

Assembly Bill No. 351–Assemblymen Dickman, Moore, Dooling;
Edwards, Ellison, Gardner, Hansen, Jones, Kirner, Munford,
Oscarson, Shelton, Titus and Wheeler

Joint Sponsors: Senators Hardy; and Settlemeyer

CHAPTER.....

AN ACT relating to charter schools; revising the requirements for a project that is financed through bonds to benefit a charter school; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Director of the Department of Business and Industry to issue bonds and other obligations to finance the acquisition, construction, improvement, restoration or rehabilitation of property, buildings and facilities for charter schools if certain criteria are met. Existing law requires a charter school for whose benefit a project is being financed to have received, within the immediately preceding 3 consecutive school years, one of the two highest ratings of performance pursuant to the statewide system of accountability for public schools. (NRS 386.630, 386.632, 386.634) **Section 1.8** of this bill instead requires a charter school for whose benefit a project is being financed to have received, within the immediately preceding 2 consecutive school years, one of the three highest ratings of performance pursuant to the statewide system of accountability for public schools. **Sections 1-1.4 and 2.2-2.8** of this bill clarify that the Director of the Department of Business and Industry has the authority to administer the Charter School Financing Law. (NRS 386.612-386.649)

Under existing law, the State pledges not to repeal, amend or modify the Charter School Financing Law in a way that impairs any outstanding bonds until all the bonds have been discharged in full or provisions for their payment and redemption have been fully made. (NRS 386.646) **Section 3.3** of this bill clarifies that such a pledge must not be construed to bind the State or the Legislature to continue to apportion funds to charter schools or to maintain such apportionments at any existing levels.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. NRS 386.616 is hereby amended to read as follows:
386.616 “Director of the Department of Business and Industry”
means the Director of the Department of Business and Industry or
any person within the Department of Business and Industry
designated by the Director ***of the Department of Business and
Industry*** to perform duties in connection with a project or the
issuance of bonds pursuant to NRS 386.612 to 386.649, inclusive.



Sec. 1.2. NRS 386.619 is hereby amended to read as follows:

386.619 "Financing agreement" means an agreement by which the Director of the Department of Business and Industry agrees to issue bonds pursuant to NRS 386.612 to 386.649, inclusive, to finance one or more projects and the obligor agrees to:

1. Make payments directly or through notes, debentures, bonds or other secured or unsecured debt obligations of the obligor executed and delivered by the obligor to the Director *of the Department of Business and Industry* or his or her designee or assignee, including a trustee, sufficient to pay the principal of, premium, if any, and interest on the bonds;

2. Pay other amounts required by NRS 386.612 to 386.649, inclusive; and

3. Comply with all the applicable provisions of NRS 386.612 to 386.649, inclusive.

Sec. 1.4. NRS 386.630 is hereby amended to read as follows:

386.630 When the Director of the Department of Business and Industry has received requests from one or more charter schools, lessees, purchasers or other obligors, the Director *of the Department of Business and Industry* may issue revenue bonds to obtain money to fulfill the requests. Title to or in a project may at all times remain in the obligor or the obligor's designee or assignee and, in that case, the bonds must be secured by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the obligor.

Sec. 1.8. NRS 386.632 is hereby amended to read as follows:

386.632 Except as otherwise provided in NRS 386.639, the Director of the Department of Business and Industry shall not finance a project unless, before financing the project, the Director *of the Department of Business and Industry* finds and the State Board of Finance approves the findings of the Director *of the Department of Business and Industry* that:

1. The project consists of any land, building or other improvement, and all real and personal properties necessary in connection therewith, which is suitable for new construction, improvement, restoration or rehabilitation of charter school facilities;

2. The charter school for whose benefit the project is being financed is not in default under the written charter or charter contract, as applicable, granted by its sponsor, as determined by the sponsor;

3. The charter school for whose benefit the project is being financed has received, within the immediately preceding ~~13~~ 2



consecutive school years, one of the ~~two~~ **three** highest ratings of performance pursuant to the statewide system of accountability for public schools, or has received equivalent ratings in another state, as determined by the Department of Education;

4. There are sufficient safeguards to ensure that all money provided by the Director of the Department of Business and Industry will be expended solely for the purposes of the project;

5. There are sufficient safeguards to ensure that the Director of the Department of Business and Industry will have the ability to monitor compliance with the provisions of NRS 386.612 to 386.649, inclusive, on an ongoing basis with respect to the project;

6. Through the advice of counsel or other reliable source, the project has received all approvals by the local, state and federal governments which may be necessary to proceed with construction, improvement, rehabilitation or redevelopment of the project; and

7. There has been a request by a charter school, lessee, purchaser or other obligor to have the Director of the Department of Business and Industry issue bonds to finance the project.

Sec. 2. (Deleted by amendment.)

Sec. 2.2. NRS 386.633 is hereby amended to read as follows:

386.633 1. Except as otherwise provided in NRS 386.639, before financing a project pursuant to NRS 386.632, the Director of the Department of Business and Industry and the State Board of Finance must:

(a) Determine the total amount of money necessary to be provided by the Director of the Department of Business and Industry for financing the project.

(b) Except as otherwise provided in this subsection, receive a 5-year operating history from the contemplated charter school, lessee, purchaser or other obligor that will make or guarantee the payment of the principal, premium, if any, and interest on any bond issued. An operating history is not required if the bonds:

(1) Are to be sold only to qualified institutional buyers, as defined in Rule 144A of the Securities and Exchange Commission, 17 C.F.R. § 230.144A, in minimum denominations of at least \$100,000; or

(2) Will receive a rating within one of the top four rating categories of Moody's Investors Service, Inc., Standard and Poor's Rating Services or Fitch IBCA, Inc.

(c) Consider whether the contemplated charter school, lessee, purchaser or other obligor that will make or guarantee the payment of the principal, premium, if any, and interest on any bonds issued has received within the 12 months immediately preceding the date



of the findings of the Director of the Department of Business and Industry, or then has or has not in effect, a rating within one of the top four rating categories of Moody's Investors Service, Inc., Standard and Poor's Rating Services or Fitch IBCA, Inc.

(d) Consider the extent to which the project is affected by any federal, state or local governmental action, activity, program or development.

(e) Consider the length of time the charter school, lessee, purchaser or other obligor of the project has maintained facilities appropriate to the community in this State.

2. The Director of the Department of Business and Industry may adopt regulations to set forth additional factors to be considered by the Director *of the Department of Business and Industry* and the State Board of Finance before financing a project pursuant to NRS 386.632.

Sec. 2.4. NRS 386.634 is hereby amended to read as follows:

386.634 1. The Director of the Department of Business and Industry may provide financing for a project pursuant to NRS 386.612 to 386.649, inclusive, if:

(a) The financing is limited in amount and purpose to the payment of the costs associated with:

(1) The acquisition, construction, improvement, restoration or rehabilitation of the project; and

(2) The cost of the project;

(b) The Director *of the Department of Business and Industry* makes the findings required by NRS 386.632; and

(c) The Director *of the Department of Business and Industry* complies with the guidelines established by the Director *of the Department of Business and Industry* pursuant to subsection 2.

2. The Director of the Department of Business and Industry shall establish guidelines for the provision of financing for a project pursuant to NRS 386.612 to 386.649, inclusive.

Sec. 2.6. NRS 386.637 is hereby amended to read as follows:

386.637 1. Any bonds issued pursuant to NRS 386.612 to 386.649, inclusive, must be authorized by an order of the Director of the Department of Business and Industry and must:

(a) Be in denominations;

(b) Bear the date or dates;

(c) Mature at the time or times, not exceeding 40 years after their respective dates;

(d) Bear interest at a rate or rates;

(e) Be in the form;

(f) Carry the registration privileges;



- (g) Be executed in the manner;
 - (h) Be payable at the place or places within or without the State;
- and

- (i) Be subject to the terms of redemption,
↪ as provided by the order authorizing their issuance.

2. Any bonds issued pursuant to NRS 386.612 to 386.649, inclusive, may be sold in one or more series at par, or below or above par, in the manner and for the price or prices which the Director of the Department of Business and Industry determines in his or her discretion, and are not required to obtain a credit rating. As an incidental expense to any project to be financed by the bonds, the Director *of the Department of Business and Industry* may employ financial and legal consultants in regard to the financing of the project on an ongoing basis.

3. Any bonds issued pursuant to NRS 386.612 to 386.649, inclusive, are fully negotiable under the terms of the Uniform Commercial Code—Investment Securities.

Sec. 2.8. NRS 386.639 is hereby amended to read as follows:

386.639 1. Any bonds issued pursuant to NRS 386.612 to 386.649, inclusive, may be refunded by the Director of the Department of Business and Industry by the issuance of refunding bonds in an amount which the Director *of the Department of Business and Industry* determines necessary to refund the principal of the bonds to be so refunded, any unpaid interest thereon and any premiums and incidental expenses necessary to be paid in connection with refunding.

2. Refunding may be carried out whether the bonds to be refunded have matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds to the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded. The holders of the bonds to be refunded must not be compelled, without their consent, to surrender their bonds for payment or exchange before the date on which they are payable by maturity, option to redeem or otherwise, or if they are called for redemption before the date on which they are by their terms subject to redemption by option or otherwise.

3. All refunding bonds issued pursuant to this section must be payable solely from revenues and other money out of which the bonds to be refunded thereby are payable or from revenues out of which bonds of the same character may be made payable under this or any other law then in effect at the time of the refunding.

4. The Director of the Department of Business and Industry shall not issue refunding bonds unless, before the refinancing, the



Director *of the Department of Business and Industry* finds that issuance of refunding bonds will provide a lower cost of financing for the obligor or provide some other public benefit, but the findings, determinations and approval required by NRS 386.632 are not required with respect to refunding bonds issued pursuant to this section.

Sec. 3. (Deleted by amendment.)

Sec. 3.3. NRS 386.646 is hereby amended to read as follows:

386.646 ~~The~~

1. Except as otherwise provided in subsection 2, the faith of the State is hereby pledged that NRS 386.612 to 386.649, inclusive, will not be repealed, amended or modified to impair any outstanding bonds or any revenues pledged to their payment, or to impair, limit or alter the rights or powers vested in a charter school to acquire, finance, improve and equip a project in any way that would jeopardize the interest of any lessee, purchaser or other obligor, or to limit or alter the rights or powers vested in the Director of the Department of Business and Industry to perform any agreement made with any lessee, purchaser or other obligor, until all bonds have been discharged in full or provisions for their payment and redemption have been fully made.

2. The provisions of subsection 1 must not be construed so as to bind the State, the Legislature or any agency of the foregoing to continue to apportion funds to charter schools or to maintain such apportionments at any existing levels.

Sec. 3.7. NRS 386.647 is hereby amended to read as follows:

386.647 1. NRS 386.612 to 386.649, inclusive, without reference to other statutes of this State, constitute full authority for the exercise of powers granted in those sections, including, without limitation, the authorization and issuance of bonds.

2. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized by NRS 386.612 to 386.649, inclusive, to be done, applies to any proceedings taken or acts done pursuant to those sections, except for laws to which reference is expressly made in those sections or by necessary implication of those sections.

3. The provisions of no other law, either general or local, except as provided in NRS 386.612 to 386.649, inclusive, apply to the doing of the things authorized in those sections to be done, and no board, agency, bureau, commission or official not designated in those sections has any authority or jurisdiction over the doing of any



of the acts authorized in those sections to be done, except as otherwise provided in those sections.

4. A project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this State or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property is not applicable to any action taken pursuant to NRS 386.612 to 386.649, inclusive. ~~[- except that the provisions of NRS 338.013 to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction for which tentative approval for financing is granted on or after July 1, 2013, by the Director of the Department of Business and Industry for work to be done on a project.]~~

5. Any bank or trust company located within or without this State may be appointed and act as a trustee with respect to bonds issued and projects financed pursuant to NRS 386.612 to 386.649, inclusive, without the necessity of associating with any other person or entity as cofiduciary, but such an association is not prohibited.

6. The powers conferred by NRS 386.612 to 386.649, inclusive, are in addition and supplemental to, and not in substitution for, and the limitations imposed by those sections do not affect, the powers conferred by any other law.

7. No part of NRS 386.612 to 386.649, inclusive, repeals or affects any other law or part thereof, except to the extent that those sections are inconsistent with any other law, it being intended that those sections provide a separate method of accomplishing its objectives, and not an exclusive one.

8. The Director of the Department of Business and Industry or a person designated by the Director *of the Department of Business and Industry* may take any actions and execute and deliver any instruments, contracts, certificates and other documents, including the bonds, necessary or appropriate for the sale and issuance of the bonds or accomplishing the purposes of NRS 386.612 to 386.649, inclusive, without the assistance or intervention of any other officer.

Sec. 4. This act becomes effective on July 1, 2015.

