

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 authorize the State Treasurer 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



20 of the State Treasurer with respect to the adoption of regulations and the
21 implementation of the provisions of this bill.

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

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

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

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

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

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

35 WHEREAS, The availability of private equity funding for
36 investment in health care and life sciences, cyber security, homeland
37 security and defense, alternative energy, advanced materials and
38 manufacturing, information technology and other industries critical
39 to economic development in this State would encourage innovation
40 and cooperation among institutions of the Nevada System of Higher



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1 Education and private sector businesses located in the State of
2 Nevada; and

3 WHEREAS, The availability of private equity funding for
4 investment in health care and life sciences, cyber security, homeland
5 security and defense, alternative energy, advanced materials and
6 manufacturing, information technology other industries critical to
7 economic development in this State would increase the ability of
8 institutions of the Nevada System of Higher Education, businesses
9 in the State of Nevada and nonprofit corporations and organizations
10 in the State of Nevada to compete more successfully for federal and
11 private research and development funding; and

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

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

21
22 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
23 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
24

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

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

32 **Sec. 3.** (Deleted by amendment.)

33 **Sec. 3.5.** (Deleted by amendment.)

34 **Sec. 3.7.** *“Corporation for public benefit” means a*
35 *corporation that is recognized as exempt pursuant to section*
36 *501(c)(3) of the Internal Revenue Code of 1986, future*
37 *amendments to that section and the corresponding provisions of*
38 *future internal revenue laws.*

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

42 **Sec. 4.5.** *“Venture capital” means equity, near-equity and*
43 *seed capital financing, including, without limitation, early stage*
44 *research and development capital for start-up enterprises, and*



1 *other equity, near-equity or seed capital for growth and expansion*
2 *of entrepreneurial enterprises.*

3 *Sec. 5. (Deleted by amendment.)*

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

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

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

12 *(1) Health care and life sciences.*

13 *(2) Cyber security.*

14 *(3) Homeland security and defense.*

15 *(4) Alternative energy.*

16 *(5) Advanced materials and manufacturing.*

17 *(6) Information technology.*

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

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

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

28 *(1) One member appointed by the Governor;*

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

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

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

32 *and*

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

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

37 *(c) The State Treasurer; and*

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

40 (a) External asset managers; or

41 (b) Private equity investment firms.

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



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1 **Sec. 6.** *If the State Treasurer obtains the judicial*
2 *determination required by subsection 3 of NRS 355.060, the State*
3 *Treasurer may transfer an amount not to exceed \$50 million from*
4 *the State Permanent School Fund to the corporation for public*
5 *benefit. Such a transfer must be made pursuant to an agreement*
6 *that requires the corporation for public benefit to:*

7 1. *Provide, through the limited partnerships or limited-*
8 *liability companies described in subsection 1 of section 5.3 of this*
9 *act, private equity funding; and*

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

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

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

16 (1) *Health care and life sciences.*

17 (2) *Cyber security.*

18 (3) *Homeland security and defense.*

19 (4) *Alternative energy.*

20 (5) *Advanced materials and manufacturing.*

21 (6) *Information technology.*

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

27 **Sec. 7.** *The State Treasurer:*

28 1. *May adopt such regulations as he or she deems necessary*
29 *to carry out the provisions of sections 2 to 7, inclusive, of this act.*

30 2. *Shall adopt regulations:*

31 (a) *Requiring the performance of audits and the submission of*
32 *reports to ensure compliance with the provisions of sections 2 to 7,*
33 *inclusive, of this act and the regulations adopted pursuant to this*
34 *section;*

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

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

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

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



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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.*

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 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



1 perishable improvements, of unexceptional title and free from all
2 encumbrances.

3 (h) Money market mutual funds that:

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

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

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

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

15 (1) The stock of the corporation is:

16 (I) Listed on a national stock exchange; or

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

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

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

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

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

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

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



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

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

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

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

