

Amendment No. 945

Assembly Amendment to Senate Bill No. 75 Second Reprint (BDR 31-523)

Proposed by: Assembly Committee on Government Affairs

Amends: Summary: No Title: No 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 underlining* is newly added transitory language.

BFG/BJE



Date: 6/6/2011

S.B. No. 75—Establishes a program to provide private equity funding to businesses engaged in certain industries in this State. (BDR 31-523)



SENATE BILL NO. 75—SELECT COMMITTEE ON
ECONOMIC GROWTH AND EMPLOYMENT

(ON BEHALF OF THE STATE TREASURER)

PREFILED DECEMBER 15, 2010

Referred to Select Committee on Economic
Growth and Employment

SUMMARY—Establishes a program to provide private equity funding to businesses engaged in certain industries in this State. (BDR 31-523)

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 public financial administration; establishing a program to provide private equity funding to businesses engaged in certain industries in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State is prohibited from donating or loaning state money or credit, or subscribing to or being interested in the stock of any company, association or corporation, except a corporation that is formed for educational or charitable purposes. (Nev. Const. Art. 8, § 9) Existing law also requires the State Treasurer to negotiate for the investment of money in the State Permanent School Fund. However, the State Treasurer is prohibited from making certain investments unless he or she obtains a judicial determination that such an investment does not violate the provisions of Section 9 of Article 8 of the Nevada Constitution. (NRS 355.060)

Section 5.3 of this bill requires the State Treasurer to form an independent corporation for public benefit, the purpose of which is to act as a limited partner of limited partnerships or a shareholder or member of limited-liability companies that provide private equity funding to businesses that engage in certain industries. Section 5.3 further enacts provisions governing the composition and duties and responsibilities of the board of directors of the corporation for public benefit. Sections 6 and 8 of this bill ~~require~~ authorize the State Treasurer ~~to, at the direction of the Commission on Economic Development,~~ to invest an amount not to exceed \$50 million of the money in the State Permanent School Fund to provide private equity funding to businesses engaged in certain industries that are located or seeking to locate in Nevada. Section 7 of this bill prescribes the duties and powers of the State Treasurer with respect to the adoption of regulations and the implementation of the provisions of this bill.

1 WHEREAS, NRS 355.060 authorizes the State Treasurer to invest money in the
2 State Permanent School Fund in certain investments; and

3 WHEREAS, The State Treasurer seeks to invest money in the State Permanent
4 School Fund in accordance with sound and prudent investment principles which
5 include a primary emphasis on the preservation of assets followed by an emphasis
6 on return; and

7 WHEREAS, A greater return on Permanent School Fund money invested by the
8 State Treasurer will have a direct beneficial impact on Nevada schools and
9 students; and

10 WHEREAS, The availability of private equity funding for investment in health
11 care and life sciences, cyber security, homeland security and defense, alternative
12 energy, advanced materials and manufacturing, information technology and other
13 industries critical to economic development in this State would assist the State of
14 Nevada in diversifying the economic base of the State; and

15 WHEREAS, The availability of private equity funding for investment in health
16 care and life sciences, cyber security, homeland security and defense, alternative
17 energy, advanced materials and manufacturing, information technology and other
18 industries critical to economic development in this State would attract new
19 businesses and investment to the State of Nevada, resulting in high-paying, quality
20 jobs; and

21 WHEREAS, The availability of private equity funding for investment in health
22 care and life sciences, cyber security, homeland security and defense, alternative
23 energy, advanced materials and manufacturing, information technology and other
24 industries critical to economic development in this State would create greater
25 exposure for institutions of the Nevada System of Higher Education through
26 expanded projects designed around health care and life sciences, cyber security,
27 homeland security and defense, alternative energy, advanced materials and
28 manufacturing, information technology and other industries critical to economic
29 development in this State; and

30 WHEREAS, The availability of private equity funding for investment in health
31 care and life sciences, cyber security, homeland security and defense, alternative
32 energy, advanced materials and manufacturing, information technology and other
33 industries critical to economic development in this State would encourage
34 innovation and cooperation among institutions of the Nevada System of Higher
35 Education and private sector businesses located in the State of Nevada; and

36 WHEREAS, The availability of private equity funding for investment in health
37 care and life sciences, cyber security, homeland security and defense, alternative
38 energy, advanced materials and manufacturing, information technology and other
39 industries critical to economic development in this State would increase the ability
40 of institutions of the Nevada System of Higher Education, businesses in the State of
41 Nevada and nonprofit corporations and organizations in the State of Nevada to
42 compete more successfully for federal and private research and development
43 funding; and

44 WHEREAS, The availability of private equity funding for investment in health
45 care and life sciences research and development would provide for advanced
46 medical care being available to people living in and visiting the State of Nevada;
47 and

48 WHEREAS, The State of Nevada, through the establishment of methods to
49 provide private equity funding to businesses in this State, would provide economic
50 growth and world-class medical care and training and would assist in the creation
51 of high-paying, quality jobs for people living in the State of Nevada; now,
52 therefore,

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

Section 1. Chapter 355 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections ~~3.5 and~~ 3.7, 4 and 4.5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. (Deleted by amendment.)

Sec. 3.5. ~~“Commission” means the Commission on Economic Development or its successor.~~ (Deleted by amendment.)

Sec. 3.7. “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.

Sec. 4. “Private equity funding” means an investment in or a purchase of securities in operating businesses that are not publicly traded on a stock exchange.

Sec. 4.5. “Venture capital” means equity, near-equity and seed capital financing, including, without limitation, early stage research and development capital for start-up enterprises, and other equity, near-equity or seed capital for growth and expansion of entrepreneurial enterprises.

Sec. 5. (Deleted by amendment.)

Sec. 5.3. 1. The State Treasurer shall cause to be formed in this State an independent corporation for public benefit, the general purpose of which is to act as a limited partner of limited partnerships or a shareholder or member of limited-liability companies that provide private equity funding to businesses:

(a) Located in this State or seeking to locate in this State; and

(b) Engaged primarily in one or more of the following industries:

(1) Health care and life sciences.

(2) Cyber security.

(3) Homeland security and defense.

(4) Alternative energy.

(5) Advanced materials and manufacturing.

(6) Information technology.

(7) Any other industry that the board of directors of the corporation for public benefit determines will likely meet the targets for investment returns established by the corporation for public benefit for investments authorized by sections 2 to 7, inclusive, of this act and comply with sound fiduciary principles.

2. The corporation for public benefit created pursuant to subsection 1 must have a board of directors consisting of:

(a) Five members from the private sector who have at least 10 years of experience in the field of investment, finance or banking and who are appointed for a term of 4 years as follows:

(1) One member appointed by the Governor;

(2) One member appointed by the Senate Majority Leader;

(3) One member appointed by the Speaker of the Assembly;

(4) One member appointed by the Senate Minority Leader; and

(5) One member appointed by the Assembly Minority Leader;

(b) The Chancellor of the Nevada System of Higher Education or his or her designee;

(c) The State Treasurer; and

(d) With the approval a majority of the members of the board of directors described in subparagraphs (1), (2) and (3), up to 5 additional members who are direct investors in the corporation for public benefit.

3. Vacancies in the appointed positions on the board of directors of the corporation for public benefit created pursuant to subsection 1 must be filled by the appointing authority for the unexpired term.

4. The State Treasurer shall serve as chair of the board of directors of the corporation for public benefit created pursuant to subsection 1.

5. The members of the board of directors of the corporation for public benefit must serve without compensation but are entitled to be reimbursed for actual and necessary expenses incurred in the performance of their duties, including, without limitation, travel expenses.

6. A member of the board of directors of the corporation for public benefit created pursuant to subsection 1 must not have an equity interest in any:

(a) External asset manager or venture capital or private equity investment firm contracting with the board pursuant to section 5.7 of this act; or

(b) Business which receives private equity funding pursuant to sections 2 to 7, inclusive, of this act.

7. The board of directors of the corporation for public benefit created pursuant to subsection 1 shall:

(a) Comply with the provisions of chapter 281A of NRS.

(b) Meet at least quarterly and conduct any meetings of the board of directors in accordance with chapter 241 of NRS.

(c) Review the performance of all external asset managers and venture capital and private equity investment firms contracting with the corporation for public benefit pursuant to section 5.7 of this act.

(d) On or before December 1 of each year, provide an annual report to the Governor and the Director of the Legislative Counsel Bureau for transmission to the next session of the Legislature, if the report is submitted in an even-numbered year or to the Legislative Commission, if the report is submitted in an odd-numbered year. The report must include, without limitation:

(1) An accounting of all money received and expended by the corporation for public benefit, including, without limitation, any matching grant funds, gifts or donations; and

(2) The name and a brief description of all businesses receiving an investment of money pursuant to the provisions of sections 2 to 7, inclusive, of this act.

Sec. 5.7. 1. The corporation for public benefit may place investments through the use or assistance of:

(a) External asset managers; or

(b) Private equity investment firms.

2. Money received pursuant to section 6 of this act by the corporation for public benefit may be used to make venture capital investments.

Sec. 6. ~~(1. At the direction of the Commission,)~~ If the State Treasurer ~~(shall invest)~~ obtains the judicial determination required by subsection 3 of NRS 355.060, the State Treasurer may transfer an amount not to exceed \$50 million from the State Permanent School Fund ~~(in)~~ to the corporation for public benefit. Such a transfer must be made pursuant to an agreement that requires the corporation for public benefit to:

1. Provide, through the limited partnerships or limited-liability companies ~~(that provide)~~ described in subsection 1 of section 5.3 of this act, private equity funding ; and

2. Ensure that at least 70 percent of all private equity funding provided by the corporation for public benefit is provided to businesses:

- (a) Located in this State or seeking to locate in this State; and
- (b) Engaged primarily in one or more of the following industries:

- (1) Health care and life sciences.
- (2) Cyber security.
- (3) Homeland security and defense.
- (4) Alternative energy.
- (5) Advanced materials and manufacturing.
- (6) Information technology.
- (7) Any other industry that the [Commission determines to be critical to

~~the economic development of this State.~~

~~2. The Commission shall ensure that at least 70 percent of all money invested pursuant to subsection 1 is provided to businesses:~~

- ~~(a) Located in this State or seeking to locate in this State; and~~
- ~~(b) Engaged primarily in one or more of the following industries:~~

- ~~(1) Health care and life sciences;~~
- ~~(2) Cyber security;~~
- ~~(3) Homeland security and defense;~~
- ~~(4) Alternative energy;~~
- ~~(5) Advanced materials and manufacturing;~~
- ~~(6) Information technology;~~
- ~~(7) Any other industry that the Commission determines to be critical to~~

~~the economic development of this State.~~

~~3. Investments made pursuant to this section may be placed through the use or assistance of:~~

- ~~(a) External asset managers; or~~
- ~~(b) Private equity investment firms.~~

~~4. Money invested pursuant to this section may not be used to make venture capital investments.~~

~~5. As used in this section, "venture capital" means equity, near-equity and seed capital financing, including, without limitation, early stage research and development capital for start-up enterprises, and other equity, near-equity or seed capital for growth and expansion of entrepreneurial enterprises.]~~ board of directors of the corporation for public benefit determines will likely meet the targets for investment returns established by the corporation for public benefit for investments authorized by sections 2 to 7, inclusive, of this act and comply with sound fiduciary principles.

Sec. 7. The State Treasurer [shall] :

1. [Adopt] May adopt such regulations as he or she deems necessary to carry out the provisions of sections 2 to 7, inclusive, of this act. [, including, without limitation, the]

2. Shall adopt regulations:

(a) Requiring the performance of [such] audits and the submission of [such] reports [as he or she deems appropriate] to ensure compliance with the provisions of sections 2 to 7, inclusive, of this act and the regulations adopted pursuant to this section [The regulations may] ;

(b) Providing for appropriate leveraging of investments to ensure that investments consist of money transferred from the State Permanent School Fund pursuant to section 6 of this act and money from private sources;

(c) Establishing a range or cap on servicing fees;

(d) Establishing limits on the amount or percentage of investment in a single venture capital project or by a fund manager; and

(e) Requiring the return of the corpus of investments after a defined investment period.

3. May adopt regulations which include, without limitation, criteria for determining eligibility for and use of private equity funding, but the Commission must have sole authority for the approval of applications for and the management of private equity funding provided pursuant to sections 2 to 7, inclusive, of this act.

~~2. Provide~~

4. May, by regulation, establish a Business Leadership Council. The members of the Business Leadership Council must serve without compensation and are subject to the provisions of chapter 281A of NRS.

5. Shall provide the ~~Commission~~ corporation for public benefit with such assistance as is necessary to carry out the provisions of sections 2 to 7, inclusive, of this act and comply with the regulations adopted pursuant to this section.

6. Shall ensure that businesses receiving venture capital investments pursuant to sections 2 to 7, inclusive, of this act have a presence in this State as evidenced by:

(a) Being domiciled in this State;

(b) Having a headquarters in this State;

(c) Having a significant percentage of employees residing in this State; or

(d) Being in the process of expanding in this State or relocating to this State.

Sec. 8. NRS 355.060 is hereby amended to read as follows:

355.060 1. The State Controller shall notify the State Treasurer monthly of the amount of uninvested money in the State Permanent School Fund.

2. Whenever there is a sufficient amount of money for investment in the State Permanent School Fund, the State Treasurer shall proceed to negotiate for the investment of the money in:

(a) United States bonds.

(b) Obligations or certificates of the Federal National Mortgage Association, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal Farm Credit Banks Funding Corporation or the Student Loan Marketing Association, whether or not guaranteed by the United States.

(c) Bonds of this state or of other states.

(d) Bonds of any county of the State of Nevada.

(e) United States treasury notes.

(f) Farm mortgage loans fully insured and guaranteed by the ~~Farmers Home Administration~~ **Farm Service Agency** of the United States Department of Agriculture.

(g) Loans at a rate of interest of not less than 6 percent per annum, secured by mortgage on agricultural lands in this state of not less than three times the value of the amount loaned, exclusive of perishable improvements, of unexceptional title and free from all encumbrances.

(h) Money market mutual funds that:

(1) Are registered with the Securities and Exchange Commission;

(2) Are rated by a nationally recognized rating service as "AAA" or its equivalent; and

(3) Invest only in securities issued or guaranteed as to payment of principal and interest by the Federal Government, or its agencies or instrumentalities, or in repurchase agreements that are fully collateralized by such securities.

(i) Common or preferred stock of a corporation created by or existing under the laws of the United States or of a state, district or territory of the United States, if:

(1) The stock of the corporation is:

(I) Listed on a national stock exchange; or

1 (II) Traded in the over-the-counter market, if the price quotations for
2 the over-the-counter stock are quoted by the National Association of Securities
3 Dealers Automated Quotations System (NASDAQ);

4 (2) The outstanding shares of the corporation have a total market value of
5 not less than \$50,000,000;

6 (3) The maximum investment in stock is not greater than 50 percent of the
7 book value of the total investments of the State Permanent School Fund;

8 (4) Except for investments made pursuant to paragraph (k), the amount of
9 an investment in a single corporation is not greater than 3 percent of the book value
10 of the assets of the State Permanent School Fund; and

11 (5) Except for investments made pursuant to paragraph (k), the total
12 amount of shares owned by the State Permanent School Fund is not greater than 5
13 percent of the outstanding stock of a single corporation.

14 (j) A pooled or commingled real estate fund or a real estate security that is
15 managed by a corporate trustee or by an investment advisory firm that is registered
16 with the Securities and Exchange Commission, either of which may be retained by
17 the State Treasurer as an investment manager. The shares and the pooled or
18 commingled fund must be held in trust. The total book value of an investment made
19 under this paragraph must not at any time be greater than 5 percent of the total book
20 value of all investments of the State Permanent School Fund.

21 (k) Mutual funds or common trust funds that consist of any combination of the
22 investments listed in paragraphs (a) to (j), inclusive.

23 *(l) The limited partnerships or limited-liability companies described in*
24 *section 6 of this act.*

25 3. The State Treasurer shall not invest any money in the State Permanent
26 School Fund pursuant to paragraph (i), (j) or (k) of subsection 2 unless the State
27 Treasurer obtains a judicial determination that the proposed investment or category
28 of investments will not violate the provisions of Section 9 of Article 8 of the
29 Constitution of the State of Nevada. The State Treasurer shall contract for the
30 services of independent contractors to manage any investments of the State
31 Treasurer made pursuant to paragraph (i), (j) or (k) of subsection 2. The State
32 Treasurer shall establish such criteria for the qualifications of such an independent
33 contractor as are appropriate to ensure that each independent contractor has
34 expertise in the management of such investments.

35 4. In addition to the investments authorized by subsection 2, the State
36 Treasurer may make loans of money from the State Permanent School Fund to
37 school districts pursuant to NRS 387.526.

38 5. No part of the State Permanent School Fund may be invested pursuant to a
39 reverse-repurchase agreement.