

ASSEMBLY BILL NO. 351—ASSEMBLYMEN DICKMAN, MOORE, DOOLING; EDWARDS, ELLISON, GARDNER, HANSEN, JONES, KIRNER, MUNFORD, OSCARSON, SHELTON, TITUS AND WHEELER

MARCH 17, 2015

JOINT SPONSORS: SENATORS HARDY; AND SETTELMEYER

Referred to Committee on Education

SUMMARY—Revises provisions relating to projects to benefit charter schools. (BDR 34-1012)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to charter schools; revising the requirements for a project that is financed through bonds to benefit a charter school; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law authorizes the Director of the Department of Business and
- 2 Industry to issue bonds and other obligations to finance the acquisition,
- 3 construction, improvement, restoration or rehabilitation of property, buildings and
- 4 facilities for charter schools if certain criteria are met. Existing law requires a
- 5 charter school for whose benefit a project is being financed to have received, within
- 6 the immediately preceding 3 consecutive school years, one of the two highest
- 7 ratings of performance pursuant to the statewide system of accountability for public
- 8 schools. (NRS 386.630, 386.632, 386.634) **Section 1.8** of this bill instead requires a
- 9 charter school for whose benefit a project is being financed to have received, within
- 10 the immediately preceding 2 consecutive school years, one of the three highest
- 11 ratings of performance pursuant to the statewide system of accountability for public
- 12 schools. **Sections 1-1.4 and 2.2-2.8** of this bill clarify that the Director of the
- 13 Department of Business and Industry has the authority to administer the Charter
- 14 School Financing Law. (NRS 386.612-386.649)
- 15 Under existing law, the State pledges not to repeal, amend or modify the
- 16 Charter School Financing Law in a way that impairs any outstanding bonds until all
- 17 the bonds have been discharged in full or provisions for their payment and
- 18 redemption have been fully made. (NRS 386.646) **Section 3.3** of this bill clarifies



19 that such a pledge must not be construed to bind the State or the Legislature to
20 continue to apportion funds to charter schools or to maintain such apportionments
21 at any existing levels.

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

1 **Section 1.** NRS 386.616 is hereby amended to read as follows:
2 386.616 “Director of the Department of Business and Industry”
3 means the Director of the Department of Business and Industry or
4 any person within the Department of Business and Industry
5 designated by the Director *of the Department of Business and*
6 *Industry* to perform duties in connection with a project or the
7 issuance of bonds pursuant to NRS 386.612 to 386.649, inclusive.

8 **Sec. 1.2.** NRS 386.619 is hereby amended to read as follows:
9 386.619 “Financing agreement” means an agreement by which
10 the Director of the Department of Business and Industry agrees to
11 issue bonds pursuant to NRS 386.612 to 386.649, inclusive, to
12 finance one or more projects and the obligor agrees to:

13 1. Make payments directly or through notes, debentures, bonds
14 or other secured or unsecured debt obligations of the obligor
15 executed and delivered by the obligor to the Director *of the*
16 *Department of Business and Industry* or his or her designee or
17 assignee, including a trustee, sufficient to pay the principal of,
18 premium, if any, and interest on the bonds;

19 2. Pay other amounts required by NRS 386.612 to 386.649,
20 inclusive; and

21 3. Comply with all the applicable provisions of NRS 386.612
22 to 386.649, inclusive.

23 **Sec. 1.4.** NRS 386.630 is hereby amended to read as follows:
24 386.630 When the Director of the Department of Business and
25 Industry has received requests from one or more charter schools,
26 lessees, purchasers or other obligors, the Director *of the Department*
27 *of Business and Industry* may issue revenue bonds to obtain money
28 to fulfill the requests. Title to or in a project may at all times remain
29 in the obligor or the obligor’s designee or assignee and, in that case,
30 the bonds must be secured by a pledge of one or more notes,
31 debentures, bonds or other secured or unsecured debt obligations of
32 the obligor.

33 **Sec. 1.8.** NRS 386.632 is hereby amended to read as follows:
34 386.632 Except as otherwise provided in NRS 386.639, the
35 Director of the Department of Business and Industry shall not
36 finance a project unless, before financing the project, the Director *of*
37 *the Department of Business and Industry* finds and the State Board



1 of Finance approves the findings of the Director *of the Department*
2 *of Business and Industry* that:

3 1. The project consists of any land, building or other
4 improvement, and all real and personal properties necessary in
5 connection therewith, which is suitable for new construction,
6 improvement, restoration or rehabilitation of charter school
7 facilities;

8 2. The charter school for whose benefit the project is being
9 financed is not in default under the written charter or charter
10 contract, as applicable, granted by its sponsor, as determined by the
11 sponsor;

12 3. The charter school for whose benefit the project is being
13 financed has received, within the immediately preceding ~~13~~ 2
14 consecutive school years, one of the ~~two~~ three highest ratings of
15 performance pursuant to the statewide system of accountability for
16 public schools, or has received equivalent ratings in another state, as
17 determined by the Department of Education;

18 4. There are sufficient safeguards to ensure that all money
19 provided by the Director of the Department of Business and
20 Industry will be expended solely for the purposes of the project;

21 5. There are sufficient safeguards to ensure that the Director of
22 the Department of Business and Industry will have the ability to
23 monitor compliance with the provisions of NRS 386.612 to 386.649,
24 inclusive, on an ongoing basis with respect to the project;

25 6. Through the advice of counsel or other reliable source, the
26 project has received all approvals by the local, state and federal
27 governments which may be necessary to proceed with construction,
28 improvement, rehabilitation or redevelopment of the project; and

29 7. There has been a request by a charter school, lessee,
30 purchaser or other obligor to have the Director of the Department of
31 Business and Industry issue bonds to finance the project.

32 **Sec. 2.** (Deleted by amendment.)

33 **Sec. 2.2.** NRS 386.633 is hereby amended to read as follows:

34 386.633 1. Except as otherwise provided in NRS 386.639,
35 before financing a project pursuant to NRS 386.632, the Director of
36 the Department of Business and Industry and the State Board of
37 Finance must:

38 (a) Determine the total amount of money necessary to be
39 provided by the Director of the Department of Business and
40 Industry for financing the project.

41 (b) Except as otherwise provided in this subsection, receive a 5-
42 year operating history from the contemplated charter school, lessee,
43 purchaser or other obligor that will make or guarantee the payment
44 of the principal, premium, if any, and interest on any bond issued.
45 An operating history is not required if the bonds:



1 (1) Are to be sold only to qualified institutional buyers, as
2 defined in Rule 144A of the Securities and Exchange Commission,
3 17 C.F.R. § 230.144A, in minimum denominations of at least
4 \$100,000; or

5 (2) Will receive a rating within one of the top four rating
6 categories of Moody's Investors Service, Inc., Standard and Poor's
7 Rating Services or Fitch IBCA, Inc.

8 (c) Consider whether the contemplated charter school, lessee,
9 purchaser or other obligor that will make or guarantee the payment
10 of the principal, premium, if any, and interest on any bonds issued
11 has received within the 12 months immediately preceding the date
12 of the findings of the Director of the Department of Business and
13 Industry, or then has or has not in effect, a rating within one of the
14 top four rating categories of Moody's Investors Service, Inc.,
15 Standard and Poor's Rating Services or Fitch IBCA, Inc.

16 (d) Consider the extent to which the project is affected by any
17 federal, state or local governmental action, activity, program or
18 development.

19 (e) Consider the length of time the charter school, lessee,
20 purchaser or other obligor of the project has maintained facilities
21 appropriate to the community in this State.

22 2. The Director of the Department of Business and Industry
23 may adopt regulations to set forth additional factors to be considered
24 by the Director *of the Department of Business and Industry* and
25 the State Board of Finance before financing a project pursuant to
26 NRS 386.632.

27 **Sec. 2.4.** NRS 386.634 is hereby amended to read as follows:

28 386.634 1. The Director of the Department of Business and
29 Industry may provide financing for a project pursuant to NRS
30 386.612 to 386.649, inclusive, if:

31 (a) The financing is limited in amount and purpose to the
32 payment of the costs associated with:

33 (1) The acquisition, construction, improvement, restoration
34 or rehabilitation of the project; and

35 (2) The cost of the project;

36 (b) The Director *of the Department of Business and Industry*
37 makes the findings required by NRS 386.632; and

38 (c) The Director *of the Department of Business and Industry*
39 complies with the guidelines established by the Director *of the*
40 *Department of Business and Industry* pursuant to subsection 2.

41 2. The Director of the Department of Business and Industry
42 shall establish guidelines for the provision of financing for a project
43 pursuant to NRS 386.612 to 386.649, inclusive.



1 **Sec. 2.6.** NRS 386.637 is hereby amended to read as follows:
2 386.637 1. Any bonds issued pursuant to NRS 386.612 to
3 386.649, inclusive, must be authorized by an order of the Director of
4 the Department of Business and Industry and must:
5 (a) Be in denominations;
6 (b) Bear the date or dates;
7 (c) Mature at the time or times, not exceeding 40 years after
8 their respective dates;
9 (d) Bear interest at a rate or rates;
10 (e) Be in the form;
11 (f) Carry the registration privileges;
12 (g) Be executed in the manner;
13 (h) Be payable at the place or places within or without the State;
14 and
15 (i) Be subject to the terms of redemption,
16 ↪ as provided by the order authorizing their issuance.

17 2. Any bonds issued pursuant to NRS 386.612 to 386.649,
18 inclusive, may be sold in one or more series at par, or below or
19 above par, in the manner and for the price or prices which the
20 Director of the Department of Business and Industry determines in
21 his or her discretion, and are not required to obtain a credit rating.
22 As an incidental expense to any project to be financed by the bonds,
23 the Director *of the Department of Business and Industry* may
24 employ financial and legal consultants in regard to the financing of
25 the project on an ongoing basis.

26 3. Any bonds issued pursuant to NRS 386.612 to 386.649,
27 inclusive, are fully negotiable under the terms of the Uniform
28 Commercial Code—Investment Securities.

29 **Sec. 2.8.** NRS 386.639 is hereby amended to read as follows:

30 386.639 1. Any bonds issued pursuant to NRS 386.612 to
31 386.649, inclusive, may be refunded by the Director of the
32 Department of Business and Industry by the issuance of refunding
33 bonds in an amount which the Director *of the Department of*
34 *Business and Industry* determines necessary to refund the principal
35 of the bonds to be so refunded, any unpaid interest thereon and any
36 premiums and incidental expenses necessary to be paid in
37 connection with refunding.

38 2. Refunding may be carried out whether the bonds to be
39 refunded have matured or thereafter mature, either by sale of the
40 refunding bonds and the application of the proceeds to the payment
41 of the bonds to be refunded, or by exchange of the refunding bonds
42 for the bonds to be refunded. The holders of the bonds to be
43 refunded must not be compelled, without their consent, to surrender
44 their bonds for payment or exchange before the date on which they
45 are payable by maturity, option to redeem or otherwise, or if they



1 are called for redemption before the date on which they are by their
2 terms subject to redemption by option or otherwise.

3 3. All refunding bonds issued pursuant to this section must be
4 payable solely from revenues and other money out of which the
5 bonds to be refunded thereby are payable or from revenues out of
6 which bonds of the same character may be made payable under this
7 or any other law then in effect at the time of the refunding.

8 4. The Director of the Department of Business and Industry
9 shall not issue refunding bonds unless, before the refinancing, the
10 Director *of the Department of Business and Industry* finds that
11 issuance of refunding bonds will provide a lower cost of financing
12 for the obligor or provide some other public benefit, but the
13 findings, determinations and approval required by NRS 386.632 are
14 not required with respect to refunding bonds issued pursuant to this
15 section.

16 **Sec. 3.** (Deleted by amendment.)

17 **Sec. 3.3.** NRS 386.646 is hereby amended to read as follows:

18 386.646 ~~{The}~~

19 **1. Except as otherwise provided in subsection 2, the** faith of
20 the State is hereby pledged that NRS 386.612 to 386.649, inclusive,
21 will not be repealed, amended or modified to impair any outstanding
22 bonds or any revenues pledged to their payment, or to impair, limit
23 or alter the rights or powers vested in a charter school to acquire,
24 finance, improve and equip a project in any way that would
25 jeopardize the interest of any lessee, purchaser or other obligor, or to
26 limit or alter the rights or powers vested in the Director of the
27 Department of Business and Industry to perform any agreement
28 made with any lessee, purchaser or other obligor, until all bonds
29 have been discharged in full or provisions for their payment and
30 redemption have been fully made.

31 **2. The provisions of subsection 1 must not be construed so as**
32 **to bind the State, the Legislature or any agency of the foregoing**
33 **to continue to apportion funds to charter schools or to maintain such**
34 **apportionments at any existing levels.**

35 **Sec. 3.7.** NRS 386.647 is hereby amended to read as follows:

36 386.647 1. NRS 386.612 to 386.649, inclusive, without
37 reference to other statutes of this State, constitute full authority for
38 the exercise of powers granted in those sections, including, without
39 limitation, the authorization and issuance of bonds.

40 2. No other act or law with regard to the authorization or
41 issuance of bonds that provides for an election, requires an approval,
42 or in any way impedes or restricts the carrying out of the acts
43 authorized by NRS 386.612 to 386.649, inclusive, to be done,
44 applies to any proceedings taken or acts done pursuant to those



1 sections, except for laws to which reference is expressly made in
2 those sections or by necessary implication of those sections.

3 3. The provisions of no other law, either general or local,
4 except as provided in NRS 386.612 to 386.649, inclusive, apply to
5 the doing of the things authorized in those sections to be done, and
6 no board, agency, bureau, commission or official not designated in
7 those sections has any authority or jurisdiction over the doing of any
8 of the acts authorized in those sections to be done, except as
9 otherwise provided in those sections.

10 4. A project is not subject to any requirements relating to
11 public buildings, structures, ground works or improvements
12 imposed by the statutes of this State or any other similar
13 requirements which may be lawfully waived by this section, and any
14 requirement of competitive bidding or other restriction imposed on
15 the procedure for award of contracts for such purpose or the lease,
16 sale or other disposition of property is not applicable to any action
17 taken pursuant to NRS 386.612 to 386.649, inclusive. ~~†, except that
18 the provisions of NRS 338.013 to 338.090, inclusive, apply to any
19 contract for new construction, repair or reconstruction for which
20 tentative approval for financing is granted on or after July 1, 2013,
21 by the Director of the Department of Business and Industry for work
22 to be done on a project.†~~

23 5. Any bank or trust company located within or without this
24 State may be appointed and act as a trustee with respect to bonds
25 issued and projects financed pursuant to NRS 386.612 to 386.649,
26 inclusive, without the necessity of associating with any other person
27 or entity as cofiduciary, but such an association is not prohibited.

28 6. The powers conferred by NRS 386.612 to 386.649,
29 inclusive, are in addition and supplemental to, and not in
30 substitution for, and the limitations imposed by those sections do
31 not affect, the powers conferred by any other law.

32 7. No part of NRS 386.612 to 386.649, inclusive, repeals or
33 affects any other law or part thereof, except to the extent that those
34 sections are inconsistent with any other law, it being intended that
35 those sections provide a separate method of accomplishing its
36 objectives, and not an exclusive one.

37 8. The Director of the Department of Business and Industry or
38 a person designated by the Director *of the Department of Business
39 and Industry* may take any actions and execute and deliver any
40 instruments, contracts, certificates and other documents, including
41 the bonds, necessary or appropriate for the sale and issuance of the
42 bonds or accomplishing the purposes of NRS 386.612 to 386.649,
43 inclusive, without the assistance or intervention of any other officer.



1 **Sec. 4.** This act becomes effective on July 1, 2015.

③



* A B 3 5 1 R 2 *