

SENATE BILL NO. 66—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE CITY OF HENDERSON)

PREFILED DECEMBER 20, 2014

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing local governmental agreements for the development of land. (BDR 22-422)

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 local government planning; revising provisions relating to agreements for the development of land entered into between the governing body of a local government and one or more persons having a legal or equitable interest in the land; establishing a procedure for the amendment or cancellation of such an agreement by the governing body; revising provisions governing the contents and scope of such an agreement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the governing body of a local government to enter into an agreement for the development of land with one or more persons who hold a legal or equitable interest in the land. (NRS 278.0201-278.0207) **Section 2** of this bill defines the term “undeveloped land” and **section 6** of this bill revises the definition of the terms “infrastructure” and “public facilities” for the purpose of such agreements. **Section 8** of this bill revises the scope and contents of an agreement for the development of land.

Existing law provides that an agreement for the development of land may establish a deadline by which construction must commence and may provide for an extension of that deadline. The extended deadline is itself subject to an extension by the governing body under certain circumstances. (NRS 278.0201) **Section 8** eliminates the authority to extend such a deadline.

Existing law provides for the amendment or cancellation of an agreement for the development of land by mutual consent of the parties to the agreement or their successors in interest. Existing law also authorizes the governing body to amend or cancel the agreement without the consent of the other parties to the agreement



under certain circumstances. (NRS 278.0205) **Section 4** of this bill provides that, under certain circumstances, the governing body must give notice and an opportunity for a party in breach to cure the breach. **Sections 4 and 9** of this bill require a governing body that proposes unilaterally to amend or cancel an agreement to hold a public hearing before taking such action. **Section 4** provides that any person having a legal or equitable interest in the land subject to the agreement or any other interested person may present oral or written testimony at the hearing. **Section 4** requires the governing body to consider all the testimony presented at the hearing.

Sections 5, 7 and 10-17 of this bill make conforming changes.

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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *"Undeveloped land" means land in its unused, natural or reclaimed state and on which little or no infrastructure exists.*

Sec. 3. (Deleted by amendment.)

Sec. 4. 1. *If a governing body makes a determination described in paragraph (b) of subsection 1 of NRS 278.0205, before the governing body may amend or cancel an agreement for development of land entered into pursuant to NRS 278.0201 without the consent of the other parties to the agreement or their successors in interest, the governing body must hold a public hearing concerning the proposed amendment to or cancellation of the agreement that complies with the provisions of this section. Not less than 60 days' notice of the date and time of the public hearing must be given to the parties to the agreement or their successors in interest and any property owner of record that is subject to the agreement.*

2. *On the date and at the time and place fixed for the hearing, any person having a legal or equitable interest in the land or any other interested person may give oral or written testimony to the governing body concerning the proposed amendment to or cancellation of the agreement.*

3. *The governing body shall consider all the testimony presented at the hearing and any other relevant information presented at the hearing and, after the conclusion of the hearing, make a determination concerning whether to amend or cancel the agreement.*

4. *Any complaint, protest or objection to:*

(a) *The proposed amendment to or cancellation of the agreement;*



(b) *The effect of the proposed amendment to or cancellation of the agreement on the zoning or entitlements related to the property that is subject to the agreement; or*

(c) *The regularity, validity or correctness of any proceedings relating to or actions taken with respect to the hearing on or before the date of the hearing,*

↪ shall be deemed waived unless presented at the hearing or received in writing by the clerk of the governing body at least 3 business days before the date of the hearing.

Sec. 5. NRS 278.010 is hereby amended to read as follows:

278.010 As used in NRS 278.010 to 278.630, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 278.0103 to 278.0195, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 278.0157 is hereby amended to read as follows:

278.0157 “Infrastructure” or “public facilities” means *facilities and the structure or network used for the delivery of goods, services and public safety. The term includes, without limitation, communications facilities, facilities for the transmission and distribution of electricity and natural gas, water [H] systems, sanitary sewer [H] systems, storm sewer [H] systems, streets and roads, traffic control systems, sidewalks, parks [H] and trails, recreational facilities, fire, police and flood protection [H] and all related appurtenances, equipment and employee costs.*

Sec. 7. NRS 278.016 is hereby amended to read as follows:

278.016 “Local ordinance” means an ordinance enacted by the governing body of any city or county, pursuant to the powers granted in NRS 278.010 to 278.630, inclusive *[H], and sections 2, 3 and 4 of this act.*

Sec. 8. NRS 278.0201 is hereby amended to read as follows:

278.0201 1. In the manner prescribed by ordinance, a governing body may, upon application of any person having a legal or equitable interest in land, enter into an agreement with that person concerning the development of that land. ~~[This agreement must describe]~~

2. An agreement entered into pursuant to this section:

(a) Must contain provisions:

(1) Describing the land which is the subject of the agreement ~~[and specify]~~ ;

(2) Specifying the duration of the agreement ~~[the]~~ ;

(3) Specifying what events will constitute breach of the agreement; and

(4) Providing periods during which any breach may be cured; and



(b) May contain provisions specifying or relating to:

(1) The permitted uses of the land ~~[, the]~~ ;

(2) The density or intensity of ~~[its use,]~~ **the use of the land;**

(3) The maximum height and size of ~~[the]~~ **any** proposed buildings ; ~~[and any provisions for the]~~

(4) The reservation or dedication of any portion of the land for public use ~~[. The agreement may fix the period within which construction must commence and provide for an extension of that deadline.~~

~~— 2. For an agreement entered into for the residential or commercial development of land, the governing body may extend, beyond the original deadline and beyond any extension of that deadline pursuant to subsection 1, the period within which construction must commence if the person:~~

~~— (a) Applies for an extension before July 1, 2013, subject to any applicable ordinances adopted by the governing body;~~

~~— (b) Demonstrates to the satisfaction of the governing body that:~~

~~— (1) Financing for the residential or commercial project is not available; and~~

~~— (2) The land will be leased for a renewable energy generation project; and~~

~~— (c) Submits with his or her application for an extension an affidavit showing that due diligence has been used to obtain financing for the residential or commercial project. The affidavit must include, without limitation, evidence that:~~

~~— (1) The project was denied financing by at least two lenders; or~~

~~— (2) The person was unable to issue bonds or other securities to finance the project.~~

~~— 3. An agreement must not be extended pursuant to subsection 2:~~

~~— (a) For more than 15 years after the original deadline or, if the deadline is extended pursuant to subsection 1, after that extension; or~~

~~— (b) If the land ceases to be leased for a renewable energy generation project, after the period established pursuant to subsection 4.~~

~~— 4. If a governing body extends a deadline pursuant to subsection 2, the governing body shall establish the maximum duration of the period for which the agreement will remain valid if the land is no longer leased for a renewable energy generation project.~~

~~— 5.] or for the payment of fees in lieu thereof;~~

(5) The protection of environmentally sensitive lands;

(6) The preservation and restoration of historic structures;



(7) The phasing or timing of construction or development on the land, including, without limitation, the dates on which all or any part of the construction or development must commence and be completed, and the terms on which any deadline may be extended;

(8) The conditions, terms, restrictions and requirements for infrastructure on the land and the financing of the public infrastructure by a person having a legal or equitable interest in the land;

(9) The conditions, terms, restrictions and requirements for annexation of land by the city or county and the phasing or timing of annexation by the city or county;

(10) The conditions, terms, restrictions and requirements relating to the intent of the governing body to include the land in an improvement district created pursuant to chapter 271 of NRS;

(11) A schedule of fees and charges; and

(12) Any other matters relating to the development of the land.

3. Unless the agreement otherwise provides and except as otherwise provided in subsection ~~17.1~~ 4, the ordinances, resolutions or regulations applicable to that land and governing the permitted uses of that land, density and standards for design, improvements and construction are those in effect at the time the agreement is made.

~~16.1~~ 4. This section does not prohibit the governing body from adopting new ordinances, resolutions or regulations applicable to that land which do not conflict with those ordinances, resolutions and regulations in effect at the time the agreement is made, except that any subsequent action by the governing body must not prevent the development of the land as set forth in the agreement. The governing body is not prohibited from denying or conditionally approving any other plan for development pursuant to any ordinance, resolution or regulation in effect at the time of that denial or approval.

~~17. Notwithstanding the provisions of subsection 6, if the governing body extends a deadline pursuant to subsection 2, changes to ordinances, resolutions or regulations that:~~

~~—(a) Are made after the extension is granted; and~~

~~—(b) Enforce environmental, life or safety standards against land that the governing body determines are similar to the land for which an agreement was made pursuant to this section;~~

~~→ apply to the land for which the agreement was made.~~

~~8. The provisions of subsection 2 of NRS 278.315 and NRS 278.350 and 278.360 do not apply if an agreement entered into~~



~~pursuant to this section contains provisions which are contrary to the respective sections.~~

~~— 9. As used in this section, “environmental, life or safety standards” includes, without limitation:~~

~~— (a) Standards and codes relating to the usage of water; and~~

~~— (b) Any specialized or uniform code related to environmental, life or safety standards.]~~

Sec. 9. NRS 278.0205 is hereby amended to read as follows:

278.0205 1. ~~{The}~~ **An** agreement for development of land entered into pursuant to NRS 278.0201 may be amended or cancelled, in whole or in part, by ~~{mutual}~~ :

(a) Mutual consent of the parties to the agreement or their successors in interest ~~{, except that}~~ ; or

(b) Subject to the requirements of this section and section 4 of this act, the governing body without the consent of the other parties to the agreement or their successors in interest, if the governing body determines, upon a review of the development of the land held at least once every 24 months, ~~{that the}~~ **that:**

(1) A party to the agreement or a successor in interest is in breach of any of the terms or conditions of the agreement ~~{are not being complied with, it may cancel or amend the agreement without the consent of the breaching party.}~~ **and:**

(I) Any applicable period set forth in the agreement for curing the breach has passed; or

(II) If the agreement does not contain an applicable period for curing the breach, the governing body has provided the party in breach with notice that the party is in breach and has provided the party not less than 30 days to cure the breach; or

(2) Any event has occurred which demonstrates that a party to the agreement or a successor in interest is unable to perform his or her duties set forth in the agreement, including, without limitation, the insolvency or bankruptcy of the party or his or her successor in interest, the appointment of a receiver for the party or his or her successor in interest or the commission of fraud by the party or his or her successor in interest.

2. ~~{Notice}~~ **In addition to the notice requirement set forth in subsection 1 of section 4 of this act, notice** of intention to amend or cancel any portion of the agreement must be given by publication in a newspaper of general circulation in the applicable city or county. The governing body may approve **cancellation of the agreement by ordinance or approve** any amendment to the agreement by ordinance if the amendment is consistent with the master plan. The original of **the notice of cancellation or** the amendment must be filed for recording with the county recorder or the recorder of Carson City.



1 **Sec. 10.** NRS 278.0235 is hereby amended to read as follows:
2 278.0235 No action or proceeding may be commenced for the
3 purpose of seeking judicial relief or review from or with respect to
4 any final action, decision or order of any governing body,
5 commission or board authorized by NRS 278.010 to 278.630,
6 inclusive, *and sections 2, 3 and 4 of this act* unless the action or
7 proceeding is commenced within 25 days after the date of filing of
8 notice of the final action, decision or order with the clerk or
9 secretary of the governing body, commission or board.

10 **Sec. 11.** NRS 278.02591 is hereby amended to read as
11 follows:

12 278.02591 1. A governing body may establish, independently
13 or in conjunction with another governing body, an analysis of the
14 cost to construct infrastructure in an area which is ~~relatively~~
15 undeveloped *land* and which is likely to become developed.

16 2. The analysis of the cost to construct infrastructure in an area
17 that is ~~relatively~~ undeveloped *land* must include, without
18 limitation:

19 (a) A precise description of the area, either in the form of a legal
20 description or by reference to roadways, lakes and waterways,
21 railroads or similar landmarks, and township, county or city
22 boundaries;

23 (b) An estimate of the expected total population of the area
24 when the land becomes fully developed;

25 (c) An assessment of the infrastructure that will be necessary to
26 support the area when it becomes fully developed according to the
27 master plan adopted by the governing body pursuant to NRS
28 278.220; and

29 (d) A plan for the development of the infrastructure which
30 includes, without limitation:

31 (1) Any minimum requirements for the development of
32 infrastructure that have been determined by the regional planning
33 coalition;

34 (2) A plan to meet the anticipated needs of the area for police
35 and fire protection, parks, roads, regional transportation and flood
36 control facilities when the land becomes fully developed;

37 (3) An estimate of the date on which each phase of the
38 development will occur;

39 (4) The manner in which the plan for the development of the
40 infrastructure will be implemented; and

41 (5) An economic analysis of the cost to plan and develop
42 fully the infrastructure for the area.

43 3. The governing body may, if it finds that the analysis of the
44 projected need for infrastructure is consistent with the master plan,
45 approve the analysis by ordinance.



4. The governing body shall provide the necessary copies of the analysis to the regional planning coalition for review and information.

Sec. 12. NRS 278.02598 is hereby amended to read as follows:

278.02598 1. A governing body may carry out the plan for infrastructure by negotiating master development agreements, independently or in conjunction with an interlocal agreement for the area.

2. As used in this section, “master development agreement” means a written agreement:

(a) Between a governing body and a person who has a legal or equitable interest in land that is entered into upon the application of the person who wishes to develop that land;

(b) To enable the governing body to distribute equitably the costs to develop infrastructure for an area of land that is ~~largely undeveloped;~~ **undeveloped land;** and

(c) That is based on an analysis of the need for infrastructure that is prepared pursuant to NRS 278.02591.

Sec. 13. NRS 278.02788 is hereby amended to read as follows:

278.02788 1. If a city has a sphere of influence that is designated in the comprehensive regional plan, the city shall adopt a master plan concerning the territory within the sphere of influence. The master plan and any ordinance required by the master plan must be consistent with the comprehensive regional plan. After adoption and certification of a master plan concerning the territory within the sphere of influence and after adopting the ordinances required by the master plan, if any, the city may exercise any power conferred pursuant to NRS 278.010 to 278.630, inclusive, **and sections 2, 3 and 4 of this act** within its sphere of influence.

2. If the comprehensive regional plan designates that all or part of the sphere of influence of a city is a joint planning area, the master plan and any ordinance adopted by the city pursuant to subsection 1 must be consistent with the master plan that is adopted for the joint planning area.

3. Before certification of the master plan for the sphere of influence pursuant to NRS 278.028, any action taken by the county pursuant to NRS 278.010 to 278.630, inclusive, **and sections 2, 3 and 4 of this act** within the sphere of influence of a city must be consistent with the comprehensive regional plan.

4. A person, county or city that is represented on the governing board and is aggrieved by a final determination of the county or, after the certification of the master plan for a sphere of influence, is aggrieved by a final determination of the city, concerning zoning, a



subdivision map, a parcel map or the use of land within the sphere of influence may appeal the decision to the regional planning commission within 30 days after the determination. A person, county or city that is aggrieved by the determination of the regional planning commission may appeal the decision to the governing board within 30 days after the determination. A person, county or city that is aggrieved by the determination of the governing board may seek judicial review of the decision within 25 days after the determination.

Sec. 14. NRS 278.160 is hereby amended to read as follows:

278.160 1. Except as otherwise provided in this section and NRS 278.150 and 278.170, the master plan, with the accompanying charts, drawings, diagrams, schedules and reports, may include such of the following elements or portions thereof as are appropriate to the city, county or region, and as may be made the basis for the physical development thereof:

(a) A conservation element, which must include:

(1) A conservation plan for the conservation, development and utilization of natural resources, including, without limitation, water and its hydraulic force, underground water, water supply, solar or wind energy, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The conservation plan must also cover the reclamation of land and waters, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan, prevention, control and correction of the erosion of soils through proper clearing, grading and landscaping, beaches and shores, and protection of watersheds. The conservation plan must also indicate the maximum tolerable level of air pollution.

(2) A solid waste disposal plan showing general plans for the disposal of solid waste.

(b) A historic preservation element, which must include:

(1) A historic neighborhood preservation plan which:

(I) Must include, without limitation, a plan to inventory historic neighborhoods and a statement of goals and methods to encourage the preservation of historic neighborhoods.

(II) May include, without limitation, the creation of a commission to monitor and promote the preservation of historic neighborhoods.

(2) A historical properties preservation plan setting forth an inventory of significant historical, archaeological, paleontological and architectural properties as defined by a city, county or region, and a statement of methods to encourage the preservation of those properties.



(c) A housing element, which must include, without limitation:

(1) An inventory of housing conditions and needs, and plans and procedures for improving housing standards and providing adequate housing to individuals and families in the community, regardless of income level.

(2) An inventory of existing affordable housing in the community, including, without limitation, housing that is available to rent or own, housing that is subsidized either directly or indirectly by this State, an agency or political subdivision of this State, or the Federal Government or an agency of the Federal Government, and housing that is accessible to persons with disabilities.

(3) An analysis of projected growth and the demographic characteristics of the community.

(4) A determination of the present and prospective need for affordable housing in the community.

(5) An analysis of any impediments to the development of affordable housing and the development of policies to mitigate those impediments.

(6) An analysis of the characteristics of the land that is suitable for residential development. The analysis must include, without limitation:

(I) A determination of whether the existing infrastructure is sufficient to sustain the current needs and projected growth of the community; and

(II) An inventory of available parcels that are suitable for residential development and any zoning, environmental and other land-use planning restrictions that affect such parcels.

(7) An analysis of the needs and appropriate methods for the construction of affordable housing or the conversion or rehabilitation of existing housing to affordable housing.

(8) A plan for maintaining and developing affordable housing to meet the housing needs of the community for a period of at least 5 years.

(d) A land use element, which must include:

(1) Provisions concerning community design, including standards and principles governing the subdivision of land and suggestive patterns for community design and development.

(2) A land use plan, including an inventory and classification of types of natural land and of existing land cover and uses, and comprehensive plans for the most desirable utilization of land. The land use plan:

(I) Must, if applicable, address mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts. The land use plan must also, if applicable, address the coordination and compatibility of land uses



1 with any military installation in the city, county or region, taking
2 into account the location, purpose and stated mission of the military
3 installation.

4 (II) May include a provision concerning the acquisition
5 and use of land that is under federal management within the city,
6 county or region, including, without limitation, a plan or statement
7 of policy prepared pursuant to NRS 321.7355.

8 (3) In any county whose population is 700,000 or more, a
9 rural neighborhoods preservation plan showing general plans to
10 preserve the character and density of rural neighborhoods.

11 (e) A public facilities and services element, which must include:

12 (1) An economic plan showing recommended schedules for
13 the allocation and expenditure of public money to provide for the
14 economical and timely execution of the various components of the
15 plan.

16 (2) A population plan setting forth an estimate of the total
17 population which the natural resources of the city, county or region
18 will support on a continuing basis without unreasonable impairment.

19 (3) An aboveground utility plan that shows corridors
20 designated for the construction of aboveground utilities and
21 complies with the provisions of NRS 278.165.

22 (4) Provisions concerning public buildings showing the
23 locations and arrangement of civic centers and all other public
24 buildings, including the architecture thereof and the landscape
25 treatment of the grounds thereof.

26 (5) Provisions concerning public services and facilities
27 showing general plans for sewage, drainage and utilities, and rights-
28 of-way, easements and facilities therefor, including, without
29 limitation, any utility projects required to be reported pursuant to
30 NRS 278.145. If a public utility which provides electric service
31 notifies the planning commission that a new transmission line or
32 substation will be required to support the master plan, those
33 facilities must be included in the master plan. The utility is not
34 required to obtain an easement for any such transmission line as a
35 prerequisite to the inclusion of the transmission line in the master
36 plan.

37 (6) A school facilities plan showing the general locations of
38 current and future school facilities based upon information furnished
39 by the appropriate county school district.

40 (f) A recreation and open space element, which must include a
41 recreation plan showing a comprehensive system of recreation areas,
42 including, without limitation, natural reservations, parks, parkways,
43 trails, reserved riverbank strips, beaches, playgrounds and other
44 recreation areas, including, when practicable, the locations and
45 proposed development thereof.



(g) A safety element, which must include:

(1) In any county whose population is 700,000 or more, a safety plan identifying potential types of natural and man-made hazards, including, without limitation, hazards from floods, landslides or fires, or resulting from the manufacture, storage, transfer or use of bulk quantities of hazardous materials. The safety plan may set forth policies for avoiding or minimizing the risks from those hazards.

(2) A seismic safety plan consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking or to ground failures.

(h) A transportation element, which must include:

(1) A streets and highways plan showing the general locations and widths of a comprehensive system of major traffic thoroughfares and other traffic ways and of streets and the recommended treatment thereof, building line setbacks, and a system of naming or numbering streets and numbering houses, with recommendations concerning proposed changes.

(2) A transit plan showing a proposed multimodal system of transit lines, including mass transit, streetcar, motorcoach and trolley coach lines, paths for bicycles and pedestrians, satellite parking and related facilities.

(3) A transportation plan showing a comprehensive transportation system, including, without limitation, locations of rights-of-way, terminals, viaducts and grade separations. The transportation plan may also include port, harbor, aviation and related facilities.

2. The commission may prepare and adopt, as part of the master plan, other and additional plans and reports dealing with such other elements as may in its judgment relate to the physical development of the city, county or region, and nothing contained in NRS 278.010 to 278.630, inclusive, **and sections 2, 3 and 4 of this act** prohibits the preparation and adoption of any such element as a part of the master plan.

Sec. 15. NRS 119.128 is hereby amended to read as follows:

119.128 An exemption pursuant to this chapter is not an exemption from the provisions of NRS 278.010 to 278.630, inclusive **H**, **and sections 2, 3 and 4 of this act**.

Sec. 16. NRS 119.340 is hereby amended to read as follows:

119.340 The provisions of this chapter are in addition to and not a substitute for NRS 278.010 to 278.630, inclusive **H**, **and sections 2, 3 and 4 of this act**.

Sec. 17. NRS 270.180 is hereby amended to read as follows:

270.180 NRS 270.160 and 270.170 are intended to supplement and not to supersede the existing laws relating to the vacation of city



1 and town plats and do not apply to land divided pursuant to NRS
2 278.010 to 278.630, inclusive ~~H~~, *and sections 2, 3 and 4 of this*
3 *act.*

4 **Sec. 17.5.** 1. Except as otherwise provided in subsection 2,
5 the amendatory provisions of this act apply to all agreements for the
6 development of land that are entered into pursuant to NRS 278.0201
7 before, on or after July 1, 2015.

8 2. The provisions of paragraph (a) of subsection 2 of NRS
9 278.0201, as amended by section 8 of this act, do not apply to
10 agreements for the development of land entered into before July 1,
11 2015.

12 **Sec. 18.** This act becomes effective on July 1, 2015.

