

SENATE BILL NO. 385—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S COMMITTEE
TO STUDY POWERS DELEGATED TO LOCAL GOVERNMENTS)

MARCH 25, 2011

Referred to Committee on Government Affairs

SUMMARY—Grants power to local governments to perform certain acts or duties which are not prohibited or limited by statute. (BDR 20-170)

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 government; authorizing counties and cities, with limited exceptions, to exercise the powers necessary for the effective operation of county and city government; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

In 1868, Judge John F. Dillon of the Iowa Supreme Court established a common-law rule of statutory interpretation known as Dillon’s Rule, which limits the powers of local governments. (*Merriam v. Moody’s Ex’rs*, 25 Iowa 163 (Iowa 1868)) Under Dillon’s Rule, a local government is authorized to exercise only those powers which are: (1) expressly granted; (2) necessarily or fairly implied in or incident to the powers expressly granted; or (3) essential to the accomplishment of the declared purposes of the local government.

Under existing law, county commissioners are authorized to exercise only those powers which are expressly granted and powers that are necessarily implied to carry out express powers. (*Sadler v. Board of County Comm’rs*, 15 Nev. 39, 42 (1880)) **Sections 1-7** of this bill authorize a board of county commissioners, with limited exceptions, to exercise all powers needed for the effective operation of county government, even if the power to perform these acts is neither express nor implied, so long as the power is not expressly prohibited or limited by constitutional or statutory provisions or granted to another entity.

Under existing law, a city government is authorized to exercise only those powers expressly granted by the charter or laws creating the city, and the necessary means of employing those powers. (*Tucker v. Mayor of Virginia City*, 4 Nev. 20, 26 (1868)) **Sections 8-21** of this bill authorize city governments, whether created by



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general law or charter, to exercise all powers needed for the effective operation of city government, with limited exceptions, even if the power to perform these acts is neither express nor implied, so long as the power is not expressly prohibited or limited by constitutional or statutory provisions or granted to another entity.

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

Section 1. Chapter 244 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *It is expressly declared as the intent of the Legislature to grant a board of county commissioners the powers necessary for the effective operation of county government.*

Sec. 3. 1. *The rule of law that any doubt as to the existence of a power of a board of county commissioners must be resolved against its existence is abrogated.*

2. *Any doubt as to the existence of a power of a board of county commissioners must be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed.*

Sec. 4. 1. *The rule of law that a board of county commissioners can exercise only powers:*

(a) Expressly granted by statute;

(b) Necessarily or fairly implied in or incident to powers expressly granted; and

(c) Indispensable to the declared purposes of a board of county commissioners,

↪ is abrogated.

2. *A board of county commissioners has:*

(a) All powers granted it by statute; and

(b) All other powers necessary or desirable in the conduct of county affairs, even though not granted by statute.

Sec. 5. *A board of county commissioners may exercise any power it has to the extent that the power is not expressly:*

1. Denied by the Constitution of the State of Nevada;

2. Denied by the Constitution of the United States;

3. Denied by the laws of the State of Nevada; or

4. Granted to another entity.

Sec. 6. 1. *If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a board of county commissioners wanting to exercise the power shall do so in that manner.*

2. *If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a board of county*



1 *commissioners wanting to exercise the power shall adopt an*
2 *ordinance prescribing a specific manner for exercising the power.*

3 **Sec. 7.** *Except as expressly granted by statute, a board of*
4 *county commissioners shall not:*

5 *1. Condition or limit its civil liability unless such condition or*
6 *limitation is part of a legally executed contract or agreement*
7 *between the county and another political subdivision or a private*
8 *individual or business.*

9 *2. Prescribe the law governing civil actions between private*
10 *persons.*

11 *3. Impose duties on another political subdivision unless the*
12 *performance of the duties is part of a legally executed agreement*
13 *between the county and another political subdivision.*

14 *4. Impose a tax.*

15 *5. Impose a service charge or user fee greater than the actual*
16 *cost of providing the services.*

17 *6. Regulate conduct that is regulated by a state agency.*

18 *7. Order or conduct an election.*

19 **Sec. 8.** *Chapter 266 of NRS is hereby amended by adding*
20 *thereto the provisions set forth as sections 9 to 13, inclusive, of this*
21 *act.*

22 **Sec. 9.** *It is expressly declared as the intent of the Legislature*
23 *to grant the city council the powers necessary for the effective*
24 *operation of city government.*

25 **Sec. 10.** *1. The rule of law that any doubt as to the*
26 *existence of a power of a city council must be resolved against its*
27 *existence is abrogated.*

28 *2. Any doubt as to the existence of a power of a city council*
29 *must be resolved in favor of its existence. This rule applies even*
30 *though a statute granting the power has been repealed.*

31 **Sec. 11.** *1. The rule of law that a city council can exercise*
32 *only powers:*

33 *(a) Expressly granted by statute;*

34 *(b) Necessarily or fairly implied in or incident to powers*
35 *expressly granted; and*

36 *(c) Indispensable to the declared purposes of a city council,*
37 *↪ is abrogated.*

38 *2. A city council has:*

39 *(a) All powers granted it by statute; and*

40 *(b) All other powers necessary or desirable in the conduct of*
41 *city affairs, even though not granted by statute.*

42 **Sec. 12.** *A city council may exercise any power it has to the*
43 *extent that the power is not expressly:*

44 *1. Denied by the Constitution of the State of Nevada;*

45 *2. Denied by the Constitution of the United States;*



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3. *Denied by the laws of the State of Nevada; or*
4. *Granted to another entity.*

Sec. 13. *Except as expressly granted by statute, a city council shall not:*

1. *Condition or limit its civil liability unless such condition or limitation is part of a legally executed contract or agreement between the city and another political subdivision or a private individual or business.*

2. *Prescribe the law governing civil actions between private persons.*

3. *Impose duties on another political subdivision unless the performance of the duties is part of a legally executed agreement between the city and another political subdivision.*

4. *Impose a tax.*

5. *Impose a service charge or user fee greater than the actual cost of providing the services.*

6. *Regulate conduct that is regulated by a state agency.*

7. *Order or conduct an election.*

Sec. 14. NRS 266.260 is hereby amended to read as follows:

266.260 1. When power is conferred upon the city council to do and perform any act or thing, and ~~the~~ *there is a constitutional or statutory provision requiring a specific manner for exercising the power, the city council wanting to exercise the power shall do so in that manner.*

2. When power is conferred upon the city council to do and perform any act or thing, and there is no constitutional or statutory provision requiring a specific manner ~~for~~ *for exercising the ~~[same is not specifically pointed out.] power,~~ the city council ~~[may]~~ wanting to exercise the power shall provide by ordinance the manner and details necessary for the full exercise of such power.*

Sec. 15. Chapter 268 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 to 20, inclusive, of this act.

Sec. 16. 1. *The rule of law that any doubt as to the existence of a power of an incorporated city must be resolved against its existence is abrogated.*

2. *Any doubt as to the existence of a power of an incorporated city must be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed.*

Sec. 17. 1. *The rule of law that an incorporated city can exercise only powers:*

(a) *Expressly granted by statute;*

(b) *Necessarily or fairly implied in or incident to powers expressly granted; and*



(c) Indispensable to the declared purposes of an incorporated city,
↪ is abrogated.

2. An incorporated city has:

(a) All powers granted it by statute; and

(b) All other powers necessary or desirable in the conduct of city affairs, even though not granted by statute.

Sec. 18. An incorporated city may exercise any power it has to the extent that the power is not expressly:

1. Denied by the Constitution of the State of Nevada;

2. Denied by the Constitution of the United States;

3. Denied by the laws of the State of Nevada; or

4. Granted to another entity.

Sec. 19. 1. If there is a constitutional or statutory provision requiring a specific manner for exercising a power, an incorporated city wanting to exercise the power shall do so in that manner.

2. If there is no constitutional or statutory provision requiring a specific manner for exercising a power, an incorporated city wanting to exercise the power shall adopt an ordinance prescribing the specific manner for exercising the power.

Sec. 20. Except as expressly granted by statute, an incorporated city shall not:

1. Condition or limit its civil liability unless such condition or limitation is part of a legally executed contract or agreement between the city and another political subdivision or a private individual or business.

2. Prescribe the law governing civil actions between private persons.

3. Impose duties on another political subdivision unless the performance of the duties is part of a legally executed agreement between the city and another political subdivision.

4. Impose a tax.

5. Impose a service charge or user fee greater than the actual cost of providing the services.

6. Regulate conduct that is regulated by a state agency.

7. Order or conduct an election.

Sec. 21. NRS 268.524 is hereby amended to read as follows:

268.524 1. It is the intent of the Legislature to authorize cities to finance, acquire, own, lease, improve and dispose of properties to:

~~1-1~~ (a) Promote industry and employment and develop trade by inducing manufacturing, industrial, warehousing and other commercial enterprises and organizations for research and development to locate in, remain or expand in this State to further



prosperity throughout the State and to further the use of the agricultural products and the natural resources of this State.

~~{2-}~~ (b) Enhance public safety by protecting hotels, motels, apartment buildings, casinos, office buildings and their occupants from fire.

~~{3-}~~ (c) Protect the health, safety and welfare of the public and promote private industry, commerce and employment in this State by:

~~{a-}~~ (1) Reducing, abating or preventing pollution or removing or treating any substance in processed material which would cause pollution; and

~~{b-}~~ (2) Furnishing energy, including electricity to the public, if available on reasonable demand, and providing facilities to transmit electricity for sale outside the State.

~~{4-}~~ (d) Promote the health of residents of the city by enabling a private enterprise to acquire, develop, expand and maintain health and care facilities and supplemental facilities for health and care facilities which will provide services of high quality to those residents at reasonable rates.

~~{5-}~~ (e) Promote the social welfare of the residents of the city by enabling corporations for public benefit to acquire, develop, expand and maintain facilities that provide services for those residents.

~~{6-}~~ (f) Promote the social welfare of the residents of the city by financing the acquisition, development, construction, improvement, expansion and maintenance of affordable housing in the city.

2. It is expressly declared as the intent of the Legislature to grant an incorporated city the powers necessary for the effective operation of city government.

Sec. 22. NRS 244.195 and 266.010 are hereby repealed.

Sec. 23. This act becomes effective on July 1, 2011.

TEXT OF REPEALED SECTIONS

244.195 Other powers. The boards of county commissioners shall have power and jurisdiction in their respective counties to do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred on the board.

266.010 Home rule granted; limitations. Subject to the right of the Legislature to create or alter the form of municipal organization by special act or charter, the right of home rule and



self-government is hereby granted to the people of any city incorporated under the provisions of this chapter.



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