

ASSEMBLY BILL NO. 376—ASSEMBLYMEN SMITH, BOBZIEN,  
KIRKPATRICK; CONKLIN, HOGAN AND OCEGUERA

MARCH 21, 2011

JOINT SPONSOR: SENATOR LESLIE

Referred to Committee on Government Affairs

SUMMARY—Makes various changes regarding the financing of certain local improvements with revenue pledged from sales and use taxes. (BDR 21-148)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§§ 4, 6)  
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 tourism improvement districts; making various changes regarding the financing of certain local improvements with revenue pledged from sales and use taxes; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law authorizes the governing body of any city or county to create a  
2 tourism improvement district (TID) and to pledge revenue from several sales and  
3 use taxes imposed in that district to finance certain projects within the district. The  
4 projects may be owned by the municipality, another governmental entity or any  
5 person and may be financed through the issuance of bonds or the entry into  
6 agreements for the reimbursement of the costs of the projects. (Chapter 271A of  
7 NRS) **Section 2** of this bill requires the independent auditing of claims made under  
8 agreements to provide such financing and prohibits the use of such financing to pay  
9 various fees and costs. **Section 2** also prohibits the use of such financing for the  
10 relocation within a TID of a retailer from another location within 3 miles outside of  
11 the boundary of the TID and excludes the use for such financing of the tax revenue  
12 from such a retailer. **Section 3** of this bill requires certain contractors on funded  
13 projects to select their subcontractors by competitive bidding. **Section 4** of this bill  
14 requires annual reports regarding projects within a TID. **Section 6** of this bill  
15 applies the prevailing wage provisions applicable to public works to construction



contracts for projects within a TID to the same extent as if the contracts were awarded by the municipality and the projects constituted public works.

Existing law does not allow the creation of a TID unless the pertinent governing body makes a written finding at a public hearing, based upon reports from independent consultants, as to whether the proposed project and financing will have a positive fiscal effect on the provision of local governmental services. (NRS 271A.080) **Section 5** of this bill requires the selection of those independent consultants from a list provided by the Commission on Tourism.

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

**Section 1.** Chapter 271A of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2. *The governing body of a municipality:***

*1. Shall require the review of each claim submitted pursuant to any contract or other agreement made with the governing body to any financing or reimbursement pursuant to NRS 271A.120, by an independent auditor.*

*2. Shall not provide any financing or reimbursement pursuant to NRS 271A.120 for:*

*(a) Any legal fees, accounting fees, costs of insurance, fees for legal notices or costs to amend any ordinances.*

*(b) Any project that includes the relocation on or after July 1, 2011, to a district of any retail facilities of a retailer from another location outside of and within 3 miles of the boundary of the district. Each pledge of money pursuant to NRS 271A.070 shall be deemed to exclude any amounts attributable to any tangible personal property sold at retail, or stored, used or otherwise consumed, in the district during a fiscal year by a retailer who, on or after July 1, 2011, relocates any of its retail facilities to a district from another location outside of and within 3 miles of the boundary of the district.*

**Sec. 3. 1. Except as otherwise provided in subsection 2, a contractor who enters into a contract with an owner or lessee of any property included in the project shall:**

*(a) Select each subcontractor who will perform any portion of the contract based on a process of competitive bidding approved by the governing body of the municipality;*

*(b) Ensure that each subcontractor who will perform any portion of the contract is appropriately licensed pursuant to chapter 624 of NRS; and*

*(c) Submit to the governing body of the municipality a list containing the name of each subcontractor who will perform any portion of the contract.*



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2. *The provisions of subsection 1 do not apply to:*

(a) *Any contract which is awarded by the municipality; or*

(b) *Any project which is constructed or maintained by a governmental entity on any property while the governmental entity owns that property.*

3. *As used in this section, "contract" means any contract or other agreement for the construction, improvement, repair, demolition or reconstruction of any project that is paid for in whole or in part:*

(a) *From the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120; or*

(b) *Pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120.*

**Sec. 4.** *1. On or before March 1 of each year, the governing body of a municipality that creates a district before, on or after July 1, 2011, shall prepare and submit to the Director of the Legislative Counsel Bureau for submission to the Legislature, or to the Legislative Commission when the Legislature is not in regular session, an annual report containing:*

(a) *A statement of the status of each project located or expected to be located in the district, and of any changes in that status since the last annual report.*

(b) *A projection of the tax revenue anticipated to be generated by each project located in the district.*

(c) *The number of jobs created, directly or indirectly, as a result of each project located in the district.*

(d) *An assessment of the financial impact of the district on the provision of local governmental services, including, without limitation, services for education, police protection and fire protection.*

2. *The governing body of a municipality that creates a district before, on or after July 1, 2011, shall require one or more of the projects located in the district to report to the Department of Taxation, on or before February 1 of each year, such information as the governing body deems to be necessary to determine the percentage of the tax revenue collected by the project from out-of-state customers during the immediately preceding calendar year. The projects required to make such a report must be selected by the governing body in such a manner as to ensure that the projects selected collectively generate not less than 50 percent of the tax revenue from the district. On or before March 1 of each year, the Department shall provide to the Fiscal Analysis Division of the Legislative Counsel Bureau:*



1 (a) A statement of the tax revenue generated by each project  
2 located in each district for the immediately preceding calendar  
3 year; and

4 (b) The information reported to the Department pursuant to  
5 this subsection for the immediately preceding calendar year.

6 3. Except as otherwise provided in:

7 (a) Subsection 2 or another specific statute, the Department of  
8 Taxation shall not disclose any information reported to the  
9 Department pursuant to subsection 2.

10 (b) Subsection 2, this paragraph or another specific statute,  
11 any information obtained by the Fiscal Analysis Division pursuant  
12 to subsection 2 shall be deemed a work product that is confidential  
13 pursuant to NRS 218F.150. The Fiscal Analysis Division may  
14 analyze the information and issue written reports based on that  
15 information but shall not disclose any proprietary or confidential  
16 information obtained from the Department pursuant to  
17 subsection 2.

18 4. As used in this section, "tax revenue" means revenue from  
19 sales and use taxes.

20 **Sec. 5.** NRS 271A.080 is hereby amended to read as follows:

21 271A.080 The governing body of a municipality shall not  
22 adopt an ordinance pursuant to NRS 271A.070 unless:

23 1. If the ordinance:

24 (a) Creates a district, the governing body has determined that no  
25 retailers will have maintained or will be maintaining a fixed place of  
26 business within the district on or within the 120 days immediately  
27 preceding the date of the adoption of the ordinance; or

28 (b) Amends the boundaries of the district to add any additional  
29 area, the governing body has determined that no retailers will have  
30 maintained or will be maintaining a fixed place of business within  
31 that area on or within 120 days immediately preceding the date of  
32 the adoption of the ordinance.

33 2. The governing body has made a written finding at a public  
34 hearing that the project will benefit the district.

35 3. The governing body has made a written finding at a public  
36 hearing, based upon reports from independent consultants which  
37 were addressed to the governing body, to the board of county  
38 commissioners, if the governing body is not the board of county  
39 commissioners for the county in which the tourism *improvement*  
40 district is or will be located, and to the board of trustees of the  
41 school district in which the tourism improvement district is or will  
42 be located, as to whether the project and the financing thereof  
43 pursuant to this chapter will have a positive fiscal effect on the  
44 provision of local governmental services, after considering:



(a) The amount of the proceeds of all taxes and other governmental revenue projected to be received as a result of the properties and businesses expected to be located in the district;

(b) The use of any money proposed to be pledged pursuant to NRS 271A.070;

(c) Any increase in costs for the provision of local governmental services, including, without limitation, services for education, including operational and capital costs, and services for police protection and fire protection, as a result of the project and the development of land within the district; and

(d) Estimates of any increases in the proceeds from sales and use taxes collected by retailers located outside of the district and of any displacement of the proceeds from sales and use taxes collected by those retailers, as a result of the properties and businesses expected to be located in the district.

➡ *The reports required from independent consultants pursuant to this subsection must be obtained from independent consultants selected by the governing body from a list of independent consultants provided by the Commission on Tourism. For the purposes of this subsection, the Commission shall, upon the request of a governing body, provide the governing body with a list of at least three qualified independent consultants, each of whom must be located outside of this State.*

4. The governing body has, at least 45 days before making the written finding required by subsection 3, provided to the board of trustees of the school district in which the tourism improvement district is or will be located:

(a) Written notice of the time and place of the meeting at which the governing body will consider making that written finding; and

(b) Each analysis prepared by or for or presented to the governing body regarding the fiscal effect of the project and the use of any money proposed to be pledged pursuant to NRS 271A.070 on the provision of local governmental services, including education.

➡ After the receipt of the notice required by this subsection and before the date of the meeting at which the governing body will consider making the written finding required by subsection 3, the board of trustees shall conduct a hearing regarding the fiscal effect on the school district, if any, of the project and the use of any money proposed to be pledged pursuant to NRS 271A.070, and may submit to the governing body of the municipality any comments regarding that fiscal effect. The governing body shall consider those comments when making any written finding pursuant to subsection 3 and shall consider those comments when considering the terms of any agreement pursuant to NRS 271A.110.



1 5. If the governing body is not the board of county  
2 commissioners for the county in which the tourism *improvement*  
3 district is or will be located, the governing body has, at least 45 days  
4 before making the written finding required by subsection 3,  
5 provided to the board of county commissioners in the county in  
6 which the tourism improvement district is or will be located:

7 (a) Written notice of the time and place of the meeting at which  
8 the governing body will consider making that written finding; and

9 (b) Each analysis prepared by or for or presented to the  
10 governing body regarding the fiscal effect of the project and the use  
11 of any money proposed to be pledged pursuant to NRS 271A.070 on  
12 the provision of local governmental services.

13 ➤ After the receipt of the notice required by this subsection and  
14 before the date of the meeting at which the governing body will  
15 consider making the written finding required by subsection 3, the  
16 board of county commissioners may conduct a hearing regarding the  
17 fiscal effect on local governmental services, if any, of the project  
18 and the use of any money proposed to be pledged pursuant to NRS  
19 271A.070, and may submit to the governing body of the  
20 municipality any comments regarding that fiscal effect. The  
21 governing body may consider those comments when making any  
22 written finding pursuant to subsection 3 and shall consider those  
23 comments when considering the terms of any agreement pursuant to  
24 NRS 271A.110.

25 6. The governing body has determined, at a public hearing  
26 conducted at least 15 days after providing notice of the hearing by  
27 publication, that:

28 (a) As a result of the project:

29 (1) Retailers will locate their businesses as such in the  
30 district; and

31 (2) There will be a substantial increase in the proceeds from  
32 sales and use taxes remitted by retailers with regard to tangible  
33 personal property sold at retail, or stored, used or otherwise  
34 consumed, in the district; and

35 (b) A preponderance of that increase in the proceeds from sales  
36 and use taxes will be attributable to transactions with tourists who  
37 are not residents of this State.

38 7. The Commission on Tourism has determined, at a public  
39 hearing conducted at least 15 days after providing notice of the  
40 hearing by publication, that a preponderance of the increase in the  
41 proceeds from sales and use taxes identified pursuant to subsection  
42 6 will be attributable to transactions with tourists who are not  
43 residents of this State.

44 8. The Governor has determined that the project and the use of  
45 any money proposed to be pledged pursuant to NRS 271A.070 will



1 contribute significantly to economic development and tourism in  
2 this State. Before making that determination, the Governor:

3 (a) Must consider the fiscal effects of the pledge of money on  
4 educational funding, including any fiscal effects described in  
5 comments provided pursuant to subsection 4 by the school district in  
6 which the tourism improvement district is or will be located, and for  
7 that purpose may require the Department of Education or the  
8 Department of Taxation, or both, to provide an appropriate fiscal  
9 report; and

10 (b) If the Governor determines that the pledge of money will  
11 have a substantial adverse fiscal effect on educational funding, may  
12 require a commitment from the municipality for the provision of  
13 specified payments to the school district in which the tourism  
14 improvement district is or will be located during the term of the use  
15 of any money pledged pursuant to NRS 271A.070. The payments  
16 may be provided pursuant to agreements with owners of property  
17 within the district authorized by NRS 271A.110 or from sources  
18 other than the owners of property within the district. Such a  
19 commitment by a municipality is not subject to the limitations of  
20 subsection 1 of NRS 354.626 and, notwithstanding any other law to  
21 the contrary, is binding on the municipality for the term of the use of  
22 any money pledged pursuant to NRS 271A.070.

23 9. If any property within the boundaries of the district is also  
24 included within the boundaries of any other tourism improvement  
25 district or any improvement district for which any money has been  
26 pledged pursuant to NRS 271.650, all of the governing bodies which  
27 created those districts have entered into an interlocal agreement  
28 providing for:

29 (a) The apportionment of any money pledged pursuant to NRS  
30 271.650 and 271A.070 with respect to such property; and


31 (b) The priority of the application of that money between:

32 (1) Bonds issued pursuant to chapter 271 of NRS; and

33 (2) Bonds and notes issued, and agreements entered into,  
34 pursuant to NRS 271A.120.

35 ➤ Any such agreement for the priority of the application of that  
36 money may be made irrevocable during the term of any bonds  
37 issued pursuant to chapter 271 of NRS to which all or any portion of  
38 that money is pledged, or during the term of any bonds or notes  
39 issued or any agreements entered into pursuant to NRS 271A.120 to  
40 which all or any portion of that money is pledged.

41 **Sec. 6.** NRS 271A.130 is hereby amended to read as follows:

42 271A.130 1. Except as otherwise provided in this section   
43 *and section 3 of this act and* notwithstanding any other law to the  
44 contrary, any contract or other agreement relating to or providing for  
45 the construction, improvement, repair, demolition, reconstruction,





1 other acquisition, equipment, operation or maintenance of any  
2 project financed in whole or in part pursuant to this chapter is  
3 exempt from any law requiring competitive bidding or otherwise  
4 specifying procedures for the award of contracts for construction or  
5 other contracts, or specifying procedures for the procurement of  
6 goods or services. The governing body of the municipality shall  
7 require a quarterly report on the demography of the workers  
8 employed by any contractor or subcontractor for each such project.

9 2. The provisions of subsection 1 do not apply to any project  
10 which is constructed or maintained by a governmental entity on any  
11 property while the governmental entity owns that property.

12 3. ~~[The provisions of NRS 338.010 to 338.090, inclusive, apply~~  
13 ~~to]~~ *A person who enters into* any contract or other agreement for the  
14 construction, improvement, repair, demolition or reconstruction of  
15 any project that is paid for in whole or in part:

16 (a) From the proceeds of bonds or notes issued pursuant to  
17 paragraph (a) of subsection 1 of NRS 271A.120; or

18 (b) Pursuant to an agreement for reimbursement entered into  
19 pursuant to paragraph (b) of subsection 1 of NRS 271A.120,

20 ~~↳ [regardless of whether the project is publicly or privately owned.]~~  
21 *shall include in the contract or other agreement the contractual*  
22 *provisions and stipulations that are required to be included in a*  
23 *contract for a public work pursuant to the provisions of NRS*  
24 *338.013 to 338.090, inclusive. The governing body of the*  
25 *municipality, the contractor who is awarded the contract or enters*  
26 *into the agreement to perform the construction, improvement,*  
27 *repair, demolition or reconstruction, and any subcontractor who*  
28 *performs any portion of the contract or agreement shall comply*  
29 *with the provisions of NRS 338.013 to 338.090, inclusive, in the*  
30 *same manner as if the governing body of the municipality had*  
31 *undertaken the project or had awarded the contract.*

32 4. *The governing body of the municipality shall ensure that*  
33 *each contractor to whom the provisions of section 3 of this act*  
34 *apply complies with those provisions.*

35 **Sec. 7.** NRS 372.750 is hereby amended to read as follows:

36 372.750 1. Except as otherwise provided in this section or  
37 NRS 360.247 ~~[H]~~ *or section 4 of this act*, it is a misdemeanor for any  
38 member of the Tax Commission or officer, agent or employee of the  
39 Department to make known in any manner whatever the business  
40 affairs, operations or information obtained by an investigation of  
41 records and equipment of any retailer or any other person visited or  
42 examined in the discharge of official duty, or the amount or source  
43 of income, profits, losses, expenditures or any particular of them, set  
44 forth or disclosed in any return, or to permit any return or copy of a





1 return, or any book containing any abstract or particulars of it to be  
2 seen or examined by any person not connected with the Department.

3 2. The Tax Commission may agree with any county fair and  
4 recreation board or the governing body of any county, city or town  
5 for the continuing exchange of information concerning taxpayers.

6 3. The Governor may, by general or special order, authorize the  
7 examination of the records maintained by the Department under this  
8 chapter by other state officers, by tax officers of another state, by  
9 the Federal Government, if a reciprocal arrangement exists, or by  
10 any other person. The information so obtained may not be made  
11 public except to the extent and in the manner that the order may  
12 authorize that it be made public.

13 4. Upon written request made by a public officer of a local  
14 government, the Executive Director shall furnish from the records of  
15 the Department, the name and address of the owner of any seller or  
16 retailer who must file a return with the Department. The request  
17 must set forth the social security number of the owner of the seller  
18 or retailer about which the request is made and contain a statement  
19 signed by the proper authority of the local government certifying  
20 that the request is made to allow the proper authority to enforce a  
21 law to recover a debt or obligation owed to the local government.  
22 Except as otherwise provided in NRS 239.0115, the information  
23 obtained by the local government is confidential and may not be  
24 used or disclosed for any purpose other than the collection of a debt  
25 or obligation owed to that local government. The Executive Director  
26 may charge a reasonable fee for the cost of providing the requested  
27 information.

28 5. Successors, receivers, trustees, executors, administrators,  
29 assignees and guarantors, if directly interested, may be given  
30 information as to the items included in the measure and amounts of  
31 any unpaid tax or amounts of tax required to be collected, interest  
32 and penalties.

33 6. Relevant information that the Tax Commission has  
34 determined is not proprietary or confidential information in a  
35 hearing conducted pursuant to NRS 360.247 may be disclosed as  
36 evidence in an appeal by the taxpayer from a determination of tax  
37 due.


38 7. At any time after a determination, decision or order of the  
39 Executive Director or other officer of the Department imposing  
40 upon a person a penalty for fraud or intent to evade the tax imposed  
41 by this chapter on the sale, storage, use or other consumption of any  
42 vehicle, vessel or aircraft becomes final or is affirmed by the  
43 Commission, any member of the Commission or officer, agent or  
44 employee of the Department may publicly disclose the identity of



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1 that person and the amount of tax assessed and penalties imposed  
2 against that person.

3 **Sec. 8.** NRS 374.755 is hereby amended to read as follows:

4 374.755 1. Except as otherwise provided in this section or  
5 NRS 360.247  *or section 4 of this act*, it is a misdemeanor for any  
6 member of the Nevada Tax Commission or officer, agent or  
7 employee of the Department to make known in any manner  
8 whatever the business affairs, operations or information obtained by  
9 an investigation of records and equipment of any retailer or any  
10 other person visited or examined in the discharge of official duty, or  
11 the amount or source of income, profits, losses, expenditures or any  
12 particular thereof, set forth or disclosed in any return, or to permit  
13 any return or copy thereof, or any book containing any abstract or  
14 particulars thereof to be seen or examined by any person not  
15 connected with the Department.

16 2. The Nevada Tax Commission may agree with any county  
17 fair and recreation board or the governing body of any county, city  
18 or town for the continuing exchange of information concerning  
19 taxpayers.

20 3. The Governor may, however, by general or special order,  
21 authorize the examination of the records maintained by the  
22 Department under this chapter by other state officers, by tax officers  
23 of another state, by the Federal Government, if a reciprocal  
24 arrangement exists, or by any other person. The information so  
25 obtained pursuant to the order of the Governor may not be made  
26 public except to the extent and in the manner that the order may  
27 authorize that it be made public.

28 4. Upon written request made by a public officer of a local  
29 government, the Executive Director shall furnish from the records of  
30 the Department, the name and address of the owner of any seller or  
31 retailer who must file a return with the Department. The request  
32 must set forth the social security number of the owner of the seller  
33 or retailer about which the request is made and contain a statement  
34 signed by the proper authority of the local government certifying  
35 that the request is made to allow the proper authority to enforce a  
36 law to recover a debt or obligation owed to the local government.  
37 Except as otherwise provided in NRS 239.0115, the information  
38 obtained by the local government is confidential and may not be  
39 used or disclosed for any purpose other than the collection of a debt  
40 or obligation owed to that local government. The Executive Director  
41 may charge a reasonable fee for the cost of providing the requested  
42 information.

43 5. Successors, receivers, trustees, executors, administrators,  
44 assignees and guarantors, if directly interested, may be given  
45 information as to the items included in the measure and amounts of



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1 any unpaid tax or amounts of tax required to be collected, interest  
2 and penalties.

3 6. Relevant information that the Nevada Tax Commission has  
4 determined is not proprietary or confidential information in a  
5 hearing conducted pursuant to NRS 360.247 may be disclosed as  
6 evidence in an appeal by the taxpayer from a determination of tax  
7 due.

8 7. At any time after a determination, decision or order of the  
9 Executive Director or other officer of the Department imposing  
10 upon a person a penalty for fraud or intent to evade the tax imposed  
11 by this chapter on the sale, storage, use or other consumption of any  
12 vehicle, vessel or aircraft becomes final or is affirmed by the  
13 Commission, any member of the Commission or officer, agent or  
14 employee of the Department may publicly disclose the identity of  
15 that person and the amount of tax assessed and penalties imposed  
16 against that person.

17 **Sec. 9.** The provisions of NRS 354.599 do not apply to any  
18 additional expenses of a local government that are related to the  
19 provisions of this act.

20 **Sec. 10.** 1. This section and sections 5 and 9 of this act  
21 become effective upon passage and approval.

22 2. Sections 1 to 4, inclusive, 6, 7 and 8 of this act become  
23 effective on July 1, 2011.

