

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT S.B. 488

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) Enforce each settlement or judgment pertaining to the right of
44 this state to receive 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;



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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.
24 **Sec. 10.** 1. Notwithstanding any other provision of law, the
25 employees, officers and other representatives of the State of Nevada shall
26 not impede or in any manner interfere with the full and timely payment
27 of principal, interest and premiums on any bonds, notes and other debt
28 instruments of the nonprofit corporation as and when due in accordance
29 with the terms of the constituent instruments defining the rights of the
30 holders of those bonds, notes and other debt instruments and any
31 providers of bond insurance, credit support and letters of credit for those
32 bonds, notes and other debt instruments.
33 2. The State of Nevada hereby pledges and agrees that it will not
34 limit, alter or restrict the rights of the nonprofit corporation to fulfill
35 each pledge of revenue and money and any other terms of any agreement
36 made with or for the benefit of the holders of any bonds, notes and other
37 debt instruments of the nonprofit corporation or in any way impair the
38 rights or remedies of the holders of those bonds, notes and other debt
39 instruments.
40 **Sec. 11.** 1. When all bonds, notes and other debt instruments of the
41 nonprofit corporation have been retired or irrevocable provision has
42 been made for such retirement, the state treasurer shall dissolve the
43 nonprofit corporation.
44 2. Upon dissolution of the nonprofit corporation, its remaining
45 assets, after the deduction of its liabilities, must be distributed and
46 deposited in the same manner as provided for the distribution and deposit
47 of tobacco proceeds pursuant to NRS 396.926, 439.605 and 439.620.



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

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

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

17 **Sec. 13.** NRS 396.926 is hereby amended to read as follows:

18 396.926 1. The millennium scholarship trust fund is hereby created
19 in the state treasury. The state treasurer may accept gifts, grants, bequests
20 and donations for deposit in the trust fund.

21 2. ~~He~~ *Except as otherwise provided in section 7 of this act, the*
22 *state treasurer shall deposit in the trust fund:*

23 (a) Forty percent of all money received by the State of Nevada pursuant
24 to any settlement entered into by the State of Nevada and a manufacturer of
25 tobacco products;

26 (b) Forty percent of all money recovered by the State of Nevada from a
27 judgment in a civil action against a manufacturer of tobacco products; and

28 (c) Any gifts, grants, bequests or donations specifically designated for
29 the trust fund by the donor.

30 3. The state treasurer shall administer the trust fund. As administrator
31 of the trust fund, the state treasurer:

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

33 (b) Shall invest the money in the trust fund as the money in other state
34 funds is invested;

35 (c) Shall manage any account associated with the trust fund;

36 (d) Shall maintain any instruments that evidence investments made with
37 the money in the trust fund;

38 (e) May contract with vendors for any good or service that is necessary
39 to carry out the provisions of this section; and

40 (f) May perform any other duties necessary to administer the trust fund.

41 4. All interest and income earned on the money in the trust fund must,
42 after deducting any applicable charges, be credited to the trust fund. All
43 claims against the trust fund must be paid as other claims against the state
44 are paid.

45 5. Not more than 2 percent of the amount of money in the trust fund
46 may be used to pay the costs of administering the trust fund.

47 6. The money in the fund remains in the fund and does not revert to the
48 state general fund at the end of any fiscal year.



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1 7. Money in the trust fund may be used only for the purposes set forth
2 in NRS 396.914 to 396.934, inclusive.

3 **Sec. 14.** NRS 439.605 is hereby amended to read as follows:

4 439.605 1. The trust fund for public health 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 trust fund:

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

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

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

15 (b) Shall invest the money in the trust fund as the money in other state
16 funds is invested;

17 (c) Shall manage any account associated with the trust fund;

18 (d) Shall maintain any instruments that evidence investments made with
19 the money in the trust 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 trust fund.

23 3. The interest and income earned on the money in the trust fund is
24 hereby appropriated to the board of trustees of the trust fund for public
25 health and must, after deducting any applicable charges, be credited to the
26 fund and accounted for separately. All claims against the fund must be paid
27 as other claims against the state are paid.

28 4. Only the interest and income earned on the money in the trust fund
29 may be expended. Such expenditures may only be made for:

30 (a) Grants made pursuant to NRS 439.615 for:

31 (1) The promotion of public health and programs for the prevention
32 of disease or illness;

33 (2) Research on issues related to public health; and

34 (3) The provision of direct health care services to children and senior
35 citizens;

36 (b) Expenses related to the operation of the board of trustees of the trust
37 fund; and

38 (c) Actual costs incurred by the health division for providing
39 administrative assistance to the board, but in no event may more than 2
40 percent of the money in the fund be used for administrative expenses or
41 other indirect costs.

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

44 **Sec. 15.** NRS 439.620 is hereby amended to read as follows:

45 439.620 1. The fund for a healthy Nevada is hereby created in the
46 state treasury. ~~The~~ *Except as otherwise provided in section 7 of this act,*
47 *the* state treasurer shall deposit in the fund:



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1 (a) Fifty percent of all money received by this state pursuant to any
2 settlement entered into by the State of Nevada and a manufacturer of
3 tobacco products; and
4 (b) Fifty percent of all money recovered by this state from a judgment
5 in a civil action against a manufacturer of tobacco products.
6 2. The state treasurer shall administer the fund. As administrator of the
7 fund, the state treasurer:
8 (a) Shall maintain the financial records of the fund;
9 (b) Shall invest the money in the fund as the money in other state funds
10 is invested;
11 (c) Shall manage any account associated with the fund;
12 (d) Shall maintain any instruments that evidence investments made with
13 the money in the fund;
14 (e) May contract with vendors for any good or service that is necessary
15 to carry out the provisions of this section; and
16 (f) May perform any other duties necessary to administer the fund.
17 3. The interest and income earned on the money in the fund must, after
18 deducting any applicable charges, be credited to the fund. All claims
19 against the fund must be paid as other claims against the state are paid.
20 4. Not more than 2 percent of the money in the fund may be used to
21 pay the costs of administering the fund.
22 5. The money in the fund remains in the fund and does not revert to the
23 state general fund at the end of any fiscal year.
24 6. All money that is deposited or paid into the fund is hereby
25 appropriated to the department and, except as otherwise provided in
26 paragraphs (c) and (d) of subsection 1 of NRS 439.630, may only be
27 expended pursuant to an allocation made by the task force for the fund for
28 a healthy Nevada. Money expended from the fund for a healthy Nevada
29 must not be used to supplant existing methods of funding that are available
30 to public agencies.
31 **Sec. 16.** This act becomes effective upon passage and approval.

