

Amendment No. 347

Assembly Amendment to Assembly Bill No. 451

(BDR 30-613)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

WBD/MSM



Date: 4/20/2009

A.B. No. 451—Establishes a program for the issuance of state obligations to provide venture capital to certain minority-owned businesses in this State. (BDR 30-613)



ASSEMBLY BILL NO. 451—ASSEMBLYMAN ARBERRY

MARCH 16, 2009

Referred to Committee on Government Affairs

SUMMARY—Establishes a program for the issuance of state obligations to provide venture capital to certain minority-owned businesses in this State. (BDR ~~309~~ 31-613)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 state obligations; establishing a program for the ~~issuance of state obligations~~ investment of state money in certificates of deposit at a reduced rate to provide ~~venture capital~~ lending institutions with money for reduced-rate loans to certain minority-owned and other small businesses in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing law prohibits the State from donating or loaning money or its credit or subscribing to or being interested in the stock of any company, association or corporation, except corporations formed for educational or charitable purposes. (Nev. Const. Art. 8, § 9) Section 9 of this bill requires the Director of the Department of Business and Industry to form an independent corporation for profit, the purpose of which is to form a limited partnership to provide venture capital to certain minority-owned businesses to enhance their ability to do business in this State. Section 9 also requires the Director to form an independent corporation for public benefit to serve as the sole stockholder of the independent corporation for profit formed by the Director.~~

~~Section 10 of this bill requires the State Board of Finance, upon application by the Director, to issue general obligation bonds of the State of Nevada, the aggregate amount of which must not exceed \$20,000,000. The Director shall use a portion of the proceeds of the bonds to loan money to the corporation for public benefit formed by the Director to provide, through the limited partnership formed by the corporation for profit formed by the Director, venture capital to certain minority-owned businesses to enhance their ability to do business in this State. Section 10 also requires the Director to create an account for the escrow of a portion of the loan to ensure that the money in the escrow, when invested, will have a value equal to or greater than the principal amount of the loan and requires the Director to provide a rate of interest on the loan that, together with any other interest, penalties and other payments received from the proceeds of the bonds, will be sufficient to pay the interest on the bonds.~~

Existing law allows the State Treasurer to invest the money of this State in negotiable certificates of deposit issued by commercial banks, insured credit unions or insured savings and loan associations. (NRS 355.140) Section 15 of this bill requires the State Treasurer to establish a Linked Deposit Program whereby the State, in an aggregate amount not to exceed \$20,000,000, invests in certificates of deposit with commercial banks, insured credit unions or insured savings and loan associations at a reduced rate

of interest on the condition that the lending institution link the value of each certificate of deposit to a reduced-rate loan to certain types of small businesses. Section 15 also provides that the rate of interest paid to the State on the deposit is to be not more than 2 percentage points below the market rate for such a deposit, and the loan rate is to be reduced not more than 2 percentage points below the market rate for such a loan. Further, section 15 requires a lending institution to sign an agreement with the State Treasurer as to the terms of such a deposit and its linked loan.

Section 17 of this bill requires a lending institution that participates in the Linked Deposit Program to apply all the usual lending standards to determine the creditworthiness of a small business seeking a loan and further requires that a preference be given to certain small businesses that are owned by a member of a racial or ethnic minority, a woman or an honorably discharged veteran of the Armed Forces of the United States. Section 19 of this bill limits such loans to not more than \$500,000 and to a term of not longer than 10 years. Section 18 of this bill limits the types of businesses that are eligible to participate in the Linked Deposit Program.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. ~~[The Legislature hereby declares that the purpose of this act is to benefit the general welfare of the people of this State by improving the state economy through the development of business opportunities for employment, and finds that this purpose is a charitable purpose within the meaning of Section 9 of Article 8 of the Nevada Constitution.] (Deleted by amendment.)~~

Sec. 2. ~~[Chapter 349 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 11, inclusive, of this act.] (Deleted by amendment.)~~

Sec. 3. ~~[As used in sections 3 to 11, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 8, inclusive, of this act have the meanings ascribed to them in those sections.] (Deleted by amendment.)~~

Sec. 4. ~~["Corporation for public benefit" means a corporation that is recognized as exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, future amendments to that section and the corresponding provisions of future internal revenue laws.] (Deleted by amendment.)~~

Sec. 5. ~~["Department" means the Department of Business and Industry.] (Deleted by amendment.)~~

Sec. 6. ~~["Director" means the Director of the Department.] (Deleted by amendment.)~~

Sec. 7. ~~["Minority owned business" means any business in this State that is established and operating, or will be established to operate, of which at least 51 percent is owned by a person who is a member of a racial or ethnic minority.] (Deleted by amendment.)~~

Sec. 8. ~~["Venture capital" means an investment in or loan made to a minority owned business.] (Deleted by amendment.)~~

Sec. 9. ~~[The Director shall cause to be formed in this State:~~

~~1. An independent corporation for profit, the general purpose of which is to form and act as the general partner of a limited partnership to provide venture capital to minority owned businesses to enhance their ability to do business in this State.~~

~~2. An independent corporation for public benefit that shall serve as the sole stockholder of the independent corporation formed pursuant to subsection 1.] (Deleted by amendment.)~~

1 **Sec. 10.** ~~{1. Upon application by the Director, the State Board of Finance~~
2 ~~shall issue general obligation bonds of the State of Nevada to carry out the~~
3 ~~provisions of subsection 2. The aggregate amount of all outstanding bonds issued~~
4 ~~pursuant to this section must not exceed \$20,000,000. The provisions of the State~~
5 ~~Securities Law apply to the issuance of bonds pursuant to this section.~~

6 ~~2. The expenses related to the issuance of bonds pursuant to this section~~
7 ~~must be paid from the proceeds of the bonds. The Director shall use the~~
8 ~~remaining proceeds to loan money to the corporation for public benefit created~~
9 ~~pursuant to subsection 2 of section 9 of this act, pursuant to a loan agreement~~
10 ~~that:~~

11 ~~(a) Requires the corporation for public benefit to use the money to provide,~~
12 ~~through the limited partnership formed by the corporation created pursuant to~~
13 ~~subsection 1 of section 9 of this act, venture capital to minority-owned businesses~~
14 ~~to enhance their ability to do business in this State;~~

15 ~~(b) Requires the creation of an escrow for a portion of the loan in an account~~
16 ~~for the benefit of the Department that, when the money in the escrow is invested~~
17 ~~for a period of not more than 15 years, will have a value equal to or greater than~~
18 ~~the principal amount of the loan; and~~

19 ~~(c) Provides a rate of interest on the loan in an amount established by the~~
20 ~~Director. The Director shall establish a rate of interest in an amount that,~~
21 ~~together with any other interest, penalties and other payments received from the~~
22 ~~proceeds of the bonds issued pursuant to this section, will be sufficient to pay the~~
23 ~~interest on the bonds.}~~ (Deleted by amendment.)

24 **Sec. 11.** ~~{The Director, in consultation with the Commission on Economic~~
25 ~~Development shall:~~

26 ~~1. Adopt such regulations as he deems necessary to carry out the provisions~~
27 ~~of sections 3 to 11, inclusive, of this act, including, without limitation, the~~
28 ~~performance of such audits and the submission of such reports as he deems~~
29 ~~appropriate to ensure compliance with the provisions of sections 3 to 11,~~
30 ~~inclusive, of this act and the regulations adopted pursuant to this section. The~~
31 ~~regulations may include criteria for the determining eligibility for and use of~~
32 ~~money loaned pursuant to subsection 2 of section 10 of this act, but the~~
33 ~~corporation created pursuant to subsection 1 of section 9 of this act must have~~
34 ~~sole authority for the approval of applications for and the management of venture~~
35 ~~capital provided pursuant to sections 3 to 11, inclusive, of this act.~~

36 ~~2. Provide the corporation created pursuant to subsection 2 of section 9 of~~
37 ~~this act with such assistance as is necessary to carry out the provisions of sections~~
38 ~~3 to 11, inclusive, of this act and comply with the regulations adopted pursuant to~~
39 ~~this section.}~~ (Deleted by amendment.)

40 **Sec. 12.** Chapter 355 of NRS is hereby amended by adding thereto the
41 provisions set forth as sections 13 to 20, inclusive, of this act.

42 **Sec. 13.** The Legislature hereby declares that the public policy of this State
43 is to benefit the general welfare of the people of this State by improving the state
44 economy through the encouragement of reduced-rate lending to minority-owned
45 and certain other small businesses.

46 **Sec. 14.** As used in sections 13 to 20, inclusive, of this act, unless the
47 context otherwise requires:

48 1. "Eligible small business" means a business that meets the requirements
49 of section 18 of this act.

50 2. "Linked deposit" means a certificate of deposit issued pursuant to
51 sections 15 to 20, inclusive, of this act to the State Treasurer by a qualified
52 lending institution at an interest rate not more than 2 percent below the current
53 market rate on the condition that the institution agrees to lend the value of the

1 deposit, according to a deposit agreement made pursuant to section 15 of this act,
2 to an eligible small business at a rate that is at least 2 percent lower than the
3 current market rate for such a loan.

4 3. “Qualified lending institution” means a commercial bank, a savings and
5 loan association or an insured credit union in this State that meets the eligibility
6 requirements of section 16 of this act.

7 Sec. 15. 1. The State Treasurer shall establish a Linked Deposit Program
8 to increase the availability of reduced-rate loans to certain small businesses
9 owned and operated in this State.

10 2. The State Treasurer may invest in reduced-rate certificates of deposit
11 with qualified lending institutions upon acceptance of a loan package pursuant to
12 this section and section 17 of this act. Each certificate of deposit issued pursuant
13 to this section by a qualified lending institution to the State Treasurer must be
14 linked to a reduced-rate loan made by the qualified lending institution to an
15 eligible small business.

16 3. The total amount invested in linked deposits by the State Treasurer at any
17 one time may not exceed, in the aggregate, \$20,000,000.

18 4. The State Treasurer may accept or reject a linked deposit loan package
19 presented by a qualified lending institution.

20 5. Upon acceptance of a linked deposit loan package from a qualified
21 lending institution:

22 (a) The State Treasurer may place a linked deposit with the lending
23 institution at a rate that is not more than 2 percentage points below the market
24 rate for such a deposit at that lending institution. The State Treasurer shall
25 determine and calculate all linked deposit rates.

26 (b) The qualified lending institution shall enter into a deposit agreement with
27 the State Treasurer, which must include requirements necessary to carry out the
28 purposes of sections 13 to 20, inclusive, of this act. The deposit agreement must
29 specify, without limitation:

30 (1) The rate of interest to be paid on the deposit;

31 (2) The rate of interest to be charged for the loan linked to the deposit;

32 (3) That the qualified lending institution:

33 (I) Shall loan an amount equal to the amount of the deposit to an
34 eligible small business at a rate that is reduced from the current market rate for
35 such a loan in the same amount as the reduction in rate received from the State
36 Treasurer for the linked deposit;

37 (II) Shall verify that the small business is eligible for such a loan;

38 (III) Shall collect and supply the State Treasurer with any
39 information requested as to the loan and the eligible small business; and

40 (IV) Shall notify the State Treasurer immediately if the eligible small
41 business becomes ineligible for the Linked Deposit Program during the term of
42 the loan; and

43 (4) That the rate of interest to be paid on the deposit will revert to the
44 current market rate at the time the eligible small business becomes ineligible for
45 the Linked Deposit Program.

46 6. The State Treasurer shall compile and maintain on his Internet website a
47 list of small businesses that have received loans from the Linked Deposit
48 Program. The list must include, without limitation, for each business listed:

49 (a) The name of the business;

50 (b) The type of business;

51 (c) The location of the business;

52 (d) The amount and term of the linked deposit loan; and

(e) The name and location of the qualified lending institution that made the loan.

Sec. 16. 1. The State Board of Finance shall qualify a lending institution for participation in the Linked Deposit Program established by the State Treasurer pursuant to section 15 of this act.

2. To qualify for participation in the Linked Deposit Program, a lending institution must:

(a) Be a commercial bank organized under chapter 659 of NRS, an insured savings and loan association organized under chapter 673 of NRS or an insured credit union organized under chapter 678 of NRS;

(b) Agree to actively advertise to and inform small businesses of the availability of reduced-rate loans through the Linked Deposit Program;

(c) Make information about the Linked Deposit Program available on the public Internet website of the institution, if any; and

(d) Apply for qualification on a form provided by the State Board of Finance.

3. The State Board of Finance shall adopt regulations necessary to carry out the provisions of this section.

Sec. 17. 1. A qualified lending institution that desires to receive a linked deposit shall accept and review applications for linked deposit loans from eligible small businesses on a form provided by the State Treasurer. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business, including, without limitation, the consideration of:

(a) Character, reputation and credit history of the applicant;

(b) Experience and depth of management;

(c) Strength of the business;

(d) Past earnings, projected cash flow and future prospects;

(e) Ability to repay the loan with earnings from the business;

(f) Sufficient invested equity to operate on a sound financial basis; and

(g) Potential for long-term success.

2. In determining which small business will receive a linked deposit loan, preference must be given, if the qualifications of the applicants are equal:

(a) First, to a business that is at least 51-percent owned by a resident of this State who is:

(1) A member of a racial or ethnic minority;

(2) A woman; or

(3) An honorably discharged veteran of the Armed Forces of the United States.

(b) Second, to a business engaged in the production and sale of fuel or power from an energy source other than a fossil fuel, including, without limitation, geothermal, hydroelectric, solar or wind energy.

3. A qualified lending institution must submit a loan package to the State Treasurer for each Linked Deposit Program loan, on a form provided by the State Treasurer. The loan package must include, without limitation, verification by the qualified lending institution that the eligible small business meets the requirements of this section and section 18 of this act and that the use of proceeds as specified in the loan meets the requirements of section 19 of this act.

Sec. 18. 1. To be eligible for a loan from a qualified lending institution pursuant to the Linked Deposit Program established pursuant to section 15 of this act, a business must:

(a) Employ not more than 50 employees;

(b) Be headquartered in this State;

(c) Maintain offices or operating facilities in this State;

- 1 (d) Transact business in this State;
2 (e) Be organized for profit;
3 (f) Have gross annual sales of less than \$5,000,000 at the time of application
4 pursuant to this section;
5 (g) Satisfy the lending criteria of the qualified lending institution;
6 (h) Submit verification of eligibility for a linked deposit loan with a qualified
7 lending institution on a form provided by the State Treasurer; and
8 (i) Submit an application for a linked deposit loan with a qualified lending
9 institution on a form provided by the qualified lending institution.

10 2. The following types of businesses are not eligible for a loan from a
11 qualified lending institution under the Linked Deposit Program established
12 pursuant to section 15 of this act:

- 13 (a) Nonprofit businesses;
14 (b) Financial businesses engaged primarily in the business of lending,
15 including, without limitation, banks, finance companies and pawnbrokers;
16 (c) Speculative real estate development companies;
17 (d) Subsidiaries of businesses located in a foreign country;
18 (e) Businesses which have previously defaulted on a Linked Deposit
19 Program loan or federally assisted financing;
20 (f) Businesses which engage in any illegal activity; and
21 (g) Any business which is ineligible under regulations adopted by the State
22 Treasurer pursuant to section 20 of this act.

23 Sec. 19. 1. A reduced-rate loan made pursuant to the Linked Deposit
24 Program may not:

- 25 (a) Exceed \$500,000; and
26 (b) Have a term of more than 10 years.
27 2. An eligible small business may use loan proceeds from a linked deposit
28 reduced-rate loan for the following purposes:

- 29 (a) Working capital;
30 (b) Real property acquisition;
31 (c) Establishing a line of credit;
32 (d) Financing of accounts receivable;
33 (e) Purchase of equipment, except that such equipment must not be
34 purchased to replace the work or function of employees, resulting in layoffs or
35 downsizing; and
36 (f) Any other purpose permissible under regulations adopted by the State
37 Treasurer pursuant to section 20 of this act.

38 Sec. 20. The State Treasurer shall adopt regulations necessary to carry out
39 the provisions of sections 13 to 20, inclusive, of this act.

40 Sec. 21. This section and sections 12 to 20, inclusive, of this act become
41 effective upon passage and approval for the purpose of adopting regulations
42 and on October 1, 2009 for all other purposes.