

Amendment No. 18

Senate Amendment to Senate Bill No. 82 (BDR 19-267)

Proposed by: Senate Committee on Government Affairs

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

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

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

SRT/HAC



Date: 4/1/2011

S.B. No. 82—Makes various changes relating to governmental information systems. (BDR 19-267)



SENATE BILL NO. 82—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to governmental information systems. (BDR 19-267)

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 governmental administration; requiring the Chief of the Office of Information Security of the Department of Information Technology to investigate and resolve certain matters relating to security breaches of information systems of certain state agencies and elected officers; authorizing the Director of the Department or the Chief of the Office of Information Security to inform members of certain governmental entities of such security breaches; ~~increasing~~ amending the membership and increasing certain terms of office of the Information Technology Advisory Board; revising the authority of the Department to provide services and equipment to local governmental agencies; requiring certain agencies and officers that use the equipment and information services of the Department to report certain incidents to the ~~{Chief of the}~~ Office of Information Security; making various other changes relating to governmental information systems; ~~{authorizing}~~ requiring the Chief of the Purchasing Division of the Department of Administration and local governments to publish certain advertisements for bids or proposals on ~~{the}~~ their respective Internet ~~{website of the Purchasing Division}~~ websites; authorizing the Chief to purchase and acquire services from a vendor who has entered into an agreement with the General Services Administration; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 4 of this bill requires the Chief of the Office of Information Security of the Department of Information Technology to investigate and resolve any security breach or unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of an information system of a state agency or elected officer that uses the equipment or services of the Department. **Section 4** also authorizes the Director to

inform the members of certain boards and commissions of such security breaches and unauthorized acquisitions.

Section 12 of this bill adds the Attorney General or his or her designee to and removes the ~~(State Library and Archives Administrator)~~ **Superintendent of Public Instruction** or his or her designee ~~(to)~~ from the membership of the Information Technology Advisory Board. **Section 12** also increases from one person to three persons the number of members who are appointed to the Board by the Governor as representatives of a city or county in this State and increases from 2 to 4 years the term of the members of the Board who are appointed by the Governor.

Under existing law, the Department is authorized to provide services to counties, cities and towns, and their agencies, if there are sufficient resources available. (NRS 242.141)

Section 13 of this bill authorizes the Department to provide services to those local governmental agencies if the provision of services would result in reduced costs to the State for equipment and services.

Under existing law, the Department is responsible for the information systems of state agencies and elected state officers that are required to use its services and equipment. (NRS 242.171) **Section 14** of this bill adds certain testing and monitoring of information systems to the duties of the Department.

Under existing law, all users of equipment or services of the Department are required to comply with certain regulations. (NRS 242.181) **Section 15** of this bill requires such users to report security-related noncompliance and unauthorized access to their information systems or applications of their information systems to the ~~(Chief of the)~~ Office of Information Security of the Department within ~~(12)~~ 24 hours after discovery.

Existing law requires the Chief of the Purchasing Division of the Department of Administration to publish advertisements for bids or proposals for commodities or services in at least one newspaper of general circulation in the State. (NRS 333.310) **Section** ~~(19)~~ 20 of this bill ~~(authorizes)~~ requires the Chief to publish the advertisement on the Internet website of the Purchasing Division ~~(rather than)~~ and in (the) a newspaper.

Section ~~(20)~~ 21 of this bill authorizes the Chief of the Purchasing Division to purchase and acquire services from a vendor who has entered into an agreement with the General Services Administration.

Under existing law, local governments are required to publish advertisements for bids or proposals for purchasing and public works in a newspaper. (NRS 332.045, 338.1378, 338.1385, 338.143, 338.1692, 338.1723, 338.1907 and 496.090) Sections 19 and 22-28 of this bill require a local government to publish such advertisements on the Internet website of the local government, if the local government maintains an Internet website, in addition to publishing such advertisements in a newspaper.

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

Section 1. Chapter 242 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4, of this act.

Sec. 2. *“Local governmental agency” means any branch, agency, bureau, board, commission, department or division of a county, incorporated city or town in this State.*

Sec. 3. *“Security validation” means a process or processes used to ensure that an information system or a network associated with an information system is resistant to any known threat.*

Sec. 4. *1. The Chief of the Office of Information Security shall investigate and resolve any breach of an information system of a state agency or elected officer that uses the equipment or services of the Department or an application of such an information system or unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of such an information system.*

2. *The Director or Chief of the Office of Information Security, at his or her discretion, may inform members of the Technological Crime Advisory Board created by NRS 205A.040, the Nevada Commission on Homeland Security created by NRS 239C.120 and the Information Technology Advisory Board created by NRS 242.122 of any breach of an information system of a state agency or elected officer or application of such an information system or unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of such an information system.*

Sec. 5. NRS 242.011 is hereby amended to read as follows:

242.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 242.015 to 242.068, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 242.055 is hereby amended to read as follows:

242.055 "Information service" means any service relating to the creation, maintenance, operation, *security validation, testing, continuous monitoring* or use of an information system.

Sec. 7. NRS 242.057 is hereby amended to read as follows:

242.057 "Information system" means any communications or computer equipment, computer software, procedures, personnel or technology used to collect, process, distribute or store information. ~~{within the Executive Branch of State Government.}~~

Sec. 8. NRS 242.059 is hereby amended to read as follows:

242.059 "Information technology" means any information, information system or information service acquired, developed, operated, maintained or otherwise used. ~~{within the Executive Branch of State Government.}~~

Sec. 9. NRS 242.071 is hereby amended to read as follows:

242.071 1. The Legislature hereby determines and declares that the creation of the Department of Information Technology is necessary for the coordinated, orderly and economical processing of information in State Government, to ensure economical use of information systems and to prevent the unnecessary proliferation of equipment and personnel among the various state agencies.

2. The purposes of the Department are:

(a) To perform information services for state agencies.

(b) To provide technical advice but not administrative control of the information systems within the state agencies ~~{county agencies and governing bodies and agencies of incorporated cities and towns.}~~ *and, as authorized, of local governmental agencies.*

Sec. 10. NRS 242.101 is hereby amended to read as follows:

242.101 1. The Director shall:

(a) Appoint the chiefs of the ~~{divisions}~~ *Programming Division and the Communication and Computing Division of the Department who are* in the unclassified service of the State;

(b) *Appoint the Chief of the Office of Information Security who is in the classified service of the State;*

(c) Administer the provisions of this chapter and other provisions of law relating to the duties of the Department; and

~~{(e)}~~ (d) Carry out other duties and exercise other powers specified by law.

2. The Director may form committees to establish standards and determine criteria for evaluation of policies relating to informational services.

Sec. 11. NRS 242.105 is hereby amended to read as follows:

242.105 1. Except as otherwise provided in subsection 3, records and portions of records that are assembled, maintained, overseen or prepared by the Department *or a local governmental agency* to mitigate, prevent or respond to acts

of terrorism, *or to maintain the continuity of government and governmental services in the case of an act of terrorism*, the public disclosure of which would, in the determination of the Director, create a substantial likelihood of threatening the safety of the general public are confidential and not subject to inspection by the general public to the extent that such records and portions of records consist of or include:

(a) Information regarding the infrastructure and security of information systems, including, without limitation:

(1) Access codes, passwords and programs used to ensure the security of an information system;

(2) Access codes used to ensure the security of software applications;

(3) Procedures and processes used to ensure the security of an information system; and

(4) Plans used to reestablish security and service with respect to an information system after security has been breached or service has been interrupted.

(b) Assessments and plans that relate specifically and uniquely to the vulnerability of *such* an information system or to the measures which will be taken to respond to such vulnerability, including, without limitation, any compiled underlying data necessary to prepare such assessments and plans.

(c) The results of tests of the security of *such* an information system, insofar as those results reveal specific vulnerabilities relative to the information system.

2. The Director shall maintain or cause to be maintained a list of each record or portion of a record that the Director has determined to be confidential pursuant to subsection 1. The list described in this subsection must be prepared and maintained so as to recognize the existence of each such record or portion of a record without revealing the contents thereof.

3. At least once each biennium, the Director shall review the list described in subsection 2 and shall, with respect to each record or portion of a record that the Director has determined to be confidential pursuant to subsection 1:

(a) Determine that the record or portion of a record remains confidential in accordance with the criteria set forth in subsection 1;

(b) Determine that the record or portion of a record is no longer confidential in accordance with the criteria set forth in subsection 1; or

(c) If the Director determines that the record or portion of a record is obsolete, cause the record or portion of a record to be disposed of in the manner described in NRS 239.073 to 239.125, inclusive.

4. On or before February 15 of each year, the Director shall:

(a) Prepare a report setting forth a detailed description of each record or portion of a record determined to be confidential pursuant to this section, if any, accompanied by an explanation of why each such record or portion of a record was determined to be confidential; and

(b) Submit a copy of the report to the Director of the Legislative Counsel Bureau for transmittal to:

(1) If the Legislature is in session, the standing committees of the Legislature which have jurisdiction of the subject matter; or

(2) If the Legislature is not in session, the Legislative Commission.

5. As used in this section, "act of terrorism" has the meaning ascribed to it in NRS 239C.030.

Sec. 12. NRS 242.122 is hereby amended to read as follows:

242.122 1. There is hereby created an Information Technology Advisory Board. The Board consists of:

(a) One member appointed by the Majority Floor Leader of the Senate from the membership of the Senate Standing Committee on Finance . ~~{during the immediately preceding session of the Legislature.}~~

(b) One member appointed by the Speaker of the Assembly from the membership of the Assembly Standing Committee on Ways and Means . ~~{during the immediately preceding session of the Legislature.}~~

(c) Two representatives of using agencies which are major users of the services of the Department. The Governor shall appoint the two representatives. Each such representative serves for a term of ~~{2}~~ 4 years. For the purposes of this paragraph, an agency is a "major user" if it is among the top five users of the services of the Department, based on the amount of money paid by each agency for the services of the Department during the immediately preceding biennium.

(d) The Director of the Department of Administration or his or her designee.

~~(e) {The Superintendent of Public Instruction of the Department of Education or his or her designee.~~

~~—(f) {Three} The Attorney General or his or her designee.~~

~~{(g) The State Library and Archives Administrator or his or her designee.~~

~~—(h) {f} Five~~ persons appointed by the Governor ~~{in July of each odd-numbered year}~~ as follows:

(1) ~~{One person}~~ *Three persons* who ~~{represents}~~ *represent* a city or county in this State ~~{, at least one of whom is engaged in the information technology or information security;}~~ and

(2) Two persons who represent the information technology industry but who:

(I) Are not employed by this State;

(II) Do not hold any elected or appointed office in State Government;

(III) Do not have an existing contract or other agreement to provide information services, systems or technology to an agency of this State; and

(IV) Are independent of and have no direct or indirect pecuniary interest in a corporation, association, partnership or other business organization which provides information services, systems or technology to an agency of this State.

2. Each person appointed pursuant to paragraph ~~(f) {(h)}~~ of subsection 1 serves for a term of ~~{2}~~ 4 years. No person so appointed may serve more than 2 consecutive terms.

3. At the first regular meeting of each calendar year, the members of the Board shall elect a Chair by majority vote.

Sec. 13. NRS 242.141 is hereby amended to read as follows:

242.141 To facilitate the economical processing of data throughout the State Government, the Department may provide service for agencies not under the control of the Governor, upon the request of any such agency. ~~{If there are sufficient resources available to the Department, it}~~ *The Department* may provide services , *including, without limitation, purchasing services,* to ~~{counties, cities and towns and to their agencies.}~~ *a local governmental agency upon request, if provision of such services will result in reduced costs to the State for equipment and services.*

Sec. 14. NRS 242.171 is hereby amended to read as follows:

242.171 1. The Department is responsible for:

(a) The applications of information systems;

(b) Designing and placing those *information* systems in operation;

(c) Any application of an information system which it furnishes to state agencies and officers after negotiation; and

(d) The ~~writing,~~ *security validation*, testing, *including, without limitation, penetration testing*, and ~~performance of programs,~~ *continuous monitoring of information systems*,

↳ for ~~the state~~ *using* agencies and ~~selected state officers which are required to use its services,~~ *for state agencies and officers which use the equipment or services of the Department pursuant to subsection 2 of NRS 242.131.*

2. The Director shall review and approve or disapprove, pursuant to standards for justifying cost, any application of an information system having an estimated developmental cost of \$50,000 or more. No using agency may commence development work on any such applications until approval and authorization have been obtained from the Director.

3. *As used in this section, "penetration testing" means a method of evaluating the security of an information system or application of an information system by simulating unauthorized access to the information system or application.*

Sec. 15. NRS 242.181 is hereby amended to read as follows:

242.181 1. Any state agency or elected state officer which uses the equipment or services of the Department shall adhere to the regulations, standards, practices, policies and conventions of the Department.

2. *Each state agency or elected state officer described in subsection 1 shall report any suspected incident of:*

(a) *Unauthorized access to an information system or application of an information system of the Department used by the state agency or elected state officer; and*

(b) *Noncompliance with the regulations, standards, practices, policies and conventions of the Department ~~that is identified by the Department as security-related.~~*

↳ *to the ~~Chief of the~~ Office of Information Security of the Department within ~~12~~ 24 hours after discovery of the suspected incident. If the ~~Chief~~ Office determines that an incident of unauthorized access or noncompliance occurred, the ~~Chief~~ Office shall immediately report the incident to the Director. The Director shall assist ~~the Chief in investigating and resolving~~ in the investigation and resolution of any such incident.*

3. The Department shall provide services to each *state* agency *and elected state officer described in subsection 1* uniformly with respect to degree of service, priority of service, availability of service and cost of service.

Sec. 16. NRS 242.191 is hereby amended to read as follows:

242.191 1. Except as otherwise provided in subsection 3, the amount receivable from ~~any~~ *a state agency or officer or local governmental* agency ~~availing itself of~~ *which uses* the services of the Department must be determined by the Director in each case and include:

(a) The annual expense, including depreciation, of operating and maintaining the Communication and Computing Division, distributed among the agencies in proportion to the services performed for each agency.

(b) A service charge in an amount determined by distributing the monthly installment for the construction costs of the computer facility among the agencies in proportion to the services performed for each agency.

2. The Director shall prepare and submit monthly to the *state agencies and officers and local governmental* agencies for which services of the Department have been performed an itemized statement of the amount receivable from each *state agency or officer or local governmental* agency.

3. The Director may authorize, if in his or her judgment the circumstances warrant, a fixed cost billing, including a factor for depreciation, for services rendered to ~~an~~ a state agency or officer or local governmental agency.

Sec. 17. NRS 242.231 is hereby amended to read as follows:

242.231 Upon the receipt of a statement submitted pursuant to subsection 2 of NRS 242.191, each state agency or officer shall authorize the State Controller by transfer or warrant to draw money from the agency's account in the amount of the statement for transfer to or placement in the Fund for Information Services.

Sec. 18. NRS 205.4765 is hereby amended to read as follows:

205.4765 1. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

- (a) Modifies;
- (b) Damages;
- (c) Destroys;
- (d) Discloses;
- (e) Uses;
- (f) Transfers;
- (g) Conceals;
- (h) Takes;
- (i) Retains possession of;
- (j) Copies;
- (k) Obtains or attempts to obtain access to, permits access to or causes to be accessed; or

(l) Enters,

↳ data, a program or any supporting documents which exist inside or outside a computer, system or network is guilty of a misdemeanor.

2. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

- (a) Modifies;
- (b) Destroys;
- (c) Uses;
- (d) Takes;
- (e) Damages;
- (f) Transfers;
- (g) Conceals;
- (h) Copies;
- (i) Retains possession of; or
- (j) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

↳ equipment or supplies that are used or intended to be used in a computer, system or network is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

- (a) Destroys;
- (b) Damages;
- (c) Takes;
- (d) Alters;
- (e) Transfers;
- (f) Discloses;
- (g) Conceals;
- (h) Copies;
- (i) Uses;
- (j) Retains possession of; or

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

↳ a computer, system or network is guilty of a misdemeanor.

4. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

(a) Obtains and discloses;

(b) Publishes;

(c) Transfers; or

(d) Uses,

↳ a device used to access a computer, network or data is guilty of a misdemeanor.

5. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization introduces, causes to be introduced or attempts to introduce a computer contaminant into a computer, system or network is guilty of a misdemeanor.

6. If the violation of any provision of this section:

(a) Was committed to devise or execute a scheme to defraud or illegally obtain property;

(b) Caused response costs, loss, injury or other damage in excess of \$500; or

(c) Caused an interruption or impairment of a public service, including, without limitation, a governmental operation, a system of public communication or transportation or a supply of water, gas or electricity,

↳ the person is guilty of a category C felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than \$100,000. In addition to any other penalty, the court shall order the person to pay restitution.

7. The provisions of this section do not apply to a person performing any testing, including, without limitation, penetration testing, of an information system of an agency that uses the equipment or services of the Department of Information Technology that is authorized by the Director of the Department of Information Technology or the chief of the Office of Information Security of the Department. As used in this subsection:

(a) "Information system" has the meaning ascribed to it in NRS 242.057.

(b) "Penetration testing" has the meaning ascribed to it in NRS 242.171.

Sec. 19. NRS 332.045 is hereby amended to read as follows:

332.045 1. The advertisement required by paragraph (a) of subsection 1 of NRS 332.039 must ~~be published at least once and not less than 7 days before the opening of bids. The advertisement must~~ be by notice to bid and must be published ~~in~~ :

(a) In a newspaper qualified pursuant to chapter 238 of NRS that has a general circulation within the county wherein the local government, or a major portion thereof, is situated, ~~in~~ at least once and not less than 7 days before the opening of bids; and

(b) On the Internet website of the local government, if the local government maintains an Internet website, every day for not less than 7 days before the opening of bids.

2. The notice must state:

(a) The nature, character or object of the contract.

(b) If plans and specifications are to constitute part of the contract, where the plans and specifications may be seen.

(c) The time and place where bids will be received and opened.

(d) Such other matters as may properly pertain to giving notice to bid.

~~[Sec. 19.]~~ **Sec. 20.** NRS 333.310 is hereby amended to read as follows:
333.310 1. An advertisement must contain a general description of the classes of commodities or services for which a bid or proposal is wanted and must state:

(a) The name and location of the department, agency, local government, district or institution for which the purchase is to be made.

(b) Where and how specifications and quotation forms may be obtained.

(c) If the advertisement is for bids, whether the Chief is authorized by the using agency to be supplied to consider a bid for an article that is an alternative to the article listed in the original request for bids if:

(1) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(2) The purchase of the alternative article results in a lower price; and

(3) The Chief deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(d) Notice of the preference set forth in NRS 333.3366.

(e) The date and time not later than which responses must be received by the Purchasing Division.

(f) The date and time when responses will be opened.

➤ The Chief or a designated agent of the Chief shall approve the copy for the advertisement.

2. Each advertisement must be published ~~[in one of the following ways:]~~:

(a) In at least one newspaper of general circulation in the State. The selection of the newspaper to carry the advertisement must be made in the manner provided by this chapter for other purchases, on the basis of the lowest price to be secured in relation to the paid circulation [.] ; and

(b) On the Internet website of the Purchasing Division.

~~[Sec. 20.]~~ **Sec. 21.** NRS 333.480 is hereby amended to read as follows:

333.480 The Chief may purchase or acquire on behalf of the State of Nevada, and all officers, departments, institutions, boards, commissions, schools and other agencies in the Executive Department of the State Government, volunteer fire departments, local governments as defined in NRS 354.474, conservation districts or irrigation districts of the State of Nevada, any supplies, **services**, materials or equipment of any kind required or deemed advisable for the state officers, departments, institutions, boards, commissions, schools, volunteer fire departments and other agencies or local governments as defined in NRS 354.474, conservation districts or irrigation districts that may be available pursuant to an agreement with a vendor who has entered into an agreement with the General Services Administration or another governmental agency dealing in supplies, **services**, materials, equipment or donable surplus material if:

1. The prices for the supplies, **services**, materials or equipment negotiated in the agreement that the Chief enters into with the vendor are substantially similar to the prices for those supplies, **services**, materials or equipment that the vendor had negotiated with the General Services Administration or other governmental agency; and

2. The Chief determines that such an agreement would be in the best interests of the State.

Sec. 22. NRS 338.1378 is hereby amended to read as follows:

338.1378 1. Before a local government accepts applications pursuant to NRS 338.1379, the local government must ; ~~[in accordance with subsection 2, advertise in a newspaper that is:]~~

(a) Publish an advertisement at least once and not less than 21 days before applications are to be submitted to the local government in a newspaper that is:

~~(1)~~ (1) Qualified pursuant to the provisions of chapter 238 of NRS; and
~~(b)~~ (2) Published in a county in which the contracts for the potential public works will be performed or, if no qualified newspaper is published in that county, published in a qualified newspaper that is published in the State of Nevada and which has a general circulation in the county in which the contracts for the potential public works will be performed.

(b) Post on the Internet website of the local government, if the local government maintains an Internet website, an advertisement every day for not less than 21 days before applications are to be submitted to the local government.

2. An advertisement required pursuant to subsection 1 ~~is~~
~~(a) Must be published at least once not less than 21 days before applications are to be submitted to the local government; and~~

~~(b) Must~~ must include:

~~(1)~~ (a) A description of the potential public works for which applications to qualify as a bidder are being accepted;

~~(2)~~ (b) The time and place at which applications are to be submitted to the local government;

~~(3)~~ (c) The place at which applications may be obtained; and

~~(4)~~ (d) Any other information that the local government deems necessary.

Sec. 23. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9 and NRS 338.1906 and 338.1907, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises on the Internet website of the county where the public work will be performed, if the county maintains an Internet website, and in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 and, with respect to the State, NRS 338.1384 to 338.13847, inclusive.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

- (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;
- (b) The bidder is not responsive or responsible;
- (c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or
- (d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

- (a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;
- (b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);
- (c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and
- (d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

- (a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;
- (b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;
- (c) An estimate of the cost of administrative support for the persons assigned to the public work;
- (d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and
- (e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

- (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;
- (b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;
- (c) Normal maintenance of the property of a school district;
- (d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;
- (e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;
- (f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

Sec. 24. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8 and NRS 338.1907, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises on the Internet website of the local government, if the local government maintains an Internet website, and in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 and 338.1446.

(c) Divide a project work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

4. Except as otherwise provided in subsection 5 and NRS 338.147, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

5. Any bids received in response to an advertisement for bids may be rejected if the local government or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

Sec. 25. NRS 338.1692 is hereby amended to read as follows:

338.1692 1. A public body shall advertise for statements of qualifications for a construction manager at risk on the Internet website of the public body, if the public body maintains an Internet website, and in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

2. A request for a statement of qualifications published pursuant to subsection 1 must include, without limitation:

(a) A description of the public work;

(b) An estimate of the cost of construction;

(c) A description of the work that the public body expects a construction manager at risk to perform;

(d) The dates on which it is anticipated that the separate phases of the preconstruction and construction of the public work will begin and end;

(e) The date by which statements of qualifications must be submitted to the public body;

(f) If the project is a public work of the State, a statement setting forth that the construction manager at risk must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a statement of qualifications;

(g) The name, title, address and telephone number of a person employed by the public body that an applicant may contact for further information regarding the public work; and

(h) A list of the selection criteria and relative weight of the selection criteria that will be used to evaluate statements of qualifications.

3. A statement of qualifications must include, without limitation:

(a) An explanation of the experience that the applicant has with projects of similar size and scope;

(b) The contact information for references who have knowledge of the background, character and technical competence of the applicant;

(c) The applicant's preliminary proposal for managing the preconstruction and construction of the public work;

(d) Evidence of the ability of the applicant to obtain the necessary bonding for the work to be required by the public body;

(e) Evidence that the applicant has obtained or has the ability to obtain such insurance as may be required by law; and

(f) A statement of whether the applicant has been:

(1) Found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause; and

(2) Disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333.

Sec. 26. NRS 338.1723 is hereby amended to read as follows:

338.1723 1. A public body shall advertise for preliminary proposals for the design and construction of a public work by a design-build team on the Internet website of the public body, if the public body maintains an Internet website, and in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

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

(a) A description of the public work to be designed and constructed;

(b) An estimate of the cost to design and construct the public work;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the public work will begin and end;

(d) The date by which preliminary proposals must be submitted to the public body;

(e) If the proposal is for a public work of the State, a statement setting forth that the prime contractor must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a preliminary proposal;

(f) A description of the extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the public work that the public body determines to be necessary;

(g) A list of the requirements set forth in NRS 338.1721;

(h) A list of the factors and relative weight assigned to each factor that the public body will use to evaluate design-build teams who submit a proposal for the public work;

(i) Notice that a design-build team desiring to submit a proposal for the public work must include with its proposal the information used by the public body to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 338.1725 and a description of that information; and

(j) A statement as to whether a design-build team that is selected as a finalist pursuant to NRS 338.1725 but is not awarded the design-build contract pursuant to NRS 338.1727 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement.

Sec. 27. NRS 338.1907 is hereby amended to read as follows:

338.1907 1. A governing body may designate one or more energy retrofit coordinators for the buildings occupied by the local government.

2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.

3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

(a) The name and location of the coordinator;

(b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;

(c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;

(d) The date and time not later than which proposals must be received by the coordinator; and

(e) The date and time when responses will be opened.

4. The request for proposals must be published on the Internet website of the governing body, if the governing body maintains an Internet website, and in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county where the public work will be performed.

5. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

(a) The best interests of the local government;

(b) The experience and financial stability of the persons submitting the proposals;

(c) Whether the proposals conform with the terms of the request for proposals;

(d) The prices of the proposals; and

(e) Any other factor disclosed in the request for proposals.

6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the local government, including any financing charges to be incurred by the local government over the life of the contract, the coordinator shall select the best proposal and request the approval of the governing body to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make

1 payments beyond the fiscal year in which the contract is executed or beyond the
2 terms of office of the governing body, or both.

3 8. Before approving a retrofit pursuant to this section, the governing body
4 shall evaluate any projects that would utilize shared savings as a method of
5 payment or any method of financing that would commit the local government to
6 make payments beyond the fiscal year in which the contract is executed or beyond
7 the terms of office of the governing body to ensure that:

8 (a) The dollar value of the annual energy savings resulting from the retrofit
9 will meet or exceed the total annual contract payments to be made by the local
10 government related to the retrofit, including any financing charges to be incurred by
11 the local government over the life of the contract; and

12 (b) The local government is likely to continue to occupy the building for the
13 entire period required to recoup the cost of the retrofit in energy savings.

14 9. Upon approval of the governing body, the coordinator shall execute the
15 contract and notify each officer or employee who is responsible for the budget of a
16 department, board, commission or other entity which occupies a portion of a
17 building that will be retrofitted of the amount of money it will be required to pay
18 annually for its portion of the retrofit.

19 10. A change order to a contract executed pursuant to this section may not be
20 approved by the local government if the cost of the change order would cause the
21 dollar value of the annual energy savings resulting from the retrofit to be less than
22 the total annual contract payments to be made by the local government, including
23 financing charges to be incurred by the local government over the life of the
24 contract, unless approval of the change order is more economically feasible than
25 termination of the retrofit.

26 11. NRS 338.1385 and 338.143 do not apply to a project for which a request
27 for proposals is advertised and the contract is awarded pursuant to the provisions of
28 this section.

29 **Sec. 28. NRS 496.090 is hereby amended to read as follows:**

30 496.090 1. In operating an airport or air navigation facility or any other
31 facilities appertaining to the airport owned, leased or controlled by a municipality,
32 the municipality may, except as limited by the terms and conditions of any grant,
33 loan or agreement pursuant to NRS 496.180, enter into:

34 (a) Contracts, leases and other arrangements with any persons:

35 (1) Granting the privilege of using or improving the airport or air
36 navigation facility, or any portion or facility thereof, or space therein, for
37 commercial purposes. The municipality may, if it determines that an improvement
38 benefits the municipality, reimburse the person granted the privilege for all or any
39 portion of the cost of making the improvement.

40 (2) Conferring the privilege of supplying goods, commodities, things,
41 services or facilities at the airport or air navigation facility or other facilities.

42 (3) Making available services to be furnished by the municipality or its
43 agents or by other persons at the airport or air navigation facility or other facilities.

44 (4) Providing for the maintenance of the airport or air navigation facility,
45 or any portion or facility thereof, or space therein.

46 (5) Allowing residential occupancy of property acquired by the
47 municipality.

48 (b) Contracts for the sale of revenue bonds or other securities whose issuance
49 is authorized by the Local Government Securities Law or NRS 496.150 or 496.155,
50 for delivery within 10 years after the date of the contract.

51 2. In each case the municipality may establish the terms and conditions and
52 fix the charges, rentals or fees for the privileges or services, which must be
53 reasonable and uniform for the same class of privilege or service and must be

1 established with due regard to the property and improvements used and the
2 expenses of operation to the municipality.

3 3. Except as otherwise provided in this subsection, and as an alternative to the
4 procedure provided in subsection 2 of NRS 496.080, to the extent of its
5 applicability, the governing body of any municipality may authorize it to enter into
6 any such contracts, leases and other arrangements with any persons, as provided in
7 this section, for a period not exceeding 50 years, upon such terms and conditions as
8 the governing body deems proper. The provisions of this subsection must not be
9 used to circumvent the requirement set forth in subsection 2 of NRS 496.080 that
10 the disposal of real property be made by public auction.

11 4. Before entering into any such contract, lease or other arrangements, the
12 municipality shall publish notice of its intention in general terms on the Internet
13 website of the municipality, if the municipality maintains an Internet website, for
14 a period of not less than 10 consecutive days, and in a newspaper of general
15 circulation within the municipality at least once a week for 21 days or three times
16 during a period of 10 days. If there is not a newspaper of general circulation within
17 the municipality, the municipality shall post a notice of its intention in a public
18 place at least once a week for 30 days. The notice must specify that a regular
19 meeting of the governing body is to be held, at which meeting any interested person
20 may appear. No such contract, lease or other arrangement may be entered into by
21 the municipality until after the notice has been given and a meeting held as
22 provided in this subsection.

23 5. Any member of a municipality's governing body may vote on any such
24 contract, lease or other arrangement notwithstanding the fact that the term of the
25 contract, lease or other arrangement may extend beyond the member's term of
26 office.

27 ~~[Sec. 21.]~~ **Sec. 29.** Notwithstanding the provisions of NRS 242.122, as
28 amended by section 12 of this act, the existing members of the Information
29 Technology Advisory Board who are appointed to 2-year terms by the Governor
30 pursuant to NRS 242.122 may continue to serve as a member of the Board until the
31 expiration of their current terms and until the Governor appoints successors to 4-
32 year terms pursuant to NRS 242.122, as amended by section 12 of this act. If a
33 position on the Board becomes vacant on or after July 1, 2011, the vacancy must be
34 filled in the manner provided in NRS 242.122, as amended by section 12 of this act.

35 ~~[Sec. 22.]~~ **Sec. 30.** This act becomes effective on July 1, 2011.