

(Reprinted with amendments adopted on April 17, 2019)

FIRST REPRINT

S.B. 398

SENATE BILL NO. 398—SENATOR RATTI

MARCH 20, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to affordable housing.  
(BDR 20-1074)

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; requiring a board of county commissioners and the governing body of an incorporated city to use certain money for the development or redevelopment of affordable housing; providing that the powers of a board of county commissioners to address matters of local concern include certain powers relating to affordable housing; providing that the powers of the governing body of an incorporated city to address matters of local concern include certain powers relating to affordable housing; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes a board of county commissioners or the governing body of an incorporated city to exercise powers necessary or proper to address matters of local concern, whether or not such powers are expressly granted to the board or governing body. (NRS 244.146, 268.0035) **Sections 1.5 and 3** of this bill include the development or redevelopment of affordable housing and any action taken to ensure the availability or affordability of housing as matters of local concern for a board of county commissioners or the governing body of a city, respectively.

Existing law generally prohibits a board of county commissioners or the governing body of an incorporated city from imposing a tax or imposing a service charge or user fee unless expressly authorized by statute. (NRS 244.146, 268.0035) **Sections 2 and 4** of this bill provide that these provisions do not prohibit a board of county commissioners or governing body, respectively, from accepting a payment of money in lieu of the performance of an obligation imposed upon a person by ordinance. **Sections 1 and 2.5** of this bill require a board of county commissioners or governing body of an incorporated city, respectively, that accepts a payment in lieu of the performance of an obligation related to the development or redevelopment of affordable housing imposed upon a person by ordinance, to



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18 account separately for that money and use that money only for the development or  
19 redevelopment of affordable housing.

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

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1     **Section 1.** Chapter 244 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3     *If a board of county commissioners accepts a payment of*  
4 *money in lieu of the performance of an obligation related to the*  
5 *development or redevelopment of affordable housing imposed*  
6 *upon a person by ordinance of the board of county commissioners,*  
7 *the board of county commissioners must account separately for*  
8 *the money received from such a payment and use that money only*  
9 *for the development or redevelopment of affordable housing in the*  
10 *county.*

11     **Sec. 1.5.** NRS 244.143 is hereby amended to read as follows:

12     244.143 1. "Matter of local concern" means any matter that:

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

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

19     (c) Does not concern:

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

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

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

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

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

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

32     (c) *The development or redevelopment of affordable housing*  
33 *in the county or any action taken by the county to ensure the*  
34 *availability or affordability of housing in the county.*

35     (d) Nuisances and graffiti in the county.

36     ~~(d)~~ (e) Outdoor assemblies in the county.

37     ~~(e)~~ (f) Contracts and purchasing by county government.

38     ~~(f)~~ (g) Operation, management and control of county jails and  
39 prisoners by county government.



~~(g)~~ (h) 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. 2.** NRS 244.146 is hereby amended to read as follows:

244.146 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.

*5. The provisions of subsections 3 and 4 must not be construed to prohibit a board of county commissioners from accepting a payment of money in lieu of the performance of an obligation imposed upon a person by ordinance of the board of county commissioners.*

**Sec. 2.5.** Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:

*If the governing body of an incorporated city accepts a payment of money in lieu of the performance of an obligation related to the development or redevelopment of affordable housing imposed upon a person by ordinance of the governing body of the incorporated city, the governing body of the incorporated city must account separately for the money received from such a payment and use that money only for the development or redevelopment of affordable housing in the city.*

**Sec. 3.** NRS 268.003 is hereby amended to read as follows:

268.003 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) *The development or redevelopment of affordable housing in the city or any action taken by the city to ensure the availability or affordability of housing in the city.*

(d) Nuisances and graffiti in the city.

~~((d))~~ (e) Outdoor assemblies in the city.

~~((e))~~ (f) Contracts and purchasing by city government.

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

~~((g))~~ (h) 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. 4.** NRS 268.0035 is hereby amended to read as follows:

268.0035 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



1 adopt an ordinance prescribing a specific manner for exercising the  
2 power.

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

5 (a) Condition or limit its civil liability unless such condition or  
6 limitation is part of a legally executed contract or agreement  
7 between the city and another governmental entity or a private person  
8 or entity.

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

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

14 (d) Impose a tax.

15 (e) Order or conduct an election.

16 4. Except as expressly authorized by statute or city charter or  
17 necessarily or fairly implied in or incident to powers expressly  
18 authorized by statute or city charter, the governing body of an  
19 incorporated city shall not:

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

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

23 *5. The provisions of subsections 3 and 4 must not be*  
24 *construed to prohibit the governing body of an incorporated city*  
25 *from accepting a payment of money in lieu of the performance of*  
26 *an obligation imposed upon a person by ordinance of the*  
27 *governing body.*

28 **Sec. 5.** This act becomes effective on July 1, 2019.

