

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.



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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 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 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 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.



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

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

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

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

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

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

17 WHEREAS, It is the intent of the Legislature to authorize the
18 Department of Transportation to establish and carry out
19 transportation facilities to increase highway efficiency, enhance
20 mobility, improve the effectiveness of transit, and facilitate the
21 feasibility of financing improvements through user fees and public-
22 private partnerships; now, therefore,
23

24 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
25 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
26

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

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

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

36 **Sec. 4.** *"Concession" means any lease, ground lease,*
37 *franchise, easement, permit, right of entry, operating agreement or*
38 *other binding agreement transferring rights for the use or control,*



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1 *in whole or in part, of an eligible transportation facility by the*
2 *Department to a private partner.*

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

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

22 **Sec. 6. “Managed lanes” means a highway facility or a set of**
23 **lanes in which operational and traffic management strategies,**
24 **including, without limitation, access control, vehicle eligibility and**
25 **pricing, are implemented and managed in response to changing**
26 **conditions, traffic and usage and which may include the**
27 **assessment of a user fee. The term includes, without limitation,**
28 **express lanes.**

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

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

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

36 **1. Assists the Department in defining a potential project**
37 **concerning an eligible transportation facility and negotiates terms**
38 **for potentially carrying out the planning, designing, financing,**
39 **constructing, improving, maintaining, operating or acquiring**
40 **rights-of-way for, or any combination thereof, the eligible**
41 **transportation facility, or any portion thereof; or**

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



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

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

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

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

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

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

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

22 **(d)** *A concession;*

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

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

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

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

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

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

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

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

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

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



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

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

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

(a) A public highway;

(b) A public use; and

(c) A public facility.

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

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

2. 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 eligible transportation facility.

3. 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 Department to carry out the eligible transportation facility.

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

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

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

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

(c) Not have been found liable for breach of contract with respect to a previous project with the Department, other than a breach for legitimate cause, during the 5 years immediately



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preceding the date of commencement of the solicitation of the public-private partnership; and

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

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

3. Any private entity that wishes to enter into a public-private partnership pursuant to section 12 of this act must provide satisfactory evidence to the Board 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



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1 *information or trade secrets that the person submitting the*
2 *proposal intends to be exempt from disclosure.*

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

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

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

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

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

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

41 *3. In exchange for the reimbursement, the Department shall*
42 *require the recipient to grant to the Department the nonexclusive*
43 *right to use any work product contained in the proposal,*
44 *including, without limitation, technologies, techniques, methods,*
45 *processes and information contained in the design. Such use by*



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1 *the Department is at the sole risk of the Department, and the*
2 *recipient does not have any responsibility for such use.*

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

20 (6) Govern the enforcement of user fees, including, without
21 limitation, provisions for the use of cameras or other mechanisms
22 to ensure that users have paid user fees which are due and
23 provisions that allow the Department of Transportation and
24 private partner access to relevant databases, including, without
25 limitation, databases of the Department of Motor Vehicles, for
26 enforcement purposes. The Department of Transportation may
27 impose a civil penalty of not more than \$10,000 per violation for
28 misuse of the data contained in such databases, including, without
29 limitation, negligence in securing the data properly. Any civil
30 penalty collected pursuant to this subparagraph must be deposited
31 in the State General Fund.

32 (b) Allow for payments to be made by this State to the private
33 partner, including, without limitation, periodic payments,
34 construction payments, payments for attaining milestones,
35 progress payments, payments based on availability or other
36 performance-based payments, payments relating to events for
37 which the public-private partnership requires payment of
38 compensation and payments relating to or arising out of the
39 termination of the public-private partnership.

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

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



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

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

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

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

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

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

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

(l) Provide for security and law enforcement.

(m) Identify any specifications of the Department that must be satisfied, including, without limitation, provisions allowing the private partner to request and receive authorization to deviate from the specifications on making a showing satisfactory to the Department.

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

2. A public-private partnership must contain a provision by which the private partner expressly agrees to be barred from seeking injunctive or other equitable relief to delay, prevent or otherwise hinder the Department from developing or constructing a facility which was planned at the time the public-private partnership was executed and which may impact the revenue that the private partner derives from the eligible transportation facility developed under the public-private partnership. The public-private partnership may provide for reasonable compensation to the private partner for the adverse effect on revenue from the eligible



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1 transportation facility developed under the public-private
2 partnership resulting from the development or construction of
3 another facility by the Department.

4 3. A public-private partnership entered into pursuant to
5 section 12 of this act must not include a provision that authorizes
6 the Department and the private partner to charge, collect, use,
7 enforce and retain user fees for any highway or portion of a
8 highway:

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

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

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

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

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

23 (3) Does not charge user fees.

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

27 (a) Shall establish a schedule or methodology for the charging
28 of user fees by the Department or the private partner for the use of
29 the eligible transportation facility. Such a schedule or
30 methodology may include, without limitation, provisions for
31 adjusting the user fees based on the type of motor vehicle, time of
32 day, traffic conditions or other factors determined necessary by the
33 Department or the private partner to implement, finance or
34 improve the performance of the eligible transportation facility;

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

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

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



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(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



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1 *charges or other penalties and charges imposed pursuant to the*
2 *public-private partnership; and*

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

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

9 4. *The Department or the private partner may:*

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

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

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

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

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

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

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

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

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

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



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

Sec. 23. 1. If a registered owner of a motor vehicle fails to respond to the notice of nonpayment provided pursuant to



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1 section 22 of this act, the Department of Transportation or the
2 private partner may file a notice with the Department of Motor
3 Vehicles. The notice must include:

4 (a) The place, time and date of the use of the eligible
5 transportation facility;

6 (b) The number of the license plate and, if available, the make
7 and model year of the motor vehicle; and

8 (c) The total amount owed to the Department of
9 Transportation or the private partner, including, without
10 limitation, any administrative fines, late charges or other penalties
11 and charges resulting from the person's failure to pay the user fee.

12 2. Upon receipt of the notice described in subsection 1, the
13 Department of Motor Vehicles shall place a hold on the renewal of
14 the registration of the motor vehicle described in the notice. The
15 Department of Motor Vehicles shall not renew the registration of
16 the motor vehicle unless the registered owner:

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

26 (b) Presents proof to the Department of Motor Vehicles of
27 payment or satisfaction issued by the Department of
28 Transportation or the private partner.

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

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

41 Sec. 24. 1. The Department of Motor Vehicles shall work
42 cooperatively with the Department of Transportation and any
43 private partner to establish a timely and efficient manner for
44 providing information concerning motor vehicles, including,
45 without limitation, the name, address and driver's license number



1 of the registered owner and the registration number of the vehicle,
2 to the Department of Transportation and any private partner for
3 the purposes of collecting and enforcing user fees and any
4 administration fines, late charges and other penalties and charges
5 imposed pursuant to sections 22 and 23 of this act. To the extent
6 practicable, such information must be transmitted electronically.

7 2. The Department of Motor Vehicles shall work
8 cooperatively with departments of motor vehicles and similar
9 agencies of other jurisdictions and states to:

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

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

19 ↪ The cooperation must include providing information
20 concerning motor vehicles, including, without limitation, the
21 name, address and driver's license number of the registered owner
22 and the registration number of the vehicle, to such departments of
23 motor vehicles and similar agencies of other jurisdictions and
24 states and forwarding such information received from such other
25 departments of motor vehicles and similar agencies of other
26 jurisdictions and states to the Department of Transportation or the
27 private partner.

28 **Sec. 25. 1.** All money that is received and is to be retained
29 by the Department pursuant to a public-private partnership which
30 is derived from the imposition of any charge with respect to the
31 operation of any motor vehicle upon any public highway in this
32 State must be deposited in the State Highway Fund, accounted for
33 separately and, except for costs of administration, be used
34 exclusively for the design, construction, operation, maintenance,
35 financing and repair of the public highways of this State. The
36 money must first be used to defray the obligations of the
37 Department under the public-private partnership, including,
38 without limitation, the costs of administration, design,
39 construction, operation, maintenance, financing and repair of the
40 eligible transportation facility from which the money is derived.

41 2. Any other money received by the Department pursuant to
42 sections 2 to 32, inclusive, of this act or any policies or procedures
43 established by the Department or set forth in the public-private
44 partnership must be deposited in the State Highway Fund and
45 accounted for separately. The interest and income on the money in



1 the account, after deducting any applicable charges, must be
2 credited to the account. The money in the account may be used
3 for:

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

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

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

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

15 **Sec. 26. 1.** An eligible transportation facility and any
16 improvement to property in connection with an eligible
17 transportation facility determined by the Department to be
18 necessary or desirable therefor may, as determined by the
19 Department, be financed:

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

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

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

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

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

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

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

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

44 (7) Any combination thereof,



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1 ↪ as described in the resolution authorizing the issuance of the
2 bonds or notes. The bonds or notes must be authorized and issued
3 under the procedure described in NRS 408.273, but the bonds or
4 notes must be secured as provided in this section and may have a
5 maturity of up to 40 years after the date of issuance. Any bonds or
6 notes authorized by this paragraph are special, limited obligations
7 of the State payable solely from the revenues specifically pledged
8 to the payment of those obligations, as specified in the resolution
9 for the issuance of the bonds or notes, and do not create a debt of
10 the State for the purposes of Section 3 of Article 9 of the Nevada
11 Constitution.

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

32 (d) By the issuance of private activity bonds or notes of the
33 State or other eligible issuer, to finance the eligible transportation
34 facility directly or by making a loan to the private partner,
35 pursuant to a financing agreement entered into between the State
36 and the private partner for the purpose of securing the bonds or
37 notes and providing for their payment. Any bonds or notes issued
38 pursuant to this paragraph must be payable solely from and
39 secured by payments made by and property of and other security
40 provided by the private partner, including, without limitation, any
41 payments made to the private partner by the Department pursuant
42 to the public-private partnership. Any bonds or notes issued
43 pursuant to this paragraph must be authorized and issued under
44 the procedure described in NRS 408.273 but the bonds or notes
45 must be secured as provided in this paragraph and may have a



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maturity of up to 40 years from the date of issuance. Any bonds or notes as authorized by this paragraph are special, limited obligations of the State payable solely from the revenues specifically pledged to the payment of those obligations, as specified in the resolution for the issuance of the bonds or notes, and do not create a debt of the State for the purposes of Section 3 of Article 9 of the Nevada Constitution.

(e) By any 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 eligible transportation facility.

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

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

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

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

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

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

(a) A public use;

(b) A public facility; or

(c) A public highway,

↳ or any combination thereof.

2. The Department may include authority in a public-private partnership or otherwise authorize a private partner to remove any



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1 *encroachments or relocate any utility from the right-of-way of an*
2 *eligible transportation facility.*

3 **Sec. 29.** *A private partner who enters into a contract for*
4 *construction work pursuant to a public-private partnership shall*
5 *pay the prevailing wage required pursuant to NRS 338.020 to*
6 *338.090, inclusive, and, solely for the purposes of those provisions,*
7 *the eligible transportation facility shall be deemed to be a public*
8 *work and the Department shall be deemed to be a party to the*
9 *contract and to be the public body advertising for bids for the*
10 *eligible transportation facility and awarding the contract for*
11 *the eligible transportation facility.*

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

14 2. *Any public-private partnership entered into pursuant to*
15 *sections 2 to 32, inclusive, of this act must include a provision*
16 *which states that the regulations adopted by the Department*
17 *pursuant to subsection 1 and the provisions of sections 2 to 32,*
18 *inclusive, of this act shall be deemed incorporated as terms of the*
19 *public-private partnership.*

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

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

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

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

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

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

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

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

38 3. *On or before February 1 of each even-numbered year, the*
39 *Board shall submit the report prepared pursuant to subsection 2 to*
40 *the Legislative Commission. On or before February 1 of each odd-*
41 *numbered year, the Board shall submit the report to the Director*
42 *of the Legislative Counsel Bureau for transmittal to the next*
43 *regular session of the Legislature.*

44 **Sec. 32.** *To the extent practicable, the provisions of sections*
45 *2 to 32, inclusive, of this act are intended to supplement other*



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statutory provisions governing the administration of highways in this State and such other provisions must be given effect to the extent that those provisions do not conflict with the provisions of sections 2 to 32, inclusive, of this act. If there is a conflict between such other provisions and the provisions of sections 2 to 32, inclusive, of this act, the provisions of sections 2 to 32, inclusive, of this act control.

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

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

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

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

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

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

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

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

2. Such statements must be filed with the Director in ample time to permit the 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



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1 and specifications and the official proposal forms on the advertised
2 project. Any bid of any person to whom plans and specifications and
3 the official proposal forms have not been issued in accordance with
4 this section must be disregarded, and the certified check, cash or
5 undertaking of such a bidder returned forthwith.

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

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

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

19 408.337 Except as otherwise provided in NRS 408.3875 to
20 408.3887, inclusive ~~H~~, and sections 2 to 32, inclusive, of this act:

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

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

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

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



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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.



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

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

10 2. The performance bonds must:

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

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

15 3. The labor and material bonds must:

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

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

28 ➔ All such bonds must be otherwise conditioned as required by law
29 or the Department.

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

33 5. Whenever the Department has cause to believe that the
34 sureties or any of them have become insufficient, it may demand in
35 writing of the contractor such further bonds or additional sureties, in
36 a total sum not exceeding that originally required, as are necessary,
37 considering the extent of the work remaining to be done. Thereafter
38 no payment may be made upon the contract to the contractor or any
39 assignee of the contractor until the further bonds or additional
40 sureties have been furnished.

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



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

408.388 ~~{1}~~ Except as otherwise provided in NRS 408.5471 to 408.549, inclusive, the Department may contract with a design-build team for the design and construction of a project if *the Director determines that the design-build process is appropriate and in the best interests of this State and* the Department determines that ~~{~~:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

14 (b) Reject all the final proposals; or

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

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

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

34 (b) Reject all the best and final offers.

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

39 (a) Review and ratify the selection.

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



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(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.



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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 ~~H~~, *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



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1 persons. Contracts for the public work must be awarded on the basis
2 of bids received.

3 5. Except as otherwise provided in subsection 6 and NRS
4 338.1389, a public body or its authorized representative shall award
5 a contract to the lowest responsive and responsible bidder.

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

9 (a) The bidder is not a qualified bidder pursuant to NRS
10 338.1379 or 338.1382;

11 (b) The bidder is not responsive or responsible;

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

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

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

18 (a) The public body publishes a notice stating that no bids were
19 received and that the contract may be let without further bidding;

20 (b) The public body considers any bid submitted in response to
21 the notice published pursuant to paragraph (a);

22 (c) The public body lets the contract not less than 7 days after
23 publishing a notice pursuant to paragraph (a); and

24 (d) The contract is awarded to the bidder who has submitted the
25 lowest responsive and responsible bid.

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

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

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

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

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



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(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.



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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;



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(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



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1 property owned by the public airport is not located upon the public
2 airport and the property is leased, loaned or otherwise made
3 available for purposes other than for the purposes of a public airport,
4 including, without limitation, residential, commercial or industrial
5 purposes;

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

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

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

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

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

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

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

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

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

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

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



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

