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FIRST REPRINT

A.B. 198

ASSEMBLY BILL NO. 198—ASSEMBLYMEN LEAVITT,
ROBERTS; HANSEN AND HARDY

FEBRUARY 18, 2019

JOINT SPONSORS: SENATORS HARDY AND HAMMOND

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the sale or lease of certain real property owned by the Department of Transportation. (BDR 35-953)

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 real property; revising certain provisions relating to the sale or lease of certain real property owned by the Department of Transportation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the Department of Transportation is authorized to acquire
2 real property considered necessary for highway purposes. The Department or Board
3 of Directors of the Department is further authorized to lease, relinquish or dispose
4 of such real property under certain circumstances. (NRS 408.487, 408.507,
5 408.533) **Section 12** of this bill requires the Department or Board, before
6 relinquishing or disposing of property that the Department has determined is no
7 longer necessary for highway purposes to a county, city or town, to offer the right
8 of first refusal to any abutting property owner. **Section 13** of this bill authorizes the
9 Department to offer for lease to an abutting property owner any property which is
10 not in current use by the Department. **Section 12** requires the Department to require
11 a county, city or town to honor any such lease before the Department may
12 relinquish or dispose of real property to a county, city or town.



* A B 1 9 8 R 1 *

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. Chapter 408 of NRS is hereby amended by adding
thereto a new section to read as follows:

*1. Before the Department or Board may relinquish or dispose
of any real property owned by the Department pursuant to NRS
408.507 or 408.533 to a county, city or town, as applicable, the
Department shall afford the right of first refusal to purchase the
real property to any abutting property owner:*

(a) At market value; or

*(b) If the Director determines such a sale is feasible and in the
best interest of the State, at less than market value.*

*2. If the Department intends to relinquish or dispose of any
real property to a local government that is subject to a lease made
pursuant to subsection 5 of NRS 408.507, the Department shall
require the local government to honor the existing lease before
relinquishing or disposing of such real property.*

Sec. 13. NRS 408.507 is hereby amended to read as follows:

408.507 1. Real property held in fee or improvements on the
property acquired by the Department in advance of the actual
construction, reconstruction or improvement of highways or in order
to avoid the payment of excessive damages, or held by the
Department pending a determination in the future on its use or
disposal may be leased or rented by the Department for fair market
value in such manner and for such periods as are determined by the
Director to be in the best interests of the State.

2. The Director may lease for fair market value space above
and below the established grade line of the highway to state and
public agencies and private persons in such manner and for such
periods as the Director determines are in the best interest of the
State, if:

(a) The full use and safety of the highway will not be impaired;



(b) Vehicular or pedestrian access to that space will not be required or permitted from the established grade line; and

(c) The free flow of traffic on the highway is not interfered with in any way.

3. All leases of an interest in real property entered into by the Department before April 1, 1985, are hereby ratified. All other leases entered into pursuant to subsection 2 must be approved by the Board subject to the provisions of subsection 4.

4. ~~HH~~ *Except as otherwise provided in subsection 5, if* the Department receives a proposal to negotiate a lease pursuant to subsection 2, it shall publish a notice in a newspaper of general circulation at least once a week for 2 weeks, stating that it has received the proposal and that it will receive other proposals for use of the space for 60 days after the completion of the publication. A copy of the notice must be mailed to each local governmental unit in the affected area. If the property is leased, it must be to the highest bidder for the space. The requirements for publication and notice do not apply if the proposal was received from an owner who controls the property on both sides of the highway.

5. *Unless otherwise prohibited by federal law, the Director may offer to lease for fair market value real property described in subsection 1 to an abutting property owner in such manner and for such periods as the Director determines are in the best interest of the State.*

6. All money received for leases and rentals must be deposited with the State Treasurer to be credited to the State Highway Fund.

Sec. 14. NRS 408.533 is hereby amended to read as follows:

408.533 1. Except as otherwise provided in NRS 37.270 ~~HH~~ *and section 12 of this act*, all real property, interests therein or improvements thereon and personal property acquired before, on or after April 1, 1957, in accordance with the provisions of NRS 408.487 and 408.489 must, after approval by the Board and if no longer needed for highway purposes, be disposed of by the Director in accordance with the provisions of subsection 2, except that:

(a) When the property was originally donated to the State, no charge may be made if it is returned to the original owner or to the holder of the reversionary right.

(b) When the property has been wholly or partially paid for by towns, cities or counties, disposal of the property and of money received therefor must be agreed upon by the governing bodies of the towns, cities and counties and the Department.

(c) When the title to the real property has been acquired in fee pursuant to NRS 408.487 and 408.489 and, in the opinion of the Board, a sale by means of a public auction or sealed bids is uneconomical or impractical because:



1 (1) There is no access to the property;

2 (2) The property has value or an increased value only to a
3 single adjoining property owner; or

4 (3) Such a sale would work an undue hardship upon a
5 property owner as a result of a severance of the property of that
6 owner or a denial of access to a public highway,

7 ➡ the Board may enter into a direct sale of the property with such
8 an owner or any other person for its fair market value.

9 (d) When the property has been acquired and the property or any
10 portion of the property is no longer needed for highway purposes,
11 the Department shall give notice of its intention to dispose of the
12 property by publication in a newspaper of general circulation in
13 the county where the property is situated. The notice must include
14 the Department's appraisal of the fair market value of the property.
15 Any person from whom the property was purchased or the person's
16 heir or grantee may purchase the property at its fair market value by
17 direct sale from the Department within 60 days after the notice is
18 published. If more than one person qualified to purchase the
19 property by direct sale pursuant to this paragraph so requests, the
20 person with the superior claim, as determined by the Department in
21 its sole discretion, is entitled to purchase the property by direct sale.
22 If a person who is entitled to purchase the property by direct sale
23 pursuant to this paragraph reasonably believes that the Department's
24 appraisal of the property is greater than the fair market value of the
25 property, the person may file an objection to the appraisal with the
26 Department. The Department shall set forth the procedure for filing
27 an objection and the process under which a final determination will
28 be made of the fair market value of the property for which an
29 objection is filed. The Department shall sell the property in the
30 manner provided in subsection 2 if:

31 (1) No person requests to purchase the property by direct sale
32 within 60 days after the notice is published pursuant to this
33 paragraph; or

34 (2) A person who files an objection pursuant to this
35 paragraph fails, within 10 business days after receipt of a written
36 notice of the final determination of the fair market value of the
37 property, to notify the Department in writing that he or she wishes to
38 purchase the property at the fair market value set forth in the notice.

39 (e) When the property is sought by another public agency for a
40 reasonable public use, the Department may first offer the property to
41 the public agency at its fair market value.

42 2. ~~[AHH]~~ *Except as otherwise provided in section 12 of this act,*
43 *all* property, interests or improvements not included within the
44 provisions of subsection 1 must first be offered for sale by the
45 Department singly or in combination at public auction or by sealed



1 bids. If the highest bid received is 90 percent or more of the
2 Department's appraisal of the fair market value of the property, the
3 property may be sold to the highest bidder. The notice and the terms
4 of the sale must be published in a newspaper of general circulation
5 in the county where the property is situated. The auctions and
6 openings of bids must be conducted by the Department. If the
7 property cannot be sold for 90 percent or more of its fair market
8 value, the Department may enter into a written listing agreement
9 with a person licensed pursuant to chapter 645 of NRS to sell or
10 lease the property for 90 percent or more of its fair market value.

11 3. It is conclusively presumed in favor of the Department and
12 any purchaser for value that the Department acted within its lawful
13 authority in acquiring and disposing of the property, and that the
14 Director acted within his or her lawful authority in executing any
15 conveyance vesting title in the purchaser. All such conveyances
16 must be quitclaim in nature and the Department shall not warrant
17 title, furnish title insurance or pay the tax on transfer of real
18 property.

19 4. No person has a right of action against the Department or its
20 employees for a violation of this section. This subsection does not
21 prevent an action by the Attorney General on behalf of the State of
22 Nevada or any aggrieved person.

23 5. All sums of money received by the Department for the sale
24 of real and personal property must be deposited with the State
25 Treasurer to be credited to the State Highway Fund, unless the
26 Federal Highway Administration participated in acquisition of the
27 property, in which case a pro rata share of the money obtained by
28 disposal of the property must be paid to the Federal Highway
29 Administration.

30 6. The Department may reserve and except easements, rights or
31 interests from the conveyance of any real property disposed of in
32 accordance with this section, ~~for~~ exchanged pursuant to subsection
33 5 of NRS 408.489 ~~or~~ *or sold pursuant to section 12 of this act.* The
34 easements, rights or interests include, but are not limited to:

35 (a) Abutter's rights of light, view or air.

36 (b) Easements of access to and from abutting land.

37 (c) Covenants prohibiting the use of signs, structures or devices
38 advertising activities not conducted, services not rendered or goods
39 not produced or available on the real property.

40 **Sec. 15.** Nothing in this act creates any right to claim adverse
41 possession of any real property.

42 **Sec. 16.** This act becomes effective on July 1, 2019.

