

CHAPTER.....

AN ACT relating to public financial administration; revising the provisions regarding the payment of prevailing wages on projects of the Nevada System of Higher Education; providing that certain documents furnished to a public body may be transmitted and stored electronically; requiring that annual energy savings resulting from energy retrofit projects meet or exceed the total annual contract payments; revising the provisions governing performance contracts for operating cost-savings measures in buildings occupied by state agencies; authorizing the issuance of refunding obligations relating to such performance contracts; authorizing the Nevada System of Higher Education for a temporary period to enter into installment-purchase and lease-purchase agreements under certain circumstances; clarifying the applicability of the provisions concerning prevailing wages to installment-purchase and lease-purchase agreements that involve improvements; creating an advisory group to conduct an interim study concerning installment-purchase and lease-purchase agreements; 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 338 of NRS is hereby amended by adding thereto a new section to read as follows:

The provisions of this section and NRS 338.013 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection 15 of NRS 338.010.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 338.050 is hereby amended to read as follows:

338.050 For the purpose of NRS 338.010 to 338.090, inclusive, *and section 1 of this act*, except as otherwise provided by specific statute, every workman who performs work for a public work covered by a contract therefor is subject to all of the provisions of NRS 338.010 to 338.090, inclusive, *and section 1 of this act*, regardless of any contractual relationship alleged to exist between such workman and his employer.

Sec. 4. NRS 338.140 is hereby amended to read as follows:

338.140 1. A public body shall not draft or cause to be drafted specifications for bids, in connection with a public work:

(a) In such a manner as to limit the bidding, directly or indirectly, to any one specific concern.

(b) Except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing or service.

(c) In such a manner as to hold the bidder to whom such contract is awarded responsible for extra costs incurred as a result of errors or omissions by the public body in the contract documents.

(d) In such a manner as to require a bidder to furnish to the public body, whether before or after the bid is submitted, documents generated in the preparation or determination of prices included in the bid, except when requested by the public body for:

(1) A determination of the price of additional work performed pursuant to a change order;

(2) An evaluation of claims for costs incurred for the performance of additional work;

(3) Preparation for arbitration or litigation; or

(4) Any combination thereof.

↪ A document furnished to a public body pursuant to this paragraph is confidential and must be returned to the bidder. *Any document furnished to a public body by a bidder pursuant to this paragraph may be transmitted and stored electronically if the manner of transmission ensures that the documents are exclusively accessible to the bidder. Electronic transmission and storage of such documents does not waive or otherwise affect the proprietary interests of the bidder in the documents.*

2. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the public body, it may list only one.

3. Specifications must provide a period of time of at least 7 days after award of the contract for submission of data substantiating a request for a substitution of "an equal" item.

Sec. 5. NRS 338.1906 is hereby amended to read as follows:

338.1906 1. Upon request by or consultation with an officer or employee of the State who is responsible for the budget of a department, board, commission, agency or other entity of the State, the appropriate energy retrofit coordinator may request the approval of the State Board of Examiners to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the

department, board, commission, agency or other entity, to make the use of energy in the building, or portion thereof, more efficient.

2. Upon approval of the State Board of Examiners, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

(a) The name and location of the coordinator;

(b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;

(c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;

(d) The date and time not later than which proposals must be received by the coordinator; and

(e) The date and time when responses will be opened.

3. The request for proposals must be published in at least one newspaper of general circulation in the State.

4. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

(a) The best interests of the State;

(b) The experience and financial stability of the persons submitting the proposals;

(c) Whether the proposals conform with the terms of the request for proposals;

(d) The prices of the proposals; and

(e) Any other factor disclosed in the request for proposals.

5. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

6. After reviewing the proposals, if the coordinator determines that ~~that [sufficient energy could be saved to justify retrofitting the building or buildings, or portion thereof,]~~ *the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract,* the coordinator shall select the best proposal and request the approval of the State Board of Examiners to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the State to make payments beyond the biennium in which the contract is executed, but the interest due on any debt created pursuant to this section must be paid at least semiannually, payments must be made on the principal at least annually and the debt must be fully repaid on or before May 1, 2013.

7. Before approving a retrofit pursuant to this section, the State Board of Examiners shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the State to make payments beyond the biennium in which the contract is executed to ensure that:

(a) The ~~[amount of energy to be saved will likely justify the cost]~~ *dollar value of the annual energy savings resulting from the retrofit ~~;~~ will meet or exceed the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract;*

(b) The State is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings; and

(c) The limitation set forth in subsection 9 will not be exceeded.

8. Upon approval of the State Board of Examiners, the coordinator shall execute the contract and notify:

(a) The State Board of Examiners of the total amount of money committed by the contract per year; and

(b) Each officer or employee who is responsible for the budget of a department, board, commission, agency or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

9. The total amount of money committed beyond the biennium for all contracts executed pursuant to this section must not exceed \$15,000,000 at any one time.

10. The Legislature hereby pledges that a tax will be levied to pay the principal and interest on any indebtedness resulting from a contract executed pursuant to this section as they become due if the required payments will not be made by the entity that executed the contract from its budgeted accounts and the proceeds from any such taxes are hereby specially appropriated for this purpose.

11. *A change order to a contract executed pursuant to this section may not be approved by the State if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract, unless approval of the change order is more economically feasible than termination of the retrofit.*

12. NRS 338.1385 does not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 6. NRS 338.1907 is hereby amended to read as follows:

338.1907 1. A governing body may designate one or more energy retrofit coordinators for the buildings occupied by the local government.

2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.

3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

- (a) The name and location of the coordinator;
- (b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;
- (c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;
- (d) The date and time not later than which proposals must be received by the coordinator; and
- (e) The date and time when responses will be opened.

4. The request for proposals must be published in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county where the public work will be performed.

5. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

- (a) The best interests of the local government;
- (b) The experience and financial stability of the persons submitting the proposals;
- (c) Whether the proposals conform with the terms of the request for proposals;
- (d) The prices of the proposals; and
- (e) Any other factor disclosed in the request for proposals.

6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that ~~that [sufficient energy could be saved to justify retrofitting the building or buildings, or portion thereof,]~~ *the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the local government, including any financing charges to be incurred by the local government over the life of the contract,* the coordinator shall select the best proposal and request the approval of the governing body to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body, or both.

8. Before approving a retrofit pursuant to this section, the governing body shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body to ensure that:

(a) The ~~[amount of energy to be saved will likely justify the cost]~~ *dollar value of the annual energy savings resulting from the retrofit [;] will meet or exceed the total annual contract payments to be made by the local government related to the retrofit, including any financing charges to be incurred by the local government over the life of the contract;* and

(b) The local government is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings.

9. Upon approval of the governing body, the coordinator shall execute the contract and notify each officer or employee who is responsible for the budget of a department, board, commission or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

10. *A change order to a contract executed pursuant to this section may not be approved by the local government if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the local government, including financing charges to be incurred by the local government over the life of the contract, unless approval of the change order is more economically feasible than termination of the retrofit.*

11. NRS 338.1385 and 338.143 do not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 7. Chapter 333A of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 22, inclusive, of this act.

Sec. 8. "Board" means:

1. If the using agency that enters into a performance contract is the University and Community College System of Nevada, the Board of Regents of the University of Nevada; or

2. For any other using agency that enters into a performance contract, the State Board of Examiners.

Sec. 9. 1. Notwithstanding any provision of chapter 333 of NRS, NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of this act, and chapter 338 of NRS to the contrary, a using agency may enter into a performance contract with a qualified service company for the purchase and installation of one or more operating cost-savings measures to reduce costs related to energy, water and the disposal of waste, and related labor costs.

2. Any operating cost-savings measures put into place as a result of a performance contract must comply with all applicable building codes.

Sec. 10. 1. The Purchasing Division of the Department of Administration shall work directly with any using agency interested in entering into a performance contract, using the list of qualified service companies compiled by the State Public Works Board pursuant to NRS 333A.080. The Purchasing Division, in conjunction with the using agency, shall ensure that each appropriate qualified service company is notified of the using agency's interest in entering into a performance contract and coordinate an opportunity for each such qualified service company to:

(a) Visit the site pertaining to which the using agency wishes to enter into a performance contract;

(b) Perform a comprehensive audit in the manner prescribed in section 11 of this act; and

(c) Submit a proposal, including, without limitation, the comprehensive audit, and make a related presentation to the using agency for all operating cost-savings measures that the qualified service company determines would be practicable to implement.

2. The using agency shall:

(a) Evaluate the proposals and presentations made pursuant to subsection 1;

(b) Evaluate the financial stability of the qualified service companies that made proposals and presentations pursuant to

subsection 1 based on the financial statements and ratings of the qualified service companies; and

(c) Select a qualified service company, pursuant to the provisions of NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of this act, and any regulations adopted pursuant thereto, for evaluating and awarding contracts.

3. A qualified service company selected by a using agency pursuant to subsection 2 shall prepare a financial-grade operational audit, which must include, without limitation:

(a) A detailed explanation of the operating cost savings that will result from the performance contract; and

(b) A comparison of the costs of implementing the operating cost-savings measures to the operating cost savings that are anticipated as a result of the performance contract.

4. Except as otherwise provided in this subsection, the financial-grade operational audit prepared by the qualified service company pursuant to subsection 3 becomes, upon acceptance, a part of the final performance contract and the costs incurred by the qualified service company in preparing the financial-grade operational audit shall be deemed to be part of the performance contract. If, after the financial-grade operational audit is prepared, the using agency decides not to execute the performance contract, the using agency shall pay the qualified service company that prepared the financial-grade operational audit the costs incurred by the qualified service company in preparing the financial-grade operational audit, if the Legislature has specifically appropriated money for that purpose. An appropriation by the Legislature for the purchase and installation of an operating cost-savings measure creates no presumption that the using agency for which the money was appropriated is required to enter into such a performance contract.

Sec. 11. *1. Each comprehensive audit performed pursuant to paragraph (b) of subsection 1 of section 10 of this act must include, without limitation:*

(a) An assessment of any operating cost-savings measure that might be implemented within the building of the using agency, including, without limitation, any operating cost-savings measure specifically requested by the using agency;

(b) An estimate of the costs associated with implementing an operating cost-savings measure described in paragraph (a);

(c) A comparison of the energy and water consumption in the building of the using agency to the energy and water consumption in similar buildings; and

(d) A report that compares the current pattern of the costs to the using agency associated with energy consumption, water

consumption and the disposal of waste, and related labor costs, to the projected costs if the using agency implements operating cost-savings measures.

2. A comprehensive audit must be based on:

(a) A review and analysis of the historical energy and water usage of the using agency; and

(b) Surveys, plans, specifications or drawings that provide details of the structure or design of the building of the using agency.

3. The using agency shall provide to each qualified service company that intends to perform a comprehensive audit the records of the energy and water consumption of the building.

Sec. 12. *1. A using agency that selects a qualified service company pursuant to section 10 of this act shall retain the professional services of a third-party consultant to work on behalf of the using agency in coordination with the qualified service company.*

2. A third-party consultant retained pursuant to subsection 1 must be certified by the Association of Energy Engineers as a "Certified Energy Manager" or hold similar credentials from a comparable nationally recognized organization.

3. The duties of a third-party consultant retained pursuant to subsection 1 may include, without limitation:

(a) Assisting the using agency in reviewing the operating cost-savings measures proposed by the qualified service company;

(b) Overseeing the construction of the operating cost-savings measures; and

(c) Monitoring the operating cost savings after the construction of the operating cost-savings measures is completed.

4. The Purchasing Division of the Department of Administration may procure sufficient funding from the qualified service company, through negotiation, to pay for the third-party consultant out of the proceeds relating to the performance contract. A qualified service company shall not pay a third-party consultant directly for the work described in subsection 3.

5. A third-party consultant retained pursuant to subsection 1 may recommend that the using agency not execute the performance contract. If the using agency does not execute the performance contract, the using agency shall pay the third-party consultant a pre-negotiated fee based on the work completed by the third-party consultant.

Sec. 13. *In connection with any installment-purchase contract or lease-purchase contract entered into to finance a performance contract, the Board may:*

1. Grant a security interest in any property that is the subject of the installment-purchase contract or lease-purchase contract

and execute an instrument to evidence such a security interest, including, without limitation, a deed of trust, a leasehold interest deed of trust, a mortgage or a financing agreement.

2. Offer certificates of participation.

3. If the installment-purchase contract or lease-purchase contract involves an improvement to property owned by the State of Nevada or the using agency, enter into a lease of the property to which the improvement will be made and any property that is adjacent to that property if the installment-purchase contract or lease-purchase contract:

(a) Except as otherwise provided in section 20 of this act, has a term of not more than 15 years beyond the date on which construction of the work required by the installment-purchase contract or lease-purchase contract is completed; and

(b) Provides for rental payments that approximate the fair market rental of the property before the improvement is made, as determined by the Board at the time the parties enter into the lease, which must be paid if the installment-purchase contract or lease-purchase contract terminates before the expiration of the lease because the Legislature fails to appropriate money for payments due pursuant to the installment-purchase contract or lease-purchase contract.

↳ A lease entered into pursuant to this subsection may provide for nominal rental payments to be paid pursuant to the lease before the installment-purchase contract or lease-purchase contract terminates.

4. Enter into any other agreement, contract or arrangement that the Board determines would be beneficial to the purpose of the installment-purchase contract or lease-purchase contract, including, without limitation, contracts for professional services, trust indentures, paying agent agreements and contracts of insurance.

Sec. 14. *For the period during which an installment-purchase contract or lease-purchase contract that was entered into to finance a performance contract is in effect, the property that is the subject of the installment-purchase contract or lease-purchase contract:*

1. Is exempt from ad valorem property taxation by this State and its political subdivisions if:

(a) An improvement is being constructed on the property pursuant to the installment-purchase contract or lease-purchase contract; or

(b) This State or a using agency is in possession of the property.

2. Shall be deemed to be the property of this State or the using agency that is a party to the installment-purchase contract

or lease-purchase contract 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 installment-purchase contract or lease-purchase contract if:

(a) An improvement is being constructed on the property pursuant to the installment-purchase contract or lease-purchase contract; or

(b) This State or the using agency is in possession of the property.

Sec. 15. *Any obligations of this State issued in accordance with NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of this act may be refunded on behalf of the State by the Board without the necessity of the refunding obligations being authorized by NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of this act, by the adoption of a resolution by the Board authorizing the issuance of obligations to refund, pay and discharge all or any part of such outstanding obligations of any one or more or all outstanding issues:*

1. For the acceleration, deceleration or other modification of the payment of such obligations, including, without limitation, any interest on such obligations that is in arrears or about to become due for any period not exceeding 3 years after the date of the issuance of the refunding obligations, unless the capitalization of interest on obligations constituting an indebtedness increases the debt of the State in excess of the limitation set forth in Section 3 of Article 9 of the Nevada Constitution.

2. For the purpose of reducing interest costs or effecting other economies.

3. For the purpose of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional obligations, otherwise concerning the outstanding obligations, or otherwise relating to any operating cost-savings measure appertaining thereto.

4. For any combination of the purposes set forth in subsections 1, 2 and 3.

Sec. 16. *1. Except as otherwise provided in sections 15 to 20, inclusive, of this act, the proceeds of refunding obligations issued pursuant to section 15 of this act must be immediately applied to the retirement of the obligations to be refunded or be placed in escrow or trust in any trust bank or trust banks within or without or both within and without this State to be applied to the payment of the refunded obligations or the refunding obligations, or both, upon their presentation for payment to the extent, in such*

priority and otherwise in the manner which the using agency may determine.

2. The incidental costs of refunding obligations may be paid by the purchaser of the refunding obligations or be defrayed from any revenues in the State General Fund, subject to appropriations for such revenues as otherwise provided by law, or other available revenues of the State under the control of the Board or from the proceeds of the refunding obligations, or from the interest or other yield derived from the investment of the proceeds of any refunding obligations or other money in escrow or trust, or from any other sources legally available therefor, or any combination thereof, as the using agency may determine.

3. Any accrued interest and any premium appertaining to a sale of refunding obligations may be applied to the payment of the interest on or principal of those refunding obligations, or both, or may be deposited in a reserve therefor, or may be used to refund obligations by deposit in escrow, trust or otherwise, or may be used to defray any incidental costs appertaining to the refunding, or any combination thereof, as the using agency may determine, but in no event by the incurrence of additional debt in excess of the limitation on state debt set forth in Section 3 of Article 9 of the Nevada Constitution.

Sec. 17. *1. Any escrow or trust into which the proceeds of refunding obligations are placed pursuant to section 16 of this act must not necessarily be limited to proceeds of refunding obligations but may include other money available for its purpose.*

2. Any proceeds of refunding obligations placed in escrow or trust, pending such use, may be invested or reinvested in federal securities, and in the case of an escrow or trust for the refunding of outstanding obligations issued in accordance with sections 15 to 20, inclusive, of this act in other securities issued by the Federal Government if the resolution by the Board authorizing the issuance of such outstanding state securities or any trust indenture or other proceedings appertaining thereto expressly allows any such investment or reinvestment in such securities issued by the Federal Government other than federal securities.

3. A trust bank accounting for federal securities and other securities issued by the Federal Government in such escrow or trust may place the securities for safekeeping wholly or in part in any trust bank or trust banks within or without or both within and without this State.

4. A trust bank shall continuously secure any money placed in escrow or trust and not so invested or reinvested in federal securities and other securities issued by the Federal Government by a pledge in any trust bank or trust banks within or without or both within and without the State of federal securities in an

amount at all times at least equal to the total uninvested amount of such money accounted for in such escrow or trust.

5. Such proceeds and investments in escrow or trust, together with any interest or other gain to be derived from any such investment, must be in an amount at all times at least sufficient to pay principal, interest, any prior redemption premiums due, and any charges of the escrow agent or trustee and any other incidental expenses payable therefrom, except to the extent provision may have been previously otherwise made therefor, as such obligations become due at their respective maturities or due at designated prior redemption date or dates in connection with which the using agency has exercised or is obligated to exercise a prior redemption option on behalf of the State.

6. The computations made in determining such sufficiency must be verified by a certified public accountant licensed to practice in this State or in any other state.

7. Any purchaser of any refunding obligation issued pursuant to sections 15 to 20, inclusive, of this act is not responsible for the application of the proceeds of the refunding obligation by the State, the Board, the using agency or any of the officers, agents or employees of the State.

8. As used in this section, “federal securities” means bills, notes, certificates of indebtedness, bonds or other similar securities which are direct obligations of the United States or which are unconditionally guaranteed as to payment, both of principal and of interest, by the United States.

Sec. 18. *Obligations for refunding and obligations for any other purpose authorized pursuant to sections 15 to 20, inclusive, of this act or by any other law may be issued separately or issued in combination in one series or more by the State in accordance with the provisions of sections 15 to 20, inclusive, of this act.*

Sec. 19. *Except as otherwise provided in sections 15 to 20, inclusive, of this act, the relevant provisions elsewhere herein appertaining generally to the issuance of obligations to defray the cost of any operating cost-savings measure are equally applicable in the authorization and issuance of refunding obligations, including, without limitation, their terms and security, the covenants and other provisions of the resolution authorizing the issuance of the obligations, or other instrument or proceedings appertaining thereto, and other aspects of the obligations.*

Sec. 20. *1. An obligation may not be refunded pursuant to sections 15 to 20, inclusive, of this act unless the holder of the obligation voluntarily surrenders the obligation for exchange or payment, or unless the obligation matures or is callable for prior redemption under its terms within 25 years after the date of*

issuance of the refunding obligations. Provision must be made for paying the securities within that period.

2. The maturity of any obligation refunded may not be extended beyond 25 years, or beyond 1 year next following the date of the last outstanding maturity, whichever limitation is later.

3. The principal amount of the refunding obligations may:

*(a) Exceed the principal amount of the refunded obligations;
or*

(b) Be less than or equal to the principal amount of the obligations being refunded if provision is duly and sufficiently made for their payment.

Sec. 21. *The determination of the using agency that the limitations imposed upon the issuance of obligations pursuant to NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of this act, including, without limitation, any obligations for funding or refunding obligations, have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion regardless of whether the authorizing resolution or the obligations authorized by that resolution contain a recital as authorized by section 22 of this act.*

Sec. 22. *A resolution providing for the issuance of a performance contract, including, without limitation, an installment-purchase contract or lease-purchase contract or other proceedings appertaining thereto, may provide that the obligations contain a recital that the obligations are issued pursuant to NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of this act, which recital is conclusive evidence of the validity of the obligations.*

Sec. 23. NRS 333A.010 is hereby amended to read as follows:

333A.010 As used in NRS 333A.010 to 333A.150, inclusive, *and sections 8 to 22, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 333A.020 to 333A.070, inclusive, *and section 8 of this act* have the meanings ascribed to them in those sections.

Sec. 24. NRS 333A.080 is hereby amended to read as follows:

333A.080 1. ~~[Notwithstanding any provision of this chapter and chapters 333 and 338 of NRS to the contrary, a using agency may enter into a performance contract with a qualified service company for the purchase and installation of an operating cost-savings measure to reduce costs related to energy, water and the disposal of waste, and related labor costs. Such a performance contract may be in the form of an installment payment contract or a lease purchase contract that is subject to the provisions of NRS 353.500 to 353.630, inclusive. Any operating cost-savings measures put into place as a result of a performance contract must comply with all applicable building codes.]~~

~~—2.]~~ The State Public Works Board shall determine those companies that satisfy the requirements of qualified service companies for the purposes of NRS 333A.010 to 333A.150, inclusive ~~[1]~~, *and sections 8 to 22, inclusive, of this act.* In making such a determination, the State Public Works Board shall enlist the assistance of the staffs of the Office of Energy within the Office of the Governor, the Buildings and Grounds Division of the Department of Administration and the Purchasing Division of the Department of Administration. The State Public Works Board shall prepare and issue a request for qualifications to not less than three potential qualified service companies.

~~[3-]~~ 2. In sending out a request for qualifications, the State Public Works Board:

(a) Shall attempt to identify at least one potential qualified service company located within this State; and

(b) May consider whether and to what extent the companies to which the request for qualifications will be sent will use local contractors.

~~[4-]~~ 3. The State Public Works Board shall ~~[use-objective]~~ *adopt, by regulation,* criteria to determine those companies that satisfy the requirements of qualified service companies. The ~~[objective]~~ criteria for evaluation must include *, without limitation,* the following areas as substantive factors to assess the capability of such companies:

(a) Design;

(b) Engineering;

(c) Installation;

(d) Maintenance and repairs associated with performance contracts;

(e) Experience in conversions to different sources of energy or fuel and other services related to operating cost-savings measures provided that is done in association with a comprehensive energy, water or waste disposal cost-savings retrofit;

(f) Monitoring projects after the projects are installed;

(g) Data collection and reporting of savings;

(h) Overall project experience and qualifications;

(i) Management capability;

(j) Ability to access long-term financing;

(k) Experience with projects of similar size and scope; and

(l) Such other factors determined by the State Public Works Board to be relevant and appropriate to the ability of a company to perform the ~~[project.]~~ *projects.*

↪ In determining whether a company satisfies the requirements of a qualified service company, the State Public Works Board shall also consider ~~[the financial health of the company as evidenced by its financial statements and ratings and]~~ whether the company holds the

appropriate licenses required for the design, engineering and construction which would be completed pursuant to a performance contract.

~~[5-]~~ 4. The State Public Works Board shall compile a list of those companies that it determines satisfy the requirements of qualified service companies. ~~[The Purchasing Division of the Department of Administration shall work directly with any using agency interested in entering into a performance contract, using the list of qualified service companies compiled by the State Public Works Board. The Purchasing Division, in conjunction with the using agency, shall ensure that each appropriate qualified service company is notified of the using agency's interest in entering into a performance contract and coordinate an opportunity for each such qualified service company to:~~

~~—(a) Perform a preliminary and comprehensive audit and assessment of all potential operating cost savings measures that might be implemented within the buildings of the using agency, including any operating cost savings measures specifically requested by the using agency; and~~

~~—(b) Submit a proposal and make a related presentation to the using agency for all such operating cost savings measures that the qualified service company determines would be practicable to implement.~~

~~—6. The using agency shall:~~

~~—(a) Evaluate the proposals and presentations made pursuant to subsection 5; and~~

~~—(b) Select a qualified service company;~~

~~—pursuant to the provisions of this chapter and chapter 333 of NRS, and any regulations adopted pursuant thereto, for evaluating and awarding contracts;~~

~~—7. A qualified service company selected by a using agency pursuant to subsection 6 shall prepare a financial grade operational audit. Except as otherwise provided in this subsection, the audit prepared by the qualified service company becomes, upon acceptance, a part of the final performance contract and the costs incurred by the qualified service company in preparing the audit shall be deemed to be part of the performance contract. If, after the audit is prepared, the using agency decides not to execute the performance contract, the using agency shall pay the qualified service company that prepared the audit the costs incurred by the qualified service company in preparing the audit, if the Legislature has specifically appropriated money for that purpose. An appropriation by the Legislature for the purchase and installation of an operating cost savings measure creates no presumption that the using agency for which the money was appropriated is required to enter into such a contract.~~

~~—8. The using agency shall retain the professional services of a third party consultant with the requisite technical expertise to assist the using agency in reviewing the operating cost savings measures proposed by the qualified service company. The Purchasing Division of the Department of Administration may procure sufficient funding from the qualified service company, through negotiation, to pay for the third party consultant. Such a third party consultant must be certified by the Association of Energy Engineers as a “Certified Energy Manager” or hold similar credentials from a comparable nationally recognized organization. A third party consultant retained pursuant to this subsection shall work on behalf of the using agency in coordination with the qualified service company.]~~

Sec. 25. NRS 333A.090 is hereby amended to read as follows:

333A.090 1. *Any financing related to a performance contract must be approved by the Board.*

2. A performance contract may be financed through ~~[a]~~ :

(a) A person other than the qualified service company.

~~[2.]~~ (b) *An installment-purchase contract or lease-purchase contract. Such an installment-purchase contract or lease-purchase contract is not subject to:*

(1) *The provisions of NRS 353.500 to 353.630, inclusive.*

(2) *Any requirement of competitive bidding or other restriction imposed on the procedure for the awarding of contracts or the procurement of goods or services.*

3. A performance contract may be structured as:

(a) A performance contract that guarantees operating cost savings, which includes, without limitation, the design and installation of equipment, the operation and maintenance, if applicable, of any of the operating cost-savings measures and the guaranteed annual savings which must meet or exceed the total annual contract payments to be made by the using agency, including *, without limitation,* any financing charges to be incurred by the using agency over the life of the performance contract. The using agency may require that these savings be verified ~~[annually or over]~~ :

(1) *When the work required by the performance contract is completed and 1 year after that work is completed; or*

(2) *Over a sufficient period that demonstrates savings.*

(b) A shared-savings contract which includes provisions mutually agreed upon by the using agency and qualified service company as to the negotiated rate of payments based upon operating cost savings and a stipulated maximum consumption level of energy or water, or both energy and water, over the life of the contract.

4. *The annual operating cost savings resulting from a performance contract must meet or exceed the total annual*

contract payments to be made by the using agency, including any financing charges to be incurred by the using agency over the life of the performance contract.

5. A change order to a performance contract executed pursuant to NRS 333A.080 may not be approved by the using agency if the cost of the change order would cause the annual operating cost savings resulting from the performance contract to be less than the total annual contract payments to be made by the using agency, including any financing charges to be incurred by the using agency over the life of the performance contract, unless approval of the change order is more economically feasible than termination of the operating cost-savings measure.

Sec. 26. NRS 333A.100 is hereby amended to read as follows:

333A.100 1. Notwithstanding any provision of NRS 333A.010 to 333A.150, inclusive, *and sections 8 to 22, inclusive, of this act* to the contrary, a performance contract entered into pursuant to NRS 333A.010 to 333A.150, inclusive, *and sections 8 to 22, inclusive, of this act* does not create a debt for the purposes of Section 3 of Article 9 of the Nevada Constitution.

2. Except as otherwise provided in this section, the term of a performance contract may extend beyond the biennium in which the contract is executed, provided that the performance contract contains a provision which states that all obligations of the State under the performance contract are extinguished at the end of any fiscal year if the Legislature fails to provide an appropriation to the using agency for the ensuing fiscal year for payments to be made under the performance contract. If the Legislature fails to appropriate money to a using agency for a performance contract, there is no remedy against the State, except that if a security interest in any property was created pursuant to the performance contract, the holder of such a security interest may enforce the security interest against that property. ~~[The]~~ *Except as otherwise provided in section 20 of this act, the* term of a performance contract must not exceed 15 years ~~[; after the date on which the work required by the performance contract is completed.]~~

3. The length of a performance contract may reflect the useful life of the operating cost-savings measure being installed or purchased under the performance contract.

Sec. 27. NRS 333A.130 is hereby amended to read as follows:

333A.130 1. During the term of a performance contract, the qualified service company shall monitor the reductions in energy or water consumption and other operating cost savings attributable to the operating cost-savings measure purchased or installed under the performance contract, and shall ~~[, at least once a year or at such other intervals specified in the performance contract,]~~ prepare and

provide a report to the using agency documenting the performance of the operating cost-savings measures ~~[]~~:

(a) At the time that the work required by the performance contract is completed and 1 year after that work is completed; or

(b) At such other intervals as specified in the performance contract.

2. A qualified service company and the using agency may agree to make modifications in the calculation of savings based on:

(a) Subsequent material changes to the baseline consumption of energy or water identified at the beginning of the term of the performance contract.

(b) A change in utility rates.

(c) A change in the number of days in the billing cycle of a utility.

(d) A change in the total square footage of the building.

(e) A change in the operational schedule, and any corresponding change in the occupancy and indoor temperature, of the building.

(f) A material change in the weather.

(g) A material change in the amount of equipment or lighting used at the building.

(h) Any other change which reasonably would be expected to modify the use of energy or the cost of energy.

Sec. 28. NRS 353.540 is hereby amended to read as follows:

353.540 "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.]~~ *"State agency" does not include the Nevada System of Higher Education unless it is anticipated that payments under the agreement will be made with state appropriations.*

Sec. 29. NRS 353.590 is hereby amended to read as follows:

353.590 If an agreement pursuant to NRS 353.500 to 353.630, inclusive, involves the construction, *alteration, repair or remodeling* of an improvement ~~[, the]~~:

1. The construction, alteration, repair or remodeling of the improvement may be conducted as specified in the agreement without complying with the provisions of:

~~[1.]~~ (a) Any law requiring competitive bidding; or

~~[2.]~~ (b) Chapter 341 of NRS.

2. The provisions of NRS 338.013 to 338.090, inclusive, and section 1 of this act, apply to the construction, alteration, repair or remodeling of the improvement.

Sec. 30. 1. During Fiscal Year 2005-2006 and Fiscal Year 2006-2007, the Nevada System of Higher Education may not enter into more than three agreements pursuant to NRS 353.500 to

353.630, inclusive, as amended by this act, with respect to which it is anticipated that payments under the agreement will be made with state appropriations.

2. The Nevada System of Higher Education shall include with a proposed agreement submitted for approval pursuant to NRS 353.550 an analysis of the fiscal impact of the proposed agreement, including, without limitation, the sources of funding for the ongoing costs relating to the agreement and a method to obtain appropriations to pay for the agreement.

Sec. 31. 1. An advisory group is hereby created to conduct an interim study concerning lease-purchase and installment-purchase agreements by public entities. The advisory group must consist of:

(a) One representative from each of the following fields, appointed by the Legislative Commission:

- (1) Public purchasing;
- (2) Labor;
- (3) Public works;
- (4) Construction project management;
- (5) State governmental financing; and
- (6) Local governmental financing.

(b) One Assemblyman who has knowledge in one or more of the fields described in subparagraphs (1) to (6), inclusive, of paragraph (a), appointed by the Speaker of the Assembly.

(c) One Senator who has knowledge in one or more of the fields described in subparagraphs (1) to (6), inclusive, of paragraph (a), appointed by the Majority Leader of the Senate.

2. The study must include, without limitation:

(a) A review of existing laws relating to lease-purchase and installment-purchase agreements;

(b) An evaluation of the applicability of existing laws relating to public works and public purchasing to existing laws relating to lease-purchase and installment-purchase agreements; and

(c) Consideration of changes to existing provisions of law relating to lease-purchase and installment-purchase agreements to better serve the needs of the State and local governments and to promote and protect the interests of Nevada's workforce.

3. In conducting the study required pursuant to this section, the advisory group shall consult with the Commission to Study Governmental Purchasing, the Committee on Local Government Finance, the Office of the State Treasurer, the State Public Works Board and experts in the fields of contracting, labor and purchasing.

4. The advisory group shall submit a report of the results of the study and any recommendations for legislation to the Director of the Legislative Counsel Bureau not later than September 1, 2006, for transmission to the 74th Session of the Nevada Legislature.

- Sec. 32.** 1. This act becomes effective on July 1, 2005.
2. Section 28 of this act expires by limitation on June 30, 2007.
3. Sections 5 and 6 of this act expire by limitation on May 1, 2013.

