

ASSEMBLY BILL NO. 554—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF OFFICE OF THE STATE TREASURER)

MARCH 26, 2001

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Referred to Committee on Government Affairs

SUMMARY—Provides for establishment of Nevada college savings program as authorized by federal law. (BDR 31-357)

FISCAL NOTE:   Effect on Local Government: No.  
                      Effect on the State: Executive Budget.

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

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AN ACT relating to higher education; requiring the state treasurer to adopt regulations to establish and carry out the Nevada college savings program as authorized by federal law; creating the Nevada college savings trust fund and providing for its administration; eliminating the prospective expiration of various provisions governing the program for the prepayment of tuition at an institution of higher education; 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 353B of NRS is hereby amended by adding thereto  
2    the provisions set forth as sections 2 to 13, inclusive, of this act.  
3    **Sec. 2.** *As used in this chapter, unless the context otherwise*  
4    *requires, “board” means the board of trustees of the college savings*  
5    *plans of Nevada created by section 3 of this act.*  
6    **Sec. 3.** 1. *There is hereby created a board of trustees of the college*  
7    *savings plans of Nevada.*  
8    2. *The board consists of five members composed of:*  
9    (a) *The state treasurer, who may name a designee to serve on the*  
10   *board on his behalf.*  
11   (b) *The director of the department of administration, who may name a*  
12   *designee to serve on the board on his behalf.*  
13   (c) *The chancellor of the system, who may name a designee to serve*  
14   *on the board on his behalf.*  
15   (d) *Two members appointed by the governor. A member who is*  
16   *appointed by the governor must possess knowledge, skill and experience*  
17   *in the field of:*



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- 1       (1) *Accounting;*
- 2       (2) *Finance;*
- 3       (3) *Investment management; or*
- 4       (4) *Marketing.*
- 5       3. *A member of the board who is appointed by the governor:*
- 6       (a) *Serves for a term of 4 years;*
- 7       (b) *Except as otherwise provided in paragraph (c), may be reappointed*
- 8       *by the governor; and*
- 9       (c) *Except as otherwise provided in this paragraph, may serve for only*
- 10       *two terms. A member who is appointed to fill a vacancy in an unexpired*
- 11       *term that is not longer than 3 years may serve two terms in addition to*
- 12       *the unexpired term.*
- 13       4. *The state treasurer or his designee shall serve as the chairman of*
- 14       *the board.*
- 15       5. *Each member of the board serves without compensation, except*
- 16       *that each member is entitled to receive:*
- 17       (a) *The per diem allowance and travel expenses provided for state*
- 18       *officers and employees generally; and*
- 19       (b) *Reimbursement for any other actual and reasonable expense*
- 20       *incurred while performing his duties.*
- 21       6. *As used in this section, the term "college savings plans of Nevada"*
- 22       *includes the Nevada higher education prepaid tuition program set forth*
- 23       *in NRS 353B.010 to 353B.810, inclusive, and the Nevada college savings*
- 24       *program set forth in sections 6 to 13, inclusive, of this act.*
- 25       Sec. 4. *Notwithstanding the provisions of any specific statute to the*
- 26       *contrary, no money on deposit in a prepaid tuition contract pursuant to*
- 27       *NRS 353B.010 to 353B.810, inclusive, or a savings trust account*
- 28       *pursuant to sections 6 to 13, inclusive, of this act may be considered an*
- 29       *asset of a parent, guardian or student for the purpose of determining the*
- 30       *eligibility of a person for a grant, scholarship or work opportunity that is*
- 31       *based on need and offered or administered by a state agency, except as*
- 32       *otherwise required by the source of the funding of the grant, scholarship*
- 33       *or work opportunity.*
- 34       Sec. 5. *The board may endorse insurance coverage written*
- 35       *exclusively to protect prepaid tuition contracts, and purchasers and*
- 36       *beneficiaries of prepaid tuition contracts pursuant to NRS 353B.010 to*
- 37       *353B.810, inclusive, and the regulations adopted pursuant thereto, and*
- 38       *savings trust accounts and account owners, and beneficiaries of savings*
- 39       *trust accounts pursuant to sections 6 to 13, inclusive, of this act, and the*
- 40       *regulations adopted pursuant thereto, which may be issued in the form of*
- 41       *a group life policy. The provisions of Title 57 of NRS are not applicable*
- 42       *to the board in carrying out the provisions of this section.*
- 43       Sec. 6. *As used in sections 6 to 13, inclusive, of this act, unless the*
- 44       *context otherwise requires, "trust fund" means the Nevada college*
- 45       *savings trust fund created by section 8 of this act.*
- 46       Sec. 7. *1. The state treasurer shall adopt regulations to establish*
- 47       *and carry out the Nevada college savings program, which must comply*
- 48       *with the requirements of a qualified state tuition program pursuant to 26*
- 49       *U.S.C. § 529.*



- 1     2. The regulations must be consistent with the provisions of the  
2     Internal Revenue Code set forth in Title 26 of the United States Code,  
3     and the regulations adopted pursuant thereto, to ensure that the Nevada  
4     college savings program meets all criteria for federal tax-deferred or tax-  
5     exempt benefits, or both.
- 6     3. The regulations must provide for the use of savings trust  
7     agreements and savings trust accounts to apply distributions toward  
8     qualified higher education expenses at eligible educational institutions in  
9     accordance with 26 U.S.C. § 529.
- 10    4. The regulations may include any other provisions not inconsistent  
11    with federal law that the state treasurer determines are necessary for the  
12    efficient and effective administration of the Nevada college savings  
13    program and the trust fund.
- 14    **Sec. 8.** 1. The Nevada college savings trust fund is hereby created.
- 15       2. The trust fund is an instrumentality of this state, and its property  
16       and income are exempt from all taxation by this state and any political  
17       subdivision thereof.
- 18       3. The trust fund consists of:
- 19       (a) All legislative appropriations made thereto;
- 20       (b) All money acquired by or for the use of the trust fund from:
- 21           (1) Any other governmental source, including, without limitation,  
22           any grant from the Federal Government, or a state or local government;  
23           or
- 24           (2) Any private source, including, without limitation, any gift,  
25           bequest, devise or endowment;
- 26       (c) All money deposited in accordance with savings trust agreements;  
27       and
- 28       (d) All earnings on the money in the trust fund.
- 29       4. All money deposited in accordance with savings trust agreements  
30       and all earnings on such money:
- 31       (a) Are not the property of this state, and this state has no claim to or  
32       interest in such money; and
- 33       (b) Must not be commingled with money of this state.
- 34       5. A savings trust agreement or any other contract entered into by or  
35       on behalf of the trust fund does not constitute a debt or obligation of this  
36       state, and no account owner is entitled to any money in the trust fund  
37       except for that money on deposit in or accrued to his account.
- 38       6. The money in the trust fund must be preserved, invested and  
39       expended solely pursuant to and for the purposes authorized by sections  
40       6 to 13, inclusive, of this act and must not be loaned or otherwise  
41       transferred or used by this state for any other purpose.
- 42    **Sec. 9.** 1. The trust fund must be administered by the state  
43    treasurer.
- 44       2. The state treasurer shall establish such accounts within the trust  
45    fund as he determines necessary, including, without limitation, a  
46    program account, an administrative account and an endowment account.
- 47       3. The program account must be used for the receipt, investment and  
48    disbursement of money pursuant to savings trust agreements.



- 1     4. *The administrative account must be used for the deposit and*  
2 *disbursement of money to administer and market the Nevada college*  
3 *savings program and to supplement the administration and marketing of*  
4 *the Nevada higher education prepaid tuition program set forth in NRS*  
5 *353B.010 to 353B.810, inclusive.*
- 6     5. *The endowment account must be used for the deposit of any*  
7 *money received by the trust fund that is not received pursuant to a*  
8 *savings trust agreement and, in the determination of the state treasurer,*  
9 *is not necessary for the use of the administrative account. The money in*  
10 *the endowment account may be expended for any purpose related to the*  
11 *Nevada college savings program or otherwise to assist the residents of*  
12 *this state to attain post-secondary education.*
- 13     **Sec. 10.** *The state treasurer may accept and expend on behalf of the*  
14 *trust fund money provided by private entities for direct expenses or*  
15 *marketing. Such money is not a part of the trust fund.*
- 16     **Sec. 11.** 1. *The board shall establish a comprehensive investment*  
17 *plan for the money in the trust fund.*
- 18     2. *Notwithstanding the provisions of any specific statute to the*  
19 *contrary, the board may invest or cause to be invested any money in the*  
20 *trust fund, including, without limitation, the money in the program*  
21 *account, in any manner reasonable and appropriate to achieve the*  
22 *objectives of the Nevada college savings program, exercising the*  
23 *discretion and care of a prudent person in similar circumstances with*  
24 *similar objectives. The board shall consider the risk, expected rate of*  
25 *return, term or maturity, diversification of total investments, liquidity and*  
26 *anticipated investments in and withdrawals from the trust fund.*
- 27     3. *The board may establish criteria and select investment managers,*  
28 *mutual funds or other such entities to act as investment managers for the*  
29 *Nevada college savings program.*
- 30     4. *The board may employ or contract with investment managers,*  
31 *evaluation services or other services as determined by the board to be*  
32 *necessary for the effective and efficient operation of the Nevada college*  
33 *savings program.*
- 34     5. *The board may employ personnel and contract for goods and*  
35 *services necessary for the effective and efficient operation of the Nevada*  
36 *college savings program.*
- 37     6. *The marketing plan and materials for the Nevada college savings*  
38 *program must be approved by the board.*
- 39     7. *The board may prescribe terms and conditions of savings trust*  
40 *agreements.*
- 41     8. *The board may contract with one or more qualified entities for the*  
42 *day-to-day operations of the Nevada college savings program as the*  
43 *program administrator for the management of the marketing of the*  
44 *program, the administration of the comprehensive investment plan and*  
45 *trust fund, the selection of investment managers for the Nevada college*  
46 *savings program, and the performance of similar activities.*
- 47     9. *All contracts authorized by this section are subject to the*  
48 *requirements of chapter 333 of NRS, except that:*



1 (a) Notwithstanding the provisions of subsection 1 of NRS 333.165 to  
2 the contrary, the board shall contract for all services regardless of the  
3 estimated value of the services; and

4 (b) Notwithstanding the provisions of NRS 333.335 to the contrary,  
5 each proposal received by the board concerning services must be  
6 evaluated by the board at a public meeting and each contract for services  
7 must be awarded by the board at a public meeting.

8 Sec. 12. Savings trust accounts and agreements entered into  
9 pursuant to sections 6 to 13, inclusive, of this act are not guaranteed by  
10 the full faith and credit of the State of Nevada.

11 Sec. 13. The board may delegate to the state treasurer any of its  
12 administrative powers and duties specified in sections 6 to 13, inclusive,  
13 of this act, if the board determines that such delegation is necessary for  
14 the efficient and effective administration of the Nevada college savings  
15 program and the trust fund.

16 Sec. 14. NRS 353B.010 is hereby amended to read as follows:

17 353B.010 As used in ~~this chapter,~~ NRS 353B.010 to 353B.810,  
18 inclusive, unless the context otherwise requires, the words and terms  
19 defined in NRS ~~353B.020~~ 353B.030 to 353B.070, inclusive, have the  
20 meanings ascribed to them in those sections.

21 Sec. 15. NRS 353B.070 is hereby amended to read as follows:

22 353B.070 "Trust fund" means the Nevada higher education prepaid  
23 tuition trust fund created pursuant to NRS 353B.140.

24 Sec. 16. NRS 353B.090 is hereby amended to read as follows:

25 353B.090 1. The board shall develop ~~at~~ the Nevada higher  
26 education prepaid tuition program for the prepayment of tuition at a  
27 guaranteed rate which is established based on the annual actuarial study  
28 required pursuant to NRS 353B.190 for undergraduate studies at a  
29 university or community college that is a member of the system.

30 2. The board shall ~~establish rules~~ adopt regulations for the  
31 implementation of the program, including, without limitation, ~~rules~~  
32 regulations setting forth requirements for residency, a limit on the number  
33 of qualified beneficiaries, the termination, withdrawal and transfer of  
34 money paid into the trust fund, the time within which the money paid into  
35 the trust fund must be used, and payment schedules.

36 Sec. 17. NRS 353B.140 is hereby amended to read as follows:

37 353B.140 1. The Nevada higher education prepaid tuition trust fund  
38 is hereby created within the state treasury to allow the cost of tuition to be  
39 paid in advance of enrollment at an institution of higher education.

40 2. The trust fund consists of payments received pursuant to:

- 41 (a) A prepaid tuition contract;  
42 (b) A bequest, endowment or grant from the Federal Government; or  
43 (c) Any other public or private source of money.

44 3. Money in the trust fund that is not expended during any biennium  
45 does not revert to the state general fund at any time.

46 Sec. 18. NRS 353B.150 is hereby amended to read as follows:

47 353B.150 1. The state treasurer shall administer the trust fund.

48 2. As administrator of the trust fund, the state treasurer:

- 49 (a) Shall maintain the financial records of the trust fund;



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- 1 (b) Shall invest the property in the trust fund pursuant to the policies for  
2 investment established by the board pursuant to NRS 353B.160;  
3 (c) Shall manage any account associated with the trust fund;  
4 (d) Shall maintain any instruments that evidence investments made with  
5 property from the trust fund;  
6 (e) May contract with vendors for any good or service that is necessary  
7 to carry out the provisions of ~~this chapter.~~ *NRS 353B.010 to 353B.810,*  
8 *inclusive;*  
9 (f) May hire such employees as are necessary to carry out the provisions  
10 of ~~this chapter.~~ *NRS 353B.010 to 353B.810, inclusive,* who must be paid  
11 out of the assets of the trust fund; and  
12 (g) May perform any other duties necessary to administer the trust fund.  
13 **Sec. 19.** NRS 353B.160 is hereby amended to read as follows:  
14 353B.160 1. The board shall create a comprehensive plan that  
15 specifies the policies for investment which the state treasurer shall follow  
16 in his administration of the trust fund.  
17 2. The board may authorize the state treasurer to invest the property of  
18 the trust fund in:  
19 (a) A bond, note, certificate or other general obligation of the State of  
20 Nevada, or of a county, city, general improvement district or school district  
21 of the State of Nevada.  
22 (b) A corporate bond of a corporation created by or existing under the  
23 laws of the United States or of a state, district or territory of the United  
24 States with a rating not lower than "A" or its equivalent by a nationally  
25 recognized rating service. The total amount invested in such bonds must  
26 not exceed 50 percent of the book value of the total fixed income  
27 investments of the trust fund.  
28 (c) Commercial paper of a corporation created by or existing under the  
29 laws of the United States or of a state, district or territory of the United  
30 States or of a wholly owned subsidiary of such a corporation with a rating  
31 not lower than A-3 or P-3 by a nationally recognized rating service.  
32 (d) A bond, note, debenture or other valid obligation that is issued by  
33 the Treasury of the United States.  
34 (e) A bond, note, debenture or other security that is issued by an agency  
35 or instrumentality of the United States or that is fully guaranteed by the  
36 United States in:  
37 (1) The Federal Farm Credit Bank;  
38 (2) The Federal National Mortgage Association;  
39 (3) The Federal Home Loan Bank;  
40 (4) The Federal Home Loan Mortgage Corporation; or  
41 (5) The Government National Mortgage Association.  
42 (f) A bond, note, debenture or other security in the Student Loan  
43 Marketing Association, regardless of whether it is guaranteed by the  
44 United States.  
45 (g) Collateralized mortgage obligations that are rated "AAA" or its  
46 equivalent by a nationally recognized rating service.  
47 (h) Asset-backed securities that are rated "AAA" or its equivalent by a  
48 nationally recognized rating service.  
49 (i) Money market mutual funds that:



- 1 (1) Are registered with the Securities and Exchange Commission;
- 2 (2) Are rated by a nationally recognized rating service as "A" or its
- 3 equivalent, or better; and
- 4 (3) Invest only in securities issued by the Federal Government or
- 5 agencies of the Federal Government or in repurchase agreements fully
- 6 collateralized by such securities.
- 7 The total dollar amount invested in such mutual funds must not exceed 20
- 8 percent of the total dollar amount of the trust fund that is invested.
- 9 (j) Common or preferred stock of a corporation created by or existing
- 10 under the laws of the United States or of a state, district or territory of the
- 11 United States, if:
  - 12 (1) The stock of the corporation is:
    - 13 (I) Listed on a national stock exchange; or
    - 14 (II) Traded in the over-the-counter market, if the price quotations
    - 15 for the over-the-counter stock are quoted by the National Association of
    - 16 Securities Dealers Automated Quotations System ~~(NASDAQ)~~ ,
    - 17 NASDAQ;
    - 18 (2) The outstanding shares of the corporation have a total market
    - 19 value of not less than \$50,000,000;
    - 20 (3) The maximum investment in stock is not greater than 60 percent
    - 21 of the book value of the total investments of the trust fund;
    - 22 (4) Except for investments made pursuant to paragraph (m), the
    - 23 amount of an investment in a single corporation is not greater than 3
    - 24 percent of the book value of the assets of the trust fund; and
    - 25 (5) Except for investments made pursuant to paragraph (m), the total
    - 26 amount of shares owned by the trust fund is not greater than 5 percent of
    - 27 the outstanding stock of a single corporation.
    - 28 (k) A covered call or put option on securities that are traded on one or
    - 29 more of the regulated exchanges in the United States.
    - 30 (l) A pooled or commingled real estate fund or a real estate security that
    - 31 is managed by a corporate trustee or by an investment advisory firm that is
    - 32 registered with the Securities and Exchange Commission, either of which
    - 33 may be retained by the board as an investment manager. The shares and the
    - 34 pooled or commingled fund must be held in trust. The total book value of
    - 35 an investment made under this paragraph must not at any time be greater
    - 36 than 5 percent of the total book value of all investments of the trust fund.
    - 37 (m) Mutual funds or common trust funds that consist of any
    - 38 combination of the investments listed in paragraphs (a) to (l), inclusive.
  - 39 3. The state treasurer shall exercise the standard of care in investing
  - 40 the property of the fund that a person of prudence, discretion and
  - 41 intelligence would exercise in the management of his own affairs, given the
  - 42 prevailing circumstances, not in regard to speculation but rather to the
  - 43 permanent disposition of the property, considering the potential income
  - 44 from and the probable safety of his capital.
  - 45 4. Subject to the terms, conditions, limitations and restrictions set forth
  - 46 in this section, the state treasurer may sell, assign, transfer or dispose of the
  - 47 property and investments of the trust fund upon the approval of a majority
  - 48 of the board.



1 5. The assets of the trust fund:  
2 (a) Must be maintained, invested and expended solely for the purposes  
3 of ~~{this chapter}~~ *NRS 353B.010 to 353B.810, inclusive*; and  
4 (b) Must not be loaned, transferred or otherwise used for a purpose  
5 other than the purposes of ~~{this chapter}~~ *NRS 353B.010 to 353B.810,*  
6 *inclusive.*  
7 6. The state treasurer shall credit any income derived from an  
8 investment or a gain from a sale or exchange of an investment to the trust  
9 fund.  
10 7. The state treasurer shall acquire each investment for the trust fund at  
11 a price not to exceed the prevailing market value for such an investment.  
12 8. Each investment in the trust fund must be clearly marked to indicate  
13 ownership by the trust fund.  
14 9. The state treasurer, an employee of the state treasurer, or a member  
15 or employee of the board shall not:  
16 (a) Have a direct or indirect interest in the income, gain or profit of an  
17 investment that the state treasurer makes;  
18 (b) Receive pay or emolument for his services in connection with an  
19 investment that the state treasurer makes; or  
20 (c) Become an endorser, surety or obligor for money that is borrowed  
21 from the trust fund.  
22 10. If the annual actuarial study performed pursuant to NRS 353B.190  
23 reveals that there is insufficient money to ensure the actuarial soundness of  
24 the trust fund, the board shall modify the terms of subsequent prepaid  
25 tuition contracts.  
26 11. The terms, conditions, limitations and restrictions regarding  
27 investments of the trust fund listed in this section apply only at the time an  
28 investment is originally acquired and must not be construed to require the  
29 liquidation of an investment at any time.  
30 **Sec. 20.** NRS 353B.810 is hereby amended to read as follows:  
31 353B.810 The provisions of ~~{this chapter}~~ *NRS 353B.010 to*  
32 *353B.810, inclusive*, must not be construed as a promise or guarantee that  
33 a qualified beneficiary:  
34 1. Will be admitted to, allowed to continue enrollment at or graduated  
35 from a community college or university; or  
36 2. Will have the full cost of his tuition paid at a community college,  
37 college or university that is not a member of the system.  
38 **Sec. 21.** Section 25 of chapter 687, Statutes of Nevada 1997, at page  
39 3489, is hereby amended to read as follows:  
40 Sec. 25. ~~{1-}~~ This act becomes effective on October 1, 1997. ~~{~~  
41 ~~and, except as otherwise provided in subsection 2, expires by~~  
42 ~~limitation when the board notifies the governor pursuant to subsection~~  
43 ~~1 of section 24 of this act that it has performed all duties and~~  
44 ~~obligations pursuant to any prepaid tuition contract entered into before~~  
45 ~~July 1, 2001.~~  
46 ~~2. Sections 12, 13 and 14 of this act expire by limitation on~~  
47 ~~July 1, 2001.]~~



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- 1     **Sec. 22.** Section 5 of chapter 141, Statutes of Nevada 1999, at page  
2     803, is hereby amended to read as follows:  
3         Sec. 5. ~~11-~~ This act becomes effective upon passage and  
4         approval.  
5         ~~12. The amendatory provisions of section 1 of this act expire by~~  
6         ~~limitation when the board notifies the governor pursuant to subsection~~  
7         ~~1 of section 24 of chapter 687, Statutes of Nevada 1997, that it has~~  
8         ~~performed all duties and obligations pursuant to any prepaid tuition~~  
9         ~~contract entered into before July 1, 2001.~~  
10     **Sec. 23.** 1. NRS 353B.020 and 353B.080 are hereby repealed.  
11     2. Section 24 of chapter 687, Statutes of Nevada 1997, at page 3489, is  
12     hereby repealed.  
13     **Sec. 24.** This act becomes effective upon passage and approval.

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### TEXT OF REPEALED SECTIONS

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**353B.020 "Board" defined.** "Board" means the board of trustees created pursuant to NRS 353B.080.

**353B.080 Creation; membership; chairman; compensation.**

1. There is hereby created a board of trustees.
2. The board consists of five members composed of:
  - (a) The state treasurer, who may name a designee to serve on the board on his behalf.
  - (b) The director of the department of administration, who may name a designee to serve on the board on his behalf.
  - (c) The chancellor of the system, who may name a designee to serve on the board on his behalf.
  - (d) Two members appointed by the governor. A member who is appointed by the governor must possess knowledge, skill and experience in the field of:
    - (1) Accounting;
    - (2) Finance;
    - (3) Investment management; or
    - (4) Marketing.
3. A member of the board who is appointed by the governor:
  - (a) Serves for a term of 4 years;
  - (b) Except as otherwise provided in paragraph (c), may be reappointed by the governor; and
  - (c) Except as otherwise provided in this paragraph, may serve for only two terms. A member who is appointed to fill a vacancy in an unexpired term that is not longer than 3 years may serve two terms in addition to the unexpired term.
4. The governor shall designate a member of the board to serve as the initial chairman of the board. Thereafter, the board shall annually elect a chairman from its members.
5. Each member of the board serves without compensation, except that each member is entitled to receive:



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(a) The per diem allowance and travel expenses provided for state officers and employees generally; and

(b) Reimbursement for any other actual and reasonable expense incurred while performing his duties.

**Section 24 of chapter 687, Statutes of Nevada 1997:**

Sec. 24. 1. The board shall notify the governor when it has performed all duties and obligations pursuant to any prepaid tuition contract entered into before July 1, 2001.

2. Notwithstanding the provisions of subsection 3 of section 9 of this act, when the board notifies the governor pursuant to subsection 1 that it has performed all duties and obligations pursuant to any prepaid tuition contract entered into before July 1, 2001, all assets of the trust fund revert to the state general fund.

