

CHAPTER.....

AN ACT relating to government contracts; declaring privatization contracts to be public records; requiring governmental entities to submit certain information to the Chief of the Budget Division of the Department of Administration relating to the use of privatization contracts; requiring state agencies and local governments to include certain information relating to privatization contracts in the tentative budget of the state agency or local government; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential or which the governmental entity determines pursuant to a balancing test must not be disclosed, must be open at all times during office hours for inspection and copying. (NRS 239.010) **Section 1** of this bill declares to be a public record any privatization contract, defined in **section 3** of this bill as a contract executed by or on behalf of a governmental entity which authorizes a private entity to provide public services that are: (1) substantially similar to the services performed by the public employees of the governmental entity; and (2) in lieu of the services otherwise required to be provided by the governmental entity.

On or before September 1 of each even-numbered year, existing law requires all departments, institutions and other agencies of the Executive Department of the State Government to submit to the Chief of the Budget Division of the Department of Administration information regarding any existing contracts the department, institution or agency has with consultants or temporary employment services, the proposed expenditures for such contracts in the next 2 fiscal years and the reasons for the use of such consultants or services. (NRS 353.210) **Section 7** of this bill requires that if such contracts are privatization contracts, the department, institution or agency must also submit a copy of each of the privatization contracts together with information regarding the duration and number of such contracts, as well as an analysis of the privatization contracts which includes a comparison of the use of the persons employed under the privatization contracts with the costs if the services were provided by regular full-time employees of the department, institution or agency. **Section 7** further requires the information regarding contracts entered into by the department, institution or agency to be made open to public inspection. **Section 8** of this bill requires a local government to provide the same disclosures regarding any contracts it has entered into while preparing a tentative budget, and to make such information open to public inspection. Because the budgetary process of local governments is required to be used by many other units of government, the provisions of **section 8** also require the disclosures required regarding contracts a government agency has entered into to be provided while preparing a tentative budget by the following entities: (1) transportation districts; (2) districts for the support of public parks; (3) consolidated, district or town libraries; (4) county hospital districts; and (5) county fire protection districts.



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

Section 1. Chapter 239 of NRS is hereby amended by adding thereto a new section to read as follows:

Any privatization contract executed by or on behalf of a governmental entity is a public record and must be open to public inspection during the regular business hours of the governmental entity.

Sec. 2. NRS 239.001 is hereby amended to read as follows:

239.001 The Legislature hereby finds and declares that:

1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law;

2. The provisions of this chapter must be construed liberally to carry out this important purpose; ~~and~~

3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly ~~and~~; ***and***

4. The use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services.

Sec. 3. NRS 239.005 is hereby amended to read as follows:

239.005 As used in this chapter, unless the context otherwise requires:

1. “Actual cost” means the direct cost related to the reproduction of a public record. The term does not include a cost that a governmental entity incurs regardless of whether or not a person requests a copy of a particular public record.

2. “Committee” means the Committee to Approve Schedules for the Retention and Disposition of Official State Records.

3. “Division” means the Division of State Library and Archives of the Department of Cultural Affairs.

4. “Governmental entity” means:

(a) An elected or appointed officer of this State or of a political subdivision of this State;

(b) An institution, board, commission, bureau, council, department, division, authority or other unit of government of this State or of a political subdivision of this State;

(c) A university foundation, as defined in NRS 396.405; or



(d) An educational foundation, as defined in NRS 388.750, to the extent that the foundation is dedicated to the assistance of public schools.

5. “Privatization contract” means a contract executed by or on behalf of a governmental entity which authorizes a private entity to provide public services that are:

(a) Substantially similar to the services provided by the public employees of the governmental entity; and

(b) In lieu of the services otherwise authorized or required to be provided by the governmental entity.

Sec. 4. NRS 244A.252 is hereby amended to read as follows:

244A.252 1. A board of county commissioners may by ordinance, but not as in a case of emergency, create one or more transportation districts in the unincorporated area of the county. The board of county commissioners is ex officio the governing body of any district created pursuant to this section and may:

(a) Organize and maintain the district.

(b) Establish, by ordinance, regulations:

(1) For the administration of its internal affairs.

(2) For the employment of professional, technical, clerical and other personnel necessary to carry out its duties.

(3) For the establishment and alteration of the boundaries of the district.

(4) Providing for the use of revenue received by the district.

(c) Hold meetings as the governing body of a district in conjunction with its meetings as the board of county commissioners without posting a separate agenda or posting additional notices of the meetings within the district.

(d) Cause a special or general district election to be held in the same manner as provided for other such elections in title 24 of NRS for the purpose of submitting a question pursuant to paragraph (b) of subsection 1 of NRS 244.3351 or paragraph (b) of subsection 1 of NRS 278.710, or both, or cause the question or questions to be submitted at a primary or general state election.

2. A special election may be held only if the board of county commissioners determines, by a unanimous vote, that an emergency exists. The determination made by the board is conclusive unless it is shown that the board acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the board must be commenced within 15 days after the board’s determination is final. As used in this subsection, “emergency” means any unexpected occurrence or combination of occurrences which requires immediate action by the board of county



commissioners to prevent or mitigate a substantial financial loss to the district or county or to enable the board to provide an essential service to the residents of the county.

3. The budget of a district created pursuant to this section must comply with the provisions of NRS 354.470 to 354.626, inclusive ~~H~~, and section 8 of this act.

4. All persons employed to perform the functions of a district are employees of the county for all purposes.

Sec. 5. NRS 244A.789 is hereby amended to read as follows:

244A.789 1. The budget of a district for the support of public parks must comply with the provisions of NRS 354.470 to 354.626, inclusive, and section 8 of this act but need not be separately prepared and may be included within the county budget. The district is not entitled to any share of revenue from the supplemental city-county relief tax.

2. The governing body may submit to the registered voters of the district at a primary or general election:

(a) A proposal to issue general obligation bonds of the district to finance the acquisition, construction, equipment and improvement of one or more park projects within the district, or outside the district if the governing body finds that the park project will benefit the residents of the district, but the amount of general obligation bonds or other securities so issued may not exceed 10 percent of the assessed valuation of the taxable property in the district. The ballot question for such a proposal must contain the principal amount of the general obligation bonds to be issued, the purpose of the issuance of the bonds and the estimate established by the governing body of:

(1) The duration of the levy of property tax that will be used to pay the general obligations; and

(2) The average annual increase, if any, in the amount of property taxes that an owner of a new home with a fair market value of \$100,000 will pay for debt service on the general obligation bonds to be issued.

(b) A proposal to levy a tax ad valorem pursuant to NRS 354.5982 for:

(1) Any of the purposes described in paragraph (a);

(2) Maintenance of public parks located within the district;

(3) Maintenance of public parks located outside the district if the governing body finds that the parks benefit the residents of the district; or

(4) Any combination of those purposes.



3. The ballot question for a proposal submitted to the registered voters pursuant to paragraph (b) of subsection 2 must contain the rate of the proposed additional property tax stated in dollars and cents per \$100 assessed valuation, the purpose of the proposed additional property tax, the duration of the proposed additional property tax and an estimate established by the governing body of the increase in the amount of property taxes that an owner of a new home with a fair market value of \$100,000 will pay per year as a result of the passage of the question.

4. As used in this section, “park project” has the meaning ascribed to it in NRS 244A.039.

5. If the proposal to issue bonds is approved by the voters, the county may issue bonds of the district as provided in chapter 350 of NRS.

Sec. 6. NRS 268.442 is hereby amended to read as follows:

268.442 1. The governing body of a city may by ordinance, but not as in a case of emergency, create one or more transportation districts in the incorporated area of the city. The governing body of the city is ex officio the governing body of any district created pursuant to this section and may:

(a) Organize and maintain the district.

(b) Establish, by ordinance, regulations:

(1) For the administration of its internal affairs.

(2) For the employment of professional, technical, clerical and other personnel necessary to carry out its duties.

(3) For the establishment and alteration of the boundaries of the district.

(4) Providing for the use of revenue received by the district.

(c) Hold meetings as the governing body of a district in conjunction with its meetings as the governing body of the city without posting a separate agenda or posting additional notices of the meetings within the district.

2. The budget of a district created pursuant to this section must comply with NRS 354.470 to 354.626, inclusive **H**, **and section 8 of this act.**

3. All persons employed to perform the functions of a district are employees of the city for all purposes.

Sec. 7. NRS 353.210 is hereby amended to read as follows:

353.210 1. Except as otherwise provided in subsection 6, on or before September 1 of each even-numbered year, all departments, institutions and other agencies of the Executive Department of the State Government, and all agencies of the Executive Department of the State Government receiving state money, fees or other money



under the authority of the State, including those operating on money designated for specific purposes by the Nevada Constitution or otherwise, shall prepare, on blanks furnished them by the Chief, and submit to the Chief:

(a) The number of positions within the department, institution or agency that have been vacant for at least 12 months, the number of months each such position has been vacant and the reasons for each such vacancy. ~~{}~~

(b) Any existing contracts the department, institution or agency has with ~~{consultants}~~ **persons** or temporary employment services, the proposed expenditures for such contracts in the next 2 fiscal years and the reasons for the use of such ~~{consultants}~~ **persons** or services. ~~{; and}~~ **If such contracts include any privatization contracts, a copy of each of those privatization contracts together with:**

(1) A statement specifying the duration of the privatization contracts;

(2) The number of privatization contracts proposed for the next 2 fiscal years and the estimated expenditures for the privatization contracts; and

(3) An analysis of each of the privatization contracts, which includes, without limitation:

(I) For the preceding, current and next fiscal years, the annual amount required to perform each of the privatization contracts; and

(II) For the preceding and current fiscal years, the number of persons the department, institution or agency employed pursuant to the privatization contracts, reflected as the equivalent full-time position if the persons were regularly employed by the department, institution or agency, including the equivalent hourly wage and the cost of benefits for each job classification.

(c) Estimates of ~~{their}~~ expenditure requirements ~~{}~~ **of the department, institution or agency**, together with all anticipated income from fees and all other sources, for the next 2 fiscal years compared with the corresponding figures of the last completed fiscal year and the estimated figures for the current fiscal year.

2. The Chief shall direct that one copy of the forms submitted pursuant to subsection 1, accompanied by every supporting schedule and any other related material, be delivered directly to the Fiscal Analysis Division of the Legislative Counsel Bureau on or before September 1 of each even-numbered year.

3. The Budget Division of the Department of Administration shall give advance notice to the Fiscal Analysis Division of the



Legislative Counsel Bureau of any conference between the Budget Division of the Department of Administration and personnel of other state agencies regarding budget estimates. A Fiscal Analyst of the Legislative Counsel Bureau or his or her designated representative may attend any such conference.

4. The estimates of expenditure requirements submitted pursuant to subsection 1 must be classified to set forth the data of funds, organizational units, and the character and objects of expenditures, and must include a mission statement and measurement indicators for each program. The organizational units may be subclassified by functions and activities, or in any other manner at the discretion of the Chief.

5. If any department, institution or other agency of the Executive Department of the State Government, whether its money is derived from state money or from other money collected under the authority of the State, fails or neglects to submit estimates of its expenditure requirements as provided in this section, the Chief may, from any data at hand in the Chief's office or which the Chief may examine or obtain elsewhere, make and enter a proposed budget for the department, institution or agency in accordance with the data.

6. Agencies, bureaus, commissions and officers of the Legislative Department, the Public Employees' Retirement System and the Judicial Department of the State Government shall submit to the Chief for his or her information in preparing the proposed executive budget the budgets which they propose to submit to the Legislature.

7. The information provided by a department, institution or agency pursuant to paragraph (b) of subsection 1 is a public record and must be open to public inspection.

8. As used in this section, "privatization contract" means a contract executed by or on behalf of a department, institution or agency which authorizes a private entity to provide public services which are:

(a) Substantially similar to the services performed by the public employees of the department, institution or agency; and

(b) In lieu of the services otherwise authorized or required to be provided by the department, institution or agency.

Sec. 8. Chapter 354 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In preparing a tentative budget pursuant to NRS 354.596, the governing body of a local government shall prepare and include a list of any existing contracts the local government has with persons or temporary employment services, the proposed



expenditures for such contracts in the next 2 fiscal years and the reasons for the use of such persons or services. If such contracts include privatization contracts, the local government must include in the list:

- (a) The duration of such contracts;*
- (b) The number of privatization contracts proposed for the next 2 fiscal years and the estimated expenditures for such contracts; and*
- (c) A summary of the number of persons the local government proposes to employ pursuant to each contract, reflected as their equivalent full-time positions if the persons were employed regularly by the local government, and their equivalent hourly wage.*

2. The list prepared pursuant to this section is a public record and must be open to public inspection.

3. As used in this section, "privatization contract" means a contract executed by or on behalf of a local government which authorizes a private entity to provide public services which are:

- (a) Substantially similar to the services provided by the public employees of the local government; and*
- (b) In lieu of the services otherwise authorized or required to be provided by the local government.*

Sec. 9. NRS 354.474 is hereby amended to read as follows:

354.474 1. Except as otherwise provided in subsections 2 and 3, the provisions of NRS 354.470 to 354.626, inclusive, **and section 8 of this act** apply to all local governments. For the purpose of NRS 354.470 to 354.626, inclusive ~~H~~, **and section 8 of this act:**

(a) "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318 and 379 of NRS, NRS 450.550 to 450.750, inclusive, and chapters 474, 541, 543 and 555 of NRS, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

(b) "Local government" does not include the Nevada Rural Housing Authority.

2. An irrigation district organized pursuant to chapter 539 of NRS shall fix rates and levy assessments as provided in NRS 539.667 to 539.683, inclusive. The levy of such assessments and the posting and publication of claims and annual financial statements as required by chapter 539 of NRS shall be deemed compliance with



the budgeting, filing and publication requirements of NRS 354.470 to 354.626, inclusive, *and section 8 of this act*, but any such irrigation district which levies an ad valorem tax shall comply with the filing and publication requirements of NRS 354.470 to 354.626, inclusive, *and section 8 of this act* in addition to the requirements of chapter 539 of NRS.

3. An electric light and power district created pursuant to chapter 318 of NRS shall be deemed to have fulfilled the requirements of NRS 354.470 to 354.626, inclusive, *and section 8 of this act* for a year in which the district does not issue bonds or levy an assessment if the district files with the Department of Taxation a copy of all documents relating to its budget for that year which the district submitted to the Rural Utilities Service of the United States Department of Agriculture.

Sec. 10. NRS 354.476 is hereby amended to read as follows:

354.476 As used in NRS 354.470 to 354.626, inclusive, *and section 8 of this act*, unless the context otherwise requires, the words and terms defined in NRS 354.479 to 354.578, inclusive, have the meanings ascribed to them in those sections.

Sec. 11. NRS 354.626 is hereby amended to read as follows:

354.626 1. No governing body or member thereof, officer, office, department or agency may, during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, in excess of the amounts appropriated for that function, other than bond repayments, medium-term obligation repayments and any other long-term contract expressly authorized by law. Any officer or employee of a local government who willfully violates NRS 354.470 to 354.626, inclusive, *and section 8 of this act* is guilty of a misdemeanor and upon conviction thereof ceases to hold his or her office or employment. Prosecution for any violation of this section may be conducted by the Attorney General or, in the case of incorporated cities, school districts or special districts, by the district attorney.

2. Without limiting the generality of the exceptions contained in subsection 1, the provisions of this section specifically do not apply to:

(a) Purchase of coverage and professional services directly related to a program of insurance which require an audit at the end of the term thereof.

(b) Long-term cooperative agreements as authorized by chapter 277 of NRS.



(c) Long-term contracts in connection with planning and zoning as authorized by NRS 278.010 to 278.630, inclusive.

(d) Long-term contracts for the purchase of utility service such as, but not limited to, heat, light, sewerage, power, water and telephone service.

(e) Contracts between a local government and an employee covering professional services to be performed within 24 months following the date of such contract or contracts entered into between local government employers and employee organizations.

(f) Contracts between a local government and any person for the construction or completion of public works, money for which has been or will be provided by the proceeds of a sale of bonds, medium-term obligations or an installment-purchase agreement and that are entered into by the local government after:

(1) Any election required for the approval of the bonds or installment-purchase agreement has been held;

(2) Any approvals by any other governmental entity required to be obtained before the bonds, medium-term obligations or installment-purchase agreement can be issued have been obtained; and

(3) The ordinance or resolution that specifies each of the terms of the bonds, medium-term obligations or installment-purchase agreement, except those terms that are set forth in subsection 2 of NRS 350.165, has been adopted.

↪ Neither the fund balance of a governmental fund nor the equity balance in any proprietary fund may be used unless appropriated in a manner provided by law.

(g) Contracts which are entered into by a local government and delivered to any person solely for the purpose of acquiring supplies, services and equipment necessarily ordered in the current fiscal year for use in an ensuing fiscal year and which, under the method of accounting adopted by the local government, will be charged against an appropriation of a subsequent fiscal year. Purchase orders evidencing such contracts are public records available for inspection by any person on demand.

(h) Long-term contracts for the furnishing of television or FM radio broadcast translator signals as authorized by NRS 269.127.

(i) The receipt and proper expenditure of money received pursuant to a grant awarded by an agency of the Federal Government.

(j) The incurrence of obligations beyond the current fiscal year under a lease or contract for installment purchase which contains a provision that the obligation incurred thereby is extinguished by the



failure of the governing body to appropriate money for the ensuing fiscal year for the payment of the amounts then due.

(k) The receipt by a local government of increased revenue that:

(1) Was not anticipated in the preparation of the final budget of the local government; and

(2) Is required by statute to be remitted to another governmental entity.

(l) An agreement authorized pursuant to NRS 277A.370.

Sec. 12. NRS 379.025 is hereby amended to read as follows:

379.025 1. Except as otherwise provided in subsection 2, the trustees of any consolidated, county, district, town or other public library, and their successors, shall:

(a) Establish, supervise and maintain a library.

(b) Appoint, evaluate the performance of and, if necessary, dismiss a librarian or, in the case of a consolidated library district, an executive director.

(c) Hold and possess the property and effects of the library in trust for the public.

(d) In the case of a county library, submit annual budgets to the board of county commissioners, containing detailed estimates of the amount of money necessary for the operation and management of the library for the next succeeding year.

(e) In the case of a consolidated, district or town library, prepare annual budgets in accordance with NRS 354.470 to 354.626, inclusive **H, and section 8 of this act.**

(f) In the case of a consolidated library district:

(1) Administer any separate account established pursuant to NRS 354.603.

(2) Annually submit a budget to the board of county commissioners and governing body of the city for joint review and recommendation, which must contain detailed priorities and estimates of the amount of money necessary for the operation and management of the consolidated library district for the next succeeding year. Unless a majority of the members of the board of county commissioners and a majority of the members of the governing body of the city reject the budget within 21 days after it is submitted to them, the trustees shall cause copies of the final budget to be submitted to the board of county commissioners for attachment to the copy of the final budget for the county which is filed pursuant to NRS 354.59801, and to the governing body of the city for attachment to the copy of the final budget for the city which is filed pursuant to NRS 354.59801. If the budget is so rejected, the



trustees shall resubmit a revised budget for joint review pursuant to this subparagraph.

(3) Submit quarterly reports to the board of county commissioners and governing body of the city concerning the budget and the programs of the library, and provide any additional information requested by either governing body as soon as is reasonably practicable after receiving the request.

(g) In the case of a district library, administer any separate account established pursuant to NRS 354.603.

(h) Establish bylaws and regulations for the management of the library and their own management.

(i) Manage all the property, real and personal, of the library.

(j) Acquire and hold real and personal property, by gift, purchase or bequest, for the library.

(k) Administer any trust declared or created for the library.

(l) Maintain or defend any action in reference to the property or affairs of the library.

2. The trustees may:

(a) Make purchases and secure rooms.

(b) Authorize the merger or, subject to the limitations in NRS 379.0221, the consolidation of a town or city library with a county library district.

(c) Invest the money in the appropriate library fund in accordance with the provisions of chapter 355 of NRS.

(d) Do all acts necessary for the orderly and efficient management and control of the library.

3. The trustees shall, as a primary goal of the consolidated library district, provide the library facilities, resources and trained staff to meet the informational needs of all residents of the district.

Sec. 13. NRS 450.650 is hereby amended to read as follows:

450.650 The board of trustees of each county hospital district shall prepare annual budgets in accordance with NRS 354.470 to 354.626, inclusive ~~H~~, and *section 8 of this act*.

Sec. 14. NRS 474.190 is hereby amended to read as follows:

474.190 1. Subject to the provisions of subsection 3, the board of directors of each county fire protection district shall prepare annual budgets in accordance with NRS 354.470 to 354.626, inclusive ~~H~~, and *section 8 of this act*.

2. The budget of a district must be based on estimates of the amount of money that will be needed to defray the expenses of the district and to meet unforeseen emergencies and the amount of a fire protection tax sufficient, together with the revenue which will result



from application of the rate to the net proceeds of minerals, to raise such sums.

3. The amount of money to be raised for the purpose of establishing, equipping and maintaining the district with fire-fighting facilities must not in any 1 year exceed 1 percent of the assessed value of the property described in NRS 474.200 and any net proceeds of minerals derived from within the boundaries of the district.

Sec. 15. NRS 474.510 is hereby amended to read as follows:

474.510 1. The board of fire commissioners shall prepare an annual budget in accordance with the provisions of NRS 354.470 to 354.626, inclusive, *and section 8 of this act*, for each district organized in accordance with NRS 474.460.

2. Each budget must be based on estimates of the amount of money which will be needed to defray the expenses of the district and to meet unforeseen emergencies and the amount of a fire protection tax sufficient, together with the revenue which will result from application of the rate to the net proceeds of minerals, to raise such sums.

3. At the time of making the levy of county taxes for the year, the board of county commissioners shall levy the tax provided by subsection 2, upon all property, both real and personal, subject to taxation within the boundaries of the district. Any tax levied on interstate or intercounty telephone lines, power lines and other public utility lines as authorized in this section must be based upon valuations established by the Nevada Tax Commission pursuant to the provisions of NRS 361.315 to 361.330, inclusive.

4. The amount of tax to be collected for the purposes of this section must not exceed, in any 1 year, 1 percent of the value of the property described in subsection 3 and any net proceeds of minerals derived from within the boundaries of the district.

5. If levied, the tax must be entered upon the assessment roll and collected in the same manner as state and county taxes. Taxes may be paid in four approximately equal installments at the times specified in NRS 361.483, and the same penalties as specified in NRS 361.483 must be added for failure to pay the taxes.

6. For the purposes of NRS 474.460 to 474.540, inclusive, the treasurer of the district shall keep two separate funds for each district, one to be known as the district fire protection operating fund and one to be known as the district emergency fund. The money collected to defray the expenses of any district organized pursuant to NRS 474.460 must be deposited in the district fire protection operating fund, and the money collected to meet



unforeseen emergencies must be deposited in the district emergency fund. The district emergency fund must be used solely for emergencies and must not be used for regular operating expenses. The money deposited in the district emergency fund must not exceed the sum of \$1,000,000. Any interest earned on the money in the district emergency fund that causes the balance in that fund to exceed \$1,000,000 must be credited to the district fire protection operating fund.

7. For the purposes of subsection 6, an emergency includes, without limitation, any event that:

(a) Causes widespread or severe damage to property or injury to or the death of persons within the district;

(b) As determined by the district fire chief, requires immediate action to protect the health, safety and welfare of persons who reside within the district; and

(c) Requires the district to provide money to obtain a matching grant from an agency of the Federal Government to repair damage caused by a natural disaster that occurred within the district.

Sec. 16. This act becomes effective on July 1, 2011.

