

ASSEMBLY BILL NO. 129—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF STATE TREASURER)

FEBRUARY 4, 1999

Referred to Committee on Government Affairs

SUMMARY—Revises certain limitations on investment of state money and money in trust fund for prepaid tuition. (BDR 31-995)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

~

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

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:

- 1 **Section 1.** NRS 353B.160 is hereby amended to read as follows:
2 353B.160 1. The board shall create a comprehensive plan that
3 specifies the policies for investment which the state treasurer shall follow in
4 his administration of the trust fund.
5 2. The board may authorize the state treasurer to invest the property of
6 the trust fund in:
7 (a) A bond, note, certificate or other general obligation of the State of
8 Nevada, or of a county, city, general improvement district or school district
9 of the State of Nevada.
10 (b) A corporate bond of a corporation created by or existing under the
11 laws of the United States or of a state, district or territory of the United
12 States with a rating not lower than ~~["BAA/BBB"]~~ ***"A" or its equivalent*** by
13 a nationally recognized rating service. The total amount invested in such
14 bonds must not exceed ~~["5"]~~ ***50*** percent of the book value of the total fixed
15 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 ~~H~~; 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)~~ *(i)* 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;

1 (3) The maximum investment in stock is not greater than 60 percent
2 of the book value of the total investments of the trust fund;

3 (4) ~~[(The)]~~ *Except for investments made pursuant to paragraph (m),*
4 *the* amount of an investment in a single corporation is not greater than 3
5 percent of the book value of the assets of the trust fund; and

6 (5) ~~[(The)]~~ *Except for investments made pursuant to paragraph (m),*
7 *the* total amount of shares owned by the trust fund is not greater than 5
8 percent of the outstanding stock of a single corporation.

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

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

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

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

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

31 5. The assets of the trust fund:

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

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

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

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

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

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

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

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

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

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

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

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

20 355.140 1. In addition to other investments provided for by a specific
21 statute, the following bonds and other securities are proper and lawful
22 investments of any of the money of this state, of its various departments,
23 institutions and agencies, and of the state insurance fund:

24 (a) Bonds and certificates of the United States;

25 (b) Bonds, notes, debentures and loans if they are underwritten by or
26 their payment is guaranteed by the United States;

27 (c) Obligations or certificates of the United States Postal Service, the
28 Federal National Mortgage Association, *the Government National*
29 *Mortgage Association*, the Federal Home Loan Banks, the Federal Home
30 Loan Mortgage Corporation or the Student Loan Marketing Association,
31 whether or not guaranteed by the United States;

32 (d) Bonds of this state or other states of the Union;

33 (e) Bonds of any county of this state or of other states;

34 (f) Bonds of incorporated cities in this state or in other states of the
35 Union, including special assessment district bonds if those bonds provide
36 that any deficiencies in the proceeds to pay the bonds are to be paid from
37 the general fund of the incorporated city;

38 (g) General obligation bonds of irrigation districts and drainage districts
39 in this state which are liens upon the property within those districts, if the
40 value of the property is found by the board or commission making the
41 investments to render the bonds financially sound over ~~and above~~ all
42 other obligations of the districts;

- 1 (h) Bonds of school districts within this state;
- 2 (i) Bonds of any general improvement district whose population is
3 200,000 or more and which is situated in two or more counties of this state
4 or of any other state, if:
- 5 (1) The bonds are general obligation bonds and constitute a lien upon
6 the property within the district which is subject to taxation; and
- 7 (2) That property is of an assessed valuation of not less than five
8 times the amount of the bonded indebtedness of the district;
- 9 (j) Medium-term obligations for counties, cities and school districts
10 authorized pursuant to chapter 350 of NRS;
- 11 (k) Loans bearing interest at a rate determined by the state board of
12 finance when secured by first mortgages on agricultural lands in this state
13 of not less than three times the value of the amount loaned, exclusive of
14 perishable improvements, and of unexceptional title and free from all
15 encumbrances;
- 16 (l) Farm loan bonds, consolidated farm loan bonds, debentures,
17 consolidated debentures and other obligations issued by federal land banks
18 and federal intermediate credit banks under the authority of the Federal
19 Farm Loan Act, formerly 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021
20 to 1129, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to
21 2259, inclusive, and bonds, debentures, consolidated debentures and other
22 obligations issued by banks for cooperatives under the authority of the
23 Farm Credit Act of 1933, formerly 12 U.S.C. §§ 1131 to 1138e, inclusive,
24 and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to 2259, inclusive,
25 excluding such money thereof as has been received or which may be
26 received hereafter from the Federal Government or received pursuant to
27 some federal law which governs the investment thereof;
- 28 (m) Negotiable certificates of deposit issued by commercial banks or
29 insured savings and loan associations;
- 30 (n) Bankers' acceptances of the kind and maturities made eligible by law
31 for rediscount with Federal Reserve banks or trust companies which are
32 members of the Federal Reserve System, except that acceptances may not
33 exceed 180 days' maturity, and may not, in aggregate value, exceed 20
34 percent of the total par value of the portfolio as determined on the date of
35 purchase;
- 36 (o) Commercial paper issued by a corporation organized and operating
37 in the United States or by a depository institution licensed by the United
38 States or any state and operating in the United States that:
- 39 (1) At the time of purchase has a remaining term to maturity of no
40 more than 270 days; and
- 41 (2) Is rated by a nationally recognized rating service as "A-1," "P-1"
42 or its equivalent, or better,

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

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

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

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

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

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

20 (q) Money market mutual funds which:

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

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

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

27 (r) Collateralized mortgage obligations that are rated by a nationally
28 recognized rating service as "AAA" or its equivalent ~~13~~; and

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

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

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

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

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

41 (3) Have executed a written master repurchase agreement in a form
42 satisfactory to the state treasurer and the state board of finance pursuant to

43 which all repurchase agreements are entered into. The master repurchase

1 agreement must require the prompt delivery to the state treasurer and the
2 appointed custodian of written confirmations of all transactions conducted
3 thereunder, and must be developed giving consideration to the Federal
4 Bankruptcy Act.

5 (b) In all repurchase agreements:

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

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

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

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

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

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

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

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

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

28 3. As used in subsection 2:

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

32 (1) A registered broker-dealer;

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

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

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

40 4. No money of this state may be invested pursuant to a reverse-
41 repurchase agreement, except money invested pursuant to chapter 286 or
42 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 ~~H~~ 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.

~~H-1~~ 6. Shall keep a just, true and comprehensive account of all money received and disbursed.

~~H-2~~ 7. Shall deliver in good order to his successor in office all money, records, books, papers and other things belonging to his office.

~~H-3~~ 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.

~~H-4~~ 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.

~~H-5~~ 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.

~~H-6~~ 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.

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

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

4 226.110 The state treasurer:

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

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

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

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

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

22 6. Shall keep a just, true and comprehensive account of all
23 money received and disbursed.

24 7. Shall deliver in good order to his successor in office all
25 money, records, books, papers and other things belonging to his
26 office.

27 8. Shall fix, charge and collect reasonable fees for:

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

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

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

39 10. Is directly responsible for the issuance of any obligation
40 authorized on the behalf and in the name of the state, except as
41 otherwise provided in NRS 538.206 and except for those
42 obligations issued pursuant to chapter 319 of NRS and NRS
43 349.400 to 349.987, inclusive. The state treasurer ~~{shall}~~ :

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

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

8 11. May organize and facilitate statewide pooled financing
9 programs, including lease purchases, for the benefit of the state and
10 any political subdivision, including districts organized pursuant to
11 NRS 450.550 to 450.750, inclusive, and chapters 244A, 309, 318,
12 379, 474, 541, 543 and 555 of NRS.

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

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