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Assembly Bill No. 567-Committee on Government Affairs

CHAPTER.....

AN ACT relating to state financial administration; authorizing the purchase of property by a state agency pursuant to a lease-purchase or installment-purchase agreement that extends beyond the current biennium under certain circumstances; allowing the interest on certain state securities to be paid more frequently than semiannually; providing the manner for applying sales and use taxes to personal property transferred to the state pursuant to certain lease-purchase or installment-purchase agreements; authorizing the issuance of general obligation bonds to refinance existing obligations relating to the 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:

Section 1. Chapter 349 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *As used in sections 2 to 16, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. "Agreement" means an agreement to purchase property, in the form of a lease or an agreement to pay in installments, pursuant to which the State of Nevada or a state agency may pay the purchase price of real or personal property over a period of time which extends beyond the biennium in which the agreement is executed, including, without limitation:

1. An agreement pursuant to which the State of Nevada or a state agency may acquire the property that is the subject of the agreement at the end of the term of the agreement or the end of the term of a renewal of the agreement upon payment of no additional consideration or nominal additional consideration; and

2. An agreement that, for the purposes of federal income tax, is treated as an agreement for conditional sale.

Sec. 5. "Board" means the state board of finance.

Sec. 6. "Chief" means the chief of the budget division of the department of administration.

Sec. 7. "State agency" means an agency, bureau, board, commission, department, division or any other unit of the government of this state that is required to submit information to the chief pursuant to subsection 1 or 6 of NRS 353.210, except for the University and Community College System of Nevada.

Sec. 8. 1. The provisions of sections 2 to 16, inclusive, of this act do not obligate the legislature to appropriate money for payments due pursuant to an agreement entered into pursuant to those sections.

2. A state agency, person acting on behalf of a state agency, officer of this state or employee of this state shall not represent that the legislature is obligated to appropriate money for payments due pursuant to an agreement entered into pursuant to sections 2 to 16, inclusive, of this act.

Sec. 9. The state treasurer may take such actions as he deems appropriate to facilitate an agreement pursuant to sections 2 to 16, inclusive, of this act, including, without limitation:

1. Entering into contracts for relevant professional services;
2. Obtaining credit enhancement and interest rate hedges; and
3. Assisting with the offering of certificates of participation pursuant to the limitations set forth in section 11 of this act.

Sec. 10. An agreement entered into pursuant to sections 2 to 16, inclusive, of this act is not subject to any requirement of competitive bidding or other restriction imposed on the procedure for the awarding of contracts.

Sec. 11. 1. A state agency may propose a project to acquire real property, an interest in real property or an improvement to real property through an agreement which has a term, including the terms of any options for renewal, that extends beyond the biennium in which the agreement is executed if the agreement:

(a) Provides that all obligations of the State of Nevada and the state agency are extinguished by the failure of the legislature to appropriate money for the ensuing fiscal year for payments due pursuant to the agreement;

(b) Does not encumber any property of the State of Nevada or the state agency except for the property that is the subject of the agreement;

(c) Provides that property of the State of Nevada and the state agency, except for the property that is the subject of the agreement, must not be forfeited if:

(1) The legislature fails to appropriate money for payments due pursuant to the agreement; or

(2) The State of Nevada or the state agency breaches the agreement;

(d) Prohibits certificates of participation in the agreement; and

(e) For the biennium in which it is executed, does not require payments that are greater than the amount authorized for such payments pursuant to the applicable budget of the state agency.

2. The provisions of paragraph (d) of subsection 1 may be waived by the board, upon the recommendation of the state treasurer, if the board determines that waiving those provisions:

(a) Is in the best interests of this state; and

(b) Complies with federal securities laws.

3. Before an agreement proposed pursuant to subsection 1 may become effective:

(a) The proposed project must be approved by the legislature by concurrent resolution or statute or as part of the budget of the state agency, or by the interim finance committee when the legislature is not in regular session;

(b) The agency must submit the proposed agreement to the chief, the state treasurer and the state land registrar for their review and transmittal to the board;

(c) The board must approve the proposed agreement; and

(d) The governor must execute the agreement.

Sec. 12. If an agreement pursuant to sections 2 to 16, inclusive, of this act involves the construction of an improvement, the construction may be conducted as specified in the agreement without complying with the provisions of:

1. Any law requiring competitive bidding; or
2. Chapter 341 of NRS.

Sec. 13. 1. Except as otherwise provided in this section, if an agreement pursuant to sections 2 to 16, inclusive, of this act involves an improvement to property owned by the State of Nevada or the state agency, the state land registrar, in consultation with the state treasurer and in conjunction with the agreement, upon approval of the state board of examiners may enter into a lease of the property to which the improvement will be made if the lease:

- (a) Has a term of 35 years or less; and
  - (b) Provides for rental payments that approximate the fair market rental of the property before the improvement is made, as determined by the state land registrar in consultation with the state treasurer at the time the lease is entered into, which must be paid if the agreement terminates before the expiration of the lease because the legislature fails to appropriate money for payments due pursuant to the agreement.
2. A lease entered into pursuant to this section may provide for nominal rental payments to be paid pursuant to the lease before the agreement terminates.

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

- (a) The state land registrar must submit the proposed lease to the chief and the state treasurer for their review and transmittal to the board; and
- (b) The board must approve the lease.

Sec. 14. Immediately after an agreement is executed pursuant to section 11 of this act, the state agency on whose behalf the agreement was executed shall file with the chief and the state treasurer:

1. A fully executed copy of the agreement; and
2. A schedule of payments that indicates the principal and interest payments due throughout the term of the agreement.

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

1. An improvement is being constructed on the property pursuant to the agreement; or
2. This state or a state agency is in possession of the property.

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

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

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

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

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

- (a) Be of a convenient denomination or denominations;
- (b) Be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code-Investment Securities;
- (c) Mature at such a time or serially at such times in regular numerical order at annual or other designated intervals in such amounts as designated and fixed by the commission;
- (d) Be made payable in lawful money of the United States, at the office of the treasurer or any commercial bank or commercial banks within or without or both within and without the state as may be provided by the commission; and
- (e) Be printed at such a place within or without this state, as the commission may determine.

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

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

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

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

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

Sec. 18. (Deleted by amendment.)

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

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

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

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

Sec. 21. 1. In addition to the debt authorized in subsection 1 of section 4 of chapter 656, Statutes of Nevada 1995, at page 2530, and notwithstanding the provisions of subsection 2 of section 4 of chapter 656, Statutes of Nevada 1995, at page 2530, the state board of finance may issue general obligation bonds of the State of Nevada in the face amount of not more than \$27,971,319, the proceeds of which must be used for refinancing the obligations of this state pursuant to the construction, lease purchase and management services contract between the department of prisons and Corrections Corporation of America that was approved by the state board of examiners on October 14, 1996, and by the board of state prison commissioners on October 14, 1996, and was authorized by section 4 of chapter 656, Statutes of Nevada 1995, at page 2530, including, without limitation, by exercising the prepayment purchase option pursuant to the contract.

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

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

Sec. 22. Assembly Bill No. 601 of this session is hereby repealed.

Sec. 23. This act becomes effective upon passage and approval.