

ASSEMBLY BILL NO. 331—ASSEMBLYMEN MARZOLA, FLORES, BENITEZ-THOMPSON, WATTS; ANDERSON, BILBRAY-AXELROD, CONSIDINE, DURAN, GONZÁLEZ, GORELOW, MARTINEZ, C.H. MILLER, MONROE-MORENO, ORENTLICHER, THOMAS AND TORRES

MARCH 17, 2021

JOINT SPONSORS: SENATORS DONATE; AND DENIS

Referred to Committee on Government Affairs

**SUMMARY**—Makes various changes to provisions relating to affordable housing. (BDR 22-807)

**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 land use planning; authorizing, under certain circumstances, the governing body of a city or county to accept a payment in lieu of the performance of certain obligations or impose a linkage fee on certain developers to pay for the development of affordable housing; revising the list of specified measures that certain cities and counties must choose from in implementing a plan for maintaining and developing affordable housing; requiring the Administrator of the Housing Division of the Department of Business and Industry to adopt regulations establishing certain criteria for the distribution and use of money from the Account for Affordable Housing; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law authorizes the governing body of a city or county to regulate and
- 2 restrict the improvement of land, taking into account the availability of and need for
- 3 affordable housing in the community. (NRS 278.020) Existing law further requires
- 4 the governing bodies of certain cities or counties to: (1) ensure an adequate supply
- 5 of affordable housing when implementing a master plan; and (2) adopt certain
- 6 measures to maintain and develop affordable housing to carry out the housing plan



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required in the master plan. (NRS 278.230, 278.235) Existing law also authorizes the governing body of a city or county to adopt zoning regulations that, in relevant part, ensure the development of an adequate supply of affordable housing in the community. In exercising such power, the governing body of the city or county may use any controls relating to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning and minimum density zoning. (NRS 278.250)

**Section 1** of this bill authorizes, under certain circumstances, the governing body of a city or county to: (1) accept a payment of money in lieu of the performance of an obligation related to the development of affordable housing imposed upon a developer by the governing body; or (2) impose a linkage fee on residential, commercial or industrial development. **Section 1** further requires that any such payment of money or linkage fee be deposited into a trust fund established by the governing body and used only to pay for the development of affordable housing in the city or county, as applicable. **Sections 2 and 3** of this bill indicate the placement of **section 1** in the Nevada Revised Statutes.

Existing law requires the governing bodies of certain cities or counties to: (1) adopt at least 6 of 12 specified measures in implementing a plan for maintaining and developing affordable housing; and (2) submit to the Housing Division of the Department of Business and Industry an annual report of how the measures adopted assisted the city or county in maintaining and developing affordable housing to meet the needs of the community for the preceding year. The report is required to include an analysis of the need for affordable housing within the city or county that exists at the end of the reporting period. The Housing Division is required to compile the annual reports and post the compilation on its Internet website. (NRS 278.235) **Section 4** of this bill adds to the list of specified measures: (1) using inclusionary zoning; (2) accepting payments of money in lieu of the performance of an obligation related to the development of affordable housing imposed upon a developer; and (3) imposing linkage fees on any residential, commercial or industrial development for the purpose of assisting in the development of affordable housing. **Section 4** also requires the governing body of a city or county to include in its annual report to the Housing Division: (1) an estimate of the number of units of affordable housing that the city or county expects to maintain or develop in the next 5 years; and (2) the specific measures from the list of specified measures that the city or county will use to maintain or develop that number of units of affordable housing. **Section 4** further requires the Housing Division to submit the compilation of reports to the Director of the Legislative Counsel Bureau and, when the Legislature is in session, to the members of certain standing committees of the Assembly and the Senate.

Existing law creates the Account for Affordable Housing, sets forth the allowable uses for the money in the Account and requires the Administrator of the Housing Division of the Department of Business and Industry to adopt regulations establishing criteria for the distribution and use of money from the Account. (NRS 319.500, 319.510, 319.520) **Section 5** of this bill requires, with certain exceptions, that such criteria include, without limitation, a consideration of the progress that local governments have made, or any formal commitments made by local governments, in maintaining and developing: (1) tier one affordable housing, which is housing for a household which has a total monthly gross income that is equal to not more than 60 percent of the median monthly gross household income for the county in which the housing is located; and (2) tier two affordable housing, which is housing for a household that has a total monthly gross income that is equal to more than 60 percent but not more than 80 percent of the median monthly gross household income for the county in which the housing is located. (NRS 278.01902, 278.01906)



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 a new section to read as follows:

*1. Except as otherwise provided in subsections 2 and 3, a governing body may:*

*(a) Accept a payment of money in lieu of the performance of an obligation related to the development of affordable housing imposed upon a developer by the governing body; or*

*(b) Impose a linkage fee on any residential, commercial or industrial development for the purpose of assisting in the development of affordable housing that the governing body determines will be necessary as a result of the development. Such determination must be based on a finding that there is a reasonable relationship between the new development and the need for affordable housing.*

*2. A governing body may accept a payment of money or impose a linkage fee pursuant to subsection 1 only if authority for such action has been adopted by ordinance as part of the governing body's affordable housing policy.*

*3. A linkage fee imposed by a governing body:*

*(a) Must not exceed:*

*(1) For an industrial development, \$5 per square foot;*

*(2) For a commercial development, \$3 per square foot;*

*(3) For a multifamily residential dwelling, \$1.50 per square foot;*

*(4) For a single-family residential dwelling that is 4,000 square feet or more, \$1.50 per square foot;*

*(5) For a single-family residential dwelling that is 1,500 square feet or more but less than 4,000 square feet, \$0.75 per square foot.*

*(b) Must not be imposed for the development of:*

*(1) A public or private educational institution;*

*(2) A religious institution;*

*(3) A multifamily development that includes less than 10 individual dwelling units;*

*(4) An owner-occupied small business that is less than 5,000 square feet; and*

*(5) A single-family residential dwelling that is less than 1,500 square feet.*

*4. Any payment of money or linkage fee received pursuant to subsection 1 must be deposited into a trust fund established by the governing body and used only to pay for the development of affordable housing in the city or county, as applicable.*



1     **Sec. 2.** NRS 278.010 is hereby amended to read as follows:  
2     278.010 As used in NRS 278.010 to 278.630, inclusive, *and*  
3 *section 1 of this act*, unless the context otherwise requires, the  
4 words and terms defined in NRS 278.0103 to 278.0195, inclusive,  
5 have the meanings ascribed to them in those sections.

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

15     **Sec. 4.** NRS 278.235 is hereby amended to read as follows:  
16     278.235 1. If the governing body of a city or county is  
17 required to include the housing element in its master plan pursuant  
18 to NRS 278.150, the governing body, in carrying out the plan for  
19 maintaining and developing affordable housing to meet the housing  
20 needs of the community, which is required to be included in the  
21 housing element pursuant to subparagraph (8) of paragraph (c) of  
22 subsection 1 of NRS 278.160, shall adopt at least six of the  
23 following measures:

24     (a) Reducing or subsidizing in whole or in part impact fees, fees  
25 for the issuance of building permits collected pursuant to NRS  
26 278.580 and fees imposed for the purpose for which an enterprise  
27 fund was created.

28     (b) Selling land owned by the city or county, as applicable, to  
29 developers exclusively for the development of affordable housing at  
30 not more than 10 percent of the appraised value of the land, and  
31 requiring that any such savings, subsidy or reduction in price be  
32 passed on to the purchaser of housing *or tenants* in such a  
33 development. Nothing in this paragraph authorizes a city or county  
34 to obtain land pursuant to the power of eminent domain for the  
35 purposes set forth in this paragraph.

36     (c) Donating land owned by the city or county to a nonprofit  
37 organization to be used for affordable housing.

38     (d) Leasing land by the city or county to be used for affordable  
39 housing.

40     (e) Requesting to purchase land owned by the Federal  
41 Government at a discounted price for the creation of affordable  
42 housing pursuant to the provisions of section 7(b) of the Southern  
43 Nevada Public Land Management Act of 1998, Public Law  
44 105-263.



(f) Establishing a trust fund for affordable housing that must be used for the acquisition, construction or rehabilitation of affordable housing.

(g) Establishing a process that expedites the approval of plans and specifications relating to maintaining and developing affordable housing.

(h) Providing money, support or density bonuses for affordable housing developments that are financed, wholly or in part, with low-income housing tax credits, private activity bonds or money from a governmental entity for affordable housing, including, without limitation, money received pursuant to 12 U.S.C. § 1701q and 42 U.S.C. § 8013.

(i) Providing financial incentives or density bonuses to promote appropriate transit-oriented housing developments that would include an affordable housing component.

(j) Offering density bonuses or other incentives to encourage the development of affordable housing.

(k) Providing direct financial assistance to qualified applicants for the purchase or rental of affordable housing.

(l) Providing money for supportive services necessary to enable persons with supportive housing needs to reside in affordable housing in accordance with a need for supportive housing identified in the 5-year consolidated plan adopted by the United States Department of Housing and Urban Development for the city or county pursuant to 42 U.S.C. § 12705 and described in 24 C.F.R. Part 91.

*(m) Using inclusionary zoning as defined in NRS 278.250.*

*(n) Accepting payments of money in lieu of the performance of an obligation related to the development of affordable housing imposed upon a developer by the governing body as described in section 1 of this act.*

*(o) Imposing linkage fees on any residential, commercial or industrial development for the purpose of assisting in the development of affordable housing as described in section 1 of this act.*

2. A governing body may reduce or subsidize impact fees, fees for the issuance of building permits or fees imposed for the purpose for which an enterprise fund was created to assist in maintaining or developing a project for affordable housing, pursuant to paragraph (a) of subsection 1, only if:

(a) When the incomes of all the residents of the project for affordable housing are averaged, the housing would be affordable on average for a family with a total gross income that does not exceed 60 percent of the median gross income for the county concerned based upon the estimates of the United States Department



1 of Housing and Urban Development of the most current median  
2 gross family income for the county.

3 (b) The governing body has adopted an ordinance that  
4 establishes the criteria that a project for affordable housing must  
5 satisfy to receive assistance in maintaining or developing the project  
6 for affordable housing. Such criteria must be designed to put into  
7 effect all relevant elements of the master plan adopted by the  
8 governing body pursuant to NRS 278.150.

9 (c) The project for affordable housing satisfies the criteria set  
10 forth in the ordinance adopted pursuant to paragraph (b).

11 (d) The governing body makes a determination that reducing or  
12 subsidizing such fees will not impair adversely the ability of the  
13 governing body to pay, when due, all interest and principal on any  
14 outstanding bonds or any other obligations for which revenue from  
15 such fees was pledged.

16 (e) The governing body holds a public hearing concerning the  
17 effect of the reduction or subsidization of such fees on the economic  
18 viability of the general fund of the city or county, as applicable, and,  
19 if applicable, the economic viability of any affected enterprise fund.

20 3. On or before January 15 of each year, the governing body  
21 shall submit to the Housing Division of the Department of Business  
22 and Industry a report, in the form prescribed by the Housing  
23 Division, of how the measures adopted pursuant to subsection 1  
24 assisted the city or county in maintaining and developing affordable  
25 housing to meet the needs of the community for the preceding year.  
26 The report must include ~~the~~ :

27 (a) An analysis of the need for affordable housing within the  
28 city or county that exists at the end of the reporting period ~~the~~ ;

29 (b) *An estimate of the number of units of affordable housing*  
30 *that the city or county expects to maintain or develop in the next 5*  
31 *years; and*

32 (c) *The specific measures from the list set forth in subsection 1*  
33 *that the city or county will use to maintain or develop the*  
34 *estimated number of units of affordable housing reported*  
35 *pursuant to paragraph (b).*

36 ➡ The governing body shall cooperate with the Housing Division to  
37 ensure that the information contained in the report is appropriate for  
38 inclusion in, and can be effectively incorporated into, the statewide  
39 low-income housing database created pursuant to NRS 319.143.

40 4. On or before February 15 of each year, the Housing Division  
41 shall ~~compile~~ :

42 (a) *Compile* the reports submitted pursuant to subsection 3 and  
43 post the compilation on the Internet website of the Housing Division  
44 ~~the~~ ; and



(b) *Submit the compilation of reports prepared pursuant to paragraph (a) to the Director of the Legislative Counsel Bureau and, when the Legislature is in session, to the members of the Assembly and Senate Standing Committees on Government Affairs and the Assembly and Senate Standing Committees on Commerce and Labor.*

**Sec. 5.** NRS 319.520 is hereby amended to read as follows:

319.520 1. The Administrator shall consult with representatives of housing authorities, organizations of persons with low income, providers of housing, financial institutions and other persons interested in the provision of affordable housing, and adopt regulations establishing:

(a) Criteria for the distribution and use of money from the Account for Affordable Housing . ~~[-and]~~ *Unless prohibited by federal law, such criteria must include, without limitation, a consideration of the progress that the local governments that receive money pursuant to NRS 319.510 have made, or any formal commitments made by the local governments, in maintaining and developing tier one affordable housing and tier two affordable housing.*

(b) Procedures for the Division and the local governments that receive money pursuant to NRS 319.510 to monitor the use of money from the Account and to enforce the provisions of this section and NRS 319.500 and 319.510.

➤ The regulations must be designed to maximize the efficient use of money in the Account and to promote the participation and assistance of local governments.

2. A recipient of money from the Account shall comply with the regulations of the Administrator and provide such reports to the Division and the local governments that receive money pursuant to NRS 319.510 upon the use of the money as the Administrator requires.

**3. As used in this section:**

(a) *"Tier one affordable housing" has the meaning ascribed to it in NRS 278.01902.*

(b) *"Tier two affordable housing" has the meaning ascribed to it in NRS 278.01906.*

**Sec. 6.** The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

