

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)
(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; providing a procedure for the selection of subcontractors on certain contracts; 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. **Section 2** also prohibits the use of such
9 financing, with respect to a TID created on or after July 1, 2011, to pay various fees
10 and costs and for the relocation within the TID of a retailer from another location
11 within 3 miles outside of the boundary of the TID, and excludes the use for such
12 financing of the tax revenue from such a retailer. **Section 3** of this bill specifies the
13 procedure required for the selection of subcontractors by contractors and



14 developers who enter into certain construction contracts on financed projects or on
15 property within a TID which benefits from financed infrastructure improvements.
16 **Section 4** of this bill requires a municipality that creates a TID to prepare and
17 submit to the Legislature annual reports regarding the TID, and requires the
18 Department of Taxation to prepare and submit to the Legislature and the
19 municipality semiannual reports regarding businesses within a TID. **Section 6** of
20 this bill applies the prevailing wage provisions applicable to public works to
21 construction contracts for financed projects within a TID to the same extent as if
22 the contracts were awarded by the municipality and the projects constituted public
23 works.

24 Existing law does not allow the creation of a TID unless the pertinent
25 governing body makes a written finding at a public hearing, based upon reports
26 from independent consultants, as to whether the proposed project and financing will
27 have a positive fiscal effect on the provision of local governmental services. (NRS
28 271A.080) **Section 5** of this bill requires the selection of those independent
29 consultants from a list provided by the Commission on Tourism.

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

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

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

5 *1. Shall require the review of each claim submitted pursuant*
6 *to any contract or other agreement made with the governing body*
7 *to provide any financing or reimbursement pursuant to NRS*
8 *271A.120, by an independent auditor.*

9 *2. Shall not, with respect to any district created on or after*
10 *July 1, 2011, provide any financing or reimbursement pursuant to*
11 *NRS 271A.120 for:*

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

14 *(b) Any project that includes the relocation on or after July 1,*
15 *2011, to the district of any retail facilities of a retailer from*
16 *another location outside of and within 3 miles of the boundary of*
17 *the district. Each pledge of money pursuant to NRS 271A.070*
18 *shall be deemed to exclude any amounts attributable to any*
19 *tangible personal property sold at retail, or stored, used or*
20 *otherwise consumed, in the district during a fiscal year by a*
21 *retailer who, on or after July 1, 2011, relocates any of its retail*
22 *facilities to the district from another location outside of and within*
23 *3 miles of the boundary of the district.*

24 **Sec. 3. 1. Except as otherwise provided in subsection 2, a**
25 **contractor or developer who enters into a contract for original**
26 **construction or a contract for benefited construction shall:**



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(a) Advertise for at least 7 calendar days for bids on each subcontract for the performance of any portion of the contract;

(b) At least 2 business days before the first day of that advertisement, provide notice of that advertisement to the governing body of the municipality;

(c) Make available to all prospective bidders on the subcontract a written set of plans and specifications for the pertinent work;

(d) Provide public notice of the name and address of each person who submits a bid on the subcontract; and

(e) After closing the period for the solicitation of bids and receiving at least three timely and responsive bids, select any subcontractor from those timely and responsive bids that the contractor or developer, in his or her sole discretion, determines to be appropriate, except that the contractor or developer shall ensure that each subcontractor who will perform any portion of the contract is appropriately licensed pursuant to chapter 624 of NRS.

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

(a) Any contract which is awarded by a 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. A governing body of a municipality that receives a notice of an advertisement for bids pursuant to paragraph (b) of subsection 1:

(a) Shall, upon such receipt, post notice of the advertisement on an Internet website maintained by the municipality; and

(b) May otherwise provide notice of the advertisement to local trade organizations and the general public.

4. As used in this section:

(a) "Contract for benefited construction":

(I) Except as otherwise provided in subparagraphs (2) and (3), means any contract or other agreement for the construction, improvement, repair, demolition or reconstruction of any property which is located within a district and which benefits from any infrastructure improvements paid for in whole or in part:

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

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

(2) Except as otherwise provided in subparagraph (3) and unless the work is paid for in whole or in part with any public funding, does not include any:



1 (I) Contract or other agreement for the improvement,
2 repair, demolition or reconstruction of any project;

3 (II) Contract or other agreement with the original
4 tenant of any leased property for any improvement of the property
5 which is to be undertaken more than 60 months after the property
6 is first made available for lease; or

7 (III) Contract or other agreement for the improvement
8 of any leased property made with any tenant of the property other
9 than the original tenant.

10 (3) Does not include any contract for original construction.

11 (b) "Contract for original construction" means any contract or
12 other agreement for the construction, improvement, repair,
13 demolition or reconstruction of any project that is paid for in
14 whole or in part:

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

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

19 (c) "Original tenant" means the first tenant of any leased
20 property after the property is first made available for lease.

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

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

30 (b) An assessment of the financial impact of the district on the
31 provision of local governmental services, including, without
32 limitation, services for police protection and fire protection.

33 2. If the governing body of a municipality creates a district
34 before, on or after July 1, 2011, the Department of Taxation shall:

35 (a) On or before April 1 and October 1 of each year, prepare
36 and submit to the Director of the Legislative Counsel Bureau for
37 submission to the Legislature, or to the Legislative Commission
38 when the Legislature is not in regular session, and to the
39 governing body of the municipality a semiannual report which
40 states:

41 (1) The amount of revenue from the taxable sales made
42 each month by each business within the district;

43 (2) To the extent that the pertinent information is available,
44 the portion of that revenue which is attributable to persons who
45 are not residents of this State;



1 (3) *The amount of the wages paid each month by each*
2 *business within the district; and*

3 (4) *The number of full-time and part-time employees*
4 *employed each month by each business within the district.*

5 (b) *Require each business within the district to report to the*
6 *Department of Taxation, at such times as the Department may*
7 *specify on a form provided by the Department, such information*
8 *as the Department determines to be necessary to carry out the*
9 *provisions of paragraph (a).*

10 3. *Except as otherwise provided in subsection 2 or another*
11 *specific statute, the Department of Taxation shall not disclose any*
12 *information reported to the Department pursuant to subsection 2.*

13 4. *As used in this section, "taxable sales" means any sales*
14 *that are taxable pursuant to chapter 372 of NRS.*

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

16 271A.080 The governing body of a municipality shall not
17 adopt an ordinance pursuant to NRS 271A.070 unless:

18 1. If the ordinance:

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

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

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

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

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

43 (b) The use of any money proposed to be pledged pursuant to
44 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.

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



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

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

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

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

22 (a) As a result of the project:

23 (1) Retailers will locate their businesses as such in the
24 district; and

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

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

32 7. The Commission on Tourism has determined, at a public
33 hearing conducted at least 15 days after providing notice of the
34 hearing by publication, that a preponderance of the increase in the
35 proceeds from sales and use taxes identified pursuant to subsection
36 6 will be attributable to transactions with tourists who are not
37 residents of this State.

38 8. The Governor has determined that the project and the use of
39 any money proposed to be pledged pursuant to NRS 271A.070 will
40 contribute significantly to economic development and tourism in
41 this State. Before making that determination, the Governor:

42 (a) Must consider the fiscal effects of the pledge of money on
43 educational funding, including any fiscal effects described in
44 comments provided pursuant to subsection 4 by the school district in
45 which the tourism improvement district is or will be located, and for



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1 that purpose may require the Department of Education or the
2 Department of Taxation, or both, to provide an appropriate fiscal
3 report; and

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

17 9. If any property within the boundaries of the district is also
18 included within the boundaries of any other tourism improvement
19 district or any improvement district for which any money has been
20 pledged pursuant to NRS 271.650, all of the governing bodies which
21 created those districts have entered into an interlocal agreement
22 providing for:

23 (a) The apportionment of any money pledged pursuant to NRS
24 271.650 and 271A.070 with respect to such property; and


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

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

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

29 ➡ Any such agreement for the priority of the application of that
30 money may be made irrevocable during the term of any bonds
31 issued pursuant to chapter 271 of NRS to which all or any portion of
32 that money is pledged, or during the term of any bonds or notes
33 issued or any agreements entered into pursuant to NRS 271A.120 to
34 which all or any portion of that money is pledged.

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

36 271A.130 1. Except as otherwise provided in this section 
37 *and section 3 of this act and* notwithstanding any other law to the
38 contrary, any contract or other agreement relating to or providing for
39 the construction, improvement, repair, demolition, reconstruction,
40 other acquisition, equipment, operation or maintenance of any
41 project financed in whole or in part pursuant to this chapter is
42 exempt from any law requiring competitive bidding or otherwise
43 specifying procedures for the award of contracts for construction or
44 other contracts, or specifying procedures for the procurement of
45 goods or services. The governing body of the municipality shall



1 require a quarterly report on the demography of the workers
2 employed by any contractor or subcontractor for each such project.

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

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

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

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

14 ~~↳ [regardless of whether the project is publicly or privately owned.]~~
15 *shall include in the contract or other agreement the contractual*
16 *provisions and stipulations that are required to be included in a*
17 *contract for a public work pursuant to the provisions of NRS*
18 *338.013 to 338.090, inclusive. The governing body of the*
19 *municipality, the contractor who is awarded the contract or enters*
20 *into the agreement to perform the construction, improvement,*
21 *repair, demolition or reconstruction, and any subcontractor who*
22 *performs any portion of the contract or agreement shall comply*
23 *with the provisions of NRS 338.013 to 338.090, inclusive, in the*
24 *same manner as if the governing body of the municipality had*
25 *undertaken the project or had awarded the contract.*

26 4. *The governing body of the municipality shall ensure that*
27 *each contractor and developer to whom the provisions of section 3*
28 *of this act apply complies with those provisions.*

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

30 372.750 1. Except as otherwise provided in this section or
31 NRS 360.247 ~~[]~~ *or section 4 of this act*, it is a misdemeanor for any
32 member of the Tax Commission or officer, agent or employee of the
33 Department to make known in any manner whatever the business
34 affairs, operations or information obtained by an investigation of
35 records and equipment of any retailer or any other person visited or
36 examined in the discharge of official duty, or the amount or source
37 of income, profits, losses, expenditures or any particular of them, set
38 forth or disclosed in any return, or to permit any return or copy of a
39 return, or any book containing any abstract or particulars of it to be
40 seen or examined by any person not connected with the Department.

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

44 3. The Governor may, by general or special order, authorize the
45 examination of the records maintained by the Department under this



chapter by other state officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person. The information so obtained may not be made public except to the extent and in the manner that the order may authorize that it be made public.

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

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

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

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

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

374.755 1. Except as otherwise provided in this section or NRS 360.247 **or section 4 of this act**, it is a misdemeanor for any member of the Nevada Tax Commission or officer, agent or employee of the Department to make known in any manner whatever the business affairs, operations or information obtained by



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1 an investigation of records and equipment of any retailer or any
2 other person visited or examined in the discharge of official duty, or
3 the amount or source of income, profits, losses, expenditures or any
4 particular thereof, set forth or disclosed in any return, or to permit
5 any return or copy thereof, or any book containing any abstract or
6 particulars thereof to be seen or examined by any person not
7 connected with the Department.

8 2. The Nevada Tax Commission may agree with any county
9 fair and recreation board or the governing body of any county, city
10 or town for the continuing exchange of information concerning
11 taxpayers.

12 3. The Governor may, however, by general or special order,
13 authorize the examination of the records maintained by the
14 Department under this chapter by other state officers, by tax officers
15 of another state, by the Federal Government, if a reciprocal
16 arrangement exists, or by any other person. The information so
17 obtained pursuant to the order of the Governor may not be made
18 public except to the extent and in the manner that the order may
19 authorize that it be made public.

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

35 5. Successors, receivers, trustees, executors, administrators,
36 assignees and guarantors, if directly interested, may be given
37 information as to the items included in the measure and amounts of
38 any unpaid tax or amounts of tax required to be collected, interest
39 and penalties.

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



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

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

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

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

