

Amendment No. 489

Assembly Amendment to Assembly Bill No. 139 First Reprint	(BDR 31-524)
Proposed by: Assemblyman Yeager	
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.



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.

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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 governments; authorizing the governing body of a county or city to transfer money from certain enterprise funds to pay the costs for constructing ~~for 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;~~ **one or more fire stations;** 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 **or more fire station** ~~stations~~ 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 or more fire [station] stations 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 or more fire [station] stations.

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 [one] a fire station pursuant to subsection 1.

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.

1 **Sec. 3.** NRS 354.59891 is hereby amended to read as follows:

2 354.59891 1. As used in this section:

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

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

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

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

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

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

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

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

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

34 2. Except as otherwise provided in subsections 3 and 4, a local government
35 shall not increase its building permit basis by more than an amount equal to the
36 building permit basis on June 30, 1989, multiplied by a percentage equal to the
37 percentage increase in the Western Urban Nonseasonally Adjusted Consumer Price
38 Index, as published by the United States Department of Labor, from January 1,
39 1988, to the January 1 next preceding the fiscal year for which the calculation is
40 made.

41 3. A local government may submit an application to increase its building
42 permit basis by an amount greater than otherwise allowable pursuant to subsection
43 2 to the Nevada Tax Commission. The Nevada Tax Commission may allow the
44 increase only if it finds that:

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

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

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

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

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

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

~~((e))~~ (2) Any interest or other income earned on the money in the enterprise fund is credited to the enterprise fund;

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

~~((e))~~ (4) The local government does not use any of the money in the enterprise fund 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, without limitation, the cost of checking plans, issuing permits, inspecting buildings and administering the program. The Committee on Local Government Finance shall adopt regulations governing the permissible expenditures from an enterprise fund pursuant to this ~~paragraph~~ *subparagraph*.

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

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

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

354.613 1. Except as otherwise provided in this section ~~((d))~~ *and section 1 of this act*, 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

1 or Attorney General alleging a violation of this section for prosecution pursuant to
2 NRS 354.626.

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

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

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

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

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

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

28 10. On and after July 1, 2021, the provisions of subsection 1 apply to transfers
29 from an enterprise fund described in subsection 9 to the general fund of a local
30 government for the purpose of subsidizing the general fund unless:

31 (a) On or before July 1, 2018, the Committee on Local Government Finance
32 has approved a plan adopted by the governing body of the local government to
33 eliminate transfers from an enterprise fund to subsidize the general fund of the local
34 government that are not made in compliance with subsection 1, which must include,
35 without limitation, a plan to reduce, by at least 3.3 percent each fiscal year during
36 the term of the plan, the amount of the transfers from the enterprise fund to the
37 general fund of the local government for the purpose of subsidizing the general
38 fund; and

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

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

46 12. After the expiration of the term of a plan approved by the Committee on
47 Local Government Finance pursuant to subsection 10, the provisions of subsection
48 1 apply to the local government that adopted the plan.

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

1 **Sec. 4.5.** ~~[[The provisions of subsection 1 of NRS 218D.380 do not apply to~~
2 ~~any provision of this act which adds or revises a requirement to submit a report to~~
3 ~~the Legislature.]~~ (Deleted by amendment.)

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