

Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities



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**ADVISORY GROUP TO CONDUCT INTERIM STUDY ON LEASE-PURCHASE AND
INSTALLMENT-PURCHASE AGREEMENTS BY PUBLIC ENTITIES**

Senate Bill 426, Section 31

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SUMMARY OF RECOMMENDATIONS

ADVISORY GROUP TO CONDUCT INTERIM STUDY ON LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS BY PUBLIC ENTITIES

Senate Bill 426 (Section 31)
(Chapter 508, *Statutes of Nevada 2005*)

This summary presents the recommendations approved by the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities at its meetings held on July 12, 2006, and August 30, 2006, in Carson City. The Advisory Group will submit these proposals to the 74th Session of the Nevada Legislature. The corresponding bill draft request (BDR) number follows each recommendation for legislation.

1. Draft legislation that would require an entity seeking to enter into a lease-purchase agreement to advertise for request for proposals in the following two contexts: 1) when the entity wishes to lease-purchase an existing building (i.e., the entity does not own the land or the existing building); and 2) when the entity wishes to lease-purchase a building that has not yet been constructed, and the entity does not own the land upon which the building will be constructed. The requirements for advertisement should be modeled on *Nevada Revised Statutes* (NRS) 338.1723, except that instead of subsection 2(e), the prime contractor is simply required to be licensed (not prequalified). In addition, the request should be able to be as specific as necessary (e.g., requiring property on a particular street corner). **(BDR 424)**
2. Draft legislation that would require a design-build process to be used in instances when a public entity wishes to construct a building upon land owned by the entity. The model for the design-build process should utilize the provisions outlined in NRS 338.1721 – 338.1727. **(BDR 424)**
3. Draft legislation that would exempt leases of state and local government land as part of a lease-purchase agreement from the appraisal and public bidding process set forth in the provisions of Assembly Bill 312 of the 2005 Legislative Session. **(BDR 424)**
4. Draft legislation that would allow the State Board of Finance or a local government to delegate to the State Treasurer, or the Chief Financial Officer, respectively, the right to approve certain financial conditions of lease-purchase and installment-purchase agreements. **(BDR 424)**
5. Draft legislation that would remove the three-project limit for lease-purchase projects by the Nevada System of Higher Education and provide direct authority for the City of Las Vegas to enter into lease-purchase agreements. **(BDR 231)**

6. Draft legislation to provide that the State Public Works Board is responsible for serving as the building official for lease-purchase projects constructed on state land, modeling the provisions of NRS 341.100(5)(h) and 341.105. **(BDR 430)**
7. Draft legislation to require the approval of the Interim Finance Committee for any changes to the scope, as defined in NAC 341.017, of a state lease-purchase project. **(BDR 230)**
8. Draft legislation that provides for a legislative declaration in one or more sections of NRS stating the importance of lease-purchase and installment-purchase agreements to the state and local governments and the need to have the process for executing these agreements be streamlined and efficient. In addition, the declaration would specify that the state and local governments should adhere to prevailing wage statutes, prohibit bid shopping and provide a preference for hiring Nevada residents to the extent such preference is required by law for lease-purchase and installment-purchase projects. **(BDR 229)**

**REPORT TO THE 74th SESSION OF THE NEVADA LEGISLATURE
BY THE ADVISORY GROUP TO CONDUCT INTERIM STUDY
ON LEASE-PURCHASE AND INSTALLMENT-PURCHASE AGREEMENTS
BY PUBLIC ENTITIES**

I. INTRODUCTION

Senate Bill No. 426, as passed by the 2005 Session of the Nevada Legislature, created the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities and charged the committee to:

- Review existing laws relating to lease-purchase and installment-purchase agreements;
- Evaluate the applicability of existing laws relating to public works and public purchasing to existing laws relating to lease-purchase and installment-purchase agreements;
- Consider changes to existing provisions of law relating to lease-purchase and installment-purchase agreements to better serve the needs of the State and local governments and to promote and protect the interests of Nevada's workforce; and
- Consult with the Commission to Study Governmental Purchasing, the Committee on Local Government Finance, the Office of the State Treasurer, the State Public Works Board and experts in the fields of contracting, labor and purchasing.

A copy of the statutory provisions in Senate Bill 426, Section 31, (Chapter 508, *Statutes of Nevada 2005*) that created and set forth the power and duties of the Advisory Group is provided in Appendix A.

A. COMPOSITION OF THE ADVISORY GROUP

The Senate Majority Leader and the Speaker of the Assembly appointed the following legislators to the Advisory Group for the 2005-07 biennium:

Senator Warren B. Hardy II, Chairman
Assemblywoman Debbie Smith, Vice Chair

As provided in Chapter 508 of the *Statutes of Nevada 2005*, the following persons were appointed to the serve as members of the Advisory Group by the Legislative Commission as representatives for their respective fields:

Andrew Clinger, representing State Governmental Financing
Richard "Skip" Daly, representing Labor
James Keenan, representing Public Purchasing
Dan O'Brien, representing Public Works
Patrick Schlosser, representing Construction Project Management
John Sherman, representing Local Governmental Financing

Legislative Counsel Bureau (LCB) staff services for the committee were provided by Tracy Raxter, Senior Program Analyst, Fiscal Analysis Division; Jeff Ferguson, Program Analyst, Fiscal Analysis Division; Brenda J. Erdoes, Legislative Counsel, Legal Division; William L. Keane, Principal Deputy Legislative Counsel, Legal Division; and Denise Larsen, Secretary, Fiscal Analysis Division.

B. OVERVIEW OF THE ADVISORY GROUP'S PROCEEDINGS

During the 2005-07 interim, the Advisory Group conducted five meetings, including two work sessions. Three of the meetings were held in Las Vegas with videoconferencing to Carson City, and the other two meetings were held in Carson City with videoconferencing to Las Vegas.

During the course of its work, the Advisory Group considered testimony from the State of Nevada Labor Commissioner, representatives of the American Federation of Labor-Congress of Industrial Organizations (including the Building and Construction Trades Council of Northern Nevada; the Northern Nevada International Union of Painters and Allied Trades; the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; Carpenters/Contractors Cooperation Committee, Inc.; Operating Engineers Local 3; and the Laborers Local 872) and members of the public with regard to labor issues. The committee also received testimony from representatives from the National Association of Industrial and Office Properties (NAIOP) regarding issues related to the current availability and future trends of commercial property in the Las Vegas area.

In addition, the committee heard testimony from the law firm of Swendseid and Stern and the financial advisor firm of Johnson Consulting Group regarding financing public works projects through lease-purchase and installment-purchase agreements. Representatives from the Nevada Department of Corrections (NDOC), the Commission to Study Governmental Purchasing, the Committee on Local Government Finance, the Nevada System of Higher Education, the Office of the State Treasurer, and the State Public Works Board (SPWB) provided expert testimony to the committee throughout the interim regarding the structure and utilization of lease-purchase and installment-purchase agreements, project management and oversight functions and the

importance of having these tools available to address capital construction needs of state and local government agencies.

The information included in this report provides a general overview of the complex issues and information considered by the Advisory Group in formulating its recommendations for legislation to be considered by the 2007 Legislature. For more detailed information on the Advisory Group, please consult the minutes and exhibits from the meetings, which are available from the Legislative Counsel Bureau's Research Library. The minutes (excluding exhibits) and a copy of this report are available electronically on the Legislature's website at www.leg.state.nv.us.

II. RECOMMENDATIONS FOR THE 2007 LEGISLATIVE SESSION

Throughout the course of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities' work during the 2005-07 biennium, the Advisory Group approved five requests for bill drafts to be considered by the 2007 Legislature. A description of the recommendations is included in Appendix B. The issues the Advisory Group discussed and the recommendations that resulted from those discussions are detailed below.

A. RECOMMENDATION TO CREATE A BIDDING PROCESS FOR LEASE-PURCHASE AGREEMENTS THAT WOULD NOT ELIMINATE THE ADVANTAGES AFFORDED BY LEASE-PURCHASE AGREEMENTS

The Advisory Group approved four recommendations with respect to creating a bidding process for Lease-Purchase agreements. Recommendations, along with a narrative associated with each BDR, are outlined below.

The Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities received testimony and information from a number of local experts, as well as individuals associated with past and present lease-purchase projects. Testimony was received from individuals from Nevada cities, counties, and state government, as well as experts in the fields of public finance and commercial real estate and development. After hearing general testimony concerning the merits of the lease-purchase concept, the Advisory Group concluded that lease-purchase agreements are a useful and important method for public entities to use to allow them to secure public buildings in a timely and efficient manner. Accordingly, the Advisory Group determined it would focus its efforts on improving and facilitating the lease-purchase process, as well as on ensuring it is available to all public entities.

While the consensus was that lease-purchase agreements are useful and important, it became apparent through the hearing process that there was concern that issues related to the construction of some existing state buildings were due to the associated lease-purchase agreement. In particular, testimony from labor organizations alleged that a number of problems encountered in the construction of the Richard H. Bryan Building in Carson City were the direct result of the building being built through a lease-purchase agreement. Accordingly, the Advisory Group requested labor to detail the primary issues with the construction of the Richard H. Bryan Building and demonstrate a direct nexus between the lease-purchase concept and the construction issues. After hearing labor's testimony, and carefully considering the issues, the Advisory Group determined that while there were issues with the Richard H. Bryan Building's construction process, these issues were likely not directly related to the fact that the building was constructed through a lease-purchase agreement.

Although the Advisory Group did not feel the issues related to the Richard H. Bryan Building (or any of the other construction projects undertaken by the state via lease-purchase agreements) were the result of the lease-purchase concept, it concluded that public entities: 1) need to find the most cost effective way to accomplish public works; and 2) need to assure that every taxpayer wanting to pursue public works had the opportunity to do so. Accordingly, the Advisory Group determined it would be beneficial to apply some sort of bidding process to lease-purchase agreements, as long as the process did not disrupt the lease-purchase concept.

Through the hearing process, the Advisory Group heard testimony that the State Public Works Board (SPWB) utilized the design-build process as described in NRS 338.1721 – 338.1727 for the lease-purchase of the Richard H. Bryan Building in Carson City. The SPWB indicated it elected to use the design-build process because it provides for an open process that requires qualified bidders, preliminary proposals, the selection of finalists, and request for proposals. Furthermore, the SPWB indicated it had experience with the design-build process through its efforts in constructing public works projects through debt financing. Accordingly, the Advisory Group determined that adopting the design-build process, with some slight modification, would be one of the recommendations of the Advisory Group.

However, through the course of the hearings, it became apparent that the design-build bidding process was not a “one size fits all” process. Accordingly, the committee determined that there were three general scenarios whereby lease-purchase agreements could be utilized. The committee explored the possibility of employing the design-build process for each of the three scenarios, but ultimately decided it would only be applicable to one of the scenarios. The three scenarios are:

- I. **The state/local government may find an existing building that it wants to acquire by lease purchase.** In this scenario, the Advisory Group determined that because the building in question would already have been constructed, there would not be a need to utilize a bidding process. The committee heard testimony from labor representatives concerned that a public entity could covertly come to an agreement with a developer to have a building or facility constructed, and then lease-purchase the building or facility after it was completed. Such an arrangement could effectively bypass the requirement that public buildings be constructed with prevailing wages. The Advisory Group determined that such a scenario, while possible, would be unlikely. Proposals to require a certain amount of time to pass between the completion of a building and when it could be lease-purchased by a public entity were entertained by the Advisory Group. It was determined that such a limitation could have an adverse affect on a public entity’s ability to pursue the purchase of the potentially best facility for its needs. However, in order to provide a more transparent process, the Advisory Group agreed to recommend legislation be drafted that would require public entities to advertise for proposals before commencing with a project to lease-purchase an existing building.

- II. The state/local government wishes to lease purchase a building but does not own the land.** This is the scenario associated with the Casa Grande project recently completed for the Nevada Department of Corrections (NDOC). In the case of Casa Grande, the developer owned the land and proposed to build the needed facility. There was no public bidding involved, and the developer constructed the facility per the state's specifications. The Advisory Group concluded that this scenario does not lend itself well to the design-build bidding procedures outlined in statute, and accordingly, did not elect to recommend any public bidding requirements for this scenario. However, in the interest of providing a transparent process, the Advisory Group elected to request legislation that would require public entities to advertise for proposals before commencing with a lease-purchase project to construct a building on land that is not owned by the state/local government.

In addition, during the Advisory Group's hearings and discussions concerning a potential bidding process for lease-purchase agreements, it was determined that a number of concerns with the bidding process and its transparency could be addressed by issuing a Legislative Declaration. The declaration would contain a number of provisions to ensure the use of prevailing wages, eliminate bid shopping, and avoid the potential of "behind-the-scenes arrangements" to circumvent laws by constructing a building that would eventually be lease-purchased to the state/local government. The resulting recommendation for a Legislative Declaration is presented under section E of this report.

In order to provide a transparent process for lease-purchase agreements for buildings already constructed and for cases when a developer owned the land and proposed to build a needed facility, the Advisory Group voted to adopt the following recommendation:

Recommendation No. 1 – Draft legislation that would require an entity seeking to enter into a lease-purchase agreement to advertise for request for proposals in the following two contexts: 1) when the entity wishes to lease purchase an existing building (i.e., the entity does not own the land or the existing building); and 2) when the entity wishes to lease-purchase a building that has not yet been constructed, and the entity does not own the land upon which the building will be constructed. The requirements for advertisement should be modeled on NRS 338.1723, except that instead of subsection 2(e), the prime contractor is simply required to be licensed (not prequalified). In addition, the request should be able to be as specific as necessary (e.g., requiring property on a particular street corner). (BDR 424)

- III. The state/local government owns the land and solicits a lease-purchase project.** This is the scenario associated with the Richard H. Bryan Building in Carson City, and for which the SPWB utilized the design-build bidding procedures set forth in NRS 338.1721 through 338.1727. General testimony during the hearing process expressed satisfaction with utilizing the design-build bidding procedures for future lease purchases when the state/local government owns the land on which a

building will be constructed. Accordingly, the Advisory Group agreed to request legislation that would apply the existing design-build bidding procedures in cases when a public entity owns the land on which a contractor will construct a building through a lease-purchase agreement.

Recommendation No. 2 – Draft legislation that would require a design-build process to be used in instances when a public entity wishes to construct a building upon land owned by the entity. The model for the design-build process should utilize the provisions outlined in NRS 338.1721 – 338.1727. (BDR 424)

Nevada Revised Statutes 338.1721 through 338.1727 are contained within Appendix C.

It was brought to the Advisory Group's attention that the Legislative Counsel Bureau (LCB) Legal Division had encountered some problems with the current lease-purchase project for the proposed new Nevada State Printing Office. Testimony indicated the problems were primarily due to conflicts with Assembly Bill (A.B.) 312 from the 2005 Legislative Session, which included the requirement that governments obtain an appraisal and an associated advertisement for any land the government wished to sell or lease. In considering the provisions of A.B. 312 of the 2005 Legislative Session, the Advisory Group concluded that the restrictive requirements set forth in A.B. 312 were useful in preventing potential abuses when the state/local government wished to sell or lease land to a private party or when it was no longer going to be used by the state/local government. However, the Advisory Group determined that the requirements made little sense in cases where the state/local government wished to lease the land in a financing transaction and planned to lease back the land immediately. Accordingly, the Advisory Group determined that one of its recommendations would be to request legislation that would amend the statutes to exempt governments from the appraisal and public bidding process for leases of government land in situations where the government owns the land and wants to construct an improvement on that land.

Recommendation No. 3 – Draft legislation that would exempt leases of state and local government land as part of a lease-purchase agreement from the appraisal and public bidding process set forth in the provisions of Assembly Bill 312 of the 2005 Legislative Session. (BDR 424)

The Advisory Group heard testimony from the state's Bond Counsel that under current law, the governing body (i.e., the State Board of Financing for the state, county commissioners for counties, the city councils for cities) is required to meet on the date the interest rate will be fixed in order to approve the interest rate for a lease-purchase or an installment-purchase agreement. Testimony stated that since the dates governing bodies meet would likely not coincide with the best time to obtain the best interest rate, it would make sense to allow a governing body to delegate to an individual the right to approve certain financial conditions related to

an agreement (i.e., interest rates and payment dates). Accordingly, the Advisory Group elected to accept the recommendations suggested by Bond Counsel and request legislation that would allow the State Board of Finance or a local government to delegate to the State Treasurer, or the Chief Financial Officer, respectively, the right to approve certain financial conditions of lease-purchase and installment-purchase agreements.

Recommendation No. 4 – Draft legislation that would allow the State Board of Finance or a local government to delegate to the State Treasurer, or the Chief Financial Officer, respectively, the right to approve certain financial conditions of lease-purchase and installment-purchase agreements. (BDR 424)

In addition to the above issues related to lease-purchase projects when the state/local government owns the land, the Advisory Group further considered a potential recommendation to address the desirability of providing funding for initial professional services related to tasks that must be completed prior to the final project approval and sale of debt instruments for financing a lease-purchase project. However, after carefully considering this proposal, the Advisory Group concluded that it was not comfortable carrying the bidding process further than recommending the design-build process. Accordingly, the Advisory Group determined it would not recommend funding professional services for bidders, but would leave that issue up to each governmental entity.

B. RECOMMENDATION TO REMOVE THE THREE-PROJECT LIMIT FOR LEASE-PURCHASE PROJECTS BY THE NEVADA SYSTEM OF HIGHER EDUCATION, AND PROVIDE DIRECT AUTHORITY FOR THE CITY OF LAS VEGAS TO ENTER INTO LEASE-PURCHASE AGREEMENTS.

The Advisory Group heard testimony that Senate Bill (S.B.) 426 of the 2005 Legislative Session placed a three-project limit on the Nevada System of Higher Education (NSHE) for lease-purchase projects for the 2005-07 biennium. Among the reasons for the restriction was the lack of established guidelines for NSHE to follow in entering into lease-purchase agreements. Testimony indicated that one of the purposes of the Advisory Group, which was also authorized by S.B. 426, was to establish proper guidelines for governmental entities to follow when entering into lease-purchase agreements. Further, after the Advisory Group made its recommendations, testimony indicated it was generally understood that the three-project limit imposed on NSHE by S.B. 426 could be removed. Accordingly, the Advisory Group voted to recommend the three-project limit for NSHE lease-purchase projects be removed in light of the other recommendations proposed by the Advisory Group. All NSHE lease-purchase projects would still have to receive legislative approval (either through a legislative session or through the Interim Finance Committee) prior to commencement of any project.

The Advisory Group also heard testimony that current statutes allow the state and counties to enter into lease-purchase agreements (NRS 355.590 for the state and

NRS 244.286 for counties); however, similar authority for cities does not exist in statute. Representatives from the City of Las Vegas testified that the city desired to have a process for lease-purchase projects similar to those for the state and counties. Accordingly, the City of Las Vegas requested that the Advisory Group issue a recommendation to specifically authorize the City of Las Vegas to enter into lease-purchase agreements. The Advisory Group discussed this matter and agreed to recommend legislation that would provide the City of Las Vegas specific statutory authority to enter into lease-purchase agreements. The Advisory Group further agreed that if any other cities would like to be granted specific authority to enter into lease-purchase agreements, they could make such a request during the 2007 Legislative Session when the bill to grant authority to the City of Las Vegas is considered.

The Advisory Group approved the following BDR with respect to lease-purchase agreements by the Nevada System of Higher Education and the City of Las Vegas:

Recommendation No 5 - Draft legislation that would remove the three-project limit for lease-purchase projects by the Nevada System of Higher Education and provide direct authority for the City of Las Vegas to enter into lease-purchase agreements. (BDR 231)

C. RECOMMENDATION TO CLARIFY ENTITY RESPONSIBLE AS BUILDING OFFICIAL

In a letter to the Advisory Group in April 2006, Deputy Manager Evan Dale, SPWB, on behalf of the agency, suggested a modification to NRS to clarify the entity responsible for serving as the building official on state lease-purchase building projects. The suggestion was in response to testimony received by the Advisory Group regarding the exemption, provided in NRS 353.590, of state lease-purchase projects from the provisions of Chapter 341 of NRS. As noted by the SPWB, NRS 341.100(5)(h) and 341.105 establish the Manager of the State Public Works Board as the building official for projects on state lands with responsibility for plan checking projects for code compliance and inspecting projects in accordance with the plans and the building code. Testimony provided to the Advisory Group indicated since local governments do not have jurisdiction on state lands and because of the exemption from NRS 341, there was no authorized building official for building projects on state lands utilizing a lease-purchase agreement. To ensure these projects were reviewed and inspected for code compliance, for the protection of the owner and the contractor, the Advisory Group voted to adopt the following recommendation:

Recommendation No. 6 - Draft legislation to provide that the State Public Works Board is responsible for serving as the building official for lease-purchase projects constructed on state land, modeling the provisions of NRS 341.100(5)(h) and 341.105. (BDR 430)

A copy of a letter dated April 7, 2006, regarding the role of the State Public Works Board as the state building official from SPWB Deputy Manager Evan Dale is attached as Appendix D. *Nevada Revised Statutes* 341.100 through 341.105 are contained within Appendix E.

D. RECOMMENDATION ON CHANGES TO PROJECT SCOPE

A concern of the Advisory Group was the need to ensure a transparent process exists with regard to changes in the scope of the design and/or construction of a building project financed through a lease-purchase agreement. The Advisory Group felt that the process for reporting and approving changes in scope to a non-lease-purchase public works project should also apply to a lease-purchase public works project to ensure the same degree of accountability. The Advisory Group noted that NRS 341.145(7) provides that the State Public Works Board shall obtain approval of the Interim Finance Committee for any changes in the scope of the design or construction of a capital improvement project authorized by the Legislature. In addition, the Advisory Group was advised that the Board has defined, through regulation in *Nevada Administrative Code* (NAC) 341.017, a change in scope as:

- Addition or deletion of 10 percent or more of the square footage of the project that was originally authorized by the Legislature;
- Change in the intended use of more than 10 percent of the square footage of the project that was originally authorized by the Legislature; and
- Change of more than 10 percent of the users of the project that were originally intended by the Legislature.

As state lease-purchase projects are exempt from the provisions of Chapter 341 of NRS, the Advisory Group felt that legislation should be drafted that provides similar provisions regarding changes in scope applicable to state lease-purchase projects. Testimony concerning lease-purchase projects of local governments was provided to the Advisory Group indicating that sufficient transparency currently exists for changes in the scope of those projects. Based on these considerations, the Advisory Group voted to adopt the following recommendation:

Recommendation No. 7 – Draft legislation to require the approval of the Interim Finance Committee for any changes to the scope, as defined in NAC 341.017, of a state lease-purchase project. (BDR 230)

E. RECOMMENDATION FOR LEGISLATIVE DECLARATION

The Advisory Group received testimony from construction industry and labor representatives on the importance of adherence to prevailing wage statutes on public

works projects to ensure an equitable basis for contractor bids and to ensure that workers were not misclassified and paid an inappropriate wage. Labor representatives also expressed concern regarding the possible scenario of a government entity approaching a private contractor with certain specifications and an informal assurance to lease-purchase a building from the private contractor in the future, thereby possibly circumventing the prevailing wage statutes. Due to these concerns, members of the Advisory Group agreed to request the drafting of a legislative declaration indicating its intent was that the state and local governments should not use lease-purchase and installment-purchase agreements to avoid or circumvent any requirement for the payment of prevailing wages on public works projects.

During the review and discussion of state lease-purchase projects recently completed, representatives of labor expressed concerns regarding the possibility of bid shopping and the utilization of an out-of-state contractor. In response to these concerns, the Advisory Group agreed to include language in the proposed legislative declaration to indicate that lease-purchase agreements should not be utilized to circumvent the bidding laws of Chapter 338 of NRS and that, to the extent otherwise required by law, the state should provide for preferential hiring of Nevada residents when utilizing lease-purchase and installment-purchase agreements. The Advisory Group also agreed the legislative declaration would be inserted into one or more sections of NRS, as appropriate, to ensure it would apply to all uses of lease-purchase and installment-purchase agreements by the state and local governments and that it should emphasize the importance of these agreements as a financing tool for the state and local governments.

Recommendation No. 8 – Draft legislation that provides for a legislative declaration in one or more sections of NRS stating the importance of lease-purchase and installment-purchase agreements to the state and local governments and the need to have the process for executing these agreements be streamlined and efficient. In addition, the declaration would specify that the state and local governments should adhere to prevailing wage statutes, prohibit bid shopping and provide a preference for hiring Nevada residents to the extent such preference is required by law for lease-purchase and installment-purchase projects. (BDR 229)

The conceptual language for the legislative declaration is contained in Appendix F.

III. OTHER ISSUES CONSIDERED BY THE ADVISORY GROUP

In addition to the items discussed in the preceding section, the Advisory Group reviewed the following issues related to lease-purchase and installment-purchase agreements:

- Utilization of inmate labor on lease-purchase building projects;
- Public review of proposed lease-purchase agreements;
- Commonality regarding entity serving as the owner representative and project manager for lease-purchase building projects;
- Utilization of a construction contingency on lease-purchase building projects that is shared between the government entity and the contractor;
- Reciprocal agreements between government entities for building official functions; and
- Utilization of lease-purchase and installment-purchase agreements as the financing method for public works projects.

Utilization of Inmate Labor on Lease-Purchase Building Projects

In discussing the Casa Grande Transitional Housing facility lease-purchase project for the Department of Corrections, the Advisory Group was advised that, initially, inmate labor was utilized for this project, but prevailing wages were not paid to these inmates. Concern was expressed by the Advisory Group that, due to the use of inmate labor, there may not have been an equitable basis for the bids received from construction contractors on this project. As noted in Recommendation No. 8, the Advisory Group felt that a legislative declaration should be drafted that would include language indicating that public entities should not use lease-purchase agreements to circumvent any requirement regarding the payment of prevailing wages for public works projects. The Advisory Group felt that the issue of utilization of inmate labor on public works projects was not within the scope of the Advisory Group's responsibilities; therefore, it did not make a recommendation regarding this issue. However, the Advisory Group indicated the issue was a subject that warranted further discussion in the 2007 Legislative Session.

Public Review of Proposed Lease-Purchase Agreements

The Advisory Group discussed a suggestion by labor representatives of whether a public review of lease-purchase agreements should be implemented either prior to or

after their award to a developer or contractor. Testimony provided by labor representatives indicated a number of questions were raised after the contract for Richard H. Bryan Building was awarded that could have been addressed sooner if an opportunity had been afforded. The Advisory Group agreed that the recommendation was related to enforcement and was beyond the scope of the Advisory Group, as a case was not demonstrated that the fact this was a lease-purchase project was the cause for the lack of enforcement. The Advisory Group determined that the legislative declaration recommended to be drafted (Recommendation No. 8) would be beneficial in addressing the areas of concern identified.

Commonality Regarding Entity Serving as the Owner Representative and Project Manager for Lease-Purchase Building Projects

During the discussion of recently completed state lease-purchase projects, the Advisory Group was informed that the owner-representative and project manager functions were performed by the State Public Works Board for the Richard H. Bryan Building project and by an outside contractor for the Casa Grande Transitional Housing facility project. Testimony provided to the Advisory Group indicated the decision as to who would be the owner-representative and manage the project was left up to the owning agency and was partly a function of money, location, logistics and the type of building. The Advisory Group discussed the possibility of having some commonality or more structure to the decision on who performs these functions to ensure that adequate expertise is acquired; however, the Advisory Group ultimately decided that the issue of oversight was primarily related to enforcement and was outside the scope of the Advisory Group's responsibilities.

Utilization of a Construction Contingency on Lease-Purchase Building Projects that is Shared Between the Government Entity and the Contractor

Representatives of labor recommended the Advisory Group review the issue of the necessity for a construction contingency on lease-purchase building projects that is shared between the government entity and the contractor, due to concerns that it may encourage contractors to submit lowball bids, underpay workers, utilize unqualified subcontractors, and utilize other methods to cut any costs possible to the detriment of the project. Testimony provided to the Advisory Group indicated that due to the conceptual nature of lease-purchase projects at the time of awarding a contract to a developer/contractor, a construction contingency is normally included for items that were not designed at that stage. In addition, the Advisory Group was advised that without the shared savings clause, the developer/contractor would receive all of the savings. Recognizing that the concerns expressed by the labor representatives were legitimate, the Advisory Group also acknowledged that the problems identified could occur on a contract that did not have a shared savings clause and that there were mechanisms in place to address them through inspections to ensure plan check and building code compliance.

Reciprocal Agreements between Government Entities for Building Official Functions

Testimony was also received by the Advisory Group that when a shared construction contingency clause existed in a lease-purchase agreement, it may be advisable to have an independent third party plan check and inspect the project for code compliance to ensure adequate safeguards are maintained. The Advisory Group discussed whether reciprocal agreements between the state and local governments should be required for performing the building official functions on lease-purchase projects. Due to concerns raised about the operational, contractual, and enforcement implications of such reciprocal agreements and the lack of substantiation indicating the need for independent third party review, the Advisory Group opted not to make a recommendation regarding this issue.

Utilization of Lease-Purchase and Installment-Purchase Agreements as the Financing Method for Public Works Projects

As part of its review of lease-purchase and installment-purchase agreements, the Advisory Group discussed utilization of these agreements as the financing method for public works projects. The Advisory Group received testimony indicating the use of lease-purchase and installment-purchase agreements by government entities in Nevada was limited due to the availability of other more preferable methods of financing capital improvements, including general obligation bonds and revenue bonds. The Advisory Group also reviewed the costs of financing utilizing a lease-purchase or an installment-purchase agreement and the structure of the financing arrangements. Testimony provided to the Advisory Group indicated that it was more expensive to finance a project utilizing a lease-purchase or installment-purchase agreement than utilizing general obligation bonds. It was noted, however, that these types of agreements were an important financial tool for the state and local governments to use in instances where general obligation bonds financing was not feasible. The Advisory Group did not receive testimony indicating there were issues regarding lease-purchase or installment-purchase financing. Statutory changes regarding an exemption from the requirement to obtain an appraisal on government-owned land associated with a lease-purchase agreement, as well as changes regarding the approval of financing terms of lease-purchase and installment-purchase agreements, were recommended and are included in Recommendation Nos. 3 and 4, respectively, contained in this report.

IV. CONCLUSION

The focus of the Advisory Group was to review and evaluate existing laws relating to lease-purchase and installment-purchase agreements by the State of Nevada and local governments, evaluate the applicability of existing public works and purchasing laws with regard to lease-purchase and installment-purchase agreements, and consider changes to existing provisions of law to better serve the needs of the State and local governments. In carrying out its duties, the Advisory Group consulted with the Commission to Study Governmental Purchasing, the Committee on Local Government Finance, the Office of the State Treasurer, the State Public Works Board, and experts in the fields of contracting, labor and purchasing.

The Advisory Group recommends five bill draft requests aimed at improving the lease-purchase and installment-purchase process. These recommendations are intended to strengthen the bidding process and scope-change requirements for lease-purchase and installment-purchase agreements, clarify the role of the State Public Works Board, provide direct authority for certain public entities to enter into lease-purchase and installment-purchase agreements and provide a more transparent process when public entities enter into agreements.

APPENDIX A

SENATE BILL 426, SECTION 31

Senate Bill 426 (Section 31)
(Chapter 508, *Statutes of Nevada 2005*)

Sec. 31. 1. An advisory group is hereby created to conduct an interim study concerning lease-purchase and installment-purchase agreements by public entities. The advisory group must consist of:

(a) One representative from each of the following fields, appointed by the Legislative Commission:

- (1) Public purchasing;
- (2) Labor;
- (3) Public works;
- (4) Construction project management;
- (5) State governmental financing; and
- (6) Local governmental financing.

(b) One Assemblyman who has knowledge in one or more of the fields described in subparagraphs (1) to (6), inclusive, of paragraph (a), appointed by the Speaker of the Assembly.

(c) One Senator who has knowledge in one or more of the fields described in subparagraphs (1) to (6), inclusive, of paragraph (a), appointed by the Majority Leader of the Senate.

2. The study must include, without limitation:

(a) A review of existing laws relating to lease-purchase and installment-purchase agreements;

(b) An evaluation of the applicability of existing laws relating to public works and public purchasing to existing laws relating to lease-purchase and installment-purchase agreements; and

(c) Consideration of changes to existing provisions of law relating to lease-purchase and installment-purchase agreements to better serve the needs of the State and local governments and to promote and protect the interests of Nevada's workforce.

3. In conducting the study required pursuant to this section, the advisory group shall consult with the Commission to Study Governmental Purchasing, the Committee on Local Government Finance, the Office of the State Treasurer, the State Public Works Board and experts in the fields of contracting, labor and purchasing.

4. The advisory group shall submit a report of the results of the study and any recommendations for legislation to the Director of the Legislative Counsel Bureau not later than September 1, 2006, for transmission to the 74th Session of the Nevada Legislature.

APPENDIX B

SUGGESTED LEGISLATION

APPENDIX B

Suggested Legislation

The following Bill Draft Request will be available during the 2007 Legislative Session, or can be accessed after “Introduction” at the following Web site: <http://www.leg.state.nv.us>

- | | |
|---------|--|
| BDR 229 | Provides declaration of legislative intent regarding use of lease-purchase agreements. |
| BDR 230 | Requires approval of changes in scope of lease-purchase projects. |
| BDR 231 | Removes the three-project limitation and the expiration date for the authority to enter into lease-purchase agreements for the Nevada System of Higher Education. Expressly provides authority for the City of Las Vegas to enter into lease-purchase agreements. |
| BDR 424 | Provides for advertisement of proposals for certain lease-purchase agreements. Provides for a design-build process to be utilized when a public entity wishes to construct a building upon land owned by the entity as part of a lease-purchase agreement. Exempts leases of land owned by public entities as part of a lease-purchase agreement from the requirement for an appraisal and public bidding. Authorizes the delegation of authority for approval of certain details of lease-purchase and installment-purchase agreements. |
| BDR 430 | Provides for State Public Works Board to be building official when State constructs building using lease-purchase agreement. |

APPENDIX C

Nevada Revised Statutes
338.1721 through 338.1727

NRS 338.1721 Qualifications of design-build team. To qualify to participate in a project for the design and construction of a public work, a design-build team must:

1. Have the ability to obtain a performance bond and payment bond as required pursuant to [NRS 339.025](#);
2. Have the ability to obtain insurance covering general liability and liability for errors and omissions;
3. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for preliminary proposals;
4. Not have been disqualified from being awarded a contract pursuant to [NRS 338.017](#), [338.13895](#), [338.1475](#) or [408.333](#);
5. Ensure that the members of the design-build team possess the licenses and certificates required to carry out the functions of their respective professions within this State; and
6. If the project is for the design and construction of a public work of the State, ensure that the prime contractor is qualified to bid on a public work of the State pursuant to [NRS 338.1379](#).

(Added to NRS by [1999, 3470](#); A [2001, 252](#), [2022](#); [2003, 119](#), [2131](#); [2005, 1810](#))

NRS 338.1723 Advertisement for preliminary proposals.

1. A public body shall advertise for preliminary proposals for the design and construction of a public work by a design-build team in a newspaper qualified pursuant to [chapter 238](#) of NRS that is published in the county where the public work will be performed. 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.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:
 - (a) A description of the public work to be designed and constructed;
 - (b) An estimate of the cost to design and construct the public work;
 - (c) The dates on which it is anticipated that the separate phases of the design and construction of the public work will begin and end;
 - (d) The date by which preliminary proposals must be submitted to the public body;
 - (e) If the proposal is for a public work of the State, a statement setting forth that the prime contractor must be qualified to bid on a public work of the State pursuant to [NRS 338.1379](#) before submitting a preliminary proposal;
 - (f) A description of the extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the public work that the public body determines to be necessary;
 - (g) A list of the requirements set forth in [NRS 338.1721](#);
 - (h) A list of the factors and relative weight assigned to each factor that the public body will use to evaluate design-build teams who submit a proposal for the public work;
 - (i) Notice that a design-build team desiring to submit a proposal for the public work must include with its proposal the information used by the public body to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of [NRS 338.1725](#) and a description of that information; and
 - (j) A statement as to whether a design-build team that is selected as a finalist pursuant to [NRS 338.1725](#) but is not awarded the design-build contract pursuant to [NRS 338.1727](#) will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement.

(Added to NRS by [1999, 3469](#); A [2001, 252](#), [2015](#), [2022](#); [2003, 119](#), [2131](#), [2441](#); [2005, 1810](#))

NRS 338.1725 Selection of finalists based on preliminary proposals; availability to public of results of evaluations of preliminary proposals and rankings of design-build teams.

1. The public body shall select at least two but not more than four finalists from among the design-build teams that submitted preliminary proposals. If the public body does not receive at least two preliminary proposals from design-build teams that the public body determines to be qualified pursuant to this section and [NRS 338.1721](#), the public body may not contract with a design-build team for the design and construction of the public work.

2. The public body shall select finalists pursuant to subsection 1 by:

(a) Verifying that each design-build team which submitted a preliminary proposal satisfies the requirements of [NRS 338.1721](#); and

(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team; and

(4) The proposed plan of the design-build team to manage the design and construction of the public work that sets forth in detail the ability of the design-build team to design and construct the public work.

3. After the selection of finalists pursuant to this section, the public body shall make available to the public the results of the evaluations of preliminary proposals conducted pursuant to paragraph (b) of subsection 2 and the rankings of the design-build teams who submitted preliminary proposals.

(Added to NRS by [1999, 3470](#); A [2001, 2016](#), [2022](#); [2003, 119](#); [2005, 1811](#))

NRS 338.1727 Request for and submission of final proposals; selection or rejection of final proposals; awarding of contract; partial reimbursement of unsuccessful finalists in certain circumstances; contents of contract; availability to public of certain information.

1. After selecting the finalists pursuant to [NRS 338.1725](#), the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals must:

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

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

2. If one or more of the finalists selected pursuant to [NRS 338.1725](#) is disqualified or withdraws, the public body may select a design-build team from the remaining finalist or finalists.

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

4. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly and be responsive to the criteria that the public body will use to select a design-build team to design and construct the public work described in subsection 1. A design-build team that submits a final proposal which is not responsive shall not be awarded the contract and shall not be eligible for the partial reimbursement of costs provided for in subsection 7.

5. A final proposal is exempt from the requirements of [NRS 338.141](#).

6. After receiving and evaluating the final proposals for the public work, the public body, at a regularly scheduled meeting, shall:

(a) Select the final proposal, using the criteria set forth pursuant to subsections 1 and 3, and award the design-build contract to the design-build team whose proposal is selected; or

(b) Reject all the final proposals.

7. If a public body selects a final proposal and awards a design-build contract pursuant to paragraph (a) of subsection 6, the public body shall:

(a) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (j) of subsection 2 of [NRS 338.1723](#). The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(b) Make available to the public the results of the evaluation of final proposals that was conducted and the ranking of the design-build teams who submitted final proposals. The public body shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

8. A contract awarded pursuant to this section:

(a) Must comply with the provisions of [NRS 338.020](#) to [338.090](#), inclusive.

(b) Must specify:

(1) An amount that is the maximum amount that the public body will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

(c) May set forth the terms by which the design-build team agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design-build team.

(d) Except as otherwise provided in paragraph (e), must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers and agents of the public body.

(e) May require the design-build team to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design-build team or the employees or agents of the design-build team in the performance of the contract.

(f) Must require that the design-build team to whom a contract is awarded assume overall responsibility for ensuring that the design and construction of the public work is completed in a satisfactory manner.

9. Upon award of the design-build contract, the public body shall make available to the public copies of all preliminary and final proposals received.

(Added to NRS by [1999, 3471](#); A [2001, 1272](#), [2017, 2022](#); [2003, 33](#), [119](#), [2027](#), [2132](#), [2442](#); [2005, 1812](#))

APPENDIX D

**Letter Dated April 7, 2006
Regarding State Building Official
from
State Public Works Deputy Manager Evan Dale**



Carson City Office:
505 E. King Street, Room 301
Carson City, Nevada 89701-3700
(775) 684-4141 • Fax (775) 684-4142

Las Vegas Office:
1830 East Sahara Street, Suite 204
Las Vegas, Nevada 89104
(702) 486-5115 • Fax (702) 486-5094

PUBLIC WORKS BOARD

MEMORANDUM

Date: April 7, 2006
To: Tracy Raxter, LCB
From: Evan Dale
Subject: RFI – Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements

Your questions and our responses are presented below:

Suggestion on modifications to NRS to clarify the entity responsible for serving as the building official on state lease-purchase building projects.

NRS 353.590 "Exemption of agreement involving construction of improvement from law requiring competitive bidding and chapter 341 of NRS" states that the construction of an improvement may be conducted as specified in the agreement without complying with the provisions of Chapter 341 of NRS. NRS 341 establishes the Manager of the State Public Works Board Building as the building Official having jurisdiction for projects on State lands. Since local government does not have jurisdiction on State lands, there is no authorized building official having jurisdiction on lease-purchase projects. Therefore, the SPWB recommends the present law be amended so that NRS Section 341.100, 5.(h), and 341.105 be included as a requirement for construction projects.

Suggestions to make the approval of lease-purchase agreements for state building projects and scope changes to those projects more transparent.

At this time, there is no process and/or requirement for the selection of developers, design-builders, and/or contractors for a lease-purchase construction project. A defined process including criteria similar to the selection of design-build teams included in NRS 338 would assist in making this part of the process more transparent.

Chronology of events regarding actions taken by the State Public Works Board on claims regarding prevailing wage violations on the Bryan Building lease-purchase project.

1. Complaint filed with Labor Commission in November, 2004 against AD Construction by two employees, Miguel Vera and Aldo Aguilar, and forwarded to Public Works to investigate. We started our investigation on November 17, 2004 and found that six(6) employees listed as laborers were actually doing work as iron workers. Pursuant to NRS 338.060(1) the contractor, AD Construction, was to forfeit \$15,950.00 for workmen not paid the correct wage and wages owed employees came to \$49,270.54.

2. A pre-hearing held on January 10, 2005 with the Labor Commissioner determined that 2 of the 6 employees were paid correctly and that 3 employees to be paid 80% of their time and 1 employee paid 70% of their time as iron workers.

2

3 On August 2, 2005 the final Administrative Decision and Order from the Labor Commission came through with a fine against AD Construction in the amount of \$11,650.00 and a requirement to pay the employees a total of \$36,089.94 for iron work wages.

4. The fine against AD Construction was put against the Prime Contractor, Jacobsen Construction, in the form of a Deductive Change Order and Jacobsen was then to bill AD Construction for the \$11,650.00. (We can only do Deductive Change Orders against the Prime Contractor on our projects as we are only contracted with them and not their sub contractors).

5. On November 23, 2004 we reviewed a complaint against Jacobsen Construction filed by the Carpenters/Contractors Cooperation Committee involving eleven(11) employees listed as carpenters but were actually doing iron worker's work. The fine against Jacobsen Construction per NRS 338.060(1) came to \$1,700.00 and the total owed to employees came to \$2,535.51.

6. On January 24, 2005 a Deductive Change Order with the Stipulation and Order from the Labor Commissioner was issued for the forfeiture from Jacobsen Construction in the amount of \$1,700.00.

7. On May 4, 2005 our agency reviewed the complaint filed against Tedesco with the Nevada Labor Commission by Charlie Nahorniak and Rudy Ramos of the Carpenters/Contractors Cooperation Committee, Inc on behalf of employee Jose Giron. Our investigation showed the employee was doing carpenter work and not laborer work. The amount owed Mr. Giron was \$420.03. The fine against Tedesco per NRS 338.060(1) came to \$450.00.

8. A Deductive Change order with the Stipulation and Order from the Labor Commissioner against Jacobsen Construction was filed July 25, 2005 for the fine against Tedesco Construction for \$450.00.

Chronology of events regarding actions taken by the State Public Works Board upon receiving notifications of the failure of the contractor/subcontractor to pay benefits owed for floor coverers working on the Bryan Building lease-purchase project.

On June 7, 2005 our office received a copy from Luke Hermann of Jacobsen Construction, of a complaint filed by Todd Koch of the International Union of Painters and Allied Trades stating that Ford and Son were not current with union benefit payments for their employees and that they owed \$7.60/hour for each employee. We reviewed the certified payrolls and there was no indication that union dues were included in the calculation of total compensation to the employees. On July 15, 2005 Ford and Son informed us that they dropped out of the union on June 1, 2005.

Response to the allegation that based on the 50 percent savings clause in the Design-Build Agreement and General Conditions document for the Bryan Building lease-purchase project, the State Public Works Board overlooked and sided with the contractor in illegal activity (i.e. failure to comply with NRS 608.150).

The State Public Works Board denies the allegation. Every wage claim filed on this project was investigated and settled in accordance with the procedures stipulated by the Labor Commissioner. The Labor Commissioner makes the final ruling on all wage claims and that office is, most likely, not even aware of the 50% clause.

The purpose of NRS 608.150 is to hold the prime contractor liable for any unpaid wages of the sub-contractors. The statute also requires the district attorney to initiate civil proceedings against a prime contractor that fails to comply with the statute. Our records indicate that there are no outstanding wage claims on this project. Furthermore, since the Public Works Board was not a contractor on the project, the logic of this allegation is unclear.

APPENDIX E

Nevada Revised Statutes
341.100 through 341.105

NRS 341.100 Manager, deputies and assistants: Appointment; classification; qualifications; duties and removal of Manager.

1. The Board may appoint a Manager who serves at the pleasure of the Board and the Governor. The Board or the Governor may remove the Manager for inefficiency, neglect of duty, malfeasance or for other just cause.

2. The Manager, with the approval of the Board, may appoint a deputy for professional services and a deputy for administrative, fiscal and constructional services. In addition, the Manager may appoint such other technical and clerical assistants as may be necessary to carry into effect the provisions of this chapter.

3. The Manager and his deputies are in the unclassified service of the State. Except as otherwise provided in [NRS 284.143](#), the Manager and each deputy shall devote his entire time and attention to the business of his office and shall not pursue any other business or occupation or hold any other office of profit.

4. The Manager and his deputy for professional services must each be a licensed professional engineer pursuant to the provisions of [chapter 625](#) of NRS or an architect registered pursuant to the provisions of [chapter 623](#) of NRS. The deputy manager for administrative, fiscal and constructional services must have a comprehensive knowledge of principles of administration and a working knowledge of principles of engineering or architecture as determined by the Board.

5. The Manager shall:

(a) Serve as the Secretary of the Board.

(b) Manage the daily affairs of the Board.

(c) Represent the Board before the Legislature.

(d) Prepare and submit to the Board, for its approval, the recommended priority for proposed capital improvement projects and provide the Board with an estimate of the cost of each project.

(e) Make recommendations to the Board for the selection of architects, engineers and contractors.

(f) Make recommendations to the Board concerning the acceptance of completed projects.

(g) Advise the Board and the Legislature, or the Interim Finance Committee if the Legislature is not in session, on a monthly basis of the progress of all public works projects which are a part of the approved capital improvement program.

(h) Serve as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government.

[Part 4:102:1937; A 1947, 283; 1943 NCL § 6975.04] + [22:295:1953; A 1955, 525]—(NRS A 1959, 787; 1960, 394; 1961, 655; 1963, 1331; 1965, 703; 1967, 1494; 1971, 166, 1431; 1981, 1278; 1983, 1960; 1987, 1485; 1991, 673; 1995, 2312; 1997, 1067; [2001, 1443](#); [2003, 2483](#))

NRS 341.105 Manager or his designated representative's authority to issue order to compel cessation of work; penalties; contest; enforcement.

1. When acting in the capacity of building official pursuant to paragraph (h) of subsection 5 of [NRS 341.100](#), the Manager or his designated representative may issue an order to compel the cessation of work on all or any portion of a building or structure based on health or safety reasons or for violations of applicable building codes or other laws or regulations.

2. If a person receives an order issued pursuant to subsection 1, the person shall immediately cease work on the building or structure or portion thereof.

3. Any person who willfully refuses to comply with an order issued pursuant to subsection 1 or who willfully encourages another person to refuse to comply or assists another person in refusing to comply with such an order is guilty of a misdemeanor and shall be punished as provided in [NRS 193.150](#). Any penalties collected pursuant to this subsection must be deposited with the State Treasurer for credit to the State General Fund.

4. In addition to the criminal penalty set forth in subsection 3, the Manager may impose an administrative penalty of not more than \$1,000 per day for each day that a person violates subsection 3.

5. If a person wishes to contest an order issued to him pursuant to subsection 1, the person may bring an action in district court. The court shall give such a proceeding priority over other civil matters that are not expressly given priority by law. An action brought pursuant to this subsection does not stay enforcement of the order unless the district court orders otherwise.

6. If a person refuses to comply with an order issued pursuant to subsection 1, the Manager may bring an action in the name of the State of Nevada in district court to compel compliance and to collect any administrative penalties imposed pursuant to subsection 4. The court shall give such a proceeding priority over other civil matters that are not expressly given priority by law. Any attorney's fees and costs awarded by the court in favor of the State and any penalties collected in the action must be deposited with the State Treasurer for credit to the State General Fund.

7. No right of action exists in favor of any person by reason of any action or failure to act on the part of the Board, the Manager or any officers, employees or agents of the Board in carrying out the provisions of this section.

8. As used in this section, "person" includes a government and a governmental subdivision, agency or instrumentality.

(Added to NRS by [2003, 2482](#))

APPENDIX F
LEGISLATIVE DECLARATION

**CONCEPTUAL LANGUAGE FOR A LEGISLATIVE DECLARATION REGARDING
THE USE OF LEASE-PURCHASE AGREEMENTS**
(To be included as new language in NRS)

The Legislature hereby finds and declares that:

1. The authority provided by other specific statutes for the government of this State and the political subdivisions of this State to use lease-purchase and installment-purchase agreements provides an important and valuable option for these governmental entities and, when this authority is used properly, provides great benefit to the residents of this State.

2. The statutory provisions governing the use of lease-purchase and installment-purchase agreements should be interpreted to allow the process of entering into and carrying out these agreements to be as streamlined and efficient as possible.

3. The government of this State and the political subdivisions of this State should not use lease-purchase and installment-purchase agreements to:

- (a) Engage in or allow bid-shopping.***
- (b) Avoid or circumvent any requirement regarding the payment of prevailing wages for public works.***

4. When using lease-purchase and installment-purchase agreements, the government of this State and the political subdivisions of this State should provide for the preferential hiring of Nevada residents to the extent otherwise required by law.