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THIRD REPRINT

A.B. 451

ASSEMBLY BILL NO. 451—ASSEMBLYMAN ARBERRY

MARCH 16, 2009

Referred to Committee on Government Affairs

SUMMARY—Establishes a program for the investment of state money in certificates of deposit at a reduced rate to provide lending institutions with money for reduced-rate loans to certain small businesses in this State. (BDR 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 investment of state money in certificates of deposit at a reduced rate to provide lending institutions with money for reduced-rate loans to certain small businesses in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law allows the State Treasurer to invest the money of this State in
2 negotiable certificates of deposit issued by commercial banks, insured credit unions
3 or insured savings and loan associations. (NRS 355.140) **Section 15** of this bill
4 requires the State Treasurer to establish a Linked Deposit Program whereby the
5 State, in an aggregate amount not to exceed \$20,000,000, invests in certificates of
6 deposit with commercial banks, insured credit unions or insured savings and loan
7 associations at a reduced rate of interest on the condition that the lending institution
8 link the value of each certificate of deposit to a reduced-rate loan to certain types of
9 small businesses. **Section 15** also provides that the rate of interest paid to the State
10 on the deposit is to be not more than 2 percentage points below the market rate for
11 such a deposit, and the loan rate is to be reduced not more than 2 percentage points
12 below the market rate for such a loan. Further, **section 15** requires a lending
13 institution to sign an agreement with the State Treasurer as to the terms of such a
14 deposit and its linked loan.

15 **Section 17** of this bill requires a lending institution that participates in the
16 Linked Deposit Program to apply all the usual lending standards to determine the
17 creditworthiness of a small business seeking a loan and further requires that a
18 preference be given to certain small businesses that: (1) are owned by a member of
19 a racial or ethnic minority, a woman or an honorably discharged veteran of the



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Armed Forces of the United States; or (2) engage in the production and sale of fuel or power from an energy source other than a fossil fuel. **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.

Section 21 of this bill prohibits the State Treasurer from making any new investments through the Linked Deposit Program after June 30, 2011.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

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

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

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

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

2. "Linked deposit" means a certificate of deposit issued pursuant to sections 15 to 20, inclusive, of this act to the State Treasurer by a qualified lending institution at an interest rate not more than 2 percent below the current market rate on the condition that the institution agrees to lend the value of the deposit, according to a deposit agreement made pursuant to section 15 of this act, to an eligible small business at a rate that is at least 2 percent lower than the current market rate for such a loan.

3. "Qualified lending institution" means a commercial bank, a savings and loan association or an insured credit union in this



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1 *State that meets the eligibility requirements of section 16 of this*
2 *act.*

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

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

13 3. *The total amount invested in linked deposits by the State*
14 *Treasurer at any one time may not exceed, in the aggregate,*
15 *\$20,000,000.*

16 4. *The State Treasurer may accept or reject a linked deposit*
17 *loan package presented by a qualified lending institution.*

18 5. *Upon acceptance of a linked deposit loan package from a*
19 *qualified lending institution:*

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

25 (b) *The qualified lending institution shall enter into a deposit*
26 *agreement with the State Treasurer, which must include*
27 *requirements necessary to carry out the purposes of sections 13 to*
28 *20, inclusive, of this act. The deposit agreement must specify,*
29 *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*
32 *the deposit;*

33 (3) *That the qualified lending institution:*

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

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

41 (III) *Shall collect and supply the State Treasurer with*
42 *any information requested as to the loan and the eligible small*
43 *business; and*



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

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

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

- (a) The name of the business;
- (b) The type of business;
- (c) The location of the business;
- (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. 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 Treasurer.

2. The State Treasurer 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;

(d) Transact business in this State;

(e) Be organized for profit;

(f) Have gross annual sales of less than \$5,000,000 at the time of application pursuant to this section;

(g) Satisfy the lending criteria of the qualified lending institution;

(h) Submit verification of eligibility for a linked deposit loan with a qualified lending institution on a form provided by the State Treasurer; and

(i) Submit an application for a linked deposit loan with a qualified lending institution on a form provided by the qualified lending institution.

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



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- (a) *Nonprofit businesses;*
- (b) *Financial businesses engaged primarily in the business of lending, including, without limitation, banks, finance companies and pawnbrokers;*
- (c) *Speculative real estate development companies;*
- (d) *Subsidiaries of businesses located in a foreign country;*
- (e) *Businesses which have previously defaulted on a Linked Deposit Program loan or federally assisted financing; and*
- (f) *Businesses which engage in any illegal activity.*

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

- (a) *Exceed \$500,000; and*
- (b) *Have a term of more than 10 years.*

2. An eligible small business may use loan proceeds from a linked deposit reduced-rate loan for the following purposes:

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

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

Sec. 21. Notwithstanding the provisions of section 15 of this act, the State Treasurer shall not accept a linked deposit loan package or invest in a reduced-rate certificate of deposit after June 30, 2011.

Sec. 22. This section and sections 12 to 21, inclusive, of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2009, for all other purposes.

