

Amendment No. 740

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| Assembly Amendment to Senate Bill No. 29 First Reprint                                | (BDR 20-465) |
| <b>Proposed by:</b> Assembly Committee on Government Affairs                          |              |
| <b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes |              |

| ASSEMBLY ACTION |                          | Initial and Date              | SENATE ACTION |                          | Initial and Date              |
|-----------------|--------------------------|-------------------------------|---------------|--------------------------|-------------------------------|
| Adopted         | <input type="checkbox"/> | Lost <input type="checkbox"/> | Adopted       | <input type="checkbox"/> | Lost <input type="checkbox"/> |
| Concurred In    | <input type="checkbox"/> | Not <input type="checkbox"/>  | Concurred In  | <input type="checkbox"/> | Not <input type="checkbox"/>  |
| Receded         | <input type="checkbox"/> | Not <input type="checkbox"/>  | Receded       | <input type="checkbox"/> | Not <input type="checkbox"/>  |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

KCP



Date: 5/18/2015

S.B. No. 29—Grants power to a board of county commissioners to perform certain acts which are not prohibited or limited by statute.  
(BDR 20-465)



## SENATE BILL NO. 29—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

PREFILED DECEMBER 20, 2014

Referred to Committee on Government Affairs

SUMMARY—Grants power to a board of county commissioners to ~~perform~~ **address matters of local concern within** certain ~~facts which are not prohibited or limited by statute.~~ **parameters.** (BDR 20-465)

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 county government; authorizing a board of county commissioners to exercise ~~the~~ powers necessary **or proper to address matters of local concern** for the effective operation of county 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 ~~the Judge~~ **and in later treatises on the law governing local governments, former Chief Justice** John F. Dillon of the Iowa Supreme Court ~~established~~ **developed** a common-law rule ~~of statutory interpretation~~ **on local governmental power** known as Dillon's Rule, which **defines and** limits the powers of local governments. ~~(Merriam v. Moody's Ex'rs, 25 Iowa 162 (Iowa 1868))~~ 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 ~~under~~ **Under** ~~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, a board of county commissioners ~~has~~ is authorized to exercise only those powers which are expressly granted **to the board and those** powers ~~that~~ **which** are necessarily implied to carry out ~~the~~ express powers ~~of the board.~~ **of the board.** (NRS 244.195; First Nat'l Bank v. Nye County, 38 Nev. 123, 134-39 (1914); Sadler v. Board of County Comm'rs, 15 Nev. 39, 42 (1880)) ~~This bill authorizes~~**

**Sections 2-2.7, 7 and 7.5 of this bill authorize** a board of county commissioners, with ~~limited~~ **certain** exceptions, to exercise all powers necessary **or proper to address matters**

of local concern for the effective operation of county government, ~~even if such a power is neither express nor implied, so long as the power is~~ whether or not the powers are expressly ~~prohibited or limited by~~ granted to the board, but such powers remain subject to all federal and state constitutional, ~~for~~ statutory and regulatory provisions, ~~granted to another entity.~~

Section 2.7 defines the term “matter of local concern” as any matter that primarily affects or impacts areas located in the county, or persons who reside, work, visit or are otherwise present in areas located in the county, and that does not have a significant effect or impact on areas located in other 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 board of county commissioners so that if there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern, it must be presumed that the board 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 a board of county commissioners; or (2) any powers other than those powers necessary or proper to address matters of local concern for the effective operation of county government.

Section 7.7 of this bill provides that during the 2015-2017 interim between regular legislative sessions, the Nevada Association of Counties shall: (1) obtain information regarding the implementation of the provisions of this bill from each board of county commissioners; and (2) compile and report the information to the next regular session of the Legislature in 2017.

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

**Section 1.** Chapter 244 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

**Sec. 2.** ~~It is expressly declared as the intent of the~~ The Legislature ~~to grant a~~ hereby finds and declares that:

1. Historically under Nevada law, the exercise of powers by a board of county commissioners 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 county government, Dillon’s Rule provides that a board of county commissioners possesses and may exercise only the following powers and no others:

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

(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 county and not merely convenient but indispensable.

1 4. Dillon's Rule also provides that if there is any fair or reasonable doubt  
2 concerning the existence of a power, that doubt is resolved against the board of  
3 county commissioners and the power is denied.

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

12 6. To provide a board of county commissioners with the appropriate  
13 authority to address matters of local concern for the effective operation of county  
14 government, the provisions of sections 2 to 7, inclusive, of this act:

15 (a) Expressly grant and delegate to the board of county commissioners ~~the~~  
16 all powers necessary or proper to address matters of local concern so that the  
17 board may adopt county ordinances and implement and carry out county  
18 programs and functions for the effective operation of county government ~~it~~; and

19 (b) Modify Dillon's Rule as applied to the board of county commissioners so  
20 that if there is any fair or reasonable doubt concerning the existence of a power  
21 of the board to address a matter of local concern, it must be presumed that the  
22 board has the power unless the presumption is rebutted by evidence of a contrary  
23 intent by the Legislature.

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

26 (a) Any local governing body other than a board of county commissioners;  
27 or

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

30 Sec. 2.1. As used in sections 2 to 7, inclusive, of this act, unless the context  
31 otherwise requires, the words and terms defined in sections 2.5 and 2.7 of this act  
32 have the meanings ascribed to them in those sections.

33 Sec. 2.5. "County government" means any public body, agency, bureau,  
34 board, commission, department, division, office or other unit of county  
35 government, or any officer or employee thereof, within the jurisdiction of the  
36 board of county commissioners.

37 Sec. 2.7. 1. "Matter of local concern" means any matter that:

38 (a) Primarily affects or impacts areas located in the county, or persons who  
39 reside, work, visit or are otherwise present in areas located in the county, and  
40 does not have a significant effect or impact on areas located in other counties;

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

43 (c) Does not concern:

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

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

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

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

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

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

(c) Nuisances and graffiti in the county.  
(d) Outdoor assemblies in the county.  
(e) Contracts and purchasing by county government.  
(f) Operation, management and control of county jails and prisoners by county government.  
(g) Any public property, buildings, lands, utilities and other public works owned, leased, operated, managed or controlled by county 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. 3. 1. The rule of law that any doubt as to the existence of a power of a board of county commissioners must be resolved against its existence is abrogated.~~

~~2. Any doubt as to the existence of the power of a board of county commissioners must be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed. (Deleted by amendment.)~~

~~Sec. 4. 1. The rule of law that a board of county commissioners can exercise only powers:~~

~~(a) Expressly granted by statute;~~  
~~(b) Necessarily or fairly implied in or incident to powers expressly granted; and~~  
~~(c) Indispensable to the declared purposes of a board of county commissioners;~~  
~~is abrogated.~~

~~2. A board of county commissioners has:~~

~~(a) All powers granted it by statute; and~~  
~~(b) All other powers necessary or desirable in the conduct of county affairs even though not granted by statute. (Deleted by amendment.)~~

~~Sec. 5. 1. A board of county commissioners may exercise any power to the extent that the power is not expressly:~~

~~1. Denied by the Constitution of the State of Nevada;~~  
~~2. Denied by the Constitution of the United States;~~  
~~3. Denied by the laws of the State of Nevada; or~~  
~~4. Granted to another entity. (Deleted by amendment.)~~

~~Sec. 6. 1. If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a board of county commissioners that wishes to exercise the power shall do so in that manner.~~

~~2. If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a board of county commissioners that wishes to exercise the power shall adopt an ordinance prescribing a specific manner for exercising the power. (Deleted by amendment.)~~

~~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, a board of county commissioners has:~~

~~(a) All powers expressly granted to the board;~~  
~~(b) All powers necessarily or fairly implied in or incident to the powers expressly granted to the board; and~~

(c) All other powers necessary or proper to address matters of local concern for the effective operation of county government, whether or not the powers are expressly granted to the board. If there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern pursuant to this paragraph, it must be presumed that the board 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 requiring a board of county commissioners to exercise a power set forth in subsection 1 in a specific manner, the board may exercise the power only in that specific manner, but if there is no constitutional or statutory provision requiring the board to exercise the power in a specific manner, the board may adopt an ordinance prescribing a specific manner for exercising the power.

3. Except as expressly authorized by statute, a board of county commissioners 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 county and another governmental entity or a private person or ~~business~~ entity.

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

(c) Impose duties on another governmental entity unless the performance of the duties is part of a legally executed agreement between the county and another governmental entity.

(d) Impose a tax.

(e) Order or conduct an election.

~~2.4~~ 4. Except as expressly authorized by statute or necessarily or fairly implied in or incident to powers expressly ~~granted~~ authorized by statute, a board of county commissioners shall not:

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

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

Sec. 7.5. NRS 244.195 is hereby amended to read as follows:

244.195 ~~The~~ Except as otherwise provided in sections 2 to 7, inclusive, of this act, the boards of county commissioners shall have power and jurisdiction in their respective counties to do and perform all such other acts and things as may be lawful and ~~strictly~~ necessary to the full discharge of the powers and jurisdiction conferred on the board.

Sec. 7.7. 1. During the 2015-2017 interim between the 78th and 79th Sessions of the Nevada Legislature, the Nevada Association of Counties shall obtain information regarding the implementation of the provisions of this act from each board of county commissioners in this State, and each such board shall cooperate and work collaboratively with the Nevada Association of Counties to provide that information.

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

Sec. 8. This act becomes effective on July 1, 2015.