

Assembly Bill No. 129–Committee on Government Affairs

CHAPTER.....

AN ACT relating to public investments; revising certain limitations on the investment of state money; revising certain limitations on the investment of money in the trust fund for prepaid tuition; authorizing the state treasurer to employ investment and financial advisers; and providing other matters properly relating thereto.

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

Section 1. NRS 353B.160 is hereby amended to read as follows:

353B.160 1. The board shall create a comprehensive plan that specifies the policies for investment which the state treasurer shall follow in his administration of the trust fund.

2. The board may authorize the state treasurer to invest the property of the trust fund in:

(a) A bond, note, certificate or other general obligation of the State of Nevada, or of a county, city, general improvement district or school district of the State of Nevada.

(b) A corporate bond of a corporation created by or existing under the laws of the United States or of a state, district or territory of the United States with a rating not lower than ~~["BAA/BBB"]~~ *"A" or its equivalent* by a nationally recognized rating service. The total amount invested in such bonds must not exceed ~~15~~ *50* percent of the book value of the total fixed income investments of the trust fund.

(c) Commercial paper of a corporation created by or existing under the laws of the United States or of a state, district or territory of the United States or of a wholly owned subsidiary of such a corporation with a rating not lower than A-3 or P-3 by a nationally recognized rating service.

(d) A bond, note, debenture or other valid obligation that is issued by the Treasury of the United States.

(e) A bond, note, debenture or other security *that is issued by an agency or instrumentality of the United States or* that is fully guaranteed by the United States in:

(1) The Federal Farm Credit Bank;

(2) The Federal National Mortgage Association;

(3) The Federal Home Loan Bank; ~~for~~

(4) The Federal Home Loan Mortgage Corporation ~~1~~ ; or

(5) The Government National Mortgage Association.

(f) A bond, note, debenture or other security in the Student Loan Marketing Association, regardless of whether it is guaranteed by the United States.

(g) *Collateralized mortgage obligations that are rated “AAA” or its equivalent by a nationally recognized rating service.*

(h) *Asset-backed securities that are rated “AAA” or its equivalent by a nationally recognized rating service.*

(i) Money market mutual funds that:

- (1) Are registered with the Securities and Exchange Commission;
- (2) Are rated by a nationally recognized rating service as “A” or its equivalent, or better; and
- (3) Invest only in securities issued by the Federal Government or agencies of the Federal Government or in repurchase agreements fully collateralized by such securities.

The total dollar amount invested in such mutual funds must not exceed 20 percent of the total dollar amount of the trust fund that is invested.

~~(h)~~ (j) Common or preferred stock of a corporation created by or existing under the laws of the United States or of a state, district or territory of the United States, if:

- (1) The stock of the corporation is:
 - (I) Listed on a national stock exchange; or
 - (II) Traded in the over-the-counter market, if the price quotations for the over-the-counter stock are quoted by the National Association of Securities Dealers Automated Quotations System (NASDAQ);
- (2) The outstanding shares of the corporation have a total market value of not less than \$50,000,000;
- (3) The maximum investment in stock is not greater than 60 percent of the book value of the total investments of the trust fund;
- (4) ~~(The)~~ *Except for investments made pursuant to paragraph (m), the* amount of an investment in a single corporation is not greater than 3 percent of the book value of the assets of the trust fund; and
- (5) ~~(The)~~ *Except for investments made pursuant to paragraph (m), the* total amount of shares owned by the trust fund is not greater than 5 percent of the outstanding stock of a single corporation.

~~(i)~~ (k) A covered call or put option on securities that are traded on one or more of the regulated exchanges in the United States.

~~(j)~~ (l) A pooled or commingled real estate fund or a real estate security that is managed by a corporate trustee or by an investment advisory firm that is registered with the Securities and Exchange Commission, either of which may be retained by the board as an investment manager. The shares and the pooled or commingled fund must be held in trust. The total book value of an investment made under this paragraph must not at any time be greater than 5 percent of the total book value of all investments of the trust fund.

(m) Mutual funds or common trust funds that consist of any combination of the investments listed in paragraphs (a) to (l), inclusive.

3. The state treasurer shall exercise the standard of care in investing the property of the fund that a person of prudence, discretion and intelligence would exercise in the management of his own affairs, given the prevailing circumstances, not in regard to speculation but rather to the permanent disposition of the property, considering the potential income from and the probable safety of his capital.

4. Subject to the terms, conditions, limitations and restrictions set forth in this section, the state treasurer may sell, assign, transfer or dispose of the property and investments of the trust fund upon the approval of a majority of the board.

5. The assets of the trust fund:

(a) Must be maintained, invested and expended solely for the purposes of this chapter; and

(b) Must not be loaned, transferred or otherwise used for a purpose other than the purposes of this chapter.

6. The state treasurer shall credit any income derived from an investment or a gain from a sale or exchange of an investment to the trust fund.

7. The state treasurer shall acquire each investment for the trust fund at a price not to exceed the prevailing market value for such an investment.

8. Each investment in the trust fund must be clearly marked to indicate ownership by the trust fund.

9. The state treasurer, an employee of the state treasurer, or a member or employee of the board shall not:

(a) Have a direct or indirect interest in the income, gain or profit of an investment that the state treasurer makes;

(b) Receive pay or emolument for his services in connection with an investment that the state treasurer makes; or

(c) Become an endorser, surety or obligor for money that is borrowed from the trust fund.

10. If the annual actuarial study performed pursuant to NRS 353B.190 reveals that there is insufficient money to ensure the actuarial soundness of the trust fund, the board shall modify the terms of subsequent prepaid tuition contracts.

11. The terms, conditions, limitations and restrictions regarding investments of the trust fund listed in this section apply only at the time an investment is originally acquired and must not be construed to require the liquidation of an investment at any time.

Sec. 2. NRS 355.140 is hereby amended to read as follows:

355.140 1. In addition to other investments provided for by a specific statute, the following bonds and other securities are proper and lawful investments of any of the money of this state, of its various departments, institutions and agencies, and of the state insurance fund:

- (a) Bonds and certificates of the United States;
- (b) Bonds, notes, debentures and loans if they are underwritten by or their payment is guaranteed by the United States;
- (c) Obligations or certificates of the United States Postal Service, the Federal National Mortgage Association, *the Government National Mortgage Association*, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation or the Student Loan Marketing Association, whether or not guaranteed by the United States;
- (d) Bonds of this state or other states of the Union;
- (e) Bonds of any county of this state or of other states;
- (f) Bonds of incorporated cities in this state or in other states of the Union, including special assessment district bonds if those bonds provide that any deficiencies in the proceeds to pay the bonds are to be paid from the general fund of the incorporated city;
- (g) General obligation bonds of irrigation districts and drainage districts in this state which are liens upon the property within those districts, if the value of the property is found by the board or commission making the investments to render the bonds financially sound over ~~and above~~ all other obligations of the districts;
- (h) Bonds of school districts within this state;
- (i) Bonds of any general improvement district whose population is 200,000 or more and which is situated in two or more counties of this state or of any other state, if:
 - (1) The bonds are general obligation bonds and constitute a lien upon the property within the district which is subject to taxation; and
 - (2) That property is of an assessed valuation of not less than five times the amount of the bonded indebtedness of the district;
- (j) Medium-term obligations for counties, cities and school districts authorized pursuant to chapter 350 of NRS;
- (k) Loans bearing interest at a rate determined by the state board of finance when secured by first mortgages on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, and of unexceptional title and free from all encumbrances;
- (l) Farm loan bonds, consolidated farm loan bonds, debentures, consolidated debentures and other obligations issued by federal land banks and federal intermediate credit banks under the authority of the Federal Farm Loan Act, formerly 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021 to 1129, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to 2259, inclusive, and bonds, debentures, consolidated debentures and other obligations issued by banks for cooperatives under the authority of the Farm Credit Act of 1933, formerly 12 U.S.C. §§ 1131 to 1138e, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to 2259, inclusive, excluding such money thereof as has been received or which may be received hereafter from the Federal Government or received pursuant to some federal law which governs the investment thereof;

(m) Negotiable certificates of deposit issued by commercial banks or insured savings and loan associations;

(n) Bankers' acceptances of the kind and maturities made eligible by law for rediscount with Federal Reserve banks or trust companies which are members of the Federal Reserve System, except that acceptances may not exceed 180 days' maturity, and may not, in aggregate value, exceed 20 percent of the total par value of the portfolio as determined on the date of purchase;

(o) Commercial paper issued by a corporation organized and operating in the United States or by a depository institution licensed by the United States or any state and operating in the United States that:

(1) At the time of purchase has a remaining term to maturity of no more than 270 days; and

(2) Is rated by a nationally recognized rating service as "A-1," "P-1" or its equivalent, or better,

except that investments pursuant to this paragraph may not, in aggregate value, exceed 20 percent of the total par value of the portfolio as determined on the date of purchase, and if the rating of an obligation is reduced to a level that does not meet the requirements of this paragraph, it must be sold as soon as possible;

(p) Notes, bonds and other unconditional obligations for the payment of money, except certificates of deposit that do not qualify pursuant to paragraph (m), issued by corporations organized and operating in the United States or by depository institutions licensed by the United States or any state and operating in the United States that:

(1) Are purchased from a registered broker-dealer;

(2) At the time of purchase have a remaining term to maturity of no more than ~~13~~ 5 years; and

(3) Are rated by a nationally recognized rating service as "A" or its equivalent, or better,

except that investments pursuant to this paragraph may not, in aggregate value, exceed 20 percent of the total par value of the portfolio, and if the rating of an obligation is reduced to a level that does not meet the requirements of this paragraph, it must be sold as soon as possible;

(q) Money market mutual funds which:

(1) Are registered with the Securities and Exchange Commission;

(2) Are rated by a nationally recognized rating service as "AAA" or its equivalent; and

(3) Invest only in securities issued by the Federal Government or agencies of the Federal Government or in repurchase agreements fully collateralized by such securities; ~~and~~

(r) Collateralized mortgage obligations that are rated by a nationally recognized rating service as "AAA" or its equivalent ~~and~~ ; and

(s) Asset-backed securities that are rated by a nationally recognized rating service as "AAA" or its equivalent.

2. Repurchase agreements are proper and lawful investments of money of the state and the state insurance fund for the purchase or sale of securities which are negotiable and of the types listed in subsection 1 if made in accordance with the following conditions:

(a) The state treasurer shall designate in advance and thereafter maintain a list of qualified counterparties which:

(1) Regularly provide audited and, if available, unaudited financial statements to the state treasurer;

(2) The state treasurer has determined to have adequate capitalization and earnings and appropriate assets to be highly credit worthy; and

(3) Have executed a written master repurchase agreement in a form satisfactory to the state treasurer and the state board of finance pursuant to which all repurchase agreements are entered into. The master repurchase agreement must require the prompt delivery to the state treasurer and the appointed custodian of written confirmations of all transactions conducted thereunder, and must be developed giving consideration to the Federal Bankruptcy Act.

(b) In all repurchase agreements:

(1) At or before the time money to pay the purchase price is transferred, title to the purchased securities must be recorded in the name of the appointed custodian, or the purchased securities must be delivered with all appropriate, executed transfer instruments by physical delivery to the custodian;

(2) The state must enter *into* a written contract with the custodian appointed pursuant to subparagraph (1) which requires the custodian to:

(I) Disburse cash for repurchase agreements only upon receipt of the underlying securities;

(II) Notify the state when the securities are marked to the market if the required margin on the agreement is not maintained;

(III) Hold the securities separate from the assets of the custodian; and

(IV) Report periodically to the state concerning the market value of the securities;

(3) The market value of the purchased securities must exceed 102 percent of the repurchase price to be paid by the counterparty and the value of the purchased securities must be marked to the market weekly;

(4) The date on which the securities are to be repurchased must not be more than 90 days after the date of purchase; and

(5) The purchased securities must not have a term to maturity at the time of purchase in excess of 10 years.

3. As used in subsection 2:

(a) "Counterparty" means a bank organized and operating or licensed to operate in the United States pursuant to federal or state law or a securities dealer which is:

(1) A registered broker-dealer

;

(2) Designated by the Federal Reserve Bank of New York as a “primary” dealer in United States government securities; and

(3) In full compliance with all applicable capital requirements.

(b) “Repurchase agreement” means a purchase of securities by the state or state insurance fund from a counterparty which commits to repurchase those securities or securities of the same issuer, description, issue date and maturity on or before a specified date for a specified price.

4. No money of this state may be invested pursuant to a reverse -repurchase agreement, except money invested pursuant to chapter 286 or chapters 616A to 616D, inclusive, of NRS.

Sec. 3. NRS 226.110 is hereby amended to read as follows:

226.110 The state treasurer:

1. Shall receive and keep all money of the state which is not expressly required by law to be received and kept by some other person.

2. Shall receipt to the state controller for all money received, from whatever source, at the time of receiving it.

3. Shall establish the policies to be followed in the investment of money of the state, subject to the periodic review and approval or disapproval of those policies by the state board of finance.

4. *May employ any necessary investment and financial advisers to render advice and other services in connection with the investment of money of the state.*

5. Shall disburse the public money upon warrants drawn upon the treasury by the state controller, and not otherwise. The warrants must be registered ~~§~~ and paid in the order of their registry. The state treasurer may use any sampling or post-audit technique, or both, which he considers reasonable to verify the proper distribution of warrants.

~~§5.1~~ 6. Shall keep a just, true and comprehensive account of all money received and disbursed.

~~§6.1~~ 7. Shall deliver in good order to his successor in office all money, records, books, papers and other things belonging to his office.

~~§7.1~~ 8. Shall fix, charge and collect reasonable fees for:

(a) Investing the money in any fund or account which is credited for interest earned on money deposited in it; and

(b) Special services rendered to other state agencies or to members of the public which increase the cost of operating his office.

~~§8.1~~ 9. Serves as the primary representative of the state in matters concerning any nationally recognized bond credit rating agency for the purposes of the issuance of any obligation authorized on the behalf and in the name of the state, except as otherwise provided in NRS 538.206 and except for those obligations issued pursuant to chapter 319 of NRS and NRS 349.400 to 349.987, inclusive.

~~§9.1~~ 10. Is directly responsible for the issuance of any obligation authorized on the behalf and in the name of the state, except as otherwise provided in NRS 538.206 and except for those obligations issued pursuant to chapter 319 of NRS and NRS 349.400 to 349.987, inclusive. The state

treasurer shall issue such an obligation as soon as practicable after receiving a request from a state agency for the issuance of the obligation.

~~110.~~ **11.** May organize and facilitate statewide pooled financing programs, including lease purchases, for the benefit of the state and any political subdivision, including districts organized pursuant to NRS 450.550 to 450.750, inclusive, and chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS.

Sec. 4. Section 3 of Assembly Bill No. 128 of this session is hereby amended to read as follows:

Sec. 3. NRS 226.110 is hereby amended to read as follows:
226.110 The state treasurer:

1. Shall receive and keep all money of the state which is not expressly required by law to be received and kept by some other person.
2. Shall receipt to the state controller for all money received, from whatever source, at the time of receiving it.
3. Shall establish the policies to be followed in the investment of money of the state, subject to the periodic review and approval or disapproval of those policies by the state board of finance.
4. May employ any necessary investment and financial advisers to render advice and other services in connection with the investment of money of the state.
5. Shall disburse the public money upon warrants drawn upon the treasury by the state controller, and not otherwise. The warrants must be registered and paid in the order of their registry. The state treasurer may use any sampling or post-audit technique, or both, which he considers reasonable to verify the proper distribution of warrants.
6. Shall keep a just, true and comprehensive account of all money received and disbursed.
7. Shall deliver in good order to his successor in office all money, records, books, papers and other things belonging to his office.
8. Shall fix, charge and collect reasonable fees for:
 - (a) Investing the money in any fund or account which is credited for interest earned on money deposited in it; and
 - (b) Special services rendered to other state agencies or to members of the public which increase the cost of operating his office.
9. Serves as the primary representative of the state in matters concerning any nationally recognized bond credit rating agency for the purposes of the issuance of any obligation authorized on the behalf and in the name of the state, except as otherwise provided in NRS 538.206 and except for those obligations issued pursuant to chapter 319 of NRS and NRS 349.400 to 349.987, inclusive.

10. Is directly responsible for the issuance of any obligation authorized on the behalf and in the name of the state, except as otherwise provided in NRS 538.206 and except for those obligations issued pursuant to chapter 319 of NRS and NRS 349.400 to 349.987, inclusive. The state treasurer ~~[shall]~~ :

(a) Shall issue such an obligation as soon as practicable after receiving a request from a state agency for the issuance of the obligation.

(b) May, except as otherwise provided in NRS 538.206, employ necessary legal, financial or other professional services in connection with the authorization, sale or issuance of such an obligation.

11. May organize and facilitate statewide pooled financing programs, including lease purchases, for the benefit of the state and any political subdivision, including districts organized pursuant to NRS 450.550 to 450.750, inclusive, and chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS.

Sec. 5. 1. This act becomes effective upon passage and approval.

2. The amendatory provisions of section 1 of this act expire by limitation when the board notifies the governor pursuant to subsection 1 of section 24 of chapter 687, Statutes of Nevada 1997, that it has performed all duties and obligations pursuant to any prepaid tuition contract entered into before July 1, 2001.

~