

SENATE BILL NO. 334—SENATOR HAMMOND

MARCH 18, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to planning and zoning.
(BDR 22-688)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 planning and zoning; prohibiting the governing body of a local government from imposing certain requirements and fees relating to the property of a school district or charter school; exempting certain property of a school district or charter school from the requirement of paying certain impact fees; requiring a local government to reimburse a school district or charter school for certain costs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill prohibits the governing body of a local government from imposing certain requirements and fees relating to property owned, leased or otherwise used by a school district or charter school.

Existing law exempts property owned by a school district from the requirement of paying certain impact fees. (NRS 278B.160) **Section 5** of this bill extends the exemption to all property owned, leased or otherwise used by a school district or charter school.

Existing law requires a local government to reimburse, upon request, a school district for the cost of certain off-site facilities. (NRS 278B.240) **Section 6** of this bill makes this requirement also applicable to charter schools.



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

Section 1. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, a school district or charter school is subject to any local ordinances governing land use.

2. A governing body shall not:

(a) Impose requirements relating to landscaping, fencing, aesthetic considerations, methods or materials of construction, additional building inspections, municipal building codes, use of buildings for educational purposes or the placement or use of temporary facilities to be used as classrooms on school property.

(b) Require a school district or charter school to contribute to the cost of:

(1) Any roadway or sidewalk which is not reasonably necessary for the safety of pupils and is not located on or contiguous to school property; or

(2) A study on the impact of a school on such a roadway or sidewalk.

(c) Require a school district or charter school to pay fees relating to planning and zoning which are not specifically authorized by this chapter.

(d) Provide for the inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by regulation of the Superintendent of Public Instruction.

(e) Impose restrictions upon the location of a school facility except as necessary to avoid unreasonable risks to public health or safety.

(f) With regard to a land use or a structure which is owned, leased or operated by a school district or charter school and which is not a school facility but is used to support the provision of instruction to pupils, impose a restriction that:

(1) Is not imposed on a similar land use or structure in the zoning district in which the land use or structure is approved; or

(2) Uses the tax-exempt status of the school district or charter school as a factor in prohibiting or regulating the land use or location of the structure.

Sec. 2. NRS 278.010 is hereby amended to read as follows:

278.010 As used in NRS 278.010 to 278.630, inclusive, *and section 1 of this act*, unless the context otherwise requires, the



1 words and terms defined in NRS 278.0105 to 278.0195, inclusive,
2 have the meanings ascribed to them in those sections.

3 **Sec. 3.** NRS 278.0233 is hereby amended to read as follows:

4 278.0233 1. Any person who has any right, title or interest in
5 real property, and who has filed with the appropriate state or local
6 agency an application for a permit which is required by statute or an
7 ordinance, resolution or regulation adopted pursuant to NRS
8 278.010 to 278.630, inclusive, *and section 1 of this act*, before that
9 person may improve, convey or otherwise put that property to use,
10 may bring an action against the agency to recover actual damages
11 caused by:

12 (a) Any final action, decision or order of the agency which
13 imposes requirements, limitations or conditions upon the use of the
14 property in excess of those authorized by ordinances, resolutions or
15 regulations adopted pursuant to NRS 278.010 to 278.630, inclusive,
16 *and section 1 of this act*, in effect on the date the application was
17 filed, and which:

18 (1) Is arbitrary or capricious; or

19 (2) Is unlawful or exceeds lawful authority.

20 (b) Any final action, decision or order of the agency imposing a
21 tax, fee or other monetary charge that is not expressly authorized by
22 statute or that is in excess of the amount expressly authorized by
23 statute.

24 (c) The failure of the agency to act on that application within the
25 time for that action as limited by statute, ordinance or regulation.

26 2. An action must not be brought under subsection 1:

27 (a) Where the agency did not know, or reasonably could not
28 have known, that its action, decision or order was unlawful or in
29 excess of its authority.

30 (b) Based on the invalidation of an ordinance, resolution or
31 regulation in effect on the date the application for the permit was
32 filed.

33 (c) Where a lawful action, decision or order of the agency is
34 taken or made to prevent a condition which would constitute a threat
35 to the health, safety, morals or general welfare of the community.

36 (d) Where the applicant agrees in writing to extensions of time
37 concerning his or her application.

38 (e) Where the applicant agrees in writing or orally on the record
39 during a hearing to the requirements, limitations or conditions
40 imposed by the action, decision or order, unless the applicant
41 expressly states in writing or orally on the record during the hearing
42 that a requirement, limitation or condition is agreed to under protest
43 and specifies which paragraph of subsection 1 provides cause for the
44 protest.



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(f) For unintentional procedural or ministerial errors of the agency.

(g) Unless all administrative remedies have been exhausted.

(h) Against any individual member of the agency.

Sec. 4. NRS 278.0235 is hereby amended to read as follows:

278.0235 No action or proceeding may be commenced for the purpose of seeking judicial relief or review from or with respect to any final action, decision or order of any governing body, commission or board authorized by NRS 278.010 to 278.630, inclusive, *and section 1 of this act*, unless the action or proceeding is commenced within 25 days after the date of filing of notice of the final action, decision or order with the clerk or secretary of the governing body, commission or board.

Sec. 5. NRS 278B.160 is hereby amended to read as follows:

278B.160 1. A local government may by ordinance impose an impact fee in a service area to pay the cost of constructing a capital improvement or facility expansion necessitated by and attributable to new development. Except as otherwise provided in NRS 278B.220, the cost may include only:

(a) The estimated cost of actual construction, including, without limitation, the cost of connecting a capital improvement or facility expansion to a line or facility used to provide water or sewer service;

(b) Estimated fees for professional services;

(c) The estimated cost to acquire the land; and

(d) The fees paid for professional services required for the preparation or revision of a capital improvements plan in anticipation of the imposition of an impact fee.

2. All property owned, *leased or otherwise used* by a school district *or charter school* is exempt from the requirement of paying impact fees imposed pursuant to this chapter.

Sec. 6. NRS 278B.240 is hereby amended to read as follows:

278B.240 1. If an owner is required by a local government, as a condition of the approval of the development, to construct or dedicate, or both, a portion of the off-site facilities for which impact fees other than for a park project are imposed, the off-site facilities must be credited against those impact fees.

2. If a school district *or charter school* is required by a local government to construct or dedicate, or both, a portion of the off-site facilities for which impact fees are imposed, the local government shall, upon the request of the school district *or charter school, as applicable*, reimburse or enter into an agreement to reimburse the school district *or charter school, as applicable*, for the cost of the off-site facilities constructed or dedicated, or both, minus the cost of the off-site facilities immediately adjacent to or providing



1 connection to the school development which would be required by
2 local ordinance in the absence of an ordinance authorizing impact
3 fees.

4 3. If an owner is required by a local government to:

5 (a) Pay a residential construction tax pursuant to NRS 278.4983;

6 (b) Dedicate land pursuant to NRS 278.4979 or otherwise
7 dedicate or improve land, or both, for use as a park; or

8 (c) Construct or dedicate a portion of the off-site facilities for
9 which impact fees for a park project are imposed,

10 ➔ the owner is entitled to a credit against the impact fee imposed
11 for the park project for the amount of the residential construction tax
12 paid, the fair market value of the land dedicated, the cost of any
13 improvements to the dedicated land or the cost of the off-site
14 facilities dedicated or constructed, as applicable.

15 **Sec. 7.** 1. Any provision in an ordinance, regulation or plan
16 of a local government which:

17 (a) Is described in subsection 2 of section 1 of this act;

18 (b) Is in effect on October 1, 2013; and

19 (c) Conflicts with any provision of this act,

20 ➔ is void and unenforceable to the extent of the conflict.

21 2. On or before October 1, 2013, each governing body of a
22 local government in this State shall review and amend its
23 ordinances, regulations and plans as necessary to ensure compliance
24 with the provisions of this act.

