

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

LCB File No. R089-08

Effective September 18, 2008

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

AUTHORITY: §§1-18, NRS 287.017.

A REGULATION relating to local governmental finance; providing requirements relating to the establishment, administration and investment of a trust fund for the management of certain retirement benefits provided by a local government; and providing 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 18, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Benefits plan” has the meaning ascribed to it in NRS 287.017.*

Sec. 4. *“Board of trustees” means the persons appointed by a governing body to administer a trust fund established pursuant to NRS 287.017.*

Sec. 5. *“Governing body” means the governing body of a local government.*

Sec. 6. *“Local government” has the meaning ascribed to it in NRS 287.017.*

Sec. 7. *“Professional fund manager” means a person or entity that provides investment management services including, without limitation, the implementation of investment strategies and the management of an investment portfolio.*

Sec. 8. *“Retirement benefits” has the meaning ascribed to it in NRS 287.017.*

Sec. 9. *“Trust fund” means a trust fund established pursuant to NRS 287.017.*

Sec. 10. 1. *A trust fund must be established by a resolution of the governing body, which must include specific statements regarding:*

(a) The purpose of the trust fund;

(b) A statement that all contributions to the trust fund, including any interest and income earned on the money in the trust fund, are held in trust, are irrevocable and may be used only to:

(1) Provide, for the benefit of retired employees of that local government and the spouses and dependents of those employees, retirement benefits in accordance with the benefits plan of that local government; and

(2) Pay any reasonable administrative expenses incident to the provision of those benefits and the administration of the trust fund;

(c) The sources of the money expected to be deposited in the trust fund;

(d) The appointment by the governing body of a board of trustees, including, without limitation, the number of members of the board of trustees and their terms of office, as determined pursuant to section 11 of this regulation;

(e) A statement that the powers, duties, rights and obligations of the board of trustees will conform to the requirements of NRS 287.017 and sections 2 to 18, inclusive, of this regulation;

(f) A statement that, except as otherwise provided in paragraph (h) of subsection 2 of NRS 287.017, no other money will be commingled with the money in the trust fund and that the trust fund will be maintained as a separate account; and

(g) A statement that the money in the trust fund will not be used to finance debt of the local government and will not be available for loans to other funds of the local government.

2. A copy of the resolution adopted pursuant to subsection 1 must be filed with the Department of Taxation within 30 days after its adoption by the governing body. The Department of Taxation shall report at least annually to the Committee on Local Government Finance regarding the trust funds established during the reporting period.

Sec. 11. 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 section 17 of this regulation, 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:

(a) He 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) He 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 section 17 of this regulation.

Sec. 12. *1. The members of a board of trustees shall select a chairman and vice chairman from the members of the board of trustees.*

2. The chairman of the board of trustees shall:

(a) Preside at all meetings of the board of trustees; and

(b) Perform the duties incident to his office and such other duties as may be prescribed by the board of trustees from time to time.

3. The vice chairman shall:

(a) Perform such duties as from time to time may be assigned to him by the chairman or by the board of trustees; and

(b) In the absence of the chairman, or in the event of his inability or refusal to act, as determined by the majority of the board of trustees, perform the duties of the chairman.

4. The board of trustees shall meet quarterly or at the call of the chairman when business is presented. The governing body may remove a member of the board of trustees if the member fails to attend two consecutive meetings or any three meetings during a calendar year.

5. The board of trustees shall comply with the provisions of chapter 241 of NRS.

6. A majority of the members of the board of trustees constitutes a quorum for all purposes.

7. Any member of the board of trustees may request a roll call vote of record.

Sec. 13. 1. *The board of trustees may not negotiate or otherwise determine the retirement benefits provided to the beneficiaries of the trust fund.*

2. A member of the board of trustees may not bind the board of trustees by word or action unless the board of trustees has, in its corporate capacity, designated such member as its agent for a specific purpose and for that purpose only.

3. The earnings of the trust fund shall not inure to the benefit of any member of the board of trustees except that a member of the board of trustees may be a beneficiary of the trust fund through participation in his employer's benefits plan.

4. A member of the board of trustees shall not be interested, directly or indirectly, as principal, partner, agent or otherwise in any contract entered into or expenditure authorized by the board of trustees, or in the profits or results thereof.

Sec. 14. 1. *A governing body may provide for the payment to members of the board of trustees of:*

(a) Compensation of not more than \$80 for each day or portion of a day that the member is actually engaged in the work of the board of trustees; and

(b) The per diem allowance and travel expenses normally provided for officers and employees of the local government, if any, for each day or portion of a day that the member is actually engaged in the work of the board of trustees.

2. The governing body shall provide to the board of trustees the staff necessary to assist the board of trustees in carrying out its powers and duties, including, without limitation, staff to organize and provide notice of the meetings of the board of trustees, take the minutes of such meetings, receive and disseminate financial reports of the professional fund managers of the trust fund, if any, and prepare financial reports and budgets for the board of trustees.

3. The governing body shall provide for the necessary and reasonable expenses of the board of trustees, including, without limitation, the costs of the annual audit required pursuant to section 15 of this regulation.

Sec. 15. *1. The governing body shall annually inform the board of trustees of the amount of the contributions that the governing body expects to make to the trust fund. In determining such a contribution, the governing body may:*

(a) Commission actuarial studies that estimate the liabilities of the benefits plan of the local government for the ensuing 5 fiscal years; or

(b) Use an alternative method of calculation that is allowed by generally accepted accounting principles and which is performed or commissioned by the governing body.

↪ The results of any such studies or calculations must be completed before March 1 of each year in order that the amount of the contributions to the trust fund is determined before completion of the tentative budget of the board of trustees for submission to the governing body pursuant to subsection 2.

2. The board of trustees shall annually submit a tentative budget to the governing body for its consideration, approval and inclusion in the tentative and final budgets of the governing body. The tentative budget submitted by the board of trustees must incorporate the amount of contributions determined pursuant to subsection 1. The governing body may modify the tentative budget of the board of trustees at its discretion.

3. The board of trustees shall cause the trust fund to be audited annually. The books, records and accounts of the trust fund may be audited by the same person or entity that audits the books, records and accounts of the local government. The governing body shall incorporate the results of the audit into the annual audit report of the local government.

Sec. 16. 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.

(b) Pursuant to subsection 2 of section 17 of this regulation.

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, 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. The investment plan must:

(a) Include formal investment policies consistent with the requirements of NRS 287.017 and sections 2 to 18, inclusive, of this regulation, 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. 17. 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. 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.

4. 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.

5. 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.

6. Except as otherwise provided in paragraph (h) of subsection 2 of NRS 281.017, the trust fund must be maintained as a separate account, and no other money may be commingled with the money in the trust fund.

7. 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.

8. 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.

Sec. 18. *1. Except as otherwise provided in subsection 2, the board of trustees shall, upon request of the governing body, transfer money from the trust fund to an account designated by the governing body not later than 10 business days after the first day of the*

month following receipt of the request by the board of trustees. A request by the governing body pursuant to this subsection must include, without limitation:

(a) An explanation of the manner in which the proposed transfer will be used to fulfill the requirements of the benefits plan of the local government;

(b) A copy of the budget of the local government for the current fiscal year, which demonstrates that expenditures for retirement benefits are authorized by the governing body pursuant to an agreement between the local government and its employees;

(c) Minutes of the meeting of the governing body at which the transfer was proposed; and

(d) The signature of the chairperson of the governing body.

2. If the request by the governing body does not meet the requirements of this section, the board of trustees may delay transfer of the money until the governing body has complied with the requirements.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB FILE R089-08**

Establishment, Administration and Investment of a Retirement Trust Fund

The Committee on Local Government Finance adopted regulations assigned LCB File No. R089-08 which pertain to chapter 354 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) Chapter 287 adopted by the Committee on Local Government Finance (CLGF), relating to the establishment, administration and investment of a trust fund for the management of certain retirement benefits provided by a local government; and providing other matters properly relating thereto.

- 1. 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 CLGF, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
10/4/07	Subcommittee	10/10/07	366	177
11/26/07	Workshop	12/13/07	366	177
1/14/08	Workshop	1/30/08	366	177
2/29/08	Subcommittee	3/6/08	366	177
3/18/08	Workshop	4/2/08	366	177
5/5/08	Hearing	6/4/08	366	177

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

Many oral and two written comments were received at the workshops and hearing. 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 Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **lhopper@tax.state.nv.us**.

The Legislative Counsel Bureau completed its review and revisions on June 3, 2008.

2. **The number of persons who:**
 (a) **Attended and testified at each workshop:**

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
10/10/07	9	3
12/13/07	9	3
1/30/08	21	6
3/6/08	11	5
4/2/08	30	4

- (b) **Attended and testified at each hearing:**

<u>Date of Hearing</u>	<u>Commission/ Public Attended</u>	<u>Public Testified</u>
6/4/08	20/31	3

- (c) **Submitted to the agency written comments:**

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
10/10/07	0
12/13/07	1
1/30/08	2
3/6/08	2
4/2/08	3

3. **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 businesses, local governments, 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 mail to assessors and the interested parties list maintained by the Department. Approximately 48% of the approximately 366 direct mail or email notices were sent to individuals or associations representing business.

Members of the CLGF, officials of the Nevada Department of Taxation, 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 Hearings.

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

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

4. 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 Department of Taxation primarily from government entities and CLGF members during the workshops and hearings listed above. CLGF adopted the permanent regulation as revised in a workshop and at the adoption hearing; and believed no changes other than those made were necessary.

5. 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.**

CLGF found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada. The permanent regulation establishes the requirements for creating a retirement 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, and accounting and auditing functions.

The regulations present no reasonably foreseeable or anticipated immediate or long-term negative economic effects to businesses. The regulation provides the criteria for creating and administering retirement trust funds for public employees. The immediate and long-term effects of the regulation are to provide a process for the creation and administration of retirement trust funds.

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

The Department anticipates some additional cost for local governments to administer the regulation.

7. 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.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

CLGF is not aware of any provision in this regulation which is also governed by federal regulation.

9. **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.**

CLGF is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.