

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

## **LCB File No. R078-15**

Submitted to LCB for Review on September 4, 2015

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

**AUTHORITY:** §§ 1-4, NRS 287.017(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.

**Section 1.** Chapter 287 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 4, inclusive, of this regulation.

**Sec. 2. NAC 287.778 is hereby amended as follows:**

1. In appointing a board of trustees:

(a) If the assets of the trust fund will only be deposited in the Retirement Benefits Investment Fund pursuant to subparagraph (1) of paragraph (g) of subsection 2 of NRS 287.017, the governing body shall appoint at least three but not more than five persons to the board of trustees, including:

(1) One or more persons who each have a combination of education and experience in finance or economics that totals 5 years or more;

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

(3) A beneficiary of the benefits plan of the local government.

(b) If the assets of the trust fund will be invested only in investments authorized for a local government pursuant to subparagraph (2) of paragraph (g) of subsection 2 of NRS 287.017, or in such investments and deposited in the Retirement Benefits Investment Fund pursuant to subparagraph (1) of paragraph (g) of subsection 2 of NRS 287.017, the governing body shall appoint at least three but not more than five persons to the board of trustees, including:

(1) One or more persons who each have a combination of education and experience in finance or economics that totals 5 years or more;

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

(3) A beneficiary of the benefits plan of the local government who has a combination of education and experience in finance or economics that totals 5 years or more.

(c) If the assets of the trust fund ~~qualify to be invested pursuant to subsection 2 of NAC 287.790,~~ *will be invested in stocks or other equity securities or bonds or other debt securities which are traded on a public securities market pursuant to NRS 287.017(2)(g)(3),* the governing body shall appoint five persons to the board of trustees, including:

(1) Two persons who have experience in the securities exchange market;

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

(3) A person who is not an employee of the local government, who has a combination of education and experience in finance or economics that totals 7 years or more; and

(4) A beneficiary of the benefits plan of the local government who has a combination of education and experience in finance or economics that totals 7 years or more.

2. A person may not be appointed to the board of trustees pursuant to this section if the person:

(a) Has a substantial financial interest in the ownership or negotiation of the securities or other financial instruments in which the assets of the trust fund are invested.

(b) Is a member of the governing body that established the trust fund.

3. A resolution adopted by two or more governing bodies to form a pooled trust pursuant to paragraph (h) of subsection 2 of NRS 287.017 may include a provision for appointment of a member of the board of trustees of a participating governing body as a member of the board of trustees of the pooled trust.

4. The term of a member of a board of trustees appointed pursuant to this section must be at least 2 years, but not more than 4 years.

5. The governing body may reappoint a member of the board of trustees, and may alter the composition of the board of trustees determined pursuant to subsection 1 if required pursuant to NAC 287.790.

**Sec. 3. NAC 287.788 is hereby amended as follows:**

1. The board of trustees may contract with a professional fund manager if the assets of the trust fund are invested:

(a) In an investment which is authorized for a local government pursuant to subparagraph (2) of paragraph (g) of subsection 2 of NRS 287.017, *or*

(b) Pursuant to subsection 2 of NAC 287.790.

2. Unless all the assets of the trust fund will only be deposited in the Retirement Benefits Investment Fund pursuant to subparagraph (1) of paragraph (g) of subsection 2 of NRS 287.017

or *invested in investments authorized pursuant to NRS 355.170*, the board of trustees shall develop an investment plan for the trust fund in consultation with a professional fund manager, if the board has entered into a contract with such a person pursuant to subsection 1, or with any other investment management advisor retained by the board of trustees. The investment plan must be approved as to its conformity with this subsection by the Committee on Local Government Finance before the investment of any assets of the trust fund *if the investment portfolio meets the requirements of subsection 2 of NAC 287.790 and the board of trustees desires to invest in securities permitted by paragraph (c) of subsection 2 of NAC 287.790 outside of the Retirement Benefits Investment Fund*. The investment plan must:

(a) Include formal investment policies consistent with the requirements of NRS 287.017 and NAC 287.760 to 287.792, inclusive, including, without limitation, policies governing acceptable risks, diversification requirements and the fundamental processes for regulating the investment of the assets of the trust fund.

(b) Include processes governing the selection and monitoring of the staff and any professional fund manager or other investment management advisor assisting the board of trustees in the administration of the trust fund that are sufficient to ensure such staff, professional fund managers and other advisors have appropriate expertise and exhibit appropriate fiduciary behavior for such positions.

(c) Include appropriate investment training for members of the board of trustees and staff to ensure that they are knowledgeable in the prevailing investment practices.

(d) Include travel policies for participation in investment training for members of the board of trustees and staff that support the need for training and are defensible in the context of the interests of the public and the beneficiaries of the trust fund.

(e) Include an organizational plan for the selection and retention of competent investment expertise among the staff and in professional fund managers and other advisors, and incorporate a competitive process for the selection of both staff and professional fund managers and advisors.

(f) Provide for the development of and annual review by the board of trustees of the asset allocation strategy of the investment plan and the positioning of classes of assets in the investment portfolio of the trust fund in light of general market trends and valuations.

(g) Provide, on at least an annual basis, for a formal evaluation of the role or potential role of passive or indexed investment strategies applicable to the investment portfolio of the trust fund, and of appropriate strategies to minimize the costs of the administration of the trust fund, including, without limitation, the costs of transactions, professional fund managers and other advisors and investment training.

(h) Provide for a periodic review of investment-related practices, including, without limitation, services provided by brokers and unconventional investment strategies, in the context of fiduciary standards and the interests of economy.

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

(j) Provide for the regular evaluation of the performance of the portfolio using consistent, documented and reliable disciplines, and establish clear criteria and procedures for selection and termination of investments by managers.

(k) Provide for regular communications on investment results to the governing body in a clear and intelligible format.

3. Approval by the Committee on Local Government Finance of the investment plan required in subsection 2 does not create or establish any fiduciary responsibility between the Committee on Local Government Finance and the trust fund or its beneficiaries.

**Sec. 4. NAC 287.790 is hereby amended as follows:**

1. Except as otherwise provided in subsection 4, if the market value of the investment portfolio of a trust fund at the end of a fiscal year is \$100,000,000 or less, the assets of the trust fund may only be:

(a) Deposited in the Retirement Benefits Investment Fund pursuant to subparagraph (1) of paragraph (g) of subsection 2 of NRS 287.017; and

(b) Invested in any investment which is authorized for a local government pursuant to subparagraph (2) of paragraph (g) of subsection 2 of NRS 287.017.

2. Except as otherwise provided in subsection 4, if the market value of the investment portfolio in a trust fund at the end of a fiscal year is more than \$100,000,000, the assets of the trust fund may be:

(a) Deposited in the Retirement Benefits Investment Fund pursuant to subparagraph (1) of paragraph (g) of subsection 2 of NRS 287.017;

(b) Invested in any investment which is authorized for a local government pursuant to subparagraph (2) of paragraph (g) of subsection 2 of NRS 287.017; and

(c) Invested in any stocks or other equity securities or bonds or other debt securities which meet the requirements of subparagraph (3) of paragraph (g) of subsection 2 of NRS 287.017.

***3. The Committee on Local Government Finance may waive the minimum market value of the investment portfolio referenced in subsection 2:***

*(a) Upon application by a local government; and*

*(b) For good cause shown, including but not limited to, a demonstrated ability to manage a portfolio which includes equity securities of \$100,000,000 or more and managing a pension fund outside the Public Employees Retirement System of \$100,000,000 or more.*

~~1-3-1~~ 4. If the market value of the investment portfolio of a trust fund that is invested pursuant to subsection 2 falls below \$100,000,000 at the end of a fiscal year, the board of trustees:

(a) Is not required to liquidate any investments described in paragraph (c) of subsection 2.

(b) Shall invest the assets of the trust fund in the manner set forth in subsection 1 until the market value of the portfolio is more than \$100,000,000.

~~1-4-1~~ 5. The assets of a pooled trust authorized pursuant to paragraph (h) of subsection 2 of NRS 287.017 may only be deposited in the Retirement Benefits Investment Fund established pursuant to NRS 355.220.

~~1-5-1~~ 6. All interest, earnings, dividends and distributions received from the investment of assets in the trust fund, minus the expenses charged for such investments, must be deposited into the trust fund.

~~1-6-1~~ 7. Except as otherwise provided in paragraph (h) of subsection 2 of NRS 287.017, the trust fund must be maintained as a separate account, and no other money may be commingled with the money in the trust fund.

~~1-7-1~~ 8. Money in the trust fund must not be used to finance the debt of the local government and must not be used for loans to other funds of the local government.

~~1-8-1~~ 9. Reasonable charges may be assessed to the trust fund for reimbursement of the direct expenses incurred by the board of trustees in administering the trust fund.