

SENATE BILL NO. 242—SENATOR HARRIS

MARCH 7, 2017

Referred to Committee on Education

SUMMARY—Revises provisions governing college savings plans.
(BDR 31-360)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 college savings plans; authorizing the Board of Trustees of the College Savings Plans of Nevada to delegate certain powers and duties relating to the Nevada Higher Education Prepaid Tuition Program to the State Treasurer; authorizing certain qualified beneficiaries to apply unused prepaid tuition benefits toward graduate-level studies; revising provisions governing the authorized investments of property of the Nevada Higher Education Prepaid Tuition Trust Fund; transferring the duty to adopt regulations governing the Nevada College Savings Program from the State Treasurer to the Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The Board of Trustees of the College Savings Plans of Nevada was created
2 under existing law to oversee the Nevada Higher Education Prepaid Tuition
3 Program and the Nevada College Savings Program. (NRS 353B.001-353B.370)
4 Under existing law, the Board is required to develop and maintain the Nevada
5 Higher Education Prepaid Tuition Program for the prepayment of the tuition of the
6 beneficiary of a prepaid tuition contract at an eligible in-state or out-of-state public
7 or private university, college or community college. The tuition paid under the
8 contract is at a guaranteed rate based on an annual actuarial study for undergraduate
9 studies at a university, state college or community college that is a member of the
10 Nevada System of Higher Education. (NRS 353B.090) Existing law also: (1)
11 creates the Nevada Higher Education Prepaid Tuition Trust Fund for deposit of
12 payments under prepaid tuition contracts and other sources of money for the
13 Program and requires the State Treasurer to administer the Trust Fund; and
14 (2) sets forth certain powers and duties of the Board relating to promotion,
15 investment and contracting services for the Program and the Trust Fund. (NRS
16 353B.010-353B.190)



Section 1 of this bill authorizes the Board to delegate to the State Treasurer those powers and duties necessary for the efficient and effective administration of the Nevada Higher Education Prepaid Tuition Program and the Trust Fund. Under existing law, the Board is authorized to make such a delegation to the State Treasurer with respect to the Nevada College Savings Program and the Nevada College Savings Program Trust Fund. (NRS 353B.320) **Sections 3 and 4** of this bill expand the authorized use of benefits under a prepaid tuition contract to allow a qualified beneficiary to apply any unused prepaid tuition benefits after his or her graduation with an undergraduate degree toward his or her graduate-level studies. **Section 3** also specifically requires the Board to adopt requirements for a master agreement for the Program by regulation. **Section 7** of this bill requires the Board to amend the master agreement for the Program to make the expanded authorization for graduate-level studies applicable to existing prepaid tuition contracts. (NAC 353B.140)

Existing law requires the Board of Trustees of the College Savings Plans of Nevada to develop policies for investment to be followed by the State Treasurer in investing in the property of the Nevada Higher Education Prepaid Tuition Trust Fund. (NRS 353B.160) **Section 5.5** of this bill expands the list of authorized investments for the Fund to include: (1) certain bonds, notes and other obligations that are issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation or Inter-American Development Bank, which are supranational entities; and (2) certain bonds, notes and other obligations, commonly called "Yankee bonds," that are issued by a foreign financial institution, corporation or government.

Existing law requires the State Treasurer to adopt regulations to establish and carry out the Nevada College Savings Program, which offers tax-free investment plans for saving money for the costs of higher education. (NRS 353B.310) **Section 6** of this bill transfers the duty to adopt regulations for the Nevada College Savings Program from the State Treasurer to the Board. The Board has the authority under existing law to adopt regulations to implement the Nevada Higher Education Prepaid Tuition Program. (NRS 353B.090)

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

Section 1. Chapter 353B of NRS is hereby amended by adding thereto a new section to read as follows:

The Board may delegate to the State Treasurer any of its administrative powers and duties specified in NRS 353B.010 to 353B.190, inclusive, if the Board determines that such delegation is necessary for the efficient and effective administration of the Nevada Higher Education Prepaid Tuition Program and the Trust Fund.

Sec. 2. NRS 353B.010 is hereby amended to read as follows:
353B.010 As used in NRS 353B.010 to 353B.190, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 353B.030 to 353B.070, inclusive, have the meanings ascribed to them in those sections.



1 **Sec. 3.** NRS 353B.090 is hereby amended to read as follows:
2 353B.090 1. The Board shall develop the Nevada Higher
3 Education Prepaid Tuition Program for the prepayment of tuition *for*
4 *a qualified beneficiary for:*

5 (a) *Undergraduate studies at:*

6 (1) *A university, state college or community college that is a*
7 *member of the System;*

8 (2) *An accredited college or university in this State that is*
9 *not a member of the System; or*

10 (3) *An accredited community college, college or university*
11 *in another state.*

12 (b) *If any money paid into the Trust Fund under a prepaid*
13 *tuition contract is remaining after a qualified beneficiary has*
14 *graduated with an undergraduate degree, for graduate-level*
15 *studies at:*

16 (1) *A university, state college or community college that is a*
17 *member of the System;*

18 (2) *An accredited college or university in this State that is*
19 *not a member of the System; or*

20 (3) *An accredited community college, college or university*
21 *in another state.*

22 2. *The amount of the tuition under a prepaid tuition contract*
23 *must be* at a guaranteed rate which is established based on the
24 annual actuarial study required pursuant to NRS 353B.190 for
25 undergraduate studies at a university, state college or community
26 college that is a member of the System.

27 ~~12-1~~ 3. The Board shall adopt regulations for the
28 implementation of the Program, including, without limitation,
29 regulations setting forth requirements for:

30 (a) Residency;

31 (b) A limit on the number of qualified beneficiaries;

32 (c) The termination, withdrawal and transfer of money paid into
33 the Trust Fund;

34 (d) A payment received by the Trust Fund as a matching
35 contribution made as described in NRS 363A.137 or 363B.117 to be
36 credited to the qualified beneficiary on whose behalf the matching
37 contribution was made;

38 (e) The time within which the money paid into the Trust Fund
39 must be used; ~~and~~

40 (f) Payment schedules ~~H~~; and

41 (g) *A master agreement for the Program.*

42 **Sec. 4.** NRS 353B.100 is hereby amended to read as follows:

43 353B.100 1. The Board may enter into a prepaid tuition
44 contract with a purchaser.



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2. The Board shall create a prepaid tuition contract in accordance with the provisions of this section.

3. The prepaid tuition contract must include, without limitation:

(a) The terms and conditions under which the purchaser shall remit payment, including, without limitation:

(1) The amount and number of payments that are required from the purchaser on behalf of the qualified beneficiary;

(2) The date upon which each payment is due; and

(3) A provision for a reasonable penalty for a delinquent payment or default.

(b) The name and date of birth of the qualified beneficiary on whose behalf the prepaid tuition contract is drawn.

(c) The terms and conditions under which another person may be substituted as the qualified beneficiary.

(d) The terms and conditions under which the purchaser, or another person designated by the purchaser, may terminate the prepaid tuition contract, receive a refund of money that he or she has paid into the Trust Fund or withdraw money that he or she has paid into the Trust Fund, including, without limitation, a provision allowing the Board to impose a fee that amounts to more than a de minimis penalty.

(e) A provision that the Board shall, after making a reasonable effort to contact the purchaser, report any money that has been deposited under a prepaid tuition contract that has not been terminated and has not been used within a specified period to the State Treasurer for proper disposition.

(f) The number of semesters for which the purchaser is contracting.

(g) A provision that money paid into the Trust Fund under a prepaid tuition contract may be applied toward tuition *for an undergraduate degree* at:

(1) A university, state college or community college that is a member of the System;

(2) An accredited college or university in this State that is not a member of the System; or

(3) An accredited community college, college or university in another state.

↳ Payments authorized pursuant to subparagraph (2) or (3) must not exceed the projected highest payment for tuition for the current academic year at a university that is a member of the System.

(h) *A provision that any money under a prepaid tuition contract that is remaining after a qualified beneficiary has graduated with an undergraduate degree may be applied toward tuition for graduate-level studies at:*



1 (1) *A university, state college or community college that is a*
2 *member of the System;*

3 (2) *An accredited college or university in this State that is*
4 *not a member of the System; or*

5 (3) *An accredited community college, college or university*
6 *in another state.*

7 ↪ *Payments authorized pursuant to this paragraph may not*
8 *exceed the total amount payable under the prepaid tuition contract*
9 *of the qualified beneficiary.*

10 (i) Any other term or condition that the Board considers
11 necessary or proper.

12 **Sec. 5.** NRS 353B.110 is hereby amended to read as follows:

13 353B.110 The Board:

14 1. May modify the regulations for the implementation of the
15 Program adopted pursuant to subsection ~~2~~ 3 of NRS 353B.090.

16 2. May establish agreements to fulfill its obligations under the
17 prepaid tuition contracts.

18 3. May contract for any necessary good or service, including,
19 without limitation, the power to engage financial consultants,
20 actuaries or legal counsel.

21 4. May procure insurance against any loss in connection with
22 the property, assets or activities of the Trust Fund, the State
23 Treasurer or the Board.

24 5. May solicit and accept a gift, including, without limitation, a
25 bequeathment or other testamentary gift, grant, loan or aid from any
26 source.

27 6. Shall solicit answers to requests for rulings from the Internal
28 Revenue Service regarding the tax status of fees paid to or on behalf
29 of a purchaser or a qualified beneficiary pursuant to a prepaid tuition
30 contract.

31 **Sec. 5.5.** NRS 353B.160 is hereby amended to read as follows:

32 353B.160 1. The Board shall create a comprehensive plan
33 that specifies the policies for investment which the State Treasurer
34 shall follow in administering the Trust Fund.

35 2. The Board may authorize the State Treasurer to invest the
36 property of the Trust Fund in:

37 (a) A bond, note, certificate or other general obligation of the
38 State of Nevada, or of a county, city, general improvement district
39 or school district of the State of Nevada.

40 (b) A corporate bond of a corporation created by or existing
41 under the laws of the United States or of a state, district or territory
42 of the United States with a rating not lower than "A" or its
43 equivalent by a nationally recognized rating service. The total
44 amount invested in such bonds must not exceed 50 percent of the
45 book value of the total fixed income investments of the Trust Fund.



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(c) Commercial paper 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 or of a wholly owned subsidiary of such a corporation with a rating not lower than "A-3" or "P-3" by a nationally recognized rating service.

(d) A bond, note, debenture or other valid obligation that is issued by the Treasury of the United States.

(e) A bond, note, debenture or other security that is issued by an agency or instrumentality of the United States or that is fully guaranteed by the United States in:

(1) The Federal Farm Credit ~~Bank;~~ *Banks Funding Corporation;*

(2) The Federal National Mortgage Association;

(3) The Federal Home Loan ~~Bank;~~ *Banks;*

(4) The Federal Home Loan Mortgage Corporation; or

(5) The Government National Mortgage Association.

(f) A bond, note, debenture or other security in the Student Loan Marketing Association, regardless of whether it is guaranteed by the United States.

(g) *A bond, note or other obligation issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation or Inter-American Development Bank that:*

(1) Is denominated in United States dollars;

(2) Is a senior unsecured unsubordinated obligation;

(3) Is purchased from a registered broker-dealer;

(4) At the time of purchase has a remaining term to maturity of 5 years or less; and

(5) Is rated by a nationally recognized rating service as "AA" or its equivalent, or better,

↪ except that investments pursuant to this paragraph may not, in aggregate value, exceed 15 percent of the total par value of the Trust Fund as determined at the time of purchase.

(h) *A bond, note or other obligation publicly issued in the United States by a foreign financial institution, corporation or government that:*

(1) Is denominated in United States dollars;

(2) Is a senior unsecured unsubordinated obligation;

(3) Is registered with the United States Securities and Exchange Commission in accordance with the provisions of the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., as amended;

(4) Is publicly traded;

(5) Is purchased from a registered broker-dealer;

(6) At the time of purchase has a remaining term to maturity of 5 years or less; and



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(7) *Is rated by a nationally recognized rating service as “AA” or its equivalent, or better,*
↳ *except that investments pursuant to this paragraph may not, in aggregate value, exceed 10 percent of the total par value of the Trust Fund as determined at the time of purchase.*

(i) Collateralized mortgage obligations that are rated “AAA” or its equivalent by a nationally recognized rating service.

~~(h)~~ (j) Asset-backed securities that are rated “AAA” or its equivalent by a nationally recognized rating service.

~~(i)~~ (k) Money market mutual funds that:

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

(2) Are rated by a nationally recognized rating service as “A” or its equivalent, or better; and

(3) Invest only in securities issued by the Federal Government or agencies of the Federal Government or in repurchase agreements fully collateralized by such securities.

↳ The total dollar amount invested in such mutual funds must not exceed 20 percent of the total dollar amount of the Trust Fund that is invested.

~~(j)~~ (l) 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

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

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

(3) The maximum investment in stock is not greater than 60 percent of the book value of the total investments of the Trust Fund;

(4) Except for investments made pursuant to paragraph (m), the amount of an investment in a single corporation is not greater than 3 percent of the book value of the assets of the Trust Fund; and

(5) Except for investments made pursuant to paragraph (m), the total amount of shares owned by the Trust Fund is not greater than 5 percent of the outstanding stock of a single corporation.

~~(k)~~ (m) A covered call or put option on securities that are traded on one or more of the regulated exchanges in the United States.

~~(l)~~ (n) A pooled or commingled real estate fund or a real estate security that is managed by a corporate trustee or by an investment advisory firm that is registered with the Securities and



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1 Exchange Commission, either of which may be retained by the
2 Board as an investment manager. The shares and the pooled or
3 commingled fund must be held in trust. The total book value of an
4 investment made under this paragraph must not at any time be
5 greater than 5 percent of the total book value of all investments of
6 the Trust Fund.

7 ~~(((m)))~~ (o) Mutual funds or common trust funds that consist of
8 any combination of the investments listed in paragraphs (a) to ~~(((H)))~~
9 (n), inclusive.

10 3. The State Treasurer shall exercise the standard of care in
11 investing the property of the Trust Fund that a person of prudence,
12 discretion and intelligence would exercise in the management of his
13 or her own affairs, given the prevailing circumstances, not in regard
14 to speculation but rather to the permanent disposition of the
15 property, considering the potential income from and the probable
16 safety of his or her capital.

17 4. Subject to the terms, conditions, limitations and restrictions
18 set forth in this section, the State Treasurer may sell, assign, transfer
19 or dispose of the property and investments of the Trust Fund upon
20 the approval of a majority of the Board.

21 5. The assets of the Trust Fund:

22 (a) Must be maintained, invested and expended solely for the
23 purposes of NRS 353B.010 to 353B.190, inclusive; and

24 (b) Must not be loaned, transferred or otherwise used for a
25 purpose other than the purposes of NRS 353B.010 to 353B.190,
26 inclusive.

27 6. The State Treasurer shall credit any income derived from an
28 investment or a gain from a sale or exchange of an investment to the
29 Trust Fund.

30 7. The State Treasurer shall acquire each investment for the
31 Trust Fund at a price not to exceed the prevailing market value for
32 such an investment.

33 8. Each investment in the Trust Fund must be clearly marked to
34 indicate ownership by the Trust Fund.

35 9. The State Treasurer, an employee of the State Treasurer, or a
36 member or employee of the Board shall not:

37 (a) Have a direct or indirect interest in the income, gain or profit
38 of an investment that the State Treasurer makes;

39 (b) Receive pay or emolument for his or her services in
40 connection with an investment that the State Treasurer makes; or

41 (c) Become an endorser, surety or obligor for money that is
42 borrowed from the Trust Fund.

43 10. If the annual actuarial study performed pursuant to NRS
44 353B.190 reveals that there is insufficient money to ensure the



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1 actuarial soundness of the Trust Fund, the Board shall modify the
2 terms of subsequent prepaid tuition contracts.

3 11. The terms, conditions, limitations and restrictions regarding
4 investments of the Trust Fund listed in this section apply only at the
5 time an investment is originally acquired and must not be construed
6 to require the liquidation of an investment at any time.

7 **Sec. 6.** NRS 353B.310 is hereby amended to read as follows:

8 353B.310 1. The ~~{State-Treasurer}~~ **Board** shall adopt
9 regulations to establish and carry out the Nevada College Savings
10 Program, which must comply with the requirements of a qualified
11 state tuition program pursuant to 26 U.S.C. § 529.

12 2. The regulations must be consistent with the provisions of the
13 Internal Revenue Code set forth in Title 26 of the United States
14 Code, and the regulations adopted pursuant thereto, to ensure that
15 the Nevada College Savings Program meets all criteria for federal
16 tax-deferred or tax-exempt benefits, or both.

17 3. The regulations must provide for the use of savings trust
18 agreements and savings trust accounts to apply distributions toward
19 qualified higher education expenses at eligible educational
20 institutions in accordance with 26 U.S.C. § 529.

21 4. The regulations must set forth requirements for a payment
22 received by the Trust Fund as a matching contribution made as
23 described in NRS 363A.137 or 363B.117 to be credited to the
24 savings trust account to which the contribution was made.

25 5. The regulations may include any other provisions not
26 inconsistent with federal law that the ~~{State-Treasurer}~~ **Board**
27 determines are necessary for the efficient and effective
28 administration of the Nevada College Savings Program and the
29 Trust Fund.

30 **Sec. 7.** 1. On or before October 1, 2017, the Board of
31 Trustees of the College Savings Plans of Nevada created by NRS
32 353B.005 shall amend the master agreement for the Nevada Higher
33 Education Prepaid Tuition Program created in accordance with
34 regulations adopted pursuant to NRS 353B.090, as amended by
35 section 3 of this act, to authorize, pursuant to NRS 353B.090, as
36 amended by section 3 of this act, the application of any money paid
37 into the Nevada Higher Education Prepaid Tuition Trust Fund
38 created pursuant to NRS 353B.140 under a prepaid tuition contract
39 that is remaining after a qualified beneficiary has graduated with an
40 undergraduate degree toward tuition for graduate-level studies by
41 the qualified beneficiary at:

42 (a) A university, state college or community college that is a
43 member of the System;

44 (b) An accredited college or university in this State that is not a
45 member of the System; or



(c) An accredited community college, college or university in another state.

2. As used in this section:

(a) "Prepaid tuition contract" has the meaning ascribed to it in NRS 353B.030.

(b) "Qualified beneficiary" has the meaning ascribed to it in NRS 353B.050.

(c) "System" has the meaning ascribed to it in NRS 353B.004.

Sec. 8. Notwithstanding the amendatory provisions of this act transferring authority to adopt regulations from the State Treasurer to the Board of Trustees of the College Savings Plans of Nevada, any regulations adopted by the State Treasurer pursuant to NRS 353B.310 before July 1, 2017, remain in effect and may be enforced by the Board or the State Treasurer, as applicable, until the Board adopts regulations to repeal or replace those regulations.

Sec. 9. This act becomes effective on July 1, 2017.

