

Chapter 354 of NAC

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

LCB File No. T003-12

(Filed with the Secretary of State on January 3, 2013)

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

AUTHORITY: §§1-7, NRS 354.107;

A REGULATION relating to governmental financial administration; requiring a report of the total estimated liability for current and retired public safety employees relating to the heart-lung-hepatitis benefits provided in NRS Chapter 617; providing standards and requirements for actuarial studies; and providing other matters relating properly thereto.

Section 1. Chapter 354 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 17, inclusive, of this regulation.

Sec. 2. *As used in Sections 1 to 17, 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. *“Actuarial study” means a report prepared and signed by an actuary having the Associate of the Society of Actuaries (ASA) designation or similar credentials from other professional organizations of actuaries. The report must document the results of an actuarial valuation of employer-provided current and post-employment medical and disability benefits to be paid to current and eligible non-current local government public safety employees per NRS 617.453, 617.455, 617.457, or 617.485 and discounting those payments back to the present.*

Sec. 4. *“Funded ratio” means the ratio of the total reserves established divided by the total discounted estimated actuarial liability for NRS Chapter 617 medical and disability benefits.*

Sec. 5. *“Last injurious exposure rule” means a judicially-created doctrine whereby full liability for an occupational disease resulting from the claimant’s exposure to injurious stimuli during more than one period of employment or insurance coverage is assigned to a single employer or insurer. Under the rule, any exposure to harmful stimuli during an insurer’s coverage period will lead to liability if the employee becomes disabled during that period by an exposure-caused injury, even if the most recent exposure was not the primary or triggering cause for the disability. [For example, see Bath Iron Works Corp. v. Dir., OWCP, 244 F.3d 222, 228-229 (1st Cir. Mass. 2001)].*

Sec. 6. *“NRS Chapter 617 benefit” means the compensation and medical benefits provided by local government employers to eligible public safety employees pursuant to NRS 617.453, 617.455, 617.457, and 617.485.*

Sec. 7. *“Pay-as-you-go funding” means the amounts funded annually by an employer who chooses to pay for the current cost of the benefits only when they become due and payable.*

Sec. 8. *“Pre-funding plan” means payments to an internal service fund or other designated fund to build reserves to pay for the total actuarially estimated liabilities arising from NRS Chapter 617 benefits.*

Sec. 9. *“Public safety employees” mean those employees subject to the occupational diseases described in NRS 617.453, 617.455, 617.457, and 617.485.*

Sec. 10. *The Department shall include in the budget forms required by NAC 354.100 a form requiring information on the NRS Chapter 617 benefits provided to eligible current and non-current local government public safety employees.*

Sec. 11. *Each local government which employs public safety personnel subject to the NRS Chapter 617 benefits must file a report about the local government's actuarially estimated liabilities associated with the NRS Chapter 617 benefits on a form prescribed by the Department. The form must be submitted with the tentative budget required by NRS 354.596.*

Sec. 12. *The information submitted by each local government pursuant to Section 11 must be compiled by the Department in an annual report in summarized form. The Department shall publish the report on its website.*

Sec. 13. *The objective in reporting NRS Chapter 617 benefit information on a form attached to the tentative budget is to provide information which will enhance financial transparency and clarity to taxpayers, local government employers and employee groups by showing the true cost of NRS Chapter 617 benefits over time. Estimated liabilities determined by an actuary are not required to be reported in the financial statements of the local government.*

- Sec. 14. 1.** *The report on the NRS Chapter 617 benefits must at a minimum include:*
- (a) How the benefit is funded, such as through a pre-funding plan recorded as contributions to an internal service fund or other reserve fund; self-funded pay-as-you-go plan; payments to an association of self-insured public employers plan; or other private insurer plan;*
 - (b) The number of current and eligible non-current public safety employees subject to the benefit, separately stated;*

- (c) The number and amount of known and accepted claims paid by a local government net of reinsurance during the prior 10 years, if available, and separately stated for eligible current public safety employees and eligible non-current public safety employees;*
- (d) The estimated total actuarial liability for the medical and disability benefits required by NRS Chapter 617, separately stated for current public safety employees and eligible non-current public safety employees;*
- (e) The basis for the estimated actuarial liability, such as an actuarial study, including the date the actuarial study was prepared, the frequency of preparation of the actuarial study, and whether the actuarial study separately reported on eligible current and eligible non-current public safety employees;*
- (f) A ten-year history of current benefit payments made and reserves established and identification of the funds from which payments were made or to which reserves were contributed;*
- (g) The funded ratio of the present value of contributions plus investment return compared to the present value of the accrued liabilities; and*
- (h) How the full and complete actuarial study may be obtained.*

2. Local governments having less than ten years of historical records for purposes of providing the information required in subsection 1 must provide the information for as many years for which records have been maintained. The first report and each subsequent report must identify the number of years of information reported if less than 10 years until 10 years of information is obtained. Local governments reporting historical information of less than

10 years must begin maintaining the information required in subsection 1 until 10 years of information is continuously available.

Sec. 15. *Employers that participate in an association of self-insured public employers plan must:*

1. Report benefit expenditures/expense equal to the employer's contractually required contributions. Recognition should be on the modified accrual or accrual basis, depending on the fund type or type of entity; and

2. Report where the actuarial study and funding report of the association of self-insured public employers plan may be obtained.

Sec. 16. *1. In order to determine the actuarial accrued liability associated with the current and post-employment NRS Chapter 617 benefits, the best practice for an actuarial valuation should consider and define the following inputs:*

(a) Participant demographic data including, but not limited to, current age, gender, service retirement, terminations with benefit eligibility, salary increases, percent married, and percent survivors of the public safety employees subject to the benefit;

(b) Reasonable assumptions about the interest rate (investment return), health care inflation rates, general inflation rates, decrement rates such as the mortality rates for heart disease in the general population; and

(c) Claims experience which considers historical information based on actual claims incurred by the local government including subsequent employment by public safety employees and which considers the last injurious exposure rule.

Sec. 17. *1. The actuarial accrued liability must at a minimum be computed using the probability of occurrence over a 30 year period, using confidence levels of 50% and 75%.*

2. An actuarial study establishing the actuarial accrued liability must be performed at least once every five years.

3. An actuarial study must identify the type of benefit and the public safety employees subject to the benefit.

4. A projection of new employees that may be hired over the 30 year period is not required for an actuarial study.

Sec. 18. *This regulation applies to the 2013-2014 fiscal year.*

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

Temporary Regulation

Related to governmental financial administration; requiring a report of the total estimated liability for current and retired public safety employees regarding benefits provided in NRS Chapter 617; providing standards and requirements for actuarial studies; and other matter related thereto.

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) 354 adopted by the Committee of Local Government Finance.

- 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 the Committee on Local Government Finance, 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>
10-5-2012	Workshop	10-23-12	337	89
10-29-2012	Hearing	11-29-12	418	88

In addition, 6 subcommittee hearings, all properly noticed, were held on the following dates:

11-29-10
02-01-11
11-01-11
04-25-12
08-09-12
09-20-12

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 several written comments or documents were received at the subcommittee meetings, workshop 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 Nevada Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at ware@tax.state.nv.us.

The Committee on Local Government Finance adopted the regulation with amendments at the hearing held on November 29, 2012.

2. The number of persons who:

(a) Attended and testified at each workshop:

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
10-23-12	34	4

(b) Attended and testified at each hearing:

<u>Date of Hearing</u>	<u>Commission/ Public Attended</u>	<u>Public Testified</u>
11-29-12	13	4

(c) Submitted to the agency written comments:

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
10-23-12	None
11-29-12	None

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 local governments, businesses 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 email to county officials and other interested parties lists maintained by the Department. Approximately 20% of the approximately 418 direct notices were sent to individuals or associations representing business.

Members of the Committee on Local Government Finance, 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 of the Committee on Local Government Finance.

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 Nevada Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Nevada Department of Taxation at ware@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 temporary regulation was adopted with changes reflecting the verbal and written comments submitted to, or received by, the Nevada Department of Taxation primarily from local governments during the workshops and hearings listed above. The Committee

on Local Government Finance adopted the temporary regulation as revised in workshop and 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.**

At the request of the Nevada Taxpayers Association, CLGF formed a subcommittee to consider regulations concerning how local governments should report the liabilities associated with providing the benefits to public safety employees required in NRS Chapter 617. NRS Chapter 617 provides disability insurance and compensation to eligible public safety employees and eligible non-current public safety employees for certain occupational diseases including heart and lung diseases, cancer and hepatitis.

The regulation provides guidance on appropriate financial reporting and liability disclosure of health care and disability benefits required by NRS Chapter 617 for local government public safety employees, to be applied for the 2013-2014 fiscal year. In addition, the regulation provides for consistent practices for preparing an actuarial study. The regulation requires the Department to compile the information into a statewide report for use by local governments and interested parties. The proposed temporary regulation presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public.

The information collected in the reports will enable interested parties to better understand the nature of future liabilities associated with the benefit; and enhances transparency in government.

The long-term effect is to provide a transparent process to determine the cost of NRS Chapter 617 benefits provided by local governments to public safety employees. The immediate effect is to provide guidance with regard to the criteria for developing actuarial studies.

- 6. The estimated cost to the agency for enforcement of the adopted regulation.**
The proposed temporary regulation will require preparation of documents, oversight, and compilation of reports by the Department. The Department anticipates these activities will require approximately 120 man hours annually.
- 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.**

The Committee on Local Government Finance 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.**

The regulation does not provide for a new fee, and does not increase an existing fee.

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restricted the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Committee on Local Government Finance determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Committee considered the fact that the proposed amendment only applies to activity by local and state government officials and imposes no direct requirements on any private businesses.