

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 or an energy efficiency improvement 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 and energy
4 efficiency improvement projects. (NRS 271.265-271.630) **Sections 2-4** of this bill
5 provide an alternative procedure for the creation of a local improvement district
6 that includes a renewable energy project or an energy efficiency improvement
7 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 or an energy efficiency**
6 **improvement project to be acquired or improved and may contract**



1 with a person to construct or improve a renewable energy project
2 or an energy efficiency improvement project, issue bonds or
3 otherwise finance the cost of the renewable energy project or
4 energy efficiency improvement project and levy assessments on
5 assessable property, without complying with the provisions of NRS
6 271.305 to 271.320, inclusive, 271.380 and 271.385, if the
7 governing body:

8 (a) Issues a provisional order pursuant to NRS 271.280 to
9 form an improvement district for a renewable energy project or an
10 energy efficiency improvement project; and

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

15 (1) The governing body agrees to enter into a contract for
16 the acquisition, construction or improvement of the renewable
17 energy project or energy efficiency improvement project in the
18 improvement district.

19 (2) The owners of the assessable property agree in writing
20 that the governing body may create the improvement district, levy
21 assessments against their property and, for all other purposes
22 relating to the improvement district, proceed pursuant to the
23 provisions of this section.

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

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

41 (b) The governing body may provide for a reserve fund, letter
42 of credit, surety bond or other collateral for payment of any
43 interim warrants or bonds issued for the improvement district and
44 include all or any portion of the costs thereof in the amounts
45 assessed against the property in the improvement district and in



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1 the amount of bonds issued for the improvement district. The
2 governing body may provide for the disposition of interest earned
3 on the reserve fund and other bond proceeds, for the disposition of
4 unexpended bond proceeds after completion of the renewable
5 energy project or energy efficiency improvement project and for
6 the disposition of the unexpended balance in the reserve fund after
7 payment in full of the bonds for the improvement district.

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

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

13 (b) Shall be deemed to have adopted the resolution required
14 pursuant to the provisions of NRS 271.325 if the plans and
15 specifications are sufficiently specific to allow a competent
16 contractor with the assistance of a competent engineer to estimate
17 the cost of constructing the renewable energy project or energy
18 efficiency improvement project and to construct the renewable
19 energy project or energy efficiency improvement project.

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

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

24 (b) Be signed by the chair of the governing body and the
25 owners of all assessable property within the improvement district.
26 If a tract of assessable property within the improvement district is
27 owned by more than one person, each person who owns the tract
28 must sign the agreement.

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

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

31 2. Upon recording pursuant to paragraph (d) of subsection 1,
32 the agreement:

33 (a) Is binding on all subsequent owners of assessable property
34 in the improvement district;

35 (b) Is not extinguished by the sale of any property on account
36 of nonpayment of general taxes or any other sale of the property;
37 and

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

40 **Sec. 4. 1. An owner of a tract that is included in a**
41 **provisional order to form an improvement district for a renewable**
42 **energy project or an energy efficiency improvement project who**
43 **wants to have the tract included in the assessable property of an**
44 **improvement district for a renewable energy project or an energy**



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1 *efficiency improvement project must submit an application to the*
2 *governing body on a form prescribed by the governing body.*

3 2. *If more than one person owns a tract that is included in a*
4 *provisional order to form an improvement district for a renewable*
5 *energy project or an energy efficiency improvement project, each*
6 *owner of the tract must submit an application to the governing*
7 *body in order to have the tract included in the assessable property*
8 *of a renewable energy project or an energy efficiency improvement*
9 *project.*

10 3. *The governing body may not include a tract in the*
11 *assessable property of an improvement district for a renewable*
12 *energy project or an energy efficiency improvement project unless*
13 *the owner or owners of the tract apply pursuant to this section to*
14 *have the tracts included.*

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

16 271.270 The governing body of any municipality, upon behalf
17 of the municipality and in its name, for the purpose of defraying all
18 the cost of acquiring or improving, or acquiring and improving, any
19 project herein authorized, or any portion of the cost thereof not to be
20 defrayed with moneys available therefor from the general fund, any
21 special fund, or otherwise, shall have power hereunder:

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

24 2. ~~[(F)]~~ *Except as otherwise provided in NRS 271.495, to* levy
25 from time to time and cause to be collected taxes against all taxable
26 property within the municipality, without limitation as to rate or
27 amount, except for the limitation in Section 2 of Article 10 of the
28 Constitution of the State of Nevada, to pay the principal of and
29 interest on bonds to the extent assessments are insufficient therefor.

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

33 4. To issue special assessment bonds as herein provided.

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

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

43 271.308 Except as otherwise provided in NRS 271.475 ~~[(F)]~~ *and*
44 *paragraph (a) of subsection 2 of section 2 of this act:*



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

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

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

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

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

16 271.310 1. On the date and at the place fixed for the hearing
17 any and all property owners interested in the project may present
18 their views in respect to the proposed projects to the governing
19 body. The governing body may adjourn the hearing from time to
20 time.

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

29 3. If the governing body determines that it is not for the public
30 interest that the proposed project, or a part of the project, be made,
31 the governing body shall , *except as otherwise provided in*
32 *paragraph (a) of subsection 3 of section 2 of this act,* make an
33 order by resolution to that effect, and thereupon the proceedings for
34 the project, or the part of the project determined against by the
35 order, must stop and must not be begun again until the adoption of a
36 new resolution.

37 4. Any complaint, protest or objection to:

38 (a) The propriety of acquiring or improving or acquiring and
39 improving the project;

40 (b) The estimated cost of the project;

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

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



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

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

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

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

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

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

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

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

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

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

2. In fixing the amount or sum of money that may be required to pay the costs of the project, the governing body need not necessarily be governed by the estimates of the costs of such project provided for herein, but the governing body may fix such other sum, within the limits prescribed, as it may deem necessary to cover the cost of such project.

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



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

(b) The term of the bonds expires;

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

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

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

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

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

6. If by mistake or otherwise any person is improperly designated in the assessment roll as the owner of any tract, or if the same is assessed without the name of the owner, or in the name of a person other than the owner, such assessment shall not for that reason be vitiated but shall, in all respects, be as valid upon and against such tract as though assessed in the name of the owner thereof; and when the assessment roll has been confirmed, such assessment shall become a lien on such tract and be collected as 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 or an energy efficiency improvement 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.

~~12-1~~ *(b)* If the general fund is insufficient to pay any such deficiency promptly, the governing body shall levy general (ad valorem) taxes upon all property in the municipality which is by law taxable for state, county and municipal purposes, without regard to any statutory or charter tax limitation existing on or after May 14, 1965, and without limitation as to rate or amount, fully sufficient, after making due allowance for probable delinquencies, to provide for the prompt payment of such bonds as they become due, both principal and interest, but subject to the limitations set forth in NRS 361.453 and Section 2 of Article 10 of the Nevada Constitution.

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



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

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