

Chapter 361 of NAC

LCB File No. T041-09

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

Filed with the Secretary of State on June 9, 2009

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

AUTHORITY: §1, NRS 354.107.

A REGULATION relating to local government financial administration; establishing the practice and procedure before the Committee on Local Government Finance when the presence of a representative of the governing body is required to appear to explain delinquent documents and payments.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *As used in sections 2 to 32, inclusive, of this regulation, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meaning ascribed to them in those sections.*

Sec. 3. “Committee” defined. *“Committee” means the Committee on Local Government Finance.*

Sec. 4 “Contact person” defined. *“Contact person” means a person designated by a party to receive communications concerning a proceeding before the Committee.*

Sec. 5. “Department” defined. *“Department” means the Department of Taxation.*

Sec. 6. “Director” defined. *“Director” means the Executive Director of the Department.*

Sec. 7. “Hearing officer” defined. *“Hearing officer” means any person the Committee may designate.*

Sec. 8. “Intervener” defined. *“Intervener” means a person or local government other than the original party to the proceeding who is directly and substantially affected by the proceeding and who requests in writing, not later than 15 days before a hearing, to appear and present testimony or otherwise participate at the hearing.*

Sec. 9. “Party” defined. *“Party” means a person, government, governmental agency or political subdivision of a government entitled or requested to appear in a proceeding of the Committee. The term includes an intervener.*

Sec. 10. “Staff” defined. *“Staff” means the staff of the Department. The term includes the Attorney General and his duly appointed deputies when acting as legal advisers to the Committee pursuant to NRS 228.110.*

Sec. 11. Scope; construction; deviation. *Sections 2 through 32 inclusive:*

- 1. Governs the practice and procedure in hearings before the Committee with regard to matters involving NRS 354.665 through 354.671; and*
- 2. Will be liberally construed to secure the just, speedy and economical determination of all issues presented to the Committee.*
- 3. In special cases, where good cause appears, not contrary to statute, deviation from these rules, if stipulated to by all parties of record, will be permitted.*

Sec. 12. Pleadings, communications.

- 1. All pleadings, including, but not limited to, complaints, petitions, answers, briefs, motions, affidavits and applications, should be addressed to the Department and not to individual members of the Committee or its staff. All pleadings are deemed to be officially received by the Department when a true copy of the paper or document, properly addressed and stamped, is deposited in the United States mail.*
- 2. Informal communications may be made with individual members of the staff and these communications and documents are deemed to be officially received by the Department when they are properly addressed and stamped and deposited in the United States mail.*
- 3. Informal communications from the Department or Committee must be signed by the responsible staff member or Committee chair.*
- 4. Each communication must be limited to one subject, contain the name and address of the person originating the communication.*

Sec. 13. Testimony must be under oath. *Oral evidence will be taken only upon oath or affirmation administered by the hearing officer, Director, Deputy Attorney General, or a Committee member. Before taking the witness stand, each person must swear, or affirm, that the testimony he is about to give will be the truth, the whole truth and nothing but the truth.*

Sec. 14. Transcripts.

- 1. If a transcript of any hearing held before the Committee or the hearing officer is desired by any party, he must furnish the reporter, pay for the transcript and deliver a copy of the transcript to the Director within 20 days after requesting a rehearing or filing an appeal of the matter.*
- 2. If a transcript is prepared by any party from a tape recording provided by the Department, the party must, if he wishes to use the transcript in any subsequent hearing or appeal of the matter, deliver a copy of the transcript to the Department within the time required by subsection 1.*

Sec. 15. Interveners.

- 1. A person, government, governmental agency or political subdivision of a government, other than the original party to any proceeding who is directly and substantially affected by the proceeding must secure an order from the Committee, Director, or the hearing officer granting leave to intervene before being allowed to participate. The granting of leave to intervene in any matter or proceeding is not a finding or determination of the Committee,*

Director, or the hearing officer that the party will or may be a party aggrieved by any ruling, order or decision of the Committee or the hearing officer for purposes of court review or appeal.

2. Petitions for leave to intervene must be in writing and must clearly identify the proceeding in which intervention is sought. The petition must set forth the name and address of the petitioner and contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding, stating the manner in which the petitioner will be affected by the proceeding and outlining the matters relied upon by the petitioner as a basis for his request to intervene. If affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof, together with a statement as to the nature and quantity of evidence the petitioner will present if his petition is granted.

3. Petitions to intervene and proof of service of copies thereof on all other parties of record must be filed not less than 15 days before the commencement of the hearing, or state a substantial reason for the delay, or it will not be considered.

4. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding or any part thereof and does not unduly broaden the issues, the Committee, Director, or the hearing officer may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.

5. If it appears during the course of a proceeding that an intervener has no direct or substantial interest in the proceeding and that the public interest does not require his participation therein, the Committee may dismiss him from the proceeding.

Sec. 16. Determination of hearing before Committee or hearing officer.

The Committee may hold a hearing on the issues presented, or it may assign a hearing officer to hear the matter and propose an order for its consideration. If a hearing officer is assigned to hear a matter and propose an order, the procedures outlined in Sections 17 through 20 apply. If the Committee does not assign a hearing officer, the procedures outlined in Sections 21 through 34 apply.

Sec. 17. Hearing before hearing officer; findings and conclusions of hearing officer.

1. The hearing officer shall conduct the hearing in the manner prescribed in Sections 21-31, inclusive.

2. Notice of the hearing must be provided in the manner prescribed in Section 23.

3. A person who wishes to intervene in a hearing must comply with the provisions set forth in Section 15.

4. At any evidentiary hearing, the parties or staff may exercise the rights set forth in Section 21.

5. Appearances and representation of the parties must be made in the manner prescribed in Section 22.

6. After the close of the evidentiary hearing, the hearing officer shall file with the Committee within 60 calendar days a proposed order that sets forth the findings and conclusions of the hearing officer and the reasons and bases for those findings and conclusions. The proposed order must be served on each party.

7. The findings of fact and conclusions of law made by a hearing officer are not required to be included in a stipulated agreement.

Sec. 18. Proposed order of hearing officer: Written objection; reply to objection; action by Committee.

1. Except as otherwise provided in this subsection, a party may file a written objection to the proposed order with the Committee within 20 calendar days after receipt of the proposed order. The written objection must state with particularity the issues presented, the points of law or fact which are relied on and the relief requested. The Committee may allow a party, upon good cause shown, to file a written objection with the Committee more than 20 days after receipt of a proposed order.

2. A party who files a written objection shall serve a copy of its objection on all parties.

3. Except as otherwise provided in this subsection, a party may reply to the written objection within 15 days after receipt of the written objection. A reply must be served on all parties. The Executive Director may grant an extension of time for the responding party to reply upon good cause shown.

4. If no party files a written objection with the Committee pursuant to subsection 1, the Committee will place the proposed order on the appropriate agenda for its next scheduled meeting for action by the Committee.

5. If a party files a written objection to the proposed order with the Committee within 20 days after receipt of the proposed order or if the Committee chooses to take any action concerning the review of the proposed order, other than to remand the proposed order to the hearing officer for clarification of the order, the Committee will hold a hearing on the proposed order. The Committee will provide to the parties at least 15 days' notice of the hearing, unless the parties waive the notice in writing or on the record before the Committee.

Sec. 19. Hearing before Committee: Basis on record before hearing officer; determination that record is inadequate. *The hearing held before the Committee pursuant to Section 20 must be based on the record made before the hearing officer. If the Committee determines the record is inadequate, the Committee may remand the matter to the hearing officer for further proceedings or open the record and hear new evidence.*

Sec. 20. Hearing before Committee of Hearing Officer's proposed determination: Action by Committee; issuance of written order.

1. After the close of oral argument, the Committee shall:

(a) Make a final order that adopts, reverses or modifies, in whole or in part, the proposed order of the hearing officer; or

(b) Remand the matter to the hearing officer for further proceedings.

2. The Executive Director shall issue the written order on behalf of the Committee within 60 calendar days after a final order is made or a matter is remanded pursuant to subsection 1.

Sec. 21. Rights of parties and staff at evidentiary hearing.

At any evidentiary hearing, the parties and staff may:

1. Call and examine witnesses.

2. Introduce exhibits relevant to the issues of the case.

3. Cross-examine opposing witnesses on any matter relevant to the issues of the case, even though that matter was not covered in the direct examination.

4. Impeach any witness regardless of which party first called him to testify.

5. *Offer rebuttal evidence.*

6. *Call any person who, because of his relationship to any other party, may be an adverse witness, and examine him as an adverse witness.*

Sec. 22. Representation of parties; qualifications of attorneys. *Appearances and representation of parties must be made as follows:*

1. *A party may appear in person, as provided in subsection 2, or may be represented by an attorney, an accountant or an authorized representative.*

2. *A party, if other than a natural person, may appear:*

(a) *If a partnership, by a partner.*

(b) *If a corporation, by an officer or other authorized representative or regular employee.*

(c) *If a municipal corporation, by an authorized officer, agent or employee.*

(d) *If an unincorporated association, by an authorized representative, officer or employee.*

3. *If a party chooses to be represented by an attorney, the attorney must be one who is admitted to practice and in good standing before the highest court of any state of the United States. If the attorney is not admitted to practice and in good standing before the Supreme Court of Nevada, an attorney so admitted and in good standing must be associated with the attorney appearing before the Committee or Department.*

Sec. 23. Meetings, Notice; telephone conference; conduct

1. *The staff will give reasonable notice of any hearing held before the Committee to each party or the authorized agent of a party at the address of each of those persons as those addresses appear in the records of the Department.*

2. *The staff will notify the appropriate representative of the party to a hearing which may have a direct effect upon his jurisdiction. The representative shall:*

(a) *Attend any hearing specified in this subsection, unless otherwise directed by the Committee; and*

(b) *Make any presentation prescribed by the Committee, Director, or hearing officer.*

3. *Hearings will be held before the Committee or designated hearing officer. Except as provided in subsection 3, notice of the place, date and hour of the hearing will be served at least 10 days before the date set for the hearing.*

4. *Hearings will be held at the offices of the Department in Carson City, Nevada, or at such other place in the State as may be designated in the notice of hearing.*

5. *The Committee may conduct a meeting or any part thereof by means of a telephone conference call so long as it complies with the applicable provisions of chapter 241 of NRS.*

6. *In all hearings ordered to be held by the Committee or hearing officer, the hearing date may be set with less than 10 days' notice if the parties and staff agree in writing.*

7. *A person appearing in a proceeding shall conform to the recognized standards of ethical and courteous conduct.*

Sec. 24. Prehearing conferences.

1. *The Committee or designated hearing officer may, upon its [his] own motion or the motion of a party, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact or documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the*

number of witnesses, any procedure for the hearing and any other matters which may expedite orderly conduct and the disposition of the proceedings or settlements thereof.

2. The action taken at a prehearing conference and the agreements, admissions or stipulations made by the parties concerned must be made a part of the record and must be approved by the parties. When approved, the action will control the course of subsequent proceedings, unless otherwise stipulated to by all the parties of record with the consent of the Committee or designated hearing officer.

3. In any proceeding the Committee or designated hearing officer may, in its [his] discretion, call all of the parties together for a conference before the taking of testimony. The hearing officer shall state on the record the results of the conference.

Sec. 25. Continuances; recesses. *The Committee or designated hearing officer may, in its [his] discretion, either before or during a hearing, grant continuances or recesses.*

Sec. 26. Failure of party to appear. *At the time and place set for the hearing, if a party fails to appear, the Committee or designated hearing officer may, in its [his] discretion, dismiss the proceeding with or without prejudice or may recess the hearing for a period of time to be set by the hearing officer to enable the party to attend.*

Sec. 27. Burden of proof; presentation of evidence.

1. Any party required to appear before the Committee regarding delinquent payments or reports has the burden of proof in any evidentiary hearing ordered or noticed for that purpose.

2. Evidence may be received in any manner ordered by the Committee or designated hearing officer, but will ordinarily be received from the parties in the following order:

- (a) Brief orientation by the staff;*
- (b) Each party;*
- (c) The staff;*
- (d) Intervenors; and*
- (e) Rebuttal by each party.*

Sec. 28. Subpoenas.

1. Subject to the restrictions imposed by NRS 360.240, a subpoena requiring the attendance of a witness from any place in the State to any designated place of a hearing for the purpose of taking testimony may be issued by the Director or designated hearing officer.

2. A party desiring to subpoena a witness must submit an application in writing to the hearing officer stating the reasons why a subpoena is requested.

3. The Director or designated hearing officer may require that a subpoena requested by a party for the production of books, waybills, papers, accounts or other documents be issued only after the submission of an application in writing, which specifies as clearly as may be, the books, waybills, papers, accounts or other documents desired.

4. The Director or designated hearing officer, upon receipt of an application for a subpoena, shall:

- (a) Grant the application and issue the subpoena;*
- (b) Deny the application; or*
- (c) Schedule a hearing to decide whether to grant or deny the application.*

5. All costs incident to the subpoenas issued at the request of the party must be paid by the party, and the Director or designated hearing officer may demand payment of the costs before the issuance of a subpoena.

Sec. 29. Admission of evidence; depositions; affidavits.

1. The hearing will not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.

2. Hearsay evidence, as that term is used in civil actions, may be admitted for the purpose of supplementing or explaining other evidence, but it is not sufficient to support findings of fact unless it would be admissible over objection in civil actions.

3. The rules of privilege will be applied as they are applied in civil actions.

4. Irrelevant, cumulative and unduly repetitious evidence is not admissible, nor is incompetent evidence, as that term is used in civil trials, with the exception of hearsay evidence as above provided.

5. The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, even though the evidence would otherwise be subject to objection.

6. The hearing officer or any party to any proceeding may cause the depositions of witnesses to be taken in the manner prescribed by law and the rules of the court for depositions in civil actions.

7. The affidavit of any person may be admitted in evidence if all the parties stipulate and consent to its admission.

Sec. 30. Official notice. *The Committee or designated hearing officer may take official notice of the following matters:*

1. Rules, regulations, official reports, decisions and orders of the Committee and any regulatory agency of the State.

2. Contents of decisions, orders, certificates and permits issued by the Committee.

3. Matters of common knowledge and technical or scientific facts of established character.

4. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference if proper and definite reference to the document is made by the party offering it and it is published and generally circulated so that all of the parties of interest at the hearing have an opportunity to examine it and present rebuttal evidence.

5. Matters which may be judicially noticed by the courts of the State.

Sec. 31. Briefs.

1. In any hearing, the Committee, Director, or designated hearing officer may order briefs filed within such time as he allows.

2. Briefs must be filed with the Director or designated hearing officer and be accompanied by an acknowledgment of or an affidavit showing service on all other parties of record.

Sec. 32. Additional information . *The Committee may order any additional information it deems necessary to determine the matters before it.*

Sec. 33. Final decision of Committee.

1. *The staff shall prepare the Committee's final decision on the issues presented in the hearing pursuant to the direction and with the approval of the Committee. The draft of each decision must be approved by the Chairman of the Committee before being issued.*

2. *The Committee's final decision will be written and will include separate findings of fact and conclusions of law based upon substantial evidence or matters officially noticed. After the hearing is completed, the Committee may request proposed findings of fact and conclusions of law from a party.*

Sec. 34. Rehearing or reconsideration of decisions of Committee.

1. *A party who believes that a decision or order of the Committee, or any portion thereof, is:*
(a) *Unlawful;*
(b) *Unreasonable; or*
(c) *Based on findings of fact or conclusions of law that are erroneous,*
may file a petition for reconsideration. The petition must be filed with the Committee and served on all parties within 15 days after the date of service of the decision or order.

2. *A petition for reconsideration must:*
(a) *Identify with precision each portion of the decision or order that the party alleges is unlawful, unreasonable or erroneous.*
(b) *Cite with specificity those portions of the record, the statutes or regulations that support the allegations in the petition. The petition must not include additional evidence or request the submission or taking of new evidence.*

3. *A party may submit an answer in opposition to a petition for reconsideration. The answer must be filed with the Committee and served on all other parties within 5 days after the date of service of the petition for reconsideration. The answer must be limited to the issues raised in the petition for reconsideration.*

4. *The Committee will grant or deny, in whole or in part, a timely filed petition for reconsideration within 60 days after the date of service of the final decision. If the Committee takes no action within the 60 days, the petition shall be deemed to be denied.*

5. *Unless otherwise provided by the Committee, the filing of a petition for reconsideration or the granting of such a petition by the Committee does not excuse compliance with or suspend the effectiveness of the challenged decision or order.*

6. *If the Committee grants a petition for reconsideration, it will reexamine the decision or order and the record with regard to the issues on which it granted reconsideration. After this reexamination, the Committee will issue a modified final order or reaffirm its original order.*

7. *A modified final decision or order incorporates all portions of the original decision or order not modified. A modified final decision or order, or the original decision or order if reaffirmed, is the final decision of the Committee.*

Sec. 35 Advisory Opinions; Petitions: Form; contents.

1. *Any person may petition for an advisory opinion concerning matters within the jurisdiction of the Department or Committee.*

2. *All petitions must be in writing, be addressed to the Director and set forth at least the following:*

- (a) *A statement that an advisory opinion is requested;*
- (b) *A succinct statement of all the facts and circumstances necessary to dispose of the petition;*
- (c) *A clear, simple statement of the issue or question to be resolved;*

(d) A statement of all statutes, rules, agency decisions or other authorities which the petitioner believes may be relevant in disposing of the petition; and

(e) A statement with supporting arguments and authorities of the petitioner's opinion of a proper disposition of the petition.

Sec. 36. Opinions: Issuance; appeals.

1. Advisory opinions must:

(a) Be written;

(b) Include a statement of facts, question, analysis and opinion;

(c) Be issued by the Director within 45 days after the filing of the petition unless the Director in writing orders an extension of time up to a maximum of 60 days after filing; and

(d) Be delivered to the petitioner in person or by certified mail.

2. Advisory opinions of the Director are appealable to the Committee in the same manner as any other appealable decision.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T041-09**

The Committee on Local Government Finance adopted temporary regulations assigned LCB File No. T041-09 which pertain to chapter 361 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) Chapter 354 adopted by the Committee on Local Government Finance (CLGF), relating to the practice and procedure before CLGF 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>
11-18-08	Workshop	12-3-08	253	4
1-17-09	Hearing	2-17-09	253	4

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

No written comments were received at the workshop. 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.

- 2. The number of persons who:**

- (a) Attended and testified at each workshop:**

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
12-3-08	30	3

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

<u>Date of Hearing</u>	<u>Committee/ Public Attended</u>	<u>Public Testified</u>
2-17-09	8/20	0

(c) Submitted to the agency written comments:

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
12/3/08	0
2/17/09	0

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 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 interested parties list maintained by the Department.

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 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

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 regulation was adopted with changes reflecting the verbal comments submitted to, or received by, the Department of Taxation primarily from CLGF members during the workshop and hearing listed above. CLGF adopted the temporary regulation as revised in a workshop; 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 regulation defines provides the process by which certain types of appeals may proceed before the CLGF.

The regulations present no reasonably foreseeable or anticipated immediate or long-term negative economic effects to businesses. The immediate and long-term effects of the regulation are to provide a process for appeals which may occur pursuant to NRS 354.665; NRS 354.671; or as a result of overseeing the implementation of severe financial emergency.

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.