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4/17/03

## AB 361 EXPLANATION OF AMENDMENTS

AB 361 is designed to provide that if a local government acquires a non-governmental utility system that pays property, franchise and other taxes, the acquiring local government should "make whole" other local governments who might lose taxes as a result of the acquisition - i.e., as a result of the property being acquired by a tax exempt entity.

AB 361, however, as drafted covers certain transactions that may cause local governments of Nevada problems in providing the best water, sewer, and other utility service to the public. For example:

- The bill has in it an exception in that in effect it subordinates payments in lieu of taxes and franchise fees to payments for bonds issued to acquire the public utility or to expand the public utility into an area formerly served by a non-governmental owned utility, but it does not have an exception for existing bonds, refunding bonds, or for bonds issued to improve a system. This will mean that bonds issued for other than an acquisition of a non-governmental utility (or an expansion to serve customers of a non-governmental utility) will be "third lien" bonds - - senior lien bonds under the proposed language would be the acquisition bonds, the "payments in lieu of taxes" would have a second lien on revenue and any additional bonds issued for improvements (or refunding purposes) and perhaps even presently existing bonds would be third lien bonds. This may not result in the best financial reception for bonds issued for governmental utilities, and in particular could create a complex situation for local governments which already have considerable utility debt outstanding.
- The bill would apparently apply, and require payments in lieu of taxes, whenever a local government acquires an existing small non-governmental water or sewer system, even if it acquires that system because of financial distress or public health concerns. This happens in many parts of the State.
- The bill appears to apply to assets that a local government may acquire to serve its own internal needs or to serve the needs of other local governments. (For example, if a local government water utility acquired an asset to serve its own electrical water pumping load, the bill would appear to require that a payment in lieu of taxes be paid on that asset).

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- The bill does not contain an exception in it for assets acquired pursuant to contracts that exist prior to the bill's effective date and thus it may apply to interests in electric assets that local governments have already contracted to acquire.

In order to alleviate the concerns outlined above, but at the same time provide that local governments will be substantially made whole for any lost franchise fees and other taxes as a result of an acquisition of a utility, the attached amendments to AB 361 are proposed. These amendments can be summarized as follows:

A. The first amendment makes it clear that the assessed value of an acquired public utility is the assessed value of what is acquired plus the assessed value of fixed generation, distribution as transmission assets acquired at a later time to serve the territory served by the acquired public utility or any expansions of that territory.

B. Amendment Nos. 2, 3, 7 and 8 are amendments to Sec. 7(3)(b) and 8(3)(a) to make it clear that payments in lieu of taxes required by the bill are subordinate to all payments required on any bonds or other obligations of the local government, including bonds issued for the acquisition or expansion, as well as bonds issued for future improvements to the utility that is acquired or expanded or to a system of which that utility is a part, and bonds issued to refund any of these bonds.

C. Amendments 4 and 10 are to add the following exceptions:

a. the amendment provides the bill would not apply to an acquisition or expansion to the extent the acquisition or expansion served the local government doing the acquisition or expansion or another local government (for example, the bill would not apply if a local government water utility acquired electricity assets to serve its power loads); and

b. the amendment provides the bill would not apply to acquisitions pursuant to contracts executed before January 1, 2003 or any improvements to those acquisitions.

Amendment 10 also adds the following exception:

c. the amendment provides the bill would not apply to the acquisition of a utility providing water or sewer service if the taxable value of the property being acquired, excluding water rights, is less than \$10 million.

D. The other amendments are conforming language amendments.

In addition to a copy of the amendments to the bill, a copy of the original bill in which the amendments outlined above have been underlined, is attached.

**AB 361 - PROPOSED AMENDMENTS**

1. Amend Sec. 7, page 2, line 23 by inserting the following after "utility":

*That assessed valuation shall equal the assessed valuation of all assets acquired by the local government from the public utility and the assessed valuation of the fixed generation, transmission and distribution assets constructed, improved or acquired by the local government after the acquisition of the public utility to serve the territory served by the public utility and any expansions thereof.*

2. Amend Sec. 7, page 3, line 18 by inserting the following at the end of that lien:

*or other obligations of the local government, including, without limitation, any bonds or other securities*

3. Amend Sec. 7, page 3, line 19 by inserting the following after "utility"

*or any improvements to the public utility so acquired or expanded or the system of which that public utility becomes a part, or a refunding of any such bonds or other securities*

4. Amend Sec. 7, page 3, by inserting the following between lines 23 and 24:

*(d) apply to any acquisition by a local government described in subsection (1) to the extent it provides service to that local government or to other local governments.*

*(e) apply to any acquisition by a local government as described in subsection (1) pursuant to a written agreement which was executed on or before January 1, 2003, or to any improvements to any facilities to be acquired pursuant to any such written agreement.*

5. Amend Sec. 8, page 4 by deleting "require a" in line 1.
6. Amend Sec. 8, page 4 by inserting "require a" after "(a)" in line 2.

7. Amend Sec. 8, page 4, line 6 by inserting the following at the end of that line:

*or other obligations of the local government, including, without limitation, any bonds or other securities*

8. Amend Sec. 8, page 4, line 8 by inserting the following after "facilities,":

*or any improvements to the public utility so acquired or expanded or the system of which that public utility becomes a part, or a refunding of any such bonds or other securities.*

9. Amend Sec. 8, page 4, line 11 by inserting "require a" after "(b)."

10. Amend Sec. 8, page 4, by inserting the following between lines 13 and 14:

*(c) apply to the acquisition of a water or sewer utility or expansion of facilities which provide water or sewer services if the taxable value as defined in NRS 361.043 of the property being acquired or of the property which will furnish the expansion at the time of the acquisition or expansion, is less than \$10 million exclusive of the value of any water rights.*

*(d) apply to any acquisition or expansion by a local government described in subsection (1) to the extent it provides service to that local government or to other local governments.*

*(e) apply to any acquisition or expansion by a local government as described in subsection (1) pursuant to a written agreement which was executed on or before January 1, 2003, or to any improvements to any facilities to be acquired pursuant to any such written agreement.*

**MARKKUP OF AB 361 Showing Proposed Amendments. 4/17/03**

**ASSEMBLY BILL NO. 361**

Referred to Committee on Taxation

**SUMMARY**—Requires local governments that acquire certain public utilities or expand certain facilities for utility service to make certain payments or provide certain compensation in lieu of taxes and franchise fees. (BDR 32-627)

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

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

Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15)

**AN ACT** relating to local governmental finances; requiring local governments that acquire certain public utilities or expand certain facilities for utility service to make certain payments or provide certain compensation in lieu of taxes and franchise fees; and providing other matters properly relating thereto.

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

- 1-1 Section 1. Chapter 360 of NRS is hereby amended by adding
- 1-2 thereto the provisions set forth as sections 2 to 10, inclusive, of this
- 1-3 act.
- 1-4 Sec. 2. *As used in sections 2 to 10, inclusive, of this act,*
- 1-5 *unless the context otherwise requires, the words and terms defined*
- 1-6 *in sections 3 to 6, inclusive, of this act have the meanings ascribed*
- 1-7 *to them in those sections.*
- 1-8 Sec. 3. *“Affected local government” means any local*
- 1-9 *government that will receive less money from state or local taxes*
- 1-10 *or franchise fees or from payments in lieu of those taxes or*
- 1-11 *franchise fees, or less compensation from another local*
- 1-12 *government pursuant to section 8 of this act, as a direct result of*

2-1 the acquisition of any public utility or expansion of any facilities  
2-2 by a local government as provided in section 8 of this act.

2-3 Sec. 4. "Local government" means any city, county, district  
2-4 or other political subdivision of this state.

2-5 Sec. 5. "Public utility" means any privately, publicly or  
2-6 cooperatively owned system for providing a utility service to the  
2-7 public or a segment of the public.

2-8 Sec. 6. "Telecommunications service" has the meaning  
2-9 ascribed to it in 47 U.S.C. § 153(46), as that section existed on  
2-10 July 1, 2003.

2-11 Sec. 7. 1. Except as otherwise provided in this section, if on  
2-12 or after July 1, 2003, a local government acquires from another  
2-13 entity a public utility that provides electric service, natural gas  
2-14 service, telecommunications service or community antenna  
2-15 television service:

2-16 (a) The local government shall make payments in lieu of and  
2-17 equal to all state and local taxes and franchise fees from which the  
2-18 local government is exempt but for which the public utility would  
2-19 be liable if the public utility was not owned by a governmental  
2-20 entity; and

2-21 (b) The Nevada Tax Commission shall, solely for the purpose  
2-22 set forth in this paragraph, annually determine and apportion the  
2-23 assessed valuation of the property of the public utility. That assessed valuation shall equal the assessed valuation of all assets acquired by the local government from the public utility and the assessed valuation of the fixed generation, transmission and distribution assets constructed, improved or acquired by the local government after the acquisition of the public utility to serve the territory served by the public utility and any expansions thereof. For the

2-24 purpose of calculating any allocation or apportionment of money  
2-25 for distribution among local governments pursuant to a formula  
2-26 required by state law which is based partially or entirely on the  
2-27 assessed valuation of taxable property:

2-28 (1) The property of the public utility shall be deemed to  
2-29 constitute taxable property to the same extent as if the public  
2-30 utility was not owned by a governmental entity; and

2-31 (2) To the extent that the property of the public utility is  
2-32 deemed to constitute taxable property pursuant to this paragraph:

2-33 (I) The assessed valuation of that property must be  
2-34 included in that calculation as determined and apportioned by the  
2-35 Nevada Tax Commission pursuant to this paragraph; and

2-36 (II) The payments required by paragraph (a) in lieu of  
2-37 any taxes that would otherwise be required on the basis of the  
2-38 assessed valuation of that property shall be deemed to constitute  
2-39 payments of those taxes.

2-40 2. The payments in lieu of taxes and franchise fees required  
2-41 by subsection 1 are due at the same time and must be collected,  
2-42 accounted for and distributed in the same manner as those taxes  
2-43 and franchise fees would be due, collected, accounted for and  
2-44 distributed if the public utility was not owned by a governmental  
2-45 entity, except that no lien attaches upon any property or money of

3-1 the local government by virtue of any failure to make all or any  
3-2 part of those payments. The local government may contest the  
3-3 validity and amount of any payment in lieu of a tax or franchise  
3-4 fee to the same extent as if that payment was a payment of the tax  
3-5 or franchise fee itself. The payments in lieu of taxes and franchise  
3-6 fees must be reduced if and to the extent that such a contest is  
3-7 successful.

3-8 3. The provisions of this section do not:

3-9 (a) Apply to the acquisition by a local government of a public  
3-10 utility owned by another governmental entity, except a public  
3-11 utility owned by another local government for which any payments  
3-12 in lieu of state or local taxes or franchise fees was required before  
3-13 its acquisition as provided in this section.

3-14 (b) Require a local government to make any payments in lieu  
3-15 of taxes or franchise fees to the extent that the making of those  
3-16 payments would cause a deficiency in the money available to the  
3-17 local government to make required payments of principal of,  
3-18 premium, if any, or interest on any bonds or other securities or other obligations  
3-19 of the local government, including, without limitation, any bonds or other securities  
issued to finance the acquisition of that public utility or any improvements to the  
public utility or the system of which that public utility becomes a part, or a refunding of  
any such bonds or other securities or to make

3-20 required payments to any funds established under the proceedings  
3-21 under which those bonds or other securities were issued.

3-22 (c) Require a county to duplicate any payments in lieu of taxes  
3-23 required pursuant to NRS 244A.755.

(d) apply to any acquisition by a local government described in  
subsection (1) to the extent it provides service to that local government or  
to other local governments.

(e) apply to any acquisition by a local government as described in  
subsection (1) pursuant to a written agreement which was executed on or  
before January 1, 2003, or to any improvements to any facilities to be  
acquired pursuant to any such written agreement.

3-24 Sec. 8. 1. Except as otherwise provided in this section, if on  
3-25 or after July 1, 2003, a local government:

3-26 (a) Acquires from another entity a public utility that provides  
3-27 water service or sewer service or

3-28 (b) Expands facilities for the provision of water service, sewer  
3-29 service, electric service, natural gas service, telecommunications

3-30 service or community antenna television service, and the  
3-31 expansion results in the local government serving additional retail  
3-32 customers who were, before the expansion, retail customers of a  
3-33 public utility which provided that service,

3-34 the local government shall enter into an interlocal agreement with  
3-35 each affected local government to compensate the affected local

3-36 government each fiscal year, as nearly as practicable, for the  
3-37 amount of any money from state and local taxes and franchise  
3-38 fees and from payments in lieu of those taxes and franchise fees,  
3-39 and for any compensation from a local government pursuant to  
3-40 this section, the affected local government would be entitled to



3-41 receive but will not receive because of the acquisition of that  
3-42 public utility or expansion of those facilities as provided in this  
3-43 section.  
3-44 2. An affected local government may waive any or all of the  
3-45 compensation to which it may be entitled pursuant to subsection 1.

4-1 3. ~~The provisions of this section do not require a:~~

4-2 (a) require a local government to provide any compensation to an

4-3 affected local government to the extent that the provision of that

4-4 compensation would cause a deficiency in the money available to

4-5 the local government to make required payments of principal of,

4-6 premium, if any, or interest on any bonds or other securities or other obligations

4-7 of the local government, including, without limitation, any bonds or other securities

4-8 issued to finance the acquisition of that public utility or expansion

4-9 of those facilities or any improvements to the public utility so acquired or

4-10 expanded or the system of which that public utility becomes a part, or a refunding of

4-11 any such bonds or other securities, or to make required payments to any funds

4-12 established under the proceedings under which those bonds or

4-13 other securities were issued.

4-11 (b) require a county to duplicate any compensation an affected local

4-12 government receives from any payments in lieu of taxes required

4-13 pursuant to NRS 244A.755.

(c) apply to the acquisition of a water or sewer utility or expansion

of facilities which provide water or sewer services if the taxable value as

defined in NRS 361.043 of the property being acquired or of the property

which will furnish the expansion at the time of the acquisition or

expansion, is less than \$10 million exclusive of the value of any water

rights.

(d) apply to any acquisition or expansion by a local government

described in subsection (1) to the extent it provides service to that local

government or to other local governments.

(e) apply to any acquisition or expansion by a local government as

described in subsection (1) pursuant to a written agreement which was

executed on or before January 1, 2003, or to any improvements to any

facilities to be acquired pursuant to any such written agreement.

4-14 Sec. 9. 1. If a local government and an affected local

4-15 government cannot reach agreement pursuant to section 8 of this

4-16 act, either party may submit to the Executive Director its proposal

4-17 for the terms of an interlocal agreement, together with any

4-18 information it deems appropriate relating to such an agreement.

4-19 Within 30 days after the receipt of that proposal, the Executive

4-20 Director shall:

4-21 (a) Provide to the other party:

4-22 (1) A copy of the proposal and any information received

4-23 with the proposal; and

4-24 (2) An opportunity to submit its proposal for the terms of an

4-25 interlocal agreement and any information that party deems

4-26 appropriate relating to such an agreement;

4-27 (b) Review each proposal and any other information submitted

4-28 by the parties; and

4-29 (c) Submit to the Committee on Local Government Finance

4-30 his findings regarding the terms of a fair and equitable interlocal

4-31 agreement.

4-32 2. Within 30 days after the receipt of the findings of the

4-33 Executive Director pursuant to subsection 1, the Committee on

4-34 Local Government Finance shall:

4-35 (a) Review those findings; and

4-36 (b) *Submit to the Nevada Tax Commission its*  
4-37 *recommendations for the terms of a fair and equitable interlocal*  
4-38 *agreement.*  
4-39 *3. The Nevada Tax Commission shall schedule a public*  
4-40 *hearing within 30 days after the Committee on Local Government*  
4-41 *Finance submits its recommendations pursuant to subsection 2.*  
4-42 *The Nevada Tax Commission shall provide public notice of the*  
4-43 *hearing at least 10 days before the date on which the hearing will*  
4-44 *be held. The Executive Director shall provide copies of all*  
4-45 *documents relevant to the recommendations of the Committee on*

5-1 *Local Government Finance to each of the parties. After the*  
5-2 *hearing, the Nevada Tax Commission shall notify the parties of its*  
5-3 *determination of the terms of a fair and equitable interlocal*  
5-4 *agreement.*  
5-5 *4. Within 30 days after the parties receive notification of the*  
5-6 *determination of the Nevada Tax Commission pursuant to*  
5-7 *subsection 3, the parties shall enter into an interlocal agreement*  
5-8 *in accordance with that determination.*  
5-9 *Sec. 10. The Nevada Tax Commission shall adopt such*  
5-10 *regulations as it deems appropriate to carry out the provisions of*  
5-11 *sections 2 to 10, inclusive, of this act.*  
5-12 *Sec. 11. This act becomes effective on July 1, 2003.*