

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

LCB FILE NO. R054-22I

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by the agency submitted on 04/22/2022**

Nevada Revised Statute(NRS) and Regulation (NAC)

DEFERRED COMPENSATION FOR STATE EMPLOYEES

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NRS 287.250 Definitions. As used in NRS 287.250 to 287.370, inclusive, unless the context otherwise requires, the words and terms defined in NRS 287.260 to 287.310, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1977, 893; A 1995, 1868; 1999, 33; 2017, 1601)

NRS 287.260 “Committee” defined. “Committee” means the Committee to Administer the Public Employees’ Deferred Compensation Program.

(Added to NRS by 1977, 894; A 2017, 1601)

NRS 287.270 “Deferred compensation” defined. “Deferred compensation” means income which a state employee or employee of the Nevada System of Higher Education may legally set aside under the Program, which may consist of one or more plans authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other plan authorized by any federal law to reduce taxable compensation or other forms of compensation, and which income, while invested under the Program, is exempt from federal income taxes on the employee’s contributions and interest, dividends and capital gains.

(Added to NRS by 1977, 894; A 1979, 797; 1985, 1122; 1987, 1823; 1993, 386; 2001, 1004; 2003, 1408)

NRS 287.275 “Executive Officer” defined. “Executive Officer” means the Executive Officer of the Public Employees’ Deferred Compensation Program appointed by the Director of the Department of Administration pursuant to NRS 232.215.

(Added to NRS by 2017, 1597)

NRS 287.300 “Investment” defined. “Investment” means a savings account, certificate of deposit, fixed or variable annuity contract, life insurance contract, mutual fund or other investment which the Committee has approved for the Program.

(Added to NRS by 1977, 894)

NRS 287.310 “Program” defined. “Program” means the Public Employees’ Deferred Compensation Program authorized by NRS 287.250 to 287.370, inclusive.

(Added to NRS by 1977, 894; A 2017, 1601)

NRS 287.320 Employer may agree with employee to defer compensation; investment of withheld money; deferred compensation and related property, rights and income held in trust.

1. The State may agree with any of its employees, and the Board of Regents of the University of Nevada may agree with any of its employees, to defer the compensation due to them in accordance with a program approved by the Committee which may consist of one or more plans authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other plan authorized by any federal law to reduce taxable compensation or other forms of compensation. The Board of Regents may agree with any of its employees to defer the compensation due to them as authorized by 26 U.S.C. § 403(b) without submitting the program to the Committee for its approval. An employee may defer compensation under one or more plans in the Program.

2. The employer shall withhold the amount of compensation which an employee has, by such an agreement, directed the employer to defer.

3. The employer may invest the withheld money in any investment approved by the Committee or, in the case of deferred compensation under 26 U.S.C. § 403(b) for employees of the Nevada System of Higher Education by the Board of Regents of the University of Nevada.

4. The investments must be underwritten and offered in compliance with all applicable federal and state laws and regulations, and may be offered only by persons who are authorized and licensed under all applicable state and federal regulations.

5. All amounts of compensation deferred pursuant to the Program, all property and all rights purchased with those amounts and all income attributable to those amounts, property or rights must, in accordance with 26 U.S.C. § 401(a), 401(k), 403(b), 457(g) or 3121, including, without limitation, a FICA alternative plan, or any other federal law authorizing a plan to reduce taxable compensation or other forms of compensation, as applicable, be held in trust for the exclusive benefit of the participants in the Program and their beneficiaries.

(Added to NRS by 1977, 894; A 1979, 797; 1985, 1122; 1987, 1823; 1993, 386; 1999, 32; 2001, 1004; 2003, 1408; 2017, 1601)

NRS 287.325 Committee to Administer Public Employees' Deferred Compensation Program: Appointment, terms and compensation of members; vacancies.

1. The Governor shall appoint the Committee to Administer the Public Employees' Deferred Compensation Program. The Committee must consist of:

(a) Two members who are employed by state agencies whose payrolls are administered by the Division of Human Resource Management of the Department of Administration;

(b) One member who is employed by:

(1) A state agency whose payroll is administered by the Division of Human Resource Management of the Department of Administration; or

(2) A political subdivision that participates in the Program;

(c) One member who is employed by a state agency whose payroll is administered by an entity other than the Division of Human Resource Management of the Department of Administration; and

(d) One member who has retired from employment by the State of Nevada or the Nevada System of Higher Education.

(e) Each member of the Committee must be a participant in the Program, have participated in the Program for not less than 2 years and have been nominated for membership by five or more persons who have each participated in the Program for not less than 6 months.

2. After their initial terms, members of the Committee serve terms of 4 years or until their successors have been appointed and have qualified.

3. A vacancy on the Committee occurs when a member dies, resigns or becomes ineligible for membership on the Committee. A person becomes ineligible for membership on the Committee when:

(a) The person ceases to be a participant in the Program; or

(b) Except as otherwise provided in this paragraph, the person ceases to have the qualifications for membership required by the paragraph of subsection 1 under which the person was appointed. A member of the Committee who ceases to have those qualifications may serve the remainder of the member's term if that period does not exceed 24 months.

4. The member appointed pursuant to paragraph (d) of subsection 1 must be compensated \$80 per day from money appropriated from the Program pursuant to NRS 287.365 for attending a meeting of the Committee and for acting at the direction of or on behalf of the Committee.

5. For the purposes of this section, "participant in the Program" means a person who is:

(a) Deferring compensation pursuant to the Program;

(b) Maintaining deferred compensation in the Program; or

(c) Receiving payments of deferred compensation pursuant to the Program.

(Added to NRS by 1995, 1867; A 1997, 25; 2017, 1601)

NRS 287.330 Committee to Administer Public Employees' Deferred Compensation Program: Duties; powers; exemption from liability for certain decisions relating to investments; delegation of administrative duties; standards for exercising delegated duties.

1. The Committee shall:

(a) At its first meeting each year, designate one of its members to serve as Chair of the Committee for a term of 1 year or until the Chair's successor has been designated.

(b) Act in such a manner as to promote the collective best interests of the participants in the Program.

2. The Committee may:

(a) Create an appropriate account for administration of money and other assets resulting from compensation deferred pursuant to the Program.

(b) With the approval of the Governor, delegate to one or more state agencies or institutions of the Nevada System of Higher Education the responsibility for administering the Program for their respective employees, including:

(1) Collection of deferred compensation;

(2) Transmittal of money collected to depositories within the State designated by the Committee; and

(3) Payment of deferred compensation to participating employees.

(c) Contract with a private person, corporation, institution or other entity, directly or through a state agency or institution of the Nevada System of Higher Education, for services necessary to the administration of the plan, including, without limitation:

(1) Consolidated billing;

- (2) The keeping of records for each participating employee and the Program;
- (3) The purchase, control and safeguarding of assets;
- (4) Programs for communication with employees; and
- (5) The administration and coordination of the Program.

3. The Committee and its individual members are not liable for any decision relating to investments if the Committee has:

- (a) Obtained the advice of qualified counsel on investments.
- (b) Established proper objectives and policies relating to investments.
- (c) Discharged its duties regarding the decision:

- (1) Solely in the interest of the participants in the Program; and

- (2) With the care, skill, prudence and diligence that, under the circumstances existing at the time of the decision, a prudent person who is familiar with similar investments would use while acting in a similar capacity in conducting an enterprise of similar character and purpose.

- (d) Solicited proposals from qualified providers, record keepers or third-party administrators of plans at least once every 5 years.

- (e) Monitored the plan and investments to ensure that fees and expenses are reasonable.

4. The Committee may delegate administrative duties for the Program to the Executive Officer. The Executive Officer and the staff of the Program shall act to discharge their duties in the collective best interest of the participants of the Program and with the care, skill, prudence and diligence that, under the circumstances existing at the time of the actions, a prudent person who is familiar with similar programs would use while acting in a similar capacity in conducting an enterprise of similar character and purpose.

(Added to NRS by 1977, 894; A 1979, 797; 1985, 1122; 1991, 1759; 1993, 387; 1995, 1868; 1997, 278; 2007, 1236; 2017, 1602)

NRS 287.335 Interest and income earned on money in deferred compensation account. The interest and income earned on the money in the deferred compensation account created pursuant to subsection 2 of NRS 287.330 in the State General Fund, after deducting any applicable charges, must be credited to the account.

(Added to NRS by 1999, 33)

NRS 287.337 Employment of staff or consultants by Executive Officer. The Executive Officer may, within the limits of money available for this purpose, employ or enter into a contract for the services of such employees or consultants as is necessary for the performance of the duties of the Executive Officer.

(Added to NRS by 2017, 1597)

NRS 287.338 Procedure for awarding contracts to vendors.

1. The Program is subject to the provisions of chapter 333 of NRS.
 2. The Committee shall act as the chief of the using agency for the purposes of NRS 333.335.
 3. If a committee to evaluate proposals for a contract of the Program is established pursuant to NRS 333.335, any number of members of the Committee may be appointed to the evaluation committee. If one or more members of the Committee are appointed to an evaluation committee:
 - (a) No action or deliberation regarding any business of the Committee other than the confidential review of the proposals pursuant to NRS 333.335 may be taken or conducted by the evaluation committee.
 - (b) Except as otherwise provided in paragraph (a), a meeting of the evaluation committee is not subject to chapter 241 of NRS.
 4. The Committee shall review the results of any evaluation of proposals for a contract for the Program pursuant to NRS 333.335 in a closed meeting.
 5. The Committee shall take the following actions pursuant to NRS 333.335 only in an open meeting:
 - (a) Award the contract pursuant to NRS 333.335;
 - (b) Cancel a request for proposals; or
 - (c) Reissue a modified request for proposals.
- (Added to NRS by 2017, 1597)

NRS 287.340 Deferrals of compensation: Deductions from payroll; limitation on amount deferred.

1. Deferrals of compensation may be withheld as deductions from the payroll in accordance with the agreement between the employer and a participating employee.
2. The amount of deferred compensation set aside by the employer to a plan under the Program during any calendar year may not exceed the amount authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other federal law authorizing a plan to reduce taxable compensation or other forms of compensation, as applicable.

(Added to NRS by 1977, 895; A 1979, 798; 1985, 1123; 1987, 1823; 2001, 1005; 2003, 1409)

NRS 287.350 Federal requirements prerequisite for operation of plan; taxation of deferred income by State or political subdivision.

1. No plan in the Program becomes effective and no deferral may be made until the plan meets the requirements of 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other federal law authorizing a plan to reduce taxable compensation or other forms of compensation, as applicable, for eligibility.

2. Income deferred during a period in which no income tax is imposed by the State or a political subdivision may not be taxed when paid to the employee.

(Added to NRS by 1977, 895; A 1979, 798; 1987, 1824; 2001, 1005; 2003, 1409)

NRS 287.360 Program additional to other retirement, pension and benefit systems. The Program must be established in addition to other retirement, pension and benefit systems established by the State or the Nevada System of Higher Education, and does not supersede, make inoperative, or reduce benefits provided by the Public Employees' Retirement System or by any other retirement, pension or benefit program established by law.

(Added to NRS by 1977, 895; A 1985, 1123; 1993, 387)

NRS 287.365 Use of money withdrawn or appropriated from Program; deposit of certain money withdrawn from Program in deferred compensation account.

1. No money may be withdrawn or appropriated from the Program, except:

(a) For payment to a participant or beneficiary of a participant pursuant to the terms of the Program;

(b) In the amount required to pay the necessary expenses of administering the Program;

(c) As specifically authorized by federal law or regulation or by a special act of the Legislature; or

(d) To compensate the member of the Committee appointed pursuant to paragraph (c) of subsection 1 of NRS 287.325.

2. All money withdrawn from the Program pursuant to paragraphs (b) and (d) of subsection 1 must be deposited in the State General Fund for credit to the deferred compensation account created pursuant to subsection 2 of NRS 287.330.

(Added to NRS by 1995, 1867; A 1997, 26; 1999, 33)

NRS 287.370 Use of appropriated money in administration of Program. No appropriated money of the State may be spent in connection with the administration of the Program except as compensation for employees who participated in the administration as part of their regular duties, including without limitation:

1. Members of the Committee;

2. The Executive Officer and employees of the Program; and

3. Employees of the state agency or the institution of the Nevada System of Higher Education selected to administer the Program.

(Added to NRS by 1977, 895; A 1985, 1123; 1993, 387; 2017, 1603)

NAC CHAPTER 287- DEFERRED COMPENSATION

- 287.700 **Definitions.**
- 287.703 **Interlocal contract with political subdivision: Entry; requirements.**
- 287.705 **Purpose.**
- 287.710 **Recordkeepers: Selection and removal.**
- 287.715 **Recordkeepers: Procedures for selection.**
- 287.730 **Appointment of subcommittee to review proposals for position of recordkeeper and make recommendations; general meeting of Committee regarding applicants; negotiation of changes to accepted proposals.**
- 287.735 **Investment consultants: Selection and removal.**

NAC 287.700 Definitions. (NRS 287.330) As used in NAC 287.700 to 287.735, inclusive, unless the context otherwise requires:

1. *“Authorized Employer Contributions” are defined as any additional contributions an employer makes on behalf of an employee as part of an authorized compensation agreement or contract between the employer and employee, that is comprised of additional compensation in excess to the prescribed salary or hourly wage of an employee and that does not conflict with NRS 281.123, 281.120 – 281.1575 inclusive.*
2. *“Committee” means the Committee established to administer the Program.*
3. *“Deferred Compensation” means any compensation either by the employee through execution of an agreement, approved by the Program, directing the employer to defer compensation, any Authorized Employer Contributions, and any Employer Matching Contributions legally set aside under the Program, which may consist of one or more plans authorized and pursuant to 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other plan authorized by any federal law to reduce taxable compensation or other forms of compensation, and which income, while invested under the Program, is exempt from federal income taxes on the employee’s contributions and interest, dividends and capital gains. The combination of employee contributions and Authorized Employer Contributions must not exceed the annual Participant deferral limits afforded by the Internal Revenue Service (IRS) tax code for any calendar tax year. NRS 287.270 and NRS 287.320 inclusive.*
4. *“Employer Matching Contributions” means any arrangement of matching contributions an employer chooses to make to any employee sponsored retirement Plan. The contribution is*

based on elective deferral contributions that an employee makes. In the Program, these classification of contributions are subject to the provisions in NAC 287.745.

5. "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.
6. "Program" means the Public Employees' Deferred Compensation Program authorized by NRS 287.250 to 287.370, inclusive.
- 7.
8. "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.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R066-13, 12-23-2013)

NAC 287.703 Interlocal contract with political subdivision: Entry; requirements. (NRS 287.330)

1. The Committee will, pursuant to NRS 277.180, enter into an interlocal contract with a political subdivision to enable any employee of the political subdivision to participate in the Program if the Committee determines, by a majority vote of all its members, that entering into the contract is in the best interest of the Program.

2. In addition to the requirements of NRS 277.180, an interlocal contract entered into pursuant to subsection 1 must provide that:

(a) The contract continues in effect until terminated by:

(1) The mutual consent of the parties;

(2) One of the parties giving 60 days' written notice to the other party; or

(3) The withdrawal, limitation or impairment of any money provided to the Committee by the State or the Federal Government for the administration of the Program.

(b) Except as otherwise provided by the terms of the contract, an employee of the political subdivision participates in the Program subject to the same terms and conditions that apply to state employees and employees of the Nevada System of Higher Education.

3. As used in this section, "political subdivision" includes, without limitation, a county, city, town, school district or special district.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog. by R128-15, eff. 4-4-2016)

NAC 287.705 Purpose. (NRS 287.330) The purpose of NAC 287.705 to 287.735, inclusive, is to set forth the procedures for the selection of investment consultants and recordkeepers for the Program.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

NAC 287.710 Recordkeepers: Selection and removal. (NRS 287.330)

1. The Committee will select recordkeepers for the Program. The Committee will contract with more than 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 every fifth year.
3. Recordkeepers serve at the pleasure of the Committee and are subject to removal at any time by a majority vote of the Committee.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

NAC 287.715 Recordkeepers: Procedures for selection. (NRS 287.330) In selecting a recordkeeper, the Committee will follow the procedures set forth in chapter 333 of NRS, the applicable regulations and the State Administrative Manual.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

NAC 287.730 Appointment of subcommittee to review proposals for position of recordkeeper and make recommendations; general meeting of Committee regarding applicants; negotiation of changes to accepted proposals. (NRS 287.330)

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 one or more of the applicants for appointment as 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.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

NAC 287.735 Investment consultants: Selection and removal. (NRS 287.330)

1. The Committee will select such investment consultants as are necessary to provide services needed for the selection of recordkeepers and for the administration of the Program and the investment of the money of the participants.

2. Such 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.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

NAC 287.740 Authorized Employer Contributions

- 1. The Program is afforded the authority to adopt and allow for Authorized Employer Contributions pursuant to Section 457(b) of U.S.C. Title 26- Internal Revenue Code.*
- 2. All Deferred Compensation, both employee voluntary contributions and any Authorized Employer Contributions in combination and in accrual, must be subject to the employees qualifying annual contribution limit for each corresponding calendar tax year and per the Program's adopted Plan Documents and administrative policies.*
- 3. Any Authorized Employer Contributions must adhere to and be in compliance with NRS 281.120 – 281.1575 inclusive.*

NAC 287.745 Employer Matching Contributions

- 1. Except as otherwise provided in subsection 2, the Program does not permit Employer Matching Contributions to be made to the State of Nevada Public Employees' Deferred Compensation Program by any Department, Agency, Board, Committee, or Commission within the Executive Branch of the State of Nevada.**
- 2. Boards, Committees, Commissions, and any classification of employee within the State of Nevada Executive Branch that does not qualify to participate in the State of Nevada Public Employees' Retirement System, may make Employer Matching Contributions to the Program with the following provisions:**
 - a) All Deferred Compensation, both employee voluntary contributions and any Employer Matching Contributions in combination and in accrual, must be subject to the employees qualifying annual contribution limit for each corresponding calendar tax year and per the Program's adopted Plan Documents and administrative policies.**
 - b) Employer Matching Contributions must adhere to and be in compliance with NRS281.120 – 2811575 inclusive.**