

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 address matters of local concern within certain parameters. (BDR 20-465)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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 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 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, a board of county commissioners is authorized to exercise only those powers which are expressly



granted to the board and those powers which are necessarily implied to carry out the express powers 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))

Sections 2-2.7, 7 and 7.5 of this bill authorize a board of county commissioners, with certain exceptions, to exercise all 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, but such powers remain subject to all federal and state constitutional, statutory and regulatory provisions.

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.

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. *The Legislature 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.*

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 board of county commissioners 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 county 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 a board of county commissioners from taking appropriate actions that are necessary or proper to address matters of local concern for the effective operation of county government and thereby impedes the board from responding to and serving the needs of local citizens diligently, decisively and effectively.*

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

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

(b) *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.*

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 a board of county commissioners; or

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

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

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

Sec. 2.7. 1. “Matter of local concern” means any matter that:

(a) 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 does not have a significant effect or impact on areas located in other 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 county.

(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. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (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 entity.*

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

4. *Except as expressly authorized by statute or necessarily or fairly implied in or incident to powers expressly 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.

