid to employees of the local government during the immediately preceding fiscal year or the prior reporting period, whichever is applicable, in accordance with existing collective bargaining agreements or any action taken by the governing body of the local government with respect to employees who are not members of an employee organization as defined in NRS 288.040;

(h) A copy of any written report that may have been prepared pursuant to NRS 288.153;

(i) An explanation of how any service restored by the loan or transfer will be maintained in future years, including an identification of the revenue stream that will be used to support any such service;

(j) A description of any amendments to the resolution which established the enterprise fund;

(k) A copy of the most recent report of indebtedness required to be submitted by the local government pursuant to NRS 354.6025, updated to the current quarter and separately identifying the indebtedness of the enterprise fund from which the loan or transfer was made;

(l) For the first quarter after the report of the annual audit prepared pursuant to NRS 354.624 has been submitted to the governing body of the local government, a comparison of each final budgeted general fund revenue and expenditure against the actual revenue and expenditure;

(m) An explanation for any variance between the final budgeted and actual amounts described in paragraph (l) exceeding 5 percent;

(n) A copy of the notice required by subsection 9 of section 2 of this regulation, along with proof satisfactory to the Committee that the notice was transmitted in accordance with that provision;

(o) The name, telephone number, facsimile number, mailing address and electronic mail address of the person who prepared the report pursuant to this section;

(p) A certification by the person who prepared the report pursuant to this section stating that to the best of his or her knowledge and belief the information submitted is true and accurate; and

(q) The signature of the person who prepared the report pursuant to this section, his or her official title and the date on which the report was prepared.

2. If the governing body of a local government fails or refuses to submit a completed quarterly report in accordance with this section or is otherwise habitually late in submitting the reports, the Committee may:

(a) Revoke approval of any loan or transfer that has not yet been made; and

(b) Deny approval of any future application submitted pursuant to section 2 of this regulation.

Sec. 7. This regulation expires by limitation on June 30, 2017.

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

LCB FILE R082-13

**A regulation relating to local financial administration; establishing the process by which
the governing body of a local government may apply for approval of
certain loans and transfers from enterprise funds**

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) 354 adopted by the Committee on Local Government Finance.

1. The Need for and Purpose of the Permanent Regulation.

The need and purpose for the permanent regulation LCB File No. R082-13, is to comply with the requirements of NRS 354.6135(6). NRS 354.6135(6) requires the Committee on Local Government Finance (CLGF) to adopt regulations specifying the procedures local governments must use to obtain the approval of CLGF for transfers or loans from enterprise funds and also the information which must be included in the application and quarterly reports; and other matters properly relating thereto.

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.

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

Date of Notice	Workshop or Hearing	Date of Workshop or Hearing	Total Number Notified	Number of Businesses Notified
9-30-13	Workshop	10-15-13	379	81
10-15-13	Hearing	11-15-13	379	81

In addition to the hearings and workshops held, the following subcommittee meetings were held to discuss the regulation:

Date of Notice	Noticed Subcommittee Meetings	Date of Workshop or Hearing	Total Number Notified	Number of Businesses Notified
8-13-13	Subcommittee	8-21-13	379	81
10-16-13	Subcommittee	10-22-13	379	81

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

Most comments were received from subcommittee members and Department staff during the workshop and adoption hearing. North Las Vegas representatives made comments to gain

clarification of proposed requirements, including regarding operating transfer; recommended a 45 day reporting requirement at the end of each quarter; and generally supported the regulation. A representative of Clark County, spoke about triggering cash reserves. A Storey County resident inquired about several of the proposed requirements and their application to local governments.

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 Nevada Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at ware@tax.state.nv.us.

The Legislative Counsel Bureau (LCB) completed its review of submitted revisions on November 5, 2013. The Committee on Local Government Finance adopted the regulation at the hearing held on November 15, 2013.

3. The number persons who:

(a) Attended and testified at each workshop or subcommittee meeting:

<u>Date of Workshop or Subcommittee Meeting</u>	<u>Attended</u>	<u>Testified</u>
8-21-13	14	5
10-15-13	16	4
10-22-13	10	2

(b) Attended and testified at each hearing:

<u>Date of Hearing</u>	<u>Committee/ Public Attended</u>	<u>Public Testified</u>
11-15-13	29	1

(c) Submitted to the agency written comments:

<u>Date of Workshop / Meeting/ Hearing</u>	<u>Number Received</u>
10-15-13 Workshop	1
10-22-13 Subcommittee Meeting	1
11-15-13 Hearing	0

Name	Telephone #	Business Address	Business Telephone #	Electronic Mail Address	Representing
Terry Rubald	775-684-2095	1550 College Parkway Carson City, NV 89701	775-684-2095	trubald@tax.state.nv.us	Dept of Taxation

Timothy Colbert		2250 Las Vegas Boulevard North Las Vegas, NV 89030		colbertt@cityofnorthlasvegas.com	City of North Las Vegas
Jan W. Fullmer	702-633-1460	2250 Las Vegas Boulevard North Las Vegas, NV 89030	702-633-1460	Fullmer@cityofnorthlasvegas.com	City of North Las Vegas

4. 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 local governments, businesses 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 email to county officials and other interested parties lists maintained by the Department. Approximately 21.37% of the approximately 379 direct notices were sent to individuals or associations representing business.

Members of CLGF, 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 Hearing of CLGF. A representative of the Nevada Taxpayers Association suggested that a copy of the resolution creating the enterprise fund plus any changes made to the resolution be included in the list of requirements as well as other information to be required; found the proposed reporting form to be well-designed; commented that the materials required should be made available electronically. No other comments from small businesses were made.

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 Nevada Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at ware@tax.state.nv.us.

5. 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 and written comments submitted to, or received by, the Nevada Department of Taxation primarily from local governments during the workshops and hearings listed above. CLGF adopted the permanent regulation as revised in workshops and during the adoption hearing; and believed no changes other than those made were necessary.

6. 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.**

LCB File No. R082-13 was proposed to comply with the requirements of NRS 354.6135(6). NRS 354.6135(6) requires CLGF to adopt regulations specifying (1) the procedures for obtaining the approval of CLGF for transfers or loans from the enterprise funds of local governments and (2) the information which must be included in the application and quarterly reports submitted by local governments.

In particular, Section 2 requires the local government to submit certain information and documents for CLGF to review in order to make a decision whether or not to approve a request to transfer or loan money from an enterprise fund. Section 3 requires additional information to be submitted having to do with how the local government has met the requirements in NRS 354.613. Section 4 contains the criteria that CLGF will consider when deciding whether to approve an application. Section 5 describes the conditions under which CLGF might deny an application. Section 6 requires certain information to be included in quarterly reports; and Section 7 states the regulation expires by limitation on June 30, 2017.

The regulation provides for the collection of useful financial information for CLGF to consider regarding the eligibility of the local government to apply for a transfer or loan; whether a transfer or loan conforms to the requirements of NRS 354.6135(6); whether the local government has been in noncompliance with NRS 354.6135; the local government's need for the transfer or loan; whether the transfer or loan will negatively affect the financial viability of the enterprise fund from which the transfer or loan is made; and whether the local government can sustain the services once a loan is repaid or transfers are eliminated.

The regulation presents no reasonably foreseeable or anticipated, adverse economic effects to businesses or to the general public. The regulation provides examples and descriptions of the types of information to be submitted by local governments for purposes of approval by CLGF of transfers or loans from an enterprise fund and subsequent quarterly reports; and does not directly affect businesses.

The long-term effect is to provide a transparent public process for the dissemination of financial information of local governments with regard to transfers or loans from enterprise funds, including notice to affected persons of the enterprise fund from which a transfer is made. The immediate effect is to provide guidance to local governments about how to apply for approval of a transfer or loan from an enterprise fund and to specify the required information.

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

The regulation presents no significant foreseeable or anticipated cost or decrease in costs for enforcement.

8. 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.

The regulation does not overlap or duplicate regulations of other state or local governmental agencies.

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

The Committee on Local Government Finance is not aware of any provision in this regulation which is also governed by federal regulation.

10. 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.

The regulation does not provide for a new fee, and does not increase an existing fee.

11. Is the proposed regulation 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 Department 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 Department 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. In addition, NRS 354.107 limits the regulatory authority of CLGF to the Local Government Budget and Finance Act in NRS chapter 354, which generally regulates the financial administration of local governments and does not apply to small businesses.