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ASSEMBLY BILL NO. 68–COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE NEVADA LEAGUE OF CITIES AND MUNICIPALITIES)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the sale or lease of real property by counties and cities. (BDR 21-401)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to local governments; exempting certain leases of real property from requirements relating to appraisal and auction; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth requirements for the sale or lease of real property by counties and by incorporated cities. In accordance with these requirements, the board of county commissioners of a county or the governing body of a city is required, with limited exceptions, to obtain two independent appraisals of the fair market value of the real property and to sell or lease the property at publication. (NRS 244.2795, 244.281, 244.283, 268.059, 268.061, 268.062) **Sections 1 and 6** of this bill authorize a county or city to lease real property without satisfying such requirements if the real property is less than 25,000 square feet and the board of county commissioners or governing body of a city adopts a resolution stating that the lease is in the best interest of the county or city.

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

Section 1. Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The governing body of a city may offer any city-owned building or any portion thereof or any other real property for lease

without complying with the provisions of NRS 268.059, 268.061 and 268.062 if:

(a) The area of the building space or other real property is less than 25,000 square feet; and

(b) The governing body adopts a resolution stating that it is in the best interest of the city to lease the property:

(1) Without offering the property to the public; and

(2) For less than the fair market value of the building space or other real property, if applicable.

2. The governing body shall:

(a) Cause to be published at least once, in a newspaper qualified under chapter 238 of NRS that is published in the county in which the city-owned building or portion thereof or the other real property is located, a notice setting forth a description of the city-owned building or portion thereof or the other real property proposed to be leased in such a manner as to identify it; and

(b) Hold a public hearing on the matter not less than 10 or more than 20 days after the date of publication of the notice.

3. A lease of a city-owned building or any portion thereof or any other real property pursuant to this section may be made on such terms and conditions as the governing body of the city deems proper. The duration of such a lease must not exceed 3 years and may include an extension for not more than an additional 2 years.

Sec. 2. NRS 268.059 is hereby amended to read as follows:

268.059 1. Except as otherwise provided in NRS 268.048 to 268.058, inclusive, 278.479 to 278.4965, inclusive, and subsection ~~[3]~~ ***4*** of NRS 496.080, ***and section 1 of this act,*** except as otherwise required by federal law, except as otherwise required pursuant to a cooperative agreement entered into pursuant to NRS 277.050 or 277.053 or an interlocal agreement in existence on October 1, 2004, except if the governing body is entering into a joint development agreement for real property owned by the city to which the governing body is a party, except for a lease of residential property with a term of 1 year or less, except for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose, except for the sale or lease of real property to the State or another governmental entity and except for the sale or lease of real property larger than 1 acre which is approved by the voters at a primary or general election, primary or general city election or special election, the governing body shall, when offering any real property for sale or lease:

(a) Except as otherwise provided in this paragraph, obtain two independent appraisals of the real property before selling or leasing it. If the governing body holds a public hearing on the matter of the fair market value of the real property, one independent appraisal of the real property is sufficient before selling or leasing it. The appraisal or appraisals, as applicable, must be based on the zoning of the real property as set forth in the master plan for the city and must have been prepared not more than 6 months before the date on which real property is offered for sale or lease.

(b) Select the one independent appraiser or two independent appraisers, as applicable, from the list of appraisers established pursuant to subsection 2.

(c) Verify the qualifications of each appraiser selected pursuant to paragraph (b). The determination of the governing body as to the qualifications of the appraiser is conclusive.

2. The governing body shall adopt by ordinance the procedures for creating or amending a list of appraisers qualified to conduct appraisals of real property offered for sale or lease by the governing body. The list must:

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

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

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

4. An appraiser shall not perform an appraisal on any real property offered for sale or lease by the governing body if the appraiser or a person related to the appraiser within the first degree of consanguinity or affinity has an interest in the real property or an adjoining property.

5. If real property is sold or leased in violation of the provisions of this section:

(a) The sale or lease is void; and

(b) Any change to an ordinance or law governing the zoning or use of the real property is void if the change takes place within 5 years after the date of the void sale or lease.

Sec. 3. NRS 268.061 is hereby amended to read as follows:

268.061 1. Except as otherwise provided in this subsection and NRS 268.048 to 268.058, inclusive, 268.063, 278.479 to 278.4965, inclusive, and subsection ~~[3]~~ ***4*** of NRS 496.080, ***and section 1 of this act,*** except as otherwise provided by federal law, except as otherwise required pursuant to a cooperative agreement entered into pursuant to NRS 277.050 or 277.053 or an interlocal agreement in existence on October 1, 2004, except if the governing body is entering into a joint development agreement for real property owned by the city to which the governing body is a party, except for a lease of residential property with a term of 1 year or less, except for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose and except for the sale or lease of real property larger than 1 acre which is approved by the voters at a primary or general election, primary or general city election or special election:

(a) If a governing body has determined by resolution that the sale or lease of any real property owned by the city will be in the best interest of the city, it may sell or lease the real property in the manner prescribed for the sale or lease of real property in NRS 268.062.

(b) Before the governing body may sell or lease any real property as provided in paragraph (a), it shall:

(1) Post copies of the resolution described in paragraph (a) in three public places in the city; and

(2) Cause to be published at least once a week for 3 successive weeks, in a newspaper qualified under chapter 238 of NRS that is published in the county in which the real property is located, a notice setting forth:

(I) A description of the real property proposed to be sold or leased in such a manner as to identify it;

(II) The minimum price, if applicable, of the real property proposed to be sold or leased; and

(III) The places at which the resolution described in paragraph (a) has been posted pursuant to subparagraph (1), and any other places at which copies of that resolution may be obtained.

➥ If no qualified newspaper is published within the county in which the real property is located, the required notice must be published in some qualified newspaper printed in the State of Nevada and having a general circulation within that county.

(c) If the governing body by its resolution finds additionally that the real property to be sold is worth more than $1,000, the governing body shall, as applicable, conduct an appraisal or appraisals pursuant to NRS 268.059 to determine the value of the real property. Except for real property acquired pursuant to NRS 371.047, the governing body shall not sell or lease it for less than the highest appraised value.

(d) If the real property is appraised at $1,000 or more, the governing body may:

(1) Lease the real property; or

(2) Sell the real property for:

(I) Cash; or

(II) Not less than 25 percent cash down and upon deferred payments over a period of not more than 10 years, secured by a mortgage or deed of trust bearing such interest and upon such further terms as the governing body may specify.

(e) A governing body may sell or lease any real property owned by the city without complying with the provisions of this section and NRS 268.059 and 268.062 to:

(1) A person who owns real property located adjacent to the real property to be sold or leased if the governing body has determined by resolution that the sale or lease will be in the best interest of the city and the real property is a:

(I) Remnant that was separated from its original parcel due to the construction of a street, alley, avenue or other thoroughfare, or portion thereof, flood control facility or other public facility;

(II) Parcel that, as a result of its size, is too small to establish an economically viable use by anyone other than the person who owns real property adjacent to the real property offered for sale or lease; or

(III) Parcel which is subject to a deed restriction prohibiting the use of the real property by anyone other than the person who owns real property adjacent to the real property offered for sale or lease.

(2) The State or another governmental entity if:

(I) The sale or lease restricts the use of the real property to a public use; and

(II) The governing body adopts a resolution finding that the sale or lease will be in the best interest of the city.

(f) A governing body that disposes of real property pursuant to paragraph (e) is not required to offer to reconvey the real property to the person from whom the real property was received or acquired by donation or dedication.

(g) If real property that is offered for sale or lease pursuant to this section is not sold or leased at the initial offering of the contract for the sale or lease of the real property, the governing body may offer the real property for sale or lease a second time pursuant to this section. If there is a material change relating to the title, zoning or an ordinance governing the use of the real property, the governing body must obtain a new appraisal of the real property pursuant to the provisions of NRS 268.059 before offering the real property for sale or lease a second time. If real property that is offered for sale or lease pursuant to this section is not sold or leased at the second offering of the contract for the sale or lease of the real property, the governing body may list the real property for sale or lease at the appraised value with a licensed real estate broker, provided that the broker or a person related to the broker within the first degree of consanguinity or affinity does not have an interest in the real property or an adjoining property.

2. If real property is sold or leased in violation of the provisions of this section:

(a) The sale or lease is void; and

(b) Any change to an ordinance or law governing the zoning or use of the real property is void if the change takes place within 5 years after the date of the void sale or lease.

Sec. 4. NRS 268.062 is hereby amended to read as follows:

268.062 1. Except as otherwise provided in this section and NRS 268.048 to 268.058, inclusive, 268.063, 278.479 to 278.4965, inclusive, and subsection ~~[3]~~ ***4*** of NRS 496.080, ***and section 1 of this act,*** except as otherwise required by federal law, except as otherwise required pursuant to a cooperative agreement entered into pursuant to NRS 277.050 or 277.053 or an interlocal agreement in existence on October 1, 2004, except if the governing body is entering into a joint development agreement for real property owned by the city to which the governing body is a party, except for a lease of residential property with a term of 1 year or less, except for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose and except for the sale or lease of real property larger than 1 acre which is approved by the voters at a primary or general election, the governing body shall, in open meeting by a majority vote of the members and before ordering the sale or lease at auction of any real property, adopt a resolution declaring its intention to sell or lease the property at auction. The resolution must:

(a) Describe the property proposed to be sold or leased in such a manner as to identify it;

(b) Specify the minimum price and the terms upon which the property will be sold or leased; and

(c) Fix a time, not less than 3 weeks thereafter, for a public meeting of the governing body to be held at its regular place of meeting, at which sealed bids will be received and considered.

2. Notice of the adoption of the resolution and of the time and place of holding the meeting must be given by:

(a) Posting copies of the resolution in three public places in the county not less than 15 days before the date of the meeting; and

(b) Causing to be published at least once a week for 3 successive weeks before the meeting, in a newspaper qualified under chapter 238 of NRS that is published in the county in which the real property is located, a notice setting forth:

(1) A description of the real property proposed to be sold or leased at auction in such a manner as to identify it;

(2) The minimum price of the real property proposed to be sold or leased at auction; and

(3) The places at which the resolution described in subsection 1 has been posted pursuant to paragraph (a), and any other places at which copies of that resolution may be obtained.

➥ If no qualified newspaper is published within the county in which the real property is located, the required notice must be published in some qualified newspaper printed in the State of Nevada and having a general circulation within that county.

3. At the time and place fixed in the resolution for the meeting of the governing body, all sealed bids which have been received must, in public session, be opened, examined and declared by the governing body. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or lease and which are made by responsible bidders, the bid which is the highest must be finally accepted, unless a higher oral bid is accepted or the governing body rejects all bids.

4. Before accepting any written bid, the governing body shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to buy or lease the property upon the terms and conditions specified in the resolution, for a price exceeding by at least 5 percent the highest written bid, then the highest oral bid which is made by a responsible person must be finally accepted.

5. The final acceptance by the governing body may be made either at the same session or at any adjourned session of the same meeting held within the 21 days next following.

6. The governing body may, either at the same session or at any adjourned session of the same meeting held within the 21 days next following, if it deems the action to be for the best public interest, reject any and all bids, either written or oral, and withdraw the property from sale or lease.

7. Any resolution of acceptance of any bid made by the governing body must authorize and direct the chair of the governing body to execute a deed or lease and to deliver it upon performance and compliance by the purchaser or lessor with all the terms or conditions of the contract which are to be performed concurrently therewith.

8. The governing body may require any person requesting that real property be sold pursuant to the provisions of this section to deposit a sufficient amount of money to pay the costs to be incurred by the governing body in acting upon the application, including the costs of publication and the expenses of appraisal. This deposit must be refunded whenever the person making the deposit is not the successful bidder. The costs of acting upon the application,

including the costs of publication and the expenses of appraisal, must be borne by the successful bidder.

9. If real property is sold or leased in violation of the provisions of this section:

(a) The sale or lease is void; and

(b) Any change to an ordinance or law governing the zoning or use of the real property is void if the change takes place within 5 years after the date of the void sale or lease.

Sec. 5. (Deleted by amendment.)

Sec. 6. Chapter 244 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board of county commissioners may offer any county-owned building or any portion thereof or any other real property for lease without complying with the provisions of NRS 244.2795, 244.281 and 244.283 if:

(a) The area of the building space or other real property is less than 25,000 square feet; and

(b) The board of county commissioners adopts a resolution stating that it is in the best interest of the county to lease the property:

(1) Without offering the property to the public; and

(2) For less than the fair market value of the building space or other real property, if applicable.

2. The board of county commissioners shall:

(a) Cause to be published at least once, in a newspaper qualified under chapter 238 of NRS that is published in the county in which the county-owned building or portion thereof or the other real property is located, a notice setting forth a description of the county-owned building or portion thereof or the other real property proposed to be leased in such a manner as to identify it; and

(b) Hold a public hearing on the matter not less than 10 or more than 20 days after the date of publication of the notice.

3. A lease of a county-owned building or any portion thereof or any other real property pursuant to this section may be made on such terms and conditions as the board of county commissioners deems proper. The duration of such a lease must not exceed 3 years and may include an extension for not more than an additional 2 years.

Sec. 7. NRS 244.2795 is hereby amended to read as follows:

244.2795 1. Except as otherwise provided in NRS 244.189, 244.276, 244.279, 244.2825, 244.2835, 244.284, 244.287, 244.290, 278.479 to 278.4965, inclusive, and subsection 3 of NRS 496.080, ***and section 6 of this act,*** except as otherwise required by federal law, except as otherwise required pursuant to a cooperative agreement entered into pursuant to NRS 277.050 or 277.053 or an interlocal agreement in existence on or before October 1, 2004, except if the board of county commissioners is entering into a joint development agreement for real property owned by the county to which the board of county commissioners is a party, except for a lease of residential property with a term of 1 year or less, except for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose, except for the sale or lease of real property to the State or another governmental entity and except for the sale or lease of real property larger than 1 acre which is approved by the voters at a primary or general election or special election, the board of county commissioners shall, when offering any real property for sale or lease:

(a) Except as otherwise provided in this paragraph, obtain two independent appraisals of the real property before selling or leasing it. If the board of county commissioners holds a public hearing on the matter of the fair market value of the real property, one independent appraisal of the real property is sufficient before selling or leasing it. The appraisal or appraisals, as applicable, must have been prepared not more than 6 months before the date on which the real property is offered for sale or lease.

(b) Select the one independent appraiser or two independent appraisers, as applicable, from the list of appraisers established pursuant to subsection 2.

(c) Verify the qualifications of each appraiser selected pursuant to paragraph (b). The determination of the board of county commissioners as to the qualifications of the appraiser is conclusive.

2. The board of county commissioners shall adopt by ordinance the procedures for creating or amending a list of appraisers qualified to conduct appraisals of real property offered for sale or lease by the board. The list must:

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

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

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

4. An appraiser shall not perform an appraisal on any real property for sale or lease by the board of county commissioners if the appraiser or a person related to the appraiser within the first degree of consanguinity or affinity has an interest in the real property or an adjoining property.

5. If real property is sold or leased in violation of the provisions of this section:

(a) The sale or lease is void; and

(b) Any change to an ordinance or law governing the zoning or use of the real property is void if the change takes place within 5 years after the date of the void sale or lease.

Sec. 8. NRS 244.281 is hereby amended to read as follows:

244.281 1. Except as otherwise provided in this subsection and NRS 244.189, 244.276, 244.279, 244.2815, 244.2825, 244.2835, 244.284, 244.287, 244.290, 278.479 to 278.4965, inclusive, and subsection 3 of NRS 496.080, ***and section 6 of this act,*** except as otherwise required by federal law, except as otherwise required pursuant to a cooperative agreement entered into pursuant to NRS 277.050 or 277.053 or an interlocal agreement in existence on or before October 1, 2004, except if the board of county commissioners is entering into a joint development agreement for real property owned by the county to which the board of county commissioners is a party, except for a lease of residential property with a term of 1 year or less, except for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose and except for the sale or lease of real property larger than 1 acre which is approved by the voters at a primary or general election or special election:

(a) When a board of county commissioners has determined by resolution that the sale or lease of any real property owned by the county will be for purposes other than to establish, align, realign, change, vacate or otherwise adjust any street, alley, avenue or other thoroughfare, or portion thereof, or flood control facility within the county and will be in the best interest of the county, it may:

(1) Sell the property in the manner prescribed for the sale of real property in NRS 244.282.

(2) Lease the property in the manner prescribed for the lease of real property in NRS 244.283.

(b) Before the board of county commissioners may sell or lease any real property as provided in paragraph (a), it shall:

(1) Post copies of the resolution described in paragraph (a) in three public places in the county; and

(2) Cause to be published at least once a week for 3 successive weeks, in a newspaper qualified under chapter 238 of NRS that is published in the county in which the real property is located, a notice setting forth:

(I) A description of the real property proposed to be sold or leased in such a manner as to identify it;

(II) The minimum price, if applicable, of the real property proposed to be sold or leased; and

(III) The places at which the resolution described in paragraph (a) has been posted pursuant to subparagraph (1), and any other places at which copies of that resolution may be obtained.

➥ If no qualified newspaper is published within the county in which the real property is located, the required notice must be published in some qualified newspaper printed in the State of Nevada and having a general circulation within that county.

(c) Except as otherwise provided in this paragraph, if the board of county commissioners by its resolution further finds that the property to be sold or leased is worth more than $1,000, the board shall appoint two or more disinterested, competent real estate appraisers pursuant to NRS 244.2795 to appraise the property. If the board of county commissioners holds a public hearing on the matter of the fair market value of the property, one disinterested, competent appraisal of the property is sufficient before selling or leasing it. Except for property acquired pursuant to NRS 371.047, the board of county commissioners shall not sell or lease it for less than the highest appraised value.

(d) If the property is appraised at $1,000 or more, the board of county commissioners may:

(1) Lease the property; or

(2) Sell the property either for cash or for not less than 25 percent cash down and upon deferred payments over a period of not more than 10 years, secured by a mortgage or deed of trust, bearing such interest and upon such further terms as the board of county commissioners may specify.

(e) A board of county commissioners may sell or lease any real property owned by the county without complying with the provisions of NRS 244.282 or 244.283 to:

(1) A person who owns real property located adjacent to the real property to be sold or leased if the board has determined by resolution that the sale will be in the best interest of the county and the real property is a:

(I) Remnant that was separated from its original parcel due to the construction of a street, alley, avenue or other thoroughfare, or portion thereof, flood control facility or other public facility;

(II) Parcel that, as a result of its size, is too small to establish an economically viable use by anyone other than the person who owns real property adjacent to the real property for sale or lease; or

(III) Parcel which is subject to a deed restriction prohibiting the use of the real property by anyone other than the person who owns real property adjacent to the real property for sale or lease.

(2) The State or another governmental entity if:

(I) The sale or lease restricts the use of the real property to a public use; and

(II) The board adopts a resolution finding that the sale or lease will be in the best interest of the county.

(f) A board of county commissioners that disposes of real property pursuant to paragraph (d) is not required to offer to reconvey the real property to the person from whom the real property was received or acquired by donation or dedication.

(g) If real property that is offered for sale or lease pursuant to this section is not sold or leased at the initial offering of the contract for the sale or lease of the real property, the board of county commissioners may offer the real property for sale or lease a second time pursuant to this section. If there is a material change relating to the title, zoning or an ordinance governing the use of the real property, the board of county commissioners must obtain a new appraisal of the real property pursuant to the provisions of NRS 244.2795 before offering the real property for sale or lease a second time. If real property that is offered for sale or lease pursuant to this section is not sold or leased at the second offering of the contract for the sale or lease of the real property, the board of county commissioners may list the real property for sale or lease at the appraised value with a licensed real estate broker, provided that the broker or a person related to the broker within the first degree of consanguinity or affinity does not have an interest in the real property or an adjoining property.

2. If real property is sold or leased in violation of the provisions of this section:

(a) The sale or lease is void; and

(b) Any change to an ordinance or law governing the zoning or use of the real property is void if the change takes place within 5 years after the date of the void sale or lease.

3. As used in this section, "flood control facility" has the meaning ascribed to it in NRS 244.276.

Sec. 9. NRS 244.283 is hereby amended to read as follows:

244.283 1. When the board of county commissioners determines that the lease of real property belonging to the county for industrial, commercial, residential or recreational purposes is necessary or desirable, the board may lease such real property, whether acquired by purchase, dedication or otherwise. Such a lease must not be in contravention of any condition in a gift or devise of real property to the county.

2. Except as otherwise provided in NRS 244.279 ~~[,]~~ ***and section 6 of this act,*** before ordering the lease of any property the board shall, in open meeting by a majority vote of the members,

adopt a resolution declaring its intention to lease the property. The resolution must:

(a) Describe the property proposed to be leased in such manner as to identify it.

(b) Specify the minimum rental, and the terms upon which it will be leased.

(c) Fix a time, not less than 3 weeks thereafter, for a public meeting of the board to be held at its regular place of meeting, at which sealed proposals to lease will be received and considered.

3. Notice of the adoption of the resolution and of the time and place of holding the meeting must be given by:

(a) Posting copies of the resolution in three public places in the county not less than 15 days before the date of the meeting; and

(b) Publishing the resolution not less than once a week for 2 successive weeks before the meeting in a newspaper of general circulation published in the county, if any such newspaper is published therein.

4. At the time and place fixed in the resolution for the meeting of the board, all sealed proposals which have been received must, in public session, be opened, examined and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to lease and which are made by responsible bidders, the proposal which is the highest must be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.

5. Before accepting any written proposal, the board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to lease the property upon the terms and conditions specified in the resolution, for a rental exceeding by at least 5 percent the highest written proposal, then the highest oral bid which is made by a responsible person must be finally accepted.

6. A person may not make an oral bid unless, at least 5 days before the meeting held for receiving and considering bids, the person submits to the board written notice of the person's intent to make an oral bid and a statement establishing the person's financial responsibility to the satisfaction of the board.

7. The final acceptance by the board may be made either at the same session or at any adjourned session of the same meeting held within the 21 days next following.

8. The board may, either at the same session or at any adjourned session of the same meeting held within the 21 days next following, if it deems such action to be for the best public interest, reject any and all bids, either written or oral, and withdraw the property from lease.

9. Any resolution of acceptance of any bid made by the board must authorize and direct the chair to execute a lease and to deliver it upon performance and compliance by the lessee with all the terms or conditions of the lessee's contract which are to be performed concurrently therewith.

10. All money received from rentals of real property must be deposited forthwith with the county treasurer to be credited to the county general fund.

11. This section does not apply to leases of real property made pursuant to NRS 244.288, 334.070 or 338.177.

Sec. 10. This act becomes effective upon passage and approval.

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