

## **REVISED MEETING NOTICE AND AGENDA**

### **COMMITTEE ON LOCAL GOVERNMENT FINANCE SUBCOMMITTEE ON TYPES OF FINANCING GUIDANCE TO THE DEPARTMENT**

**Date and Time of Meeting:**                      **September 26, 2016**                      **9:00 a.m.**

<b>Place of Meeting:</b> <b>Nevada State Legislative Building</b> <b>401 South Carson Street</b> <b>Room 2135</b> <b>Carson City, Nevada</b>	<b>Video Conference To:</b> <b>Grant Sawyer Office Building</b> <b>555 East Washington Avenue</b> <b>Room 4412</b> <b>Las Vegas, Nevada</b>
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*This meeting will also be part of a teleconference. Please call the Department at (775) 684-2100 for the teleconference number.*  
Action will be taken on the items indicated in **BOLD**:

1.     **ROLL CALL AND OPENING REMARKS**
2.     Public Comment (See Note 2)
3.     **For Possible Action: Discussion and Consideration of Proposed Guidance Letter on the Review of Current and Pending GASB standards on Lease Accounting; Requirements for Reporting Installment-purchase Agreements; and Types of Installment-purchase Agreements and Medium Term Obligations Subject to Approval by the Department of Taxation; Recommendation of Guidance Letter to the full Committee on Local Government Finance**
4.     **REVIEW AND APPROVAL OF MINUTES**  
      **(a) For Possible Action: CLGF Subcommittee Meeting – August 1, 2016**  
      **(b) For Possible Action: CLGF Subcommittee Meeting – September 12, 2016**
5.     **PUBLIC COMMENT (See Note 2)**  
      In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes.
6.     **For Possible Action: ADJOURNMENT**

NOTE 1: Items on this agenda may be taken in a different order than listed. Items may be combined for consideration by the Committee on Local Government Finance. Items may be pulled or removed from the agenda at any time.

NOTE 2: In consideration of others, who may also wish to provide public comment, please avoid repetition and limit your comments to no more than five (5) minutes. Public comment may be made on any issue and any discussion of those items; provided that comment will be limited to areas relevant to and within the authority of the Committee on Local Government Finance. No action will be taken on any items raised in the public comment period. At the discretion of the Chairman, public comment may be received prior to action on individual agenda items. Public Comment may not be limited based on viewpoint. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the Committee may refuse to consider public comment. See NRS 233B.126.

NOTE 3: We are pleased to make accommodations for members of the public who are disabled. Please notify the Department of Taxation in writing, at 1550 College Parkway, Carson City Nevada, 89706 or call (775) 684-2180 prior to the meeting.

NOTE 4: Materials and files for items on this agenda 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 agenda may be made to:

Terry Rubald, Deputy Executive Director, Department of Taxation 1550 College Parkway Carson City, NV 89701

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Notice of this meeting was posted in the following Carson City, Nevada location: Department of Taxation 1550 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 also posted on the Internet through the Department of Taxation website at [www.tax.nv.gov](http://www.tax.nv.gov), and on the Department of Administration website at [https://notice.nv.gov/](http://https://notice.nv.gov/).

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<b>Room 2135</b>	<b>Room 4412</b>
<b>Carson City, Nevada</b>	<b>Las Vegas, Nevada</b>

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## **ITEM 3**

**For Possible Action: Discussion and Consideration of Proposed Guidance Letter on the Review of Current and Pending GASB standards on Lease Accounting; Requirements for Reporting Installment-purchase Agreements; and Types of Installment-purchase Agreements and Medium Term Obligations Subject to Approval by the Department of Taxation; Recommendation of Guidance Letter to the full Committee on Local Government Finance**



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## Guidance Letter 16-004

**Date:** September 26, 2016

**To:** Local Government Finance Officers; Local Government Auditing Firms

**From:** Terry E. Rubald, Deputy Executive Director, Department of Taxation  
Co-authored by Kelly Langley, Supervisor, Local Government Finance, Division of Local Government Services

**cc:** Committee on Local Government Finance, Marvin Leavitt, Chairman  
Deonne Contine, Executive Director, Department of Taxation

**Subject:** Review of Current and Pending GASB standards on Lease Accounting; Requirements for Reporting Installment-purchase Agreements; and Types of Installment-purchase Agreements and Medium Term Obligations Subject to Approval by the Department of Taxation

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### SUMMARY

Local governments regularly enter into leases for various reasons. Leasing provides alternative financing solutions allowing government to have the benefit of necessary items such as vehicles, heavy equipment, and buildings without having to purchase them outright. Leasing may be the solution which allows local governments to preserve capital dollars for other projects for which leasing is not an option; enables improvement of cash flow; and incorporates flexible structuring to meet budget needs.

The purpose of this Guidance Letter is to clarify the types of installment purchase and medium-term obligation financing transactions subject to approval by the Department of Taxation pursuant to NRS 350.089. In addition, this Guidance Letter reviews the existing Governmental Accounting Standards Board ("GASB") standard on leases as well as the latest GASB exposure draft on lease accounting to assist the reader in understanding how to treat and report various financial lease arrangements pursuant to Nevada law. Finally, the Guidance Letter makes recommendations for reporting to the Department and on local government financial statements consistent with generally accepted accounting principles and Nevada law.

### AUTHORITY FOR THIS LETTER

NRS 354.472(1)(d): One of the purposes of the Local Government Budget and Finance Act is to provide for the control of revenues, expenditures and expenses in order to promote prudence and efficiency in the expenditure of public money. NRS 354.612(2) requires fund financial

statements and other schedules to be prepared in accordance with generally accepted accounting principles.

## DISCUSSION

### ***Statutory and Regulatory Framework***

NRS 350.089 provides that medium-term obligations and installment-purchase agreements adopted by a local government must be approved by the Executive Director of the Department of Taxation ("Department"). A medium-term obligation is defined in NRS 350.007 as an obligation to repay borrowed money evidenced by a note or bond and having a term of 10 years or less, except for terms of less than 1 year which are payable in full from money appropriated for the same fiscal year that the obligation is incurred.

An installment-purchase agreement is specifically defined in NRS 350.0055 as the purchase of real or personal property by installment, lease, or other transaction types described in NRS 350.800 and which will be discussed in more detail below. Historically the Department has treated most capital leases as a type of installment purchase agreement subject to approval pursuant to NRS 350.089. Under NRS 350.089, however, installment-purchase agreements do not include obligations to pay rent pursuant to a lease which contains no option or right to purchase or which contain only an option or right to purchase the property without any credit towards the purchase price for lease or rental payments. With the advent of more creative leasing arrangements in recent times, it becomes important to understand the characteristics of leases in order to determine whether the lease is subject to Department approval.

NRS 350.013 requires the annual submission to the Department of Taxation and to the appropriate Debt Management Commission, of a report of the outstanding general obligation debt, other general obligations or special obligations, or levies of any special elective tax. In counties whose population is 100,000 or more, the statements may be updated more often than once a year to include items related to installment purchases that do not count against a debt limit.

NAC 350.010 describes the information which must be included in the Annual Statement and Report by municipalities required by NRS 350.013. In addition to various schedules concerning general obligation debt, the report must also include the amount of any other debts, such as mortgages or capital leases, which the governing body contemplates incurring before the end of the fiscal year following the date of the schedule.

NRS 350.014(1) requires the submission of proposed installment-purchase agreements with a term of more than 10 years to be approved by the appropriate debt management commission.

### ***Governmental Accounting Standards Board Statements***

The Department finds that Governmental Accounting Standards Board ("GASB") Statements, including but not limited to, No. 62, Codification of Accounting and Financial reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements and No. 34, Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments are appropriate standards for the preparation of financial statements for all funds and comply with the requirements of NRS 354.612(2) as generally accepted accounting principles. In particular, Statement No. 34 establishes the components of basic financial

statements for general purpose governments. Statement No. 62 provides lease accounting standards for reporting leases in local government financial statements, including criteria for determining whether a lease is a capital or operating lease. GASB 62 criteria are useful in classifying leases subject to reporting and/or approval by the Department.

In addition, the Department recognizes GASB is in the process of adopting an Exposure Draft regarding financial reporting for leases by state and local governments. The GASB Exposure Draft coordinates with the Financial Accounting Standards Board ("FASB") Accounting Standards Update ("ASU") on leases. The Department anticipates that when the updated GASB standard becomes effective on December 15, 2018, it will also comply with NRS 354.612(2).<sup>1</sup> The updated GASB standard will establish a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under both the updated GASB and FASB standards, a lessee will be required to recognize a lease liability and an intangible right-to-use lease asset. A lessor will be required to recognize a lease receivable and a deferred inflow of resources."<sup>2</sup> The goal of the revised ASU is to provide guidance in how to uniformly reflect actual lease liabilities in financial statements.

### ***Lease Accounting***

Under GASB 62, a lease is defined as an agreement conveying the right to use capital assets (land and/or depreciable assets) but does not include agreements that are contracts for services that do not transfer the right to use capital assets from one contracting party to the other.<sup>3</sup>

GASB Statement No. 62 at paragraph 212 classifies leases into capital leases and operating leases from the standpoint of the lessee. From the standpoint of the lessor, leases may be classified as sales-type leases, direct financing leases, leveraged leases, or operating leases.

### ***Criteria for Classifying Leases:***

GASB 62, Paragraph 213 provides the criteria by which a lease may be classified as a capital or operating lease by the lessee. The criteria are summarized below.

#### **Capital Leases**

If at inception a lease meets at least one of the criteria outlined in paragraph 213 of GASB 62, the lease should be classified as a capital lease by the lessee. Otherwise, it should be classified as an operating lease. Capital leases are essentially treated as a loan for book accounting purposes. The four criteria are:

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<sup>1</sup> Effective date is stated in the Exposure Draft, paragraph B129, page 49.

<sup>2</sup> GASB Exposure Draft, January 25, 2016 "Leases", pg iv. In addition, the 2016 GAAP Guide Volume II notes that the Financial Accounting Standards Board, ("FASB") has also released an Exposure Draft of an Accounting Standards Update ("ASU") on Leases that may have an important impact on the preparation of financial statements in the future. This proposed ASU is part of a joint project with the International Accounting Standards Board ("IASB") to develop a new approach to lease accounting that will ensure that assets and liabilities arising from lease agreements are reflected on an entity's statement of financial position. *See Wolters Kluwer 2016 GAAP Guide Volume II* Restatement and Analysis of Current FASB. Standards, Chapter 54 ASC 840, pg. 54,053

<sup>3</sup> GASB Statement 62, Paragraph 211, p. 87.

- ☐ The lease transfers ownership of the property to the lessee by the end of the lease term.
- ☐ The lease contains a bargain purchase option (i.e., less than the fair market value)
- ☐ The lease term is greater than 75% of estimated economic life of the equipment
- ☐ The present value at the beginning of the lease term of the minimum lease payments equals or exceeds 90% of leased property's fair market value.<sup>4</sup>

A capital lease is treated by the lessee as both the borrowing of funds and the acquisition of an asset to be depreciated; thus the lease is recorded on the lessee's balance sheet as an asset and corresponding liability (lease payable). Periodic lessee expenses consist of interest on the debt and depreciation of the asset.<sup>5</sup>

### **Operating Leases**

Operating leases are all leases that cannot otherwise be classified as capital leases.<sup>6</sup> In general, an operating lease must have all of the following characteristics:

- ☐ The lease term is less than 75% of the estimated economic life of the equipment
- ☐ The present value of the lease payments is less than 90% of the leased property's fair market value
- ☐ The lease cannot contain a bargain purchase option (i.e., less than fair market value)
- ☐ Ownership is retained by the lessor during and after the lease term
- ☐ An operating lease is accounted for by the lessee without showing an asset (for the equipment) or a liability (for the lease payment obligations) on its balance sheet. Periodic payments are accounted for by the lessee as operating expenses for the period)

In addition, if none of the criteria for a capital lease are present and both the collectability of the minimum lease payments is reasonably predictable and no important uncertainties surround the amount of un-reimbursable costs yet to be incurred by the lessor under the lease, the lease is classified as an operating lease.

Paragraph 222 of GASB 62 notes that normally, rental on an operating lease should be charged to expense/expenditure over the lease term as it becomes payable. If rental payments are not made on a straight-line basis, rental expense/expenditure nevertheless should be recognized on a straight-line basis unless another systematic and rational basis is more representative of the time pattern in which use benefit is derived from the leased property, in which case that basis should be used.

### ***Lease / Installment-purchase Agreements<sup>7</sup>:***

An Installment-purchase Agreement is defined as an agreement for the purchase of real or personal property by installment or lease. In addition, an installment-purchase agreement includes other transactions in which a municipality acquires real or personal property and

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<sup>4</sup> GASB 62, Paragraph 213 contains an exception to the minimum lease payment criterion. If the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion should not be used for purposes of classifying the lease. A lessor should compute the present value ("PV") of the minimum lease payment using the interest rate implicit in the lease. A lessee should compute the PV using its incremental borrowing rate, with additional caveats.

<sup>5</sup> GASB 62, Paragraph 216, p. 91; Paragraph 218, p. 92.

<sup>6</sup> GASB 62, Paragraph 212 (1)(2), p. 88

<sup>7</sup> Nevada Revised Statute (NRS) 350.0055

another person acquires or retains a security interest in that or other property. A security interest transaction must be counted against a municipality's debt limit, unless the obligation by its terms is extinguished by a failure of the governing body to appropriate money for the ensuing fiscal year for payment of the amounts then due (a "non-funding clause"); or the municipality's budget includes a provision for the discharge of the obligation in full in the same fiscal year as when the transaction occurs.<sup>8</sup>

Under NRS 350.089, an Installment-purchase Agreement also includes transactions not required to be counted against the municipality's debt limit if those transactions are (a) greater than \$100,000 for local governments in a county whose population is 100,000 or more; or (b) greater than \$50,000 for a local government in a county whose population is less than 100,000. However, if the Installment-purchase Agreement contains no option or right to purchase at the conclusion of the lease term; or if the lease contains an option or right to purchase the property but does not credit the lease payments towards the purchase price, then the lease is not considered an Installment-purchase Agreement for purposes of enforcement of NRS 350.089.

### ***Application of GASB Standards***

A local government which adopts a resolution authorizing a medium-term obligation or installment-purchase agreement whether or not subject to direct approval by the Department under NRS 350.089, however, is still obligated to prepare fund financial statements using generally accepted accounting principles pursuant to NRS 354.612(2). As stated above, GASB Statement No. 62, as well as the GASB and FASB Exposure Drafts soon to be finalized regarding the recognition and measurement of lease liabilities are viewed by the Department as generally accepted accounting principles. As such, local governments should recognize and measure lease liabilities pursuant to the model provided in the GASB and FASB Statements as of their effective dates.

The following discussion reviews GASB standards for lessees, however, the reader should be aware there are additional reporting requirements if the local government is the lessor.

For example, Paragraph 223 in GASB 62 requires disclosure of the following information with respect to leases in the notes to the lessee's financial statements:

- a. For capital leases:
  1. The gross amount of assets recorded under capital leases as of the date of each set of financial statements presented by major classes according to nature or function. This information may be combined with the comparable information for owned assets.
  2. The total of minimum sublease rentals to be received in the future under noncancelable subleases as of the date of the latest financial statements presented.
  3. Total contingent rentals actually incurred for each period for which a cash flows statement is presented
  4. Assets recorded under capital leases and the accumulated amortization thereon. Unless the expense resulting from amortization of assets recorded under capital leases is included with depreciation expense and the fact that it

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<sup>8</sup> NRS 350.800(1)(a-b)



is so included is disclosed, the amortization expense should be disclosed in the notes to the financial statements.

- b. For operating leases having initial or remaining non-cancelable lease terms in excess of one year, the total of minimum rentals to be received in the future under non-cancelable subleases as of the date of the latest financial statements presented.
- c. For all operating leases, rental expense/expenditure for each period for which a cash flows statement is presented, with separate amounts for minimum rentals, contingent rentals, and sublease rentals, Rental payments under leases with terms of a month or less that were not renewed need not be included.
- d. A general description of the lessee's leasing arrangements including, but not limited to the following:
  - (1) The basis on which contingent rental payments are determined
  - (2) The existence and terms of renewal or purchase options and escalation clauses
  - (3) Restrictions imposed by lease agreements, such as those concerning additional debt and further leasing

Under GASB 62, Paragraph 234, leases involving land and building(s) should be accounted for by the lessee by separately capitalizing each asset if the lease contains a provision to transfer ownership by the end of the term of the lease or if the lease contains a bargain purchase option. "For this purpose, the present value of the minimum lease payments after deducting executory costs, including any gain thereon, should be allocated between the two elements in proportion to their fair values at the inception of the lease." The reader should review GASB 62 for other standards if the lease involves land only, if the lease involves equipment as well as real estate, or if the lease involves only part of a building.

GASB 62, Paragraphs 244-256 also establish standards of accounting and financial reporting by a seller-lessee for sale-leaseback transactions involving real estate. For example, Paragraph 245 states that sale-leaseback accounting should be used by a seller-lessee only if a sale-leaseback transaction includes a lessee-lessor relationship that involves the active use of the property by the seller-lessee in consideration for payment of rent; the payment terms and provisions adequately demonstrate the buyer-lessor's initial and continuing investment in the property; and the payment terms and provisions transfer all of the other risks and rewards of ownership as demonstrated by the absence of any other continuing involvement by the seller-lessee. Paragraph 255 indicates that the notes to financial statements of a seller-lessee should include a description of the terms of the sale-leaseback transaction, including future commitments, obligations, provisions, or circumstances that require or result in the seller-lessee's continuing involvement.

For the future, the GASB Exposure Draft concludes a lessee will recognize a lease liability and a lease asset at the beginning of a lease, and the lease liability will be measured at the present value of payments expected to be made for the lease term. The lease asset will be measured at the amount of the initial measurement of the lease liability, plus any payments made to the lessor at or before the beginning of the lease and certain indirect costs.<sup>9</sup>

Paragraph 29 of the GASB Exposure Draft indicates that if a lease agreement is expected to be financed from general government resources, the lease should be accounted for and reported on a basis consistent with governmental fund accounting principles. Paragraph 31 indicates that a lessee's accounting for lease liability would include a description of leasing arrangements;

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<sup>9</sup> GASB Exposure Draft, 1-25-2016, p. iv

the amount of lease assets recognized; the amount of lease assets by major classes of underlying assets, to be disclosed separately from other capital assets; and a schedule of future lease payments to be made in the notes to financial statements.

## **APPLICATION:**

1. Until December 15, 2018, local governments should account for and report leases in the local government financial statements on a basis consistent with GASB 62. Thereafter, the local government may rely on the final adopted version of the proposed GASB statement, which is currently known as the GASB Exposure Draft dated January 25, 2016. If the local government is considering early implementation of the new standard, implementation will require recognition and measurement of any previously unrecorded leases (i.e., operating leases) on the local government's financial statements.

2. NRS 350.013(1) requires local governments to submit a complete statement of current general obligation debt and special elective taxes, and a report of current debt and special assessments and retirement schedules, in the detail and form established by the Committee on Local Government Finance, known informally as the Indebtedness Report. Local governments may anticipate revised forms to accommodate the inclusion and listing of those leases recorded on the financial statements consistent with the requirements of NRS 350.013(4), NRS 350.014(1), and NAC 350.010.

3. Lease accounting as provided in GASB 62 should only be applied to the lease elements of a contract; other elements of a contract should be treated according to the GASB standard appropriate to the contract element.

4. Local governments should review the terms of the agreement and determine whether the agreement is a medium-term obligation or installment-purchase or lease agreement subject to review and approval by the Department. If the agreement meets the definition in NRS 350.007 for a medium-term obligation or the definition in NRS 350.0055 for an installment-purchase agreement, prepare the documentation necessary for review and approval by the Department.

5. Guidelines and references with regard to the procedures for procuring approval of medium-term obligations and installment-purchase agreements, are available on the Department's website at

[http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Local\\_Government\\_Finance\\_Documents/](http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Local_Government_Finance_Documents/)

6. Evaluate the lease agreement to determine whether there is an option or right to purchase. For example, determine whether there is a bargain purchase option as that term is defined in GASB 62, Paragraph 271 at page 119. A bargain purchase option is a provision allowing the lessee the option to purchase the leased property for a price that is sufficiently lower than the expected fair value of the property at the date the option becomes exercisable such that exercise of the option appears, at the inception of the lease, to be reasonably assured. If such a provision is present, and the terms of the agreement otherwise meet the definition of an installment-purchase agreement, the lease agreement is subject to review and approval by the Department.

7. Evaluate the lease agreement to determine whether the lease or rental payments are credited towards the purchase price. If the title to the subject property and the buildings thereon

vest in the local government at the expiration of the lease, either automatically or upon written notice or request by the local government with no further payment, the lease should be considered a capital lease requiring approval by the Department.

8. If the local government is contemplating a transaction that is difficult to classify, the local government should consult with both its auditors and Department staff as to how the financial statements of the local government should reflect the transaction. For example, consider a financing arrangement known as a "lease-leaseback project" in which property owned by a local government is leased to any person for a minimum amount, as long as such lease requires the other party to construct (or provide for the construction of) a building or buildings upon the subject property. ~~and title to the subject property and the buildings vest in the local government at the expiration of the lease, either automatically or upon written notice or request by the local government.~~

The lease-leaseback approach is realized when a local government enters into two leases with a chosen design/build contractor or financing entity. One lease is a Site Lease and the other is a Facilities Lease. The Site Lease is the document in which the local government leases the real property to the builder or financing entity for a nominal amount (say, \$1 per year). The Facilities Lease is the document the local government will utilize to lease back the real property and completed facilities. It is through the lease payments by the local government that the design/build contractor or financing entity will be paid. ~~Because the local government may simply request title be transferred~~ ~~The vesting of title~~ at the expiration of the Facilities Lease, the transaction may constitute an option to purchase in which the lease payments are considered credited towards the purchase price for purposes of NRS 350.0055.

The local government should consult with its auditors and the Department as to the proper classification of this type of transaction or other unusual transactions prior to completion of the obligation in order to avoid any potential reporting violations.

## ***SELECTED REFERENCES***

### **Nevada Revised Statutes, Chapters 350, 354, and 450:**

**NRS 350.0055 “Installment-purchase agreement” defined.**

**NRS 350.087 Resolution authorizing medium-term obligation or installment-purchase agreement: Adoption; contents; notice.**

**NRS 350.089 Approval of resolution for medium-term obligation or installment-purchase agreement by Executive Director of Department of Taxation; appeal to Nevada Tax Commission.**

**NRS 350.013 Municipalities to submit annually statement of current and contemplated general obligation debt and special elective taxes, statement of debt management policy, plan for capital improvement or alternate statement and certain information regarding chief financial officer; update of information; exceptions**

**NRS 350.014 Approval or notification of commission required for certain proposals.**

**NRS 350.0145 Notice and submission of statement of certain proposals to commission; procedure for approval or disapproval.**

**NRS 354.472 Purposes of Local Government Budget and Finance Act.**

**NRS 450.665 Powers of board of trustees: Borrowing of money and incurrence or assumption of indebtedness; limitations and conditions.**

### **Nevada Administrative Code, Chapter 350**

**NAC 350.010 Annual statement and report by municipalities.**

**NAC 350.120 Forwarding of documents to Department of Taxation following authorization.**

**NAC 350.130 Authorization void after 18 months.**

## **Governmental Accounting Standards Board**

Exposure Draft on Leases (January 25, 2016, Project No. 3-24E), as retrieved from the internet on September 8, 2016 at

<http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1175804830991>

Governmental Accounting Standards Board Statement No. 62, Codification of Accounting and Financial reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA

Pronouncements, as retrieved from the internet on September 8, 2016 at

[http://www.gasb.org/cs/ContentServer?site=GASB&c=Document\\_C&pagename=GASB%2FDocument\\_C%2FGASBDocumentPage&cid=1176159967625](http://www.gasb.org/cs/ContentServer?site=GASB&c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176159967625)

Governmental Accounting Standards Board Statement No. 34, Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments, as retrieved from the internet on September 8, 2016 at

[http://www.gasb.org/cs/ContentServer?site=GASB&c=Document\\_C&pagename=GASB%2FDocument\\_C%2FGASBDocumentPage&cid=1176160029121](http://www.gasb.org/cs/ContentServer?site=GASB&c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176160029121)

## **Financial Accounting Standards Board**

Financial Accounting Standards Board Statement 13, Accounting for Leases, as retrieved from the internet on September 8, 2016 at <http://www.fasb.org/pdf/fas13.pdf>

Exposure Draft on Leases (Topic 842) dated May 16, 2013, as retrieved from the internet on September 8, 2016 at

[http://www.fasb.org/cs/ContentServer?c=Document\\_C&pagename=FASB%2FDocument\\_C%2FDocumentPage&cid=1176162613656](http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176162613656)

## **National Council on Governmental Accounting (NCGA)**

Statement 5, *Accounting and Financial Reporting Principles for Lease Agreements of State and Local Governments*

**If you have any questions about this guidance letter, please call the Local Government Finance  
Section of  
the Division of Local Government Services, Department of Taxation at (775) 684-2100.**

**WEBSITE LOCATIONS:**

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>

Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select  
Assessment

Standards Publications and "Guidance letters."

## **ITEM 4**

### **REVIEW AND APPROVAL OF MINUTES**

**(a) For Possible Action: CLGF Subcommittee Meeting – August 1, 2016**

**(b) For Possible Action: CLGF Subcommittee Meeting – September 12, 2016**

**Minutes of the Subcommittee Meeting**  
**COMMITTEE ON LOCAL GOVERNMENT FINANCE**  
**TYPES OF FINANCING GUIDANCE TO THE DEPARTMENT**  
**August 1, 2016**  
**9:30 a.m.**

The meeting was held at the Department of Taxation, 1550 College Parkway, Carson City, Nevada and video-conferenced to the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada.

**COMMITTEE MEMBERS PRESENT:**

Marty Johnson, Chairman  
Marvin Leavitt  
Jeff Zander

**COMMITTEE MEMBERS ABSENT:**

Jessica Colvin

**COUNSEL TO COMMITTEE**

Peter Keegan

**DEPT OF TAXATION STAFF PRESENT:**

Terry Rubald  
Kelly Langley  
Keri Gransberry  
Penny Hampton  
Chali Spurlock

**MEMBERS OF THE PUBLIC PRESENT:**

<b>Name</b>	<b>Representing</b>
Anna Thornley	NV Taxpayers Association
Jeff Zander	Elko County
Wes Henderson	League of Cities & Municipalities
Alan Kalt	Churchill County
Brett Hilton	UMC
Brent Loveland	UMC

**ITEM 1. ROLL CALL AND OPENING REMARKS**

Chairman Johnson called the meeting to order at 9:30 a.m. Roll call was taken and it was determined that a quorum was present.

Chairman Johnson opened with clarification that he is not an employee of any local government; the business he is in, is to help local governments do financing. His understanding is that what they are trying to accomplish is to provide guidance. He does not see it requiring businesses to hire professional services with financing. He does not see that this would impact his business or anyone else's.

**ITEM 2. PUBLIC COMMENT**

There was no public comment.

**ITEM 3. For Possible Action: Discussion and Consideration of Proposed Guidance to the Department of Taxation regarding various types of financing including medium term obligations, installment purchase agreements, and other forms of financing such as, but not limited to, "lease-leaseback" structures.**



Chairman Johnson made an introductory comment that what brought us to the point of having a subcommittee was the financing done by the Elko Convention and Visitors Authority. That financing caused us to decide that we need to look at guidance on what kind of financing should be authorized. His intention would be to provide a list of do's and don'ts in a guidance letter that could be sent out to local governments.

Marvin Leavitt agreed with Chairman Johnson. He stated we need further understanding. His position is that we do need to provide guidance, the dos and don'ts, and how it relates to the various financing.

Terry Rubald, with the Department of Taxation, requested to go over the exhibits, and what questions the Department has. She referred to their packets, chapter 350 which provides the process local government has to go through in order to get a medium term obligation approved, basically; the local government has to adopt a resolution or an installment purchase agreement. Then the Department goes through a process of review looking for probable ability of the local government to repay the obligation or installment purchase agreement. They also look for the compliance of the local government with all the applicable provisions of law. If the Department does not approve it, it can be appealed to the Nevada Tax Commission.

Ms. Rubald then referred to the checklist example in the exhibits. She explained the Department uses this checklist for a medium term obligation or an installment purchase agreement. They make sure the public has been properly noticed about the financing and that the resolution contains all the requirements provided in NRS Chapter 350. That includes a finding by the governing body that the public interest requires the medium term financing, a statement specifying the fund sources for repayment, and that there is an indication that there was board discussion and approval via the minutes of the meeting.

Ms. Rubald continued on the 2<sup>nd</sup> page of the checklist, where they ask for a statement for intended time for procuring the medium term financing, a proposed amortization schedule for repayment of the proposed obligation, and in the case of local governments that are formed under NRS Chapter 318, whether the financing was approved by the debt management commission. If the proposed obligation is for an installment purchase agreement of more than 10 years, the written approval of the debt management commission is requested, and an analysis comparing the cost of installment purchase financing with other available methods of financing. They also look at the highest overlapping tax rate is for the entity, and whether the entity is in compliance with the various filing requirements of Chapter 354. They look at the fund identified to service the proposed debt, whether the revenue sources to that fund are reasonable and consistent, whether the entity identified a particular revenue source to fund the repayment, whether there are other outstanding debt issues serviced by this fund, whether future balloon payments will affect the expenditure pattern of the fund or the future service of the proposed issue, whether the entity maintains a debt service fund, the nature and duration of the debt, and whether there is available room in the debt margin of the entity.

Ms. Rubald went on to page 3 of the checklist. The Department looks at actual and budgeted ending fund balances. They review the overall financial health of the entity, the schedule of long term debt, the debt management policy, and their capital improvement plan.

Ms. Rubald stated that all of this is designed to ensure the local government can afford the medium term obligation or installment purchase agreement and to make sure the financing was transparent to the public. She mentioned that last June at their CLGF meeting, they brought forward an example of a different form of financing called lease-leaseback structure. Part of that structure is in the packet, part has been redacted as this is only an example of the types of financing potentially avail to local governments. The lease-leaseback structure is designed to provide leased facilities to the local government without incurring a debt obligation to the government. The facilities are privately financed, constructed and owned. The local government

leases back the facility from the 3<sup>rd</sup> party. This form of financing has some aspects of a capital lease or long term lease, but not all of them. The part that is not in the packet, but was reviewed last June at the meeting, is the facility use agreement where the local government allowed the 3<sup>rd</sup> party to lease the land on which it builds the building, and the 3<sup>rd</sup> party leases it back to the local government. In this example there is a 25 year obligation for rents. In addition, the local government pays a substantial base use fee, and other fees, which in this example amounted to several million dollars. The 3<sup>rd</sup> party has borrowed the money, but the terms of the borrowing provide for a balloon payment in 10 years. In the event the 3<sup>rd</sup> party's loan can't be refinanced on terms acceptable to the local government, then the local government will be in default of the lease agreement. Otherwise, the base use fee is adjusted and the local government pays the balloon payment and/or agrees to the refinancing. In the example provided, there has been some confusion as this lease-leaseback structure was reported as a capital lease in the CAFR but there was no request to approve an installment purchase agreement to the Department, because the local government later said it was an operating lease that did not need department oversight. This example has been described as nonrecourse financing, by going through a 3<sup>rd</sup> party that gets the financing and owns the facility, there is no requirement to use prevailing wage laws, it cuts financing red tape, and the local government apparently doesn't have to go through loan counsel. This example has brought up a number of questions to the Department.

Ms. Rubald clarified that the prepayments in the form of base fees were significant and they wonder if those types of base fees should be noted in the CAFR, and should this form of financing be on the indebtedness reports because of the magnitude of the operating lease. How should the lease payments be shown? Should it be an operating lease in service and supplies, or should it be shown as a capital lease? Should it be considered an installment purchase agreement for purposes of oversight, or should it be subject to the approval of the local debt management commission? Basically, the Department is asking if this is debt or not for purposes of the indebtedness report and/or the medium term obligation installment purchase review.

Ms. Rubald asked if Kelly Langley would like to add anything else.

Kelly Langley, with the Department of Taxation, stated Ms. Rubald had summarized it very well. She stated their concern was that the large payment, the prepayment, was issued with tax dollars from an account that, at the time, had received ad valorem and the representative prepayment for the following 25 years so that their future payments could be produced.

Ms. Rubald stated to Chairman Johnson that the Department doesn't know what to do with it.

Chairman Johnson stated he understands what they are saying. He commented that he thinks there are some misunderstandings of what debt is. In some cases debt is a general obligation, in other cases, like in installment purchase agreements, it's not a debt, but there is still an obligation to make an annual payment. He thinks one thing they need to make sure that they do in this guidance, is to make sure there is a clear understanding. Just because something is not considered a debt, like capital deeds, doesn't necessarily mean that it doesn't need to be authorized. There is also the concept of the pledge of revenue. The ability to use revenue to make a debt service and the pledging of that revenue are two different things. He gave an example that we can pledge gas tax, sales tax, and a variety of other revenues, but there are some revenues you can't pledge. He thinks that it confuses folks as well.

Chairman Johnson mentioned the checklist, and asked Ms. Rubald what local governments have that tell them what they need to do if they go into medium term financing. He asked if this checklist was available to them.

Ms. Rubald stated this is for internal use only. Ms. Rubald asked Penny Hampton, with the Department of Taxation, if local governments have a checklist of their own. Wes Henderson,

with Nevada League of Cities and Municipalities, stated there is a packet online. Ms. Hampton clarified they have a packet, but not a checklist.

Chairman Johnson stated after doing this for 25 years, he has not looked at the checklist in a very long time. He said years ago they had a discussion about a tax rate election question, to put a tax rate outside of the GAAP. He wonders if this applies here, that all they can do is make the information available, that if the local governments don't use it, or follow it, what kind of recourse there is.

Ms. Rubald noted the only recourse is regulation or statute. The documents on the website are a reflection of what the statute asks for.

Ms. Hampton stated we are talking about ECVA's and they have elected to structure it as an operating lease, and it has taken the whole transaction outside of what we normally review.

Ms. Rubald replied that we would probably require a statutory change to include operating leases of that magnitude. Then we need to decide what magnitude that is, is it the number of years or the base fees amounting to millions. There are a lot of operating leases we don't care about.

Ms. Hampton stated typically those are simply expenses and included in part of their services and supplies.

Ms. Rubald asked if we want to distinguish between the size or the magnitude of the operating lease or not because it might have an effect on the overall health of the organization.

Chair Johnson asked if the concern on this one is the payments and the term of the payments between the entity and the contractor, or the fact that there was financing done against it, or is it the whole thing.

Ms. Langley stated she thinks it's the size of the payments over the term (25 years), as well as the fact that they stated they could walk away at the end of that time. The goal is that they own that at the end of the term. Also, the way in which it was financed brings concerns over if whether the board understands the terms of the financing. The auditors and the accountants did not understand it. They showed it as a capital lease and were going to depreciate it. It only came to their attention when the entity decided to ask questions as to how it works on their indebtedness reports.

Ms. Rubald clarified that an operating lease does not go on the books. It doesn't become a part of the assets.

Ms. Langley stated the entity originally thought it was a capital lease, at least the auditor. When the department asked questions, they then said no, it wasn't a capital lease. The statements made conflicted their CAFR. The CAFR completely misrepresented that transaction.

Ms. Rubald suggested they need to engage in identification on when a transaction is an operating lease, and when it is a capital lease. She explained her concern is transparency. This is a relatively big undertaking, a large facility in this example that the public thinks is theirs, but it's not. They paid a lot, millions of dollars, for a base fee, and continue to pay large amounts for the operating lease. There is no mechanism to afford transparency to the public.

Ms. Langley asked if GAAP has any regulation because of the size. The annual payment is approximately half a million dollars. She asked if there was something because of size that accounting regulations would require it to be treated differently.

Chairman Johnson stated he is not a CPA and does not know about the accounting regulations.

Mr. Leavitt commented that normally in operating leases it's something that is not resolved in the acquisition of major plant equipment. We would not see large buildings, large structures or sewer plants, things like that normally structured with an operating lease. He would think if a lease was to be involved, it would be a capital lease, or a debt would be incurred, or medium term obligation, revenue bond, general obligation bond, or something of that nature. It appears now we are talking about acquiring major facilities, but it's structured in such a way that it becomes an operating lease which is foreign to what we have done in the past. He gave an example that you do one of these to build a city hall. If you don't make payments, you could be turned out of your city hall building, which is a major disruption to government. It's an essential facility. He asked if you could build an essential facility, which in a way is necessary to the government, and incur an obligation with multiple payments to build it, even though the form of it is different than what we normally consider debt. What process should we go through to get it approved, is it enough that the governing board approves it, should it be similar to the medium term financing where the Department of Taxation has a role in that? His concern is he suspects we will see a bunch of these, and it could be a concern. We also need to address if one of these is trying to be incurred by a local government on financial difficulty watch.

Ms. Rubald wondered if this particular example is most like an installment purchase agreement, as they expect to own it at the end of the term, even though they are not obligated during the term, they can back away at any time. Chapter 354 has a definition of installment purchase agreement; it says the term installment purchase agreement does not include an obligation to pay rent pursuant to a lease which contains no option or right to purchase, or which contains only an option or right to purchase the property without any credit towards the purchase price. She stated she is beginning to wonder if they will have to have a statutory change to address this kind of financing.

Jeff Zander stated he is sort of familiar with this, being from Elko, especially when they were building this building. The legislative session was in place and the governor had passed regulation to exempt school districts from prevailing wage. They awarded a bid while that regulation was in place, so they were one of the few school districts in the state that benefited from that. In the meantime contractor boards picketed their office, while the convention center was down the road being built and not paying prevailing wages on that facility. He thinks it saved the taxpayers some money, and that's a good thing. He said the issue is whether this is a capital lease or an operating lease. The fact that you do an operating lease and build a facility on convention center land clouds that issue. It doesn't make any sense to him that the government would pay for a building on their land that they would never own.

Alan Kalt, representing Churchill County, came forward to give the definition of a capital lease. There are four criteria. When the ownership interest at the end of the lease transfers to the entity, it's a capital lease. If the lease document contains a bargain purchase price, for example if at the end of the lease you can buy it for a buck, that's a capital lease. If the term of the lease is 75% or more of the estimated useful life of that asset, that would be a capital lease. The fourth criteria put out by GAAP, is if the present value of the payments over the life of the lease is 90% of the fair market value. What an auditor and an accountant would do is measure against these four criteria, if it meets one or more, it's a capital lease, if not, it's an operating lease.

Ms. Rubald suggested that maybe we need to incorporate that in an operating letter to us, local governments that is, how we distinguish between them.

Mr. Kalt responded that if it meets these accounting provisions of a capital lease, we already

have statutory provisions that state: capital lease, this is what you do. He thinks of operating leases in local governments for example, copier contracts come to mind. He has not studied the detailed transaction in Elko, but he assumes somebody's accountant has checked that criteria to determine it. Ms. Hampton did say the auditing firm said capital.

Ms. Hampton replied that so did their finance people.

Ms. Rubald noted there are multiple people involved in this. The City of Phoenix created an LLC, and the LLC was the borrower of the bank.

Ms. Hampton clarified that the executors or executive director's response to Ms. Langley's inquiry, that the auditors stated it was a capital lease. It was in the MD and A, it was in the notes, as well as how the budget was set up. His response, from what she gathers, is that the auditor didn't understand the transaction and the finance people did not understand the arrangement.

Mr. Kalt asked if they provided another CPA out of Phoenix that said this was an operating lease. Ms. Hampton stated she didn't believe so.

Mr. Kalt stated that sometimes when you have a misunderstanding with auditors that it's recommended that you get a second opinion. He continued that they would have to disclose that to the auditors. It might be something the department may want to look at. In his recollection, in the quarterly economic surveys, there is a question that asks local government, if they have entered into any debt or financial arrangements, and maybe change the language there to a lease, and if it's an operating agreement they could change it there. He also stated we wouldn't want local governments to have to follow the same medium term financing for 3 years, as with copiers, or computer leases. Ms. Hampton added or school buses.

Chair Johnson stated John Sensed emailed that to him, he believes it's the same definition that the IRS uses. He questioned if capital leases are required to come before taxation to be approved.

Ms. Rubald stated she did not believe so, they are supposed to be part of the CAFR. Ms. Hampton stated that would fall into medium term when they do the financing if it exceeds to 50,000. With that said, you have the 10 years and the statute also covers anything over 10 years, you could equate that to capital leases.

Ms. Rubald added that installment purchase agreements are for greater than 10 years, and that's why she believes this has aspects of that.

Chair Johnson agreed. He stated he hasn't reviewed this particular transaction in great detail, but it seems like it has elements most like an installment purchase agreement.

Ms. Rubald asked what he thought would be most helpful to local governments. Modifying their current packets, to have a discussion on different types of leases, maybe that would be a start.

Mr. Zander suggested maybe guidance on to how those particular leases are going to be accounted for.

Chair Johnson agreed that they need to look at, including those definitions to local governments, so that they know. Also, to provide them with some guidance or the subcommittee to the Department of Taxation so that the Department can do this, but some guidance on what would keep a capital lease from becoming an installment agreement. He

stated he could see where you could cross the line when you enter into an obligation, debt being G.O. backed type bonds, with a medium term general obligations, and we need to make a payment, no non appropriation clause. Then obligations would be the things we are supposed to pay, but we have the ability to decide not to appropriate it. It seems to him, that it would be fairly easy for someone intending to do a capital lease to turn that into an installment purchase agreement without realizing that has been done.

It seems to him the only difference between a capital lease and an installment purchase agreement would be that in a capital lease, the lender owns the facility, but with an installment purchase agreement, you essentially own the facility, over time. Going back to Mr. Leavitt's example of City Hall, if you did a City Hall under a capital lease, he believes the owner/contractor that owns that facility still has to pay property taxes, etc. Under an installment purchase agreement if the local government has control over the facility, even though there is a non-appropriation clause, there aren't property taxes required. He mentioned he could be wrong on that, and they may want to ask John Swenseid about. It seems to him, there is not much distinction between those two loans.

Mr. Leavitt commented to Ms. Rubald that when they were drafting language for short term financing and medium term financing regulations, we envisioned a situation that he wonders, with some of these new financing mechanisms, that people can have enough ingenuity to devise a system so they never have to get medium term financing approved, by simply calling it something else. There are numerous ways to circumvent that so that you might never have to have medium term financing approved. They originally thought that the Department would approve it if there was a guarantee that there was an ability to pay by someone outside of the local government. Now maybe we've reached a point that the local government, with their ingenuity, and how they structure the deal, can achieve the same results without having an outside party do it. He wonders if they don't have to get some kind of a revision of the statute, or an understanding at least, could go through regulations, to provide a review. It would need to be in fairly general terms because you would have to anticipate there would be new financing mechanisms that someone thinks of that are not yet contemplated. So there would be some review for the local government so they don't get in an obligation they can't pay.

He went on to state that he is afraid if they don't get something like that in, it will encourage them, when they start to see themselves going down that path, to get enter into one of these new kinds vehicles and we find ourselves worse off than we are now.

Ms. Rubald commented that she believes she is on the same page, that she is concerned about transparency.

Ms. Langley stated on the indebtedness report, there is a spot for "other". And maybe they can redefine "other" as what types of financing it may include.

Ms. Rubald commented that they would have to look at the authority for the indebtedness reports as to what "other" can include. It would be nice if we could start informing people about those kinds of financings.

Chair Johnson mentioned it seems to him that there are two kinds of concepts they have been talking about. One is guidance, and the other idea is that maybe we need to expand the list what types of obligations require either Taxation and/or debt management approval. His question is, under the idea that this subcommittee was put together, does that second thing fit with what we are supposed to be doing.

Ms. Rubald stated the second thing is more than guidance because it requires either a statutory

or regulation change, which we would need to come up with a proposed solution and go through workshops if it was a regulation or if it needs to be statutory then we are going to have to find a sponsor.

Chair Johnson clarified that he is wondering is that part of what this subcommittee was charged with.

Mr. Leavitt stated he believes that what caused this subcommittee was the instant situation in Elko County. We are dealing with a new form of, whatever you call it, an operating lease, debt or an obligation. He believes the subcommittee was established to look at what we need to do, if anything with this type of a new financing arrangement. He thinks it should include guidance for the local governments as well as maybe some recommendations as to what we ought to do. Obviously we will have a full committee meeting in September some time, and likely another meeting of this group before.

Chair Johnson stated he thinks one more would wrap this up.

Mr. Leavitt went on to state that maybe they need to get some guidance from the Attorney General on what they can do right now. He is most concerned with what they can do regulation wise on the definition of some of things, whether they fit within the definition of medium term financing, the definition of capital lease, or operating lease. He is just concerned, that it's so easy, they could get some entrepreneurs that want to sell a package, and the local government is in difficulty, and it looks really good to them, they don't have to go to the department or the voters, and they could end up in a big mess.

Chair Johnson stated they aren't saying this is a bad way to finance, but without that additional oversight that we have everywhere else in this state, there does need to be some sort of ability to have someone else take a look at it. He stated part of the problem is people come in from other states where they may not have to have approval for medium term financing, but here you have too, and the local governments need to understand that.

Ms. Rubald suggested they review guideline for the MTO and see if there is any opportunity in that document to discuss the difference between operating and capital leases. They will also review their indebtedness report to see if there is an opportunity to reference these kinds of operating leases under "other". They will look at the quarterly economic report and see if there is an opportunity to put a reference in that. They will also approach the AG's office to see how far they can push it under the existing regulatory scheme, and what authority the committee has to have a regulation addressing the lease-leaseback structure and/or operating leases in general if any and bring it back to the committee. From there they can decide what part to go forward with for regulatory or statutory change. This committee may not want to address, but at least make a recommendation to CLGF for further study on that. And what can be done today with their reporting forms. She asked if that sounded like a plan.

Chair Johnson added that with the current regulatory framework, they could certainly put out a letter to local governments advising them of some of these issues. If they are doing a capital lease, that they make sure it's a capital lease. He thinks there is some guidance that can be provided without needing to worry about changing the regulations or statutes, and that's something else he thinks they should work on.

Ms. Rubald stated she would draft up a guidance letter in the format they used for the other committee, on the difference between enterprise and special revenue funds, but in this case it would be this topic. She can bring it back to the committee to discuss it, and see what else can be done.

Chair Johnson added maybe they can run it by John Swenseid as well.

Peter Keegan, Deputy Attorney, asked with respect to defined terms if there is a reference anywhere within 350 or otherwise to how leases are defined. Specifically, 350 defines installment purchase agreements and medium term obligations pretty specifically. Whereas capital leases, operational leases and perhaps lease-leaseback is not something that is specifically defined. He asked if there was a reference to GAAP at all that would be a hinge.

Ms. Rubald answered yes that was the hinge that she used in the last guidance letter that the committee, or the local government budget and finance act has to be based on generally accepted accounting principles.

Mr. Keegan suggested that general references are probably better than specific definitions. For example, if you have GAAP or other reference manuals that may be more up to date. That gives more deference to the committee to be able to define those types of obligations as they come before the committee, or require those leases, yet to be defined, to come before the committee to be evaluated under GAAP or other principles. That might be more guiding in terms of what those obligations are and how they should be evaluated. He's not sure if any of that makes sense, but he's here, so he is offering.

Chair Johnson stated if he understands what Mr. Keegan is saying, he thinks that's what he envisioned. Basically if the obligation meets 3 of these 5 criteria that they lay out, then it needs to be authorized. It doesn't mean they can't do it, just that they need to through those steps. Without being specific, some broad criteria that states they need to have another level of oversight on this particular type of a deal.

Mr. Keegan noted it seems like the objective is to obtain oversight. He's looking at a medium financing checklist. Somewhere a simple change could be at a statutory or regulation level. Leasing obligations, or some other term, need to be reviewed under GAAP or other principles in order to ensure compliance with debt ratios or however you want to define it. It would give the committee to require something to be filled out, presented or reviewed rather than phone calls from these entrepreneurs stating something does not have to be reviewed. It could be simply pointed at, that no, these types need to be carefully reviewed to ensure they aren't going to put local governments in turmoil.

Mr. Leavitt remembers years ago, with one of the statutes, they almost wrote it exactly the way some of the accepted accounting principles were at that time. Low and behold, they changed the accepted accounting principles and they had to go back and change the statutes, and it's not something they want to have to do. Leases are good example. Over the years, the way they define leases change. He is afraid if they adopt this language, it would change in a year or two, and they would be back at doing it again.

Ms. Hampton stated operating leases typically run annually, every three years or so. She suggested something change in their references using the time frame as a determining factor as to if they need to come to the Department of Taxation, or somebody for review.

Mr. Keegan again noted he is not an expert in this field, but keeping it as general as possible, referencing the outside authorities, in other instances he has seen attempts to make regulatory changes to nail something down to a specific T, it always ends up in future amendments and problems with redefining things as the tide shifts. If there are outside entities that are constantly updating things and educating individuals on the ever evolving financial instruments, then



referencing those as a general way for this body to evaluate obligations in a lease format, he thinks is the best way to go. He stated he will review 350 with Bill and Dawn, and he's sure Dawn will come back with something at the next committee or subcommittee meeting.

Chair Johnson asked Ms. Rubald if they need to take in action on this.

Ms. Rubald answered no, that they will create some guidance letters and identification of other opportunities to address this and bring it back to the committee. She noted Mr. Keegan mentioned what he will do, and we will bring that back as well, and the committee can decide how to fine tune that.

ITEM 4.

**BRIEFING TO AND FROM THE SUBCOMMITTEE ON LOCAL GOVERNMENT FINANCE AND LOCAL GOVERNMENT FINANCE STAFF**

a) Discussion of Matters Affecting Local Governments

**b) For Possible Action: Schedule Date and Review Agenda Topics for the Next Meeting**

Ms. Rubald stated there is nothing to brief them on, so they could move on to the next date. She asked if they had any preference.

Chair Johnson stated it would be best if they meet before the next CLGF Meeting, Mr. Leavitt agreed.

She volunteered the 1<sup>st</sup> or the 2<sup>nd</sup> week in September, or sooner if they would like.

Chair Johnson said part of that depends on how long it will take her folks to put stuff together.

Ms. Rubald stated sometime after the 8<sup>th</sup> of September. Chair Johnson asked if they could do the 12<sup>th</sup>, Ms. Rubald, Mr. Leavitt, and Mr. Zander agreed.

Ms. Rubald added that staff will make the arrangements and get out a notice for the 12<sup>th</sup>.

ITEM 5.

**PUBLIC COMMENT**

There was no public comment.

ITEM 6.

**For Possible Action: ADJOURNMENT**

The meeting was adjourned at 10:04 a.m.

**Minutes of the Subcommittee Meeting**  
**COMMITTEE ON LOCAL GOVERNMENT FINANCE**  
**TYPES OF FINANCING GUIDANCE TO THE DEPARTMENT**  
**September 12, 2016**  
**9:00 a.m.**

The meeting was held at the Department of Taxation, 1550 College Parkway, Carson City, Nevada and video-conferenced to the Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada.

**COMMITTEE MEMBERS PRESENT:**

Marty Johnson, Chairman  
Marvin Leavitt  
Jeff Zander  
Jessica Colvin

**COUNSEL TO COMMITTEE**

Dawn Buoncristiani

**DEPT OF TAXATION STAFF PRESENT:**

Terry Rubald  
Kelly Langley  
Keri Gransberry  
Penny Hampton  
Heidi Rose  
Susan Lewis  
Chali Spurlock

**MEMBERS OF THE PUBLIC PRESENT:**

<b>Name</b>	<b>Representing</b>
Steve Nielsen	Government Facilities Development Services
Diane M. Nielsen	Government Facilities Development Services
Don Newman	Elko Convention & Visitors Authority
Hugh Gallagher	Storey County
Devin Fabor	IT Humboldt County
Debbie Kinder	City of Sparks
Teri Gage	Eide Bailly
Gerald Eick	Incline Village General Improvement District
Michelle Cagliano	Self
Mark Vincent	City of Las Vegas

**ITEM 1. ROLL CALL AND OPENING REMARKS**

Chairman Johnson called the meeting to order at 9:00 a.m. Roll call was taken and it was determined that a quorum was present.

Chairman Johnson made opening comments, reiterating what he stated at the last meeting, that in his occupation he does help local governments go through the capital financing process, and nothing that the subcommittee has spoken about so far has required folks to use outside consultants, and unless that were to come up, he is able to participate in these discussions.

**ITEM 2. PUBLIC COMMENT**

There was no public comment.

**ITEM 3. For Possible Action: Discussion and Consideration of Proposed Guidance Letter on the Treatment and Reporting Requirements connected with lease financing and installment purchase agreements**

Terry Rubald, with the Department of Taxation, introduced the exhibits, which include the proposed draft Guidance Letter 16-004, a portion of the GASB Standard #62, and GASB

Exposure Draft, as well as the minutes from the subcommittee meeting on August 1, 2016, where the committee directed the department to create a guidance letter.

The GASB exposure draft on leases will require the reporting of virtually all kinds of leases irrespective of the classifications of capital or operating. Ms. Rubald believes that will pose a challenge to the department on how to handle for reporting.

She went on to discuss that the purpose of the guidance letter was three fold. First to clarify what kinds of leases under the existing GASB standard #62 should be reported to the department for approval. Second to recognize that GASB does represent general accounting principles that can be relied upon. Finally, to consider the fact that the GASB exposure draft may change accounting for leases and how we should accommodate that in the future for purposes of reporting and inclusion in the indebtedness report.

Ms. Rubald asked the committee how they would like to go through the guidance letter. The members requested she go through it, section by section.

Ms. Rubald began with page 1 of the guidance letter and noted that the authority they relied on is NRS 354.472, the Local Government Budget and Finance Act and NRS 354.612, the use of generally accepted accounting principles.

Ms. Rubald went on to page 2 of the letter, explaining that the discussion section is basically setting the stage for what our law calls for in terms of medium term obligations and installment purchase agreements. The department has typically treated capital leases as the type of installment purchase agreements that would be subject to review and approval by the department. She also noted the more creative financing arrangements seen recently, and that has led them to try and understand what characteristics of leases should be subject to department approval.

Ms. Rubald felt it was important to note that in the third paragraph they mention GASB 62 and GASB 34 as the generally accepted accounting principles. She stated it is literally the link between what our statute calls for and what we are going to rely on for the GAP principles.

She mentioned that she specifically added that GASB is going through the process of adopting an exposure draft, and that they are following the footsteps of FASB. The FASB standard has been out for a few years, but the idea is to get a uniform treatment for leases.

Ms. Rubald went on to page 3, which she noted almost all of it was a recap of a portion of the standard in GASB 62. GASB 62 is already in existence and the exposure draft won't be final until December of 2018. For the purpose of this guidance letter, Ms. Rubald stated that she is relying on the existing GASB. She went on to discuss the criteria for classifying leases between a capital lease and an operating lease. If any one of the four criteria is present, it constitutes a capital lease. Everything else that does not meet the criteria is an operating lease.

She continued with page 4, which describes an operating lease. She stated if none of the criteria for a capital lease are present and both the collectability of the minimum lease payments is reasonably predictable and no important uncertainties surround the amount of unreimbursable costs yet to be incurred by the lessor under the lease, the lease is classified as an operating lease.

She indicated that on page 3 and the top of page 4, it discusses the treatment of a capital lease and the treatment of an operating lease, and the books and records of the local government.

She moved on to the lease installment purchase agreements. She explained the definition comes directly from the statute which provides that an installment purchase agreement can be

an installment purchase agreement, a lease, or it can be a transaction in which a municipality acquires real or personal property and there is a security interest associated with it. All of the security interest transactions have to be counted against the municipalities debt limit unless there is a non-funding clause or if the debt is discharged the year it is incurred. There is an exception about what is subject to review and approval. All the security agreements are subject to review and approval. If there is not a security agreement, then a transaction greater than \$100,000 for governments with a population of 100,000 or more or greater than \$50,000 for smaller counties with populations less than 100,000 are also subject to review and approval. There is an exception to that if the installment purchase agreement contains no option or right to purchase at the conclusion of the lease term or if the lease contains an option or right to purchase the property but does not credit the lease payments towards the purchase price, then the lease is not considered an installment purchase agreement.

Ms. Rubald noted that the letter went on to talk about the application of the GASB standard. She went on the page five, which is basically a review of GASB 62 says regarding the perspective of the lessee. For capital leases it states how the financial statements should be treated according to GASB, the same for operating leases. She noted she made special mention towards the bottom of page five, that GASB 62, paragraph 234, about leases involving land and buildings as that is what started us down this road, a lease that included land and buildings. Ms. Rubald quoted directly from GASB "the present value of the minimum lease payments after deducting executor costs, including any gain thereon, should be allocated between the two elements in proportion to their fair values at the inception of the lease." She noted there are other kinds of leases as well that GASB mentions, such as lease back transactions. She added that in the GASB exposure draft, lease leaseback transactions are specifically mentioned.

Ms. Rubald went on to page six, noting she needs to make an update that Mr. Eick had noted that GASB exposure draft really isn't an accounting standard update, that is what FASB does. She will update paragraph one to be consistent with the other update. She noted they are stating that we have to follow GASB 62 until it is replaced, and it looks like it will be replaced in December of 2018 by the exposure draft. She read that people can opt to implement the GASB exposure draft early, but that poses a problem for the department on how to keep up with the changing dynamic in terms of the reporting. The exposure draft does not seem to distinguish between capital or operating leases. She stated in the future this will need to be addressed, probably by regulation, whether they want everything reported in the financials as part of the indebtedness report or limit it to just the capital type leases they have now. The statute distinguishes capital leases. If GASB eliminates the criteria for distinguishing, it will pose a problem for the department. They will be unable to tell if it is a capital lease or not.

Member Colvin believes that seems to be an issue now. She explained there are different criteria for a capital lease under GASB 62 because of the 75% test and the 90% test could require a lease to be considered capitalized but if the payments were not going towards the purchase price then it wouldn't meet the criteria under the statute.

Ms. Rubald stated we are discussing two different things. They need to figure out what kind of leases need to be approved by the department. For the purpose of the financial statements, Ms. Rubald noted they would have to go with GASB 62, which could include more leases than capital leases.

Member Colvin continued that they could be reported as capital in the financial statements, as a capital lease but not have gone to the department for approval.

Ms. Rubald agreed.

Chairman Johnson clarified that the purpose of this guidance letter is not to stop this type of financing, but to determine which ones need to go through the approval process.

Ms. Rubald agreed. She mentioned under the applications, specifically under number two, that approval may not be needed by the department for some kinds of leases, but whatever is in the financial statement needs to be in the indebtedness report.

Member Leavitt believed it could make the indebtedness report huge if they add all the small operating leases.

Chairman Johnson added it would also be misleading.

Member Leavitt stated it makes it appear that it's a major debt. It lumps all of it with what is normally considered long term debt.

Ms. Rubald offered that maybe we should segregate these operating leases into a sub report. They check the indebtedness report and compare it to the financials. There needs to be reconciliation. They will need help from the local governments distinguishing which is which. She added that in the guidance letter she states "local governments may anticipate revised forms to accommodate the inclusion and listing of all leases recorded on the financial statements."

Chairman Johnson referred to No. 2 as written, in the first sentence where it talks about current general obligation debt and special elective taxes. He doesn't believe any of those terms used pick up installment purchase agreements.

Ms. Rubald clarified that the second part does, and read "a report of current debt and special assessments".

Chairman Johnson mentioned they talked about this last time, that technically installment purchase agreements are not debt because of the non-appropriation clause. He thinks some of these things need to be reworded and there may be some statutory changes needed to do that. He thinks generically we refer to debt anytime there is an obligation for local governments to pay money to somebody else. But in a technical sense, installment purchase agreements are not debt because of the non-appropriation clause, they don't count it as a debt. We need to look at clarifying how those things are asked for and requested on these various forms moving forward.

Ms. Rubald asked Ms. Langley if capital leases were included on the indebtedness reports.

Ms. Kelly Langley, with the Department of Taxation, answered that they do have leases on the indebtedness report.

Chairman Johnson clarified that there is a line for it, but if the statute says it is just the debt that needs to be reported, then it is only asking for a subset of what is actually on the indebtedness report and maybe we just need to make sure that we cover and get it all clarified.

Member Leavitt inquired, for his own clarification, how we stand with most local governments on the debt relation to the debt limits. He knows in the past the debt limits have been so far above what any of the local governments had the ability to pay that the report was almost meaningless, he wondered if that was still the case.

Chairman Johnson and Ms. Rubald responded that it was.

Chairman Johnson responded that assessed value, which debt limits are based on, grows faster than the revenues.

Member Leavitt added that the debt limits for the state has always been meaningful, but the ones for local governments haven't been.

Chairman Johnson stated Carson City has been within sight of it, a couple of times, but it generally hasn't been an issue.

Ms. Rubald went on to No. 3. She wanted to be sure everyone knew that GASB 62 in the lease section should only be applied to the lease elements of the contract, and if there are other elements there might be other GASB statements that apply.

She continued to No.4, which explains that local governments should review the terms of the agreement and determine whether it is a medium term obligation, an installment purchase, or a lease agreement that needs department review and approval. If the agreement meets the definition then there would be a need for review and approval. In No. 5, Ms. Rubald wanted to point out that we already have some information on what the procedures are, and what information they need to get that approval.

Going on to No. 6, she wanted to specifically mention the option or right to purchase, and what the definition of a bargain purchase option is in GASB. If there is something that meets the bargain purchase option and the terms of the agreement otherwise meets the definition of an installment purchase agreement, it would need approval by the department.

Ms. Rubald proceeded to No. 7 which mentions the lease-leaseback approach. She explained the first paragraph describes what a lease-leaseback project would be, and the last paragraph talks about the two leases – a Site Lease from the local government to the contractor or financing entity, which is usually a nominal amount, and then the Facilities Lease which is the document that the government uses to lease back the real property with the completed facilities. It's through the lease payments by the local government that the contractor or financing entity is paid. She stated they are taking the position that the vesting of title at the expiration of the Facilities Lease constitutes an option to purchase, where the lease payments are credited toward the purchase price for purposes of interpreting the statute.

Chairman Johnson asked if the committee members had any questions.

Member Colvin asked for clarification if governments are required to report anything that is reported as a capital lease on their financial statements even though it may have not gone to the department for approval. Ms. Rubald answered it was. Member Colvin asked if they report them as capital leases, or as other.

Ms. Langley replied that currently it is other debt, other lease purchases. She explained that it is discussed in other debt, as far as lease purchases. Ms. Rubald added especially where there is security interest. Ms. Langley continued that capital leases are also under the medium term obligation section, which reads notes, bonds, including general obligation bonds, and capital leases, include all medium term indebtedness that has been incurred whether approved or not pursuant to the provisions of NRS 350.087 through 95 municipal obligations.

Member Colvin believes these long term obligations should be disclosed in the official statements, regardless of if they are approved of by the department, and asked if the committee agreed.

Chairman Johnson said clearly it is a call for disclosure, and that would be the committee's recommendation.

Member Leavitt wondered if there would be some value of having a “catch all” at the end that would say something about if they incur an obligation that is different than any of these which involves the payment of money over a long period time for the acquisition of assets, that it would fall under this and would need approval by the department. He stressed again that he is afraid they will get someone who is in a difficult financial condition, and someone comes to them with a new animal that hasn’t been considered. A catch all that doesn’t fit some of the things they are thinking of now.

Ms. Rubald stated that could be added, and she thinks it would be helpful.

Ms. Langley commented maybe they could add a line on the indebtedness report “other debt structures that are not shown above”, whether or not they have to be included. That may help them reconcile between their CAFRs, what they have to report per GAP, and what the department is requesting.

Member Leavitt added that every time they have somebody in financial difficulty, they find out they have some debt that has not been reported or not approved. He is nervous that they need a catch all for that sort of stuff.

Ms. Rubald added again that it could be added.

Member Zander commended Ms. Rubald and her staff for the development of the guidance letter; he hopes it will provide the guidance necessary. He appreciates the savings to the taxpayers of this particular process, but the reporting was definitely not correct.

Chairman Johnson noted currently this is just addressed to County Finance Officers, and asked if this should go to a much wider audience. Ms. Rubald agreed. Chairman Johnson added finance officers of every local government in the state, and perhaps even the auditing firms that do the auditing for them. Ms. Rubald agreed, and stated she would make sure that happens.

Ms. Rubald asked if the committee was to go forward with this, if they would want to go to the full committee. It may be helpful under the authority for this letter if the Committee on Local Government Finance approved the guidance letter.

Chairman Johnson stated anything the subcommittee recommends will go to the full committee. He asked if there was any public comment.

Mr. Steve Nielsen, with Government Facility Development Services came forward. He noted his company was the developer for the Elko Conference Center on behalf of a nonprofit foundation. He added that we are all in favor of good reporting, and that he was on the side of government for 35 years. He stated the purpose of his company is to bring private capital to assist government entities. Currently, they are working with a number of Nevada counties relating to financing and developing 1900 era jails and court houses, and office buildings, etc.

His concern is how this lease-lease purchase is categorized. He stated it can’t be called one thing at the local government level, and something else at the state level. The state has \$35 million a year in leases. Changing reporting requirements could have an unbelievable impact on the rest of government.

Mr. Nielsen went on to discuss item 7, he wanted to focus on lease-leaseback. He stated this is not a debt obligation of the county, city, or state under a true lease-leaseback scenario. He stated the problem he has is they are dancing around that in item 7, and classifying it as a lease-lease purchase agreement, and it is not a lease purchase agreement. He referred to the first paragraph, where it talks about expiration of the lease and whether it is an automatic

transfer of the improvements or a written request by the local government, which makes it a lease purchase agreement, and that is not what this is. He stated his company does 25-30 year financing, they amortize the debt through nonprofit to have a zero value at the end of the lease. There is no bargain purchase, no gift clause. At the end of the lease term, the government has the option of leaving the improvements in place, which have a zero value, or demolishing them. He went on to state that we go from not having a regulatory approval process, or a debt obligation to the state, or county, or city and then as soon as you put this last language in, you could perceive this as a medium debt lease purchase agreement, and that is not true. He is all for government entities reporting lease obligations, there should be some level of oversight, and they are not trying to bypass that, they are trying to help.

Mr. Nielsen explained the structure they use is private capital through a nonprofit foundation, which is the owner/borrower, who has taken on the debt and the risk. It is not an obligation of the government entity. It is solely their obligation; it is a lease payment, that's all it is, leasing an office space. He asked for them to please not make it a purchase agreement, as this is not a lease purchase agreement.

Ms. Rubald asked Chairman Johnson if she could address Mr. Nielsen with a question. She asked Mr. Nielsen how it is not a bargain purchase if the value is zero at the end of the lease. Mr. Nielsen stated there is no purchase. She stated the local government simply has to notify them that they will take the property back as is. He answered or they would demolish it, unless the state relieves them of that obligation. She asked if he believed Elko, or anyone, would demolish it after investing millions after all those years.

Mr. Nielsen explained he did not, but the reality is they have been working for years, with underwriters and credit agencies to help the state, find an ability to use private capital, build facilities, while not impacting their credit or debt capacity, and have the state be the benefactor of lower cost financing and get the facilities they need. He stated just in the last month, the state public works approved \$1.2 billion worth of improvements that are needed in the state, but the legislature and treasurer came out and said we have bonding capacity of \$50 million. This whole mechanism is here to help. Please, don't put in guidelines that are counter to existing state law and that cause a problem. He agreed that we should have good government, good accounting, but that truthfully when they go out to the private sector and want to borrow money; their tests for accountability are extreme. They have to drill down into if the government entity actually can make lease payments. They will not put their money out if all the risks are not covered.

Mr. Nielsen noted there is incredible discipline, market feasibility, etc. He reiterated that they were contracted to build 55,000 sq. ft. but as they went through financial feasibility, they said that was too big, too much pressure on government, so they built 28,000 after they studied four different iterations of what size it should be. He again stated he agrees with the reporting, but requested they not put language in here that goes beyond what the state statutes are and barricade what they are trying to do here.

Chairman Johnson clarified that the goal isn't to shut down any type of financing. What they are trying to determine is what types need to be approved. He asked is there an issue with this type of financing that Mr. Nielsen has described, to go to the accounting debt management commission and the Department of Taxation to get approval, and if that causes a problem.

Mr. Nielsen answered that it does. He stated credit rating agencies will say that their hands are all over it, that they used a shell company to build facilities for you, and that will hit your debt and credit capacity.

Ms. Langley asked Mr. Nielsen about the \$3 million prepayment that was used to buy down the payments so the local government could afford the payments. She stated that money came



from a capital fund that would have been used to purchase a building or space, etc. They did the \$3 million prepayment over the life. Mr. Nielsen interjected and stated that was a one-time payment, it was not over the life. It was not amortized by his auditors, there have been issues with how Elko Convention & Visitors Authority (ECVA) reported this on their end, but this was like leasing a car. They bought down the lease on the front end to get payments they can afford. Ms. Langley stated at the end of the day they just want transparency, and maybe Ms. Teri Gage could clarify.

Ms. Teri Gage with Eide Bailly, on behalf of ECVA, stated she believes at this point they reported it correctly on the CAFR as a capital lease according to GASB. She stated that was mainly because of the requirement of the present value of the minimum lease payments exceeds 90% of the fair market value of the property. She stated they are in the process of the audit right now, however, based on the information they have they believe that it falls under capital lease according to GASB.

Mr. Nielsen stated he does not disagree with that as it relates to GASB reporting.

Member Leavitt commented that this is a perfect example of what he was trying to get at previously. It doesn't matter what you call it, it is an obligation that has to be paid over time, just like a debt. He believes the reporting is appropriate.

Ms. Gage stated if the entity can take title of the asset for nothing, then the lease payments went towards the purchase price, which would be the definition of an installment purchase agreement.

Ms. Rubald agreed.

Mr. Nielsen stated what if the nonprofit decides to scrape the ground. He said they are making an assumption that the entity will take advantage of this. He also noted the language was drafted by rating agencies, and underwriters to address the issue they are talking about.

Mr. Eick commented that he has taken an interest in this because he believes with the GASB exposure draft coming out lease accounting will become an issue for all government. He is pleased to hear that they are aware this will affect a broader audience. He suggests that the title of the guidance letter makes reference not only to reporting but the need for authority from the department. He also applauds that the committee is forward looking, as wherever the bar has been set about leasing, there is always someone trying to put a new twist on it to help those who are trying to avoid their responsibilities. He believes the GASB exposure draft is trying to expose that. Governments are in the business of reporting a flow of resources, and when they have made a commitment to a series of transactions that could jeopardize that flow that it needs to be disclosed. He wanted to note he is in favor of the guidance letter.

Chairman Johnson stated he wants governments to have as many options as possible, as long as it's legal; he thinks it should be allowed. But if it needs to be authorized, then it needs to be authorized. Chairman Johnson believes that is the purpose of this letter.

Mr. Eick agreed, and commented that his organization has realized that they can't just keep writing checks for large equipment, he knows they will likely have what will become capital leases or installment purchases; it doesn't bother him that he will need to present that to oversight agencies to get their approval. He sees that the committee making this clear, will not keep him from making his choices, just make him have to think farther ahead to get it all done.

Ms. Rubald noted part of this letter is a warning system that the new GASB could be a new standard. She addressed Mr. Nielsen, and stated that it boils down to an interpretation of what

is an option or right to purchase and whether the payments made over time can be applied to that so called purchase. She respectfully disagrees with his interpretation because in this specific instance, she truly believes that the local government has found a financing form, where other folks take the immediate risk during the period and at the end of the day the government gets a new facility for zero dollars at the end of the lease term. She believes that type of obligation that should be not only part of the financial statement, but is probably subject to approval. She stated that was just her opinion.

Member Leavitt agreed.

Chairman Johnson noted that if Convention Authority were to do something in the future, this would be looked at in a credit review.

Member Zander agreed.

Chairman Johnson asked if there were any further public comments.

Mr. Nielsen stated he hopes we have negated the lease-leaseback, as they are not giving any credit to the risk taken on by a private entity. If you call it a lease purchase, then why bring on a third party, why bring in private capital. The ECVA is a 10 year financing, the nonprofit has to refinance; there are all kinds of risk to them. He stated again this is not a lease-leaseback approach, and he is not negating the need for reporting. It is an obligation, but the nonprofit is the one taking the risk. He is asking it to not be categorized as a lease purchase.

Chairman Johnson asked Mr. Nielsen if all he had to do was go to the county debt management commission and get their approval, and send the required documentation to the Department of Taxation to get their approval, everything else was the same, if that create a problem for them.

Mr. Nielsen stated, he is not a lawyer, but questioned if that would trigger prevailing wage, etc. He stated they are trying not to burden a project that is privately financed with additional costs. If it is just an approval process, that would be fine. He does not want to trigger unintended consequences.

Chairman Johnson asked if there were any further public comments. There were none.

He asked Ms. Rubald what it was that she would like the subcommittee to do, and they can discuss that. She stated the first thing would be to expand who the guidance letter is written to, and the second to change the subject title to include not only treatment and reporting requirements of various types of leases but the authority of the department to review those. She added that on page 6 paragraph 1, that she needs to change the language to the GASB exposure draft. She would also like to add after paragraph 7, a paragraph 8 hat would be a catch all that if the obligation is different than any of the discussion points and there is a payment of money over a long period of time and otherwise meets the criteria 350.089, then it would need to be approved by the department. She would like to make those changes, and resubmit the draft to the subcommittee to submit to the full committee for approval.

Chairman Johnson commented his preference would be that if a lease-leaseback is not an installment purchase agreement that we don't need to make it into one. He stated maybe they need some additional discussion with the auditing firms as his concern is that someone could think a transaction is an operating lease, then the auditors change it to a capital lease, and it happens after the fact.

Ms. Rubald commented that if it happens after the fact, it is brought to the departments' attention and they write letters stating they do not approve or disapprove of the transaction.

Ms. Langley stated one of the concerns is whether or not it should have required approval when they were reviewing it. She noted the auditors are looking for guidance.

Chairman Johnson stated maybe we need to add if they are contemplating something like this they need to consult their auditors and find out how they will treat it.

Ms. Landry noted in this case, because it fails the one requirement, it is considered a capital lease and needs to be reported as a capital lease in the CAFR for transparency.

Ms. Rubald added the catch all should contain a statement that says if you are contemplating a transaction that does not fit these parameters, then you should consult with the auditors as to how the financial statements will reflect the transaction. Chairman Johnson agreed.

Mr. Eick commented that he could see that the safe harbor would be to err on the side of caution, and bring things to the department if you are unsure. He stated he hopes the committee could help the various county debt commissions that have not seen these types of transactions before. He thinks a good step would be what the process would be if someone wanted to err on the side of caution and present it to the department first.

Chairman Johnson added to Ms. Rubald, that in addition to consulting with the auditing firm that they should consult with their analyst at the Department of Taxation.

Ms. Rubald noted she would get the revisions out ASAP.

Chairman Johnson asked if they were going to need another meeting, the subcommittee discussed available dates, and the possibility of extending the next committee meeting.

Chairman Johnson moved to Item 4.

**ITEM 4. Discussion and Consideration of Recommendations for future regulatory oversight regarding new forms of financing**

Ms. Rubald noted she added this item as a catch all, because she did not know if the subcommittee wants to consider whether we need to explore any regulatory guidance to be consistent with the change in GASB.

Chairman Johnson asked Member Leavitt if we had the GASB stuff in mind when this subcommittee was formed.

Member Leavitt requested Ms. Rubald to add this to the Agenda for the Committee Meeting and at that time the subcommittee can be expanded to include that.

**ITEM 5. BRIEFING TO AND FROM THE SUBCOMMITTEE ON LOCAL GOVERNMENT FINANCE AND LOCAL GOVERNMENT FINANCE STAFF**

a) Discussion of Matters Affecting Local Governments

**b) For Possible Action: Schedule Date and Review Agenda Topics for the Next Meeting**

Ms. Rubald noted they have nothing further, and the Chairman has already voiced his availability for the next meeting.

ITEM 6. PUBLIC COMMENT

There was no further public comment.

Chairman Johnson requested the minutes be on a future agenda as there is a mistake in them. Ms. Rubald stated they would be.

ITEM 7. **For Possible Action: ADJOURNMENT**

The meeting was adjourned at 10:12 a.m.

DRAFT