

Amendment No. 336

Assembly Amendment to Assembly Bill No. 139	(BDR 31-524)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

NAS/HAC



Date: 4/17/2021

A.B. No. 139—Revises provisions relating to local governments. (BDR 31-524)



ASSEMBLY BILL NO. 139—ASSEMBLYMEN YEAGER; AND GORELOW

FEBRUARY 15, 2021

JOINT SPONSOR: SENATOR SCHEIBLE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to local governments. (BDR 31-524)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 local governments; authorizing the governing body of a county or city to transfer money from certain enterprise funds to pay the costs for constructing a fire station; requiring, under certain circumstances, the Committee on Local Government Finance to submit a report related to certain enterprise funds to the Director of the Legislative Counsel Bureau; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires, under certain circumstances, a local government to create an enterprise fund exclusively for building permit fees and fees imposed for the issuance of barricade permits and encroachment permits. Under existing law, money in such an enterprise fund must not be used for any purpose other than the actual direct and indirect costs of the program for the issuance of barricade permits, encroachment permits and building permits, including the cost of checking plans, issuing permits, inspecting buildings and administering the program. (NRS 354.59891)

Section 1 of this bill authorizes the governing body of a county or city to transfer money from the enterprise fund to pay the capital costs of constructing one ~~for more~~ fire ~~stations~~ station if: (1) the transfer does not cause the balance of the unreserved working capital in the enterprise fund to be less than 50 percent of the annual operating costs and capital expenditures for the program for the issuance of barricade permits, encroachment permits and building permits; and (2) the governing body finds that the construction of the fire station is necessary based on an analysis of the need for infrastructure prepared between January 1, 2020, and December 31, 2021. **Section 1** also creates an exception to the requirement for the county or city to reduce the fees it charges for barricade permits, encroachment permits and building permits when the balance in the enterprise fund exceeds a certain amount. **Section 1** further: (1) prohibits the transfer of money from the enterprise fund after December 31, 2021; (2) prohibits money transferred from the enterprise fund from being committed for expenditure after December 31, 2023; and (3) requires any portion of such money remaining to be reverted to the enterprise fund on January 1, 2024. Additionally, section 1 requires the Committee on Local Government Finance to: (1) review the fees imposed for the issuance of a building permit, barricade permit or encroachment permit by any local governing body that transfers money from an enterprise fund for the construction of a

fire station to determine whether such fees are excessive; and (2) submit a report to the Director of the Legislative Counsel Bureau.

Section 2 of this bill indicates the placement of section 1 in the Nevada Revised Statutes. Sections 3 and 4 of this bill create exceptions to existing provisions that restrict the transfer and use of money from an enterprise fund.

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

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

1. The governing body of a county or city that has created an enterprise fund pursuant to NRS 354.59891 may transfer an amount of money from the enterprise fund to pay the capital costs of constructing one ~~for more~~ fire ~~stations~~ station if:

(a) The transfer from the enterprise fund does not cause the balance of unreserved working capital in the enterprise fund to be less than 50 percent of the annual operating costs and capital expenditures for the program for the issuance of barricade permits, encroachment permits and building permits; and

(b) The governing body finds that the construction of the fire station is necessary based on an analysis of the need for infrastructure prepared pursuant to NRS 278.02591 between January 1, 2020, and December 31, 2021.

2. Money transferred from an enterprise fund pursuant to subsection 1 must only be used to pay the capital costs of constructing one fire station.

3. The provisions of subsection 6 of NRS 354.59891 do not apply to a county or city that uses money from the enterprise fund to the extent that the excess of the amount authorized pursuant to paragraph (d) of subsection 4 of NRS 354.59891 is transferred from the enterprise fund to pay the capital costs of constructing ~~for~~ one fire station pursuant to subsection 1.

~~3.~~ 4. No money may be transferred from an enterprise fund pursuant to subsection 1 after December 31, 2021. Any remaining balance of the money transferred from the enterprise fund pursuant to subsection 1 must not be committed for expenditure after December 31, 2023, and any portion of the money remaining must be reverted to the enterprise fund on January 1, 2024.

5. If the governing body of a county or city transfers money from an enterprise fund pursuant to subsection 1, the Committee on Local Government Finance must review the fees imposed by the governing body for the issuance of building permits, barricade permits and encroachment permits and determine whether the fees are excessive. The Committee shall submit a report of its findings to the Director of the Legislative Counsel Bureau for transmittal to the Legislature or, if the Legislature is not in session, to the Legislative Commission. The report must include, without limitation, the findings of the Committee on whether the fees are excessive and any recommendations for additional limitations for the use of money from an enterprise fund created pursuant to NRS 354.59891. Any report required pursuant to this subsection is due one year after the date on which the governing body of the county or city transfers money from an enterprise fund pursuant to subsection 1.

Sec. 2. NRS 354.470 is hereby amended to read as follows:
354.470 NRS 354.470 to 354.626, inclusive, *and section 1 of this act* may be cited as the Local Government Budget and Finance Act.

Sec. 3. NRS 354.59891 is hereby amended to read as follows:
354.59891 1. As used in this section:

1 (a) "Barricade permit" means the official document issued by the building
2 officer of a local government which authorizes the placement of barricade
3 appurtenances or structures within a public right-of-way.

4 (b) "Building permit" means the official document or certificate issued by the
5 building officer of a local government which authorizes the construction of a
6 structure.

7 (c) "Building permit basis" means the combination of the rate and the valuation
8 method used to calculate the total building permit fee.

9 (d) "Building permit fee" means the total fees that must be paid before the
10 issuance of a building permit, including, without limitation, all permit fees and
11 inspection fees. The term does not include, without limitation, fees relating to
12 water, sewer or other utilities, residential construction tax, tax for the improvement
13 of transportation imposed pursuant to NRS 278.710, any fee imposed pursuant to
14 NRS 244.386 or 268.4413 or any amount expended to change the zoning of the
15 property.

16 (e) "Current asset" means any cash maintained in an enterprise fund and any
17 interest or other income earned on the money in the enterprise fund that, at the end
18 of the current fiscal year, is anticipated by a local government to be consumed or
19 converted into cash during the next ensuing fiscal year.

20 (f) "Current liability" means any debt incurred by a local government to
21 provide the services associated with issuing building permits that, at the end of the
22 current fiscal year, is determined by the local government to require payment
23 within the next ensuing fiscal year.

24 (g) "Encroachment permit" means the official document issued by the building
25 officer of a local government which authorizes construction activity within a public
26 right-of-way.

27 (h) "Operating cost" means the amount paid by a local government for
28 supplies, services, salaries, wages and employee benefits to provide the services
29 associated with issuing building permits.

30 (i) "Working capital" means the excess of current assets over current liabilities,
31 as determined by the local government at the end of the current fiscal year.

32 2. Except as otherwise provided in subsections 3 and 4, a local government
33 shall not increase its building permit basis by more than an amount equal to the
34 building permit basis on June 30, 1989, multiplied by a percentage equal to the
35 percentage increase in the Western Urban Nonseasonally Adjusted Consumer Price
36 Index, as published by the United States Department of Labor, from January 1,
37 1988, to the January 1 next preceding the fiscal year for which the calculation is
38 made.

39 3. A local government may submit an application to increase its building
40 permit basis by an amount greater than otherwise allowable pursuant to subsection
41 2 to the Nevada Tax Commission. The Nevada Tax Commission may allow the
42 increase only if it finds that:

43 (a) Emergency conditions exist which impair the ability of the local
44 government to perform the basic functions for which it was created; or

45 (b) The building permit basis of the local government is substantially below
46 that of other local governments in the State and the cost of providing the services
47 associated with the issuance of building permits in the previous fiscal year
48 exceeded the total revenue received from building permit fees, excluding any
49 amount of residential construction tax collected, for that fiscal year.

50 4. Upon application by a local government, the Nevada Tax Commission
51 shall exempt the local government from the limitation on the increase of its
52 building permit basis if:

1 (a) The local government creates an enterprise fund pursuant to NRS 354.612
2 exclusively for building permit fees, fees imposed for the issuance of barricade
3 permits and fees imposed for encroachment permits; *and*

4 (b) *Except as otherwise provided in section 1 of this act:*

5 (1) The purpose of the enterprise fund is to recover the costs of operating
6 the activity for which the fund was created, including overhead;

7 ~~[(c)]~~ (2) Any interest or other income earned on the money in the enterprise
8 fund is credited to the enterprise fund;

9 ~~[(d)]~~ (3) The local government maintains a balance of unreserved working
10 capital in the enterprise fund that does not exceed 50 percent of the annual
11 operating costs and capital expenditures for the program for the issuance of
12 barricade permits, encroachment permits and building permits of the local
13 government, as determined by the annual audit of the local government conducted
14 pursuant to NRS 354.624; and

15 ~~[(e)]~~ (4) The local government does not use any of the money in the enterprise
16 fund for any purpose other than the actual direct and indirect costs of the program
17 for the issuance of barricade permits, encroachment permits and building permits,
18 including, without limitation, the cost of checking plans, issuing permits, inspecting
19 buildings and administering the program. The Committee on Local Government
20 Finance shall adopt regulations governing the permissible expenditures from an
21 enterprise fund pursuant to this ~~[paragraph]~~ *subparagraph*.

22 5. Any amount in an enterprise fund created pursuant to this section that is
23 designated for special use, including, without limitation, prepaid fees and any other
24 amount subject to a contractual agreement, must be identified as a restricted asset
25 and must not be included as a current asset in the calculation of working capital.

26 6. ~~[(b)]~~ *Except as otherwise provided in section 1 of this act, if* a balance in
27 excess of the amount authorized pursuant to *subparagraph (3) of paragraph [(d)]*
28 *(b)* of subsection 4 is maintained in an enterprise fund created pursuant to this
29 section at the close of 2 consecutive fiscal years, the local government shall reduce
30 the fees for barricade permits, encroachment permits and building permits it
31 charges by an amount that is sufficient to ensure that the balance in the enterprise
32 fund at the close of the fiscal year next following those 2 consecutive fiscal years
33 does not exceed the amount authorized pursuant to *subparagraph (3) of paragraph*
34 ~~[(d)] (b)~~ of subsection 4.

35 **Sec. 4.** NRS 354.613 is hereby amended to read as follows:

36 354.613 1. Except as otherwise provided in this section ~~[(b)]~~ *and section 1 of*
37 *this act*, the governing body of a local government may, on or after July 1, 2011,
38 loan or transfer money from an enterprise fund, money collected from fees imposed
39 for the purpose for which an enterprise fund was created or any income or interest
40 earned on money in an enterprise fund only if the loan or transfer is made:

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

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

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

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

51 (II) The purpose of the loan or transfer;

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

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

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

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

9 (d) Upon the dissolution of the enterprise fund.

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

15 (a) The increase is not prohibited by law;

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

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

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

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

30 5. This section must not be construed to:

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

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

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

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

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

47 7. A fee increase imposed in violation of this section must not be invalidated
48 on the basis of that violation. The sole remedy for a violation of this section is the
49 penalty provided in NRS 354.626. Any person who pays a fee for the enterprise for
50 which the enterprise fund is created may file a complaint with the district attorney
51 or Attorney General alleging a violation of this section for prosecution pursuant to
52 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 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 and after July 1, 2021, the provisions of subsection 1 apply to 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, which must include, without limitation, a plan to reduce, by at least 3.3 percent each fiscal year during the term of the plan, the amount of the transfers from the enterprise fund to the general fund of the local government for the purpose of subsidizing the general fund; and

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

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

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

13. The provisions of this section do not apply to an enterprise fund created by the governing body of a local government for the purpose of providing telecommunication services pursuant to the provisions of NRS 710.010 to 710.159, inclusive.

Sec. 4.5. 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.

- 1 **Sec. 5.** 1. This act becomes effective upon passage and approval.
2 2. Sections 1 to 4, inclusive, of this act expire by limitation on June 30, 2024.