

ASSEMBLY BILL NO. 567—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF OFFICE OF THE STATE TREASURER)

MARCH 26, 2001

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing state financial administration. (BDR 30-358)

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.

AN ACT relating to state financial administration; allowing the State of Nevada or a state agency to purchase property pursuant to an agreement the term of which extends beyond the current biennium; allowing the interest on certain state securities to be paid more frequently than semiannually; exempting from the operation of the Uniform Commercial Code—Secured Transactions certain transfers involving a government or governmental unit; providing the manner for applying sales and use taxes to personal property transferred to a governmental entity pursuant to certain agreements; authorizing the issuance of general obligation bonds to finance improvements and refinance existing obligations relating to Southern Nevada Women's Correctional Facility; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 349 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 16, inclusive, of this act.
3 **Sec. 2.** *Sections 2 to 16, inclusive, of this act may be cited as the*
4 *State Lease Purchase and Installment Purchase Law.*
5 **Sec. 3.** *As used in sections 2 to 16, inclusive, of this act, unless the*
6 *context otherwise requires, the words and terms defined in sections 4 to*
7 *7, inclusive, of this act have the meanings ascribed to them in those*
8 *sections.*
9 **Sec. 4.** *“Agreement” means an agreement to purchase property, in*
10 *the form of a lease or an agreement to pay in installments, pursuant to*
11 *which the State of Nevada or a state agency may pay the purchase price*
12 *of real or personal property over a period of time which extends beyond*
13 *the biennium in which the agreement is executed, including, without*
14 *limitation:*



* A B 5 6 7 R 1 *

- 1 1. An agreement pursuant to which the State of Nevada or a state
2 agency may acquire the property that is the subject of the agreement at
3 the end of the term of the agreement or the end of the term of a renewal
4 of the agreement upon payment of no additional consideration or
5 nominal additional consideration; and
6 2. An agreement that, for the purposes of federal income tax, is
7 treated as an agreement for conditional sale.
8 Sec. 5. "Board" means the state board of finance.
9 Sec. 6. "Chief" means the chief of the budget division of the
10 department of administration.
11 Sec. 7. "State agency" means an agency, bureau, board,
12 commission, department, division or any other unit of the government of
13 this state that is required to submit information to the chief pursuant to
14 subsection 1 or 6 of NRS 353.210, except for the University and
15 Community College System of Nevada.
16 Sec. 8. 1. The provisions of sections 2 to 16, inclusive, of this act
17 do not obligate the legislature to appropriate money for payments due
18 pursuant to an agreement entered into pursuant to those sections.
19 2. A state agency, person acting on behalf of a state agency, officer of
20 this state or employee of this state shall not represent that the legislature
21 is obligated to appropriate money for payments due pursuant to an
22 agreement entered into pursuant to sections 2 to 16, inclusive, of this act.
23 Sec. 9. The state treasurer may take such actions as he deems
24 appropriate to facilitate an agreement pursuant to sections 2 to 16,
25 inclusive, of this act, including, without limitation:
26 1. Entering into contracts for relevant professional services;
27 2. Obtaining credit enhancement and interest rate hedges; and
28 3. Assisting with the offering of certificates of participation pursuant
29 to the limitations set forth in section 11 of this act.
30 Sec. 10. An agreement entered into pursuant to sections 2 to 16,
31 inclusive, of this act is not subject to any requirement of competitive
32 bidding or other restriction imposed on the procedure for the awarding of
33 contracts.
34 Sec. 11. 1. Except as otherwise provided in this section, a state
35 agency or person acting on the behalf of a state agency may enter into an
36 agreement which has a term, including the terms of any options for
37 renewal, that extends beyond the biennium in which the agreement is
38 executed if the agreement:
39 (a) Provides that all obligations of the State of Nevada and the state
40 agency are extinguished by the failure of the legislature to appropriate
41 money for the ensuing fiscal year for payments due pursuant to the
42 agreement;
43 (b) Does not encumber any property of the State of Nevada or the
44 state agency except for the property that is the subject of the agreement;
45 (c) Provides that property of the State of Nevada and the state agency,
46 except for the property that is the subject of the agreement, must not be
47 forfeited if:
48 (1) The legislature fails to appropriate money for payments due
49 pursuant to the agreement; or



* A B 5 6 7 R 1 *

- 1 (2) *The State of Nevada or the state agency breaches the*
2 *agreement;*
3 (d) *Prohibits certificates of participation in the agreement; and*
4 (e) *For the biennium in which it is executed, does not require*
5 *payments that are greater than the amount authorized for such payments*
6 *pursuant to the applicable budget of the state agency.*
7 2. *The provisions of paragraph (d) of subsection 1 may be waived by*
8 *the board, upon the recommendation of the state treasurer, if the board*
9 *determines that waiving those provisions:*
10 (a) *Is in the best interests of this state; and*
11 (b) *Complies with federal securities laws.*
12 3. *Before a state agency may enter into an agreement pursuant to*
13 *this section to acquire real property or an interest in real property or pay*
14 *a total of \$50,000 or more in any 1 year:*
15 (a) *The agency must submit the proposed agreement to the chief and*
16 *the state treasurer for their review and transmittal to the board;*
17 (b) *The board must approve the agreement; and*
18 (c) *The governor must execute the agreement.*
19 4. *Before a state agency may enter into an agreement pursuant to*
20 *this section to pay a total of \$100,000 or more in any 1 year:*
21 (a) *The legislature must approve the acquisition of the property that is*
22 *the subject of the agreement;*
23 (b) *The agency must submit the proposed agreement to the chief and*
24 *the state treasurer for their review and transmittal to the board;*
25 (c) *The board must approve the agreement; and*
26 (d) *The governor must execute the agreement.*
27 **Sec. 12.** *If an agreement pursuant to sections 2 to 16, inclusive, of*
28 *this act involves the construction of an improvement, the construction*
29 *may be conducted as specified in the agreement without complying with*
30 *the provisions of:*
31 1. *Any law requiring competitive bidding; or*
32 2. *Chapter 341 of NRS.*
33 **Sec. 13.** 1. *Except as otherwise provided in this section, if an*
34 *agreement pursuant to sections 2 to 16, inclusive, of this act involves an*
35 *improvement to property owned by the State of Nevada or the state*
36 *agency, the state land registrar, in consultation with the state treasurer*
37 *and in conjunction with the agreement, may enter into a lease of the*
38 *property to which the improvement will be made if the lease:*
39 (a) *Has a term of 35 years or less; and*
40 (b) *Provides for rental payments that approximate the fair market*
41 *rental of the property before the improvement is made, as determined by*
42 *the state land registrar in consultation with the state treasurer at the time*
43 *the lease is entered into, which must be paid if the agreement terminates*
44 *before the expiration of the lease because the legislature fails to*
45 *appropriate money for payments due pursuant to the agreement.*
46 2. *A lease entered into pursuant to this section may provide for*
47 *nominal rental payments to be paid pursuant to the lease before the*
48 *agreement terminates.*



1 3. *Before the state land registrar may enter into a lease pursuant to*
2 *this section:*

3 (a) *The state land registrar must submit the proposed lease to the chief*
4 *and the state treasurer for their review and transmittal to the board; and*

5 (b) *The board must approve the lease.*

6 **Sec. 14.** *Immediately after entering into an agreement pursuant to*
7 *sections 2 to 16, inclusive, of this act, the state agency or person acting*
8 *on behalf of the state agency shall file with the chief and the state*
9 *treasurer:*

10 1. *A fully executed copy of the agreement; and*

11 2. *A schedule of payments that indicates the principal and interest*
12 *payments due throughout the term of the agreement.*

13 **Sec. 15.** *While an agreement entered into pursuant to sections 2 to*
14 *16, inclusive, of this act is in effect, the property that is the subject of the*
15 *agreement is exempt from ad valorem property taxation by this state and*
16 *its political subdivisions if:*

17 1. *An improvement is being constructed on the property pursuant to*
18 *the agreement; or*

19 2. *This state or a state agency is in possession of the property.*

20 **Sec. 16.** *While an agreement entered into pursuant to sections 2 to*
21 *16, inclusive, of this act is in effect, the property that is the subject of the*
22 *agreement shall be deemed to be the property of this state or the state*
23 *agency for the purposes of statutory limits on damages that may be*
24 *awarded against this state, including, without limitation, the limits in*
25 *chapter 41 of NRS, with respect to any action or claim, including a claim*
26 *for civil damages, that arises from or is related to the property and is*
27 *brought by a person who is not a party to the agreement if:*

28 1. *An improvement is being constructed on the property pursuant to*
29 *the agreement; or*

30 2. *This state or a state agency is in possession of the property.*

31 **Sec. 17.** NRS 349.276 is hereby amended to read as follows:

32 349.276 1. As the commission may determine, any bonds and other
33 state securities issued hereunder, except as otherwise provided in the
34 constitution of the state, or in the State Securities Law, or in any act
35 supplemental thereto, must:

36 (a) Be of a convenient denomination or denominations;

37 (b) Be fully negotiable within the meaning of and for all the purposes of
38 the Uniform Commercial Code-Investment Securities;

39 (c) Mature at such a time or serially at such times in regular numerical
40 order at annual or other designated intervals in such amounts as designated
41 and fixed by the commission;

42 (d) Be made payable in lawful money of the United States, at the office
43 of the treasurer or any commercial bank or commercial banks within or
44 without or both within and without the state as may be provided by the
45 commission; and

46 (e) Be printed at such a place within or without this state, as the
47 commission may determine.



1 2. Any such bonds or other state securities must bear interest at a rate
2 or rates which do not exceed the limit provided in NRS 349.076. The
3 interest must be made payable:

4 (a) If the security constitutes a debt subject to the limitations stated in
5 the first paragraph of section 3 of article 9 of the constitution of this state,
6 *not less often than* semiannually.

7 (b) If the security does not constitute a debt or is issued for the
8 protection and preservation of the state's property or natural resources or
9 for the purpose of obtaining the benefits thereof, at intervals which the
10 commission shall designate, and the first interest payment may be for
11 another period.

12 3. General obligation bonds must mature within 20 years from their
13 date or within 20 years from the date of passage of the act authorizing their
14 issuance or the issuance of any securities funded or refunded thereby,
15 whichever limitation is shorter; but any bonds constituting a debt which is
16 not subject to the limitations stated in the first paragraph of section 3 of
17 article 9 of the constitution of this state must mature within 50 years from
18 their date.

19 4. Special obligation bonds must mature within 50 years from their
20 date.

21 **Sec. 18.** NRS 104.9109 is hereby amended to read as follows:

22 104.9109 1. Except as otherwise provided in subsections 3 and 4,
23 this article applies to:

24 (a) A transaction, regardless of its form, that creates a security interest
25 in personal property or fixtures by contract;

26 (b) An agricultural lien;

27 (c) A sale of accounts, chattel paper, payment intangibles or promissory
28 notes;

29 (d) A consignment;

30 (e) A security interest arising under NRS 104.2401, 104.2505,
31 subsection 3 of NRS 104.2711, or subsection 5 of NRS 104A.2508, as
32 provided in NRS 104.9110; and

33 (f) A security interest arising under NRS 104.4210 or 104.5118.

34 2. The application of this article to a security interest in a secured
35 obligation is not affected by the fact that the obligation is itself secured by
36 a transaction or interest to which this article does not apply.

37 3. This article does not apply to the extent that:

38 (a) A statute, regulation or treaty of the United States preempts this
39 article;

40 ~~[(b) Another statute of this state expressly governs the creation,~~
41 ~~perfection, priority or enforcement of a security interest created by this~~
42 ~~state or a governmental unit of this state;~~

43 ~~—(c) A statute of another state, a foreign country, or a governmental unit~~
44 ~~of another state or a foreign country, other than a statute generally~~
45 ~~applicable to security interests, expressly governs creation, perfection,~~
46 ~~priority, or enforcement of a security interest created by the state, country,~~
47 ~~or governmental unit; or~~

48 ~~—(d)] or~~



* A B 5 6 7 R 1 *

- 1 **(b)** The rights of a transferee beneficiary or nominated person under a
2 letter of credit are independent and superior under NRS 104.5114.
- 3 4. This article does not apply to:
- 4 (a) A landlord's lien, other than an agricultural lien;
- 5 (b) A lien, other than an agricultural lien, given by statute or other rule
6 of law for services or materials, but NRS 104.9333 applies with respect to
7 priority of the lien;
- 8 (c) An assignment of a claim for wages, salary or other compensation of
9 an employee;
- 10 (d) A sale of accounts, chattel paper, payment intangibles or promissory
11 notes as part of a sale of the business out of which they arose;
- 12 (e) An assignment of accounts, chattel paper, payment intangibles or
13 promissory notes which is for the purpose of collection only;
- 14 (f) An assignment of a right to payment under a contract to an assignee
15 that is also obligated to perform under the contract;
- 16 (g) An assignment of a single account, payment intangible or
17 promissory note to an assignee in full or partial satisfaction of a preexisting
18 indebtedness;
- 19 (h) A transfer of an interest in or an assignment of a claim under a
20 policy of insurance, other than an assignment by or to a health-care
21 provider of a health-care-insurance receivable and any subsequent
22 assignment of the right to payment, but NRS 104.9315 and 104.9322 apply
23 with respect to proceeds and priorities in proceeds;
- 24 (i) An assignment of a right represented by a judgment, other than a
25 judgment taken on a right to payment that was collateral;
- 26 (j) A right of recoupment or set-off, but:
- 27 (1) NRS 104.9340 applies with respect to the effectiveness of rights
28 of recoupment or set-off against deposit accounts; and
- 29 (2) NRS 104.9404 applies with respect to defenses or claims of an
30 account debtor;
- 31 (k) The creation or transfer of an interest in or lien on real property,
32 including a lease or rents thereunder, except to the extent that provision is
33 made for:
- 34 (1) Liens on real property in NRS 104.9203 and 104.9308;
- 35 (2) Fixtures in NRS 104.9334;
- 36 (3) Fixture filings in NRS 104.9501, 104.9502, 104.9512, 104.9516
37 and 104.9519; and
- 38 (4) Security agreements covering personal and real property in
39 NRS 104.9604;
- 40 (l) An assignment of a claim arising in tort, other than a commercial tort
41 claim, but NRS 104.9315 and 104.9322 apply with respect to proceeds and
42 priorities in proceeds; ~~to~~
- 43 (m) An assignment of a deposit account in a consumer transaction, but
44 NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities
45 in proceeds ~~to~~; *or*
- 46 ***(n) A transfer by a government or governmental unit.***



* A B 5 6 7 R 1 *

1 **Sec. 19.** Chapter 372 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 *In administering the provisions of NRS 372.325, the department shall*
4 *apply the exemption for the sale of tangible personal property to the State*
5 *of Nevada, its unincorporated agencies and instrumentalities, to include*
6 *all tangible personal property that is transferred for use by a state entity*
7 *in accordance with an agreement executed pursuant to sections 2 to 16,*
8 *inclusive, of this act.*

9 **Sec. 20.** Chapter 374 of NRS is hereby amended by adding thereto a
10 new section to read as follows:

11 *In administering the provisions of NRS 374.330, the department shall*
12 *apply the exemption for the sale of tangible personal property to the State*
13 *of Nevada, its unincorporated agencies and instrumentalities, to include*
14 *all tangible personal property that is transferred for use by a state entity*
15 *in accordance with an agreement executed pursuant to sections 2 to 16,*
16 *inclusive, of this act.*

17 **Sec. 21.** 1. Except as otherwise provided in subsection 2, in addition
18 to the debt authorized in subsection 1 of section 4 of chapter 656, Statutes
19 of Nevada 1995, at page 2530, and notwithstanding the provisions of
20 subsection 2 of section 4 of chapter 656, Statutes of Nevada 1995, at page
21 2530, the state board of finance may issue general obligation bonds of the
22 State of Nevada in the face amount of not more than \$44,000,000, the
23 proceeds of which must be used for:

24 (a) Refinancing the obligations of this state pursuant to the construction,
25 lease purchase and management services contract between the department
26 of prisons and Corrections Corporation of America that was approved by
27 the state board of examiners on October 14, 1996, and by the board of state
28 prison commissioners on October 14, 1996, and was authorized by section
29 4 of chapter 656, Statutes of Nevada 1995, at page 2530, including, without
30 limitation, by exercising the prepayment purchase option pursuant to the
31 contract;

32 (b) Constructing, renovating and improving the Southern Nevada
33 Women's Correctional Facility; or

34 (c) Both of such purposes.

35 2. Not more than \$16,028,681 of the proceeds of the bonds described
36 in subsection 1 may be used for the purpose described in paragraph (b) of
37 subsection 1.

38 3. The expenses related to the issuance of bonds pursuant to this
39 section must be paid from the proceeds of the bonds, and must not exceed
40 2 percent of the face amount of the bonds sold.

41 4. The provisions of the State Securities Law, contained in chapter 349
42 of NRS, apply to the issuance of bonds pursuant to this section.

43 **Sec. 22.** 1. This section and sections 1 to 17, inclusive, 19, 20 and
44 21 of this act become effective upon passage and approval.

45 2. Section 18 of this act becomes effective at 12:01 a.m. on
46 July 1, 2001.

