

ASSEMBLY BILL NO. 485—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF THE DEPARTMENT OF ADMINISTRATION)

MARCH 25, 2013

Referred to Committee on Transportation

SUMMARY—Revises provisions relating to transportation.
(BDR 35-1158)

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

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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; authorizing the Department of Transportation to grant to a private partner the use of certain real property; exempting such use of real property from all real property and ad valorem taxes; 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 a user fee; authorizing the Department of Motor Vehicles to establish certain administrative fees; authorizing the Department of Transportation to approve, upon request, the construction of a toll bridge or toll road by a person; providing penalties; 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 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: (1) establish a schedule or methodology for charging user fees for the use of a transportation facility; (2) establish administrative fines and other penalties and charges for nonpayment of user fees; and (3) 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 that the registered owner of a motor vehicle is subject to 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 notified 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 retained by the Department of Transportation pursuant to a public-private partnership: (1) be deposited in the State Highway Fund; (2) be accounted for separately; (3) be used first to defray the obligations of the Department under the public-private partnership; and (4) except for costs of administration, be used exclusively for the design, construction, operation, maintenance, financing and repair of the public highways of Nevada. **Section 26** of this bill authorizes certain financing of an eligible transportation facility. **Section 28** of this bill authorizes the Department to grant to a private partner the use of certain real property and exempts the use of that real property from all real property and ad valorem taxes. **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 of the Department to submit certain reports concerning the status of any eligible transportation facilities to the Legislative Commission and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature.

Under existing law, the Department may authorize private persons to develop, construct, improve, maintain or operate certain transportation facilities, except toll bridges or toll roads. (NRS 408.5471-408.549) **Section 38** of this bill allows toll bridges, toll roads and other transportation facilities that charge user fees, and **section 41** of this bill provides that certain provisions governing public-private partnerships apply to such toll bridges, toll roads and transportation facilities that charge user fees.

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

WHEREAS, The Legislature finds that it is beneficial to explore alternative approaches to developing transportation facilities,



1 including managing the use of existing and planned transportation
2 facilities; and

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

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

10 WHEREAS, It is the intent of the Legislature to maximize the
11 effectiveness and efficiency of the State's transportation facilities
12 and highway system; and

13 WHEREAS, It is the intent of the Legislature to authorize the
14 Department of Transportation to establish and carry out
15 transportation facilities to increase efficiency, enhance mobility,
16 expand capacity, improve the effectiveness of transit and facilitate
17 the feasibility of financing improvements through public-private
18 partnerships; now, therefore,

19
20 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
21 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
22

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

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

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

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

37 **Sec. 5. 1.** *"Eligible transportation facility" means a facility,*
38 *including an enhanced, improved, expanded, extended, upgraded*
39 *or new facility, used or useful for the safe transport of people or*
40 *goods via one or more modes of transport, whether involving*
41 *highways, railways, airports, monorails, transit, bus systems,*
42 *guided rapid transit, fixed guideways, ferries, vessels, intermodal*
43 *or multimodal systems or any other mode of transport, as well as*
44 *facilities, structures, parking facilities, rest areas, maintenance*



yards, rail yards or storage facilities, vehicles, rolling stock or other related equipment, items or property.

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

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

Sec. 7. "Motor vehicle" has the meaning ascribed to it in NRS 484A.130.

Sec. 8. "Private partner" means a person with whom the Department enters into a public-private partnership.

Sec. 9. "Public-private partnership" means a contract entered into by the Department with a private partner under which the private partner:

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

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

Sec. 10. "Registered owner" means a person whose name appears in the records of the Department of Motor Vehicles as the person to whom a motor vehicle is registered.

Sec. 11. "User fee" means a fee, toll, fare or other similar charge, including, without limitation, any incidental, account maintenance, administrative, credit card or video tolling fee or charge, imposed on a person for his or her use of an eligible transportation facility by the Department or by a private partner pursuant to a public-private partnership.



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

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

8 **(a) A predevelopment agreement leading to another**
9 *implementing agreement for an eligible transportation facility as*
10 *described in this subsection;*

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

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

15 **(d) A concession, including, without limitation, a toll**
16 *concession and an availability payment concession;*

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

20 **(f) An operations and maintenance agreement for an eligible**
21 *transportation facility;*

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

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

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

29 **(a) The opening of the eligible transportation facility to the**
30 *public and the commencement of its full operations and collection*
31 *of revenue, if the eligible transportation facility charges user fees;*

32 **(b) The opening of the eligible transportation facility and the**
33 *commencement of its full operations, if the eligible transportation*
34 *facility is used by the public without user fees; or*

35 **(c) The commencement of the public-private partnership, if the**
36 *eligible transportation facility involves a facility or service that is*
37 *not generally open to or used by the public.*

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

39 **(a) As a result of a force majeure event or any other matter**
40 *outside of the reasonable control of the Department or the private*
41 *partner;*

42 **(b) As a means to compensate the private partner for events set**
43 *forth in the public-private partnership that entitle the private*
44 *partner to additional time or compensation, or both; or*

45 **(c) For additional terms upon the mutual agreement of:**



1 (1) *The private partner; and*

2 (2) *The Department, as authorized by the Board.*

3 5. *An eligible transportation facility must:*

4 (a) *Be owned by the Department; and*

5 (b) *Remain a public use, a public facility or a public highway,*
6 *or any combination thereof.*

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

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

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

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

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

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

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

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

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

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



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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) A two-phase procurement involving a request for statements of qualifications and a request for proposals; or

(b) A one-phase procurement involving a request for proposals.

2. If a request for statements of 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 establish an evaluation process to obtain the best value for the Department. The Department may determine:

(a) The method of evaluation;

(b) The factors the Department will consider, including, without limitation, qualifications, experience, cost, price, financial plan, financial commitment, innovative financing and technology, technical approach and management approach; and

(c) The relative weight of those factors in the evaluation process.

4. In the request for statements of qualifications, request for proposals or other request, as applicable, the Department shall set forth the evaluation process, including the methodology, the factors that will be used and the relative weight of those factors.

5. 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



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

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

5 7. *After evaluation of the proposals submitted in response to*
6 *a request for proposals, the Department may 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 who submitted proposals.*

17 8. *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 9. *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 for the eligible*
26 *transportation facility and the conclusion of any specified period*
27 *to protest or otherwise challenge the award, except pursuant to an*
28 *administrative or judicial order requiring release or disclosure of*
29 *any part of the proposal.*

30 **Sec. 16.** 1. *The Department may reimburse a person who*
31 *submitted a proposal but with whom the Department did not enter*
32 *into a public-private partnership for a portion of the cost of*
33 *preparing the proposal or best and final offer, or both, if the*
34 *Department determines that the proposal:*

35 (a) *Was responsive to the request for proposals; and*

36 (b) *Met all the requirements set by the Department for the*
37 *eligible transportation facility.*

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

43 3. *In exchange for the reimbursement, the Department shall*
44 *require the recipient to grant to the Department the nonexclusive*
45 *right to use any work product contained in the proposal,*



1 *including, without limitation, technologies, techniques, methods,*
2 *processes and information contained in the project design. Such*
3 *use by the Department is at the sole risk of the Department, and*
4 *the recipient does not have any responsibility for such use.*

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

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

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

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

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

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

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

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

41 *(a) Except as otherwise provided in subsection 3, authorize the*
42 *Department or the private partner, or both, to charge, collect, use,*
43 *enforce and retain user fees, including, without limitation,*
44 *provisions that:*



1 (1) *Specify the technology to be used in or the technology*
2 *standards that must be met in connection with the eligible*
3 *transportation facility.*

4 (2) *Establish circumstances under which the Department*
5 *may receive the revenues or a share of the revenues from such*
6 *user fees.*

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

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

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

16 (I) *High-occupancy vehicle lanes where single- or low-*
17 *occupancy vehicles may use higher-occupancy vehicle lanes by*
18 *paying a user fee.*

19 (II) *Managed lanes or facilities in which the user fees*
20 *may vary during the course of the day or week or according to the*
21 *levels of congestion that are anticipated or experienced.*

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

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

38 (b) *Allow for payments to be made by this State to the private*
39 *partner, including, without limitation, periodic payments,*
40 *construction payments, milestone payments, progress payments,*
41 *payments based on availability or any other performance-based*
42 *payments, payments relating to compensation events specified in*
43 *the public-private partnership and payments relating to or arising*
44 *out of the termination of the public-private partnership.*



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

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

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

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

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

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

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

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

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

28 (l) Provide for security and law enforcement.

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

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

42 2. A public-private partnership must contain a provision by
43 which the private partner expressly agrees to be barred from
44 seeking injunctive or other equitable relief to delay, prevent or
45 otherwise hinder the Department from developing or constructing



1 any other facility which was planned at the time the public-private
2 partnership was executed and which may impact the revenue that
3 the private partner derives from the eligible transportation facility
4 developed under the public-private partnership. The public-private
5 partnership may provide for reasonable compensation to the
6 private partner for the adverse effect on revenue from the eligible
7 transportation facility developed under the public-private
8 partnership resulting from the development or construction of
9 another facility by the Department.

10 3. A public-private partnership must not include a provision
11 that authorizes the Department and the private partner to charge,
12 collect, use, enforce and retain user fees on any eligible
13 transportation facility which is a highway or portion of a highway
14 in existence on July 1, 2013, except that user fees may be charged,
15 collected, used, enforced and retained where:

16 (a) Express lanes or high-occupancy vehicle lanes are
17 converted to high-occupancy toll lanes, if the conversion is
18 permissible under federal law;

19 (b) New capacity or lanes are constructed or added to the
20 existing highway;

21 (c) The existing highway is reconstructed or rehabilitated, if
22 the imposition of user fees is permissible under federal law; or

23 (d) It is otherwise permissible under federal law.

24 4. In connection with an eligible transportation facility that
25 charges user fees, the Department is also entitled to charge,
26 collect, use, enforce and retain user fees and exercise, for the
27 benefit of the Department, the power to:

28 (a) Manage traffic on the eligible transportation facility in the
29 manner described in subparagraph (5) of paragraph (a) of
30 subsection 1; and

31 (b) Govern the enforcement of user fees in the manner
32 described in subparagraph (6) of paragraph (a) of subsection 1.

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

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

44 (b) Shall, consistent with the provisions of section 22 of this
45 act, establish the schedule of administrative fines, late charges and



1 *any other penalties or charges which may be imposed against any*
2 *person who violates any regulation or rule governing the use of*
3 *the eligible transportation facility or who fails to pay a user fee;*
4 *and*

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

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

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

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

18 *(c) An authorized emergency vehicle if:*

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

21 *(2) It is enforcing traffic laws; and*

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

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

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

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

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

44 *(c) The registered owner of a motor vehicle.*



2. Except as otherwise provided in this subsection, the name, the address, any other personal identifying information and any 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 assessing, charging and collecting a user fee and enforcing any administrative fines, late charges or other penalties and charges imposed pursuant to the public-private partnership; and

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

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

4. The Department or the private partner may:

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

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

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

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

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

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

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

(2) Destroyed within 30 days after receiving written notice that the person who established the account wants to close the account and has paid all outstanding user fees, administrative fines, late fees or any other penalties and charges imposed; and



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

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

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

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

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

3. A long-term or short-term lessor of a motor vehicle that is the registered owner of a vehicle is not liable to the Department or the private partner for any failure to pay a user fee arising out of the use of a leased or rented motor vehicle during any period that the motor vehicle is not in the possession of the lessor if, within 20 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



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

9 **Sec. 23.** 1. *If a registered owner of a motor vehicle fails to*
10 *respond to the notice of nonpayment provided pursuant to section*
11 *22 of this act, the Department of Transportation or a private*
12 *partner may file a notice with the Department of Motor Vehicles.*
13 *The notice must include:*

14 (a) *The place, time and date of the use of the eligible*
15 *transportation facility;*

16 (b) *The license plate number and, to the extent known, the*
17 *make and model year of the motor vehicle; and*

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

22 2. *Upon receipt of the notice described in subsection 1, the*
23 *Department of Motor Vehicles shall place a hold on the renewal of*
24 *the registration of the motor vehicle described in the notice. The*
25 *Department of Motor Vehicles shall not renew the registration of*
26 *the motor vehicle unless the registered owner:*

27 (a) *Pays to the Department of Motor Vehicles the total amount*
28 *owed to the Department of Transportation or the private partner,*
29 *which amount the Department of Motor Vehicles shall forward, as*
30 *directed by the Department of Transportation, to the Department*
31 *of Transportation or the private partner, along with an accounting*
32 *indicating the amount paid, from whom, for which motor vehicle*
33 *and the corresponding license plate number of the motor vehicle;*
34 *or*

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

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



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

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

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

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

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

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

Sec. 25. *1. All money which is received and is to be retained by the Department 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 this State must 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*



1 *highways of this State. The money must first be used to defray the*
2 *obligations for which the Department is responsible under the*
3 *public-private partnership, including, without limitation, the costs*
4 *of administration, design, construction, operation, maintenance,*
5 *financing and repair of the eligible transportation facility from*
6 *which the money is derived.*

7 2. *Any other money received and to be retained by the*
8 *Department pursuant to sections 2 to 32, inclusive, of this act or*
9 *pursuant to any policies or procedures established by the*
10 *Department or set forth in the public-private partnership must be*
11 *deposited in the State Highway Fund and accounted for*
12 *separately. The interest and income on the money in the account,*
13 *after deducting any applicable charges, must be credited to the*
14 *account. The money in the account may be used for:*

15 (a) *The payment of the costs of planning, designing, financing,*
16 *constructing, improving, maintaining, operating or acquiring*
17 *rights-of-way for, or any combination thereof, the eligible*
18 *transportation facility;*

19 (b) *The payment of the costs of administering the eligible*
20 *transportation facility and enforcing the collection and*
21 *enforcement of tolls;*

22 (c) *Satisfaction of any obligations of the Department pursuant*
23 *to a public-private partnership; and*

24 (d) *The costs of administration, construction, maintenance*
25 *and repair of the public highways located in the county or*
26 *counties from which the money was obtained.*

27 **Sec. 26. 1. An eligible transportation facility and any**
28 **improvement to property in connection with an eligible**
29 **transportation facility determined by the Department to be**
30 **necessary or desirable therefor may, as determined by the**
31 **Department, be financed:**

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

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

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

41 (2) *Payments from the Department to the private partner*
42 *pursuant to a public-private partnership, including any availability*
43 *payments;*

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



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

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

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

12 (7) *Any other funds and revenues of the Department that*
13 *are eligible for such use; or*

14 (8) *Any combination thereof,*

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

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



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



1 *facility or in connection with a public-private partnership in any*
2 *manner in which the Department is authorized by law.*

3 **Sec. 28.** 1. *The Department may grant to a private partner*
4 *in connection with a public-private partnership a lease, easement,*
5 *operating agreement, license, permit or right of entry for such real*
6 *property and related appurtenances. Such grant and use shall be*
7 *deemed for all purposes a public use, a public facility or a public*
8 *highway, or any combination thereof.*

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

13 3. *The use of the real property and related appurtenances*
14 *granted by the Department to the private partner pursuant to*
15 *subsection 1 is exempt from all real property and ad valorem taxes*
16 *pursuant to NRS 361.157.*

17 **Sec. 29.** *A private partner who enters into a contract for*
18 *construction work pursuant to a public-private partnership shall*
19 *pay the prevailing wage required pursuant to NRS 338.020 to*
20 *338.090, inclusive. Solely for the purposes of those provisions:*

21 1. *The eligible transportation facility shall be deemed to be a*
22 *public work; and*

23 2. *The Department shall be deemed to be:*

24 (a) *A party to the contract; and*

25 (b) *The public body advertising for bids and awarding the*
26 *contract for the eligible transportation facility.*

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

29 2. *Any public-private partnership entered into pursuant to*
30 *sections 2 to 32, inclusive, of this act must include a provision*
31 *which states that the regulations adopted by the Department*
32 *pursuant to subsection 1 and the provisions of sections 2 to 32,*
33 *inclusive, of this act as of the date the Department entered into the*
34 *public-private partnership shall be deemed incorporated as terms*
35 *of the public-private partnership.*

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

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

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

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



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

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

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

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

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

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

26 **Sec. 33.** NRS 408.317 is hereby amended to read as follows:

27 408.317 1. Except as otherwise provided in NRS 408.3875 to
28 408.3887, inclusive, *and sections 2 to 32, inclusive, of this act*, all
29 work of construction, reconstruction, improvement and maintenance
30 of highways as provided under the provisions of this chapter is
31 under the supervision and direction of the Director and must be
32 performed in accordance with the plans, specifications and contracts
33 prepared by the Director.

34 2. All maintenance and repair of highways when performed by
35 the Department must be paid out of the State Highway Fund.

36 **Sec. 34.** NRS 408.327 is hereby amended to read as follows:

37 408.327 Except as otherwise provided in NRS 408.3875 to
38 408.3887, inclusive, *⚡, and sections 2 to 32, inclusive, of this act:*

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

42 2. The advertisement must state the place where the bidders
43 may obtain or inspect the plans and specifications and the time and
44 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. 35. NRS 408.333 is hereby amended to read as follows:

408.333 Except as otherwise provided in NRS 408.3875 to 408.3887, inclusive ~~H~~, 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 and specifications and the official proposal forms on the advertised project. If the Director determines that the person has, within the preceding year, breached a contract for a public work for which the cost exceeds \$25,000,000 by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117, the Director shall refuse to furnish the person with plans and specifications and the official proposal forms on the advertised project. Any bid of any person to whom plans and specifications and the official proposal forms have not been issued in accordance with this section must be disregarded, and the certified check, cash or undertaking of such a bidder returned forthwith.

4. Any person who is disqualified by the Director, in accordance with the provisions of this section, may request, in writing, a hearing before the Director and present again the person's check, cash or undertaking and such further evidence with respect to the person's financial responsibility, organization, plant and



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1 equipment, or experience, as might tend to justify, in his or her
2 opinion, issuance to him or her of the plans and specifications for
3 the work.

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

8 **Sec. 36.** NRS 408.337 is hereby amended to read as follows:

9 408.337 Except as otherwise provided in NRS 408.3875 to
10 408.3887, inclusive **H**, and sections 2 to 32, inclusive, of this act:

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

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

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

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

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

42 **Sec. 37.** NRS 408.343 is hereby amended to read as follows:

43 408.343 1. Except as otherwise provided in NRS 408.3875 to
44 408.3887, inclusive **H**, and sections 2 to 32, inclusive, of this act:

45 (a) All bids must be submitted:



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

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

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

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

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

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

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

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

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

(a) That is established by the Director; and

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

Sec. 38. NRS 408.357 is hereby amended to read as follows:

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

2. The performance bonds must:

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



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

3. The labor and material bonds must:

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

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

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

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

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

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

Sec. 39. 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.~~ *has the meaning ascribed to "eligible transportation facility" in section 5 of this act.*

Sec. 40. 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



1 combination thereof, a transportation facility pursuant to NRS
2 408.5475 or 408.548.

3 **Sec. 41.** NRS 408.5485 is hereby amended to read as follows:

4 408.5485 **1.** The Department may contract with a person
5 whose request or proposal is approved pursuant to NRS 408.5483
6 for transportation services to be provided by the transportation
7 facility in exchange for such payments for service and other
8 consideration as the Department may deem appropriate ~~H~~ ,
9 *including, without limitation, periodic payments, construction*
10 *payments, milestone payments, progress payments, payments*
11 *based on availability or any other performance-based payments,*
12 *payments relating to compensation events specified in a public-*
13 *private partnership and payments relating to or arising out of the*
14 *termination of a public-private partnership.*

15 **2.** *The powers, rights, reservations and authority granted to*
16 *the Department pursuant to section 26 of this act with respect to*
17 *an eligible transportation facility authorized by sections 2 to 32,*
18 *inclusive, of this act apply to the development, design,*
19 *construction, financing, improvement, maintenance or operation,*
20 *or any combination thereof, of a transportation facility authorized*
21 *by NRS 408.5471 to 408.549, inclusive.*

22 **3.** *If a transportation facility authorized by NRS 408.5471 to*
23 *408.549, inclusive, imposes or otherwise involves user fees, the*
24 *powers, rights, reservations and authority granted to the*
25 *Department with respect to an eligible transportation facility*
26 *authorized by sections 2 to 32, inclusive, of this act:*

27 *(a) Apply to the development, design, construction, financing,*
28 *improvement, maintenance or operation, or any combination*
29 *thereof, of the transportation facility; and*

30 *(b) Are supplemental to the provisions of NRS 408.5471 to*
31 *408.549, inclusive.*

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

33 338.1373 **1.** A local government or its authorized
34 representative shall award a contract for a public work pursuant to
35 the provisions of NRS 338.1415 and:

36 (a) NRS 338.1377 to 338.139, inclusive;

37 (b) NRS 338.143 to 338.148, inclusive;

38 (c) NRS 338.169 to 338.16995, inclusive; or

39 (d) NRS 338.1711 to 338.173, inclusive.

40 **2.** The provisions of NRS 338.1375 to 338.1382, inclusive,
41 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to
42 338.16995, inclusive, and 338.1711 to 338.1727, inclusive, do not
43 apply with respect to contracts for the construction, reconstruction,
44 improvement and maintenance of highways that are awarded by the
45 Department of Transportation pursuant to NRS 408.201 and



1 408.313 to 408.433, inclusive ~~H~~, and sections 2 to 32, inclusive, of
2 *this act*.

3 **Sec. 43.** NRS 338.1385 is hereby amended to read as follows:

4 338.1385 1. Except as otherwise provided in subsection 9
5 and NRS 338.1906 and 338.1907, this State, or a governing body or
6 its authorized representative that awards a contract for a public work
7 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
8 shall not:

9 (a) Commence a public work for which the estimated cost
10 exceeds \$100,000 unless it advertises in a newspaper qualified
11 pursuant to chapter 238 of NRS that is published in the county
12 where the public work will be performed for bids for the public
13 work. If no qualified newspaper is published in the county where the
14 public work will be performed, the required advertisement must be
15 published in some qualified newspaper that is printed in the State of
16 Nevada and has a general circulation in the county.

17 (b) Commence a public work for which the estimated cost is
18 \$100,000 or less unless it complies with the provisions of NRS
19 338.1386, 338.13862 and 338.13864 and, with respect to the State,
20 NRS 338.1384 to 338.13847, inclusive.

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

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

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

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

35 5. Except as otherwise provided in subsection 6 and NRS
36 338.1389, a public body or its authorized representative shall award
37 a contract to the lowest responsive and responsible bidder.

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

41 (a) The bidder is not a qualified bidder pursuant to NRS
42 338.1379 or 338.1382;

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

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



* A B 4 8 5 *

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

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

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

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

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

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

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

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

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

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

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

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

9. This section does not apply to:

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

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to ~~NRS 408.323 or 408.327;~~ *the provisions of chapter 408 of NRS.*

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

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



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

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

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.16995, inclusive.

Sec. 44. NRS 338.143 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

(a) The bidder is not responsive or responsible;

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



1 (c) The public interest would be served by such a rejection.
2 6. A local government may let a contract without competitive
3 bidding if no bids were received in response to an advertisement for
4 bids and:

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

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

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

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

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

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

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

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

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

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

36 8. This section does not apply to:

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

39 (b) Any work of construction, reconstruction, improvement and
40 maintenance of highways subject to ~~NRS 408.323 or 408.327;~~ *the*
41 *provisions of chapter 408 of NRS;*

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

43 (d) The Las Vegas Valley Water District created pursuant to
44 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
45 District created pursuant to chapter 477, Statutes of Nevada 1983 or



1 the Virgin Valley Water District created pursuant to chapter 100,
2 Statutes of Nevada 1993;

3 (e) The design and construction of a public work for which a
4 public body contracts with a design-build team pursuant to NRS
5 338.1711 to 338.1727, inclusive;

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

9 (g) The preconstruction or construction of a public work for
10 which a public body enters into a contract with a construction
11 manager at risk pursuant to NRS 338.169 to 338.16995, inclusive.

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

13 361.157 1. When any real estate or portion of real estate
14 which for any reason is exempt from taxation is leased, loaned or
15 otherwise made available to and used by a natural person,
16 association, partnership or corporation in connection with a business
17 conducted for profit or as a residence, or both, the leasehold interest,
18 possessory interest, beneficial interest or beneficial use of the lessee
19 or user of the property is subject to taxation to the extent the:

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

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

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

27 2. Subsection 1 does not apply to:

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

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

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

41 (d) Property leased or otherwise made available to and used by a
42 natural person, private association, private corporation, municipal
43 corporation, quasi-municipal corporation or a political subdivision
44 under the provisions of the Taylor Grazing Act or by the United



1 States Forest Service or the Bureau of Reclamation of the United
2 States Department of the Interior;

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

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

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

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

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

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

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

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

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

32 (n) *Any lease, easement, operating agreement, license, permit*
33 *or right of entry for any exempt state property granted by the*
34 *Department of Transportation pursuant to section 28 of this act;*
35 *or*

36 (o) Any lease, easement, operating agreement, license, permit or
37 right of entry for any exempt state property granted by the
38 Department or the Regional Transportation Commission of
39 Southern Nevada pursuant to section 45 of the Boulder City Bypass
40 Toll Road Demonstration Project Act.

41 3. Taxes must be assessed to lessees or users of exempt real
42 estate and collected in the same manner as taxes assessed to owners
43 of other real estate, except that taxes due under this section do not
44 become a lien against the property. When due, the taxes constitute a
45 debt due from the lessee or user to the county for which the taxes



- 1 were assessed and, if unpaid, are recoverable by the county in the
- 2 proper court of the county.
- 3 **Sec. 46.** This act becomes effective on July 1, 2013.

