

SENATE BILL NO. 323—SENATORS FORD, SPEARMAN, KIHUEN,
MANENDO, PARKS; ATKINSON, DENIS AND WOODHOUSE

MARCH 16, 2015

JOINT SPONSOR: ASSEMBLYWOMAN NEAL

Referred to Committee on Revenue and
Economic Development

SUMMARY—Establishes a program to provide loans to certain
small businesses owned by minorities and women.
(BDR 18-956)

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 economic development; requiring the Office of
Economic Development to develop and carry out a
program to provide loans to certain small businesses
owned by minorities or women; authorizing the issuance
of revenue bonds to fund loans for the expansion of
certain small businesses owned by minorities or women;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Constitution contains a provision commonly known as a “gift
clause” which restricts the State, under certain circumstances, from donating or
loaning the State’s money or credit to any company, association or corporation,
except corporations formed for educational or charitable purposes. (Nev. Const.
Art. 8, § 9) The State loans its credit in violation of this constitutional provision
only when the State acts as a surety or guarantor for the debts of a company,
corporation or association. (*Employers Ins. Co. of Nev. v. State Bd. of Exam’rs*, 117
Nev. 249, 258 (2001)) The State does not loan its credit in violation of this
constitutional provision when the State issues revenue bonds which are not backed
or guaranteed by the State’s general credit or taxing powers but are payable solely
from revenues derived from the projects or programs financed by the revenue
bonds. (*State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333 (1973))

Additionally, the State does not donate, loan or “gift” its money in violation of
this constitutional provision when the State dispenses state funds for a public



purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation of such funds. (*Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606, 616 (2011)) In most cases, the courts generally will give great weight and due deference to the Legislature's finding that a particular dispensation of state funds serves a public purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation. (*Washoe Cnty. Water Conserv. Dist. v. Beemer*, 56 Nev. 104, 115 (1935); *Cable v. Beemer*, 64 Nev. 77, 82-85 (1947); *McLaughlin v. Hous. Auth. of Las Vegas*, 68 Nev. 84, 93 (1951); *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 332-33 (1973); *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606, 612 (2011)) For example, the Nevada Supreme Court has held that legislation which promotes economic development and seeks to create, protect or enhance job opportunities "inures to the public benefit" and serves an important public purpose because it assists in "relieving unemployment and maintaining a stable economy." (*State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333 (1973))

Section 3 of this bill requires the Office of Economic Development, in consultation with the Director of the Department of Business and Industry, to develop and carry into effect a program under which certain small businesses owned by minorities or women may obtain loans to finance the expansion of their businesses in this State. **Section 3** requires the Office to develop the procedures for applying for a loan, which must include, without limitation, a requirement to submit an application containing certain information about the applicant's business and the planned use of the loan. **Section 3** further requires the Office to approve a loan if the Office finds that the business satisfies certain criteria and that the loan will enable the business to acquire the capital equipment necessary to enable the business to expand and hire additional employees. Under **section 3**, if the Office approves a loan, the loan must be made on such terms as the Office finds to be in the best interests of this State, and the Director of the Department of Business and Industry must fund the loan from the proceeds of the revenue bonds issued under **section 4** of this bill, in accordance with the Office's instructions.

Section 4 authorizes the Director to issue or request the issuance of revenue bonds in the manner provided by the State Securities Law. Under **section 4**, the proceeds of these revenue bonds must be used to pay the costs of the program.

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

Section 1. 1. The Legislature hereby finds and declares that:

(a) Section 9 of Article 8 of the Nevada Constitution contains a provision commonly known as a "gift clause" which restricts the State under certain circumstances from donating or loaning the State's money or credit to any company, association or corporation, except corporations formed for educational or charitable purposes.

(b) In *Employers Insurance Company of Nevada v. State Board of Examiners*, 117 Nev. 249, 258 (2001), the Nevada Supreme Court held that the State loans its credit in violation of Section 9 of Article 8 of the Nevada Constitution only when the State acts as a surety or guarantor for the debts of a company, corporation or association.

(c) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333 (1973), the Nevada Supreme Court held that the State does not loan



its credit in violation of Section 9 of Article 8 of the Nevada Constitution when the State issues revenue bonds which are not backed or guaranteed by the State’s general credit or taxing powers but are payable solely from revenues derived from the projects or programs financed by the revenue bonds.

(d) In *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606, 616 (2011), the Nevada Supreme Court held that the State does not donate, loan or “gift” its money in violation of Section 9 of Article 8 of the Nevada Constitution when the State dispenses state funds for a public purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation of the state funds.

(e) In *McLaughlin v. Housing Authority of the City of Las Vegas*, 68 Nev. 84, 93 (1951), and *Lawrence v. Clark County*, 127 Nev. Adv. Op. 32, 254 P.3d 606, 612 (2011), the Nevada Supreme Court held that when the Legislature authorizes a state agency to dispense state funds:

(1) The courts will carefully examine whether the Legislature made an informed and appropriate finding that dispensation of the state funds serves a public purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation;

(2) The courts will give great weight and due deference to the Legislature’s finding, and the courts will uphold the Legislature’s finding unless it clearly appears to be erroneous and without reasonable foundation; and

(3) The courts will closely examine whether the dispensing state agency reviews all facts, figures and necessary information when making the dispensation, and when the state agency has done so, it will not be second-guessed by the courts.

2. The Legislature hereby further finds and declares that:

(a) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333 (1973), the Nevada Supreme Court held that legislation which promotes economic development and seeks to create, protect or enhance job opportunities “inures to the public benefit” and serves an important public purpose because it assists in “relieving unemployment and maintaining a stable economy.”

(b) To promote, develop and maintain a stable economy in this State, it is necessary and essential for the State to incentivize the expansion of small businesses owned by women or members of racial or ethnic minorities because in this State:

(1) Such businesses historically have lacked access to sufficient capital to enable the businesses to make the capital investments necessary to expand and hire additional employees; and

(2) Such businesses are more likely to employ greater numbers of women or members of racial or ethnic minorities and



1 therefore relieve unemployment in many segments of the population
2 of this State that traditionally have experienced the highest rates of
3 unemployment and underemployment.

4 3. The Legislature hereby further finds and declares that:

5 (a) The purpose of this act is to develop and carry into effect a
6 state program under which disadvantaged small businesses located
7 in this State may obtain loans from the program to finance the
8 expansion of such small businesses.

9 (b) The provisions of this act are intended to serve an important
10 public purpose and ensure that the State receives valuable benefits
11 and fair consideration in exchange for each loan from the program
12 because:

13 (1) The program requires the dispensing state agency to
14 review all facts, figures and necessary information when making
15 each loan from the program; and

16 (2) The loans from the program will diversify and expand the
17 number and types of businesses in this State, will increase
18 employment opportunities for women and members of racial or
19 ethnic minorities in many segments of the population of this State
20 that traditionally have experienced the highest rates of
21 unemployment and underemployment, and will benefit the overall
22 public health, safety and welfare of the people of this State by
23 relieving unemployment, encouraging economic growth and
24 maintaining a stable economy.

25 **Sec. 2.** Chapter 231 of NRS is hereby amended by adding
26 thereto the provisions set forth as sections 3 and 4 of this act.

27 **Sec. 3. 1. *The Office, in consultation with the Director of***
28 ***the Department of Business and Industry, shall develop and carry***
29 ***into effect a program under which a disadvantaged small business***
30 ***enterprise located in this State may obtain a loan from the***
31 ***program to finance the expansion of its business.***

32 ***2. In carrying out the program, the Office may make loans,***
33 ***undertake a commitment to make loans or participate with private***
34 ***lending institutions in the making of loans to finance the***
35 ***expansion of a disadvantaged small business enterprise.***

36 ***3. In determining whether the making of a loan to an***
37 ***applicant is in the best interests of this State pursuant to this***
38 ***section, the Office shall consider, without limitation, whether the***
39 ***making of the loan will assist this State to:***

40 ***(a) Diversify and expand the number and types of businesses***
41 ***and industries in this State.***

42 ***(b) Encourage economic growth and maintain a stable***
43 ***economy.***

44 ***(c) Expand employment opportunities or relieve***
45 ***unemployment or underemployment in any segments of the***



population of this State that traditionally have experienced the highest rates of unemployment and underemployment.

4. The Office shall establish procedures for applying for a loan from the program. The procedures must require an applicant to submit an application for a loan that includes, without limitation:

(a) A statement of the proposed use of the loan;

(b) A business plan; and

(c) Such other information as the Office deems necessary to determine whether the making of the loan to the applicant is in the best interests of this State.

5. The Office shall approve an application for a loan submitted pursuant to this section if the Office finds that:

(a) The disadvantaged small business enterprise is in existence, operational and operated for profit and has the capability to continue in operation in this State for a period prescribed by the Office;

(b) The disadvantaged small business enterprise maintains its principal place of business in this State;

(c) The disadvantaged small business enterprise is in compliance with all applicable licensing and registration requirements in this State;

(d) The loan will enable the business to acquire the capital equipment necessary to expand in this State and hire additional employees in this State;

(e) There is adequate assurance that the loan will be repaid; and

(f) The making of the loan is in the best interests of this State.

6. If the Office approves an application for a loan pursuant to this section:

(a) The Office and the applicant must execute a loan agreement that contains such terms as the Office finds to be in the best interests of the State; and

(b) The Director of the Department of Business and Industry must fund the loan from the proceeds of the revenue bonds issued pursuant to section 4 of this act in accordance with the instructions of the Office.

7. The rate of interest on loans made pursuant to the program must be as low as practicable, but sufficient to pay the cost of the program, including, without limitation, the repayment of bonds issued pursuant to section 4 of this act, and provide an appropriate reserve, as determined by the Office, in consultation with the Director of the Department of Business and Industry.

8. As used in this section:



1 (a) *“Disadvantaged small business enterprise” means a small*
2 *business in this State:*

3 (1) *Of which at least 51 percent is owned by a natural*
4 *person who is a woman or a member of a racial or ethnic*
5 *minority; and*

6 (2) *Whose management and daily business operations are*
7 *controlled by one or more natural persons who are women or*
8 *members of a racial or ethnic minority.*

9 (b) *“Small business” means a business whose gross receipts do*
10 *not exceed \$1,000,000 for the year immediately preceding the date*
11 *of an application for a loan pursuant to this section.*

12 **Sec. 4. 1.** *To pay the cost of the program created pursuant*
13 *to section 3 of this act, the Director of the Department of Business*
14 *and Industry may, in consultation with the Office, borrow money*
15 *or otherwise become obligated, and may provide evidence of those*
16 *obligations by issuing or requesting the State Board of Finance to*
17 *issue revenue bonds in an aggregate principal amount not to*
18 *exceed \$10,000,000, in the manner provided by the State Securities*
19 *Law.*

20 **2.** *Any bonds issued pursuant to this section and*
21 *administrative expenses related to the bonds are payable solely*
22 *from revenues pledged or available for their repayment. This*
23 *limitation must be plainly stated on the face of the bonds.*

