

SENATE BILL NO. 67—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 16, 2005

Referred to Committee on Government Affairs

SUMMARY—Establishes certain mechanisms to protect assets of local government under certain circumstances if local government is involved in litigation or threatened litigation. (BDR 31-880)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to local financial administration; allowing the governing body of a local government to invoke certain provisions of Nevada law relating to severe financial emergency under certain circumstances involving litigation or threatened litigation; staying certain actions by a creditor to attach, garnish or execute upon the assets of a local government whose management has been taken over by the Department of Taxation until such time as a program has been formulated to liquidate the debt owed by the local government to the creditor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law, under certain circumstances: (1) requires the Department of Taxation to make a recommendation of severe financial emergency to the Nevada Tax Commission concerning a local government; and (2) requires the Commission to order the Department to take over the management of a local government determined to be experiencing a severe financial emergency. (NRS 354.655-354.725)

This bill allows the governing body of a local government, under certain circumstances, to request that the Nevada Tax Commission issue an order directing the Department of Taxation to take over the management of the local government if the local government is experiencing or will experience a severe financial emergency as a result of litigation or threatened litigation. This bill also provides that if the Department takes over the management of a local government because the local government is involved in litigation or threatened litigation, actions by a creditor to attach, garnish or execute upon the assets of the local government must



15 be stayed until such time as the creditor meets with the Department and the
16 Department formulates a program to liquidate the debt owed by the local
17 government to the creditor.

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

1 **Section 1.** Chapter 354 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *If the governing body of a local government*
4 *determines by the affirmative vote of a majority of its members*
5 *that, because the local government is involved in litigation or*
6 *threatened litigation, the local government is or will be in a severe*
7 *financial emergency, the governing body may submit a request to*
8 *the Nevada Tax Commission for an order that the Department, as*
9 *soon as practicable, take over the management of the local*
10 *government pursuant to the provisions of NRS 354.655 to 354.725,*
11 *inclusive, and this section and section 3 of this act.*

12 **2.** *If the Nevada Tax Commission receives a request pursuant*
13 *to subsection 1, the Nevada Tax Commission shall order the*
14 *Department to take over the management of the local government.*

15 **Sec. 3.** *If the Department takes over the management of a*
16 *local government because the local government is involved in*
17 *litigation or threatened litigation and if a creditor of the local*
18 *government is allowed by law to commence or maintain an action*
19 *in the nature of an attachment, garnishment or execution in the*
20 *courts of this State against the local government or its assets, the*
21 *action must be stayed until the following conditions have been*
22 *satisfied:*

23 **(a)** *The creditor must meet with the Department to formulate a*
24 *program for the liquidation of the debt owed by the local*
25 *government to that creditor; and*

26 **(b)** *The Department must adopt a program for the liquidation*
27 *of the debt owed by the local government to the creditor as*
28 *described in paragraph (a). The Department shall formulate the*
29 *program not later than 60 days after meeting with the creditor*
30 *pursuant to paragraph (a). The formulation of the program is a*
31 *final decision for the purposes of judicial review.*

32 **Sec. 4.** NRS 354.655 is hereby amended to read as follows:
33 354.655 As used in NRS 354.655 to 354.725, inclusive, *and*
34 *sections 2 and 3 of this act*, unless the context requires otherwise:

35 1. "Committee" means the Committee on Local Government
36 Finance.

37 2. "Department" means the Department of Taxation.



1 3. "Executive Director" means the Executive Director of the
2 Department of Taxation.

3 4. "Local government" means any local government subject to
4 the provisions of the Local Government Budget and Finance Act.

5 5. The words and terms defined in the Local Government
6 Budget and Finance Act have the meanings ascribed to them in that
7 act.

8 **Sec. 5.** NRS 354.657 is hereby amended to read as follows:

9 354.657 1. The purpose of NRS 354.655 to 354.725,
10 inclusive, *and sections 2 and 3 of this act*, is to provide specific
11 methods for the treatment of delinquent documents, technical
12 financial assistance and severe financial emergency.

13 2. To accomplish the purpose set forth in subsection 1, the
14 provisions of NRS 354.655 to 354.725, inclusive, *and sections 2*
15 *and 3 of this act*, must be broadly and liberally construed.

16 **Sec. 6.** NRS 354.695 is hereby amended to read as follows:

17 354.695 1. As soon as practicable after taking over the
18 management of a local government, the Department shall, with the
19 approval of the Committee:

20 (a) Establish and implement a management policy and a
21 financing plan for the local government;

22 (b) Provide for the appointment of a financial manager for the
23 local government who is qualified to manage the fiscal affairs of the
24 local government;

25 (c) Provide for the appointment of any other persons necessary
26 to enable the local government to provide the basic services for
27 which it was created in the most economical and efficient manner
28 possible;

29 (d) Establish an accounting system and separate accounts in a
30 bank or credit union, if necessary, to receive and expend all money
31 and assets of the local government;

32 (e) Impose such hiring restrictions as deemed necessary after
33 considering the recommendations of the financial manager;

34 (f) Negotiate and approve all contracts entered into by or on
35 behalf of the local government before execution and enter into such
36 contracts on behalf of the local government as the Department
37 deems necessary;

38 (g) Negotiate and approve all collective bargaining contracts to
39 be entered into by the local government, except issues submitted to
40 a fact finder whose findings and recommendations are final and
41 binding pursuant to the provisions of the Local Government
42 Employee-Management Relations Act;

43 (h) Approve all expenditures of money from any fund or
44 account and all transfers of money from one fund to another;



(i) Employ such technicians as are necessary for the improvement of the financial condition of the local government;

(j) Meet with the creditors of the local government and formulate a debt liquidation program;

(k) *If the Department has taken over the management of a local government because the local government is involved in litigation or threatened litigation, carry out the duties set forth in section 3 of this act, if the provisions of that section are applicable;*

(l) Approve the issuance of bonds or other forms of indebtedness by the local government;

~~[(m)]~~ (m) Discharge any of the outstanding debts and obligations of the local government; and

~~[(n)]~~ (n) Take any other actions necessary to ensure that the local government provides the basic services for which it was created in the most economical and efficient manner possible.

2. The Department may provide for reimbursement from the local government for the expenses the Department incurs in managing the local government. If such reimbursement is not possible, the Department may request an allocation by the Interim Finance Committee from the Contingency Fund pursuant to NRS 353.266, 353.268 and 353.269.

3. The governing body of a local government which is being managed by the Department pursuant to this section may make recommendations to the Department or the financial manager concerning the management of the local government.

4. Each state agency, board, department, commission, committee or other entity of the State shall provide such technical assistance concerning the management of the local government as is requested by the Department.

5. The Department may delegate any of the powers and duties imposed by this section to the financial manager appointed pursuant to paragraph (b) of subsection 1.

6. Except as otherwise provided in NRS 354.723 and 450.760, once the Department has taken over the management of a local government pursuant to the provisions of subsection 1, that management may only be terminated pursuant to NRS 354.725.

Sec. 7. NRS 31.010 is hereby amended to read as follows:

31.010 ~~[(The)]~~

1. Except as otherwise provided in subsection 2, the plaintiff at the time of issuing the summons, or at any time thereafter, may apply to the court for an order directing the clerk to issue a writ of attachment and thereby cause the property of the defendant to be attached as security for the satisfaction of any judgment that may be



1 recovered, unless the defendant gives security to pay such judgment
2 as provided in this chapter.

3 *2. If the Department of Taxation has taken over the*
4 *management of a local government pursuant to the provisions of*
5 *section 2 of this act, and if a plaintiff is allowed by law to apply to*
6 *a court for an order directing the clerk to issue a writ of*
7 *attachment, the plaintiff must comply with the applicable*
8 *provisions of section 3 of this act before applying for such an*
9 *order.*

10 **Sec. 8.** NRS 41.075 is hereby amended to read as follows:

11 41.075 No cause of action may be brought against the
12 Committee on Local Government Finance created pursuant to NRS
13 354.105, or any of its members, which is based upon:

14 1. Any act or omission in the execution of, or otherwise in
15 conjunction with, the execution of NRS 354.655 to 354.725,
16 inclusive, *and sections 2 and 3 of this act*, or any policy or plan
17 adopted pursuant thereto, whether or not such statute, policy or plan
18 is valid, if the statute, policy or plan has not been declared invalid
19 by a court of competent jurisdiction; or

20 2. The exercise or performance or the failure to exercise or
21 perform a discretionary function or duty on the part of the
22 Committee on Local Government Finance or member thereof,
23 whether or not the discretion involved is abused.

24 **Sec. 9.** This act becomes effective upon passage and approval.



