Analysis of AB 54

Amendments to Severe Financial Emergency Statutes

Testimony from Terry E. Rubald

Deputy Executive Director, Department of Taxation

The majority of the bill updates the laws regarding technical financial assistance and severe financial emergency, including the processes used to arrive at a determination that a local government is in severe financial emergency, what happens during severe financial emergency, and what needs to happen to either end severe financial emergency or otherwise come to closure if financial stability cannot be obtained for the local government.

Severe financial emergency basically means that a local government is close to financial insolvency; it means that it cannot continue to pays its bills. Since there is no state law granting a local government the ability to seek Chapter 9 bankruptcy protection, the severe financial emergency laws provide a process for allowing the State to take over the financial management of the local government, which is akin to a state of receivership. If the State is unable to make the local government solvent within 3 years' time, then the next step is possible dissolution of the local government, or raising the property tax rate to the maximum $5.00 if the voters do not approve dissolution.

There is currently in the law a laundry list of 27 conditions, which, if they are present, would indicate that the local government is in financial distress. The financial distress experienced by a local government, however, is a matter of degree. The 27 conditions listed in NRS 354.685 on pages 8 and 9 of the bill are indicators that a local government is having problems, but some indicators are more serious or occur more frequently than others. Perhaps a local government is only late with reports because the person filling out the forms doesn't understand how to fill out the forms, or how to prepare a budget, and the fix is really for the Department to provide some additional training. On the other hand, having insufficient cash to meet payroll is pretty serious. That's why there are different levels of assistance – the Department can provide technical financial assistance if the degree of financial distress is less; or, if the financial distress is so great that the local government is in danger of becoming insolvent, we can go through the process of declaring the entity to be in severe financial emergency and actually make the financial decisions for the local government until such time as the local government gets back on its feet.

Sections 4 and 5

Section 4 has actually very little to do with severe financial emergency, although it is in the same section. The intention of NRS 354.665 is to provide a tool to gain the cooperation of the local government when it is seriously delinquent in submitting the various reports that are due to the Department. If the local government refuses to cooperate then there is a process of notification, and a hearing to provide an opportunity to explain why the reports were late. If the explanation is not satisfactory, the Committee may instruct the executive Director to request the State Treasurer to withhold the next CTX distribution. What this bill proposes to amend is to expand the list of the types of distributions that can be withheld, because not all types of local governments receive CTX distributions. The amendment in Section 4, sub-paragraph 3 provides that other types of property taxes or net proceeds which the state collects could be withheld until such time as the local government begins to turn in the delinquent reports.

Section 5 is just like Section 4, except that it pertains specifically to late payments to the Public Employees' Benefits Program. PEBS can bring to the Department's attention that payments are delinquent. We go through the notice and hearing process, and if the explanation for the delinquency is not satisfactory to the Committee on Local Government Finance, then again, CTX can be withheld and the monies withheld can be used to bring PEBS payments current. What this bill proposes to do is to expand the list, just like in Section 4, to include property taxes and net proceeds taxes that are collected by the State and distributed to local governments, because, as I mentioned before, not every local government receives CTX whereas they might receive centrally-assessed property taxes or net proceeds taxes.

Section 6

First, Section 6, starting on page 6 of the bill, introduces the concept of a fiscal watch, if the Department determines that one or more of the conditions leading to severe financial emergency exists. A fiscal watch is simply the monitoring of a local government and begins upon written notice by the Department to the local government, CLGF and the Tax Commission. A fiscal watch continues until such time as the executive director determines that those conditions no longer exist. If a local government is placed on the fiscal watch list, that government may then request technical financial assistance. The Tax Commission ultimately determines whether to order the Department to provide technical financial assistance, and CLGF would provide its recommendations at a hearing. Technical financial assistance would continue to be provided until the Tax Commission orders it stopped. The Department or the local government could request the Tax Commission to issue the stop order.

By amending NRS 354.675 in this way, the Department can bring to the attention of CLGF and the Tax Commission, as well as the local government, that it finds one or more of the financial conditions present that needs to be addressed, without necessarily going directly to severe financial emergency. It's important to call attention to conditions early so that the local government can fix the problem itself, and to have a heightened awareness with CLGF and the Tax Commission that something is amiss and may need further attention. In addition, once on the fiscal watch list, the local government can request technical financial assistance, which is defined in Section 2 subparagraph 9 as assistance with developing budgets, reviewing contracts, analyzing cost allocations, debt management, feasibility analyses, and revenue forecasting.

Section 7

Section 7 starting on page 7 of the bill provides that CLGF will conduct hearings to determine whether a condition of severe financial emergency exists, upon receiving a recommendation from the Department that one or more of the triggering events is in existence. Section 7 on page 9 of the bill also proposes two additional conditions that may indicate severe financial emergency, and they include whether the ending fund balance of the general fund is less than 4 percent; and the second one is if the local government has failed to pay the FUTA tax.

Section 7, subparagraph 3 on page 9 of the bill also allows the local government to request a hearing to determine whether a severe financial emergency exists, without waiting for the Department to make the determination, if the majority of the members of the governing body determines that litigation or threatened litigation will result in severe financial emergency. Although it appears in the bill as new language, it is actually incorporating some of the language previously in law in NRS 354.686 which is proposed for **repeal on page 25 of the bill**. Right now, current law allows the local government to submit a request for takeover to the Tax Commission, and the Tax Commission "shall" order the Department to take over the management of the local government, no questions asked. What this language proposes is that instead of the Tax Commission immediately ordering the Department to take over the local government upon receiving such a request, instead, we're introducing a little more process to consider whether going straight to severe financial emergency is necessary and prudent by allowing a hearing or hearings to take place first. The language requiring immediate takeover is omitted in this amendment. The idea is to provide for a hearing to let all parties associated with the litigation provide information and evidence to the Committee to see if severe financial emergency is really the best solution.

The balance of Section 7 on pages 9 and 10 of the bill clarifies procedures and the due process necessary prior to declaring severe financial emergency. The Committee would determine whether a recommendation should be made to the Tax Commission to declare severe financial emergency, and would provide notice of its findings. The process begins by requiring the local government to submit an action plan. That's in subparagraph 5 of Section 7, at the bottom of page 9. CLGF reviews that plan, provides its feedback, and could decide just to monitor the situation and conduct additional hearings to review the financial operations of the local government. However, if CLGF ultimately recommends severe financial emergency, then CLGF notifies the Tax Commission. Once the Commission receives the notice and recommendations from CLGF, it would hold a hearing at which CLGF would recommend a course of action to mitigate the financial conditions causing the severe financial emergency.

Section 7, subparagraph 9 at page 10 of the bill also introduces the notion that contiguous local governments to a city being considered for severe financial emergency should also be notified and given an opportunity to be heard, because they might be asked to provide some of the services during the emergency or thereafter.

Sections 8 and 9

Section 8, starting at page 11 of the bill, amends NRS 354.695, which lists the powers and responsibilities of the Department after severe financial emergency is declared and the Department is ordered to take over the management of the local government. **Section 9, starting at page 12 of the bill** amends NRS 354.705 which talks about the total revenue and expenditures needed to perform the basic functions of the local government and the process for declaring severe financial emergency.

Section 8, starting at page 11 of the bill, addresses the powers and duties of the Department. Many of those powers and duties have to do with expense mitigation. First, there is also an amendment to **Section 8 subparagraph(1)(g) at line 30 on page 11** that permits the Department to negotiate and approve all future collective bargaining agreements and other employee contracts, except for those issues that go to arbitration. In addition, if the severe financial emergency exists because it meets certain of the conditions in NRS 354.685, then the Department can also open and renegotiate in good faith any existing collective bargaining agreements or other employment contracts. The language you see in subparagraphs 1(g) and (h) is the result of working with employee unions and other interested parties to obtain consensus language.

Going on, Section 8, subparagraph (1)(k) also provides that the Department can meet with creditors of the local government to formulate a debt liquidation plan. The new language specifies that a debt liquidation program could include the extension of bond payments and reduction in interest rates by exchanging existing bonds for new bonds. The language you see there in (k) is also compromise language resulting from working with interested debt holders and bond insurers.

Section 8, subparagraph 5 of the bill clarifies that if a financial manager is appointed, that person is responsible to the Department, rather than to the local government.

Under Section 9, subparagraph 2 back on page 13 of the bill, if expense mitigation isn't enough and additional revenue is also needed, the plan must also be adopted by the Tax Commission. If the Tax Commission revises the plan, the revisions must also be approved by the panel members from CLGF. **Subparagraph 5 of Section 9 at the top of page 15 of the bill** permits the levy of additional property tax at the next quarterly payment due date, even if the taxes previously imposed have been partially or fully paid. That would help address cash flow problems in a more timely manner.

Section 11

Going back to Section 11, starting on page 16 of the bill, provides a two year period rather than a one year period to repay any amounts loaned from the Severe Financial Emergency Fund.

Section 12

Section 12 starting at the bottom of page 16 of the bill amends NRS 354.723, which are the procedures that occur when the Committee makes a finding that severe financial emergency is unlikely to cease to exist within 3 years. The Committee submits its findings and recommendations to the Tax Commission. If the Tax Commission adopts CLGF's recommendation and findings, then the Commission could require the submission of a question of dis-incorporation to the voters or require the local government to take any other remedial action in accordance with the recommendations and findings of CLGF.