

SENATE BILL NO. 369—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF OFFICE OF BUSINESS FINANCE AND PLANNING)

MARCH 11, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing state revenue bonds for industrial development. (BDR 30-644)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to revenue bonds for industrial development; providing under certain circumstances for the confidentiality of certain records submitted by obligors for the issuance of such bonds; prohibiting, under certain circumstances, the issuance of such bonds by the state if the issuance would result in the abandonment or closure of an existing facility; revising the prerequisites to the financing of a proposed project; authorizing the director of the department of business and industry to adopt regulations related to the issuance of such bonds and to refund such bonds issued by counties and cities in this state; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 349 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. 1. *The director may provide financing for a project***
4 *pursuant to this section if:*
5 *(a) The financing is limited in amount and purpose to the payment of*
6 *the costs associated with:*
7 *(1) The acquisition, refurbishing, replacement and installation of*
8 *equipment for the project; and*
9 *(2) The issuance of bonds pursuant to this section;*
10 *(b) The total amount of the bonds issued pursuant to this section for a*
11 *particular project does not exceed \$2,500,000;*
12 *(c) The director determines that the bonds will:*

1 (1) *Be sold only to qualified institutional buyers, as defined in Rule*
2 *144A of the Securities and Exchange Commission, 17 C.F.R. §*
3 *230.144A, in minimum denominations of at least \$100,000; or*

4 (2) *Receive a rating within one of the top four rating categories of*
5 *Moody's Investors Service, Inc., Standard and Poor's Rating Services or*
6 *Fitch IBCA, Inc.;*

7 (d) *The director makes the findings set forth in paragraphs (a) to (e),*
8 *inclusive, (g) and (h) of subsection 2 of NRS 349.580, and the governing*
9 *body of the city or county where the project is to be located approves the*
10 *findings of the director; and*

11 (e) *The director complies with the guidelines established pursuant to*
12 *subsection 2.*

13 2. *The board shall establish guidelines for the provision of financing*
14 *for a project pursuant to this section.*

15 **Sec. 3. 1.** *Except as otherwise provided in subsection 2, the*
16 *director, the board and the governing body of the county or city where a*
17 *project is located shall make available for public inspection, upon*
18 *request, information furnished by an obligor to obtain the director's*
19 *assistance in financing a project pursuant to NRS 349.400 to 349.670,*
20 *inclusive, and section 2 of this act.*

21 2. *Except as ordered by a court of competent jurisdiction or as*
22 *required by federal law, the director, the board and the governing body of*
23 *the county or city where the project is located shall not, without the prior*
24 *consent of the obligor, disclose proprietary information or financial*
25 *statements or records of the obligor or guarantor that are not otherwise*
26 *available to the public if the obligor has:*

27 (a) *Requested in writing that the information, statements or records be*
28 *kept confidential; and*

29 (b) *Furnished the information, statements or records for the sole*
30 *purpose of obtaining the director's assistance in financing a project*
31 *pursuant to NRS 349.400 to 349.670, inclusive, and section 2 of this act.*

32 3. *As used in this section:*

33 (a) *"Proprietary information" means any trade secret or other*
34 *information which, if disclosed to members of the general public, may*
35 *result in a competitive disadvantage to the obligor, including, without*
36 *limitation:*

37 (1) *Documents concerning the marketing or strategic planning of*
38 *the obligor;*

39 (2) *Data, studies and reports concerning the development of new*
40 *products or services; and*

41 (3) *Data that identify the share of the market of the obligor.*

42 (b) *"Trade secret" has the meaning ascribed to it in NRS 600A.030.*

1 **Sec. 4.** NRS 349.400 is hereby amended to read as follows:
2 349.400 As used in NRS 349.400 to 349.670, inclusive, *and sections 2*
3 *and 3 of this act*, unless the context otherwise requires, the words and
4 terms defined in NRS 349.410 to 349.540, inclusive, have the meanings
5 ascribed to them in those sections.

6 **Sec. 5.** NRS 349.425 is hereby amended to read as follows:
7 349.425 “Corporation for public benefit” means a corporation that is
8 ~~recognized~~ :

9 1. *Recognized* as exempt pursuant to section 501(c)(3) of the Internal
10 Revenue Code of 1986, *26 U.S.C. § 501(c)(3)*, future amendments to that
11 section and the corresponding provisions of future internal revenue laws ~~;~~
12 *; or*

13 2. *Organized for a public or charitable purpose and which, upon*
14 *dissolution, must distribute its assets to the United States, a state, or a*
15 *person which is recognized as exempt pursuant to section 501(c)(3) of the*
16 *Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), future*
17 *amendments to that section and the corresponding provisions of future*
18 *internal revenue laws.*

19 **Sec. 6.** NRS 349.565 is hereby amended to read as follows:
20 349.565 1. The director may not, under NRS 349.400 to 349.670,
21 inclusive ~~;~~

22 ~~—1.~~ *, and sections 2 and 3 of this act:*

23 (a) Operate any manufacturing, industrial, warehousing or commercial
24 enterprise or an organization for research and development or any health
25 and care facility to which he provided assistance; or

26 ~~{2.—Assist}~~

27 (b) *Except as otherwise provided in subsection 2, assist* any
28 manufacturing, industrial, warehousing or commercial enterprise or an
29 organization for research and development to locate in a county or city
30 which would ~~{compete substantially with an enterprise or organization~~
31 ~~already established in the county or city for substantially the same intrastate~~
32 ~~markets.}~~ *result in the abandonment or closure of an existing facility of a*
33 *like nature located within that county or city, unless the existing facility*
34 *is operated by the contemplated lessee, purchaser or other obligor or an*
35 *affiliate of such a person and the facility is to be abandoned or closed*
36 *because of obsolescence, lack of available labor or limitations at the site*
37 *of the facility.*

38 2. The provisions of paragraph (b) of subsection 1 do not apply to:

39 (a) *Health and care facilities and supplemental facilities for a health*
40 *and care facility;*

41 (b) *Civic and cultural enterprises open to the general public;*

42 (c) *Enterprises located in a redevelopment area created pursuant to*

43 *NRS 279.382 to 279.685, inclusive;*

1 *(d) Enterprises located in an area designated as an empowerment*
2 *zone pursuant to sections 1391 to 1397, inclusive, of the Internal*
3 *Revenue Code of 1986, 26 U.S.C. §§ 1391-97, future amendments to*
4 *those sections and the corresponding provisions of future internal*
5 *revenue laws;*

6 *(e) Facilities established by a corporation for public benefit; and*

7 *(f) Enterprises whose products are substantially sold, used or*
8 *distributed outside this state.*

9 **Sec. 7.** NRS 349.580 is hereby amended to read as follows:

10 349.580 ~~[The]~~ *Except as otherwise provided in NRS 349.640 and*
11 *section 2 of this act, the* director shall not finance a project unless, before
12 financing:

13 1. The director finds that:

14 (a) The project to be financed has been approved for financing pursuant
15 to the requirements of NRS 244A.669 to 244A.763, inclusive, or 268.512
16 to 268.568, inclusive; and

17 (b) There has been a request by a city or county to have the director
18 issue bonds to finance the project; or

19 2. The director finds and both the board and the governing body of the
20 city or county where the project is to be located approve the findings of the
21 director that:

22 (a) The project consists of any land, building or other improvement and
23 all real and personal properties necessary in connection therewith,
24 excluding inventories, raw materials and working capital, whether *or not* in
25 existence, *which is* suitable for new construction, improvement,
26 preservation, restoration, rehabilitation or redevelopment:

27 (1) For manufacturing, industrial, warehousing, civic, cultural or other
28 commercial enterprises, educational institutions, *corporations for public*
29 *benefit* or organizations for research and development;

30 (2) For a health and care facility or a supplemental facility for a health
31 and care facility;

32 (3) Of real or personal property appropriate for addition to a hotel,
33 motel, apartment building, casino or office building to protect it or its
34 occupants from fire; or

35 (4) Of a historic structure;

36 (b) The project will provide a public benefit;

37 (c) The contemplated lessee, purchaser or other obligor has sufficient
38 financial resources to place the project in operation and to continue its
39 operation, meeting the obligations of the lease, purchase contract or
40 financing agreement;

41 (d) There are sufficient safeguards to assure that all money provided by
42 the department will be expended solely for the purposes of the project;

(e) ~~[There are existing and projected needs for the project and the project would alleviate an existing shortage of facilities or services in the state;~~

~~—(f)]~~ The project would be compatible with existing facilities in the area adjacent to the location of the project;

~~[(g)]~~ (f) The project is compatible with the plan of the state for economic diversification and development or for the marketing and development of tourism in this state;

~~[(h)]~~ (g) Through the advice of counsel or other reliable source that the project has received all approvals by the local, state and federal governments which may be necessary to proceed with construction, improvement, rehabilitation or redevelopment of the project; and

~~[(i)]~~ (h) There has been a request by a city, county, lessee, purchaser, other obligor or other enterprise to have the director issue revenue bonds for industrial development to finance the project.

Sec. 8. NRS 349.590 is hereby amended to read as follows:

349.590 ~~[(Before)]~~ *Except as otherwise provided in NRS 349.640, before* financing a project pursuant to subsection 2 of NRS 349.580, the director and the ~~[state board of finance]~~ *board* must also:

1. Determine the total amount of money necessary to be provided by the director for financing the project.

2. ~~[(Receive)]~~ *Except as otherwise provided in this subsection, receive* a 5-year operating history from the contemplated lessee, purchaser or other obligor or from ~~[a parent or other enterprise which guarantees principal and interest payments]~~ *any other enterprise that will make or guarantee the payment of the principal, premium, if any, and interest* on any bonds issued. *An operating history is not required if the bonds:*

(a) *Are to be sold only to qualified institutional buyers, as defined in Rule 144A of the Securities and Exchange Commission, 17 C.F.R. § 230.144A, in minimum denominations of at least \$100,000; or*

(b) *Will receive a rating within one of the top four rating categories of Moody's Investors Service, Inc., Standard and Poor's Rating Services or Fitch IBCA, Inc.*

3. Consider whether the contemplated lessee, purchaser, other obligor or other enterprise ~~[which guarantees principal and interest payments]~~ *that will make or guarantee the payment of the principal, premium, if any, and interest on any bonds issued* has received within the 12 months preceding the date of the findings of the director, or then has or has not in effect, a rating within one of the top four rating categories of ~~[either]~~ Moody's Investors Service, Inc., ~~[or]~~ Standard and Poor's Ratings Services ~~[.]~~ *or Fitch IBCA, Inc.*

4. Identify any existing facilities of a like nature within the ~~[area-to-be served-by-the-project]~~ *county or city in which the project will be located*

1 and consider ~~[what the competitive effect of the project would be on the~~
2 ~~existing facilities.]~~ *the applicability of paragraph (b) of subsection 1 of*
3 *NRS 349.565.*

4 5. Consider the extent to which the project is affected by any federal,
5 state or local governmental action, activity, program or development.

6 6. Consider whether the lessee, purchaser, other obligor or other
7 enterprise of the project has maintained facilities appropriate to the
8 community in this state for 10 years or longer.

9 **Sec. 9.** NRS 349.630 is hereby amended to read as follows:

10 349.630 The director shall adopt regulations *to carry out the*
11 *provisions of NRS 349.400 to 349.670, inclusive, and sections 2 and 3 of*
12 *this act, including, without limitation, regulations* for:

13 1. Investment and reinvestment of the proceeds from the sale of bonds,
14 including, but not limited to:

15 (a) Bonds or other obligations of the United States of America.

16 (b) Bonds or other obligations, the payment of the principal and interest
17 of which is unconditionally guaranteed by the United States of America.

18 (c) Obligations issued or guaranteed as to principal and interest by any
19 agency or person controlled or supervised by and acting as an
20 instrumentality of the United States of America pursuant to authority
21 granted by the Congress of the United States of America.

22 (d) Obligations issued or guaranteed by any state of the United States of
23 America, or any political subdivision of any state.

24 (e) Prime commercial paper.

25 (f) Prime finance company paper.

26 (g) Bankers' acceptances drawn on and accepted by commercial banks.

27 (h) Repurchase agreements fully secured by obligations issued or
28 guaranteed as to principal and interest by the United States of America or
29 by any person controlled or supervised by and acting as an instrumentality
30 of the United States of America pursuant to authority granted by the
31 Congress of the United States of America.

32 (i) Certificates of deposit issued by commercial banks, including banks
33 domiciled outside the United States of America.

34 (j) Money market mutual funds that:

35 (1) Are registered with the Securities and Exchange Commission;

36 (2) Are rated by a nationally recognized rating service as "AAA" or
37 its equivalent; and

38 (3) Invest only in securities issued or guaranteed as to payment of
39 principal and interest by the Federal Government, or its agencies or
40 instrumentalities, or in repurchase agreements that are fully collateralized
41 by such securities.

42 2. Receiving, holding and disbursing of proceeds of the sale of bonds
43 by one or more banks or trust companies located within or out of this state.

1 **Sec. 10.** NRS 349.640 is hereby amended to read as follows:

2 349.640 1. Any bonds issued under the provisions of NRS 349.400
3 to 349.670, inclusive, *and sections 2 and 3 of this act, or NRS 244A.669*
4 *to 244A.763, inclusive, or 268.512 to 268.568, inclusive*, may be refunded
5 by the director by the issuance of refunding bonds in an amount which he
6 deems necessary to refund the principal of the bonds to be so refunded, any
7 unpaid interest thereon and any premiums and incidental expenses
8 necessary to be paid in connection with refunding.

9 2. Refunding may be carried out whether the bonds to be refunded
10 have matured or thereafter mature, either by sale of the refunding bonds
11 and the application of the proceeds to the payment of the bonds to be
12 refunded, or by exchange of the refunding bonds for the bonds to be
13 refunded. The holders of the bonds to be refunded must not be compelled,
14 without their consent, to surrender their bonds for payment or exchange
15 before the date on which they are payable by maturity, option to redeem or
16 otherwise, or if they are called for redemption before the date on which
17 they are by their terms subject to redemption by option or otherwise.

18 3. All refunding bonds issued pursuant to this section must be payable
19 solely from revenues and other money out of which the bonds to be
20 refunded thereby are payable or from revenues out of which bonds of the
21 same character may be made payable under this or any other law then in
22 effect at the time of the refunding.

23 **4. *The director shall not issue refunding bonds unless before the***
24 ***refinancing he finds that issuance of refunding bonds will provide a***
25 ***lower cost of financing for the obligor or provide some other public***
26 ***benefit, but the findings and determinations required by NRS 349.580***
27 ***and 349.590 and section 2 of this act are not required with respect to***
28 ***refunding bonds issued pursuant to this section.***

29 **Sec. 11.** 1. The director shall not provide any financing pursuant to
30 section 2 of this act until the state board of finance has established the
31 guidelines required pursuant to subsection 2 of that section.

32 2. For the purposes of this section, "director" has the meaning ascribed
33 to it in NRS 349.440.

34 **Sec. 12.** This act becomes effective upon passage and approval.