

Amendment No. 252

Senate Amendment to Senate Bill No. 509

(BDR 31-424)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

SJA/EGO



Date: 4/21/2007

S.B. No. 509—Makes various changes to provisions relating to state financial administration and the acquisition of property. (BDR 31-424)



SENATE BILL NO. 509—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ADVISORY GROUP TO CONDUCT INTERIM STUDY ON LEASE-
PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS BY PUBLIC ENTITIES)

MARCH 26, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to state financial
administration and the acquisition of property. (BDR 31-424)

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 state financial administration; requiring state agencies to
advertise for proposals before entering into certain lease-purchase and
installment-purchase agreements; making various other changes to
provisions relating to lease-purchase and installment-purchase
agreements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes state agencies to enter into lease-purchase and installment-purchase agreements to acquire real property, an interest in real property or an improvement to real property. (NRS 353.500-353.630) **Section 2** of this bill requires a state agency to advertise for proposals before it enters into a lease-purchase or installment-purchase agreement for the purpose of acquiring an existing building that is located on property which is not owned by the State. **Section 3** of this bill specifies the requirements for such an advertisement. **Section 2** also requires that, if a state agency wishes to enter into a lease-purchase or installment-purchase agreement requiring the construction of a building on property which is owned by the State, the agency must contract with a design-build team for the design and construction of the building.

Existing law provides the requirements for lease-purchase and installment-purchase agreements which extend beyond the biennium in which the agreements are executed. Any such agreement must prohibit certificates of participation unless the State Board of Finance waives the prohibition. (NRS 353.550) **Section 5** of this bill provides that if the Board waives the prohibition, the agreement does not have to include: (1) the rate of interest to be paid under the agreement; (2) the dates on which and prices at which the prepayments may be made under the agreement; (3) the amount to be received from the sale of the agreement or interests therein; and (4) the principal amount to be paid under the agreement and the amount of principal to be repaid in any particular year.

Existing law provides that if a lease-purchase or installment-purchase agreement involves an improvement to property owned by the State, the State Land Registrar may enter into a lease of the property to which the improvement will be made if the lease has a term of 35 years or less and the lease provides for rental payments that approximate the fair market rental of the property before the improvement is made. (NRS 353.600) **Section 8** of this bill provides that any such lease is exempt from ~~the~~ **certain** provisions ~~of chapter 321 of NRS.~~

in existing law governing the lease of state land that require certain appraisals and the acceptance of sealed bids followed by oral offers.

Existing law authorizes the issuance and prescribes the terms of evidence of certain installment-purchase agreements. (NRS 350.091) **Section 9** of this bill provides that certain installment-purchase agreements involving the construction, alteration, repair or remodeling of an improvement need not contain certain details and certain leases thereunder need not comply with certain statutes, but prevailing wage requirements (NRS 338.013-338.090) apply to the construction, alteration, repair or remodeling.

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

Section 1. Chapter 353 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *Before a state agency enters into an agreement:*

1. If, pursuant to the terms of the agreement:

(a) The state agency will acquire an existing building that is located on property which is not owned by the State; or

(b) The state agency will construct a building that will be located on property which is not owned by the State,

the state agency shall advertise for proposals in the manner set forth in section 3 of this act.

2. If, pursuant to the terms of the agreement, the state agency will construct a building that will be located on property which is owned by the State, the state agency shall contract with a design-build team for the design and construction of the building in accordance with NRS 338.1711 to 338.1727, inclusive, regardless of the estimated cost of the building.

Sec. 3. *1. A state agency that is required to advertise for proposals pursuant to section 2 of this act shall advertise for proposals in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county in which the building is or will be located. If no qualified newspaper is published in the county, 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.*

2. A request for proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the building, including, without limitation, its size and location;

(b) An estimate of the cost of the building;

(c) If the proposal is for the construction of a building:

(1) The date on which it is anticipated that the state agency will begin construction of the building;

(2) The date by which proposals must be submitted to the state agency; and

(3) A statement setting forth that the contractor who will construct the building must be licensed pursuant to chapter 624 of NRS; and

(d) Any other information that the state agency determines to be necessary.

3. Nothing in this section shall be construed to require a state agency to enter into an agreement with any person who submits a proposal to the state agency.

1 **Sec. 4.** NRS 353.500 is hereby amended to read as follows:

2 353.500 As used in NRS 353.500 to 353.630, inclusive, *and sections 2 and 3*
3 *of this act*, unless the context otherwise requires, the words and terms defined in
4 NRS 353.510 to 353.540, inclusive, have the meanings ascribed to them in those
5 sections.

6 **Sec. 5.** NRS 353.550 is hereby amended to read as follows:

7 353.550 1. A state agency may propose a project to acquire real property, an
8 interest in real property or an improvement to real property through an agreement
9 which has a term, including the terms of any options for renewal, that extends
10 beyond the biennium in which the agreement is executed if the agreement:

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

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

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

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

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

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

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

25 2. The provisions of paragraph (d) of subsection 1 may be waived by the
26 Board, upon the recommendation of the State Treasurer, if the Board determines
27 that waiving those provisions:

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

29 (b) Complies with federal securities laws.

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

32 (a) The proposed project must be approved by the Legislature by concurrent
33 resolution or statute or as part of the budget of the state agency, or by the Interim
34 Finance Committee when the Legislature is not in regular session;

35 (b) The agency must submit the proposed agreement to the Chief, the State
36 Treasurer and the State Land Registrar for their review and transmittal to the Board;

37 (c) The Board must approve the proposed agreement; and

38 (d) The Governor must execute the agreement.

39 **4. If the provisions of paragraph (d) of subsection 1 are waived as provided**
40 *in subsection 2, the agreement proposed pursuant to subsection 1, and the*
41 *proposed agreement submitted pursuant to paragraph (b) of subsection 3 and*
42 *approved pursuant to paragraph (c) of subsection 3, need not contain the*
43 *following details if the Board, before the execution of the agreement by the*
44 *Governor pursuant to paragraph (d) of subsection 3, delegates to the State*
45 *Treasurer or his designee the authority to make a binding agreement, subject to*
46 *paragraphs (a), (b), (c) and (e) of subsection 1:*

47 (a) *The rate of interest to be paid under the agreement;*

48 (b) *The dates on which and prices at which the prepayments may be made*
49 *under the agreement;*

50 (c) *The amount to be received from the sale of the agreement or interests*
51 *therein; and*

52 (d) *The principal amount to be paid under the agreement and the amount of*
53 *principal to be repaid in any particular year.*

5. All terms of the agreement other than:

(a) The rate of interest to be paid under the agreement;

(b) The dates and prices for the prepayments of amounts under the agreement;

(c) The amount to be received from the sale of the agreement or interests therein; and

(d) The principal amount to be paid under the agreement and the amount of principal to be repaid in any particular year,

must be approved by the Board before the agreement is executed by the Governor.

6. The final rate of interest, dates and prices of prepayments, price for the sale of the agreement or interests therein, principal amount and requirements for the principal amounts to be repaid in any year are not required to be approved by the Board if each of those terms complies with the requirements specified by the Board before the agreement is executed by the Governor.

Sec. 6. NRS 353.580 is hereby amended to read as follows:

353.580 ~~Any~~ Except as otherwise provided in sections 2 and 3 of this act, an agreement entered into pursuant to NRS 353.500 to 353.630, inclusive, and sections 2 and 3 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. 7. NRS 353.590 is hereby amended to read as follows:

353.590 If an agreement pursuant to NRS 353.500 to 353.630, inclusive, and sections 2 and 3 of this act involves the construction, alteration, repair or remodeling of an improvement:

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

(a) ~~Any~~ Except as otherwise provided in sections 2 and 3 of this act, any law requiring competitive bidding; or

(b) Chapter 341 of NRS.

2. The provisions of NRS 338.013 to 338.090, inclusive, apply to the construction, alteration, repair or remodeling of the improvement.

Sec. 8. NRS 353.600 is hereby amended to read as follows:

353.600 1. Except as otherwise provided in this section, if an agreement pursuant to NRS 353.500 to 353.630, inclusive, and sections 2 and 3 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.

4. Any lease of state land under this section is exempt from the requirements of ~~Chapter 321 of NRS~~ NRS 321.007 and 321.335.

Sec. 9. NRS 350.091 is hereby amended to read as follows:

350.091 1. Whenever the governing body of any local government is authorized to enter into a medium-term obligation or installment-purchase agreement as provided in NRS 280.266 or 350.089 that is intended to finance a capital project, the governing body shall update its plan for capital improvement in the same manner as is required for general obligation debt pursuant to NRS 350.013.

2. Whenever the governing body of any local government is authorized to enter into a medium-term obligation as provided in NRS 350.089, the governing body may issue, as evidence thereof, negotiable notes or medium-term negotiable bonds that, except as otherwise provided in subsection 5 of NRS 496.155:

(a) Must mature not later than 10 years after the date of issuance;

(b) Must bear interest at a rate or rates which do not exceed by more than 3 percent the Index of Twenty Bonds which was most recently published before the bids are received or a negotiated offer is accepted; and

(c) May, at the option of the local government, contain a provision which allows redemption of the notes or bonds before maturity, upon such terms as the governing body determines.

3. Whenever the governing body of any local government is authorized to enter into an installment-purchase agreement as provided in NRS 280.266 or 350.089, the governing body may issue, as evidence thereof, an installment-purchase agreement, lease or other evidence of a transaction described in NRS 350.800. An installment-purchase agreement, lease or other evidence of a transaction described in NRS 350.800 issued pursuant to this subsection:

(a) Must have a term that is 30 years or less;

(b) Must bear interest at a rate or rates that do not exceed by more than 3 percent the Index of Revenue Bonds which was most recently published before the local government enters into the installment-purchase agreement; and

(c) May, at the option of the local government, contain a provision that allows prepayment of the purchase price upon such terms as are provided in the agreement.

4. A proposed installment-purchase agreement approved by the governing body need not contain the following details if the governing body, before the execution of the installment-purchase agreement, delegates to its chief administrative officer or chief financial officer, or both, the authority to make a binding agreement, subject to paragraph (a) of subsection 1 of NRS 350.800:

(a) The rate of interest to be paid under the installment-purchase agreement;

(b) The dates on which and the prices at which the prepayments may be made under the installment-purchase agreement;

(c) The amount to be received from the sale of the installment-purchase agreement or interests therein; and

(d) The principal amount to be paid under the installment-purchase agreement and the amount of principal to be repaid in any particular year.

5. All terms of the installment-purchase agreement other than:

(a) The rate of interest;

(b) The dates and prices for the prepayments of amounts under the installment-purchase agreement;

(c) The amount to be received from the sale of the installment-purchase agreement or interests therein; and

(d) The principal amount to be paid under the installment-purchase agreement and the amount of principal to be repaid in any particular year,

1 ~~must be approved by the governing body before the installment-purchase~~
2 ~~agreement is executed.~~

3 6. ~~If an installment-purchase agreement involves a lease for a term of 35~~
4 ~~years or less of land of the municipality on which improvements are to be located~~
5 ~~which will be, in whole or in part, the subject of the installment-purchase~~
6 ~~agreement, then no provisions of law, including, without limitation, NRS~~
7 ~~244.2795, 244.281, 244.282, 244.283, 266.267, 268.059, 268.061 or 268.062, that~~
8 ~~require an appraisal or public bidding before entering into or executing that lease~~
9 ~~apply to the lease entered into under this subsection.~~

10 7. ~~If an installment-purchase agreement pursuant to this section involves~~
11 ~~the construction, alteration, repair or remodeling of an improvement, the~~
12 ~~provisions of NRS 338.013 to 338.090, inclusive, apply to the construction,~~
13 ~~alteration, repair or remodeling of the improvement.~~

14 8. ~~If the term of the medium-term obligation or installment-purchase~~
15 ~~agreement is more than 5 years, the weighted average term of the medium-term~~
16 ~~obligation or installment-purchase agreement may not exceed the estimated~~
17 ~~weighted average useful life of the assets being financed with the medium-term~~
18 ~~obligation or installment-purchase agreement.~~

19 ~~§5-1~~ 9. ~~For the purposes of subsection~~ ~~4-1~~ 8, the Committee on Local
20 Government Finance may adopt regulations that provide guidelines for the useful
21 life of various types of assets and for calculation of the weighted average useful life
22 of assets.

23 **Sec. 10. NRS 321.007 is hereby amended to read as follows:**

24 321.007 1. Except as otherwise provided in subsection 5, NRS 322.063,
25 322.065, ~~for~~ 322.075, ~~or~~ or 353.600, except as otherwise required by federal law
26 and except for land that is sold or leased pursuant to an agreement entered into
27 pursuant to NRS 277.080 to 277.170, inclusive, when offering any land for sale or
28 lease, the State Land Registrar shall:

29 (a) Obtain two independent appraisals of the land before selling or leasing it.
30 The appraisals must have been prepared not more than 6 months before the date on
31 which the land is offered for sale or lease.

32 (b) Notwithstanding the provisions of chapter 333 of NRS, select the
33 two independent appraisers from the list of appraisers established pursuant to
34 subsection 2.

35 (c) Verify the qualifications of each appraiser selected pursuant to paragraph
36 (b). The determination of the State Land Registrar as to the qualifications of an
37 appraiser is conclusive.

38 2. The State Land Registrar shall adopt regulations for the procedures for
39 creating or amending a list of appraisers qualified to conduct appraisals of land
40 offered for sale or lease by the State Land Registrar. The list must:

41 (a) Contain the names of all persons qualified to act as a general appraiser in
42 the same county as the land that may be appraised; and

43 (b) Be organized at random and rotated from time to time.

44 3. An appraiser chosen pursuant to subsection 1 must provide a disclosure
45 statement which includes, without limitation, all sources of income of the appraiser
46 that may constitute a conflict of interest and any relationship of the appraiser with
47 the owner of the land or the owner of an adjoining property.

48 4. An appraiser shall not perform an appraisal on any land offered for sale or
49 lease by the State Land Registrar if the appraiser or a person related to the appraiser
50 within the first degree of consanguinity or affinity has an interest in the land or an
51 adjoining property.

52 5. If a lease of land is for residential property and the term of the lease is 1
53 year or less, the State Land Registrar shall obtain an analysis of the market value of

1 similar rental properties prepared by a licensed real estate broker or salesman when
2 offering such a property for lease.

3 **Sec. 11. NRS 321.335 is hereby amended to read as follows:**

4 321.335 1. Except as otherwise provided in NRS 321.125, 321.510,
5 322.063, 322.065, ~~322.075~~ or 353.600, except as otherwise required by
6 federal law and except for an agreement entered into pursuant to the provisions of
7 NRS 277.080 to 277.170, inclusive, or a lease of residential property with a term of
8 1 year or less, after April 1, 1957, all sales or leases of any lands that the Division is
9 required to hold pursuant to NRS 321.001, including lands subject to contracts of
10 sale that have been forfeited, are governed by the provisions of this section.

11 2. Whenever the State Land Registrar deems it to be in the best interests of
12 the State of Nevada that any lands owned by the State and not used or set apart for
13 public purposes be sold or leased, he may, with the approval of the State Board of
14 Examiners and the Interim Finance Committee, cause those lands to be sold or
15 leased upon sealed bids, or oral offer after the opening of sealed bids for cash or
16 pursuant to a contract of sale or lease, at a price not less than the highest appraised
17 value for the lands plus the costs of appraisal and publication of notice of sale or
18 lease.

19 3. Before offering any land for sale or lease, the State Land Registrar shall
20 cause it to be appraised by competent appraisers selected pursuant to NRS 321.007.

21 4. After receipt of the report of the appraisers, the State Land Registrar shall
22 cause a notice of sale or lease to be published once a week for 4 consecutive weeks
23 in a newspaper of general circulation published in the county where the land to be
24 sold or leased is situated, and in such other newspapers as he deems appropriate. If
25 there is no newspaper published in the county where the land to be sold or leased is
26 situated, the notice must be so published in a newspaper published in this State
27 having a general circulation in the county where the land is situated.

28 5. The notice must contain:

- 29 (a) A description of the land to be sold or leased;
30 (b) A statement of the terms of sale or lease;
31 (c) A statement that the land will be sold pursuant to subsection 6; and
32 (d) The place where the sealed bids will be accepted, the first and last days on
33 which the sealed bids will be accepted, and the time when and place where the
34 sealed bids will be opened and oral offers submitted pursuant to subsection 6 will
35 be accepted.

36 6. At the time and place fixed in the notice published pursuant to subsection
37 4, all sealed bids which have been received must, in public session, be opened,
38 examined and declared by the State Land Registrar. Of the proposals submitted
39 which conform to all terms and conditions specified in the notice published
40 pursuant to subsection 4 and which are made by responsible bidders, the bid which
41 is the highest must be finally accepted, unless a higher oral offer is accepted or the
42 State Land Registrar rejects all bids and offers. Before finally accepting any written
43 bid, the State Land Registrar shall call for oral offers. If, upon the call for oral
44 offers, any responsible person offers to buy or lease the land upon the terms and
45 conditions specified in the notice, for a price exceeding by at least 5 percent the
46 highest written bid, then the highest oral offer which is made by a responsible
47 person must be finally accepted.

48 7. The State Land Registrar may reject any bid or oral offer to purchase or
49 lease submitted pursuant to subsection 6, if he deems the bid or offer to be:

- 50 (a) Contrary to the public interest.
51 (b) For a lesser amount than is reasonable for the land involved.
52 (c) On lands which it may be more beneficial for the State to reserve.

(d) On lands which are requested by the State of Nevada or any department, agency or institution thereof.

8. Upon acceptance of any bid or oral offer and payment to the State Land Registrar in accordance with the terms of sale specified in the notice of sale, the State Land Registrar shall convey title by quitclaim or cause a patent to be issued as provided in NRS 321.320 and 321.330.

9. Upon acceptance of any bid or oral offer and payment to the State Land Registrar in accordance with the terms of lease specified in the notice of lease, the State Land Registrar shall enter into a lease agreement with the person submitting the accepted bid or oral offer pursuant to the terms of lease specified in the notice of lease.

10. The State Land Registrar may require any person requesting that state land be sold pursuant to the provisions of this section to deposit a sufficient amount of money to pay the costs to be incurred by the State Land Registrar in acting upon the application, including the costs of publication and the expenses of appraisal. This deposit must be refunded whenever the person making the deposit is not the successful bidder. The costs of acting upon the application, including the costs of publication and the expenses of appraisal, must be borne by the successful bidder.

11. If land that is offered for sale or lease pursuant to this section is not sold or leased at the initial offering of the contract for the sale or lease of the land, the State Land Registrar may offer the land for sale or lease a second time pursuant to this section. If there is a material change relating to the title, zoning or an ordinance governing the use of the land, the State Land Registrar must obtain a new appraisal of the land pursuant to the provisions of NRS 321.007 before offering the land for sale or lease a second time. If land that is offered for sale or lease pursuant to this section is not sold or leased at the second offering of the contract for the sale or lease of the land, the State Land Registrar may list the land for sale or lease at the appraised value with a licensed real estate broker, provided that the broker or a person related to the broker within the first degree of consanguinity or affinity does not have an interest in the land or an adjoining property.

Sec. 12. NRS 322.060 is hereby amended to read as follows:

322.060 ~~Subject~~ ***Except as otherwise provided in NRS 353.600, subject*** to the provisions of NRS 321.335, leases or easements authorized pursuant to the provisions of NRS 322.050, and not made for the purpose of extracting oil, coal or gas or the utilization of geothermal resources from the lands leased, must be:

1. For such areas as may be required to accomplish the purpose for which the land is leased or the easement granted.

2. Except as otherwise provided in NRS 322.063, 322.065 and 322.067, for such term and consideration as the Administrator of the Division of State Lands of the State Department of Conservation and Natural Resources, as ex officio State Land Registrar, may determine reasonable based upon the fair market value of the land.

3. Executed upon a form to be prepared by the Attorney General. The form must contain all of the covenants and agreements usual or necessary to such leases or easements.

~~Sec. 10.~~ **Sec. 13.** This act becomes effective on July 1, 2007.