



Steve Sisolak
Governor

Laura E. Freed
Director

Matthew Tuma
Deputy Director

Rob Boehmer
Executive Officer

STATE OF NEVADA DEPARTMENT OF ADMINISTRATION

PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM

100 N. Stewart Street, Suite 100, Carson City, Nevada 89701
Telephone 775-684-3398 | Fax 775-684-3399 | defcomp.nv.gov

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption and Amendment of Regulations of the State of Nevada Public Employees' Deferred Compensation Program (NDC)

To: All Interested Parties
From: Nevada Public Employees Deferred Compensation Program (NDC)
Date: December 6, 2022
Re: Proposed Regulations LCB No. R054-22

The Nevada Deferred Compensation Program (NDC) will hold a public hearing as follows:

Tuesday, January 10, 2023, starting at 8:30AM

LOCATION:

Nevada State Library and Achieves Building, 100 North Stewart Street, in the Entry Level Board Room, Carson City, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to **LCB File No. R054-22** Chapter 287 of the Nevada Administrative Code.

Supporting materials relating to this meeting will be physically available, but in an effort to reduce costs and preserve resources, attendees are encouraged to access electronic copies on the NDC's website at <https://www.defcomp.nv.gov>

Teleconference Access:

+1 775-321-6111 US
Phone Conference ID: 931 460 410#

Note: Persons may attend the meeting and provide testimony through the conference call, or by providing written testimony via email to msalerno@defcomp.nv.gov.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. *The need for and the purpose of the proposed regulation or amendment.*

The need and purpose of the proposed regulation adoption and amendment is to provide clarification of the established authority under NRS 287.320 which adopts existing federal law, that states employers are authorized to make contributions to the deferred compensation plans of their employees under certain circumstances. (See, e.g., 26 U.S.C. §§ 401(a), 401(m) and 403(b); 26 C.F.R § 1.457-2), and to meet and fulfill recommendations made by the State of Nevada Governor's Office's Division of Internal Audits (DIA) in audit DIA 21-05. This regulation establishes requirements for employer contributions made to a deferred compensation plan under 26 U.S.C. § 457(b), and this regulation establishes requirements for employer matching contributions made to deferred compensation plans of certain employees, more particularly employees within the Executive Branch of the State of Nevada. This regulation further establishes that, for the purposes of existing law and regulations, such employer contributions to a deferred compensation plan are treated as deferred compensation of the employees for whom the contributions were made, along with the income which the employee has elected to defer.

2. *The terms or the substance of the proposed regulation to be adopted, amended, or repealed, or a description of the subjects and issues involved.*

The purpose of the adopted regulation is to provide clarity for the public, individuals, and satisfy the recommendations made by the DIA through further clarifying regulations.

Existing law does not provide necessary clarification on what circumstances Employer Contributions and Employer Matching Contributions can be made to the NDC Program.

3. *The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and, in each case, must include:*

(a) Both adverse and beneficial effects-

The NDC Committee and Administrative staff used informed, reasonable judgement in determining that there will not be an adverse impact on small businesses due to the fact that only qualified government entities and agencies qualify to be able to contribute and participate in the NDC Program. This proposed amendment to Chapter 287 of NAC will clarify Employer Contributions and Employer Matching Contributions that are legally made under the Program by any department, agency, board, committee, commission or any other entity within the Executive Branch of State Government. Furthermore, this amendment to Chapter 287 of NAC appropriately fulfills and satisfies the recommendations made by the DIA in Audit DIA 21-05.

(b) Both immediate and long-term effects.

The immediate and long-term effects of this amendment to Chapter 287 of the NAC ensures that all departments, agencies, boards committees commissions, and any other entities within the Executive Branch of State Government will comply with NRS 281.120 to 281.1575 inclusively.

There is no adverse and beneficial effect nor any immediate or long-term effects on or to the public as a result of this amendment being proposed.

4. *The estimated cost to the agency for enforcement of the proposed regulation.*

There is no known estimated cost to the agency for enforcement of this proposed regulation adoption and amendment.

5. *A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.*

There is no known description or citation to any other federal, state, or local governmental regulations which the proposed regulation would overlap or duplicate.

6. *If the regulation is required pursuant to federal law, a citation and description of the federal law.*

Not applicable.

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

Not applicable.

8. *Whether the proposed regulation establishes a new fee or increases an existing fee.*

No new fees are established.

PERSONS WISHING TO COMMENT

Persons wishing to comment upon the proposed action of the Nevada Public Employees' Deferred Compensation Program may:

- Appear at the scheduled public hearing in person, OR via teleconference/telephone to address their comments, data, views, or arguments; OR
- Address their comments, data, views, or arguments, in written form, via email at msalerno@defcomp.nv.gov, or by postal mail to the Nevada Public Employees' Deferred Compensation Program (NDC), 100 North Stewart Street, Suite 100, Carson City, Nevada 89701. Written submissions must be received by the NDC on or before 3:00PM Pacific, Friday, **December 30, 2022**.

If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the NDC may proceed immediately to act upon any written submissions.

POSTING/DISSEMINATION OF THE PROPOSED REGULATIONS

This Notice of Intent to Act Upon a Regulation has been posted and disseminated as follows:

- **EMAILED TO:**
 - All persons on the NDC's mailing list for administrative regulations
- **DEPOSITED WITH** the State Library & Archives and Public Records Administrator
- **POSTED AT THE FOLLOWING PHYSICAL LOCATIONS:**
 - Nevada State Library & Archives building located at 100 N. Stewart Street, Carson City Nevada, 89701
 - Blasdel Building, 209 E. Musser Street, Carson City, Nevada, 89701
 - Capitol Building, 101 N. Carson Street, Carson City, Nevada, 89701
 - Legislative Building, 401 S. Carson Street, Carson City, Nevada, 89701

- **POSTED ONLINE AT THE FOLLOWING WEBSITES:**
 - Nevada Public Employees' Deferred Compensation Administrative Office
<https://www.defcomp.nv.gov>
 - State of Nevada Public Notices
www.notice.nv.gov
 - Nevada Legislature Administrative Regulation Notices, Meetings and Workshops
<https://www.leg.state.nv.us/app/notice/a/>
<https://www.leg.state.nv.us/Register/2022Register/R054-22RP1.pdf>

HOW TO OBTAIN A COPY OF THE PROPOSED REGULATION

A copy of the proposed regulations may be obtained by any of the following means:

- Available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us> .
- Available to access and download from the NDC's website at: <https://www.defcomp.nv.gov>
- By email or mail through a written request to the NDC Administrative office via email at msalerno@defcomp.nv.gov or postal mail to Nevada Deferred Compensation, 100 N. Stewart Street, Suite 100, Carson City, Nevada, 89701, or by verbal request to the NDC Administrator at 775-684-3398.

All interested parties are encouraged to participate in the regulatory review process.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements are necessary, please notify Robert Boehmer, Executive Officer/Administrator at (775) 684-3398 within 72 hours of the meeting date and time.

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

LCB File No. R054-22

December 9, 2022

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

AUTHORITY: §§ 1-4, NRS 287.330.

A REGULATION relating to public employees; adopting provisions governing employer contributions to certain deferred compensation plans of public employees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the establishment of the Public Employees’ Deferred Compensation Program. (NRS 287.250-287.370) Under the Program, state employees and employees of the Nevada System of Higher Education are authorized to defer a certain amount of compensation and have such deferred compensation set aside for certain plans authorized under federal law to reduce taxable compensation or other forms of compensation. (NRS 287.320, 287.340) Existing law requires that such deferred compensation be held in trust for the exclusive benefit of the participants in the Program and their beneficiaries and be invested in certain approved investments. (NRS 287.320) Under existing law, the Committee to Administer the Public Employees’ Deferred Compensation Program, which is appointed by the Governor, is required to administer the Program. (NRS 287.325, 287.330)

Under the existing federal law, employers are authorized to make contributions to the deferred compensation plans of their employees under certain circumstances. (*See, e.g.*, 26 U.S.C. §§ 401(a), 401(m) and 403(b); 26 C.F.R § 1.457-2) **Section 3** of this regulation establishes requirements for employer contributions made to a deferred compensation plan under 26 U.S.C. § 457(b), and **section 4** of this regulation establishes requirements for employer matching contributions made to deferred compensation plans of certain employees. **Section 2** of this regulation establishes that, for the purposes of existing law and regulations, such employer contributions to a deferred compensation plan are treated as deferred compensation of the employees for whom the contributions were made, along with the income which the employee has elected to defer.

Section 1. Chapter 287 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *For the purposes of NRS 287.250 to 287.370, inclusive, and this chapter, the term “deferred compensation” includes any:*

1. Income which a state employee or employee of the Nevada System of Higher Education may legally set aside under the Program;

2. Employer contributions described in section 3 of this regulation which are legally made under the Program; and

3. Employer matching contributions described in section 4 of this regulation, which are legally made under the Program..

Sec. 3. *1. A department, agency, board, committee, commission or any other entity within the Executive Branch of State Government may, on behalf of an employee of the employer, make contributions to the eligible deferred compensation plan of the employee if:*

(a) The employer and employee have entered into a compensation agreement or contract that requires the employer to make contributions to the eligible deferred compensation plan of the employee in addition to the payment to the employee of a salary or hourly wage;

(b) The total amount of deferred compensation withheld by the employer and set aside to the eligible deferred compensation plan during the calendar year and the total amount of the employer contributions described in paragraph (a) do not exceed the maximum amount of compensation which may be deferred by the employee pursuant to section 457(b) of the Internal Revenue Code, 26 U.S.C. § 457(b); and

(c) The compensation paid to the employee and the amount of employer contributions described in paragraph (a) comply with NRS 281.120 to 281.1575, inclusive.

2. *As used in this section, “eligible deferred compensation plan” means a plan satisfying the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. § 457(b).*

Sec. 4. *1. A department, agency, board, committee, commission or any other entity within the Executive Branch of State Government which participates in the Public Employees’ Retirement System established by chapter 286 of NRS may not make employer matching contributions to any plan within the Program.*

2. A department, agency, board, committee, commission or any other entity within the Executive Branch of State Government which does not participate in the Public Employees’ Retirement System established by chapter 286 of NRS may make employer matching contributions to any plan within the Program if:

(a) The total amount of deferred compensation set aside by the employer to a plan under the Program during any calendar year and the total amount of the employer matching contributions does not exceed the maximum contribution limit for the applicable plan; and

(b) The compensation paid to the employee and the amount of employer matching contributions described in paragraph (a) complies with NRS 281.120 to 281.1575, inclusive.

3. As used in this section, “employer matching contributions” means any contributions made by an employer to a plan within the Program pursuant to an arrangement whereby an employer makes contributions to the plan based on the amount of compensation deferred by an employee and contributed to such a plan.