

SENATE BILL NO. 488—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF OFFICE OF THE STATE TREASURER)

MARCH 26, 2001

Referred to Committee on Government Affairs

SUMMARY—Revises authority of state treasurer to invest money held in certain trust funds and to administer proceeds from settlement agreements and civil litigation between State of Nevada and tobacco companies. (BDR 18-361)

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 the state treasurer; revising the authority of the state treasurer to invest money held in certain trust funds; authorizing the state treasurer to create a nonprofit corporation to purchase and collect the proceeds from settlement agreements and civil litigation between the State of Nevada and tobacco companies; 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 226 of NRS is hereby amended by adding thereto
- 2 the provisions set forth as sections 2 to 12, inclusive, of this act.
- 3 **Sec. 2. 1. *The state treasurer shall:***
- 4 *(a) Establish policies, subject to the periodic review and approval or*
- 5 *disapproval of those policies by the state board of finance, for the*
- 6 *investment of any money held in a trust fund that the state treasurer is*
- 7 *specifically required to invest as the money in other state funds is*
- 8 *invested; and*
- 9 *(b) Except as otherwise provided by specific statute, invest that money*
- 10 *in accordance with those policies in:*
- 11 *(1) Any investments in which the state treasurer is authorized to*
- 12 *invest any money in the state general fund; and*
- 13 *(2) Any other investments, including equity investments, which*
- 14 *persons of prudence, discretion and intelligence acquire or retain in the*
- 15 *management of their own affairs, given the prevailing circumstances, not*
- 16 *in regard to speculation but rather to the permanent disposition of their*
- 17 *property, and considering the potential income from and probable safety*
- 18 *of their capital. The state treasurer shall not invest any money pursuant*



1 *to this subparagraph in any stock of, or other equity interest in, any*
2 *company, association or corporation, unless the state treasurer obtains a*
3 *judicial determination that the proposed investment or category of*
4 *investments will not violate section 9 of article 8 of the constitution of the*
5 *State of Nevada.*
6 *2. As used in this section, "trust fund" includes, without limitation,*
7 *the millennium scholarship trust fund created pursuant to NRS 396.926,*
8 *the trust fund for public health created pursuant to NRS 439.605 and the*
9 *fund for a healthy Nevada created pursuant to NRS 439.620.*
10 **Sec. 3.** *As used in sections 3 to 12, inclusive, of this act, unless the*
11 *context otherwise requires, the words and terms defined in sections 4 and*
12 *5 of this act have the meanings ascribed to them in those sections.*
13 **Sec. 4.** *"Nonprofit corporation" means the nonprofit corporation*
14 *formed by the state treasurer pursuant to section 6 of this act.*
15 **Sec. 5.** *"Tobacco proceeds" means any money to which this state*
16 *may be entitled pursuant to:*
17 *1. Any settlement entered into by the State of Nevada and a*
18 *manufacturer of tobacco products; and*
19 *2. A judgment in a civil action against a manufacturer of tobacco*
20 *products.*
21 **Sec. 6.** *The state treasurer may form a nonprofit corporation*
22 *pursuant to chapter 82 of NRS to carry out the provisions of sections 3 to*
23 *12, inclusive, of this act. The nonprofit corporation must be organized as*
24 *a public instrumentality of the state that is operated exclusively for*
25 *charitable purposes within the meaning of section 501(c)(3) of the*
26 *Internal Revenue Code of 1986, as amended.*
27 **Sec. 7.** *1. The state treasurer may execute a sale of the right of the*
28 *state to receive tobacco proceeds by entering into a contract of sale with*
29 *the nonprofit corporation, without any recourse, legal, moral or*
30 *otherwise, to the state or retention by the state of any risk of collection,*
31 *but with such covenants, terms and conditions as the state treasurer may*
32 *approve.*
33 *2. If the state treasurer executes a sale pursuant to subsection 1:*
34 *(a) He shall distribute and deposit the net proceeds of the sale in the*
35 *same manner as provided for the distribution and deposit of tobacco*
36 *proceeds pursuant to NRS 396.926, 439.605 and 439.620; and*
37 *(b) He may, in addition to any other covenants, terms and conditions*
38 *authorized pursuant to subsection 1, enter into covenants with the*
39 *nonprofit corporation which are binding on the State of Nevada and*
40 *require the State of Nevada to:*
41 *(1) Perform its obligations pursuant to any settlement entered into*
42 *by the State of Nevada and a manufacturer of tobacco products; and*
43 *(2) Sue or take any other legal action that the nonprofit corporation*
44 *determines to be appropriate to enforce the payment of tobacco proceeds.*
45 **Sec. 8.** *The nonprofit corporation may:*
46 *1. Issue bonds, notes and other debt instruments in an unlimited*
47 *aggregate principal amount to finance and refinance contracts for the*
48 *purchase of tobacco proceeds;*



1 2. *Enter into contracts for any bond insurance, credit support and*
2 *letters of credit that the nonprofit corporation determines to be*
3 *appropriate for any such bonds, notes and other debt instruments;*

4 3. *Obtain any necessary legal, financial or other professional*
5 *services in connection with the authorization, sale or issuance of any*
6 *such bonds, notes or other debt instruments; and*

7 4. *Enter into any rate hedge contracts, including, without limitation,*
8 *contracts for interest rate swaps, floors or caps, options, puts or calls that*
9 *the nonprofit corporation determines to be appropriate as a hedge*
10 *against its exposure to liability for interest rates or payments.*

11 **Sec. 9.** *1. Any bonds, notes and other debt instruments issued by*
12 *the nonprofit corporation:*

13 (a) *Must be made payable solely from the assets of the nonprofit*
14 *corporation; and*

15 (b) *Shall not be deemed to constitute a debt or liability of the State of*
16 *Nevada or a pledge of the full faith and credit of the State of Nevada.*

17 2. *No suit or other legal proceeding may be brought or maintained*
18 *against the State of Nevada or any of its officers, employees, agents or*
19 *other representatives on account of any act or omission of the nonprofit*
20 *corporation or on account of any act or omission of any officer,*
21 *employee, agent or other representative of the State of Nevada for or on*
22 *behalf of the nonprofit corporation, whether or not the act or omission is*
23 *otherwise actionable under federal or state law, other than any suits or*
24 *other legal proceedings brought to enforce any contracts for the*
25 *purchase of tobacco proceeds or any covenants entered into by the state*
26 *treasurer pursuant to paragraph (b) of subsection 2 of section 7 of this*
27 *act.*

28 **Sec. 10.** *1. Notwithstanding any other provision of law, the*
29 *employees, officers and other representatives of the State of Nevada shall*
30 *not impede or in any manner interfere with the full and timely payment*
31 *of principal, interest and premiums on any bonds, notes and other debt*
32 *instruments of the nonprofit corporation as and when due in accordance*
33 *with the terms of the constituent instruments defining the rights of the*
34 *holders of those bonds, notes and other debt instruments and any*
35 *providers of bond insurance, credit support and letters of credit for those*
36 *bonds, notes and other debt instruments.*

37 2. *The State of Nevada hereby pledges and agrees that it will not*
38 *limit, alter or restrict the rights of the nonprofit corporation to fulfill*
39 *each pledge of revenue and money and any other terms of any agreement*
40 *made with or for the benefit of the holders of any bonds, notes and other*
41 *debt instruments of the nonprofit corporation or in any way impair the*
42 *rights or remedies of the holders of those bonds, notes and other debt*
43 *instruments.*

44 **Sec. 11.** *1. When all bonds, notes and other debt instruments of the*
45 *nonprofit corporation have been retired or irrevocable provision has*
46 *been made for such retirement, the state treasurer shall dissolve the*
47 *nonprofit corporation.*

48 2. *Upon dissolution of the nonprofit corporation, its remaining*
49 *assets, after the deduction of its liabilities, must be distributed and*



1 *deposited in the same manner as provided for the distribution and deposit*
2 *of tobacco proceeds pursuant to NRS 396.926, 439.605 and 439.620.*

3 **Sec. 12.** *Notwithstanding any other provision of law:*

4 1. *The creation, perfection, priority and enforcement of any lien on*
5 *any property or revenue of the nonprofit corporation, or on any other*
6 *money, established to secure any bond, note or other debt instrument*
7 *issued pursuant to the provisions of sections 3 to 12, inclusive, of this act,*
8 *must be as specified in those provisions and in the instruments approved*
9 *by the nonprofit corporation issuing the bonds, notes or other debt*
10 *instruments pursuant to those provisions, and the provisions of the*
11 *Uniform Commercial Code—Secured Transactions do not apply thereto.*

12 2. *Any lien on property, revenue or other money created to secure*
13 *any bond, note or other debt instrument issued pursuant to the provisions*
14 *of sections 3 to 12, inclusive, of this act has priority over any other lien*
15 *on that property, revenue or other money created pursuant to chapter*
16 *104 of NRS unless otherwise provided in the instrument creating the lien*
17 *to secure the bond, note or other debt instrument issued pursuant to the*
18 *provisions of sections 3 to 12, inclusive, of this act.*

19 **Sec. 13.** 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 all other obligations
42 of the districts;

43 (h) Bonds of school districts within this state;

44 (i) Bonds of any general improvement district whose population is
45 200,000 or more and which is situated in two or more counties of this state
46 or of any other state, if:

47 (1) The bonds are general obligation bonds and constitute a lien upon
48 the property within the district which is subject to taxation; and



- 1 (2) That property is of an assessed valuation of not less than five
- 2 times the amount of the bonded indebtedness of the district;
- 3 (j) Medium-term obligations for counties, cities and school districts
- 4 authorized pursuant to chapter 350 of NRS;
- 5 (k) Loans bearing interest at a rate determined by the state board of
- 6 finance when secured by first mortgages on agricultural lands in this state
- 7 of not less than three times the value of the amount loaned, exclusive of
- 8 perishable improvements, and of unexceptional title and free from all
- 9 encumbrances;
- 10 (l) Farm loan bonds, consolidated farm loan bonds, debentures,
- 11 consolidated debentures and other obligations issued by federal land banks
- 12 and federal intermediate credit banks under the authority of the Federal
- 13 Farm Loan Act, formerly 12 U.S.C. §§ 636 to 1012, inclusive, and §§ 1021
- 14 to 1129, inclusive, and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to
- 15 2259, inclusive, and bonds, debentures, consolidated debentures and other
- 16 obligations issued by banks for cooperatives under the authority of the
- 17 Farm Credit Act of 1933, formerly 12 U.S.C. §§ 1131 to 1138e, inclusive,
- 18 and the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 to 2259, inclusive,
- 19 excluding such money thereof as has been received or which may be
- 20 received hereafter from the Federal Government or received pursuant to
- 21 some federal law which governs the investment thereof;
- 22 (m) Negotiable certificates of deposit issued by commercial banks,
- 23 insured credit unions or savings and loan associations;
- 24 (n) Bankers' acceptances of the kind and maturities made eligible by
- 25 law for rediscount with Federal Reserve banks or trust companies which
- 26 are members of the Federal Reserve System, except that acceptances may
- 27 not exceed 180 days' maturity, and may not, in aggregate value, exceed 20
- 28 percent of the total par value of the portfolio as determined on the date of
- 29 purchase;
- 30 (o) Commercial paper issued by a corporation organized and operating
- 31 in the United States or by a depository institution licensed by the United
- 32 States or any state and operating in the United States that:
 - 33 (1) At the time of purchase has a remaining term to maturity of not
 - 34 more than 270 days; and
 - 35 (2) Is rated by a nationally recognized rating service as "A-1," "P-1"
 - 36 or its equivalent, or better,
 - 37 except that investments pursuant to this paragraph may not, in aggregate
 - 38 value, exceed 20 percent of the total par value of the portfolio as
 - 39 determined on the date of purchase, and if the rating of an obligation is
 - 40 reduced to a level that does not meet the requirements of this paragraph, it
 - 41 must be sold as soon as possible;
- 42 (p) Notes, bonds and other unconditional obligations for the payment of
- 43 money, except certificates of deposit that do not qualify pursuant to
- 44 paragraph (m), issued by corporations organized and operating in the
- 45 United States or by depository institutions licensed by the United States or
- 46 any state and operating in the United States that:
 - 47 (1) Are purchased from a registered broker-dealer;
 - 48 (2) At the time of purchase have a remaining term to maturity of not
 - 49 more than 5 years; and



- 1 (3) Are rated by a nationally recognized rating service as "A" or its
2 equivalent, or better,
3 except that investments pursuant to this paragraph may not, in aggregate
4 value, exceed 20 percent of the total par value of the portfolio, and if the
5 rating of an obligation is reduced to a level that does not meet the
6 requirements of this paragraph, it must be sold as soon as possible;
- 7 (q) Money market mutual funds which:
8 (1) Are registered with the Securities and Exchange Commission;
9 (2) Are rated by a nationally recognized rating service as "AAA" or
10 its equivalent; and
11 (3) Invest only in securities issued by the Federal Government or
12 agencies of the Federal Government or in repurchase agreements fully
13 collateralized by such securities;
- 14 (r) Collateralized mortgage obligations that are rated by a nationally
15 recognized rating service as "AAA" or its equivalent; and
16 (s) Asset-backed securities that are rated by a nationally recognized
17 rating service as "AAA" or its equivalent.
- 18 2. Repurchase agreements are proper and lawful investments of money
19 of the state and the state insurance fund for the purchase or sale of
20 securities which are negotiable and of the types listed in subsection 1 if
21 made in accordance with the following conditions:
- 22 (a) The state treasurer shall designate in advance and thereafter maintain
23 a list of qualified counterparties which:
24 (1) Regularly provide audited and, if available, unaudited financial
25 statements to the state treasurer;
26 (2) The state treasurer has determined to have adequate capitalization
27 and earnings and appropriate assets to be highly credit worthy; and
28 (3) Have executed a written master repurchase agreement in a form
29 satisfactory to the state treasurer and the state board of finance pursuant to
30 which all repurchase agreements are entered into. The master repurchase
31 agreement must require the prompt delivery to the state treasurer and the
32 appointed custodian of written confirmations of all transactions conducted
33 thereunder, and must be developed giving consideration to the Federal
34 Bankruptcy Act, 11 U.S.C. §§ 101 et seq.
- 35 (b) In all repurchase agreements:
36 (1) At or before the time money to pay the purchase price is
37 transferred, title to the purchased securities must be recorded in the name
38 of the appointed custodian, or the purchased securities must be delivered
39 with all appropriate, executed transfer instruments by physical delivery to
40 the custodian;
41 (2) The state must enter into a written contract with the custodian
42 appointed pursuant to subparagraph (1) which requires the custodian to:
43 (I) Disburse cash for repurchase agreements only upon receipt of
44 the underlying securities;
45 (II) Notify the state when the securities are marked to the market if
46 the required margin on the agreement is not maintained;
47 (III) Hold the securities separate from the assets of the custodian;
48 and



- 1 (IV) Report periodically to the state concerning the market value of
2 the securities;
- 3 (3) The market value of the purchased securities must exceed 102
4 percent of the repurchase price to be paid by the counterparty and the value
5 of the purchased securities must be marked to the market weekly;
- 6 (4) The date on which the securities are to be repurchased must not
7 be more than 90 days after the date of purchase; and
- 8 (5) The purchased securities must not have a term to maturity at the
9 time of purchase in excess of 10 years.
- 10 3. As used in subsection 2:
- 11 (a) "Counterparty" means a bank organized and operating or licensed to
12 operate in the United States pursuant to federal or state law or a securities
13 dealer which is:
- 14 (1) A registered broker-dealer;
- 15 (2) Designated by the Federal Reserve Bank of New York as a
16 "primary" dealer in United States government securities; and
- 17 (3) In full compliance with all applicable capital requirements.
- 18 (b) "Repurchase agreement" means a purchase of securities by the state
19 or state insurance fund from a counterparty which commits to repurchase
20 those securities or securities of the same issuer, description, issue date and
21 maturity on or before a specified date for a specified price.
- 22 4. No money of this state may be invested pursuant to a reverse-
23 repurchase agreement, except money invested pursuant to *section 2 of this*
24 *act or* chapter 286 of NRS.
- 25 **Sec. 14.** NRS 396.926 is hereby amended to read as follows:
- 26 396.926 1. The millennium scholarship trust fund is hereby created
27 in the state treasury. The state treasurer may accept gifts, grants, bequests
28 and donations for deposit in the trust fund.
- 29 2. ~~The~~ *Except as otherwise provided in section 7 of this act, the*
30 state treasurer shall deposit in the trust fund:
- 31 (a) Forty percent of all money received by the State of Nevada pursuant
32 to any settlement entered into by the State of Nevada and a manufacturer of
33 tobacco products;
- 34 (b) Forty percent of all money recovered by the State of Nevada from a
35 judgment in a civil action against a manufacturer of tobacco products; and
- 36 (c) Any gifts, grants, bequests or donations specifically designated for
37 the trust fund by the donor.
- 38 3. The state treasurer shall administer the trust fund. As administrator
39 of the trust fund, the state treasurer:
- 40 (a) Shall maintain the financial records of the trust fund;
- 41 (b) Shall invest the money in the trust fund as the money in other state
42 funds is invested;
- 43 (c) Shall manage any account associated with the trust fund;
- 44 (d) Shall maintain any instruments that evidence investments made with
45 the money in the trust fund;
- 46 (e) May contract with vendors for any good or service that is necessary
47 to carry out the provisions of this section; and
- 48 (f) May perform any other duties necessary to administer the trust fund.



1 4. All interest and income earned on the money in the trust fund must,
2 after deducting any applicable charges, be credited to the trust fund. All
3 claims against the trust fund must be paid as other claims against the state
4 are paid.
5 5. Not more than 2 percent of the amount of money in the trust fund
6 may be used to pay the costs of administering the trust fund.
7 6. The money in the fund remains in the fund and does not revert to the
8 state general fund at the end of any fiscal year.
9 7. Money in the trust fund may be used only for the purposes set forth
10 in NRS 396.914 to 396.934, inclusive.
11 **Sec. 15.** NRS 439.605 is hereby amended to read as follows:
12 439.605 1. The trust fund for public health is hereby created in the
13 state treasury. ~~The~~ *Except as otherwise provided in section 7 of this act,*
14 *the* state treasurer shall deposit in the trust fund:
15 (a) Ten percent of all money received by this state pursuant to any
16 settlement entered into by the State of Nevada and a manufacturer of
17 tobacco products; and
18 (b) Ten percent of all money recovered by this state from a judgment in
19 a civil action against a manufacturer of tobacco products.
20 2. The state treasurer shall administer the trust fund. As administrator
21 of the trust fund, the state treasurer:
22 (a) Shall maintain the financial records of the trust fund;
23 (b) Shall invest the money in the trust fund as the money in other state
24 funds is invested;
25 (c) Shall manage any account associated with the trust fund;
26 (d) Shall maintain any instruments that evidence investments made with
27 the money in the trust fund;
28 (e) May contract with vendors for any good or service that is necessary
29 to carry out the provisions of this section; and
30 (f) May perform any other duties necessary to administer the trust fund.
31 3. The interest and income earned on the money in the trust fund is
32 hereby appropriated to the board of trustees of the trust fund for public
33 health and must, after deducting any applicable charges, be credited to the
34 fund and accounted for separately. All claims against the fund must be paid
35 as other claims against the state are paid.
36 4. Only the interest and income earned on the money in the trust fund
37 may be expended. Such expenditures may only be made for:
38 (a) Grants made pursuant to NRS 439.615 for:
39 (1) The promotion of public health and programs for the prevention
40 of disease or illness;
41 (2) Research on issues related to public health; and
42 (3) The provision of direct health care services to children and senior
43 citizens;
44 (b) Expenses related to the operation of the board of trustees of the trust
45 fund; and
46 (c) Actual costs incurred by the health division for providing
47 administrative assistance to the board, but in no event may more than 2
48 percent of the money in the fund be used for administrative expenses or
49 other indirect costs.



1 5. The money in the trust fund remains in the fund and does not revert
2 to the state general fund at the end of any fiscal year.

3 **Sec. 16.** NRS 439.620 is hereby amended to read as follows:
4 439.620 1. The fund for a healthy Nevada is hereby created in the
5 state treasury. ~~The~~ *Except as otherwise provided in section 7 of this act,*
6 *the* state treasurer shall deposit in the fund:

7 (a) Fifty percent of all money received by this state pursuant to any
8 settlement entered into by the State of Nevada and a manufacturer of
9 tobacco products; and

10 (b) Fifty percent of all money recovered by this state from a judgment
11 in a civil action against a manufacturer of tobacco products.

12 2. The state treasurer shall administer the fund. As administrator of the
13 fund, the state treasurer:

14 (a) Shall maintain the financial records of the fund;
15 (b) Shall invest the money in the fund as the money in other state funds
16 is invested;
17 (c) Shall manage any account associated with the fund;
18 (d) Shall maintain any instruments that evidence investments made with
19 the money in the fund;
20 (e) May contract with vendors for any good or service that is necessary
21 to carry out the provisions of this section; and
22 (f) May perform any other duties necessary to administer the fund.

23 3. The interest and income earned on the money in the fund must, after
24 deducting any applicable charges, be credited to the fund. All claims
25 against the fund must be paid as other claims against the state are paid.

26 4. Not more than 2 percent of the money in the fund may be used to
27 pay the costs of administering the fund.

28 5. The money in the fund remains in the fund and does not revert to the
29 state general fund at the end of any fiscal year.

30 6. All money that is deposited or paid into the fund is hereby
31 appropriated to the department and, except as otherwise provided in
32 paragraphs (c) and (d) of subsection 1 of NRS 439.630, may only be
33 expended pursuant to an allocation made by the task force for the fund for
34 a healthy Nevada. Money expended from the fund for a healthy Nevada
35 must not be used to supplant existing methods of funding that are available
36 to public agencies.

37 **Sec. 17.** This act becomes effective upon passage and approval.

