

SENATE BILL NO. 377—SENATOR HARDY

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Establishes provisions authorizing public-private partnerships for certain projects. (BDR 22-297)

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 public-private partnerships; authorizing a public agency to enter into a public-private partnership for certain projects; setting forth requirements for such public-private partnerships; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law sets forth standards and requirements for the public procurement
2 of goods and services and for public works projects. (Chapters 332, 333, 334 and
3 338 of NRS) **Section 8** of this bill provides an alternative to current standards and
4 requirements by authorizing the State and certain local governments to enter into
5 public-private partnerships. **Sections 7 and 9** of this bill provide that a public-
6 private partnership is a contract entered into by a private partner and the State or a
7 local government under which the private partner assumes responsibility for: (1)
8 planning, designing, financing, constructing, equipping, improving, maintaining or
9 operating a project related to a museum, or any portion thereof, but where the State
10 or local government retains ownership of the project; or (2) providing services that
11 a public agency is authorized to provide. **Sections 9-15** of this bill set forth the
12 requirements for entering into a public-private partnership, including the
13 solicitation and consideration of proposals, requirements for and authority of
14 private partners, and the financing of the public-private partnership, and provide
15 authority to carry out certain activities relating to the public-private partnership.



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

Section 1. Title 22 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Local government” has the meaning ascribed to it in NRS 354.474.*

Sec. 4. *“Private partner” means a person with whom a public agency enters into a public-private partnership.*

Sec. 5. *“Project” means any structure, facility, undertaking or system related to a museum which a public agency is authorized to plan, construct, design, finance, improve, equip, operate or maintain, or any combination thereof.*

Sec. 6. *“Public agency” means:*

1. This State or any agency of this State; or

2. Any local government of this State.

Sec. 7. *“Public-private partnership” means a contract entered into by a public agency and one or more private partners under which the private partner assumes responsibility for a project or any portion thereof.*

Sec. 8. *A public agency may enter into a public-private partnership with one or more private partners. A public-private partnership must set forth fully the purposes, powers, rights, obligations and responsibilities, financial and otherwise, of the public agency and private partner.*

Sec. 9. 1. *A public agency may do such things as are necessary and appropriate to carry out a project, including, without limitation:*

(a) Plan, design, finance, construct, improve, equip, maintain, operate and make such other improvements to existing projects as may be necessary and appropriate to accommodate, develop and own the project.

(b) Determine the allowable uses of and the goals, standards, specifications and criteria of the project.

(c) Enter into contracts or other agreements with any private entity, any public agency, another state or the Federal Government for the project.

(d) Retain legal, financial, technical and other consultants to assist the public agency concerning the public-private partnership.

(e) Secure financial and other assistance for the project.



* S B 3 7 7 R 1 *

(f) Apply for, accept and expend money from any lawful source, including, without limitation, any public or private funding, loan, grant, line of credit, loan guarantee, credit instrument, private activity bond allocation, credit assistance from the Federal Government or other type of assistance that is available to carry out the public-private partnership.

(g) Accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other thing of value made to the public agency to carry out the public-private partnership.

(h) Pay any compensation to which a private partner is entitled, pursuant to the terms of the public-private partnership, upon the termination of the public-private partnership.

2. Any project described in section 5 of this act, whether planned, designed, financed, constructed, improved, equipped, maintained or operated by the public agency or a private partner, must be and remain:

(a) A public use;

(b) A public facility; and

(c) Owned by the public agency.

Sec. 10. 1. Except as otherwise provided in subsection 3, a public-private partnership entered into pursuant to this chapter must be awarded through one or more solicitations that must include, without limitation, requests for qualifications, the creation of a short list of qualified proposers, requests for proposals, negotiations and best and final offers.

2. For any solicitation in which the public agency issues a request for qualifications, request for proposals or similar solicitation for a public-private partnership, the public agency may determine which factors it will consider and the relative weight of those factors in the evaluation process for the project in order to obtain the best value for the public agency.

3. The public agency shall consider any unsolicited proposal which the public agency receives during the period that the public agency is receiving requests for qualifications.

4. The public agency may reimburse an unsuccessful bidder for a portion of the cost of preparing a proposal or best and final offer, or both. If the public agency intends to make such a reimbursement, the public agency shall set forth the terms and conditions of the reimbursement in the request for qualifications or request for proposals for the project.

Sec. 11. 1. Except as otherwise provided in paragraph (d) of subsection 2, the provisions of chapters 332, 333, 334 and 338 of NRS do not apply to a public private partnership entered into pursuant to the provisions of this chapter.



2. *To be eligible to be a private partner in connection with a public-private partnership, a private partner must:*

(a) *Obtain a performance bond and payment bond as the public agency may require;*

(b) *Obtain insurance covering general liability and liability for errors and omissions;*

(c) *Not have been found liable for breach of contract with respect to a previous contract with the public agency, other than a breach for legitimate cause; and*

(d) *If applicable to the project, not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895 or 338.1475.*

3. *A private partner is not required to hold the licenses and certifications required to undertake the work for the project as a condition of eligibility to be a private partner, but must ensure that any work that requires a license and certification is performed by persons that possess the required licenses and certifications.*

Sec. 12. 1. *A public-private partnership may, as determined by the public agency, be financed:*

(a) *By the private partner using its own money or obtaining money in any lawful manner for that entity.*

(b) *By the issuance of revenue bonds or notes of the public agency which are payable from and secured by:*

(1) *Revenues from the public-private partnership, including, without limitation, any user fees and payments established, due and collected;*

(2) *Payments from the public agency to the private partner pursuant to the public private partnership;*

(3) *Payments from the private partner;*

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

(5) *Any grants, donations or other sources of money, if use of the money for the purpose of paying and securing the payment of the principal of and interest on those bonds or notes is consistent with and not prohibited by the instrument, law or regulation under which the money is received; or*

(6) *Any combination thereof.*

↪ *Any bonds or notes authorized by this paragraph are special, limited obligations of the public agency payable solely from the revenues specifically pledged to the payment of those obligations, and shall never be a debt of the State under Section 3 of Article 9 of the Nevada Constitution.*

(c) *By the issuance of revenue bonds or notes of the public agency, to finance the project directly or by making a loan to the private partner, pursuant to a financing agreement entered into*



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1 *between the public agency and the private partner for the purpose*
2 *of securing the bonds or notes and providing for their payment.*
3 *Any bonds or notes issued under this paragraph must be solely*
4 *payable from and secured by payments made by and property of*
5 *and other security provided by the private partner, including,*
6 *without limitation, any payments made to the private partner by*
7 *the public agency pursuant to the public-private partnership. Any*
8 *bonds or notes as authorized by this paragraph are special, limited*
9 *obligations of the public agency payable solely from the revenues*
10 *specifically pledged to the payment of those obligations, and shall*
11 *never be a debt of the State under Section 3 of Article 9 of the*
12 *Nevada Constitution.*

13 (d) *With legally available money from any other source or*
14 *from user fees.*

15 (e) *By any combination of paragraphs (a) to (d), inclusive.*

16 2. *A public-private partnership entered into pursuant to this*
17 *chapter does not create a debt for the purposes of Section 3 of*
18 *Article 9 of the Nevada Constitution.*

19 **Sec. 13.** *Information obtained by or disclosed to the public*
20 *agency during the procurement or negotiation of a public-private*
21 *partnership may be kept confidential until the public-private*
22 *partnership is executed, except that the public agency may exempt*
23 *from release any proprietary information obtained by or disclosed*
24 *to the public agency during the procurement or negotiation.*

25 **Sec. 14.** *The public agency may acquire, condemn or hold*
26 *real property and related appurtenances under fee title, lease,*
27 *easement, dedication or license for the public-private partnership.*
28 *The public agency may grant to a private partner a lease,*
29 *easement, operating agreement, license, permit or right of entry*
30 *for such real property and related appurtenances and such grant*
31 *and use shall be deemed for all purposes:*

32 1. *A public use; and*

33 2. *A public facility.*

34 **Sec. 15.** *The public agency may include authority in a*
35 *public-private partnership or otherwise authorize a private partner*
36 *to remove any encroachments or relocate any utility from the*
37 *right-of-way of the project.*

38 **Sec. 16.** *NRS 361.157 is hereby amended to read as follows:*

39 361.157 1. *When any real estate or portion of real estate*
40 *which for any reason is exempt from taxation is leased, loaned or*
41 *otherwise made available to and used by a natural person,*
42 *association, partnership or corporation in connection with a business*
43 *conducted for profit or as a residence, or both, the leasehold interest,*
44 *possessory interest, beneficial interest or beneficial use of the lessee*
45 *or user of the property is subject to taxation to the extent the:*



- 1 (a) Portion of the property leased or used; and
- 2 (b) Percentage of time during the fiscal year that the property is
- 3 leased by the lessee or used by the user, in accordance with
- 4 NRS 361.2275,
- 5 ➤ can be segregated and identified. The taxable value of the interest
- 6 or use must be determined in the manner provided in subsection 3 of
- 7 NRS 361.227 and in accordance with NRS 361.2275.
- 8 2. Subsection 1 does not apply to:
- 9 (a) Property located upon a public airport, park, market or
- 10 fairground, or any property owned by a public airport, unless the
- 11 property owned by the public airport is not located upon the public
- 12 airport and the property is leased, loaned or otherwise made
- 13 available for purposes other than for the purposes of a public airport,
- 14 including, without limitation, residential, commercial or industrial
- 15 purposes;
- 16 (b) Federal property for which payments are made in lieu of
- 17 taxes in amounts equivalent to taxes which might otherwise be
- 18 lawfully assessed;
- 19 (c) Property of any state-supported educational institution,
- 20 except any part of such property located within a tax increment area
- 21 created pursuant to NRS 278C.155;
- 22 (d) Property leased or otherwise made available to and used by a
- 23 natural person, private association, private corporation, municipal
- 24 corporation, quasi-municipal corporation or a political subdivision
- 25 under the provisions of the Taylor Grazing Act or by the United
- 26 States Forest Service or the Bureau of Reclamation of the United
- 27 States Department of the Interior;
- 28 (e) Property of any Indian or of any Indian tribe, band or
- 29 community which is held in trust by the United States or subject to a
- 30 restriction against alienation by the United States;
- 31 (f) Vending stand locations and facilities operated by persons
- 32 who are blind under the auspices of the Bureau of Services to
- 33 Persons Who Are Blind or Visually Impaired of the Rehabilitation
- 34 Division of the Department of Employment, Training and
- 35 Rehabilitation, whether or not the property is owned by the federal,
- 36 state or a local government;
- 37 (g) Leases held by a natural person, corporation, association,
- 38 municipal corporation, quasi-municipal corporation or political
- 39 subdivision for development of geothermal resources, but only for
- 40 resources which have not been put into commercial production;
- 41 (h) The use of exempt property that is leased, loaned or made
- 42 available to a public officer or employee, incident to or in the course
- 43 of public employment;
- 44 (i) A parsonage owned by a recognized religious society or
- 45 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; or

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

(n) Any lease, easement, operating agreement, license or permit for any exempt property granted by a governmental entity pursuant to section 14 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. 17. This act becomes effective on July 1, 2011.

