

SENATE BILL NO. 126—SENATOR FORD

PREFILED FEBRUARY 13, 2017

Referred to Committee on Revenue and
Economic Development

SUMMARY—Establishes a program to provide loans to small business enterprises, minority-owned business enterprises, women-owned business enterprises and disadvantaged business enterprises. (BDR 18-21)

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 small business enterprises, minority-owned business enterprises, women-owned business enterprises and disadvantaged business enterprises; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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

13 Additionally, the State does not donate, loan or “gift” its money in violation of
14 this constitutional provision when the State dispenses state funds for a public
15 purpose and the State receives a valuable benefit or fair consideration in exchange
16 for the dispensation of such funds. (*Lawrence v. Clark County*, 127 Nev. 390, 405
17 (2011)) In most cases, the courts generally will give great weight and due deference
18 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 County Water Conserv. Dist. v. Beemer*, 56 Nev. 104, 115 (1935); *Cauble 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. 390, 406 (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))

This bill requires the Office of Economic Development to develop and carry into effect a program under which a business certified as a small business enterprise, minority-owned business enterprise, woman-owned business enterprise or disadvantaged business enterprise may obtain a loan to finance the expansion of its business in this State. **Section 2.5** of this bill establishes the Small Business Enterprise Loan Account in the State General Fund as a revolving loan account which must be administered by the Office and used to fund loans to such business enterprises. **Section 3** of this bill requires the Office to establish the program and authorizes the Office, in carrying out the program, to: (1) enter into an agreement with a person who operates a program in this State to provide loans to small business enterprises, minority-owned business enterprises, women-owned business enterprises and disadvantaged business enterprises; and (2) make grants of money from the Account to that person which must be used to make loans or participate with private lending institutions in the making of loans to finance the expansion of such business enterprises. **Section 3** further requires the Office to develop: (1) the criteria a business must satisfy to be eligible for a loan; and (2) 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. Under **section 3**, the Office, or the person with whom the Office has entered into an agreement to carry out the program, is authorized to approve a loan if the business satisfies certain criteria established by the Office and 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 such a loan is approved: (1) the business receiving the loan must enter into a loan agreement with the Office or the person carrying out the program; (2) the loan must be funded from the Small Business Enterprise Loan Account created by **section 2.5**; and (3) all payments of principal and interest on the loan must be deposited in the Account.

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



1 8 of the Nevada Constitution only when the State acts as a surety or
2 guarantor for the debts of a company, corporation or association.

3 (c) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333
4 (1973), the Nevada Supreme Court held that the State does not loan
5 its credit in violation of Section 9 of Article 8 of the Nevada
6 Constitution when the State issues revenue bonds which are not
7 backed or guaranteed by the State's general credit or taxing powers
8 but are payable solely from revenues derived from the projects or
9 programs financed by the revenue bonds.

10 (d) In *Lawrence v. Clark County*, 127 Nev. 390, 405 (2011), the
11 Nevada Supreme Court held that the State does not donate, loan or
12 "gift" its money in violation of Section 9 of Article 8 of the Nevada
13 Constitution when the State dispenses state funds for a public
14 purpose and the State receives a valuable benefit or fair
15 consideration in exchange for the dispensation of the state funds.

16 (e) In *McLaughlin v. Housing Authority of the City of Las*
17 *Vegas*, 68 Nev. 84, 93 (1951), and *Lawrence v. Clark County*, 127
18 Nev. 390, 399, 406 (2011), the Nevada Supreme Court held that
19 when the Legislature authorizes a state agency to dispense state
20 funds:

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

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

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

33 2. The Legislature hereby further finds and declares that:

34 (a) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333
35 (1973), the Nevada Supreme Court held that legislation which
36 promotes economic development and seeks to create, protect or
37 enhance job opportunities "inures to the public benefit" and serves
38 an important public purpose because it assists in "relieving
39 unemployment and maintaining a stable economy."

40 (b) To promote, develop and maintain a stable economy in this
41 State, it is necessary and essential for the State to incentivize the
42 expansion of small business enterprises, minority-owned business
43 enterprises, women-owned business enterprises and disadvantaged
44 business enterprises because in this State:



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(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, members of racial or ethnic minorities and other residents of this State, including persons who are socially and economically disadvantaged, and therefore relieve unemployment in many segments of the population of this State that traditionally have experienced the highest rates of unemployment and underemployment.

3. The Legislature hereby further finds and declares that:

(a) The purpose of this act is to develop and carry into effect a state program under which small business enterprises, minority-owned business enterprises, women-owned business enterprises and disadvantaged business enterprises located in this State may obtain loans from the program to finance the expansion of such business enterprises.

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

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

(2) The loans from the program will diversify and expand the number and types of businesses in this State, will increase employment opportunities for women, members of racial or ethnic minorities and other residents of this State, including persons who are socially and economically disadvantaged, in many segments of the population of this State that traditionally have experienced the highest rates of unemployment and underemployment, and will benefit the overall public health, safety and welfare of the people of this State by relieving unemployment, encouraging economic growth and maintaining a stable economy.

Sec. 2. Chapter 231 of NRS is hereby amended by adding thereto the provisions set forth as sections 2.5, 3 and 4 of this act.

Sec. 2.5. 1. *The Small Business Enterprise Loan Account is hereby created in the State General Fund as a revolving loan account. The Account must be administered by the Office.*

2. *All interest and income earned on the money in the Account must be credited to the Account.*

3. *The money in the Account does not revert to the State General Fund at the end of any fiscal year and must be carried forward to the next fiscal year.*



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1 4. *Money in the Account must be used by the Office to*
2 *develop and carry into effect the program developed by the Office*
3 *pursuant to section 3 of this act.*

4 5. *Claims against the Account must be paid as other claims*
5 *against the agency are paid.*

6 6. *The Office may apply for and accept gifts, grants, bequests*
7 *and donations from any source for deposit in the Account.*

8 **Sec. 3.** 1. *The Office shall develop and carry into effect a*
9 *program under which a business located in this State that is*
10 *certified by an agency or entity approved by the Office as a small*
11 *business enterprise, minority-owned business enterprise, woman-*
12 *owned business enterprise or disadvantaged business enterprise*
13 *may obtain a loan of money distributed from the Account to*
14 *finance the expansion of its business.*

15 2. *In carrying out the program, the Office may:*

16 (a) *Enter into an agreement with a person who operates a*
17 *program in this State to provide loans to small business*
18 *enterprises, minority-owned business enterprises, women-owned*
19 *business enterprises and disadvantaged business enterprises.*

20 (b) *Make grants of money from the Account to that person,*
21 *which must be used by that person to make loans or participate*
22 *with private lending institutions in the making of loans to finance*
23 *the expansion of a business located in this State that is certified by*
24 *an agency or entity approved by the Office as a small business*
25 *enterprise, minority-owned business enterprise, woman-owned*
26 *business enterprise or disadvantaged business enterprise.*

27 3. *The Office shall establish the criteria which must be used*
28 *by the program to determine whether to make a loan to a business*
29 *described in subsection 1 and the criteria which such a business*
30 *must meet to qualify for a loan under the program. In establishing*
31 *such criteria, the Office shall consider, without limitation, whether*
32 *the making of the loan will assist this State to:*

33 (a) *Diversify and expand the number and types of businesses*
34 *and industries in this State;*

35 (b) *Encourage economic growth and maintain a stable*
36 *economy;*

37 (c) *Expand employment opportunities or relieve*
38 *unemployment or underemployment in any segments of the*
39 *population of this State that traditionally have experienced the*
40 *highest rates of unemployment and underemployment; and*

41 (d) *Encourage the formation and expansion of businesses*
42 *located in this State that are certified by an agency or entity*
43 *approved by the Office as a small business enterprise, minority-*
44 *owned business enterprise, woman-owned business enterprise or*
45 *disadvantaged business enterprise.*



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

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

6 (b) A business plan; and

7 (c) Such other information as the Office deems necessary to
8 determine whether the making of the loan to the applicant satisfies
9 the criteria established by the Office pursuant to subsection 3 and
10 whether the applicant is qualified for the loan.

11 5. A business located in this State that is certified by an
12 agency or entity approved by the Office as a small business
13 enterprise, minority-owned business enterprise, woman-owned
14 business enterprise or disadvantaged business enterprise may
15 submit an application for a loan to the Office or the person with
16 whom the Office has entered into an agreement to carry out the
17 program.

18 6. The Office, or the person with whom the Office has
19 entered into an agreement to carry out the program, may approve
20 an application for a loan submitted pursuant to subsection 5 if the
21 Office, or the person carrying out the program, finds that:

22 (a) The applicant operates a for-profit business in this State
23 and has the capability to continue in operation in this State for a
24 period prescribed by the Office;

25 (b) The applicant maintains its principal place of business in
26 this State;

27 (c) The applicant is certified by an agency or entity approved
28 by the Office as a small business enterprise, minority-owned
29 business enterprise, woman-owned business enterprise or
30 disadvantaged business enterprise and is in compliance with all
31 applicable licensing and registration requirements in this State;

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

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

37 (f) The making of the loan satisfies the criteria established by
38 the Office pursuant to subsection 3.

39 7. If the Office, or a person with whom the Office has entered
40 into an agreement to carry out the program, approves an
41 application for a loan pursuant to this section:

42 (a) The Office, or the person carrying out the program, and
43 the applicant must execute a loan agreement that contains such
44 terms as the Office or person deems necessary; and



1 ***(b) The Office, or the person carrying out the program, must***
2 ***fund the loan from the money in the Account.***

3 ***8. The rate of interest on loans made pursuant to the program***
4 ***must be as low as practicable, but sufficient to pay the cost of the***
5 ***program.***

6 ***9. After deducting the costs directly related to administering***
7 ***the program, payments of principal and interest on loans made to***
8 ***a small business enterprise, minority-owned business enterprise,***
9 ***woman-owned business enterprise or disadvantaged business***
10 ***enterprise from money distributed from the Account must be***
11 ***deposited in the State General Fund for credit to the Account.***

12 ***10. As used in this section, "Account" means the Small***
13 ***Business Enterprise Loan Account created by section 2.5 of this***
14 ***act.***

15 **Sec. 4.** (Deleted by amendment.)

16 **Sec. 5.** There is hereby appropriated from the State General
17 Fund to the Small Business Enterprise Loan Account created by
18 section 2.5 of this act the sum of \$2,000,000.

19 **Sec. 6.** This act becomes effective on July 1, 2017.

