

SENATE BILL NO. 78—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE CITY OF NORTH LAS VEGAS)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to local government financial administration. (BDR 31-403)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 governmental financial administration; revising provisions governing the authority of a governing body of a local government to transfer money from an enterprise fund to the general fund of the local government for the purpose of subsidizing the general fund; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The Local Government Budget and Finance Act authorizes the governing body
2 of a local government to establish certain funds, including an enterprise fund to
3 account for operations which are financed and conducted in a manner similar to the
4 operations of a private business, where the intent of the governing body is to have
5 the expenses of providing goods or services to the general public financed through
6 charges imposed on users. (NRS 354.470-354.626) Under existing law, a governing
7 body of a local government is authorized to loan or transfer money from an
8 enterprise fund only if the loan or transfer is made: (1) as a medium-term obligation
9 in compliance with certain requirements; (2) to pay the expenses of the pertinent
10 enterprise; (3) for a cost allocation for employees, equipment or other resources; or
11 (4) upon the dissolution of the enterprise fund. Until June 30, 2021, existing law
12 also authorizes certain local governments to transfer money from an enterprise fund
13 to the general fund of the local government for the purpose of subsidizing the
14 general fund if certain requirements are satisfied. (NRS 354.613) This bill
15 authorizes a local government to make such transfers from an enterprise fund on
16 and after July 1, 2021, if: (1) on or before July 1, 2018, the Committee on Local
17 Government Finance has approved a plan adopted by the governing body of the
18 local government to eliminate such transfers, which includes, without limitation, a
19 plan to reduce the amount of such transfers by at least 3.3 percent each fiscal year



20 during the term of the plan; and (2) the local government reduces the amount of the
21 transfers in accordance with the plan.

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

- 1 **Section 1.** NRS 354.613 is hereby amended to read as follows:
2 354.613 1. Except as otherwise provided in this section and
3 NRS 354.6135, the governing body of a local government may, on
4 or after July 1, 2011, loan or transfer money from an enterprise
5 fund, money collected from fees imposed for the purpose for which
6 an enterprise fund was created or any income or interest earned on
7 money in an enterprise fund only if the loan or transfer is made:
8 (a) In accordance with a medium-term obligation issued by the
9 recipient in compliance with the provisions of chapter 350 of NRS,
10 the loan or transfer is proposed to be made and the governing body
11 approves the loan or transfer under a nonconsent item that is
12 separately listed on the agenda for a regular meeting of the
13 governing body, and:
14 (1) The money is repaid in full to the enterprise fund within 5
15 years; or
16 (2) If the recipient will be unable to repay the money in full
17 to the enterprise fund within 5 years, the recipient notifies the
18 Committee on Local Government Finance of:
19 (I) The total amount of the loan or transfer;
20 (II) The purpose of the loan or transfer;
21 (III) The date of the loan or transfer; and
22 (IV) The estimated date that the money will be repaid in
23 full to the enterprise fund;
24 (b) To pay the expenses related to the purpose for which the
25 enterprise fund was created;
26 (c) For a cost allocation for employees, equipment or other
27 resources related to the purpose of the enterprise fund which is
28 approved by the governing body under a nonconsent item that is
29 separately listed on the agenda for a regular meeting of the
30 governing body; or
31 (d) Upon the dissolution of the enterprise fund.
32 2. Except as otherwise provided in this section, the governing
33 body of a local government may increase the amount of any fee
34 imposed for the purpose for which an enterprise fund was created
35 only if the governing body approves the increase under a
36 nonconsent item that is separately listed on the agenda for a regular
37 meeting of the governing body, and the governing body determines
38 that:
39 (a) The increase is not prohibited by law;



(b) The increase is necessary for the continuation or expansion of the purpose for which the enterprise fund was created; and

(c) All fees that are deposited in the enterprise fund are used solely for the purposes for which the fees are collected.

3. Upon the adoption of an increase in any fee pursuant to subsection 2, the governing body shall, except as otherwise provided in this subsection, provide to the Department of Taxation an executed copy of the action increasing the fee. This requirement does not apply to the governing body of a federally regulated airport.

4. The provisions of subsection 2 do not limit the authority of the governing body of a local government to increase the amount of any fee imposed upon a public utility in compliance with the provisions of NRS 354.59881 to 354.59889, inclusive, for a right-of-way over any public area if the public utility is billed separately for that fee. As used in this subsection, "public utility" has the meaning ascribed to it in NRS 354.598817.

5. This section must not be construed to:

(a) Prohibit a local government from increasing a fee or using money in an enterprise fund to repay a loan lawfully made to the enterprise fund from another fund of the local government; or

(b) Prohibit or impose any substantive or procedural limitations on any increase of a fee that is necessary to meet the requirements of an instrument that authorizes any bonds or other debt obligations which are secured by or payable from, in whole or in part, money in the enterprise fund or the revenues of the enterprise for which the enterprise fund was created.

6. The Department of Taxation shall provide to the Committee on Local Government Finance a copy of each report submitted to the Department on or after July 1, 2011, by a county or city pursuant to NRS 354.6015. The Committee shall:

(a) Review each report to determine whether the governing body of the local government is in compliance with the provisions of this section; and

(b) On or before January 15 of each odd-numbered year, submit a report of its findings to the Director of the Legislative Counsel Bureau for transmittal to the Legislature.

7. A fee increase imposed in violation of this section must not be invalidated on the basis of that violation. The sole remedy for a violation of this section is the penalty provided in NRS 354.626. Any person who pays a fee for the enterprise for which the enterprise fund is created may file a complaint with the district attorney or Attorney General alleging a violation of this section for prosecution pursuant to NRS 354.626.



8. For the purposes of paragraph (c) of subsection 1, the Committee on Local Government Finance shall adopt regulations setting forth the extent to which general, overhead, administrative and similar expenses of a local government of a type described in paragraph (c) of subsection 1 may be allocated to an enterprise fund. The regulations must require that:

(a) Each cost allocation makes an equitable distribution of all general, overhead, administrative and similar expenses of the local government among all activities of the local government, including the activities funded by the enterprise fund; and

(b) Only the enterprise fund's equitable share of those expenses may be treated as expenses of the enterprise fund and allocated to it pursuant to paragraph (c) of subsection 1.

9. Except as otherwise provided in subsections 10 and 11, if a local government has subsidized its general fund with money from an enterprise fund for the 5 fiscal years immediately preceding the fiscal year beginning on July 1, 2011, the provisions of subsection 1 do not apply ~~until July 1, 2021,~~ to transfers from the enterprise fund to the general fund of the local government for the purpose of subsidizing the general fund if the local government:

(a) Does not increase the amount of the transfers to subsidize the general fund in any fiscal year beginning on or after July 1, 2011, above the amount transferred in the fiscal year ending on June 30, 2011, except for loans and transfers that comply with the provisions of subsection 1; and

(b) Does not, on or after July 1, 2011, increase any fees for any enterprise fund used to subsidize the general fund except for increases described in paragraph (b) of subsection 5.

10. ~~On or before July 1, 2012, a local government to which the provisions of subsection 9 apply shall adopt a plan to eliminate, on or before the fiscal year beginning on July 1, 2021, all transfers from any enterprise funds to subsidize the general fund that are not made in compliance with subsection 1. A copy of the plan must be filed with the Department of Taxation on or before July 15, 2012.~~

~~11.~~ On and after July 1, ~~2012,~~ **2021**, the provisions of subsection ~~9 do not~~ **1** apply to ~~a local government that fails to comply with the provisions of subsection 10.~~ **transfers from an enterprise fund described in subsection 9 to the general fund of a local government for the purpose of subsidizing the general fund unless:**

(a) On or before July 1, 2018, the Committee on Local Government Finance has approved a plan adopted by the governing body of the local government to eliminate transfers from an enterprise fund to subsidize the general fund of the local government that are not made in compliance with subsection 1,



1 *which must include, without limitation, a plan to reduce, by at*
2 *least 3.3 percent each fiscal year during the term of the plan, the*
3 *amount of the transfers from the enterprise fund to the general*
4 *fund of the local government for the purpose of subsidizing the*
5 *general fund; and*

6 *(b) In accordance with the plan approved by the Committee on*
7 *Local Government Finance pursuant to paragraph (a), for each*
8 *fiscal year during the term of the plan, the local government*
9 *reduces by at least 3.3 percent the amount of the transfers from*
10 *the enterprise fund to the general fund of the local government for*
11 *the purpose of subsidizing the general fund.*

12 *11. Each plan approved by the Committee on Local*
13 *Government Finance pursuant to subsection 10 is subject to*
14 *annual review by the Committee.*

15 *12. After the expiration of the term of a plan approved by the*
16 *Committee on Local Government Finance pursuant to subsection*
17 *10, the provisions of subsection 1 apply to the local government*
18 *that adopted the plan.*

19 **Sec. 2.** Section 13 of chapter 307, Statutes of Nevada 2011, at
20 page 1694, is hereby amended to read as follows:

21 Sec. 13. ~~11.~~ This section and sections 1 to 9,
22 inclusive, 11 and 12 of this act become effective on July 1,
23 2011.

24 ~~12. Section 10 of this act becomes effective on July 1,~~
25 ~~2021.~~

26 **Sec. 3.** Section 10 of chapter 307, Statutes of Nevada 2011, at
27 page 1692, is hereby repealed.

28 **Sec. 4.** This act becomes effective on July 1, 2017.

TEXT OF REPEALED SECTION

Section 10 of chapter 307, Statutes of Nevada 2011:

Sec. 10. Section 1 of this act is hereby amended to read as follows:

Section 1. Chapter 354 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the governing body of a local government may, on or after July 1, 2011, loan or transfer money from an enterprise fund, money collected from fees imposed for the purpose for which an enterprise fund was created or any income or interest earned



on money in an enterprise fund only if the loan or transfer is made:

(a) In accordance with a medium-term obligation issued by the recipient in compliance with the provisions of chapter 350 of NRS, the loan or transfer is proposed to be made and the governing body approves the loan or transfer under a nonconsent item that is separately listed on the agenda for a regular meeting of the governing body, and:

(1) The money is repaid in full to the enterprise fund within 5 years; or

(2) If the recipient will be unable to repay the money in full to the enterprise fund within 5 years, the recipient notifies the Committee on Local Government Finance of:

(I) The total amount of the loan or transfer;

(II) The purpose of the loan or transfer;

(III) The date of the loan or transfer; and

(IV) The estimated date that the money will be repaid in full to the enterprise fund;

(b) To pay the expenses related to the purpose for which the enterprise fund was created;

(c) For a cost allocation for employees, equipment or other resources related to the purpose of the enterprise fund which is approved by the governing body under a nonconsent item that is separately listed on the agenda for a regular meeting of the governing body; or

(d) Upon the dissolution of the enterprise fund.

2. Except as otherwise provided in this section, the governing body of a local government may increase the amount of any fee imposed for the purpose for which an enterprise fund was created only if the governing body approves the increase under a nonconsent item that is separately listed on the agenda for a regular meeting of the governing body, and the governing body determines that:

(a) The increase is not prohibited by law;

(b) The increase is necessary for the continuation or expansion of the purpose for which the enterprise fund was created; and

(c) All fees that are deposited in the enterprise fund are used solely for the purposes for which the fees are collected.

3. Upon the adoption of an increase in any fee pursuant to subsection 2, the governing body shall, except as otherwise provided in this subsection, provide to the Department of Taxation an executed copy of the action increasing the fee. This requirement does not apply to the governing body of a federally regulated airport.



4. The provisions of subsection 2 do not limit the authority of the governing body of a local government to increase the amount of any fee imposed upon a public utility in compliance with the provisions of NRS 354.59881 to 354.59889, inclusive, for a right-of-way over any public area if the public utility is billed separately for that fee. As used in this subsection, "public utility" has the meaning ascribed to it in NRS 354.598817.

5. This section must not be construed to:

(a) Prohibit a local government from increasing a fee or using money in an enterprise fund to repay a loan lawfully made to the enterprise fund from another fund of the local government; or

(b) Prohibit or impose any substantive or procedural limitations on any increase of a fee that is necessary to meet the requirements of an instrument that authorizes any bonds or other debt obligations which are secured by or payable from, in whole or in part, money in the enterprise fund or the revenues of the enterprise for which the enterprise fund was created.

6. The Department of Taxation shall provide to the Committee on Local Government Finance a copy of each report submitted to the Department on or after July 1, 2011, by a county or city pursuant to NRS 354.6015. The Committee shall:

(a) Review each report to determine whether the governing body of the local government is in compliance with the provisions of this section; and

(b) On or before January 15 of each odd-numbered year, submit a report of its findings to the Director of the Legislative Counsel Bureau for transmittal to the Legislature.

7. A fee increase imposed in violation of this section must not be invalidated on the basis of that violation. The sole remedy for a violation of this section is the penalty provided in NRS 354.626. Any person who pays a fee for the enterprise for which the enterprise fund is created may file a complaint with the district attorney or Attorney General alleging a violation of this section for prosecution pursuant to NRS 354.626.

8. For the purposes of paragraph (c) of subsection 1, the Committee on Local Government Finance shall adopt regulations setting forth the extent to which general, overhead, administrative and similar expenses of a local government of a type described in paragraph (c) of subsection



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1 may be allocated to an enterprise fund. The regulations must require that:

(a) Each cost allocation makes an equitable distribution of all general, overhead, administrative and similar expenses of the local government among all activities of the local government, including the activities funded by the enterprise fund; and

(b) Only the enterprise fund's equitable share of those expenses may be treated as expenses of the enterprise fund and allocated to it pursuant to paragraph (c) of subsection 1.

~~19. Except as otherwise provided in subsections 10 and 11, if a local government has subsidized its general fund with money from an enterprise fund for the 5 fiscal years immediately preceding the fiscal year beginning on July 1, 2011, the provisions of subsection 1 do not apply until July 1, 2021, to transfers from the enterprise fund to the general fund of the local government for the purpose of subsidizing the general fund if the local government:~~

~~—(a) Does not increase the amount of the transfers to subsidize the general fund in any fiscal year beginning on or after July 1, 2011, above the amount transferred in the fiscal year ending on June 30, 2011, except for loans and transfers that comply with the provisions of subsection 1; and~~

~~—(b) Does not, on or after July 1, 2011, increase any fees for any enterprise fund used to subsidize the general fund except for increases described in paragraph (b) of subsection 5.~~

~~10. On or before July 1, 2012, a local government to which the provisions of subsection 9 apply shall adopt a plan to eliminate, on or before the fiscal year beginning on July 1, 2021, all transfers from any enterprise funds to subsidize the general fund that are not made in compliance with subsection 1. A copy of the plan must be filed with the Department of Taxation on or before July 15, 2012.~~

~~11. On and after July 1, 2012, the provisions of subsection 9 do not apply to a local government that fails to comply with the provisions of subsection 10.~~

