

ASSEMBLY BILL NO. 503—ASSEMBLYWOMAN KIRKPATRICK

MAY 29, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises temporarily provisions governing the use by a local government of money in an enterprise fund. (BDR 31-1226)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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; revising temporarily provisions governing the use by a local government of money in an enterprise fund; requiring the Committee on Local Government Finance to adopt certain regulations; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law restricts the use by a local government of money in an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned on money in an enterprise fund under certain circumstances. (NRS 354.613) **Section 1** of this bill authorizes temporarily the governing body of a local government to loan or transfer such money if the ending fund balance of the general fund of the local government at the end of a fiscal year is less than 9 percent of the total expenditures of the local government from the general fund during that fiscal year. Any such loan or transfer requires the prior approval of the Committee on Local Government Finance. Any money loaned or transferred by the governing body pursuant to **section 1** must be used only, in order of priority: (1) to restore police and fire services; (2) to restore the operation of libraries, parks and other recreational services; and (3) to settle any legal claim outstanding on the date on which the loan or transfer is made. **Section 1** requires the governing body of a local government that loans or transfers money pursuant to that section to make certain quarterly reports to the Committee on Local Government Finance concerning the loan or transfer. **Section 1** also requires the Committee to adopt regulations specifying the procedure for obtaining the approval of the Committee required by that section.



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Section 9.5 of this bill requires the governing body of any local government which makes such a loan or transfer to report certain information to the Director of the Legislative Counsel Bureau on or before January 15, 2015, for transmittal to the Audit Division of the Bureau and to the Legislature.

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

Section 1. Chapter 354 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section and notwithstanding any provision of NRS 354.613 to the contrary, if the ending fund balance of the general fund of a local government at the end of a fiscal year is less than 9 percent of the total expenditures of the local government from the general fund during that fiscal year, as reflected in the report of the annual audit prepared for the local government pursuant to NRS 354.624, the governing body of the local government may, during the following fiscal year, by resolution and with the prior approval of the Committee on Local Government Finance, loan or transfer money from an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned on money in an enterprise fund.

2. Any money loaned or transferred by the governing body of a local government pursuant to subsection 1 may be used only for the purposes listed in this subsection, in the following order of priority:

(a) To restore police and fire services;

(b) To restore the operation of libraries, parks and other recreational services; and

(c) To settle any legal claim outstanding on the date on which the loan or transfer authorized by subsection 1 is made.

3. The governing body of a local government that loans or transfers any money pursuant to subsection 1 shall submit a quarterly report to the Committee on Local Government Finance which includes all of the information required pursuant to subsections 4 and 5.

4. Each report submitted by the governing body of a local government pursuant to subsection 3 must include, without limitation:

(a) Information about any increase in a fee described in subsection 1 imposed by the local government;

(b) Any change to salaries or benefits paid to employees of the local government;



1 (c) Any change to a collective bargaining agreement
2 negotiated pursuant to chapter 288 of NRS to which the local
3 government is a party; and

4 (d) Any information prescribed by regulation of the Committee
5 on Local Government Finance pursuant to subsection 6.

6 5. In addition to the requirements set forth in subsection 4, if,
7 for any fiscal year, the difference between budgeted and actual
8 general fund revenues or expenditures for the local government is
9 more than 5 percent for any category of revenues or expenditures,
10 as provided in the report of the annual audit prepared for the local
11 government pursuant to NRS 354.624, in addition to the
12 requirements set forth in subsection 4, the first quarterly report
13 submitted to the Committee on Local Government Finance after
14 the audit report is submitted to the local government must include
15 an explanation of the difference.

16 6. The Committee on Local Government Finance:

17 (a) Shall adopt regulations specifying the procedure for
18 obtaining the approval of the Committee required by subsection 1;
19 and

20 (b) May prescribe by regulation any additional information
21 which must be included in the reports submitted by the governing
22 body of a local government pursuant to subsection 3.

23 7. The provisions of this section:

24 (a) Apply only to a local government which has, during each
25 of the 5 fiscal years immediately preceding the effective date of
26 this act, loaned or transferred:

27 (1) Money from an enterprise fund;

28 (2) Money collected from fees imposed for the purpose for
29 which an enterprise fund was created; or

30 (3) Any income or interest earned on money in an
31 enterprise fund.

32 (b) Do not apply to an enterprise fund created for an airport
33 owned and operated by a local government.

34 **Sec. 2.** NRS 354.470 is hereby amended to read as follows:

35 354.470 NRS 354.470 to 354.626, inclusive, *and section 1 of*
36 *this act* may be cited as the Local Government Budget and Finance
37 Act.

38 **Sec. 3.** NRS 354.472 is hereby amended to read as follows:

39 354.472 1. The purposes of NRS 354.470 to 354.626,
40 inclusive, *and section 1 of this act* are:

41 (a) To establish standard methods and procedures for the
42 preparation, presentation, adoption and administration of budgets of
43 all local governments.



(b) To enable local governments to make financial plans for programs of both current and capital expenditures and to formulate fiscal policies to accomplish these programs.

(c) To provide for estimation and determination of revenues, expenditures and tax levies.

(d) To provide for the control of revenues, expenditures and expenses in order to promote prudence and efficiency in the expenditure of public money.

(e) To provide specific methods enabling the public, taxpayers and investors to be apprised of the financial preparations, plans, policies and administration of all local governments.

2. For the accomplishment of these purposes, the provisions of NRS 354.470 to 354.626, inclusive, *and section 1 of this act* must be broadly and liberally construed.

Sec. 4. NRS 354.474 is hereby amended to read as follows:

354.474 1. Except as otherwise provided in subsections 2 and 3, the provisions of NRS 354.470 to 354.626, inclusive, *and section 1 of this act* apply to all local governments. For the purpose of NRS 354.470 to 354.626, inclusive ~~H~~, *and section 1 of this act*:

(a) "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318 and 379 of NRS, NRS 450.550 to 450.750, inclusive, and chapters 474, 541, 543 and 555 of NRS, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

(b) "Local government" includes the Nevada Rural Housing Authority for the purpose of loans of money from a local government in a county whose population is less than 100,000 to the Nevada Rural Housing Authority in accordance with NRS 354.6118. The term does not include the Nevada Rural Housing Authority for any other purpose.

2. An irrigation district organized pursuant to chapter 539 of NRS shall fix rates and levy assessments as provided in NRS 539.667 to 539.683, inclusive. The levy of such assessments and the posting and publication of claims and annual financial statements as required by chapter 539 of NRS shall be deemed compliance with the budgeting, filing and publication requirements of NRS 354.470 to 354.626, inclusive, *and section 1 of this act*, but any such irrigation district which levies an ad valorem tax shall comply with the filing and publication requirements of NRS 354.470 to 354.626, inclusive, *and section 1 of this act* in addition to the requirements of chapter 539 of NRS.



3. An electric light and power district created pursuant to chapter 318 of NRS shall be deemed to have fulfilled the requirements of NRS 354.470 to 354.626, inclusive, *and section 1 of this act* for a year in which the district does not issue bonds or levy an assessment if the district files with the Department of Taxation a copy of all documents relating to its budget for that year which the district submitted to the Rural Utilities Service of the United States Department of Agriculture.

Sec. 5. NRS 354.476 is hereby amended to read as follows:

354.476 As used in NRS 354.470 to 354.626, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 354.479 to 354.578, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NRS 354.590 is hereby amended to read as follows:

354.590 Whenever the terms of NRS 354.470 to 354.626, inclusive, *and section 1 of this act* require or refer to action of a governing body by resolution, the governing body may at its discretion act by ordinance, if it is otherwise authorized by law to adopt ordinances.

Sec. 7. NRS 354.594 is hereby amended to read as follows:

354.594 The Committee on Local Government Finance shall determine and advise local government officers of regulations, procedures and report forms for compliance with NRS 354.470 to 354.626, inclusive ~~§~~, *and section 1 of this act*.

Sec. 8. NRS 354.613 is hereby amended to read as follows:

354.613 1. Except as otherwise provided in this section ~~§~~ *and section 1 of this act*, the governing body of a local government may, on or after July 1, 2011, loan or transfer money from an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned on money in an enterprise fund only if the loan or transfer is made:

(a) In accordance with a medium-term obligation issued by the recipient in compliance with the provisions of chapter 350 of NRS, the loan or transfer is proposed to be made and the governing body approves the loan or transfer under a nonconsent item that is separately listed on the agenda for a regular meeting of the governing body, and:

(1) The money is repaid in full to the enterprise fund within 5 years; or

(2) If the recipient will be unable to repay the money in full to the enterprise fund within 5 years, the recipient notifies the Committee on Local Government Finance of:

(I) The total amount of the loan or transfer;

(II) The purpose of the loan or transfer;



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- 1 (III) The date of the loan or transfer; and
2 (IV) The estimated date that the money will be repaid in
3 full to the enterprise fund;
4 (b) To pay the expenses related to the purpose for which the
5 enterprise fund was created;
6 (c) For a cost allocation for employees, equipment or other
7 resources related to the purpose of the enterprise fund which is
8 approved by the governing body under a nonconsent item that is
9 separately listed on the agenda for a regular meeting of the
10 governing body; or
11 (d) Upon the dissolution of the enterprise fund.
12 2. Except as otherwise provided in this section, the governing
13 body of a local government may increase the amount of any fee
14 imposed for the purpose for which an enterprise fund was created
15 only if the governing body approves the increase under a
16 nonconsent item that is separately listed on the agenda for a regular
17 meeting of the governing body, and the governing body determines
18 that:
19 (a) The increase is not prohibited by law;
20 (b) The increase is necessary for the continuation or expansion
21 of the purpose for which the enterprise fund was created; and
22 (c) All fees that are deposited in the enterprise fund are used
23 solely for the purposes for which the fees are collected.
24 3. Upon the adoption of an increase in any fee pursuant to
25 subsection 2, the governing body shall, except as otherwise provided
26 in this subsection, provide to the Department of Taxation an
27 executed copy of the action increasing the fee. This requirement
28 does not apply to the governing body of a federally regulated
29 airport.
30 4. The provisions of subsection 2 do not limit the authority of
31 the governing body of a local government to increase the amount of
32 any fee imposed upon a public utility in compliance with the
33 provisions of NRS 354.59881 to 354.59889, inclusive, for a right-
34 of-way over any public area if the public utility is billed separately
35 for that fee. As used in this subsection, "public utility" has the
36 meaning ascribed to it in NRS 354.598817.
37 5. This section must not be construed to:
38 (a) Prohibit a local government from increasing a fee or using
39 money in an enterprise fund to repay a loan lawfully made to the
40 enterprise fund from another fund of the local government; or
41 (b) Prohibit or impose any substantive or procedural limitations
42 on any increase of a fee that is necessary to meet the requirements of
43 an instrument that authorizes any bonds or other debt obligations
44 which are secured by or payable from, in whole or in part, money in



1 the enterprise fund or the revenues of the enterprise for which the
2 enterprise fund was created.

3 6. The Department of Taxation shall provide to the Committee
4 on Local Government Finance a copy of each report submitted to
5 the Department on or after July 1, 2011, by a county or city pursuant
6 to NRS 354.6015. The Committee shall:

7 (a) Review each report to determine whether the governing body
8 of the local government is in compliance with the provisions of this
9 section; and

10 (b) On or before January 15 of each odd-numbered year, submit
11 a report of its findings to the Director of the Legislative Counsel
12 Bureau for transmittal to the Legislature.

13 7. A fee increase imposed in violation of this section must not
14 be invalidated on the basis of that violation. The sole remedy for a
15 violation of this section is the penalty provided in NRS 354.626.
16 Any person who pays a fee for the enterprise for which the
17 enterprise fund is created may file a complaint with the district
18 attorney or Attorney General alleging a violation of this section for
19 prosecution pursuant to NRS 354.626.

20 8. For the purposes of paragraph (c) of subsection 1, the
21 Committee on Local Government Finance shall adopt regulations
22 setting forth the extent to which general, overhead, administrative
23 and similar expenses of a local government of a type described in
24 paragraph (c) of subsection 1 may be allocated to an enterprise fund.
25 The regulations must require that:

26 (a) Each cost allocation makes an equitable distribution of all
27 general, overhead, administrative and similar expenses of the local
28 government among all activities of the local government, including
29 the activities funded by the enterprise fund; and

30 (b) Only the enterprise fund's equitable share of those expenses
31 may be treated as expenses of the enterprise fund and allocated to it
32 pursuant to paragraph (c) of subsection 1.

33 9. Except as otherwise provided in subsections 10 and 11, if a
34 local government has subsidized its general fund with money from
35 an enterprise fund for the 5 fiscal years immediately preceding the
36 fiscal year beginning on July 1, 2011, the provisions of subsection 1
37 do not apply until July 1, 2021, to transfers from the enterprise fund
38 to the general fund of the local government for the purpose of
39 subsidizing the general fund if the local government:

40 (a) Does not increase the amount of the transfers to subsidize the
41 general fund in any fiscal year beginning on or after July 1, 2011,
42 above the amount transferred in the fiscal year ending on June 30,
43 2011, except for loans and transfers that comply with the provisions
44 of subsection 1; and



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(b) Does not, on or after July 1, 2011, increase any fees for any enterprise fund used to subsidize the general fund except for increases described in paragraph (b) of subsection 5.

10. On or before July 1, 2012, a local government to which the provisions of subsection 9 apply shall adopt a plan to eliminate, on or before the fiscal year beginning on July 1, 2021, all transfers from any enterprise funds to subsidize the general fund that are not made in compliance with subsection 1. A copy of the plan must be filed with the Department of Taxation on or before July 15, 2012.

11. On and after July 1, 2012, the provisions of subsection 9 do not apply to a local government that fails to comply with the provisions of subsection 10.

Sec. 9. NRS 354.626 is hereby amended to read as follows:

354.626 1. No governing body or member thereof, officer, office, department or agency may, during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, in excess of the amounts appropriated for that function, other than bond repayments, medium-term obligation repayments and any other long-term contract expressly authorized by law. Any officer or employee of a local government who willfully violates NRS 354.470 to 354.626, inclusive, *and section 1 of this act* is guilty of a misdemeanor and upon conviction thereof ceases to hold his or her office or employment. Prosecution for any violation of this section may be conducted by the Attorney General or, in the case of incorporated cities, school districts or special districts, by the district attorney.

2. Without limiting the generality of the exceptions contained in subsection 1, the provisions of this section specifically do not apply to:

(a) Purchase of coverage and professional services directly related to a program of insurance which require an audit at the end of the term thereof.

(b) Long-term cooperative agreements as authorized by chapter 277 of NRS.

(c) Long-term contracts in connection with planning and zoning as authorized by NRS 278.010 to 278.630, inclusive.

(d) Long-term contracts for the purchase of utility service such as, but not limited to, heat, light, sewerage, power, water and telephone service.

(e) Contracts between a local government and an employee covering professional services to be performed within 24 months following the date of such contract or contracts entered into between local government employers and employee organizations.



(f) Contracts between a local government and any person for the construction or completion of public works, money for which has been or will be provided by the proceeds of a sale of bonds, medium-term obligations or an installment-purchase agreement and that are entered into by the local government after:

(1) Any election required for the approval of the bonds or installment-purchase agreement has been held;

(2) Any approvals by any other governmental entity required to be obtained before the bonds, medium-term obligations or installment-purchase agreement can be issued have been obtained; and

(3) The ordinance or resolution that specifies each of the terms of the bonds, medium-term obligations or installment-purchase agreement, except those terms that are set forth in subsection 2 of NRS 350.165, has been adopted.

➔ Neither the fund balance of a governmental fund nor the equity balance in any proprietary fund may be used unless appropriated in a manner provided by law.

(g) Contracts which are entered into by a local government and delivered to any person solely for the purpose of acquiring supplies, services and equipment necessarily ordered in the current fiscal year for use in an ensuing fiscal year and which, under the method of accounting adopted by the local government, will be charged against an appropriation of a subsequent fiscal year. Purchase orders evidencing such contracts are public records available for inspection by any person on demand.

(h) Long-term contracts for the furnishing of television or FM radio broadcast translator signals as authorized by NRS 269.127.

(i) The receipt and proper expenditure of money received pursuant to a grant awarded by an agency of the Federal Government.

(j) The incurrence of obligations beyond the current fiscal year under a lease or contract for installment purchase which contains a provision that the obligation incurred thereby is extinguished by the failure of the governing body to appropriate money for the ensuing fiscal year for the payment of the amounts then due.

(k) The receipt by a local government of increased revenue that:

(1) Was not anticipated in the preparation of the final budget of the local government; and

(2) Is required by statute to be remitted to another governmental entity.

(l) An agreement authorized pursuant to NRS 277A.370.

Sec. 9.5. 1. The governing body of any local government that loans or transfers money from an enterprise fund pursuant to section 1 of this act on or before December 1, 2014, shall, on or



1 before January 15, 2015, submit a report to the Director of the
2 Legislative Counsel Bureau for transmittal to the Audit Division of
3 the Bureau. The report must include:

4 (a) A copy of the audit report prepared for the local government
5 pursuant to NRS 354.624 for the fiscal years ending on June 30,
6 2013, and June 30, 2014; and

7 (b) A copy of each quarterly report previously submitted by the
8 governing body to the Committee on Local Government Finance
9 pursuant to section 1 of this act.

10 2. The Audit Division shall review the report submitted by the
11 governing body pursuant to subsection 1 and transmit the report,
12 with the comments of the Audit Division, to the 78th Session of the
13 Legislature.

14 **Sec. 10.** This act becomes effective upon passage and approval
15 and expires by limitation on June 30, 2017.

