

EMERGENCY REQUEST OF SPEAKER OF THE ASSEMBLY

ASSEMBLY BILL NO. 493—ASSEMBLYMAN HAMBRICK

MAY 31, 2015

Referred to Committee on Government Affairs

SUMMARY—Grants power to the governing body of an incorporated city to address matters of local concern within certain parameters. (BDR 21-1296)

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 incorporated cities; authorizing the governing body of an incorporated city to exercise powers necessary or proper to address matters of local concern for the effective operation of city government; providing that such powers do not apply to certain matters; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

In a case from 1868 and in later treatises on the law governing local governments, former Chief Justice John F. Dillon of the Iowa Supreme Court developed a common-law rule on local governmental power known as Dillon's Rule, which defines and limits the powers of local governments. 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 objects and purposes of the local government and not merely convenient but indispensable. Dillon's Rule also provides that if there is any fair or reasonable doubt concerning the existence of a power, that doubt is resolved against the local government and the power is denied. (*Merriam v. Moody's Ex'rs*, 25 Iowa 163, 170 (1868); 1 John F. Dillon, *Commentaries on the Law of Municipal Corporations* § 237 (5th ed. 1911))

In Nevada's jurisprudence, the Nevada Supreme Court has adopted and applied Dillon's Rule to county, city and other local governments. (*Ronnow v. City of Las Vegas*, 57 Nev. 332, 341-43 (1937); *Hard v. Depaoli*, 56 Nev. 19, 30 (1935); *Lyon County v. Ross*, 24 Nev. 102, 111-12 (1897); *State ex rel. Rosenstock v. Swift*, 11 Nev. 128, 140 (1876)) Thus, as a general rule under existing law, the governing body of an incorporated city is authorized to exercise only those powers which are



expressly granted to the governing body and those powers which are necessarily implied to carry out the express powers of the governing body. (*Ronnow v. City of Las Vegas*, 57 Nev. 332, 341-43 (1937))

Sections 2-7 of this bill authorize the governing body of an incorporated city, with certain exceptions, to exercise all powers necessary or proper to address matters of local concern for the effective operation of city government, whether or not the powers are expressly granted to the governing body, but such powers remain subject to all federal and state constitutional, statutory and regulatory provisions.

Section 6 defines the term “matter of local concern” as any matter that primarily affects or impacts areas located in the incorporated city, or persons who reside, work, visit or are otherwise present in areas located in the city, and that does not have a significant effect or impact on areas located in other cities or counties. However, the term “matter of local concern” does not include any matter that is within the exclusive jurisdiction of another governmental entity or any matter that concerns: (1) a state interest that requires statewide uniformity of regulation; (2) the regulation of business activities that are subject to substantial regulation by a federal or state agency; or (3) any other federal or state interest that is committed by the Constitution, statutes or regulations of the United States or this State to federal or state regulation that preempts local regulation.

Sections 2 and 7 modify Dillon’s Rule as applied to the governing body so that if there is any fair or reasonable doubt concerning the existence of a power of the governing body to address a matter of local concern, it must be presumed that the governing body has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature. **Section 2** also states that the provisions of this bill must not be interpreted to modify Dillon’s Rule with regard to: (1) any local governing body other than the governing body of an incorporated city; or (2) any powers other than those powers necessary or proper to address matters of local concern for the effective operation of city government.

Section 8 of this bill provides that during the 2015-2017 interim between regular legislative sessions, the Nevada League of Cities shall: (1) obtain information regarding the implementation of the provisions of this bill from each governing body of an incorporated city in this State; and (2) compile and report the information to the next regular session of the Legislature in 2017.

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

Section 1. Chapter 268 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *The Legislature hereby finds and declares that:*

1. Historically under Nevada law, the exercise of powers by the governing body of an incorporated city has been governed by a common-law rule on local governmental power known as Dillon’s Rule, which is named after former Chief Justice John F. Dillon of the Iowa Supreme Court who in a case from 1868 and in later treatises on the law governing local governments set forth the common-law rule defining and limiting the powers of local governments.



2. In Nevada's jurisprudence, the Nevada Supreme Court has adopted and applied Dillon's Rule to county, city and other local governments.

3. As applied to city government, Dillon's Rule provides that the governing body of an incorporated city possesses and may exercise only the following powers and no others:

(a) Those powers granted in express terms by the Nevada Constitution, statute or city charter;

(b) Those powers necessarily or fairly implied in or incident to the powers expressly granted; and

(c) Those powers essential to the accomplishment of the declared objects and purposes of the city and not merely convenient but indispensable.

4. Dillon's Rule also provides that if there is any fair or reasonable doubt concerning the existence of a power, that doubt is resolved against the governing body of an incorporated city and the power is denied.

5. As a general rule on local governmental power, Dillon's Rule serves an important function in defining the powers of city government and remains a vital component of Nevada law. However, with regard to matters of local concern, a strict interpretation and application of Dillon's Rule unnecessarily restricts the governing body of an incorporated city from taking appropriate actions that are necessary or proper to address matters of local concern for the effective operation of city government and thereby impedes the governing body from responding to and serving the needs of local citizens diligently, decisively and effectively.

6. To provide the governing body of an incorporated city with the appropriate authority to address matters of local concern for the effective operation of city government, the provisions of sections 2 to 7, inclusive, of this act:

(a) Expressly grant and delegate to the governing body of an incorporated city all powers necessary or proper to address matters of local concern so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government; and

(b) Modify Dillon's Rule as applied to the governing body of an incorporated city so that if there is any fair or reasonable doubt concerning the existence of a power of the governing body to address a matter of local concern, it must be presumed that the governing body has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature.

7. The provisions of sections 2 to 7, inclusive, of this act must not be interpreted to modify Dillon's Rule with regard to:



(a) Any local governing body other than the governing body of an incorporated city; or

(b) Any powers other than those powers necessary or proper to address matters of local concern for the effective operation of city government.

Sec. 3. As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4, 5 and 6 of this act have the meanings ascribed to them in those sections.

Sec. 4. “City government” means any public body, agency, bureau, board, commission, department, division, office or other unit of city government, or any officer or employee thereof, within the jurisdiction of the governing body of an incorporated city.

Sec. 5. “Incorporated city” or “city” means a city organized pursuant to the provisions of chapter 266 of NRS or incorporated pursuant to a special charter.

Sec. 6. 1. “Matter of local concern” means any matter that:
(a) Primarily affects or impacts areas located in the incorporated city, or persons who reside, work, visit or are otherwise present in areas located in the city, and does not have a significant effect or impact on areas located in other cities or counties;

(b) Is not within the exclusive jurisdiction of another governmental entity; and

(c) Does not concern:

(1) A state interest that requires statewide uniformity of regulation;

(2) The regulation of business activities that are subject to substantial regulation by a federal or state agency; or

(3) Any other federal or state interest that is committed by the Constitution, statutes or regulations of the United States or this State to federal or state regulation that preempts local regulation.

2. The term includes, without limitation, any of the following matters of local concern:

(a) Public health, safety and welfare in the city.

(b) Planning, zoning, development and redevelopment in the city.

(c) Nuisances and graffiti in the city.

(d) Outdoor assemblies in the city.

(e) Contracts and purchasing by city government.

(f) Operation, management and control of city jails and prisoners by city government.



(g) Any public property, buildings, lands, utilities and other public works owned, leased, operated, managed or controlled by city government, including, without limitation:

(1) Roads, highways and bridges.

(2) Parks, recreational centers, cultural centers, libraries and museums.

3. The provisions of subsection 2:

(a) Are intended to be illustrative;

(b) Are not intended to be exhaustive or exclusive; and

(c) Must not be interpreted as either limiting or expanding the meaning of the term “matter of local concern” as provided in subsection 1.

Sec. 7. 1. Except as prohibited, limited or preempted by the Constitution, statutes or regulations of the United States or this State and except as otherwise provided in this section, the governing body of an incorporated city has:

(a) All powers expressly granted to the governing body;

(b) All powers necessarily or fairly implied in or incident to the powers expressly granted to the governing body; and

(c) All other powers necessary or proper to address matters of local concern for the effective operation of city government, whether or not the powers are expressly granted to the governing body. If there is any fair or reasonable doubt concerning the existence of a power of the governing body to address a matter of local concern pursuant to this paragraph, it must be presumed that the governing body has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature.

2. If there is a constitutional or statutory provision or provision of a city charter requiring the governing body of an incorporated city to exercise a power set forth in subsection 1 in a specific manner, the governing body may exercise the power only in that specific manner, but if there is no constitutional or statutory provision or provision of city charter requiring the governing body to exercise the power in a specific manner, the governing body may adopt an ordinance prescribing a specific manner for exercising the power.

3. Except as expressly authorized by statute or city charter, the governing body of an incorporated city shall not:

(a) 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 governmental entity or a private person or entity.

(b) Prescribe the law governing civil actions between private persons or entities.



1 (c) *Impose duties on another governmental entity unless the*
2 *performance of the duties is part of a legally executed agreement*
3 *between the city and another governmental entity.*

4 (d) *Impose a tax.*

5 (e) *Order or conduct an election.*

6 4. *Except as expressly authorized by statute or city charter or*
7 *necessarily or fairly implied in or incident to powers expressly*
8 *authorized by statute or city charter, the governing body of an*
9 *incorporated city shall not:*

10 (a) *Impose a service charge or user fee; or*

11 (b) *Regulate business activities that are subject to substantial*
12 *regulation by a federal or state agency.*

13 **Sec. 8.** 1. During the 2015-2017 interim between the 78th
14 and 79th Sessions of the Nevada Legislature, the Nevada League of
15 Cities shall obtain information regarding the implementation of the
16 provisions of sections 2 to 7, inclusive, of this act from each
17 governing body of an incorporated city in this State, and each such
18 governing body shall cooperate and work collaboratively with the
19 Nevada League of Cities to provide that information.

20 2. On or before February 1, 2017, the Nevada League of Cities
21 shall compile and report the information obtained pursuant to this
22 section to the Director of the Legislative Counsel Bureau for
23 transmittal to the 79th Session of the Nevada Legislature.

24 **Sec. 9.** This act becomes effective on July 1, 2015.

