

SENATE BILL NO. 260—SENATOR HARDY

MARCH 17, 2011

JOINT SPONSOR: ASSEMBLYWOMAN WOODBURY

Referred to Committee on Government Affairs

SUMMARY—Provides an alternative procedure for the creation of certain local improvement districts. (BDR 21-126)

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 improvements; providing an alternative procedure for the creation of certain local improvement districts that include a renewable energy project; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law sets forth the procedures for a governing body to acquire,
2 improve, equip, operate and maintain local improvement districts that include
3 various types of projects, including renewable energy projects. (NRS 271.265-
4 271.630) **Sections 2-4** of this bill provide an alternative procedure for the creation
5 of a local improvement district that includes a renewable energy project.

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

- 1 **Section 1.** Chapter 271 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

- 3 **Sec. 2. 1. *A governing body may adopt an ordinance***
4 ***pursuant to NRS 271.325 creating an improvement district and***
5 ***ordering a renewable energy project to be acquired or improved***
6 ***and may contract with a person to construct or improve a***
7 ***renewable energy project, issue bonds or otherwise finance the***
8 ***cost of the renewable energy project and levy assessments on***
9 ***assessable property, without complying with the provisions of NRS***



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1 271.305 to 271.320, inclusive, 271.380 and 271.385, if the
2 governing body:

3 (a) Issues a provisional order pursuant to NRS 271.280 to
4 form an improvement district for a renewable energy project; and

5 (b) Has entered into a written agreement with the owners of all
6 assessable property who applied pursuant to section 4 of this act to
7 have their property included in the improvement district which
8 states that:

9 (1) The governing body agrees to enter into a contract for
10 the acquisition, construction or improvement of the renewable
11 energy project in the improvement district.

12 (2) The owners of the assessable property agree in writing
13 that the governing body may create the improvement district, levy
14 assessments against their property and, for all other purposes
15 relating to the improvement district, proceed pursuant to the
16 provisions of this section.

17 2. If an ordinance is adopted and the agreement entered into
18 pursuant to subsection 1 so states:

19 (a) The governing body may amend the ordinance creating the
20 improvement district, change the assessment roll and redistribute
21 the assessments required pursuant to NRS 271.390 in the same
22 manner in which these actions were originally taken to add
23 additional property to the improvement district. The assessments
24 may be redistributed between the assessable property originally in
25 the improvement district and the additional assessable property if:

26 (1) The owners of the additional assessable property submit
27 an application pursuant to section 4 of this act and consent in
28 writing to inclusion of their property in the improvement district
29 and to the amount of the assessment against their property; and

30 (2) The redistribution of the assessments is not prohibited
31 by any covenants made for the benefit of the owners of any bonds
32 or interim warrants issued for the improvement district.

33 (b) The governing body may amend the ordinance creating the
34 improvement district, change the assessment roll and redistribute
35 the assessments required by NRS 271.390 in the same manner in
36 which these actions were originally taken to remove assessable
37 property from the improvement district. The assessments may be
38 redistributed among the assessable property remaining in the
39 improvement district if:

40 (1) The owners of the remaining assessable property
41 consent in writing to the amount of the revised assessment on their
42 property; and

43 (2) The redistribution of the assessments is not prohibited
44 by any covenants made for the benefit of the owners of any bonds
45 or interim warrants issued for the improvement district.



(c) The governing body may adopt any ordinance pertaining to the improvement district including the ordinance creating the improvement district required by NRS 271.325, the ordinance authorizing interim warrants required by NRS 271.355, the ordinance levying assessments required by NRS 271.390, the ordinance authorizing bonds required by NRS 271.475 or any ordinance amending those ordinances after a single reading and without holding a hearing thereon, as if an emergency exists, upon an affirmative vote of not less than two-thirds of all voting members of the governing body, excluding from any computation any vacancy on the governing body and any members thereon who may vote to break a tie vote, and provide that the ordinances become effective at the time an emergency ordinance would have become effective. The provisions of NRS 271.308 do not apply to any such ordinance.

(d) The governing body may provide for a reserve fund, letter of credit, surety bond or other collateral for payment of any interim warrants or bonds issued for the improvement district and include all or any portion of the costs thereof in the amounts assessed against the property in the improvement district and in the amount of bonds issued for the improvement district. The governing body may provide for the disposition of interest earned on the reserve fund and other bond proceeds, for the disposition of unexpended bond proceeds after completion of the renewable energy project and for the disposition of the unexpended balance in the reserve fund after payment in full of the bonds for the improvement district.

3. If the governing body of a municipality forms an improvement district pursuant to the provisions of this section, the governing body:

(a) Is not required to adopt the resolutions required pursuant to the provisions of NRS 271.310, 271.360 and 271.390.

(b) Shall be deemed to have adopted the resolution required pursuant to the provisions of NRS 271.325 if the plans and specifications are sufficiently specific to allow a competent contractor with the assistance of a competent engineer to estimate the cost of constructing the renewable energy project and to construct the renewable energy project.

Sec. 3. 1. Any agreement entered into pursuant to section 2 of this act must:

(a) Include a description of the property in the improvement district.

(b) Be signed by the chair of the governing body and the owners of all assessable property within the improvement district. If a tract of assessable property within the improvement district is



1 *owned by more than one person, each person who owns the tract*
2 *must sign the agreement.*

3 *(c) Be accompanied by an acknowledgment of each signature.*

4 *(d) Be recorded in the office of the county recorder.*

5 **2. Upon recording pursuant to paragraph (d) of subsection 1,**
6 ***the agreement:***

7 *(a) Is binding on all subsequent owners of assessable property*
8 *in the improvement district;*

9 *(b) Is not extinguished by the sale of any property on account*
10 *of nonpayment of general taxes or any other sale of the property;*
11 *and*

12 *(c) Is prior and superior to all liens, claims, encumbrances and*
13 *titles other than the liens of assessment and general taxes.*

14 **Sec. 4. 1. An owner of a tract that is included in a**
15 ***provisional order to form an improvement district for a renewable***
16 ***energy project who wants to have the tract included in the***
17 ***assessable property of an improvement district for a renewable***
18 ***energy project must submit an application to the governing body***
19 ***on a form prescribed by the governing body.***

20 **2. If more than one person owns a tract that is included in a**
21 ***provisional order to form an improvement district for a renewable***
22 ***energy project, each owner of the tract must submit an application***
23 ***to the governing body in order to have the tract included in the***
24 ***assessable property of a renewable energy project.***

25 **3. The governing body may not include a tract in the**
26 ***assessable property of an improvement district for a renewable***
27 ***energy project unless the owner or owners of the tract apply***
28 ***pursuant to this section to have the tracts included.***

29 **Sec. 5. NRS 271.270 is hereby amended to read as follows:**

30 **271.270** The governing body of any municipality, upon behalf
31 of the municipality and in its name, for the purpose of defraying all
32 the cost of acquiring or improving, or acquiring and improving, any
33 project herein authorized, or any portion of the cost thereof not to be
34 defrayed with moneys available therefor from the general fund, any
35 special fund, or otherwise, shall have power hereunder:

36 1. To levy assessments against assessable property within the
37 municipality and to cause the assessments so levied to be collected.

38 2. ~~FFo~~ ***Except as otherwise provided in NRS 271.495, to*** levy
39 from time to time and cause to be collected taxes against all taxable
40 property within the municipality, without limitation as to rate or
41 amount, except for the limitation in Section 2 of Article 10 of the
42 Constitution of the State of Nevada, to pay the principal of and
43 interest on bonds to the extent assessments are insufficient therefor.



3. To pledge the proceeds of any assessments and taxes levied hereunder to the payment of special assessment bonds and to create liens on such proceeds to secure such payments.

4. To issue special assessment bonds as herein provided.

5. To make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted herein, or in the performance of the municipality's covenants or duties or in order to secure the payment of its bonds, provided no encumbrance, mortgage or other pledge of property (excluding any money) of the municipality is created thereby, and provided no property (excluding money) of the municipality is liable to be forfeited or taken in payment of such bonds.

Sec. 6. NRS 271.308 is hereby amended to read as follows:

271.308 Except as otherwise provided in NRS 271.475 ~~and~~ *and paragraph (c) of subsection 2 of section 2 of this act:*

1. When expressly authorized by a provision of this chapter and the conditions of paragraph (a) or (b), or both, of subsection 2 of NRS 271.306 are satisfied, an ordinance required by this chapter may be adopted or amended as if an emergency existed.

2. The governing body's declaration, if any, in any ordinance that it is such an ordinance is conclusive in the absence of fraud or gross abuse of discretion.

3. Such an ordinance may become effective at any time when an emergency ordinance of the municipality may go into effect.

4. Such an ordinance may be adopted by an affirmative vote of not less than two-thirds of all the voting members of the governing body, excluding from any such computation any vacancy on the governing body and any member thereon who may vote only to break a tie vote.

Sec. 7. NRS 271.310 is hereby amended to read as follows:

271.310 1. On the date and at the place fixed for the hearing any and all property owners interested in the project may present their views in respect to the proposed projects to the governing body. The governing body may adjourn the hearing from time to time.

2. After the hearing has been concluded, after all written complaints, protests and objections have been read and considered, and after all persons desiring to be heard in person have been heard, the governing body shall consider the arguments, if any, and any other relevant material put forth, and shall *, except as otherwise provided in paragraph (a) of subsection 3 of section 2 of this act,* by resolution or ordinance, as the board determines, pass upon the merits of each such complaint, protest or objection.

3. If the governing body determines that it is not for the public interest that the proposed project, or a part of the project, be made,



1 the governing body shall , *except as otherwise provided in*
2 *paragraph (a) of subsection 3 of section 2 of this act*, make an
3 order by resolution to that effect, and thereupon the proceedings for
4 the project, or the part of the project determined against by the
5 order, must stop and must not be begun again until the adoption of a
6 new resolution.

7 4. Any complaint, protest or objection to:

8 (a) The propriety of acquiring or improving or acquiring and
9 improving the project;

10 (b) The estimated cost of the project;

11 (c) The determination concerning the portion of the cost of the
12 project to be paid by assessments;

13 (d) The method used to estimate the special benefits to be
14 derived from the project generally or by any tract in the assessment
15 area;

16 (e) The basis established for apportionment of the assessments;
17 or

18 (f) The regularity, validity and correctness of any other
19 proceedings or instruments taken, adopted or made before the date
20 of the hearing,

21 ➔ shall be deemed waived unless presented in writing at the time
22 and in the manner provided by NRS 271.305.

23 **Sec. 8.** NRS 271.360 is hereby amended to read as follows:

24 271.360 1. ~~[After]~~ *Except as otherwise provided in*
25 *paragraph (a) of subsection 3 of section 2 of this act, after* the
26 making of any construction contract, or after the determination of
27 the net cost to the municipality, but not necessarily after the
28 completion of the project, the governing body, by resolution or by a
29 document prepared by the engineer and ratified by the governing
30 body, shall:

31 (a) Determine the cost of the project to be paid by the assessable
32 property in the improvement district.

33 (b) Order the engineer to make out an assessment roll, or ratify
34 his or her roll already made, containing, among other things:

35 (1) The name of each last known owner of each tract to be
36 assessed, or if not known, that the name is "unknown."

37 (2) A description of each tract to be assessed, and the amount
38 of the proposed assessment thereon, apportioned upon the basis for
39 assessments stated in the provisional order for the hearing on the
40 project.

41 (c) Cause a copy of the resolution or ratified document to be
42 furnished by the clerk to the engineer.

43 2. In fixing the amount or sum of money that may be required
44 to pay the costs of the project, the governing body need not
45 necessarily be governed by the estimates of the costs of such project



1 provided for herein, but the governing body may fix such other sum,
2 within the limits prescribed, as it may deem necessary to cover the
3 cost of such project.

4 3. Before ordering the engineer to make out an assessment roll
5 or ratifying his or her roll already made, the governing body shall
6 consider all applications for hardship determinations and the
7 recommendations made by the social services agency and make a
8 final decision on each application. The governing body shall direct
9 the engineer to postpone the assessments on property for which a
10 hardship determination has been finally approved. A property owner
11 whose hardship determination is approved shall pay interest on the
12 unpaid balance of previous and current assessments at the same rate
13 and terms as are established for other assessments in the manner
14 provided by the governing body. The assessment must remain
15 postponed until the earlier of the following occurrences:

16 (a) The property is sold or transferred to a person other than one
17 to whom a hardship determination has been granted;

18 (b) The term of the bonds expires;

19 (c) The property owner's application for renewal of the hardship
20 determination is disapproved;

21 (d) The property owner fails to pay the interest on the unpaid
22 balance of assessments in a timely manner; or

23 (e) The property owner pays all previous and current
24 assessments.

25 4. A property owner may pay all previous and current
26 assessments at any time before they become due without penalty.

27 5. The governing body shall not sell bonds on the basis of the
28 assessments for which hardship determinations have been approved.
29 A special fund for the payment of the costs of the project assessed
30 against property for which hardship determinations have been made
31 must be created. The fund must be reimbursed when the balance of
32 unpaid assessments are paid, including all interest paid during the
33 period of postponement. The surplus and deficiency fund
34 established pursuant to NRS 271.428 may be used as the special
35 fund.

36 6. If by mistake or otherwise any person is improperly
37 designated in the assessment roll as the owner of any tract, or if the
38 same is assessed without the name of the owner, or in the name of a
39 person other than the owner, such assessment shall not for that
40 reason be vitiated but shall, in all respects, be as valid upon and
41 against such tract as though assessed in the name of the owner
42 thereof; and when the assessment roll has been confirmed, such
43 assessment shall become a lien on such tract and be collected as
44 provided by law.



Sec. 9. NRS 271.390 is hereby amended to read as follows:

271.390 1. ~~[After]~~ *Except as otherwise provided in paragraph (a) of subsection 3 of section 2 of this act, after* the assessment roll is in final form and is so confirmed by resolution, the municipality by ordinance shall, by reference to the assessment roll, as modified if modified, and as confirmed by the resolution, levy the assessments in the roll. This ordinance may be adopted or amended as if an emergency existed.

2. Written notice of the levy of assessment must be given by mail to the owners of all the property upon which the assessment was levied.

3. The decision, resolution and ordinance are a final determination of the regularity, validity and correctness of the proceedings, of the assessment roll, of each assessment contained therein, and of the amount thereof levied on each tract and parcel of land.

4. The determination by the governing body is conclusive upon the owners of the property assessed.

5. The roll, when endorsed by the clerk as the roll designated in the assessment ordinance, is prima facie evidence in all courts and tribunals of the regularity of all proceedings preliminary to the making thereof and the validity of the assessments and the assessment roll.

Sec. 10. NRS 271.430 is hereby amended to read as follows:

271.430 ~~[Should]~~

1. *Except as otherwise provided in subsection 2, should* any assessment prove insufficient to pay for the project or work for which it is levied and the expense incident thereto, the amount of the deficiency must be paid from the general fund of the municipality to the extent that money is not available for its payment from the surplus and deficiency fund.

2. *A municipality may not use any assets in its general fund to pay a deficiency described in subsection 1 that is related to a renewable energy project acquired or improved pursuant to section 2 of this act.*

Sec. 11. NRS 271.495 is hereby amended to read as follows:

271.495 1. *Except as otherwise provided in subsection 2:*

(a) If the special fund created by the proceeds of the assessments is insufficient to pay such bonds and interest thereon as they become due and the amounts in the surplus and deficiency fund are not sufficient for that purpose, the deficiency must be paid out of any assets in the general fund of the municipality, regardless of source, which are otherwise legally available therefor.

~~[2-]~~ (b) If the general fund is insufficient to pay any such deficiency promptly, the governing body shall levy general (ad



1 valorem) taxes upon all property in the municipality which is by law
2 taxable for state, county and municipal purposes, without regard to
3 any statutory or charter tax limitation existing on or after
4 May 14, 1965, and without limitation as to rate or amount, fully
5 sufficient, after making due allowance for probable delinquencies,
6 to provide for the prompt payment of such bonds as they become
7 due, both principal and interest, but subject to the limitations set
8 forth in NRS 361.453 and Section 2 of Article 10 of the Nevada
9 Constitution.

10 *2. A municipality may not use any assets in its general fund*
11 *to pay a deficiency of a special fund created by the proceeds of the*
12 *assessments for a renewable energy project acquired or improved*
13 *pursuant to section 2 of this act.*

14 **Sec. 12.** This act becomes effective on July 1, 2011.

