

## Amendment No. 416

Senate Amendment to Senate Bill No. 83 (BDR 35-484)

**Proposed by:** Senate Committee on Transportation**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 83 (§§ 18, 19, 23).

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.

DLJ/TMC



Date: 4/19/2011

S.B. No. 83—Revises provisions relating to transportation. (BDR 35-484)



SENATE BILL NO. 83—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION)

PREFILED DECEMBER 15, 2010

Referred to Committee on Transportation

SUMMARY—Revises provisions relating to transportation. (BDR 35-484)

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 transportation; authorizing the Department of Transportation to enter into a public-private partnership to plan, design, construct, improve, finance, operate and maintain an eligible transportation facility; authorizing the Board of Directors of the Department of Transportation to establish user fees, administrative fines and other penalties and charges relating to the use of such a facility; **providing for the disposition of money which is received and is to be retained by the Department of Transportation pursuant to a public-private partnership; providing that such money must first be used to defray the obligations of the Department of Transportation under the public-private partnership;** making provisions regarding taxation of leasehold interests, possessory interests, beneficial interests and beneficial use of exempt property inapplicable to property used by a public-private partnership; requiring the Department of Motor Vehicles to place a hold on the renewal of the registration of a motor vehicle of a registered owner who fails to pay such a user fee; authorizing the Department of Motor Vehicles to establish certain administrative fees; revising provisions governing design-build projects of the Department of Transportation; authorizing the Department of Transportation to approve, upon request, the construction of a toll bridge or toll road by a person; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 12** of this bill authorizes the Department of Transportation to enter into one or more public-private partnerships for planning, designing, financing, constructing, improving, maintaining, operating or acquiring rights-of-way for certain transportation facilities. **Section 18 of this bill provides that a public-private partnership entered into pursuant to the provisions of section 12 may authorize the charging of user fees in certain circumstances and sets forth specific exceptions to the charging of user fees.** **Section 19** of this bill authorizes the Board of Directors of the Department to establish: (1) a schedule or methodology for charging user fees for the use of ~~such a~~ a transportation facility; and (2) administrative fines and other penalties and charges for nonpayment of user fees. **Section 19** also authorizes the Board to approve exemptions from the user fees for certain motor vehicles. **Section 20 of this bill requires the Department to adopt regulations establishing a privacy policy regarding the collection and use of personal identifying information necessary for the collection and enforcement of user fees.** **Section 22** of this bill provides administrative fines, late charges and other penalties and charges for failure to pay a required user fee. **Section 23** of this bill requires the Department of Motor Vehicles to place a hold on the renewal of the registration of a motor vehicle if the Department of Transportation or a private partner provides notice to the Department of Motor Vehicles that the registered owner of the motor vehicle has failed to pay a required user fee.

**Section 25** of this bill requires that all money which is received and is to be retained by the Department of Transportation ~~(in connection with a transportation facility that)~~ pursuant to a public-private partnership and which is derived from the imposition of any charge with respect to the operation of any motor vehicle upon any public highway in Nevada be deposited in the State Highway Fund, accounted for separately and, except for costs of administration, be used exclusively for the design, construction, operation, maintenance, financing and repair of the public highways of Nevada. In addition, **section 25** requires that the money ~~(received by the Department from the eligible transportation facility)~~ first be used to defray the obligations of the Department under the public-private partnership, including, without limitation, the costs of administration, design, construction, operation, maintenance, financing and repair of the eligible transportation facility ~~from which the money is derived.~~ **Section 26** of this bill authorizes certain financing of a transportation facility. **Section 29** of this bill requires a private partner to pay prevailing wages for facility construction. **Section 30** of this bill authorizes the Department to adopt regulations to carry out the provisions of this bill. **Section 31** of this bill requires the Board of Directors to submit a report concerning any transportation facilities completed to the Legislative Commission on or before February 1 of each even-numbered year and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature on or before February 1 of each odd-numbered year.

Under existing law, the Department is authorized to enter into contracts with a design-build team to design and construct highway projects for which the estimated cost exceeds \$20 million and which meet certain conditions. Once each fiscal year, the Department is authorized to contract with a design-build team for a project the estimated cost of which is at least \$5 million but less than \$20 million. (NRS 408.388) **Section 38** of this bill removes the monetary thresholds that limit the number of projects of the Department that may be constructed pursuant to the design-build method and, therefore, allows the Department to contract with a design-build team for any highway project if the conditions set forth in existing law are met.

A design-build team that submits a final proposal to the Department on a project is required under existing law to submit, as part of the proposal, certain information about the subcontractors who will provide a portion of the work on the project. (NRS 408.3886) **Section 39** of this bill eliminates the requirement that a design-build team provide this information regarding subcontractors.

Upon request, the Department is allowed under existing law to authorize a person to develop, construct, improve, maintain or operate certain transportation projects except a toll bridge or toll road. (NRS 408.5471, 408.5473) **Section 40** of this bill eliminates the exclusion of toll bridges and toll roads and, therefore, allows the Department to approve requests or proposals for toll bridge and toll road projects.

WHEREAS, The Legislature finds that the State of Nevada is faced with growing traffic congestion and the limited ability to expand freeway capacity because of financial, environmental and physical constraints; and

WHEREAS, The Legislature finds that it is beneficial to evaluate alternative approaches to managing the use of existing and planned transportation facilities; and

WHEREAS, The Legislature finds that public-private partnerships have been demonstrated to be an effective means of providing motorists with more reliable travel opportunities and more choices within congested freeway corridors; and

WHEREAS, The Legislature finds that public-private partnerships are an effective means of financing the development, operation and maintenance of a transportation facility; and

WHEREAS, It is the intent of the Legislature to maximize the effectiveness and efficiency of the State's highway system; and

WHEREAS, It is the intent of the Legislature to authorize the Department of Transportation to establish and carry out transportation facilities to increase highway efficiency, enhance mobility, improve the effectiveness of transit, and facilitate the feasibility of financing improvements through user fees and public-private partnerships; now, therefore,

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

**Section 1.** Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 32, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Authorized emergency vehicle" has the meaning ascribed to it in NRS 484A.020.*

**Sec. 4.** *"Concession" means any lease, ground lease, franchise, easement, permit, right of entry, operating agreement or other binding agreement transferring rights for the use or control, in whole or in part, of an eligible transportation facility by the Department to a private partner.*

**Sec. 5. 1.** *"Eligible transportation facility" means a facility, including an enhanced, improved, expanded, extended, upgraded or new facility, used or useful for the safe transport of people or goods via one or more modes of transport, whether involving highways, railways, airports, monorails, transit, bus systems, guided rapid transit, fixed guideways, ferries, vessels, intermodal or multimodal systems or any other mode of transport, as well as facilities, structures, parking, rest areas, maintenance yards, rail yards or storage facilities, vehicles, rolling stock or other related equipment, items or property.*

**2.** *The term includes, without limitation, highways, roads, bridges, on-ramps, off-ramps, direct connectors to or from other highways or arterials, tunnels, connectors to an airport, pavement, shoulders, structures, culverts, curbs, toll gantries and systems, drains, rights-of-way, buildings, communication facilities, equipment appurtenances, lighting, signage, service centers, operations centers, rest areas, services, personal property and works incidental to, related to or desirable for highway design, construction, improvement, operation or maintenance.*

**Sec. 6.** *"Managed lanes" means a highway facility or a set of lanes in which operational and traffic management strategies, including, without limitation, access control, vehicle eligibility and pricing, are implemented and*

1 *managed in response to changing conditions, traffic and usage and which may*  
2 *include the assessment of a user fee. The term includes, without limitation,*  
3 *express lanes.*

4 **Sec. 7.** *“Motor vehicle” has the meaning ascribed to it in NRS 484A.130.*

5 **Sec. 8.** *“Private partner” means a person with whom the Department*  
6 *enters into a public-private partnership.*

7 **Sec. 9.** *“Public-private partnership” means a contract entered into by the*  
8 *Department with a private partner under which the private partner:*

9 1. *Assists the Department in defining a potential project concerning an*  
10 *eligible transportation facility and negotiates terms for potentially carrying out*  
11 *the planning, designing, financing, constructing, improving, maintaining,*  
12 *operating or acquiring rights-of-way for, or any combination thereof, the eligible*  
13 *transportation facility, or any portion thereof; or*

14 2. *Assumes responsibility for planning, designing, financing, constructing,*  
15 *improving, maintaining, operating or acquiring rights-of-way for, or any*  
16 *combination thereof, an eligible transportation facility, or any portion thereof.*

17 **Sec. 10.** *“Registered owner” means a person whose name appears in the*  
18 *records of the Department of Motor Vehicles as the person to whom a motor*  
19 *vehicle is registered.*

20 **Sec. 11.** *“User fee” means a fee, toll, fare or other similar charge,*  
21 *including, without limitation, any incidental, account maintenance,*  
22 *administrative, credit card or video tolling fee or charge authorized by a public-*  
23 *private partnership and imposed on a person for his or her use of an eligible*  
24 *transportation facility.*

25 **Sec. 12.** 1. *The Department, subject to the approval of the Board, may*  
26 *enter into a public-private partnership to plan, finance, design, construct,*  
27 *improve, maintain, operate or acquire the rights-of-way for, or any combination*  
28 *thereof, an eligible transportation facility.*

29 2. *A public-private partnership may include, without limitation:*

30 (a) *A predevelopment agreement leading to another implementing agreement*  
31 *that is described in this subsection;*

32 (b) *A design-build agreement;*

33 (c) *A design-build agreement that includes the financing, maintenance or*  
34 *operation, or any combination thereof, of the eligible transportation facility;*

35 (d) *A concession;*

36 (e) *A construction agreement that includes the financing, maintenance or*  
37 *operation, or any combination thereof, of the eligible transportation facility;*

38 (f) *An agreement for the operation and maintenance of the eligible*  
39 *transportation facility;*

40 (g) *Any other method or agreement for completion of the eligible*  
41 *transportation facility, or any combination thereof, that the Department*  
42 *determines will serve the public interest; or*

43 (h) *Any combination of paragraphs (a) to (g), inclusive.*

44 3. *Except as otherwise provided in subsection 4, notwithstanding any other*  
45 *law to the contrary, a public-private partnership may be for a term of not more*  
46 *than 55 years after:*

47 (a) *The opening of the eligible transportation facility to the public and the*  
48 *commencement of its full operations and collection of revenue, if the public-*  
49 *private partnership involves an eligible transportation facility that charges user*  
50 *fees;*

51 (b) *The opening of the eligible transportation facility and the commencement*  
52 *of its full operations; or*

1       (c) *The commencement of the public-private partnership, if the public-*  
2 *private partnership involves a facility or service that is not generally open to or*  
3 *used by the public.*

4       4. *A public-private partnership may be extended:*

5       (a) *As a result of an event in the nature of force majeure;*

6       (b) *As a means to compensate the private partner for events set forth in the*  
7 *public-private partnership that entitle the private partner to compensation; or*

8       (c) *For additional terms upon the mutual agreement of the private partner*  
9 *and the Department, as authorized by the Board.*

10       5. *An eligible transportation facility must be owned by the Department and*  
11 *remain:*

12       (a) *A public highway;*

13       (b) *A public use; and*

14       (c) *A public facility.*

15       **Sec. 13.** *The Department may do such things as are necessary and*  
16 *appropriate to carry out a public-private partnership entered into pursuant to*  
17 *section 12 of this act, including, without limitation:*

18       1. *Retain legal, financial, technical and other consultants to assist the*  
19 *Department concerning the eligible transportation facility.*

20       2. *Apply for, accept and expend money from any lawful source, including,*  
21 *without limitation, any public or private funding, loan, grant, line of credit, loan*  
22 *guarantee, credit instrument, private activity bond allocation, credit assistance*  
23 *from the Federal Government or other type of assistance that is available to carry*  
24 *out the eligible transportation facility.*

25       3. *Accept from any source any grant, donation, gift or other form of*  
26 *conveyance of land, money, other real or personal property or other thing of*  
27 *value made to the Department to carry out the eligible transportation facility.*

28       4. *Enter into a bond indenture, loan agreement, interest rate swap, hedge*  
29 *agreement, financing agreement, security agreement, pledge agreement, credit*  
30 *facility, trust agreement or other financial agreement in connection with the*  
31 *financing of the eligible transportation facility pursuant to sections 2 to 32,*  
32 *inclusive, of this act.*

33       **Sec. 14.** 1. *To enter into a public-private partnership with the Department*  
34 *pursuant to section 12 of this act, a person must:*

35       (a) *Obtain a performance bond, payment bond, letter of credit, parent*  
36 *company guarantee or other security acceptable to the Department, or any*  
37 *combination thereof, in amounts determined by the Department;*

38       (b) *Obtain insurance covering general liability and liability for errors and*  
39 *omissions in amounts determined by the Department;*

40       (c) *Not have been found liable for breach of contract with respect to a*  
41 *previous project with the Department, other than a breach for legitimate cause,*  
42 *during the 5 years immediately preceding the date of commencement of the*  
43 *solicitation of the public-private partnership; and*

44       (d) *Not be disqualified from being awarded a contract pursuant to NRS*  
45 *338.017, 338.13895, 338.1475 or 408.333.*

46       2. *A private partner is not required to hold the licenses and certifications*  
47 *required to undertake the work for the eligible transportation facility as a*  
48 *condition of eligibility to be a private partner, but must ensure that any work*  
49 *which requires a license or certification is performed by a person that possesses*  
50 *the required license or certification.*

51       3. *Any private entity that wishes to enter into a public-private partnership*  
52 *pursuant to section 12 of this act must provide satisfactory evidence to the Board*  
53 *that the entity is in compliance with the requirements of title 7 of NRS.*

**Sec. 15. 1.** *A public-private partnership entered into pursuant to section 12 of this act must be awarded through one or more solicitations. The Department may solicit a public-private partnership through a process involving:*

- (a) A request for statements of qualifications and a request for proposals; or*
- (b) A request for proposals.*

**2.** *If a request for qualifications is issued by the Department, the Department may select a certain number of persons who submitted a statement of qualifications to receive and respond to a request for proposals.*

**3.** *For any solicitation in which the Department issues a request for statements of qualifications, request for proposals or similar request, the Department may determine the method of evaluation and which factors the Department will consider, and the relative weight of those factors, in the evaluation process to obtain the best value for the Department, including, without limitation, such factors as qualifications, experience, cost, price, financial plan, financial commitment, innovative financing and technology, technical approach and management approach. The Department shall set forth in the request for statements of qualifications, request for proposals or other request, as applicable, the methodology, the factors that will be used, and the relative weight of those factors, for the evaluation process.*

**4.** *Each request for proposals issued for an eligible transportation facility must require each person submitting a proposal to include with the proposal an executive summary. The executive summary must address the major elements of the proposal but must not include the financial terms of the proposal, the financing plan or other confidential or proprietary information or trade secrets that the person submitting the proposal intends to be exempt from disclosure.*

**5.** *The executive summary may be released to the public by the Department at any time.*

**6.** *After evaluation of the proposals submitted in response to a request for proposals, the Department shall enter into negotiations with the applicant whose proposal appeared to have the best value to enter into a public-private partnership. If the Department is unable to negotiate a public-private partnership with that applicant upon such terms and conditions that the Department determines to be in the best interest of the public, the Department shall suspend or terminate negotiations with that applicant. The Department may then undertake negotiations with the next highest-ranked applicant in sequence until a public-private partnership is entered into or a determination is made by the Department to reject all applicants that submitted proposals.*

**7.** *After the award and execution of the public-private partnership, the Department shall make available to the applicants and the public the results of the evaluations of proposals and the final rankings of the applicants.*

**8.** *Notwithstanding any other law to the contrary, to maximize competition and to obtain the best value for the public, no part of a proposal other than the executive summary may be released or disclosed by the Department before the award and execution of the public-private partnership and the conclusion of any specified period to protest or otherwise challenge the award, except pursuant to an administrative or judicial order requiring release or disclosure of any part of the proposal.*

**Sec. 16. 1.** *The Department may reimburse a person who submitted a proposal but with whom the Department did not enter into a public-private partnership for a portion of the cost of preparing the proposal or best and final offer, or both, if the Department determines that the proposal was responsive to the request for proposals and met all the requirements set by the Department for the eligible transportation facility.*



2. If the Department intends to make such a reimbursement, the Department shall set forth the terms, conditions and estimated amount of the reimbursement in the request for qualifications or in the request for proposals, as applicable, for the eligible transportation facility.

3. In exchange for the reimbursement, the Department shall require the recipient to grant to the Department the nonexclusive right to use any work product contained in the proposal, including, without limitation, technologies, techniques, methods, processes and information contained in the design. Such use by the Department is at the sole risk of the Department, and the recipient does not have any responsibility for such use.

**Sec. 17.** 1. Except as otherwise provided in this subsection, information obtained by or disclosed to the Department during the procurement or negotiation of a public-private partnership may be kept confidential until the public-private partnership is executed. The Department may exempt from release to the public any confidential or proprietary information obtained by or disclosed to the Department during the procurement or negotiation.

2. To make confidential and proprietary information exempt from disclosure pursuant to subsection 1, the person who submits a proposal or other response to a solicitation for an eligible transportation facility must:

(a) Invoke the request for exclusion upon submission of the information or other materials for which protection is sought;

(b) Identify the data or other materials for which protection is sought with conspicuous labeling;

(c) State the reasons why protection is necessary for each document for which protection is sought;

(d) Fully comply with any applicable state law with respect to information that the person contends should be exempt from disclosure; and

(e) Defend any action seeking release of records that the person submitting the proposal or response believes are protected from disclosure, and indemnify, defend and hold harmless the State, the Department, its agents and its employees from any judgments awarded against the State or the Department in favor of the party requesting the records, including any and all costs connected with that defense. Under no circumstances will the Department be responsible or liable to the person submitting the proposal or response or any other person for the disclosure of any such labeled materials, whether the disclosure is required by law or court order or occurs through inadvertence, mistake or negligence on the part of the Department or its officers, employees, contractors or consultants.

**Sec. 18.** 1. A public-private partnership entered into pursuant to section 12 of this act may include provisions that:

(a) ~~Authorize~~ Except as otherwise provided in subsection 3, authorize the Department and the private partner to charge, collect, use, enforce and retain user fees, including, without limitation, provisions that:

(1) Specify the technology to be used in the eligible transportation facility;

(2) Establish circumstances under which the Department may receive the revenues or a share of the revenues from such user fees; and

(3) State that the user fees may be collected directly by the Department, the private partner or by a third party engaged for that purpose.

(4) Prescribe a formula, indexation or mechanism for the adjustment of user fees during the term of the public-private partnership.

(5) Allow a variety of strategies to be employed to manage traffic on the eligible transportation facility, including, without limitation:



1           (I) High-occupancy vehicle lanes where single- or low-occupancy  
2 vehicles may use higher-occupancy vehicle lanes by paying a toll.

3           (II) Managed lanes or facilities in which the tolls may vary during  
4 the course of the day or week or according to the levels of congestion that are  
5 anticipated or experienced.

6           (III) Any combination of, or variation on, the strategies set forth  
7 in sub-subparagraphs (I) and (II), or any other strategy that the Department  
8 determines is appropriate based on the specific circumstances of the eligible  
9 transportation facility.

10          (6) Govern the enforcement of user fees, including, without limitation,  
11 provisions for the use of cameras or other mechanisms to ensure that users have  
12 paid user fees which are due and provisions that allow the Department of  
13 Transportation and private partner access to relevant databases, including,  
14 without limitation, databases of the Department of Motor Vehicles, for  
15 enforcement purposes. The Department of Transportation may impose a civil  
16 penalty of not more than \$10,000 per violation for misuse of the data contained  
17 in such databases, including, without limitation, negligence in securing the data  
18 properly. Any civil penalty collected pursuant to this subparagraph must be  
19 deposited in the State General Fund.

20          (b) Allow for payments to be made by this State to the private partner,  
21 including, without limitation, periodic payments, construction payments,  
22 payments for attaining milestones, progress payments, payments based on  
23 availability or other performance-based payments, payments relating to events  
24 for which the public-private partnership requires payment of compensation and  
25 payments relating to or arising out of the termination of the public-private  
26 partnership.

27          (c) Allow the Department to accept payments of money from, and share  
28 revenues with, the private partner. The Department shall deposit such money in  
29 the State Highway Fund.

30          (d) Address the manner in which the Department and the private partner  
31 will share management of the risks of the eligible transportation facility.

32          (e) Specify the manner in which the Department and the private partner  
33 will share the costs of any development of the eligible transportation facility.

34          (f) Allocate financial responsibility for any costs that exceed the amount  
35 specified in the public-private partnership.

36          (g) Establish applicable liquidated or stipulated damages to be assessed for  
37 nonperformance by the private partner.

38          (h) Establish performance criteria or incentives, or both.

39          (i) Address the acquisition of rights-of-way and other property interests  
40 that may be required for the eligible transportation facility, including, without  
41 limitation, provisions that address the exercise of eminent domain by the  
42 Department in the manner authorized pursuant to chapters 37 and 408 of NRS.

43          (j) Establish recordkeeping, accounting and auditing standards to be used  
44 for the project.

45          (k) Upon termination of the public-private partnership, address  
46 responsibility for repair, rehabilitation, reconstruction or renovations that are  
47 required for an eligible transportation facility to meet all applicable standards set  
48 forth in the public-private partnership upon reversion of the eligible  
49 transportation facility to this State.

50          (l) Provide for security and law enforcement.

51          (m) Identify any specifications of the Department that must be satisfied,  
52 including, without limitation, provisions allowing the private partner to request

1 and receive authorization to deviate from the specifications on making a showing  
2 satisfactory to the Department.

3 (n) Specify remedies available and procedures for dispute resolution,  
4 including, without limitation, the right of the private partner to institute legal  
5 proceedings to obtain an enforceable judgment or award against the Department  
6 in the event of a default by the Department and procedures for use of dispute  
7 review boards, mediation, facilitated negotiation, nonbinding and binding  
8 arbitration and other alternative dispute resolution procedures.

9 2. A public-private partnership must contain a provision by which the  
10 private partner expressly agrees to be barred from seeking injunctive or other  
11 equitable relief to delay, prevent or otherwise hinder the Department from  
12 developing or constructing a facility which was planned at the time the public-  
13 private partnership was executed and which may impact the revenue that the  
14 private partner derives from the eligible transportation facility developed under  
15 the public-private partnership. The public-private partnership may provide for  
16 reasonable compensation to the private partner for the adverse effect on revenue  
17 from the eligible transportation facility developed under the public-private  
18 partnership resulting from the development or construction of another facility by  
19 the Department.

20 3. A public-private partnership entered into pursuant to section 12 of this  
21 act must not include a provision that authorizes the Department and the private  
22 partner to charge, collect, use, enforce and retain user fees for any highway or  
23 portion of a highway;

24 (a) Which exists as of the effective date of this act, except that user fees may  
25 be authorized for the use of any new lanes that are constructed and added to the  
26 existing highway by the public-private partnership so long as the number of lanes  
27 on the highway that are not subject to user fees is not reduced;

28 (b) Which includes any portion of Interstate Highway No. 15; or

29 (c) Unless, as of the date the highway or portion of a highway is open to  
30 public use and user fees are charged, there is available an alternative highway  
31 which:

32 (1) Is substantially similar in route, distance and quality to the portion of  
33 the highway that is subject to the user fees;

34 (2) Can accommodate the same classes of vehicles as the portion of the  
35 highway that is subject to the user fees; and

36 (3) Does not charge user fees.

37 Sec. 19. 1. If the Department enters into a public-private partnership  
38 pursuant to section 12 of this act and the eligible transportation facility involves  
39 user fees, the Board:

40 (a) Shall establish a schedule or methodology for the charging of user fees  
41 by the Department or the private partner for the use of the eligible transportation  
42 facility. Such a schedule or methodology may include, without limitation,  
43 provisions for adjusting the user fees based on the type of motor vehicle, time of  
44 day, traffic conditions or other factors determined necessary by the Department  
45 or the private partner to implement, finance or improve the performance of the  
46 eligible transportation facility;

47 (b) Shall, consistent with the provisions of section 22 of this act, establish the  
48 schedule of administrative fines, late charges and other penalties or charges  
49 which may be imposed against any person who violates any regulation or rule  
50 governing the use of the eligible transportation facility or who fails to pay a user  
51 fee; and

(c) In addition to the exemptions provided in subsection 2, may provide for exemptions from the payment of a user fee and may authorize the private partner to provide for such exemptions.

2. The following motor vehicles are exempt from any user fee established by the Board:

(a) A preregistered vehicle transporting a number of occupants that is specified in the public-private partnership or otherwise specified by the Board;

(b) A transit bus or vanpool vehicle owned or operated by an agency or political subdivision of this State or the United States, to the extent that such vehicles are exempted pursuant to an agreement between the agency or political subdivision and the Department or the private partner;

(c) An authorized emergency vehicle if:

(1) It is responding to an emergency and its emergency lights are in use; or

(2) It is enforcing traffic laws; and

(d) A vehicle that is exempt pursuant to the terms of the public-private partnership.

3. The Board may review annually any fee schedule or methodology established pursuant to this section and any adjustments to the user fees made by the Department or the private partner to determine whether the user fees effectively manage travel times, speed and reliability with regard to the eligible transportation facility. Such a review does not entitle the Department to modify the terms of a binding public-private partnership.

**Sec. 20.** 1. The Department or private partner may use any method that it determines appropriate to charge, assess and collect a user fee, including, without limitation, the issuance of invoices, collection by means of toll booths, prepayment requirements and the use of an electronic, video or automated collection system. An electronic, video or automated collection system may be used to verify payment or to charge or assess the user fee to:

(a) The account of a person whose vehicle is equipped with a transponder or other automated payment technology approved by the Department;

(b) The account of a person who otherwise registers to use the collection system for the eligible transportation facility; or

(c) The registered owner of a motor vehicle.

2. Except as otherwise provided in this subsection, the name, address, other personal identifying information and trip data of a user of an eligible transportation facility is confidential and the Department, a private partner, consultant, contractor or representative thereof shall not release, sell or distribute such information without the express written consent of the user. The Department and the private partner may use and release such information:

(a) As is necessary for the purpose of charging, assessing and collecting a user fee and enforcing any administrative fines, late charges or other penalties and charges imposed pursuant to the public-private partnership; and

(b) To a law enforcement agency pursuant to a subpoena.

3. The Department or the private partner may solicit and contract with a person to provide services relating to the enforcement and collection of a user fee and any administrative fines, late charges or other penalties and charges imposed pursuant to the public-private partnership.

4. The Department or the private partner may:

(a) Accept cash payment of user fees at each toll booth or similar fixed collection facility for user fees;

(b) Allow a person to establish and deposit money into an account for use in an automated collection system; or

(c) Allow a person to establish an anonymous account that is not linked to a specific vehicle for use in an automated collection system.

5. The Department shall adopt regulations establishing a privacy policy regarding the collection and use of personal identifying information pursuant to this section. The regulations must include, without limitation, provisions:

(a) Requiring that any personal identifying information used to collect and enforce user fees be destroyed not later than 30 days after the person has paid the user fee, administrative fines, late fees or other penalties and charges imposed;

(b) Requiring that any personal identifying information collected for the establishment of an account for the use of an automated collection system be:

(1) Stored longer than 30 days only if the information is required to perform account functions, including, without limitation, billing and other activities directly related to the use of the account; and

(2) Destroyed within 30 days after receiving written notice that the person who established the account wants to close the account; and

(c) Requiring that each person establishing an account for use in an automated collection system be provided a copy, in a clear and conspicuous manner, of the privacy policy required by this section and all other applicable privacy laws, including, without limitation, sections 18 and 21 of this act.

**Sec. 21. 1. The Department or a private partner may use a photo-monitoring, video, image capture or other automated or technology-based system to detect the failure of the driver or registered owner of a motor vehicle to pay a user fee or to verify the payment of a user fee.**

**2. The data, including, without limitation, photographs, images, videotapes and other information about the motor vehicle and its owner generated and obtained by a system described in subsection 1, may only be used by the Department or the private partner to establish the nonpayment of a user fee and to enforce collection of a user fee and any administrative fines, late charges and other penalties or charges imposed pursuant to the public-private partnership and for no other purpose.**

**Sec. 22. 1. Except as otherwise provided in subsection 3, the registered owner of a motor vehicle who fails to pay a user fee is subject to an administrative fine for nonpayment and is liable to the Department or private partner for the payment of the user fee, the administrative fine, late charge and any other penalties or charges established by the Board or pursuant to the public-private partnership.**

**2. If a driver or registered owner fails to pay a user fee, the Department or the private partner shall provide notice of the nonpayment to the registered owner. The notice must describe the claimed nonpayment and the amount due, including, without limitation, any administrative fines, late charges or other penalties or charges, and explain that the registered owner must, within 20 days after receiving the notice, pay the full amount due or contest the claim in the manner described in the notice. A registered owner who does not pay the full amount due or contest the claim within 20 days after receiving the notice cannot challenge the claim in any proceeding or action brought by the Department or the private partner.**

**3. A long-term or short-term lessor of a motor vehicle that is the registered owner of a vehicle is not liable to the Department or the private partner for any failure to pay a user fee arising out of the use of a leased or rented motor vehicle during any period that the motor vehicle is not in the possession of the lessor if, within ~~20~~ 45 days after receiving the written notice from the Department or the private partner, the lessor provides to the Department or the private partner the name, address, driver's license number and other identifying information of the**

1 *person to whom the motor vehicle was rented or leased at the time of the use of*  
2 *the eligible transportation facility. If the lessor provides such information, the*  
3 *person to whom the motor vehicle was rented or leased at the time of the use of*  
4 *the eligible transportation facility is liable for the user fee or administrative fee,*  
5 *or both, and any late charges or other penalties or charges resulting from the*  
6 *person's failure to pay the user fee.*

7 **Sec. 23. 1.** *If a registered owner of a motor vehicle fails to respond to the*  
8 *notice of nonpayment provided pursuant to section 22 of this act, the Department*  
9 *of Transportation or the private partner may file a notice with the Department of*  
10 *Motor Vehicles. The notice must include:*

- 11 *(a) The place, time and date of the use of the eligible transportation facility;*  
12 *(b) The number of the license plate and, if available, the make and model*  
13 *year of the motor vehicle; and*  
14 *(c) The total amount owed to the Department of Transportation or the*  
15 *private partner, including, without limitation, any administrative fines, late*  
16 *charges or other penalties and charges resulting from the person's failure to pay*  
17 *the user fee.*

18 **2.** *Upon receipt of the notice described in subsection 1, the Department of*  
19 *Motor Vehicles shall place a hold on the renewal of the registration of the motor*  
20 *vehicle described in the notice. The Department of Motor Vehicles shall not*  
21 *renew the registration of the motor vehicle unless the registered owner:*

22 *(a) Pays to the Department of Motor Vehicles the total amount owed to the*  
23 *Department of Transportation or a private partner, which amount the*  
24 *Department of Motor Vehicles shall forward, as directed by the Department of*  
25 *Transportation pursuant to the applicable terms of the public-private partnership,*  
26 *to the Department of Transportation or the private partner, along with an*  
27 *accounting indicating the amount paid, from whom, for which motor vehicle and*  
28 *the corresponding license plate number of the motor vehicle; or*

29 *(b) Presents proof to the Department of Motor Vehicles of payment or*  
30 *satisfaction issued by the Department of Transportation or the private partner.*

31 **3.** *In addition to any administrative fine, late charge or other penalty or*  
32 *charge for nonpayment of a user fee established pursuant to a public-private*  
33 *partnership, the Department of Motor Vehicles may impose an additional*  
34 *administrative fee of not more than \$15 upon any person who applies for the*  
35 *renewal of the registration of a motor vehicle subject to a hold placed on the*  
36 *renewal pursuant to this section.*

37 **4.** *In addition to any other remedy provided by this section, the Department*  
38 *of Transportation or a private partner may recover in a civil action any user fee,*  
39 *administrative fine, late charge or other penalty or charge authorized pursuant to*  
40 *section 22 of this act, as well as the costs of collection and enforcement.*

41 **Sec. 24. 1.** *The Department of Motor Vehicles shall work cooperatively*  
42 *with the Department of Transportation and any private partner to establish a*  
43 *timely and efficient manner for providing information concerning motor vehicles,*  
44 *including, without limitation, the name, address and driver's license number of*  
45 *the registered owner and the registration number of the vehicle, to the*  
46 *Department of Transportation and any private partner for the purposes of*  
47 *collecting and enforcing user fees and any administration fines, late charges and*  
48 *other penalties and charges imposed pursuant to sections 22 and 23 of this act.*  
49 *To the extent practicable, such information must be transmitted electronically.*

50 **2.** *The Department of Motor Vehicles shall work cooperatively with*  
51 *departments of motor vehicles and similar agencies of other jurisdictions and*  
52 *states to:*

1       (a) Assist the Department of Transportation and the private partner with the  
2 collection and enforcement of user fees charged against a motor vehicle operated  
3 on the eligible transportation facility by a person from such other jurisdiction or  
4 state; and

5       (b) Assist such other departments of motor vehicles and similar agencies with  
6 the collection and enforcement of user fees charged against a motor vehicle  
7 operated on the toll facilities of such other jurisdiction or state by a motor vehicle  
8 registered in this State.

9       (c) The cooperation must include providing information concerning motor  
10 vehicles, including, without limitation, the name, address and driver's license  
11 number of the registered owner and the registration number of the vehicle, to  
12 such departments of motor vehicles and similar agencies of other jurisdictions  
13 and states and forwarding such information received from such other  
14 departments of motor vehicles and similar agencies of other jurisdictions and  
15 states to the Department of Transportation or the private partner.

16       Sec. 25. 1. All money that is received and is to be retained by the  
17 Department pursuant to a public-private partnership which is derived from the  
18 imposition of any charge with respect to the operation of any motor vehicle upon  
19 any public highway in this State must be deposited in the State Highway Fund,  
20 accounted for separately and, except for costs of administration, be used  
21 exclusively for the design, construction, operation, maintenance, financing and  
22 repair of the public highways of this State. The money must first be used to defray  
23 the obligations of the Department under the public-private partnership,  
24 including, without limitation, the costs of administration, design, construction,  
25 operation, maintenance, financing and repair of the eligible transportation  
26 facility from which the money is derived.

27       2. Any other money received by the Department pursuant to sections 2 to  
28 32, inclusive, of this act or any policies or procedures established by the  
29 Department or set forth in the public-private partnership must be deposited in the  
30 State Highway Fund and accounted for separately. The interest and income on  
31 the money in the account, after deducting any applicable charges, must be  
32 credited to the account. The money in the account may be used for:

33       (a) The payment of the costs of planning, designing, financing, constructing,  
34 improving, maintaining, operating or acquiring rights-of-way for, or any  
35 combination thereof, the eligible transportation facility;

36       (b) The payment of the costs of administering the eligible transportation  
37 facility and enforcing the collection of user fees;

38       (c) Satisfaction of any obligations of the Department pursuant to a public-  
39 private partnership; and

40       (d) The costs of administration, construction, maintenance and repair of the  
41 public highways located in the county or counties from which the money was  
42 obtained.

43       Sec. 26. 1. An eligible transportation facility and any improvement to  
44 property in connection with an eligible transportation facility determined by the  
45 Department to be necessary or desirable therefor may, as determined by the  
46 Department, be financed:

47       (a) By the private partner using equity, debt, bonds or other financing or  
48 money or any combination thereof, for the eligible transportation facility.

49       (b) By the issuance of revenue bonds or notes of the State which are payable  
50 from and secured by:

51       (1) Revenues from the eligible transportation facility, including, without  
52 limitation, user fees and payments established, due and collected pursuant to  
53 sections 22 and 23 of this act, other than subsection 3 of section 23 of this act;



1           (2) *Payments from the Department to the private partner pursuant to a*  
2 *public-private partnership;*

3           (3) *Payments from the private partner as described in section 18 of this*  
4 *act;*

5           (4) *Guarantees or other forms of financial assistance from the private*  
6 *partner or any other person;*

7           (5) *Any grants, donations or other sources of money mentioned in*  
8 *subsection 2 or 3 of section 13 of this act, if use of the money for the purpose of*  
9 *paying and securing the payment of the principal of and interest on those bonds*  
10 *or notes is consistent with and not prohibited by the instrument, law or regulation*  
11 *under which the money is received;*

12           (6) *Interest or other gain accruing on any of the money deposited in the*  
13 *State Highway Fund pursuant to section 25 of this act; or*

14           (7) *Any combination thereof,*  
15 *as described in the resolution authorizing the issuance of the bonds or notes.*  
16 *The bonds or notes must be authorized and issued under the procedure described*  
17 *in NRS 408.273, but the bonds or notes must be secured as provided in this*  
18 *section and may have a maturity of up to 40 years after the date of issuance. Any*  
19 *bonds or notes authorized by this paragraph are special, limited obligations of the*  
20 *State payable solely from the revenues specifically pledged to the payment of*  
21 *those obligations, as specified in the resolution for the issuance of the bonds or*  
22 *notes, and do not create a debt of the State for the purposes of Section 3 of Article*  
23 *9 of the Nevada Constitution.*

24           (c) *By the issuance of revenue bonds or notes of the State, to finance the*  
25 *eligible transportation facility directly or by making a loan to the private partner,*  
26 *pursuant to a financing agreement entered into between the State and the private*  
27 *partner for the purpose of securing the bonds or notes and providing for their*  
28 *payment. Any bonds or notes issued pursuant to this paragraph must be payable*  
29 *solely from and secured by payments made by and property of and other security*  
30 *provided by the private partner, including, without limitation, any payments made*  
31 *to the private partner by the Department pursuant to the public-private*  
32 *partnership. Any bonds or notes issued pursuant to this paragraph must be*  
33 *authorized and issued under the procedure described in NRS 408.273, but the*  
34 *bonds or notes must be secured as provided in this paragraph and may have a*  
35 *maturity of up to 40 years from the date of issuance. Any bonds or notes as*  
36 *authorized by this paragraph are special, limited obligations of the State payable*  
37 *solely from the revenues specifically pledged to the payment of those obligations,*  
38 *as specified in the resolution for the issuance of the bonds or notes, and do not*  
39 *create a debt of the State for the purposes of Section 3 of Article 9 of the Nevada*  
40 *Constitution.*

41           (d) *By the issuance of private activity bonds or notes of the State or other*  
42 *eligible issuer, to finance the eligible transportation facility directly or by making*  
43 *a loan to the private partner, pursuant to a financing agreement entered into*  
44 *between the State and the private partner for the purpose of securing the bonds or*  
45 *notes and providing for their payment. Any bonds or notes issued pursuant to this*  
46 *paragraph must be payable solely from and secured by payments made by and*  
47 *property of and other security provided by the private partner, including, without*  
48 *limitation, any payments made to the private partner by the Department pursuant*  
49 *to the public-private partnership. Any bonds or notes issued pursuant to this*  
50 *paragraph must be authorized and issued under the procedure described in NRS*  
51 *408.273 but the bonds or notes must be secured as provided in this paragraph and*  
52 *may have a maturity of up to 40 years from the date of issuance. Any bonds or*  
53 *notes as authorized by this paragraph are special, limited obligations of the State*



1 payable solely from the revenues specifically pledged to the payment of those  
2 obligations, as specified in the resolution for the issuance of the bonds or notes,  
3 and do not create a debt of the State for the purposes of Section 3 of Article 9 of  
4 the Nevada Constitution.

5 (e) By any loan, grant, line of credit, loan guarantee, credit instrument,  
6 private activity bond allocation, credit assistance from the Federal Government  
7 or other type of assistance that is available to carry out the eligible transportation  
8 facility.

9 (f) With any grant, donation, gift or other form of conveyance of land,  
10 money or other real or personal property or other thing of value made to the  
11 Department to carry out the eligible transportation facility.

12 (g) With available money from any other source, including a source  
13 described in subsections 2 and 3 of section 13 of this act or from user fees.

14 (h) By any combination of paragraphs (a) to (g), inclusive.

15 2. If so determined by the Department, any bonds or notes issued as  
16 described in paragraph (b) of subsection 1 may also be payable from and secured  
17 by taxes which are credited to the State Highway Fund that would not cause the  
18 bonds or notes to create a public debt under the provisions of Section 3 of Article  
19 9 of the Nevada Constitution. In addition, the Department may pledge those taxes  
20 to and use those taxes for the payment of any of its obligations under a public-  
21 private partnership.

22 Sec. 27. The Department may acquire, condemn or hold real property and  
23 related appurtenances under fee title, lease, easement, dedication or license for  
24 an eligible transportation facility or otherwise in connection with a public-private  
25 partnership in any manner in which the Department is authorized by law.

26 Sec. 28. 1. The Department may grant to a private partner in connection  
27 with a public-private partnership a lease, easement, operating agreement, license,  
28 permit or right of entry for such real property and related appurtenances and  
29 such grant and use shall be deemed for all purposes:

30 (a) A public use;

31 (b) A public facility; or

32 (c) A public highway,

33 or any combination thereof.

34 2. The Department may include authority in a public-private partnership or  
35 otherwise authorize a private partner to remove any encroachments or relocate  
36 any utility from the right-of-way of an eligible transportation facility.

37 Sec. 29. A private partner who enters into a contract for construction work  
38 pursuant to a public-private partnership shall pay the prevailing wage required  
39 pursuant to NRS 338.020 to 338.090, inclusive, and, solely for the purposes of  
40 those provisions, the eligible transportation facility shall be deemed to be a public  
41 work and the Department shall be deemed to be a party to the contract and to be  
42 the public body advertising for bids for the eligible transportation facility and  
43 awarding the contract for the eligible transportation facility.

44 Sec. 30. 1. The Department may adopt regulations to carry out the  
45 provisions of sections 2 to 32, inclusive, of this act.

46 2. Any public-private partnership entered into pursuant to sections 2 to 32,  
47 inclusive, of this act must include a provision which states that the regulations  
48 adopted by the Department pursuant to subsection 1 and the provisions of  
49 sections 2 to 32, inclusive, of this act shall be deemed incorporated as terms of the  
50 public-private partnership.

51 Sec. 31. If the Department enters into a public-private partnership  
52 pursuant to section 12 of this act:

1       **1. The Department shall report annually to the Board on the status of the**  
2       **eligible transportation facility.**

3       **2. On or before February 1 of each year, the Board shall prepare a written**  
4       **report concerning the eligible transportation facility. The report must include,**  
5       **without limitation:**

6           **(a) The current status of the eligible transportation facility.**

7           **(b) If the eligible transportation facility involves user fees, the amount of**  
8       **user fees collected by the Department and the private partner.**

9           **(c) The amount of money received by the Department in connection with the**  
10       **eligible transportation facility from sources other than user fees.**

11           **(d) The amount paid by the Department under a public-private partnership.**

12           **(e) Such other information as the Board determines appropriate.**

13       **3. On or before February 1 of each even-numbered year, the Board shall**  
14       **submit the report prepared pursuant to subsection 2 to the Legislative**  
15       **Commission. On or before February 1 of each odd-numbered year, the Board**  
16       **shall submit the report to the Director of the Legislative Counsel Bureau for**  
17       **transmittal to the next regular session of the Legislature.**

18       **Sec. 32. To the extent practicable, the provisions of sections 2 to 32,**  
19       **inclusive, of this act are intended to supplement other statutory provisions**  
20       **governing the administration of highways in this State and such other provisions**  
21       **must be given effect to the extent that those provisions do not conflict with the**  
22       **provisions of sections 2 to 32, inclusive, of this act. If there is a conflict between**  
23       **such other provisions and the provisions of sections 2 to 32, inclusive, of this act,**  
24       **the provisions of sections 2 to 32, inclusive, of this act control.**

25       **Sec. 33. NRS 408.327 is hereby amended to read as follows:**

26       408.327 Except as otherwise provided in NRS 408.3875 to 408.3887,  
27       inclusive ~~§~~, **and sections 2 to 32, inclusive, of this act:**

28       1. Whenever the provisions of NRS 408.323 do not apply, the Director shall  
29       advertise for bids for such work according to the plans and specifications prepared  
30       by the Director.

31       2. The advertisement must state the place where the bidders may obtain or  
32       inspect the plans and specifications and the time and place for opening the plans  
33       and specifications.

34       3. Publication of the advertisement must be made at least once a week for 2  
35       consecutive weeks for a total of at least two publications in a newspaper of general  
36       circulation in the county in which the major portion of the proposed improvement  
37       or construction is to be made, and the advertisement must also be published at least  
38       once a week for 2 consecutive weeks for a total of at least two publications in one  
39       or more daily papers of general circulation throughout the State. The first  
40       publication of the advertisement in the daily newspapers having general circulation  
41       throughout the State must be made not less than 15 days before the time set for  
42       opening bids.

43       **Sec. 34. NRS 408.333 is hereby amended to read as follows:**

44       408.333 Except as otherwise provided in NRS 408.3875 to 408.3887,  
45       inclusive ~~§~~, **and sections 2 to 32, inclusive, of this act:**

46       1. Before furnishing any person proposing to bid on any advertised work with  
47       the plans and specifications for such work, the Director shall require from the  
48       person a statement, verified under oath, in the form of answers to questions  
49       contained in a standard form of questionnaire and financial statement, which must  
50       include a complete statement of the person's financial ability and experience in  
51       performing public work of a similar nature.

52       2. Such statements must be filed with the Director in ample time to permit the  
53       Department to verify the information contained therein in advance of furnishing

proposal forms, plans and specifications to any person proposing to bid on the advertised public work, in accordance with the regulations of the Department.

3. Whenever the Director is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement, the Director may refuse to furnish the person with plans and specifications and the official proposal forms on the advertised project. Any bid of any person to whom plans and specifications and the official proposal forms have not been issued in accordance with this section must be disregarded, and the certified check, cash or undertaking of such a bidder returned forthwith.

4. Any person who is disqualified by the Director, in accordance with the provisions of this section, may request, in writing, a hearing before the Director and present again the person's check, cash or undertaking and such further evidence with respect to the person's financial responsibility, organization, plant and equipment, or experience, as might tend to justify, in his or her opinion, issuance to him or her of the plans and specifications for the work.

5. Such a person may appeal the decision of the Director to the Board no later than 5 days before the opening of the bids on the project. If the appeal is sustained by the Board, the person must be granted the rights and privileges of all other bidders.

**Sec. 35.** NRS 408.337 is hereby amended to read as follows:

408.337 Except as otherwise provided in NRS 408.3875 to 408.3887, inclusive ~~H~~, *and sections 2 to 32, inclusive, of this act:*

1. All bids must be accompanied by an undertaking executed by a corporate surety authorized to do business in the State, or by cash or a certified check in an amount equal to at least 5 percent of the amount bid. Such undertaking, cash or check furnished to accompany a bid submitted on-line pursuant to NRS 408.343 must be furnished in accordance with the procedures set forth by the Director.

2. If the successful bidder fails to execute the contract in accordance with his or her bid and give any bond required by law and the contract and bond are not postmarked or delivered to the Department within 20 days after award of the contract, the undertaking, cash or certified check is forfeited and the proceeds must be paid into the State Highway Fund.

3. The failure of the successful bidder to furnish any bond required of the bidder by law within the time fixed for his or her execution of the contract constitutes a failure to execute the contract.

4. If the Director deems it is for the best interests of the State, the Director may, on refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsible bidder. If the second lowest responsible bidder fails or refuses to execute the contract, the Director may likewise award it to the third lowest responsible bidder. On the failure or refusal to execute the contract of the second or third lowest bidder to whom a contract is so awarded, their bidder's security is likewise forfeited to the State.

5. The bidder's security of the second and third lowest responsible bidders may be withheld by the Department until the contract has been finally executed and the bond given as required under the provisions of the contract, at which time the security must be returned. The bidder's security submitted by all other unsuccessful bidders must be returned to them within 10 days after the contract is awarded.

**Sec. 36.** NRS 408.343 is hereby amended to read as follows:

408.343 1. Except as otherwise provided in NRS 408.3875 to 408.3887, inclusive ~~H~~, *and sections 2 to 32, inclusive, of this act:*

(a) All bids must be submitted:

(1) Under sealed cover and received at the address in Nevada stated in the advertisement for bids and must be opened publicly and read at the time stated in the advertisement; or

(2) Pursuant to the process of on-line bidding established by the Director.

(b) No bids may be received after the time stated in the advertisement even though bids are not opened exactly at the time stated in the advertisement. No bid, whether submitted in accordance with subparagraph (1) or (2) of paragraph (a), may be opened before that time.

(c) Any bid may be withdrawn by request at any time before the time stated in the advertisement. The withdrawal must be filed with the Director and executed by the bidder or the bidder's duly authorized representative. The withdrawal may be filed electronically. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid before the time stated in the advertisement.

(d) The Department may reject any bid or all bids if, in the opinion of the Department, the bids are unbalanced, incomplete, contain irregularities of any kind or for any good cause.

(e) Until the final award of the contract, the Department may reject or accept any bids and may waive technical errors contained in the bids, as may be deemed best for the interests of the State.

(f) In awarding a contract, the Department shall make the award to the lowest responsible bidder who has qualified and submitted his or her bid in accordance with the provisions of this chapter.

2. The Director may adopt regulations to carry out the provisions of this section.

3. As used in this section, "on-line bidding" means a process:

(a) That is established by the Director; and

(b) By which bidders submit proposals or bids for contracts on a secure website on the Internet or its successor, if any, which is established and maintained by the Department for that purpose.

**Sec. 37.** NRS 408.357 is hereby amended to read as follows:

408.357 1. Except as otherwise provided in NRS 408.354, *and sections 2 to 32, inclusive, of this act*, every contract must provide for the filing and furnishing of one or more bonds by the ~~[successful bidder]~~ *person to whom the contract is awarded* with corporate sureties approved by the Department and authorized to do business in the State, in a sum equal to the full or total amount of the contract awarded. The bond or bonds must be performance bonds or labor and material bonds, or both.

2. The performance bonds must:

(a) Guarantee the faithful performance of the contract in accordance with the plans, specifications and terms of the contract.

(b) Be maintained for 1 year after the date of completion of the contract.

3. The labor and material bonds must:

(a) Secure payment of state and local taxes relating to the contract, premiums under the Nevada Industrial Insurance Act, contributions under the Unemployment Compensation Law, and payment of claims for labor, materials, provisions, implements, machinery, means of transportation or supplies furnished upon or used for the performance of the contract; and

(b) Provide that if the contractor or his or her subcontractors, or assigns, fail to pay for such taxes, premiums, contributions, labor and materials required of, and used or consumed by, the contractor or his or her subcontractors, the surety shall make the required payment in an amount not exceeding the total sum specified in the bond together with interest at a rate of 8 percent per annum.

1     ↪ All such bonds must be otherwise conditioned as required by law or the  
2     Department.

3     4. No person bidding for work or submitting proposals under the provisions  
4     of this chapter may be accepted as surety on any bond.

5     5. Whenever the Department has cause to believe that the sureties or any of  
6     them have become insufficient, it may demand in writing of the contractor such  
7     further bonds or additional sureties, in a total sum not exceeding that originally  
8     required, as are necessary, considering the extent of the work remaining to be done.  
9     Thereafter no payment may be made upon the contract to the contractor or any  
10    assignee of the contractor until the further bonds or additional sureties have been  
11    furnished.

12    6. The Department in every contract may require the furnishing of proof by  
13    the successful bidder of public liability and insurance coverage for damage to  
14    property.

15    **Sec. 38.** NRS 408.388 is hereby amended to read as follows:

16    408.388 ~~{+}~~ Except as otherwise provided in NRS 408.5471 to 408.549,  
17    inclusive, the Department may contract with a design-build team for the design and  
18    construction of a project if *the Director determines that the design-build process is*  
19    *appropriate and in the best interests of this State and* the Department determines  
20    that ~~{-~~

21    ~~—(a) Except as otherwise provided in subsection 2, the estimated cost of the~~  
22    ~~project exceeds \$20,000,000; and~~

23    ~~—(b) Contracting~~ *contracting* with a design-build team will enable the  
24    Department to:

25    ~~{(1)}~~ 1. Design and construct the project at a cost that is significantly  
26    lower than the cost that the Department would incur to design and construct the  
27    project using a different method;

28    ~~{(2)}~~ 2. Design and construct the project in a shorter time than would be  
29    required to complete the project using a different method, if exigent circumstances  
30    require that the project be designed and constructed within a short time; or

31    ~~{(3)}~~ 3. Ensure that the design and construction of the project is properly  
32    coordinated, if the project is unique, highly technical and complex in nature. ~~{-~~

33    ~~—2. Notwithstanding the provisions of subsection 1, the Department may, once~~  
34    ~~in each fiscal year, contract with a design-build team for the design and~~  
35    ~~construction of a project the estimated cost of which is at least \$5,000,000 but less~~  
36    ~~than \$20,000,000 if the Department makes the determinations otherwise required~~  
37    ~~pursuant to paragraph (b) of subsection 1.]~~

38    **Sec. 39.** NRS 408.3886 is hereby amended to read as follows:

39    408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the  
40    Department shall provide to each finalist a request for final proposals for the  
41    project. The request for final proposals must:

42    (a) Set forth the factors that the Department will use to select a design-build  
43    team to design and construct the project, including the relative weight to be  
44    assigned to each factor; and

45    (b) Set forth the date by which final proposals must be submitted to the  
46    Department.

47    2. Except as otherwise provided in this subsection, in assigning the relative  
48    weight to each factor for selecting a design-build team pursuant to subsection 1, the  
49    Department shall assign, without limitation, a relative weight of 5 percent to the  
50    possession of a certificate of eligibility to receive a preference in bidding on public  
51    works and a relative weight of at least 30 percent for the proposed cost of design  
52    and construction of the project. If any federal statute or regulation precludes the  
53    granting of federal assistance or reduces the amount of that assistance for a

particular project because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly ~~and~~ **and** be responsive to the criteria that the Department will use to select a design-build team to design and construct the project described in subsection 1 . ~~and comply with the provisions of NRS 338.141.~~

4. After receiving the final proposals for the project, the Department shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to subsections 1 and 2;

(b) Reject all the final proposals; or

(c) Request best and final offers from all finalists in accordance with subsection 5.

5. If the Department determines that no final proposal received is cost-effective or responsive and the Department further determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project. In conjunction with preparing a request for best and final offers pursuant to this subsection, the Department may alter the scope of the project, revise the estimates of the costs of designing and constructing the project, and revise the selection factors and relative weights described in paragraph (a) of subsection 1. A request for best and final offers prepared pursuant to this subsection must set forth the date by which best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:

(a) Select the most cost-effective and responsive best and final offer, using the criteria set forth in the request for best and final offers; or

(b) Reject all the best and final offers.

6. If the Department selects a final proposal pursuant to paragraph (a) of subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection 5, the Department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(c) Make available to the public a summary setting forth the factors used by the Department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals and, if applicable, best and final offers. The Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

7. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive; and

(b) Must specify:

(1) An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the Department will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

8. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the workforce of the prime contractor on the design-build team to construct at least 15 percent of the project.

**Sec. 40.** NRS 408.5471 is hereby amended to read as follows:

408.5471 As used in NRS 408.5471 to 408.549, inclusive, unless the context otherwise requires, "transportation facility" means a road, railroad, bridge, tunnel, overpass, airport, mass transit facility, parking facility for vehicles or similar commercial facility used for the support of or the transportation of persons or goods, including, without limitation, any other property that is needed to operate the facility. ~~[The term does not include a toll bridge or toll road.]~~

**Sec. 41.** NRS 408.5473 is hereby amended to read as follows:

408.5473 ~~[The]~~ *In addition to the provisions of sections 2 to 32, inclusive, of this act, the* Department may authorize a person to develop, construct, improve, maintain or operate, or any combination thereof, a transportation facility pursuant to NRS 408.5475 or 408.548.

**Sec. 42.** NRS 338.1373 is hereby amended to read as follows:

338.1373 1. A local government or its authorized representative shall award a contract for a public work pursuant to the provisions of:

- (a) NRS 338.1377 to 338.139, inclusive;
- (b) NRS 338.143 to 338.148, inclusive;
- (c) NRS 338.169 to 338.1699, inclusive; or
- (d) NRS 338.1711 to 338.1727, inclusive.

2. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive ~~[,]~~ *and sections 2 to 32, inclusive, of this act.*

**Sec. 43.** 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 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;~~ *the provisions of chapter 408 of NRS;*
- (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. 44.** 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 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;~~ *the provisions of chapter 408 of NRS;*

(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. 45.** NRS 361.157 is hereby amended to read as follows:

361.157 1. When any real estate or portion of real estate which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a natural person, association, partnership or corporation in connection with a business conducted for profit or as a residence, or both, the leasehold interest, possessory interest, beneficial interest or beneficial use of the lessee or user of the property is subject to taxation to the extent the:

(a) Portion of the property leased or used; and

(b) Percentage of time during the fiscal year that the property is leased by the lessee or used by the user, in accordance with NRS 361.2275,

➤ can be segregated and identified. The taxable value of the interest or use must be determined in the manner provided in subsection 3 of NRS 361.227 and in accordance with NRS 361.2275.

2. Subsection 1 does not apply to:

(a) Property located upon a public airport, park, market or fairground, or any property owned by a public airport, unless the property owned by the public airport is not located upon the public airport and the property is leased, loaned or otherwise made available for purposes other than for the purposes of a public airport, including, without limitation, residential, commercial or industrial purposes;

(b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(c) Property of any state-supported educational institution, except any part of such property located within a tax increment area created pursuant to NRS 278C.155;

(d) Property leased or otherwise made available to and used by a natural person, private association, private corporation, municipal corporation, quasi-municipal corporation or a political subdivision under the provisions of the Taylor Grazing Act or by the United States Forest Service or the Bureau of Reclamation of the United States Department of the Interior;

(e) Property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States;

(f) Vending stand locations and facilities operated by persons who are blind under the auspices of the Bureau of Services to Persons Who Are Blind or Visually Impaired of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation, whether or not the property is owned by the federal, state or a local government;

(g) Leases held by a natural person, corporation, association, municipal corporation, quasi-municipal corporation or political subdivision for development of geothermal resources, but only for resources which have not been put into commercial production;

(h) The use of exempt property that is leased, loaned or made available to a public officer or employee, incident to or in the course of public employment;

(i) A parsonage owned by a recognized religious society or corporation when used exclusively as a parsonage;

(j) Property owned by a charitable or religious organization all, or a portion, of which is made available to and is used as a residence by a natural person in connection with carrying out the activities of the organization;

(k) Property owned by a governmental entity and used to provide shelter at a reduced rate to elderly persons or persons having low incomes;

(l) The occasional rental of meeting rooms or similar facilities for periods of less than 30 consecutive days; ~~for~~

(m) The use of exempt property to provide day care for children if the day care is provided by a nonprofit organization ~~for~~ ; or

*(n) Any lease, easement, operating agreement, license, permit or right of entry for any exempt State property granted by the Department of Transportation pursuant to section 28 of this act.*

3. Taxes must be assessed to lessees or users of exempt real estate and collected in the same manner as taxes assessed to owners of other real estate, except that taxes due under this section do not become a lien against the property. When due, the taxes constitute a debt due from the lessee or user to the county for which the taxes were assessed and, if unpaid, are recoverable by the county in the proper court of the county.

**Sec. 46.** 1. This act becomes effective on July 1, 2011.

2. Sections 43 and 44 of this act expire by limitation on April 30, 2013.