

**PROPOSED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R098-22

September 1, 2022

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

AUTHORITY: §§ 1-5, NRS 360.283.

A REGULATION relating to taxation; revising provisions relating to a petition to revise the estimates of the population of a county, incorporated city or unincorporated town prepared by the Department of Taxation; repealing certain provisions relating to the use of population counts set forth in a decennial or special census conducted by the Bureau of the Census of the United States Department of Commerce; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Department of Taxation to annually determine the population of each town, township, city and county and submit its determination to the Governor, who is required to certify the respective population totals on or before March 1 of each year. The Department is required to use the population totals certified by the Governor for any tax that is collected for apportionment in whole or in part to any political subdivision where the basis of the apportionment is the population of the political subdivision. (NRS 360.283, 360.285) **Section 5** of this regulation repeals obsolete provisions that allow, under certain circumstances, the population count from a decennial census or special census conducted by the Bureau of the Census of the United States Department of Commerce to replace the estimates of populations calculated by the Department of Taxation. **Sections 1-3** of this regulation make conforming changes to eliminate references to the repealed provisions.

Existing law authorizes each town, city or county to petition the Department of Taxation to revise the respective estimated population of the town, city or county, and to appeal the decision of the Department on review. (NRS 360.283) Existing regulations establish a procedure for submitting a petition to appeal an estimate of the population that requires: (1) a petition to appeal to be filed with the Department not later than 2 weeks after the date on which estimates are distributed by the demographer employed by the Department; and (2) if an appeal must be heard by a hearing officer, the Department to mail or transmit by facsimile machine, notice of the date for the hearing. (NAC 360.390) **Section 4** of this regulation makes technical corrections to the language related to such procedure for consistency with Nevada Revised Statutes. **Section 4** further requires that: (1) a petition to revise the estimates of the population of a county, city or town be filed not later than 14 days after the date on which the estimates are distributed; and (2)

if such petition must be heard by a hearing officer, the Department must mail or transmit by electronic mail notice of the date for the hearing.

Section 1. NAC 360.365 is hereby amended to read as follows:

360.365 1. Except as otherwise provided in this section or NAC ~~360.373,~~ 360.375, ~~for~~ ~~360.377,~~ estimates of the population of this State and its counties must be determined by averaging on an equal basis the results of the Nevada regression model and the relevant housing unit model.

2. The housing unit model must include housing units listed on the county assessors' records as of July 1 of each year. Only units included on the county assessors' records may be used unless the appropriate local governmental official certifies to the Department that the unit has been approved for occupancy on or before July 1. Documentation certified by the appropriate local governmental official, subject to the approval of the Department and the demographer employed by the Department, may be submitted to the Department to verify that a housing unit should be included in the calculations.

3. The number of persons per household must be calculated using the last decennial census unless a more recent source is available and has been approved by the Department and the demographer employed by the Department. The number of persons per household may be adjusted using historical rates of change in persons per household. To the extent possible, the vacancy rate must be determined for all incorporated cities and unincorporated towns within a county on a consistent basis using data from the last decennial census. The occupancy rate may be updated by using a postal survey, data from utilities providing services within those cities and towns or information from other sources acceptable to the Department and the demographer employed by the Department that indicates changes to data from the last decennial census.

4. A county and the incorporated cities and unincorporated towns within that county may coordinate and agree upon the data to be included in the housing unit models for the county and each incorporated city and unincorporated town. If the county, incorporated cities and unincorporated towns cannot agree by September 30, the question of what data may be included must be submitted to the Department and the demographer employed by the Department for resolution. Housing unit estimates must be submitted to the demographer employed by the Department not later than the first state working day in November.

5. If the Department and the demographer employed by the Department determine that data is unavailable to produce a workable housing unit model, the Nevada regression model must be used to determine the population of the county.

6. If the Department and the demographer employed by the Department determine that data is unavailable to produce a workable Nevada regression model, the housing unit model must be used to determine the population of the county.

7. If the Department and the demographer employed by the Department determine that data is unavailable to produce a workable housing unit model and a workable Nevada regression model, the latest estimates prepared by the Bureau of the Census must be used to determine the population of the county.

Sec. 2. NAC 360.368 is hereby amended to read as follows:

360.368 1. Except as otherwise provided in this section or NAC ~~360.373,~~ 360.375, ~~for~~ ~~360.377,~~ the estimate of the population of an unincorporated town must be determined by using the town-county ratio for the unincorporated town obtained from the relevant housing unit model. The ratio may be adjusted by the Department and the demographer employed by the Department:

(a) For annexations not previously included in the ratio.

(b) To increase the estimates by using the number of housing units added since the date of the most recent estimates of population. The number of housing units must be certified by the appropriate local governmental official.

(c) For any error or omission which comes to the attention of the Department.

↪ The resulting town-county ratio must be multiplied by the total population of the county calculated pursuant to NAC 360.365 or 360.375.

2. If the Department and the demographer employed by the Department determine that the data necessary to produce a workable housing unit model is not available, the estimate of the population of the unincorporated town may be determined by using:

(a) A decennial census ratio;

(b) A ratio obtained from the most relevant available information; or

(c) An average on an equal basis of the ratios set forth in paragraphs (a) and (b),

↪ as determined by the Department and the demographer employed by the Department.

Sec. 3. NAC 360.370 is hereby amended to read as follows:

360.370 1. Except as otherwise provided in this section or NAC ~~360.373,~~ 360.375, ~~for~~ ~~360.377,~~ the estimate of the population of an incorporated city must be determined by using the city-county ratio for the incorporated city obtained from the relevant housing unit model. The ratio may be adjusted by the Department and the demographer employed by the Department:

(a) For annexations not previously included in the ratio.

(b) To increase the estimates by using the number of housing units added since the date of the most recent estimates of population. The number of housing units must be certified by the appropriate local governmental official.

(c) For any error or omission which comes to the attention of the Department.

↳ The resulting city-county ratio must be multiplied by the total population of the county calculated pursuant to NAC 360.365 or 360.375.

2. If the Department and the demographer employed by the Department determine that the data necessary to produce a workable housing unit model is not available, the adjusted Bureau of the Census ratio must be used to determine the estimate of the population of the incorporated city.

3. If the Department and the demographer employed by the Department determine that the data necessary to produce a workable housing unit model and a workable adjusted Bureau of the Census ratio is not available, the estimate of the population of the incorporated city may be determined by using:

(a) A decennial census ratio;

(b) A ratio obtained from the most relevant available information; or

(c) An average on an equal basis of the ratios set forth in paragraphs (a) and (b),

↳ as determined by the Department and the demographer employed by the Department.

4. As used in this section, “adjusted Bureau of the Census ratio” means the fraction or percentage of the total population of a county that is located within a certain incorporated city or unincorporated town within the county which is based upon the most recent estimates prepared by the Bureau of the Census and is adjusted by the Department and the demographer employed by the Department for annexations, changes in housing units, any errors or omissions, and any other relevant information that comes to the attention of the Department and the demographer employed by the Department.

Sec. 4. NAC 360.390 is hereby amended to read as follows:

360.390 1. The demographer employed by the Department shall distribute to the designated representative of each county, incorporated city and unincorporated town the estimates of the population of the county, incorporated city or unincorporated town not later than the first state working day in December.

2. A petition to ~~{appeal}~~ *revise* the estimates of the population of a county, incorporated city or unincorporated town must be submitted in writing to the Department not later than ~~{2 weeks}~~ *14 days* after the date on which the estimates are distributed. The petition must set forth the grounds for the ~~{appeal}~~ *petition* and include copies of all documentation supporting the ~~{appeal}~~ *petition*.

3. Upon filing a petition to ~~{appeal}~~ *revise the estimated population of a county, incorporated city or unincorporated town*, the petitioner shall give notice of the ~~{appeal}~~ *petition* to the county and all incorporated cities and unincorporated towns within the county.

4. The Department will, within 5 state working days after ~~{receiving}~~ *the deadline to file* a petition ~~{to appeal}~~ *pursuant to subsection 2*, notify all counties, incorporated cities and unincorporated towns in the State of the receipt of ~~{the petition}~~ *any petitions submitted to the Department*.

5. ~~{An appeal}~~ *A petition* must be based on at least one of the following grounds:

- (a) An error was made in the application of the methodology used to determine the estimates.
- (b) An incorrect assumption was made in developing the proposed estimates.
- (c) Additional information has become available which was not available or not used when the proposed estimates were being developed and the application of the additional information, if accepted by the Department and the demographer employed by the Department, would cause the proposed estimates to change materially.

6. The Department and the demographer employed by the Department will review the petition and may issue revised estimates. If revised estimates are issued, the Department will notify the petitioner in writing of the revised estimates as soon as practicable. If the revised estimates are agreed to by the petitioner not later than 30 days after the date on which the written notification is issued, or within such additional period as agreed to by the Department and the petitioner, the Department will issue a written decision on the petition adopting the revised estimates as the estimates of the population of the respective county, incorporated city or unincorporated town. If the revised estimates are not timely agreed to by the petitioner or if the Department and the demographer employed by the Department determine not to issue revised estimates within 30 days after the submission of the petition, the Department will set the ~~appeal~~ *petition* for hearing.

7. The ~~appeal~~ *petition* must be heard by a hearing officer of the Department in accordance with the provisions of NAC 360.043 to 360.200, inclusive. The Department will mail or transmit by ~~faecsimile machine~~ *electronic mail* to the petitioner and all counties, incorporated cities and unincorporated towns a notice of the date for the hearing during which oral arguments will be heard. The notice must be mailed or transmitted by ~~faecsimile machine~~ *electronic mail* not later than 5 state working days before the date of the hearing. Unless extended by the Department, an oral argument will be limited to 20 minutes.

8. A decision of the hearing officer may be appealed to the Commission. A decision of the Commission is a final decision for the purposes of judicial review.

9. An existing estimate of the population of any incorporated city or unincorporated town that does not submit a petition ~~to appeal~~ pursuant to this section will not be affected by any revised estimate that is agreed to by the Department and a petitioner pursuant to this section

unless the Department determines that specific errors were made in the calculation of the existing estimate.

Sec. 5. NAC 360.373 and 360.377 are hereby repealed.

TEXT OF REPEALED SECTIONS

360.373 Use of population count from decennial census. (NRS 360.090, 360.283)

1. When the Bureau of the Census conducts a decennial census in this State, the population count from the decennial census may replace the estimates of populations calculated pursuant to NAC 360.365, 360.368 and 360.370.

2. An appropriate local government official may apply to the Department for approval to use the population count from the decennial census. The Department shall approve the request if the Department and the demographer employed by the Department determine that the population count is reasonable and the county and all of the incorporated cities and unincorporated towns within the county agree to use the population count.

3. If the county, incorporated cities and unincorporated towns cannot agree on a method to estimate population on or before December 1, the estimates of the populations of the county and all of the incorporated cities and unincorporated towns in that county must be determined pursuant to NAC 360.365, 360.368 and 360.370.

4. If the population count from the decennial census is used to estimate the population of a county, incorporated city or unincorporated town, the population count must be adjusted, if necessary, by the Department and the demographer employed by the Department for the change in housing units between the effective date of the population count and July 1.

360.377 Use of population count from special census. (NRS 360.090, 360.283)

1. If the Bureau of the Census conducts a special census in this State, the population count from the special census may replace the estimates of populations calculated pursuant to NAC 360.365, 360.368 and 360.370.

2. If the population count from a special census is used to estimate the population of a county, incorporated city or unincorporated town, the population count must be adjusted, if necessary, by the Department and the demographer employed by the Department for the change in housing units between the effective date of the population count and July 1.