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**FIRST REPRINT** **S.B. 500**

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SENATE BILL NO. 500—COMMITTEE ON FINANCE

MARCH 26, 2001

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Referred to Committee on Finance

SUMMARY—Revises various provisions of University Securities Law. (BDR 34-915)

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.

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AN ACT relating to the University Securities Law; authorizing the board of regents of the University of Nevada to delegate its authority concerning the sale of securities; authorizing variable rates of interest on securities; authorizing the investment of pledged revenues and the proceeds of securities in certain investment contracts; authorizing agreements for an exchange of interest rates; removing certain exceptions concerning the applicability of the Uniform Commercial Code—Secured Transactions; creating an exception for transfers of a local government from the provisions of the Uniform Commercial Code—Secured Transactions; 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 396 of NRS is hereby amended by adding thereto  
2     the provisions set forth as sections 2 to 5, inclusive, of this act.  
3     **Sec. 2. 1. *The board may, before any sale of securities, whether by***  
4     *competitive bid or negotiated sale, delegate to the chancellor of the*  
5     *university or the vice chancellor for finance of the university the*  
6     *authority to sign a contract for the purchase of the securities or to accept*  
7     *a binding bid for the securities subject to the requirements specified by*  
8     *the board concerning:*  
9         *(a) The rate of interest on the securities;*  
10        *(b) The dates on which and the prices at which the securities may be*  
11        *called for redemption before maturity;*  
12        *(c) The price at which the securities will be sold; and*  
13        *(d) The principal amount of the securities and the amount of principal*  
14        *maturing in any particular year.*  
15     **2. All terms of the securities other than:**  
16        *(a) The rate of interest;*  
17        *(b) The dates and prices for the redemption of the securities;*  
18        *(c) The price for the sale of the securities;*



1 (d) The principal amount of the securities; and  
2 (e) The requirements for the principal maturing in particular  
3 years,  
4 must be approved by the board before the securities are delivered.

5 3. The final rate of interest, dates and prices of redemption, price for  
6 the sale of the securities, principal amount and the requirements for the  
7 principal amount maturing in particular years are not required to be  
8 approved by the board if each of those terms complies with the  
9 requirements specified by the board before the contract for the purchase  
10 of the securities is signed or the bid for the securities is accepted.

11 Sec. 3. 1. The resolution authorizing the issuance of any securities  
12 or any trust indenture or other instrument appertaining thereto may fix a  
13 rate or rates of interest or provide for the determination of the rate or  
14 rates from time to time by a designated agent according to the procedure  
15 specified in that resolution or other instrument. The rate so determined  
16 must approximate the rates then being paid for other securities which  
17 contain similar provisions and have an equivalent rating. The board may  
18 contract with or select any person to make that determination.

19 2. The board may enter into an agreement with a third party for an  
20 assurance of payment of the principal of, the interest on, or premiums, if  
21 any, due in connection with any securities issued by the board. The  
22 obligation of the board to reimburse that third party for any advances  
23 made pursuant to that agreement may be provided in that agreement,  
24 recited in those securities or evidenced by another instrument as  
25 designated in the resolution authorizing the issuance of those securities  
26 or any other instrument appertaining thereto. The board may assign its  
27 rights under that agreement.

28 3. In fixing the rate or rates of interest for securities pursuant to  
29 subsection 1 or the rate or rates of interest imposed on the board for  
30 reimbursement of any advances made under an agreement pursuant to  
31 subsection 2, the board is not subject to any limitations on rates of  
32 interest provided by statute, including, without limitation, NRS 396.852.  
33 The resolution fixing that rate or rates of interest must contain the  
34 findings of the board that the procedure specified therein for determining  
35 that rate or rates is reasonable under existing or anticipated conditions in  
36 the market and is necessary and advisable for marketing the securities.  
37 These findings are conclusive. This section does not prohibit the board  
38 from fixing a maximum rate of interest.

39 Sec. 4. In addition to the investments permitted by NRS 396.861, the  
40 board, subject to any contractual limitations from time to time imposed  
41 upon the university by any resolution authorizing the issuance of  
42 outstanding securities or by any trust indenture or other proceedings  
43 appertaining thereto, may cause to be invested and reinvested, except as  
44 otherwise provided in NRS 396.876, any pledged revenues and any  
45 proceeds of securities issued hereunder in an investment contract that is  
46 collateralized with securities issued by the Federal Government or  
47 agencies of the Federal Government if:

48 1. The collateral has a market value of at least 102 percent of the  
49 amount invested and any accrued unpaid interest thereon;



1     2. The university receives a security interest in the collateral that is  
2     fully perfected and the collateral is held in custody for the university or  
3     its trustee by a third-party agent of the university which is a commercial  
4     bank authorized to exercise trust powers;

5     3. The market value of the collateral is determined not less  
6     frequently than weekly and, if the ratio required by subsection 1 is not  
7     met, sufficient additional collateral is deposited with the agent of the  
8     university to meet that ratio within 2 business days after the  
9     determination; and

10    4. The party with whom the investment contract is executed is a  
11    commercial bank, or that party or a guarantor of the performance of that  
12    party is:

13    (a) An insurance company which has a rating on its ability to pay  
14    claims of not less than "Aa2" by Moody's Investors Service, Inc., or  
15    "AA" by Standard and Poor's Ratings Services, or their equivalent; or

16    (b) An entity which has a credit rating on its outstanding long-term  
17    debt of not less than "A2" by Moody's Investors Service, Inc., or "A" by  
18    Standard and Poor's Ratings Services, or their equivalent.

19    Sec. 5. 1. The university, in connection with securities it has issued  
20    or proposes to issue, may enter into an agreement for an exchange of  
21    interest rates as provided in this section if the board finds that such an  
22    agreement would be in the best interests of the university.

23    2. The university may enter into an agreement to exchange interest  
24    rates only if:

25    (a) The long-term debt obligations of the person with whom the  
26    university enters the agreement are rated "A" or better by a nationally  
27    recognized rating agency; or

28    (b) The obligations pursuant to the agreement of the person with  
29    whom the university enters the agreement are either:

30    (1) Guaranteed by a person whose long-term debt obligations are  
31    rated "A" or better by a nationally recognized rating agency; or

32    (2) Collateralized by obligations deposited with the university or an  
33    agent of the university which would be legal investments for the state  
34    pursuant to NRS 355.140 and which have a market value at the time the  
35    agreement is made of not less than 100 percent of the principal amount  
36    upon which the exchange of interest rates is based.

37    3. The university may agree, with respect to securities that the  
38    university has issued or proposes to issue bearing interest at a variable  
39    rate, to pay sums equal to interest at a fixed rate or rates or at a different  
40    variable rate determined pursuant to a formula set forth in the agreement  
41    on an amount not to exceed the principal amount of the securities with  
42    respect to which the agreement is made, in exchange for an agreement to  
43    pay sums equal to interest on the same principal amount at a variable  
44    rate determined pursuant to a formula set forth in the agreement.

45    4. The university may agree, with respect to securities that the  
46    university has issued or proposes to issue bearing interest at a fixed rate  
47    or rates, to pay sums equal to interest at a variable rate determined  
48    pursuant to a formula set forth in the agreement on an amount not to  
49    exceed the outstanding principal amount of the securities with respect to



1 *which the agreement is made, in exchange for an agreement to pay sums*  
2 *equal to interest on the same principal amount at a fixed rate or rates set*  
3 *forth in the agreement.*

4 *5. The term of an agreement entered into pursuant to this section*  
5 *must not exceed the term of the securities with respect to which the*  
6 *agreement was made.*

7 *6. The university's obligations to make payments under the*  
8 *agreement may be secured by any of the pledged revenues that are*  
9 *pledged to the securities in connection with the agreement as executed,*  
10 *so long as the pledge does not violate the terms of any resolution or other*  
11 *instrument appertaining to outstanding securities issued hereunder.*

12 *7. Limitations upon the rate of interest on securities do not apply to*  
13 *interest paid pursuant to an agreement entered into pursuant to this*  
14 *section.*

15 *8. If the university has entered into an agreement pursuant to this*  
16 *section with respect to those securities, it may treat the amount or rate of*  
17 *interest on the securities as the amount or rate of interest payable after*  
18 *giving effect to the agreement for the purpose of calculating:*

19 *(a) Rates and charges of a revenue-producing enterprise whose*  
20 *revenues are pledged to or used to pay the securities;*

21 *(b) Statutory requirements concerning revenue coverage that are*  
22 *applicable to the securities; and*

23 *(c) Any other amounts which are based upon the rate of interest of the*  
24 *securities.*

25 *9. Subject to covenants applicable to the securities, any payments*  
26 *required to be made by the university under the agreement may be made*  
27 *from pledged revenues that are pledged to pay debt service on the*  
28 *securities with respect to which the agreement was made or from any*  
29 *other legally available source.*

30 **Sec. 6.** NRS 396.809 is hereby amended to read as follows:  
31 396.809 NRS 396.809 to 396.885, inclusive, ~~shall~~ *and sections 2 to*  
32 *5, inclusive, of this act may* be known as the University Securities Law.

33 **Sec. 7.** NRS 104.9109 is hereby amended to read as follows:

34 104.9109 1. Except as otherwise provided in subsections 3 and 4,  
35 this article applies to:

36 (a) A transaction, regardless of its form, that creates a security interest  
37 in personal property or fixtures by contract;

38 (b) An agricultural lien;

39 (c) A sale of accounts, chattel paper, payment intangibles or promissory  
40 notes;

41 (d) A consignment;

42 (e) A security interest arising under NRS 104.2401, 104.2505,  
43 subsection 3 of NRS 104.2711, or subsection 5 of NRS 104A.2508, as  
44 provided in NRS 104.9110; and

45 (f) A security interest arising under NRS 104.4210 or 104.5118.

46 2. The application of this article to a security interest in a secured  
47 obligation is not affected by the fact that the obligation is itself secured by  
48 a transaction or interest to which this article does not apply.

49 3. This article does not apply to the extent that:



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- 1 (a) A statute, regulation or treaty of the United States preempts this  
2 article; ~~or~~
- 3 (b) ~~Another statute of this state expressly governs the creation,~~  
4 ~~perfection, priority or enforcement of a security interest created by this~~  
5 ~~state or a governmental unit of this state;~~
- 6 ~~—(c) A statute of another state, a foreign country, or a governmental unit~~  
7 ~~of another state or a foreign country, other than a statute generally~~  
8 ~~applicable to security interests, expressly governs creation, perfection,~~  
9 ~~priority, or enforcement of a security interest created by the state, country,~~  
10 ~~or governmental unit; or~~
- 11 ~~—(d)~~ The rights of a transferee beneficiary or nominated person under a  
12 letter of credit are independent and superior under NRS 104.5114.
- 13 4. This article does not apply to:
- 14 (a) A landlord's lien, other than an agricultural lien;
- 15 (b) A lien, other than an agricultural lien, given by statute or other rule  
16 of law for services or materials, but NRS 104.9333 applies with respect to  
17 priority of the lien;
- 18 (c) An assignment of a claim for wages, salary or other compensation of  
19 an employee;
- 20 (d) A sale of accounts, chattel paper, payment intangibles or promissory  
21 notes as part of a sale of the business out of which they arose;
- 22 (e) An assignment of accounts, chattel paper, payment intangibles or  
23 promissory notes which is for the purpose of collection only;
- 24 (f) An assignment of a right to payment under a contract to an assignee  
25 that is also obligated to perform under the contract;
- 26 (g) An assignment of a single account, payment intangible or  
27 promissory note to an assignee in full or partial satisfaction of a preexisting  
28 indebtedness;
- 29 (h) A transfer of an interest in or an assignment of a claim under a  
30 policy of insurance, other than an assignment by or to a health-care  
31 provider of a health-care-insurance receivable and any subsequent  
32 assignment of the right to payment, but NRS 104.9315 and 104.9322 apply  
33 with respect to proceeds and priorities in proceeds;
- 34 (i) An assignment of a right represented by a judgment, other than a  
35 judgment taken on a right to payment that was collateral;
- 36 (j) A right of recoupment or set-off, but:
- 37 (1) NRS 104.9340 applies with respect to the effectiveness of rights  
38 of recoupment or set-off against deposit accounts; and
- 39 (2) NRS 104.9404 applies with respect to defenses or claims of an  
40 account debtor;
- 41 (k) The creation or transfer of an interest in or lien on real property,  
42 including a lease or rents thereunder, except to the extent that provision is  
43 made for:
- 44 (1) Liens on real property in NRS 104.9203 and 104.9308;
- 45 (2) Fixtures in NRS 104.9334;
- 46 (3) Fixture filings in NRS 104.9501, 104.9502, 104.9512, 104.9516  
47 and 104.9519; and
- 48 (4) Security agreements covering personal and real property in NRS  
49 104.9604;



1 (l) An assignment of a claim arising in tort, other than a commercial tort  
2 claim, but NRS 104.9315 and 104.9322 apply with respect to proceeds and  
3 priorities in proceeds; ~~to~~  
4 (m) An assignment of a deposit account in a consumer transaction, but  
5 NRS 104.9315 and 104.9322 apply with respect to proceeds and priorities  
6 in proceeds ~~to~~; *or*  
7 *(n) A transfer by a government or governmental unit.*  
8 **Sec. 8.** 1. This section and sections 1 through 6, inclusive, of this act  
9 become effective on July 1, 2001.  
10 2. Section 7 of this act becomes effective at 12:01 a.m. on July 1,  
11 2001.

