

ASSEMBLY BILL NO. 49—COMMITTEE ON TAXATION

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

PREFILED DECEMBER 20, 2012

Referred to Committee on Taxation

SUMMARY—Makes various changes relating to public defenders.
(BDR 32-255)

FISCAL NOTE: Effect on Local Government: No.
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 public defenders; imposing an additional sales and use tax to be used by counties to pay costs associated with providing legal defense for indigent persons; authorizing boards of county commissioners to impose an additional sales and use tax to be used to provide revenue for the Fund for Legal Defense of Indigent Persons; establishing the Fund for Legal Defense of Indigent Persons to reimburse certain counties for certain extraordinary costs of providing public defender services; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, any county whose population is 100,000 or more (currently
2 Washoe and Clark Counties) must create an office of public defender to provide
3 defense services to indigent persons, and any county with a population of less than
4 100,000 may, but is not required to, create such an office. (NRS 260.010) The State
5 Public Defender provides indigent defense services in counties which have not
6 created an office of public defender or which have hired private attorneys to
7 provide indigent defense services. The State Public Defender may charge those
8 counties, in amounts not to exceed limits set by the Legislature, for providing those
9 services. (NRS 180.110)

10 **Sections 2-9** of this bill establish a source of revenue to be used by a county to
11 pay the costs incurred in connection with the provision of indigent defense services.
12 **Section 2** imposes an additional one-eighth of 1 percent sales and use tax
13 throughout this State. **Section 3** requires this tax to be distributed to the county in
14 which it is collected after deduction of a certain percentage of the taxes to
15 compensate the State for collection costs. **Section 5** requires a county treasurer to
16 deposit this tax in a separate fund known as the indigent legal defense fund and



17 authorizes the county to use money in this fund to pay for: (1) the county's public
18 defender; (2) any amount required to be paid by the county to the State Public
19 Defender; or (3) any other costs required to be paid by the county in connection
20 with the provision of legal services to indigent persons.

21 **Section 7** of this bill authorizes a board of county commissioners to impose a
22 additional sales and use tax of not more than one-eighth of 1 percent in that county.
23 Under **section 8** of this bill, after deduction of a certain percentage of the tax to
24 compensate the State for collection costs, this tax must be transferred to the Fund
25 for Legal Defense of Indigent Persons created by **section 14** of this bill. **Section 15**
26 of this bill establishes a Board of Trustees of the Fund, consisting of a county
27 commissioner from each county which has imposed the maximum amount of the
28 optional tax who is appointed by the board of county commissioners of that county.
29 **Section 16** of this bill authorizes a county which has imposed the maximum
30 amount of the optional tax to apply to the Board of Trustees for reimbursement
31 from the Fund of certain extraordinary costs paid by the county in connection with
32 the provision of indigent defense services.

1 WHEREAS, In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the
2 United States Supreme Court held that the United States
3 Constitution requires states to furnish legal counsel to indigent
4 persons who are charged with certain crimes; and

5 WHEREAS, Since the decision in *Gideon*, the United States
6 Supreme Court has held that the United States Constitution requires
7 states to furnish legal counsel to indigent persons in additional
8 circumstances, including, without limitation, juvenile delinquency
9 proceedings, misdemeanor cases for which incarceration is possible
10 and certain pretrial and postconviction proceedings; and

11 WHEREAS, On April 26, 2007, the Nevada Supreme Court
12 ordered the creation of the Indigent Defense Commission to study
13 various issues concerning the system used in this State to provide
14 indigent defense services; and

15 WHEREAS, Upon the recommendation of the Indigent Defense
16 Commission, the Nevada Supreme Court has adopted performance
17 standards for public defenders in this State and is considering
18 adopting limits on the caseloads of public defenders; and

19 WHEREAS, In the State of Nevada, counties with a population of
20 100,000 or more are required to create an office of public defender
21 and counties with a population of less than 100,000 may create an
22 office of public defender, hire private attorneys to provide indigent
23 defense services or use the State Public Defender to provide such
24 services; and

25 WHEREAS, Counties pay a substantial percentage of the total
26 expenditures in this State for indigent defense services; and

27 WHEREAS, The provision of competent indigent defense
28 services in an increased number of cases has placed financial strain
29 on counties in this State; and



1 WHEREAS, To ensure that counties in this State are able to pay
2 for indigent defense services that satisfy constitutional standards, it
3 is necessary to provide additional sources of funding for indigent
4 defense services in this State; now, therefore,

5
6 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
7 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
8

9 **Section 1.** Title 32 of NRS is hereby amended by adding
10 thereto a new chapter to consist of the provisions set forth as
11 sections 2 to 9, inclusive, of this act.

12 **Sec. 2. 1.** *For the privilege of selling tangible personal*
13 *property at retail, a tax is hereby imposed upon all retailers at the*
14 *rate of one-eighth of 1 percent of the gross receipts of any retailer*
15 *from the sale of all tangible personal property sold at retail in a*
16 *county.*

17 **2.** *An excise tax is hereby imposed on the storage, use or*
18 *other consumption in a county of tangible personal property*
19 *purchased from any retailer for storage, use or other consumption*
20 *in the county at the rate of one-eighth of 1 percent of the sales*
21 *price of the property. The tax is imposed on all property which was*
22 *acquired out of State in a transaction which would have been a*
23 *taxable sale if it had occurred within this State.*

24 **3.** *Except as otherwise provided in sections 3, 4 and 5 of this*
25 *act, the tax must be administered, collected and distributed in the*
26 *same manner as the tax set forth in chapter 374 of NRS.*

27 **Sec. 3. 1.** *All fees, taxes, interest and penalties imposed and*
28 *all amounts of tax required to be paid to the counties under*
29 *section 2 of this act must be paid to the Department in the form of*
30 *remittances payable to the Department.*

31 **2.** *The Department shall deposit the payments with the State*
32 *Treasurer for credit to the Sales and Use Tax Account in the State*
33 *General Fund.*

34 **3.** *The State Controller, acting upon the collection data*
35 *furnished by the Department, shall monthly:*

36 **(a)** *Transfer from the Sales and Use Tax Account 1.75 percent*
37 *of all fees, taxes, interest and penalties collected pursuant to*
38 *section 2 of this act during the preceding month to the appropriate*
39 *account in the State General Fund as compensation to the State*
40 *for the cost of collecting the tax.*

41 **(b)** *Determine for each county an amount of money equal to*
42 *any fees, taxes, interest and penalties collected in or for that*
43 *county pursuant to section 2 of this act during the preceding*
44 *month, less the amount transferred to the State General Fund*
45 *pursuant to paragraph (a).*



1 (c) *Transfer the amount determined for each county to the*
2 *Intergovernmental Fund and remit the money to the county*
3 *treasurer.*

4 **Sec. 4.** *The Department may redistribute any fee, tax, penalty*
5 *and interest distributed to a county other than the county entitled*
6 *thereto, but no such redistribution may be made as to amounts*
7 *originally distributed more than 6 months before the date on*
8 *which the Department obtains knowledge of the improper*
9 *distribution.*

10 **Sec. 5.** 1. *The county treasurer shall deposit the money*
11 *received from the State Controller pursuant to section 3 of this act*
12 *in the county treasury for credit to a fund to be known as the*
13 *indigent legal defense fund. The indigent legal defense fund must*
14 *be accounted for as a separate fund and not as a part of any other*
15 *fund.*

16 2. *The board of county commissioners may only use the*
17 *money in the indigent legal defense fund to pay:*

18 (a) *The costs of creating, maintaining, operating or*
19 *administering the office of public defender created by the county*
20 *pursuant to NRS 260.010;*

21 (b) *Any amount required to be paid by the county to the State*
22 *Public Defender; or*

23 (c) *Any other fees, expenses or costs required to be paid by the*
24 *county in connection with the provision of legal services to an*
25 *indigent person.*

26 **Sec. 6.** *As used in sections 6 to 9, inclusive, of this act,*
27 *“Fund for Legal Defense of Indigent Persons” means the Fund*
28 *for Legal Defense of Indigent Persons created by section 14 of this*
29 *act.*

30 **Sec. 7.** 1. *The board of county commissioners of any*
31 *county may by ordinance, but not as in a case of emergency,*
32 *impose an additional tax pursuant to this section for the Fund for*
33 *Legal Defense of Indigent Persons.*

34 2. *An ordinance enacted pursuant to this section may not*
35 *become effective before a question concerning the imposition of*
36 *the tax is approved by a two-thirds majority of the members of the*
37 *board of county commissioners. Any proposal to increase the rate*
38 *of the tax must be approved by a two-thirds majority of the*
39 *members of the board of county commissioners.*

40 3. *Any ordinance enacted pursuant to this section must*
41 *specify the date on which the tax must first be imposed or on*
42 *which an increase in the rate of the tax becomes effective, which*
43 *must be the first day of the first calendar quarter that begins at*
44 *least 120 days after the date on which a two-thirds majority of the*
45 *board of county commissioners approved the question.*



1 4. *An ordinance enacted pursuant to this section must*
2 *include provisions in substance as follows:*

3 (a) *A provision imposing a tax upon retailers at the rate of not*
4 *more than one-eighth of 1 percent of the gross receipts of any*
5 *retailer from the sale of all tangible personal property sold at*
6 *retail, or stored, used or otherwise consumed, in the county.*

7 (b) *Provisions substantially identical to those contained in*
8 *chapter 374 of NRS, insofar as applicable.*

9 (c) *A provision that all amendments to chapter 374 of NRS*
10 *after the date of enactment of the ordinance, not inconsistent with*
11 *sections 6 to 9, inclusive, of this act, automatically become a part*
12 *of an ordinance enacted pursuant to this section.*

13 (d) *A provision that the county shall contract before the*
14 *effective date of the ordinance with the Department to perform all*
15 *functions incident to the administration or operation of the tax in*
16 *the county.*

17 (e) *A provision that a purchaser is entitled to a refund, in the*
18 *same manner as set forth in NRS 374.635 to 374.720, inclusive, of*
19 *the amount of the tax required to be paid that is attributable to the*
20 *tax imposed upon the sale of, and the storage, use or other*
21 *consumption in a county of, tangible personal property used for*
22 *the performance of a written contract:*

23 (1) *Entered into on or before the effective date of the tax or*
24 *the increase in the tax; or*

25 (2) *For the construction of an improvement to real property*
26 *for which a binding bid was submitted before the effective date of*
27 *the tax or the increase in the tax if the bid was afterward accepted,*
28 *↳ if, under the terms of the contract or bid, the contract price or*
29 *bid amount cannot be adjusted to reflect the imposition of the tax*
30 *or the increase in the tax.*

31 5. *An ordinance amending an ordinance enacted pursuant to*
32 *this section must include a provision in substance that the county*
33 *shall amend the contract made pursuant to paragraph (d) of*
34 *subsection 4 by a contract made between the county and the State*
35 *acting by and through the Department before the effective date of*
36 *the amendatory taxing ordinance, unless the county determines*
37 *with the written concurrence of the Department that no such*
38 *amendment of the contract is necessary or desirable.*

39 6. *In any proceeding under any ordinance enacted pursuant*
40 *to this section, the Department may act for and on behalf of the*
41 *county which has enacted that ordinance.*

42 **Sec. 8. 1. All fees, taxes, interest and penalties imposed and**
43 **all amounts of tax required to be paid pursuant to section 7 of this**
44 **act must be paid to the Department in the form of remittances**
45 **payable to the Department.**



1 2. *The Department shall deposit the payments with the State*
2 *Treasurer for credit to the Sales and Use Tax Account in the State*
3 *General Fund.*

4 3. *The State Controller, acting upon the collection data*
5 *furnished by the Department, shall monthly:*

6 (a) *Transfer from the Sales and Use Tax Account 1.75 percent*
7 *of all fees, taxes, interest and penalties collected pursuant to*
8 *section 7 of this act during the preceding month to the appropriate*
9 *account in the State General Fund as compensation to the State*
10 *for the cost of collecting the tax.*

11 (b) *Determine the amount of money equal to any fees, taxes,*
12 *interest and penalties collected pursuant to section 7 of this act*
13 *during the preceding month, less the amount transferred to the*
14 *State General Fund pursuant to paragraph (a).*

15 (c) *Transfer the amount determined pursuant to paragraph (b)*
16 *to the Fund for Legal Defense of Indigent Persons.*

17 **Sec. 9.** *The Department may redistribute any fee, tax, penalty*
18 *and interest to the Fund for Legal Defense of Indigent Persons if*
19 *the Fund is entitled thereto, but no such redistribution may be*
20 *made as to amounts originally distributed more than 6 months*
21 *before the date on which the Department obtains knowledge of the*
22 *improper distribution.*

23 **Sec. 10.** Title 14 of NRS is hereby amended by adding thereto
24 a new chapter to consist of the provisions set forth as sections 11 to
25 17, inclusive, of this act.

26 **Sec. 11.** *As used in this chapter, unless the context otherwise*
27 *requires, the words and terms defined in sections 12 and 13 of this*
28 *act have the meanings ascribed to them in those sections.*

29 **Sec. 12.** *“Board of Trustees” means the Board of Trustees of*
30 *the Fund.*

31 **Sec. 13.** *“Fund” means the Fund for Legal Defense of*
32 *Indigent Persons created by section 14 of this act.*

33 **Sec. 14.** 1. *The Fund for Legal Defense of Indigent*
34 *Persons is hereby created as a special revenue fund for the*
35 *purposes described in this chapter.*

36 2. *Interest earned on the money in the Fund must be*
37 *deposited for credit to the Fund.*

38 3. *Any money remaining in the Fund at the end of a fiscal*
39 *year remains in the Fund and does not revert to the State General*
40 *Fund.*

41 4. *Claims against the Fund must be paid on claims approved*
42 *by the Board of Trustees.*

43 **Sec. 15.** 1. *The Fund must be administered by a Board of*
44 *Trustees composed of one member of the board of county*
45 *commissioners from each county which has imposed the*



1 *maximum amount of the tax authorized by section 7 of this act.*
2 *The board of county commissioners of a county which has*
3 *imposed the maximum amount of the tax authorized by section 7*
4 *of this act shall appoint a member of the board to the Board of*
5 *Trustees.*

6 *2. Each member of the Board of Trustees shall serve a term*
7 *of 1 year or until a successor has been appointed and has*
8 *qualified.*

9 *3. A vacancy on the Board of Trustees must be filled in the*
10 *same manner as the original appointment.*

11 **Sec. 16.** *The Board of Trustees may:*

12 *1. Enter into all necessary contracts and agreements.*

13 *2. Employ personnel as necessary and prescribe their*
14 *compensation and working conditions.*

15 *3. Enter into agreements with the Department of*
16 *Administration to obtain the services of consultants, attorneys,*
17 *auditors and accountants.*

18 *4. Rent, lease, purchase or otherwise procure or receive real*
19 *or personal property.*

20 *5. Adopt regulations necessary for carrying out the provisions*
21 *of this chapter.*

22 **Sec. 17.** *1. A county which has imposed the maximum*
23 *amount of the tax authorized by section 7 of this act may apply to*
24 *the Board of Trustees for reimbursement or partial reimbursement*
25 *of extraordinary costs that the county is required to pay in*
26 *connection with the provision of legal services to an indigent*
27 *person in a complex case, a capital case or a case in which an*
28 *unforeseen increase in costs has occurred.*

29 *2. The Board of Trustees shall set forth the manner in which*
30 *a county may apply for reimbursement pursuant to this section.*

31 *3. After reviewing an application received pursuant to this*
32 *section, the Board of Trustees may approve reimbursement of all*
33 *or part of the costs if the Board of Trustees determines that:*

34 *(a) The county has imposed the maximum amount of the tax*
35 *authorized by section 7 of this act;*

36 *(b) The county was required to pay the costs in connection*
37 *with the provision of legal services to an indigent person;*

38 *(c) The costs were extraordinary; and*

39 *(d) The costs were incurred in a complex case, a capital case*
40 *or a case in which an unforeseen increase in costs occurred.*

41 *4. If the Board of Trustees approves reimbursement or partial*
42 *reimbursement, payment to the county must be made from the*
43 *Fund, to the extent that money is available in the Fund.*

44 *5. Upon payment to the county, the Board of Trustees:*



1 (a) *Is subrogated to the right of the county to recover from the*
2 *indigent person or any other person responsible for the support of*
3 *the indigent person any costs paid by the county for the provision*
4 *of legal services to the indigent person, to the extent of the*
5 *reimbursement or partial reimbursement paid from the Fund; and*

6 (b) *Has a lien upon the proceeds of any recovery by the county*
7 *of any costs paid by the county for the provision of legal services*
8 *to the indigent person, to the extent of the reimbursement or*
9 *partial reimbursement paid from the Fund.*

10 6. *As used in this section:*

11 (a) *“Capital case” means a criminal case in which the most*
12 *serious crime charged is a felony punishable by death or by*
13 *imprisonment for life with or without possibility of parole.*

14 (b) *“Complex case” means a case in which the provision of*
15 *adequate legal representation requires significantly more time or*
16 *resources because of:*

17 (1) *The number, novelty or difficulty of the factual or legal*
18 *issues involved in the case;*

19 (2) *The severity of the charges against the client; or*

20 (3) *Other special circumstances.*

21 **Sec. 18.** This act becomes effective on July 1, 2013.

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