SENATE BILL NO. 250–SENATOR HARDY

MARCH 13, 2013

Referred to Committee on Government Affairs

SUMMARY—Provides for the creation of certain local improvement districts. (BDR 21-475)

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

**Legislative Counsel's Digest:**

Existing law sets forth the procedures for a governing body to acquire, improve, equip, operate and maintain local improvement districts that include various types of projects, including energy efficiency improvement projects and renewable energy projects. (NRS 271.265-271.630) This bill provides for the creation by a local government, without an election, of a local improvement district that includes an energy efficiency improvement project or a renewable energy project.

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. The governing body of a municipality, on behalf of the municipality and in its name, without an election, may create a district to finance one or more energy efficiency improvement projects or renewable energy projects. The governing body may create the district only if:***

***(a) The governing body has, pursuant to subsection 8, adopted by resolution a procedure for the creation and administration of a***

*district for the purposes of financing one or more energy efficiency improvement projects or renewable energy projects.*

*(b) Each owner of each tract on which an energy efficiency improvement project or renewable energy project will be located consents in writing to the location of the project on the tract and the levy of an assessment against the tract to pay all or a portion of the cost thereof in an amount up to the estimated maximum benefit to the tract from the installation or improvement. The estimated maximum benefit may not exceed the market value of the tract as determined by the governing body.*

*(c) Each consent provided pursuant to paragraph (b):*

*(1) Describes the tract to be assessed and the improvements to be financed;*

*(2) States the estimated maximum benefit that the owner agrees will be conferred on the tract by virtue of the installation or improvement; and*

*(3) Is accompanied by:*

*(I) A signed copy of each contract between an owner of the tract and each contractor described in subsection 5 pursuant to which the contractor agrees to construct, acquire and install the installation or improvement identified in the consent at a total price which does not exceed the limitation set forth in subsection 5 and which contains any terms required by the resolution adopted pursuant to subsection 8 and such other terms not inconsistent with the provisions of this section or with the resolution, as may be agreed upon by the owner of the tract and the contractor and is acceptable to the governing body; and*

*(II) A deposit in an amount determined in the manner specified in the resolution adopted pursuant to subsection 8, which may be refunded if the project to which the consent relates is completed and is financed with assessments levied pursuant to this chapter within the period specified in the resolution.*

*(d) The outstanding amount owed on all recorded instruments which are liens against any tract included in the district does not exceed 90 percent of the fair market value of the property assessed, as defined by the governing body, without taking into account the imposition of the liens for assessments pursuant to this section and the additional value added to the tract by a project financed pursuant to this section.*

*2. Each consent provided pursuant to paragraph (b) of subsection 1 and each amendment thereto must be recorded in the office of the county recorder and, once recorded, is binding on the owner who signed the consent and any other person who holds any interest in the tract to which the consent relates and who signed the consent.*

***3. A district created pursuant to subsection 1 may be created at any time as designated by a governing body, but may only include tracts for which a consent has been recorded pursuant to subsection 2.***

***4. A resolution adopted pursuant to subsection 8 must contain or incorporate by reference an exhibit describing each tract to be assessed, the type of improvement or installation to be financed for each tract and the estimated maximum benefit as stated in the consent.***

***5. Construction within a district created pursuant to subsection 1 must be completed through independent contracts with contractors licensed in Nevada who are approved by the governing body. The municipality is not responsible for the construction, or any defects or delays thereof. The laws of this State relating to public bidding, public works or public procurement are not applicable to contracts for construction executed pursuant to this subsection. The total contract price of any improvement or installation must not exceed 80 percent of the estimated maximum benefit for the tract as stated in the consent, as it may be amended from time to time, unless the owner of the property to be assessed:***

***(a) Agrees to pay and pays or causes another party to pay, the difference between 80 percent of the estimated maximum benefit and the total contract price from a source other than financing provided pursuant to this chapter; and***

***(b) Agrees in writing that the improvement or installation will in fact benefit the tract by an amount at least equal to the sum of the estimated maximum benefit stated in the consent and the amount to be paid from a source other than financing provided pursuant to this chapter.***

***6. The improvements to or installations within a district created pursuant to subsection 1 must not be owned by a municipality but shall be deemed to be the property of the owner of the tract upon which the improvement or installation is located.***

***7. A resolution adopted pursuant to subsection 8 may be adopted as if an emergency exists by a vote of two-thirds of the governing body.***

***8. Before creating a district pursuant to subsection 1, a governing body must adopt a resolution which specifies the procedures for the creation and administration of such a district. The resolution may provide for one or more of the following:***

***(a) Additional notices of the proposal to create the district, notices of the opportunity to apply for inclusion in the district or any other notices;***

***(b) A reserve of money for bonds issued for the district, the method of funding the reserve and the disposition of any interest earned upon or the principal of the reserve that is not needed to repay any bonds or interim warrants issued for the purposes of financing an energy efficiency improvement project or renewable energy project within the district;***

***(c) Any other security for those bonds or interim warrants, and the method of determining the term of the bonds in compliance with NRS 271.515;***

***(d) Any requirements for casualty insurance, liability insurance or other types of insurance for any project within the district;***

***(e) The method of determining the lien-to-value ratio of the property for the purpose of complying with the limitation prescribed by paragraph (d) of subsection 1;***

***(f) Any limitation on the lien-to-value ratio that would result in a lower lien-to-value ratio than that prescribed by paragraph (d) of subsection 1;***

***(g) Any limitation on the amount of the contract price, as a percentage of the estimated maximum benefit, that is lower than the limitation prescribed by subsection 5;***

***(h) Any sources, other than the proceeds of assessments, that will be used to pay:***

***(1) The cost of construction and installation of improvements financed pursuant to this section;***

***(2) The cost of any reserve of money or other security for financing an energy efficiency improvement project or renewable energy project pursuant to this section; or***

***(3) The cost of engineering work, the cost to issue any bonds or provide other financing, or the cost of other incidentals pursuant to this section;***

***(i) Any other security features, covenants required of property owners, covenants required of other parties or any other covenants, guarantees, insurance or other matters which the governing body finds are necessary or desirable for the financing of an energy efficiency improvement project or renewable energy project pursuant to this section; and***

***(j) Any other matters, procedures or financing terms which the governing body, in its sole discretion, determines are necessary or desirable to carry out the purposes of this section.***

***9. A bond or interim warrant issued for a district created pursuant to subsection 1 must not be secured by a pledge of the general credit or taxing power of the municipality or by the surplus and deficiency fund established pursuant to NRS 271.428.***

***10. The provisions:***

***(a) Of NRS 271.275 to 271.365, inclusive, do not apply to a district which is created pursuant to subsection 1.***

***(b) Of NRS 271.495 and 271.500 do not apply to any bonds or interim warrants issued to finance an energy efficiency improvement project or renewable energy project within a district created pursuant to subsection 1.***

**Sec. 2.** NRS 271.099 is hereby amended to read as follows:

271.099 "Energy efficiency improvement project" means the ***installation or*** modification of ~~[real property or the facilities or equipment on the real property that is designed to reduce the energy consumption of the real property.]~~ ***one or more energy efficiency improvements and incidentals which are necessary, useful or desirable for any such improvements and which installation or modification has a useful life, as estimated by a governing body, of not less than 10 years.***

**Sec. 3.** NRS 271.199 is hereby amended to read as follows:

271.199 "Renewable energy project" means ***any improvement to*** real property, ***and*** facilities and equipment used to generate electricity from renewable energy to offset customer load in whole or in part on the ~~[premises,]~~ ***real property on which the renewable energy project is located,*** and all appurtenances and incidentals necessary, useful or desirable for any such ~~[real property,]~~ ***improvements,*** facilities and equipment ~~[.]~~ ***, and which improvement has a useful life, as estimated by a governing body, of not less than 10 years.***

**Sec. 4.** NRS 271.385 is hereby amended to read as follows:

271.385 1. At the time and place designated pursuant to NRS 271.380, the governing body shall hear and determine any written complaint, protest or objection filed as provided in that section and any verbal views expressed in respect to the proposed assessments, assessment roll or assessment procedure. The governing body may adjourn the hearing from time to time.

2. The governing body, by resolution, may revise, correct, confirm or set aside any assessment and order that the assessment be made de novo.

3. Any complaint, protest or objection to:

(a) The assessment roll;

(b) The regularity, validity and correctness of each assessment;

(c) The amount of each assessment; or

(d) The regularity, validity and correctness of any other proceedings occurring after the date of the hearing described in NRS 271.310 and before the date of the hearing governed by this section,

➥ shall be deemed waived unless filed in writing within the time and in the manner provided by NRS 271.380.

***4. If any owner of a tract which is assessed for the purposes of creating a district pursuant to subsection 1 of section 1 of this act objects in writing within the time and in the manner provided by NRS 271.380, the tract must be removed from the assessment roll, and the municipality shall not finance the project located on the tract unless the objecting owner withdraws his or her objection in writing within the time specified by the governing body.***

**Sec. 5.** NRS 271.475 is hereby amended to read as follows:

271.475 1. The governing body shall likewise have power to issue negotiable bonds in an amount not exceeding the total unpaid assessments levied to pay the cost of any project, howsoever acquired, as hereinafter provided.

2. Any ordinance pertaining to the sale, issuance or payment of bonds or other securities of the municipality, or any combination thereof, may:

(a) Be adopted as if an emergency existed. The declaration of the governing body, if any, is conclusive in the absence of fraud or gross abuse of discretion.

(b) Become effective at any time when an emergency ordinance of the municipality may go into effect.

(c) Be adopted by not less than two-thirds of all of 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.

***3. The proceeds of bonds which are to be used to pay the costs of construction, acquisition or installation of an energy efficiency improvement project or renewable energy project within a district created pursuant to subsection 1 of section 1 of this act must be paid to the contractor as directed in writing by the property owner or, if the property owner has paid the contractor, must be paid to reimburse the property owner, but in either case, only upon receipt of:***

***(a) Written evidence that the installation or improvement is complete, or verification through an inspection if so authorized in the resolution adopted pursuant to subsection 8 of section 1 of this act or if the municipality otherwise determines to make an inspection;***

***(b) A waiver of any mechanic's or materialmen's liens if so authorized in the resolution adopted pursuant to subsection 8 of section 1 of this act; and***

***(c) Written evidence that the total contract price has been paid unless the price is to be paid by the municipality to or at the direction of the contractor.***

***➥ No such inspection or review or receipt of a waiver imposes any liability on the municipality for any constructed, acquired or***

***installed energy efficiency improvement project or renewable energy project or any unconstructed, unacquired or uninstalled item, any defect in any such item, any failure of any party to pay for any item, or any lien, including, without limitation, any mechanic's or materialmen's lien.***

**Sec. 6.** NRS 271.485 is hereby amended to read as follows:

271.485 1. Any bonds issued pursuant to this chapter may be sold in such a manner as may be approved by the governing body to defray the cost of the project, including all proper incidental expenses. The governing body may issue a single issue of bonds to defray the costs of projects in two or more improvement districts if the principal amount of those bonds does not exceed the total uncollected assessments levied in each improvement district.

2. Bonds must be sold in the manner prescribed in NRS 350.105 to 350.195, inclusive:

(a) For not less than the principal amount thereof and accrued interest thereon; or

(b) At the option of the governing body, below par at a discount not exceeding 9 percent of the principal amount and except as otherwise provided ***in this paragraph and*** in NRS 99.067, 271.487 and 271.730, at a price which will not result in an effective interest rate which exceeds by more than 3 percent the Index of Twenty Bonds which was most recently published before the bids are received or a negotiated offer is accepted if the maximum or any lesser amount of discount permitted by the governing body has been capitalized as a cost of the project. ***If the bonds bear an amount of interest that is included in gross income for the purposes of calculating federal income tax pursuant to the provisions of Title 26 of the United States Code, the net effective interest rate must not exceed twice the maximum interest rate as provided in this paragraph.***

3. Except as otherwise provided in subsection 4 and NRS 271.487 and 271.730, the rate of interest of the bonds must not at any time exceed the rate of interest, or lower or lowest rate if more than one, borne by the special assessments, but any rate of interest of the bonds may be the same as or less than any rate of interest of the assessment, subject to the limitation provided in subsection 2, as the governing body may determine.

4. Except as otherwise provided in NRS 271.730, if a governing body creates a district pursuant to the provisions of NRS 271.710, the governing body or chief financial officer of the municipality shall, in consultation with a financial advisor or the underwriter of the bonds, fix the rate of interest of the bonds at a rate of interest such that the principal and interest due on the bonds in each year, net of any interest capitalized from the proceeds of the

bonds, will not exceed the amount of principal and interest to be collected on the special assessments during that year.

5. The governing body may employ legal, fiscal, engineering and other expert services in connection with any project authorized by this chapter and the authorization, issuance and sale of bonds.

6. Any accrued interest must be applied to the payment of the interest on or the principal of the bonds, or both interest and principal.

7. Any unexpended balance of the proceeds of the bond remaining after the completion of the project for which the bonds were issued must be paid immediately into the fund created for the payment of the principal of the bonds and must be used therefor, subject to the provisions as to the times and methods for their payment as stated in the bonds and the proceedings authorizing their issuance.

8. The validity of the bonds must not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement of the project for which the bonds are issued.

9. A purchaser of the bonds is not responsible for the application of the proceeds of the bonds by the municipality or any of its officers, agents and employees.

10. The governing body may enter into a contract to sell special assessment bonds at any time but, if the governing body so contracts before it awards a construction contract or otherwise contracts for acquiring or improving the project, the governing body may terminate the contract to sell the bonds, if:

(a) Before awarding the construction contract or otherwise contracting for the acquisition or improvement of the project, it determines not to acquire or improve the project; and

(b) It has not elected to proceed pursuant to subsection 2 or 3 of NRS 271.330, but has elected to proceed pursuant to subsection 1 of that section.

11. If the governing body ceases to have jurisdiction to proceed, because the requisite proportion of owners of the frontage to be assessed, or of the area, zone or other basis of assessment, file written complaints, protests and objections to the project, as provided in NRS 271.306, or for any other reason, any contract to sell special assessment bonds is terminated and becomes inoperative.

**Sec. 7.** This act becomes effective on July 1, 2013.