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POSTED – December 22, 2015

NOTICE OF PUBLIC HEARING
FOR THE ADOPTION OF PERMANENT REGULATION OF THE
COMMITTEE ON LOCAL GOVERNMENT FINANCE

The Committee on Local Government Finance (CLGF) will hold a public hearing on January 26, 2016 commencing at 9:00 a.m. at the Gaming Control Board, Board Room, 1919 College Parkway, Carson City, Nevada, with videoconferencing to the Gaming Control Board, Grant Sawyer State Office Building, 555 East Washington Avenue, Second Floor, Room 2450, Las Vegas, Nevada. CLGF will receive testimony from all interested persons and consider and take action on proposed permanent adoption of amendments, additions and deletions to the Nevada Administrative Code as identified in **LCB File No. R078-15**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, CLGF may proceed immediately to act upon any written submissions:

1. **The Need for and Purpose of the Proposed Permanent Regulations.**

The need and purpose of the proposed permanent regulation, **LCB File No. R078-15**, is to update and clarify existing provisions relating to the administration of trust funds for future retirement benefits of local government employees.

2. **Terms or Substance of the Proposed Permanent Regulation or Description of the Subjects and Issues Involved.**

First: Existing regulations require the governing body of a local government that establishes a trust fund to appoint persons to a board of trustees to administer the trust fund. Such persons are required to have certain experience, depending on how the assets of the trust fund will be invested. (NAC 287.764, 287.778) **Section 1** of this regulation revises provisions relating to the nature of the investment of the assets of a trust fund for purposes of appointing qualified persons to a board of trustees.

Second: Existing regulations also require a board of trustees to develop an investment plan for a trust fund in certain circumstances. The Committee on Local Government Finance must approve the investment plan before the investment of any assets of the trust fund. (NAC 287.788) **Section 2** of this regulation provides additional circumstances in which a board of trustees is not required to develop an investment plan for a trust fund. **Section 2** also establishes only certain circumstances in which the Committee on Local Government Finance is required to approve an investment plan developed by a board of trustees.

Third: Additionally, existing regulations generally provide that if the market value of the investment portfolio of a trust fund at the end of a fiscal year is more than \$100,000,000, the assets of the trust fund may be: (1) deposited in the Retirement Benefits Investment Fund; (2) invested in any investment which is authorized for a local government; and (3) invested in any stocks or other equity securities or bonds or other debt securities which meet certain requirements. (NAC 287.790) **Section 3** of this regulation authorizes the Committee on Local Government Finance to waive the \$100,000,000 minimum market value upon application by a local government and for good cause shown.

3. **Estimated Economic Effect of the Proposed Permanent Regulation on the Business which it is to Regulate, and the Public.**

A. Adverse and Beneficial Effects.

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. The regulation reduces the number of required trustees on the board of the trust fund when the assets of the trust fund will not be invested in stocks or other equity securities or bonds or other debt securities; requires an investment plan unless the assets of the trust fund are invested in any investments authorized pursuant to NRS 355.170; and requires the Committee on Local Government Finance to review investment plans under limited circumstances. The beneficial effects include reducing costs and improving efficiencies relating to: (1) the composition of the trust fund board; (2) preparing an investment plan when the assets are not invested in stocks, other equities, and bonds; and (3) limiting the oversight of the Committee on Local Government Finance in the administration of the trust fund to certain circumstances. The regulation does not directly affect private businesses.

B. Immediate and Long-Term Effects.

The immediate and long-term effects will be to improve efficiency and reduce costs associated with the administration of a trust fund for retirement benefits of a local government.

4. The Methods Used by the Agency in Determining the Impact on a Small Business.

The Department mailed or emailed a Small Business Impact Statement and Questionnaire on prior to the workshop held on October 27, 2015 to persons and businesses on the Department's interested parties list. No responses were received. Because of the nature of the regulation, the Department believes there is no impact on a small business.

5. Estimated Cost to Agency for Enforcement of the Proposed Permanent Regulation.

The proposed permanent regulation will reduce the number of oversight activities, including arrangement of CLGF meetings. The estimated cost to the Department of Taxation is minimal.

6. Regulations of Other State or Local Governmental Agencies which the Proposed Permanent Regulation Overlaps or Duplicates and the Necessity Therefore.

The proposed permanent regulation does not overlap or duplicate regulations of other state or local governmental agencies.

7. Establishment of New Fee or Existing Fee Increase.

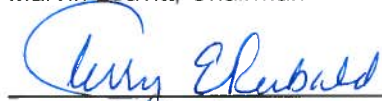
None.

Persons wishing to comment on the proposed action of the Committee on Local Government Finance may appear at the above scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Taxation, 1550 College Parkway, Suite 115, Carson City, Nevada 89706. **Written submissions must be received at least two weeks prior to the above scheduled public hearing.**

A copy of this notice and the proposed permanent regulations to be adopted and amended will be on file at the Nevada State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed permanent regulations to be adopted and amended will be available at the Department of Taxation, at the addresses listed below and on the Department of Taxation website, <http://tax.nv.gov/> and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of the proposed permanent regulations will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. Copies will be mailed to members of the public upon request. A reasonable fee may be charged for copies if deemed necessary.

Under NRS 233B.064(2), when adopting any regulation, the Agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporation, and its reason for overruling the consideration urged against its adoption.

Marvin Leavitt, Chairman



By Terry E. Rubald, Deputy Executive Director
Department of Taxation
December 22, 2015

Note 1: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the workshop. If special arrangements for the meeting are necessary, please notify the Department of Taxation in writing, at 1550 E. College Parkway, Carson City Nevada, 89706 or call (775) 684-2180 prior to the meeting.

Note 2: Materials and files for items on this notice are maintained in the offices of the Department of Taxation located in Carson City, Nevada. Requests for copies of materials and files for items on this notice may be made to:
Terry Rubald, Deputy Executive Director, Department of Taxation, 1550 College Parkway, Suite 115, Carson City, NV 89706

Note 3: Notice of this meeting was posted in the following Carson City, Nevada locations: Department of Taxation, 1550 E. College Parkway; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was emailed for posting to the following locations: Department of Taxation, 4600 Kietzke Lane, Building L, Suite 235, Reno; Department of Taxation, 2550 Paseo Verde, Suite 180, Henderson; Department of Taxation, 555 E. Washington Street; Las Vegas; Clark County Office, 500 South Grand Central Parkway, Las Vegas. Notice of this meeting was posted on the internet through the Department of Taxation website <http://tax.nv.gov/> and on the Internet website maintained by the Legislative Counsel Bureau <http://leg.state.nv.us/> and the Department of Administration website <https://notice.nv.gov/>.

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

LCB File No. R078-15

October 1, 2015

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

AUTHORITY: §§1-3, NRS 287.017.

A REGULATION relating to local governmental finance; revising provisions relating to trust funds for future retirement benefits of local governmental employees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the governing body of any local government which provides retirement benefits to retired employees of that local government and the spouses and dependents of those employees to establish a trust fund for the purpose of funding those benefits, and authorizes the Committee on Local Government Finance to adopt regulations for the creation and administration of such trust funds. (NRS 287.017) Existing law also establishes a Retirement Benefits Investment Fund, administered by the Retirement Benefits Investment Board, which may accept retirement trust fund monies from local governments for investment purposes. (NRS 355.220)

Existing regulations require the governing body of a local government that establishes a trust fund to appoint persons to a board of trustees to administer the trust fund. Such persons are required to have certain experience, depending on how the assets of the trust fund will be invested. (NAC 287.764, 287.778) **Section 1** of this regulation revises provisions relating to the nature of the investment of the assets of a trust fund for purposes of appointing qualified persons to a board of trustees.

Existing regulations also require a board of trustees to develop an investment plan for a trust fund in certain circumstances. The Committee on Local Government Finance must approve the investment plan before the investment of any assets of the trust fund. (NAC 287.788) **Section 2** of this regulation provides additional circumstances in which a board of trustees is not required to develop an investment plan for a trust fund. **Section 2** also establishes only certain circumstances in which the Committee on Local Government Finance is required to approve an investment plan developed by a board of trustees.

Additionally, existing regulations generally provide that if the market value of the investment portfolio of a trust fund at the end of a fiscal year is more than \$100,000,000, the assets of the trust fund may be: (1) deposited in the Retirement Benefits Investment Fund; (2)

invested in any investment which is authorized for a local government; and (3) invested in any stocks or other equity securities or bonds or other debt securities which meet certain requirements. (NAC 287.790) **Section 3** of this regulation authorizes the Committee on Local Government Finance to waive the \$100,000,000 minimum market value upon application by a local government and for good cause shown.

Section 1. NAC 287.778 is hereby amended to read as follows:

287.778 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 *any of* the assets of the trust fund ~~qualify to~~ *will* be invested ~~pursuant to~~ *in 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 ~~NAC 287.790,~~ *NRS 287.017*, 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 the person:

(a) 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) 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 ~~{NAC 287.790.}~~ *subsection 1.*

Sec. 2. NAC 287.788 is hereby amended to read as follows:

287.788 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 ~~{H}~~ ; *or*

(b) Pursuant to subsection 2 of NAC 287.790.

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, *or invested in any investments authorized pursuant to NRS 355.170*, 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 *3* by the Committee on Local Government Finance before the investment of any assets of the trust fund ~~{H}~~ *if:*

(a) The assets of the trust fund qualify to be invested pursuant to NAC 287.790; and

(b) The board of trustees desires to invest outside the Retirement Benefits Investment Fund 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. *An* investment plan *developed pursuant to subsection 2* must:

(a) Include formal investment policies consistent with the requirements of NRS 287.017 and NAC 287.760 to 287.792, inclusive, 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.

~~13.1~~ **4.** Approval by the Committee on Local Government Finance of the investment plan , *if* required ~~14.1~~ *pursuant to* 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. 3. NAC 287.790 is hereby amended to read as follows:

287.790 1. Except as otherwise provided in ~~subsection 4,~~ *subsections 3 and 5*, 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,~~ *subsections 3 and 5*, 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. ~~##~~ *The Committee on Local Government Finance may waive the minimum market value of the investment portfolio in a trust fund set forth in subsection 2:*

(a) Upon application by a local government; and

(b) For good cause shown, including, without limitation, demonstrating an ability to manage an investment portfolio which includes equity securities of \$100,000,000 or more and managing a pension fund of \$100,000,000 or more outside the Public Employees' Retirement System.

4. *Except as otherwise provided in subsection 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.

~~14.1~~ 5. 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.

~~15.1~~ 6. 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.

~~16.1~~ 7. Except as otherwise provided in paragraph (h) of subsection 2 of NRS 287.017, the trust fund must be maintained as a separate account, and no other money may be commingled with the money in the trust fund.

~~17.1~~ 8. 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.

~~18.1~~ 9. 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.