

SENATE BILL NO. 145—SENATORS HARDY; BROWER AND
SETTELMAYER

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN HARDY AND HICKEY

Referred to Committee on Government Affairs

SUMMARY—Establishes provisions authorizing certain public-private partnerships. (BDR 22-471)

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Legislative Counsel's Digest:

Existing law sets forth standards and requirements for the public procurement of goods and services and for public works projects. (Chapters 332, 333, 334 and 338 of NRS) **Section 9** of this bill provides an alternative to current standards and requirements by authorizing the State and certain local governments to enter into public-private partnerships. **Sections 5, 7 and 10** of this bill provide that a public-private partnership is a contract entered into by a private partner and the State or a local government under which the private partner assumes responsibility for: (1) planning, designing, financing, constructing, equipping, operating, maintaining or improving a museum, or any portion thereof, but where the State or local government retains ownership of the museum; (2) providing mental health services or pharmaceuticals to offenders in a prison or jail which the State or a local government is authorized to operate; or (3) providing mental health or telemedicine services that are included in a group insurance system, plan or program established, offered, carried out, managed, operated or maintained by the State or a local government. **Sections 10-16** of this bill set forth the requirements for entering into a public-private partnership, including the solicitation of proposals, requirements for and authority of private partners, and the financing of the public-private partnership.



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

Section 1. Title 22 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

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

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

Sec. 5. *“Project” means:*

1. Any structure, facility, undertaking or system related to a museum that a public agency is authorized to plan, design, finance, construct, equip, operate, maintain or improve.

2. Any of the following services that a public agency is authorized to provide:

(a) Mental health services or pharmaceuticals provided to offenders in a prison or jail that a public agency is authorized to operate.

(b) Mental health or telemedicine services that are included as part of a group insurance system, plan or program established, offered, carried out, managed, operated or maintained by a public agency, including, without limitation, the Public Employees’ Benefits Program and Medicaid.

Sec. 6. *“Public agency” means:*

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

2. Any local government of this State.

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

Sec. 8. *1. “Telemedicine” means the use of interactive audio, video or other telecommunications technology to transmit or transfer medical data or information between a provider of health care and a patient.*

2. As used in this section:

(a) “Patient” means a person who consults with or is examined or interviewed by a provider of health care for purposes of diagnosis or treatment.

(b) “Provider of health care” has the meaning ascribed to it in NRS 629.031.



1 **Sec. 9.** *A public agency may enter into a public-private*
2 *partnership with one or more private partners. A public-private*
3 *partnership must set forth fully the purposes, powers, rights,*
4 *obligations and responsibilities, financial and otherwise, of the*
5 *public agency and private partner.*

6 **Sec. 10.** *1. A public agency may do such things as are*
7 *necessary and appropriate to carry out a project, including,*
8 *without limitation:*

9 *(a) Plan, design, finance, construct, equip, operate, maintain*
10 *or improve existing projects as may be necessary and appropriate*
11 *to accommodate, develop and own the project.*

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

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

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

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

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

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

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

34 **2.** *Any project described in subsection 1 of section 5 of this*
35 *act, whether planned, designed, financed, constructed, equipped,*
36 *operated, maintained or improved by the public agency or a*
37 *private partner, must be and remain:*

38 *(a) A public use;*

39 *(b) A public facility; and*

40 *(c) Owned by the public agency.*

41 **Sec. 11.** *1. Except as otherwise provided in subsection 4, a*
42 *public-private partnership entered into pursuant to this chapter*
43 *must be awarded through one or more solicitations that must*
44 *include, without limitation, requests for qualifications, the*
45 *creation of a short list of qualified proposers, requests for*



1 *proposals, negotiations and best and final offers. A solicitation*
2 *must include, without limitation, public notice and advertising of*
3 *the solicitation.*

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

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

16 *4. The public agency shall consider any unsolicited proposal*
17 *for a project that the public agency receives. If the public agency*
18 *receives an unsolicited proposal for a project, the public agency*
19 *shall:*

20 *(a) Issue a request for qualifications, request for proposals or*
21 *similar solicitation to solicit additional proposals for the project;*
22 *and*

23 *(b) Otherwise comply with the procedures set forth in*
24 *subsections 1, 2 and 3 in awarding the public-private partnership.*

25 **Sec. 12.** *1. Except as otherwise provided in paragraph (d)*
26 *of subsection 2, the provisions of chapters 332, 333, 334 and 338*
27 *of NRS do not apply to a public-private partnership entered into*
28 *pursuant to the provisions of this chapter.*

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

31 *(a) Must obtain a performance bond and payment bond in an*
32 *amount required by the public agency;*

33 *(b) Must obtain insurance covering general liability and*
34 *liability for errors and omissions;*

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

38 *(d) If applicable to the project, must not have been disqualified*
39 *from being awarded a contract pursuant to NRS 338.017,*
40 *338.13845, 338.13895 or 338.1475.*

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



1 **Sec. 13. 1. A public-private partnership may, as determined**
2 **by the public agency, be financed:**

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

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

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

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

12 **(3) Payments from the private partner;**

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

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

20 **(6) Any combination thereof.**

21 **↪ Any bonds or notes authorized by this paragraph are special,**
22 **limited obligations of the public agency payable solely from the**
23 **revenues specifically pledged to the payment of those obligations,**
24 **and do not create a debt for the purposes of Section 3 of Article 9**
25 **of the Nevada Constitution.**

26 **(c) By the issuance of revenue bonds or notes of the public**
27 **agency pursuant to a financing agreement entered into between**
28 **the public agency and the private partner for the purpose of**
29 **securing the bonds or notes and providing for their payment. Any**
30 **bonds or notes issued under this paragraph must be payable solely**
31 **from and secured by payments made by and property of and other**
32 **security provided by the private partner, including, without**
33 **limitation, any payments made to the private partner by the public**
34 **agency pursuant to the public-private partnership. Any bonds or**
35 **notes as authorized by this paragraph are special, limited**
36 **obligations of the public agency payable solely from the revenues**
37 **specifically pledged to the payment of those obligations, and do**
38 **not create a debt for the purposes of Section 3 of Article 9 of the**
39 **Nevada Constitution.**

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

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

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



1 **Sec. 14.** *Information obtained by or disclosed to the public*
2 *agency during the procurement or negotiation of a public-private*
3 *partnership may be kept confidential until the public-private*
4 *partnership is executed, except that the public agency may exempt*
5 *from release any proprietary information obtained by or disclosed*
6 *to the public agency during the procurement or negotiation.*

7 **Sec. 15.** *The public agency may acquire, condemn or hold*
8 *real property and related appurtenances under fee title, lease,*
9 *easement, dedication or license for the public-private partnership.*
10 *The public agency may grant to a private partner a lease,*
11 *easement, operating agreement, license, permit or right of entry*
12 *for such real property and related appurtenances, and such grant*
13 *and use shall be deemed for all purposes to be:*

14 1. *A public use; and*

15 2. *A public facility.*

16 **Sec. 16.** *The public agency may include authority in a*
17 *public-private partnership or otherwise authorize a private partner*
18 *to remove any encroachments or relocate any utility from the*
19 *right-of-way of any project described in subsection 1 of section 5*
20 *of this act.*

21 **Sec. 17.** NRS 361.157 is hereby amended to read as follows:

22 361.157 1. When any real estate or portion of real estate
23 which for any reason is exempt from taxation is leased, loaned or
24 otherwise made available to and used by a natural person,
25 association, partnership or corporation in connection with a business
26 conducted for profit or as a residence, or both, the leasehold interest,
27 possessory interest, beneficial interest or beneficial use of the lessee
28 or user of the property is subject to taxation to the extent the:

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

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

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

36 2. Subsection 1 does not apply to:

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



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

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

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

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

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

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

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

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

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

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

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

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

(n) Any lease, easement, operating agreement, license, permit or right of entry for any exempt property granted by a governmental entity pursuant to section 15 of this act; or



1 ~~1(a)~~ (o) Any lease, easement, operating agreement, license,
2 permit or right of entry for any exempt state property granted by the
3 Department or the Regional Transportation Commission of
4 Southern Nevada pursuant to section 45 of the Boulder City Bypass
5 Toll Road Demonstration Project Act.

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

13 **Sec. 18.** This act becomes effective on July 1, 2013.

