

SENATE BILL NO. 100—SENATOR HARDY

PREFILED JANUARY 26, 2011

Referred to Committee on Government Affairs

SUMMARY—Makes changes to provisions governing local improvement districts. (BDR 21-392)

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 improvement districts; authorizing certain modifications after a local improvement project has begun and assessments have been levied; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes counties, cities and towns to initiate, levy assessments and issue bonds for local improvement projects under certain conditions. (NRS 271.265, 271.270) After a governing body passes an ordinance ordering such a project, modifications may be made to the project by amending the ordinance provided that no construction contracts have yet been entered. (NRS 271.325) This bill allows certain modifications to be made after the project has begun and assessments have been levied, provided that such modifications do not increase assessments or, if assessments are increased, the affected property owners have requested such modifications and increased assessments in writing.

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

Section 1. Chapter 271 of NRS is hereby amended by adding thereto a new section to read as follows:

1. After a project ordered pursuant to NRS 271.325 has begun and any special assessment thereon has been levied and divided into installments, the governing body may by ordinance modify the project if the modification:

(a) Reduces the total amount of the assessment;

(b) Makes no change in the total amount of the assessment and causes no increase or decrease in the amount of money



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1 *assessed on each tract and parcel of land included in the*
2 *assessment;*

3 *(c) Eliminates a portion of the project or provides a*
4 *substitution therein without increasing the cost of any assessment*
5 *or substantially affecting the distribution of benefits from the*
6 *work;*

7 *(d) Eliminates a portion of the assessment district without*
8 *increasing the amount of any assessment or substantially affecting*
9 *the distribution of benefits from the work; or*

10 *(e) Excludes from the project and the assessment property*
11 *which will not be benefited by the project without increasing the*
12 *amount of any assessment.*

13 *2. A modification made pursuant to subsection 1 which*
14 *provides for the elimination, addition or substitution of some part*
15 *of the project and which may result in an increase in some*
16 *assessments may be approved by the governing body by ordinance*
17 *if the owners of the assessable property affected by the increased*
18 *assessments request in writing the modification and the increased*
19 *assessments.*

20 *3. Any modification made pursuant to this section must not*
21 *release or discharge the sureties upon any bond issued pursuant to*
22 *this chapter.*

23 **Sec. 2.** NRS 271.305 is hereby amended to read as follows:

24 271.305 1. In the provisional order the governing body shall
25 set a time, at least 20 days thereafter, and a place at which the
26 owners of the tracts to be assessed, or any other interested persons,
27 may appear before the governing body and be heard as to the
28 propriety and advisability of acquiring or improving, or acquiring
29 and improving, the project or projects provisionally ordered. If a
30 mobile home park is located on one or more of the tracts to be
31 assessed, the notice must be given to the owner of the tract and each
32 tenant of that mobile home park.

33 2. Notice must be given:

34 (a) By publication.

35 (b) By mail.

36 (c) By posting.

37 3. Proof of publication must be by affidavit of the publisher.

38 4. Proof of mailing and proof of posting must be by affidavit of
39 the engineer, clerk, or any deputy mailing the notice and posting the
40 notice, respectively.

41 5. Proof of publication, proof of mailing and proof of posting
42 must be maintained in the records of the municipality until all the
43 assessments appertaining to the project have been paid in full,
44 including principal, interest, any penalties, and any collection costs.



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6. The notice may be prepared by the engineer and ratified by the governing body, and, except as otherwise provided in subsection 7, must state:

(a) The kind of project proposed.

(b) The estimated cost of the project, and the portion, if any, to be paid from sources other than assessments.

(c) The basis for apportioning the assessments, which assessments must be in proportion to the special benefits derived to each of the several tracts comprising the assessable property and on a front foot, area, zone or other equitable basis.

(d) The number of installments and time in which the assessments will be payable.

(e) The maximum rate of interest on unpaid installments of assessments.

(f) The extent of the improvement district to be assessed, by boundaries or other brief description.

(g) The time and place of the hearing where the governing body will consider all objections to the project.

(h) That all written objections to the project must be filed with the clerk of the municipality at least 3 days before the time set for the hearing.

(i) If the project is not a commercial area vitalization project, that pursuant to NRS 271.306, if a majority of the property owners to be assessed for a project proposed by a governing body object in writing within the time stated in paragraph (h), the project must not be acquired or improved unless:

(1) The municipality pays one-half or more of the total cost of the project, other than a park project, with money derived from other than the levy or assessments; or

(2) The project constitutes not more than 2,640 feet, including intersections, remaining unimproved in any street, including an alley, between improvements already made to either side of the same street or between improvements already made to intersecting streets.

(j) That the description of the tracts to be assessed, the maximum amount of benefits estimated to be conferred on each such tract and all proceedings in the premises are on file and can be examined at the office of the clerk.

(k) Unless there will be no substantial change, that a substantial change in certain existing street elevations or grades will result from the project, without necessarily including any statement in detail of the extent or location of any such change.

(l) That a person should object to the formation of the district using the procedure outlined in the notice if the person's support for



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1 the district is based upon a statement or representation concerning
2 the project that is not contained in the language of the notice.

3 (m) That if a person objects to the amount of maximum benefits
4 estimated to be assessed or to the legality of the proposed
5 assessments in any respect:

6 (1) The person is entitled to be represented by counsel at the
7 hearing;

8 (2) Any evidence the person desires to present on these
9 issues must be presented at the hearing; and

10 (3) Evidence on these issues that is not presented at the
11 hearing may not thereafter be presented in an action brought
12 pursuant to NRS 271.315.

13 (n) If the project is a commercial area vitalization project, that:

14 (1) A person who owns or resides within a tract in the
15 proposed improvement district and which is used exclusively for
16 residential purposes may file a protest to inclusion in the assessment
17 plat pursuant to NRS 271.392; and

18 (2) Pursuant to NRS 271.306, if written remonstrances by the
19 owners of tracts constituting one-third or more of the basis for the
20 computation of assessments for the commercial area vitalization
21 project are presented to the governing body, the governing body
22 shall not proceed with the commercial area vitalization project.

23 7. The notice need not state either or both of the exceptions
24 stated in subsection 2 of NRS 271.306 unless either or both of the
25 exceptions are determined by the governing body or the engineer to
26 be relevant to the proposed improvement district to which the notice
27 appertains.

28 8. All proceedings may be modified or rescinded wholly or in
29 part by resolution adopted by the governing body, or by a document
30 prepared by the engineer and ratified by the governing body, at any
31 time before the passage of the ordinance adopted pursuant to NRS
32 271.325, creating the improvement district, and authorizing the
33 project.

34 9. No substantial change in the improvement district, details,
35 preliminary plans or specifications or estimates may be made after
36 the first publication, posting or mailing of notice to property owners,
37 whichever occurs first, except ~~for~~:

38 (a) *As otherwise provided in section 1 of this act; or*

39 (b) *For* the deletion of a portion of a project and property from
40 the proposed program and improvement district or any assessment
41 unit.

42 10. The engineer may make minor changes in time, plans and
43 materials entering into the work at any time before its completion.

44 11. If the ordinance is for a commercial area vitalization
45 project, notice sent pursuant to this section must be sent by mail to



1 each person who owns real property which is located within the
2 proposed improvement district and to each tenant who resides or
3 owns a business located within the proposed improvement district.

4 **Sec. 3.** NRS 271.320 is hereby amended to read as follows:

5 271.320 1. After the hearing and after the governing body
6 has:

7 (a) Disposed of all complaints, protests and objections, oral and
8 in writing;

9 (b) Determined that it is not prevented from proceeding pursuant
10 to subsection 3 or 4 of NRS 271.306; and

11 (c) Determined that:

12 (1) Either or both exceptions stated in subsection 2 of NRS
13 271.306 apply; or

14 (2) There were not filed with the clerk complaints, protests
15 and objections in writing and signed by the owners of tracts
16 constituting a majority of the frontage, of the area, of the zone, or of
17 the other basis for the computation of assessments stated in the
18 notice, of the tracts to be assessed in the improvement district or in
19 the assessment unit, if any,

20 and the governing body has jurisdiction to proceed, the governing
21 body shall determine whether to proceed with the improvement
22 district, and with each assessment unit, if any, except as otherwise
23 provided in this chapter.

24 2. ~~HH~~ *Except as otherwise provided in section 1 of this act, if*
25 the governing body desires to proceed and desires any modification,
26 by motion or resolution it shall direct the engineer to prepare and
27 present to the governing body:

28 (a) A revised and detailed estimate of the total cost, including,
29 without limiting the generality of the foregoing, the cost of
30 acquiring or improving each proposed project and of each of the
31 incidental costs. The revised estimate does not constitute a
32 limitation for any purpose.

33 (b) Full and detailed plans and specifications for each proposed
34 project designed to permit and encourage competition among the
35 bidders, if any project is to be acquired by construction contract.

36 (c) A revised map and assessment plat showing respectively the
37 location of each project and the tracts to be assessed therefor, not
38 including any area or project not before the governing body at a
39 provisional order hearing.

40 3. That resolution, a separate resolution, or the ordinance
41 creating the improvement district may combine or divide the
42 proposed project or projects into suitable construction units for the
43 purpose of letting separate and independent contracts, regardless of
44 the extent of any project constituting an assessment unit and
45 regardless of whether a portion or none of the cost of any project is



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1 to be defrayed other than by the levy of special assessments. Costs
2 of unrelated projects must be segregated for assessment purposes as
3 provided in this chapter.

4 **Sec. 4.** NRS 271.325 is hereby amended to read as follows:

5 271.325 1. When an accurate estimate of cost, full and
6 detailed plans and specifications and map are prepared, are
7 presented and are satisfactory to the governing body, it shall, by
8 resolution, make a determination that:

9 (a) Public convenience and necessity require the creation of the
10 district; and

11 (b) The creation of the district is economically sound and
12 feasible.

13 ➔ This determination may be made part of the ordinance creating
14 the district adopted pursuant to subsection 2 and is conclusive in the
15 absence of fraud or gross abuse of discretion.

16 2. The governing body may, by ordinance, create the district
17 and order the proposed project to be acquired or improved. This
18 ordinance may be adopted and amended as if an emergency existed.

19 3. The ordinance must prescribe:

20 (a) The extent of the improvement district to be assessed, by
21 boundaries or other brief description, and similarly of each
22 assessment unit therein, if any.

23 (b) The kind and location of each project proposed, without
24 mentioning minor details.

25 (c) The amount or proportion of the total cost to be defrayed by
26 assessments, the method of levying assessments, the number of
27 installments and the times in which the costs assessed will be
28 payable.

29 (d) The character and extent of any construction units.

30 4. The engineer may further revise the cost, plans and
31 specifications and map from time to time for all or any part of any
32 project, and the ordinance may be appropriately amended . ~~Before~~
33 *Except as otherwise provided in section 1 of this act, such*
34 *amendment must take place before* letting any construction contract
35 therefor and before any work being done other than by independent
36 contract let by the municipality.

37 5. The ordinance, if amended, must order the work to be done
38 as provided in this chapter.

39 6. Upon adoption or amendment of the ordinance, the
40 governing body shall cause to be recorded in the office of the county
41 recorder a certified copy of a list of the tracts to be assessed and the
42 amount of maximum benefits estimated to be assessed against each
43 tract in the assessment area, as shown on the assessment plat as
44 revised and approved by the governing body pursuant to NRS
45 271.320. Neither the failure to record the list as provided in this



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1 subsection nor any defect or omission in the list regarding any
2 parcel or parcels to be included within the district affects the validity
3 of any assessment, the lien for the payment thereof or the priority of
4 that lien.

5 7. The governing body may not adopt an ordinance creating or
6 modifying the boundaries of an improvement district for a
7 commercial area vitalization project if the boundaries of the
8 improvement district overlap an existing improvement district
9 created for a commercial area vitalization project.

10 **Sec. 5.** NRS 271.367 is hereby amended to read as follows:

11 271.367 Because the protection afforded by a security wall
12 benefits each tract in the subdivision, in addition to any other basis
13 for apportioning the assessments authorized in NRS 271.010 to
14 271.360, inclusive, *and section 1 of this act*, the governing body
15 may apportion the assessments for a security wall on the basis that
16 all tracts in the subdivision share equally in the cost and
17 maintenance of the project.

18 **Sec. 6.** This act becomes effective on July 1, 2011.

