Assembly Bill No. 251--Assemblymen Dini, Getto and Bergevin

CHAPTER.....

AN ACT relating to the financing of water projects; creating a board; providing for its organization, powers and duties; providing for the issuance of state securities; making an appropriation; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 349 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 28, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 28, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this act, have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Board" means the board for financing water projects.*

**Sec. 4.** *"Cost of a water project" means all or a designated part of the cost of any water project, including any incidental cost pertaining to the water project. The cost of a water project may include, among other costs, the costs of:*

*1. Surveys, audits, preliminary plans, other plans, specifications, estimates and other costs of preparations;*

*2. Appraising, printing, estimating, advice, services of engineers, architects, financial consultants, attorneys, clerical personnel and other agents and employees;*

*3. Publishing, posting, mailing and otherwise giving notice, filing or recording instruments, taking options and fees to banks;*

*4. Establishment of a reserve for contingencies;*

*5. Interest on bonds for any time which does not exceed the estimated period of construction plus 1 year, discounts on bonds, reserves for the payment of the principal of and interest on bonds, replacement expenses and other costs of issuing bonds;*

*6. Amending any resolution or other instrument authorizing the issuance of, or otherwise relating to, bonds for the water project; and*

*7. Short-term financing,*

*and the expense of operation and maintenance of the water project.*

**Sec. 5.** *"Director" means the director of the department of commerce or any person within the department of commerce designated by him to perform duties in connection with a water project or the issuance of bonds.*

**Sec. 6.** *"Expense of operation and maintenance" means any reasonable and necessary current expense of the state for the operation, maintenance or administration of a water project or of the collection and administration of revenues from a water project. The term includes, among other expenses:*

*1. Expenses for engineering, auditing, reporting, legal services and other expenses of the director which are directly related to the administration of water projects.*

*2. Premiums for fidelity bonds and policies of property and liability insurance pertaining to water projects, and shares of the premiums of blanket bonds and policies which may be reasonably allocated to the state.*

*3. Payments to pension, retirement, health insurance and other insurance funds.*

*4. Reasonable charges made by any paying agent, commercial bank, trust company or other depository bank pertaining to any bonds.*

*5. Services rendered under the terms of contracts, services of professionally qualified persons, salaries, administrative expenses and the cost of materials, supplies and labor pertaining to the issuance of any bonds, including the expenses of any trustee, receiver or other fiduciary.*

*6. Costs incurred in the collection and any refund of revenues from the water project, including the amount of the refund.*

**Sec. 7.** *"Mortgage" includes a deed of trust and any other security agreement covering real or personal property, or both.*

**Sec. 8.** *"Obligor" means the natural person, partnership, firm, company, public utility, corporation, association, trust, estate, political subdivision, state agency or any other legal entity, or its legal representative, who agrees to make the payments sufficient to pay the principal of, premium, if any, and interest on the state securities or revenue bonds issued pursuant to sections 2 to 28, inclusive, of this act.*

**Sec. 9.** *"Revenue bonds" means bonds, notes or other securities evidencing a special limited obligation of the state, the principal and interest of which are payable solely out of revenues derived from the financing, leasing or sale of the water project to be financed.*

**Sec. 10.** *"State securities" means notes, warrants, interim debentures, bonds and temporary bonds issued as general obligations by the director for any water project or for a refunding which are payable from taxes, whether or not additionally secured by a pledge of all or any designated revenues of one or more water projects.*

**Sec. 11.** *"Tax" means a general tax upon property.*

**Sec. 12.** *"Water project" means a project for the management, control, delivery, use or distribution of water.*

**Sec. 13.** *The director has all the powers necessary to accomplish the purposes set forth in sections 2 to 28, inclusive, of this act. These powers must be exercised for the health, safety, convenience, prosperity and welfare of the inhabitants of this state. He may adopt such regulations as are necessary to carry out the provisions of sections 2 to 28, inclusive, of this act.*

**Sec. 14.** *Sections 2 to 28, inclusive, of this act, must be liberally construed to effectuate the purposes of those sections.*

**Sec. 15.** *The director shall not finance a water project unless, before financing:*

*1. The water project has been finally approved by the board after a public hearing on the matter.*

*2. The director finds and the state board of examiners approves the findings of the director that:*

*(a) The contemplated lessee, purchaser or other obligor has sufficient financial resources to place the water project in operation and to continue its operation, meeting the obligations of the lease, purchase contract or financing agreement;*

*(b) There are sufficient safeguards to assure that all money provided by the director will be expended solely for the purposes of the water project; and*

*(c) The total amount of money necessary to be provided by the director for financing the water project has been determined in writing by the board on a form acceptable to the director.*

*3. For the issuance of state securities, the director and the state board of examiners have received and approved the authorizing documents showing the legal authority for the obligor to borrow and repay the proceeds of the state securities.*

*4. For the issuance of revenue bonds, the director and the state board of examiners have received and approved:*

*(a) The financial plan showing that the revenues to be derived from the water project are adequate to pay the principal and interest on such bonds;*

*(b) A 5-year operating history from the contemplated lessee, purchaser or other obligor or from a parent or other guarantor, who guarantees the payments of principal and interest on any bonds issued; and*

*(c) A written statement from the obligor affirming that the obligor does not undertake to commit the state, and any political subdivision or municipality thereof to incur any pecuniary liability in connection with the issuance of the bonds.*

**Sec. 16.** *1. The bonds must be authorized by an order of the director, and must:*

*(a) Be in the denominations;*

*(b) Bear the date or dates;*

*(c) Mature at the time or times, not exceeding 30 years after their respective dates;*

*(d) Bear interest at a rate or rates specified in the order;*

*(e) Be in the form;*

*(f) Carry the registration privileges;*

*(g) Be executed in the manner;*

*(h) Be payable at the place or places within or without the state; and*

*(i) Be subject to the terms of redemption,*

*which the order authorizing their issue provides.*

*2. The bonds may be sold in one or more series at par, or below or above par, in the manner and for the price or prices which the director determines in his discretion.*

*3. State securities must be authorized by resolution of the board of examiners at the request of the director.*

*4. As an incidental expense to any water project to be financed by the bonds, the director may employ:*

*(a) Financial and legal consultants in regard to the financing of the water project; and*

*(b) A person whose business is in Nevada or elsewhere to act as a trustee for the water project.*

*5. The bonds are fully negotiable under the terms of the Uniform Commercial Code--Investment Securities.*

**Sec. 17.** *1. The director may, to pay the cost of any water project, borrow money or otherwise become obligated, and may provide evidence of those obligations by issuing, except as otherwise provided in this subsection, state securities or revenue bonds. If the obligor is not a governmental entity, the director shall issue only revenue bonds to fulfill the obligation.*

*2. State obligations may be outstanding pursuant to this section in an aggregate principal amount of not more than $200,000,000.*

*3. State securities must be payable from taxes and may be additionally secured by all or any designated revenues from one or more water projects. Any governmental entity statutorily authorized to levy taxes for the payment of bonded indebtedness may use the proceeds of those taxes to pay the principal of, interest on and redemption premiums due in connection with state securities issued pursuant to this section. Any such state securities may be issued without an election or other preliminaries. No state securities may be issued to refund any municipal securities issued to finance a water project before July 1, 1987.*

*4. Provisions of NRS 349.150 to 349.364, inclusive, which are not inconsistent with the provisions of sections 2 to 28, inclusive, of this act, apply to the issuance of state securities under this section. Provisions of NRS 349.400 to 349.670, inclusive, which are not inconsistent with the provisions of sections 2 to 28, inclusive, of this act, apply to the issuance of revenue bonds under this section.*

*5. The legislature finds and declares that the issuance of state securities pursuant to sections 2 to 28, inclusive, of this act, is necessary for the protection and preservation of the natural resources of this state and for the purpose of obtaining the benefits thereof, and constitutes an exercise of the authority conferred by the second paragraph of section 3 of article 9 of the constitution of the State of Nevada.*

**Sec. 18.** *1. The director may charge the obligor a fee not to exceed 2 percent of the principal amount of the financing, payable either in advance or at the time the bonds are issued. The director shall deposit all money received pursuant to this section with the state treasurer for credit to the fund for the financing of water projects.*

*2. Whether or not bonds are issued, the director shall use any fee so collected to reimburse his office for the expenses and costs incurred in financing the water project and, within the limits of money available for this purpose, to reimburse a municipality pursuant to the provisions of section 28 of this act. Any portion of the fee which exceeds the director's expenses and costs must be refunded to the obligor.*

**Sec. 19.** *1. Except as otherwise provided in subsection 3, all amounts received by the director from an obligor in connection with any financing undertaken pursuant to sections 2 to 28, inclusive, of this act, must be deposited with the state treasurer for credit to the fund for the financing of water projects in the state treasury, which is hereby created.*

*2. Any revenue from water projects financed with state securities which is in the fund must be applied in the following order of priority:*

*(a) Deposited into the consolidated bond interest and redemption fund in amounts necessary to pay the principal of, interest on and redemption premiums due in connection with state securities issued for water projects.*

*(b) Deposited into any reserve account created for the payment of the principal of, interest on and redemption premiums due in connection with state securities issued for water projects, in amounts and at times determined to be necessary.*

*(c) Paid out for expenses of operation and maintenance.*

*3. Any revenue from water projects financed with revenue bonds may:*

*(a) Be deposited in the fund for the financing of water projects and subject to the provisions of subsection 2; or*

*(b) Subject to any agreement with the holders of the bonds, be invested, deposited or held by the director in such funds or accounts as he deems necessary or desirable. If the director is acting pursuant to this subsection, he need not deposit the money in the state treasury and the provisions of chapters 355 and 356 of NRS do not apply to any investments or deposits made pursuant to this subsection.*

**Sec. 20.** *1. Any bonds issued under the provisions of sections 2 to 28, inclusive, of this act, may be refunded by the director by the issuance of refunding bonds in an amount which he deems necessary to refund the principal of the bonds to be so refunded, any unpaid interest thereon and any premiums and incidental expenses necessary to be paid in connection with refunding.*

*2. Refunding may be carried out whether the bonds to be refunded have matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds to the payment of the bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded. The holders of the bonds to be refunded must not be compelled, without their consent, to surrender their bonds for payment or exchange before the date on which they are payable by maturity, option to redeem or otherwise, or if they are called for redemption before the date on which they are by their terms subject to redemption by option or otherwise.*

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

**Sec. 21.** *No action may be brought questioning the legality of any contract, lease, agreement, indenture, mortgage, order or bonds executed, adopted or taken in connection with any water project or improvements authorized by sections 2 to 28, inclusive, of this act, after 30 days after the effective date of the order of the director authorizing the issuance of those bonds.*

**Sec. 22.** *The faith of the state is hereby pledged that sections 2 to 28, inclusive, of this act, will not be repealed, amended or modified to impair any outstanding bonds or any revenues pledged to their payment, or to impair, limit or alter the rights or powers vested in a city or county to acquire, finance, improve and equip a water project in any way that would jeopardize the interest of any lessee, purchaser or other obligor, or to limit or alter the rights or powers vested in the director to perform any agreement made with any lessee, purchaser or other obligor, until all bonds have been discharged in full or provisions for their payment and redemption have been fully made.*

**Sec. 23.** *A water project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this state or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose*

*or the lease, sale or other disposition of property is not applicable to any action taken pursuant to sections 2 to 28, inclusive, of this act.*

**Sec. 24.** *1. The board for financing water projects is hereby created. The board consists of five members appointed by the governor.*

*2. The governor shall appoint:*

*(a) Four persons who are:*

*(1) Residents of this state; and*

*(2) Knowledgeable and experienced in the fields of planning and the development and reclamation of water resources.*

*(b) One person who is a resident of this state and knowledgeable in the field of municipal finance.*

*3. Not more than three members of the board may be members of the same political party and not more than two may be residents of the same county.*

**Sec. 25.** *Each member of the board is entitled to receive a salary of $60 per day for their services while actually engaged in the performance of their duties as members of the board.*

**Sec. 26.** *The board shall:*

*1. At its first meeting and annually thereafter elect a chairman from among its members.*

*2. Meet regularly at least once in each calendar quarter and at other times upon the call of the chairman.*

**Sec. 27.** *1. The state engineer shall advise the board, upon its request, of the existence and status of any water rights which affect a water project under consideration by the board.*

*2. Upon the board's request and within the limits of available resources and staff, the state engineer and the director may on a case by case basis assist persons in the preparation of a preliminary plan for a water project.*

**Sec. 28.** *1. When any municipality or other obligor desires to undertake a water project it may present its preliminary plan to the board for approval. The board shall analyze the potential yield of the water project, and may tentatively approve it if it will preserve or increase the water available for beneficial use in this state.*

*2. If the board, after a public hearing on the issue, tentatively approves the water project, the municipality or other obligor may proceed to prepare a final plan and submit it for final approval. If the board finally approves the water project, the cost of the final plan may be included in the cost of the water project. If the board does not finally approve the water project, the director may, within the limits of money available for this purpose in the fund for the financing of water projects, reimburse a municipality for the costs incurred after the tentative approval.*

**Sec. 29.** NRS 354.59805 is hereby amended to read as follows:

354.59805 Except as otherwise provided in NRS 354.59816 and section 1 of [this act,] *Assembly Bill No. 698 of this session,* the maximum amount of money which a local government, except a school district, a district to provide a telephone number for emergencies, or a redevelopment agency, is permitted to receive from taxes ad valorem, other than those levied on the net proceeds of mines or for the payment of bonded indebtedness and interest thereon incurred as a general or short-term obligation of the issuer, *or for the payment of obligations issued to pay the cost of a water project pursuant to section 17 of this act,* or for the payment of obligations under a capital lease executed before April 30, 1981, must be calculated by:

1. First multiplying the tax rate certified for that local government for the fiscal year ending on June 30, 1981, by its assessed valuation as equalized for the collection of taxes during the fiscal year beginning on July 1, 1981. For the purposes of this subsection:

(a) A county whose actual tax rate, for purposes other than debt service, for the fiscal year ending on June 30, 1981, was less than 50 cents per $100 of assessed valuation is entitled to the use of a rate not greater than 80 cents per $100 of assessed valuation.

(b) A fire protection district in such a county whose tax rate was more than 50 cents per $100 of assessed valuation is entitled to the use of a rate not greater than $1.10 per $100 of assessed valuation.

2. Then subtracting the estimated amount to be received by that local government from the supplemental city-county relief tax for the fiscal year for which the tax ad valorem is to be levied. For the fiscal years beginning on and after July 1, 1982, the executive director of the department of taxation shall provide this estimate to the local government on or before March 15 preceding the fiscal year to which it applies. A local government may, on or before April 1 preceding the fiscal year to which the estimate applies, appeal in writing to the Nevada tax commission, which may increase or decrease the estimate as it finds the facts warrant.

3. Then reducing the amount resulting from subsections 1 and 2 if necessary to bring it within any applicable limit provided in NRS 354.59811 or 354.59816.

**Sec. 30.** NRS 540.051 is hereby amended to read as follows:

540.051 The division shall:

1. Provide political subdivisions and private [enterprise in water-short] *enterprises in arid* regions with information, alternatives and recommendations bearing upon regional shortages *of water* including feasible selections or courses of planning and action for acquiring additional [waters] *water* or for conserving [waters] *water* now available, or both.

2. Include in its planning the investigation of new sources *of water* such as desalinization, importation [, conservation] *and conservation*, and means of transporting existing [sources.] *water.*

3. Develop forecasts of supply and demand for future needs.

4. Advise the state department of conservation and natural resources and the legislature concerning economic and social effects of water policy.

5. Suggest changes in water policy which may be necessary to meet new requirements of law or of the people of the state.

6. Cooperate with the state engineer in dealings with the Federal Government and other states, but the state engineer is solely responsible for litigation.

*7. Provide the board for financing water projects and the director of the department of commerce with necessary technical and clerical assistance in financing water projects.*

**Sec. 31.** 1. There is hereby appropriated from the state general fund to the board for financing water projects the sum of $8,000 for the salaries and travel expenses of members of the board.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 1989, and reverts to the state general fund as soon as all payments of money committed have been made.