

**A.B. 401**

ASSEMBLY BILL NO. 401—ASSEMBLYMEN HARDY, GRADY,  
BROWN, ANDONOV, BEERS, CHRISTENSEN, GEDDES,  
GIBBONS, GOICOECHEA, GRIFFIN, GUSTAVSON, HETRICK,  
MABEY, MCCLAIN AND WEBER

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Allows public body or Department of Transportation  
to authorize private entity to acquire, construct,  
improve, maintain or operate transportation facility.  
(BDR 28-798)

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 works; providing in skeleton form for  
the authorization by a public body or the Department of  
Transportation of a private entity to acquire, construct,  
improve, maintain or operate, or any combination thereof,  
a transportation facility; and providing other matters  
properly relating thereto.

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

- 1     **Section 1.** Chapter 338 of NRS is hereby amended by adding
- 2     thereto the provisions set forth as sections 2 to 8, inclusive, of this
- 3     act.
- 4     **Sec. 2.** *“Transportation facility” means a road, bridge,*
- 5     *tunnel, overpass, airport, mass transit facility, parking facility for*
- 6     *vehicles or similar commercial facility used for the transportation*
- 7     *of persons or goods, including, without limitation, any other*
- 8     *property that is needed to operate the facility.*
- 9     **Sec. 3.** *A public body may authorize a person to acquire,*
- 10    *construct, improve, maintain or operate, or any combination*



1 *thereof, a transportation facility pursuant to section 4 or 5 of this*  
2 *act.*

3 **Sec. 4. 1.** *A person may submit a request to a public body to*  
4 *acquire, construct, improve, maintain or operate, or any*  
5 *combination thereof, a transportation facility.*

6 **2.** *The request must be accompanied by the following*  
7 *information, unless waived by the public body:*

8 (a) *A topographic map indicating the location of the*  
9 *transportation facility.*

10 (b) *A description of the transportation facility, including,*  
11 *without limitation, the conceptual design of the facility and all*  
12 *proposed interconnections with other transportation facilities.*

13 (c) *The projected total cost of the transportation facility over*  
14 *its life and the proposed date for acquisition of, commencement of*  
15 *the construction of, or improvements to the transportation facility.*

16 (d) *A statement setting forth the method by which the operator*  
17 *of the transportation facility proposes to secure all property*  
18 *interests required for the transportation facility. The statement*  
19 *must include, without limitation:*

20 (1) *The names and addresses, if known, of the current*  
21 *owners of any property needed for the transportation facility;*

22 (2) *The nature of the property interests to be acquired; and*

23 (3) *Any property that requires condemnation by the public*  
24 *body.*

25 (e) *Information relating to the current transportation plans, if*  
26 *any, of any governmental entity in the jurisdiction of which any*  
27 *portion of the transportation facility is located.*

28 (f) *A list of all permits and approvals required for the*  
29 *acquisition or construction of or improvement to the*  
30 *transportation facility from local, state or federal agencies and a*  
31 *projected schedule for obtaining those permits and approvals.*

32 (g) *A list of the facilities of any public utility that will be*  
33 *crossed by the transportation facility and a statement of the plans*  
34 *of the operator to accommodate such crossings.*

35 (h) *A statement setting forth the general plans of the person*  
36 *submitting the request for financing and operating the*  
37 *transportation facility.*

38 (i) *The names and addresses of the persons who may be*  
39 *contacted for further information concerning the request.*

40 (j) *Any additional material and information that the public*  
41 *body may request.*

42 **Sec. 5.** *A public body may request persons to submit*  
43 *proposals to acquire, construct, improve, maintain or operate, or*  
44 *any combination thereof, a transportation facility.*



1       **Sec. 6. 1.** *A public body may approve a request or proposal*  
2 *submitted pursuant to section 4 or 5 of this act if the public body*  
3 *determines that the transportation facility serves a public purpose.*  
4 *To determine whether the transportation facility serves a public*  
5 *purpose, the public body shall consider whether:*

6       *(a) There is a public need for the type of transportation facility*  
7 *that is proposed;*

8       *(b) The proposed interconnections between the transportation*  
9 *facility and existing transportation facilities and the plans of*  
10 *the person submitting the request for the operation of the*  
11 *transportation facility are reasonable and compatible with the*  
12 *transportation plan of the State and with the plans of any other*  
13 *governmental entity in the jurisdiction of which any portion of the*  
14 *transportation facility will be located;*

15       *(c) The estimated cost of the transportation facility is*  
16 *reasonable in relation to similar transportation facilities;*

17       *(d) The plans of the person submitting the request will result*  
18 *in the timely acquisition or construction of, or improvement to the*  
19 *transportation facility or its more efficient operation; and*

20       *(e) The long-term quality of the transportation facility will*  
21 *meet a level of performance over a sufficient duration of time to*  
22 *provide real value to the public.*

23       **2.** *In evaluating a request or proposal submitted pursuant to*  
24 *section 4 or 5 of this act, the public body may rely on internal staff*  
25 *reports prepared by personnel of the public body who are familiar*  
26 *with the operation of similar transportation facilities or the advice*  
27 *of outside advisors or consultants with relevant experience.*

28       **3.** *A public body may charge a reasonable fee to cover the*  
29 *costs of processing, reviewing and evaluating a request or*  
30 *proposal submitted pursuant to section 4 or 5 of this act,*  
31 *including, without limitation, reasonable fees for the services of*  
32 *an attorney or a financial or other consultant or advisor.*

33       **4.** *The approval of a request or proposal by the public body is*  
34 *contingent on the person who submitted the request or proposal*  
35 *entering into an agreement with the public body. In such an*  
36 *agreement, the public body shall include criteria that address the*  
37 *long-term quality of the transportation facility.*

38       **5.** *In connection with the approval of a transportation*  
39 *facility, the public body shall establish a date for the acquisition*  
40 *of, commencement of the construction of, or improvements to the*  
41 *transportation facility. The public body may extend the date from*  
42 *time to time.*

43       **Sec. 7.** *A public body may contract with a person whose*  
44 *request or proposal is approved pursuant to section 6 of this act*  
45 *for transportation services to be provided by the transportation*



1 *facility in exchange for such payments for service and other*  
2 *consideration as the public body may deem appropriate.*

3 **Sec. 8.** *The public body may take any action necessary to*  
4 *obtain federal, state or local assistance for a transportation facility*  
5 *that it approves and may enter into any contracts required to*  
6 *receive such assistance. The public body may determine if it serves*  
7 *the public purpose for all or a portion of the costs of the*  
8 *transportation facility to be paid, directly or indirectly, from the*  
9 *proceeds of a grant or loan made by the local, state or Federal*  
10 *Government or any agency or instrumentality thereof.*

11 **Sec. 9.** NRS 338.1711 is hereby amended to read as follows:

12 338.1711 1. Except as otherwise provided in this section ~~§~~  
13 *and sections 2 to 8, inclusive, of this act*, a public body shall  
14 contract with a prime contractor for the construction of a public  
15 work for which the estimated cost exceeds \$100,000.

16 2. A public body may contract with a design-build team for the  
17 design and construction of a public work that is a discrete project if  
18 the public body determines that:

19 (a) The public work is:

20 (1) A plant or facility for the treatment and pumping of water  
21 or the treatment and disposal of wastewater or sewage, the estimated  
22 cost of which exceeds \$100,000,000; or

23 (2) Any other type of public work, except a stand-alone  
24 underground utility project, the estimated cost of which exceeds  
25 ~~[\$30,000,000;] \$20,000,000;~~ and

26 (b) Contracting with a design-build team will enable the public  
27 body to:

28 (1) Design and construct the public work at a cost that is  
29 significantly lower than the cost that the public body would incur to  
30 design and construct the public work using a different method;

31 (2) Design and construct the public work in a shorter time  
32 than would be required to design and construct the public work  
33 using a different method, if exigent circumstances require that the  
34 public work be designed and constructed within a short time; or

35 (3) Ensure that the design and construction of the public  
36 work is properly coordinated, if the public work is unique, highly  
37 technical and complex in nature.

38 3. Each state agency and each *department, division, board,*  
39 *unit or agency of a* local government may contract with a design-  
40 build team ~~whose~~ *not more than three times or on not more than*  
41 *20 percent of its projects, whichever is greater*, in each fiscal year  
42 for the design and construction of a public work if the governing  
43 body of the entity that is responsible for financing the public work  
44 determines that:

45 (a) The estimated cost of the public work is:



1 (1) At least \$250,000 but less than ~~[\$30,000,000]~~  
2 **\$20,000,000** if the public work is the construction of a park and  
3 appurtenances thereto, the rehabilitation or remodeling of a public  
4 building, or the construction of an addition to a public building;

5 (2) At least \$500,000 but less than ~~[\$30,000,000]~~  
6 **\$20,000,000** if the public work is the construction of a new public  
7 building;

8 (3) At least \$5,000,000 but less than \$100,000,000 if the  
9 public work is the construction, alteration or repair of a plant or  
10 facility for the treatment and pumping of water or the treatment and  
11 disposal of wastewater or sewage; or

12 (4) At least ~~[\$5,000,000]~~ **\$2,500,000** but less than  
13 ~~[\$30,000,000]~~ **\$20,000,000** if the public work is the construction,  
14 alteration or repair of any other fixed works as described in  
15 subsection 2 of NRS 624.215; and

16 (b) Contracting with a design-build team will enable the public  
17 body to:

18 (1) Design and construct the public work at a cost that is  
19 significantly lower than the cost that the public body would incur to  
20 design and construct the public work using a different method;

21 (2) Design and construct the public work in a shorter time  
22 than would be required to design and construct the public work  
23 using a different method, if exigent circumstances require that the  
24 public work be designed and constructed within a short time; or

25 (3) Ensure that the design and construction of the public  
26 work is properly coordinated, if the public work is unique, highly  
27 technical and complex in nature.

28 4. Notwithstanding the provisions of subsections 1, 2 and 3, a  
29 public body may contract with:

30 (a) A nonprofit organization for the design and construction of a  
31 project to restore, enhance or develop wetlands.

32 (b) A prime contractor or design-build team with respect to a  
33 public work if the public body determines that the public work is:

34 (1) Not part of a larger public work; and

35 (2) Limited in scope to:

36 (I) Removal of asbestos;

37 (II) Replacement of equipment or systems for heating,  
38 ventilation and air-conditioning;

39 (III) Replacement of a roof;

40 (IV) Landscaping; or

41 (V) Restoration, enhancement or development of  
42 wetlands.

43 5. As used in this section, "state agency" includes an agency,  
44 bureau, board, commission, department, division or any other unit of  
45 the Legislative Department, Judicial Department or Executive



1 Department of State Government or the University and Community  
2 College System of Nevada.

3 **Sec. 10.** Chapter 408 of NRS is hereby amended by adding  
4 thereto the provisions set forth as sections 11 to 17, inclusive, of this  
5 act.

6 **Sec. 11.** *“Transportation facility” means a road, bridge,*  
7 *tunnel, overpass, airport, mass transit facility, parking facility for*  
8 *vehicles or similar commercial facility used for the transportation*  
9 *of persons or goods, including, without limitation, any other*  
10 *property that is needed to operate the facility.*

11 **Sec. 12.** *The Department may authorize a person to acquire,*  
12 *construct, improve, maintain or operate, or any combination*  
13 *thereof, a transportation facility pursuant to section 13 or 14 of*  
14 *this act.*

15 **Sec. 13.** *1. A person may submit a request to the*  
16 *Department to acquire, construct, improve, maintain or operate, or*  
17 *any combination thereof, a transportation facility.*

18 *2. The request must be accompanied by the following*  
19 *information, unless waived by the Department:*

20 *(a) A topographic map indicating the location of the*  
21 *transportation facility.*

22 *(b) A description of the transportation facility, including,*  
23 *without limitation, the conceptual design of the facility and all*  
24 *proposed interconnections with other transportation facilities.*

25 *(c) The projected total cost of the transportation facility over*  
26 *its life and the proposed date for acquisition of, commencement of*  
27 *the construction of, or improvements to the transportation facility.*

28 *(d) A statement setting forth the method by which the operator*  
29 *of the transportation facility proposes to secure all property*  
30 *interests required for the transportation facility. The statement*  
31 *must include, without limitation:*

32 *(1) The names and addresses, if known, of the current*  
33 *owners of any property needed for the transportation facility;*

34 *(2) The nature of the property interests to be acquired; and*

35 *(3) Any property that requires condemnation by the*  
36 *Department.*

37 *(e) Information relating to the current transportation plans, if*  
38 *any, of any governmental entity in the jurisdiction of which any*  
39 *portion of the transportation facility is located.*

40 *(f) A list of all permits and approvals required for the*  
41 *acquisition or construction of or improvement to the*  
42 *transportation facility from local, state or federal agencies and a*  
43 *projected schedule for obtaining those permits and approvals.*



1 (g) A list of the facilities of any public utility that will be  
2 crossed by the transportation facility and a statement of the plans  
3 of the operator to accommodate such crossings.

4 (h) A statement setting forth the general plans of the person  
5 submitting the request for financing and operating the  
6 transportation facility.

7 (i) The names and addresses of the persons who may be  
8 contacted for further information concerning the request.

9 (j) Any additional material and information that the  
10 Department may request.

11 **Sec. 14.** The Department may request persons to submit  
12 proposals to acquire, construct, improve, maintain or operate, or  
13 any combination thereof, a transportation facility.

14 **Sec. 15. 1.** The Department may approve a request or  
15 proposal submitted pursuant to section 13 or 14 of this act if the  
16 Department determines that the transportation facility serves a  
17 public purpose. To determine whether the transportation facility  
18 serves a public purpose, the Department shall consider whether:

19 (a) There is a public need for the type of transportation facility  
20 that is proposed;

21 (b) The proposed interconnections between the transportation  
22 facility and existing transportation facilities and the plans of  
23 the person submitting the request for the operation of the  
24 transportation facility are reasonable and compatible with the  
25 transportation plan of the State and with the plans of any other  
26 governmental entity in the jurisdiction of which any portion of the  
27 transportation facility will be located;

28 (c) The estimated cost of the transportation facility is  
29 reasonable in relation to similar transportation facilities;

30 (d) The plans of the person submitting the request will result  
31 in the timely acquisition or construction of, or improvement to the  
32 transportation facility or its more efficient operation; and

33 (e) The long-term quality of the transportation facility will  
34 meet a level of performance over a sufficient duration of time to  
35 provide real value to the public.

36 2. In evaluating a request or proposal submitted pursuant to  
37 section 13 or 14 of this act, the Department may rely on internal  
38 staff reports prepared by personnel of the Department who are  
39 familiar with the operation of similar transportation facilities or  
40 the advice of outside advisors or consultants with relevant  
41 experience.

42 3. The Department may charge a reasonable fee to cover the  
43 costs of processing, reviewing and evaluating a request or  
44 proposal submitted pursuant to section 13 or 14 of this act,





1 *including, without limitation, reasonable fees for the services of*  
2 *an attorney or a financial or other consultant or advisor.*

3 *4. The approval of a request or proposal by the Department is*  
4 *contingent on the person who submitted the request or proposal*  
5 *entering into an agreement with the Department. In such an*  
6 *agreement, the Department shall include criteria that address the*  
7 *long-term quality of the transportation facility.*

8 *5. In connection with the approval of a transportation*  
9 *facility, the Department shall establish a date for the acquisition*  
10 *of, commencement of the construction of, or improvements to, the*  
11 *transportation facility. The Department may extend the date from*  
12 *time to time.*

13 **Sec. 16.** *The Department may contract with a person whose*  
14 *request or proposal is approved pursuant to section 15 of this act*  
15 *for transportation services to be provided by the transportation*  
16 *facility in exchange for such payments for service and other*  
17 *consideration as the Department may deem appropriate.*

18 **Sec. 17.** *The Department may take any action necessary to*  
19 *obtain federal, state or local assistance for a transportation facility*  
20 *that it approves and may enter into any contracts required to*  
21 *receive such assistance. The Department may determine if it serves*  
22 *the public purpose for all or a portion of the costs of the*  
23 *transportation facility to be paid, directly or indirectly, from the*  
24 *proceeds of a grant or loan made by the local, state or Federal*  
25 *Government or any agency or instrumentality thereof.*

26 **Sec. 18.** NRS 408.388 is hereby amended to read as follows:

27 408.388 1. ~~The~~ *Except as otherwise provided in sections*  
28 *11 to 17, inclusive, of this act, the* Department may contract with a  
29 design-build team for the design and construction of a project if the  
30 Department determines that:

31 (a) Except as otherwise provided in subsection 2, the estimated  
32 cost of the project exceeds \$30,000,000; and

33 (b) Contracting with a design-build team will enable the  
34 Department to:

35 (1) Design and construct the project at a cost that is  
36 significantly lower than the cost that the Department would incur to  
37 design and construct the project using a different method;

38 (2) Design and construct the project in a shorter time than  
39 would be required to complete the project using a different method,  
40 if exigent circumstances require that the project be designed and  
41 constructed within a short time; or

42 (3) Ensure that the design and construction of the project is  
43 properly coordinated, if the project is unique, highly technical and  
44 complex in nature.





1 2. Notwithstanding the provisions of subsection 1, the  
2 Department may, once in each fiscal year, contract with a design-  
3 build team for the design and construction of a project the estimated  
4 cost of which is at least \$5,000,000 but less than \$30,000,000 if the  
5 Department makes the determinations otherwise required pursuant  
6 to paragraph (b) of subsection 1.  
7 **Sec. 19.** This act becomes effective on July 1, 2003.

