

Amendment No. 538

Assembly Amendment to Assembly Bill No. 399	(BDR 31-606)
Proposed by: Assemblywoman Spiegel	
Amendment Box: Consistent with Amendment No. 369.	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from A.B. 399.

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.



ASSEMBLY BILL NO. 399—ASSEMBLYWOMAN SPIEGEL

MARCH 21, 2019

Referred to Committee on Government Affairs

SUMMARY—Provides for the establishment of a retirement savings program for private sector employees. (BDR 31-606)

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 employment; creating the Board of Trustees of the Nevada Employee Savings Trust; prescribing the membership, powers, duties and limitations of the Board; authorizing the Board to create the Nevada Employee Savings Trust Program; prescribing certain required attributes of the Program; creating the Nevada Employee Savings Administrative Fund and specifying the sources and uses of money deposited therein; creating the Nevada Employee Savings Trust and prescribing the manner of its administration; providing for the confidentiality of certain information; providing civil immunity to certain persons and entities in connection with the Program; making certain persons fiduciaries with respect to participants in the Program; prohibiting certain persons from engaging in certain financial transactions in connection with the Program; requiring the preparation and submission of certain annual reports; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law provides for individual retirement accounts and individual retirement annuities by which persons may save money for retirement under favorable income tax treatment. (26 U.S.C. §§ 408, 408A) This bill establishes the Nevada Employee Savings Trust under the direction of a board of trustees with the power to establish a similar program and to encourage private employees to establish such accounts.

Section 19 of this bill creates the Board of Trustees of the Nevada Employee Savings Trust and establishes its membership. **Section 20** of this bill establishes certain powers and duties of the Board. In particular, **section 20** authorizes and empowers the Board to: (1) design, establish and operate the Nevada Employee Savings Trust Program; **and** (2) ~~charge and collect fees on money invested through the Program to defray the costs of administering the Program; and (3)~~ adopt regulations, rules and procedures for the establishment and operation of the Program and to take such other actions necessary or desirable to establish and operate the Program.

Section 21 of this bill requires the State Treasurer to provide staff support to the Board within the limits of appropriations and authorizes the ~~Board to delegate to the~~ State Treasurer ~~any of its~~ **to provide** administrative ~~powers and duties.~~ **support to the Board.**

Section 22 of this bill provides that an act or undertaking of the Board does not constitute a debt of the State of Nevada, or any political subdivision thereof, or a pledge of the full faith and credit of the State of Nevada, or of any political subdivision thereof, and is payable solely from the assets controlled by the Board. **Section 22** also prohibits the Board from imposing any obligations on the State or pledging the credit of the State.

Section 23 of this bill establishes certain attributes that the Board must include in the Program, including: (1) that covered employers must automatically enroll covered employees in the Program; (2) that contributions to a covered employee's Individual Retirement Account (IRA) must be withheld from the employee's compensation at the rate set by the Board unless the employee elects to not contribute or to contribute at a different rate; and (3) that the Board must prepare informational materials, disclosure statements, forms and instructions concerning the Program for distribution by covered employers to covered employees.

Section 24 of this bill creates the Nevada Savings Trust Administrative Fund in the State Treasury, specifies the sources of money that may be deposited in the Fund and requires the Board to use money in the Fund solely to pay the administrative costs and expenses of the Board and the Program.

Section 25 of this bill authorizes the Board to borrow money or enter into certain long-term procurement contracts with financial providers until the Board determines that the Program is financially self-sustaining.

Section 26 of this bill creates the Nevada Employee Savings Trust as an instrumentality of the State and requires the Board to appoint a Trustee of the Trust. **Section 26** requires that the assets of all Individual Retirement Accounts established by covered employees through the Program be allocated to the Trust and invested, managed and administered for the exclusive purposes of providing benefits to the covered employees and defraying the reasonable expenses of the Board, Program and Trust. **Section 26** also establishes certain investment guidelines and practices.

Section 27 of this bill provides that, except to the extent necessary to administer the Program, personal information relating to individual participants in the program and information relating to individual accounts established or maintained through the Program is confidential and must be maintained as confidential, unless the person who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

Section 28 of this bill provides a grant of immunity from civil liability to covered employers for the consequences of various decisions made by employees or the Board in connection with the Program, including, for example, an employee's decision to participate in or to opt out of the Program, any investment decision made by the participant or the Board, and any loss, failure to realize a gain, or any other adverse consequence incurred by any person as a result of participating in the Program. **Section 28** also provides that a covered employer or other employer must not be deemed to be a fiduciary in relation to the Program.

Section 29 of this bill absolves the State and any employee or officer thereof, and the Board and a member of the Board or employee thereof, and the Program from any responsibility or civil liability for the actions of certain other persons in connection with the Program, including, for example, a person's failure to comply with provisions of the Internal Revenue Code, the payment of benefits, and any loss, failure to realize a gain, or any other adverse consequence incurred by any person as a result of participating in the Program. **Section 29** also provides that the debts, contracts, and obligations of the Board, Program or Trust are not the debts, contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the Board, Program or Trust.

Section 30 of this bill provides that members of the Board, the Trustee and certain other persons involved in the administration of Trust are fiduciaries with respect to the participants in the Program.

Section 31 of this bill prohibits members of the Board, its staff and persons who serve as administrators of the Program from engaging in certain financial transactions in connection with the Program.

Section 32 of this bill requires the Board to obtain an annual independent audit of the Board, the Program and the Trust and to annually submit audited financial reports to the Governor, State Controller and the Legislature.

1 WHEREAS, The Legislature finds that too many Nevadans have inadequate
2 savings for retirement, and over 56 percent of wage and salary workers in Nevada
3 work for an employer that does not offer a retirement plan or program or offer any
4 other easy way to save at work; and

5 WHEREAS, It is the policy of this State to encourage Nevadans to voluntarily
6 save for retirement, including by facilitating saving in individual retirement
7 accounts as well as by encouraging employers to adopt retirement savings and other
8 retirement plans for employees in this State; and

9 WHEREAS, More adequate, portable, low-cost, and consumer-protective
10 retirement savings by Nevada households will enhance their retirement security and
11 ultimately reduce the pressure on State public assistance programs for retirees and
12 other elderly citizens and the potential burden on Nevada citizens and taxpayers to
13 finance such programs; and

14 WHEREAS, The Legislature intends to create the Nevada Employee Savings
15 Trust to be governed by a Board of Trustees, which will design and establish a
16 program that encourages private-sector employees to establish tax-favored
17 individual retirement accounts funded by payroll deductions and will select
18 competent and qualified private-sector entities to administer the program and
19 manage the accounts on behalf of program participants; and

20 WHEREAS, The Nevada College Savings Program administered by the Board of
21 Trustees of the College Savings Plans of Nevada has demonstrated the feasibility of
22 a public-private partnership that outsources investment and administration to assist
23 private citizens of Nevada to save on a voluntary and cost-efficient basis; now,
24 therefore,

25
26 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
27 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
28

29 **Section 1.** Title 31 of NRS is hereby amended by adding thereto a new
30 chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this
31 act.

32 **Sec. 2.** *As used in this chapter, unless the context otherwise requires, the*
33 *words and terms defined in sections 3 to 18, inclusive, of this act have the*
34 *meanings ascribed to them in those sections.*

35 **Sec. 3.** *“Administrative Fund” means the Nevada Employee Savings Trust*
36 *Administrative Fund created by section 24 of this act.*

37 **Sec. 4.** *“Board” means the Board of Trustees of the Nevada Employee*
38 *Savings Trust created by section 19 of this act.*

39 **Sec. 5.** *“Compensation” means compensation within the meaning of*
40 *section 219(f)(1) of the Internal Revenue Code that is received by a covered*
41 *employee from a covered employer.*

42 **Sec. 6.** *“Contribution rate” means the percentage of a covered employee’s*
43 *compensation that is withheld from his or her compensation and paid to the*
44 *Individual Retirement Account established or maintained for the covered*
45 *employee through the Program.*

46 **Sec. 7. 1.** *“Covered employee” means a person who:*

- 47 (a) *Is employed by a covered employer for not less than 120 days;*
48 (b) *Has wages or other compensation that is allocable to the State; and*
49 (c) *Is at least 18 years of age.*

50 **2.** *For purposes of the investment, withdrawal, transfer, rollover or other*
51 *distribution of an Individual Retirement Account, the term also includes the*
52 *beneficiary of a deceased covered employee.*

53 **3.** *The term does not include:*

1 (a) Any employee covered under the federal Railway Labor Act, 45 U.S.C. §§
2 151 et seq.;

3 (b) Any employee on whose behalf an employer makes contributions to a
4 Taft-Hartley multiemployer pension trust fund; or

5 (c) Any person who is an employee of the Federal government, the State or
6 any other state, country or municipal corporation, or any of the State's or any
7 other state's units or instrumentalities.

8 Sec. 8. "Covered employer" means an employer that:

9 1. Has been in business for at least twenty-four months;

10 2. Pays its employees through ~~for~~ an electronic payroll system or service;
11 and

12 3. Has not maintained a tax-favored retirement plan for its employees or
13 has not done so in an effective form and operation at any time within the current
14 or 2 immediately preceding calendar years.

15 Sec. 9. 1. Except as otherwise provided in subsection 2, "employer"
16 means a person or entity engaged in a business, profession, trade or other
17 enterprise in this State, whether for profit or not for profit, that employs one or
18 more persons in this State.

19 2. The term does not include an agency or entity of the federal government,
20 the government of this State or a political subdivision of this State.

21 Sec. 10. "Individual Retirement Account" means an individual retirement
22 account and an individual retirement annuity established under section 408 or
23 408A of the Internal Revenue Code.

24 Sec. 11. "Internal Revenue Code" means the federal Internal Revenue
25 Code of 1986, as amended.

26 Sec. 12. "Investment fund" means an investment portfolio established by
27 the Board within the Trust for investment purposes.

28 Sec. 13. "Participant" means a person who contributes to an Individual
29 Retirement Account established or maintained through the Program or has an
30 account balance in an Individual Retirement Account established or maintained
31 through the Program.

32 Sec. 14. "Program" means the Nevada Employee Savings Trust Program
33 established by the Board pursuant to section 20 of this act.

34 Sec. 15. "State" means the State of Nevada.

35 Sec. 16. "Tax-favored retirement plan" means a retirement plan that is tax-
36 qualified under or is described in and satisfies the requirements of subsection
37 401(a), 401(k), 403(a), 403(b), 408(k) or 408(p) of the Internal Revenue Code.

38 Sec. 17. "Trust" means the Individual Retirement Account retirement trust
39 or annuity contract established pursuant to section 26 of this act.

40 Sec. 18. "Trustee" means the trustee of the Trust selected by the Board
41 pursuant to section 26 of this act.

42 Sec. 19. 1. There is hereby created the Board of Trustees of the Nevada
43 Employee Savings Trust.

44 2. The Board consists of:

45 (a) The State Treasurer or his or her designee;

46 (b) The Lieutenant Governor or his or her designee;

47 (c) One member, appointed by the Governor, who represents employers;

48 (d) One member, appointed by the Governor, who is a representative of an
49 association that represents employees;

50 (e) One member, appointed by the Governor, who has experience in the field
51 of investments;

52 (f) One member, appointed by the Majority Leader of the Senate, who
53 represents retirees; and

(g) One member, appointed by the Speaker of the Assembly, who has experience in small business.

3. Each appointed member serves a term of 4 years unless dismissed for cause. Members may be reappointed for additional terms of 4 years in the same manner as the original appointments.

4. Any vacancy occurring in the appointed membership of the Board must be filled in the same manner as the original appointment for the remainder of the unexpired term.

5. The Lieutenant Governor or his or her designee shall serve as the Chair of the Board.

6. The Board shall meet at the call of the Chair as frequently as required to perform its duties.

7. A majority of the members of the Board constitutes a quorum for the transaction of business, and a majority of a quorum present at any meeting is sufficient for any official action taken by the Board.

8. Each member of the Board serves without compensation, except that each member is entitled to receive:

(a) The per diem allowance and travel expenses provided for state officers and employees generally; and

(b) Reimbursement for any other actual and reasonable expense incurred while performing his or her duties.

Sec. 20. The Board is authorized and empowered to:

1. Design, establish, and operate the Program;

~~2. Charge and collect fees to defray the costs of administering the Program;~~

~~3. Enter into contracts necessary or desirable for the administration of the Program;~~

~~4. Hire, retain and terminate third party service providers as the Board deems necessary or desirable for the Program, including, but not limited to, nonprofit organizations, consultants, investment managers or advisors, trustees, custodians, insurance companies, record keepers, administrators, actuaries, counsel, auditors and other professionals;~~

~~5. Determine, without limitation, the:~~

(a) Types of Individual Retirement Accounts to be offered;

(b) Default contribution rate; and

(c) Process for automatic escalation of participant contributions;

~~6. Develop an option for participants to convert contributions into fixed lifetime income streams;~~

~~7. Develop and implement an outreach plan to gain input and disseminate information regarding the Program and retirement and financial education in general, to employees, employers and other constituents in this State;~~

~~8. Determine the number of days by which an eligible employer must make the Program available to a covered employee upon first becoming an eligible employer or covered employee; and~~

~~9. Adopt regulations, rules and procedures for the establishment and operation of the Program and to take such other actions necessary or desirable to establish and operate the Program.~~

Sec. 21. 1. The State Treasurer shall, within the limits of legislative appropriations, provide staff support to the Board.

~~2. The Board may delegate to the State Treasurer any of its administrative powers and duties as specified in this chapter, if the Board determines that such delegation is necessary for the efficient and effective administration of the Trust.~~

~~3.1~~ *and may otherwise provide administrative support to the Board.*

2. The Board may enter into an intergovernmental agreement or contract to obtain outreach, technical assistance or compliance services with any officer, agency, division or department of the State, including, without limitation, the Lieutenant Governor, Secretary of State, Department of Taxation, Department of Employment, Training and Rehabilitation, Department of Business and Industry and Department of Labor. An officer, agency, division or department that enters into such an intergovernmental agreement with the Board shall collaborate with any other officer, agency, division or department of the State as necessary to provide such outreach, technical assistance or compliance services to the Board.

Sec. 22. 1. An act or undertaking of the Board does not constitute a debt of the State of Nevada, or any political subdivision thereof, or a pledge of the full faith and credit of the State of Nevada, or of any political subdivision thereof, and is payable solely from the Trust.

2. The Board may not impose any obligations on the State or pledge the credit of the State.

Sec. 23. The Program designed, established and operated by the Board pursuant to section 20 of this act must provide, without limitation, that:

1. Each covered employer shall automatically enroll each covered employee in the Program.

2. An employer shall not contribute to the Program or endorse or otherwise promote the Program.

3. Contributions must be withheld from the compensation of each covered employee at the contribution rate set by the Board unless the covered employee elects to not contribute or to contribute at a different rate.

4. An Individual Retirement Account established and maintained through the Program must qualify for favorable federal income tax treatment pursuant to section 408 or 408A of the Internal Revenue Code.

5. The Board may establish intervals after which a covered employee must reaffirm his or her intent to opt out of the Program.

6. A covered employer must deposit a covered employee's withheld contributions under the Program with the Trustee in such manner as is determined by the Board, but in no case later than 10 business days after the date such amounts otherwise would have been paid to the covered employee.

7. The Board shall determine the rules and procedures for withdrawals, distributions, transfers and rollovers of Individual Retirement Accounts and for the designation of Individual Retirement Account beneficiaries.

8. The Board shall determine a method for employers other than covered employers and employees other than covered employees to participate in the Program, if allowed under federal law.

9. The Board shall prepare or cause to be prepared informational materials and required disclosures regarding the Program for distribution by covered employers to covered employees. Such materials must include, without limitation;

(a) A description of the benefits and risks associated with making contributions through the Program;

(b) Instructions about how to obtain additional information about the Program;

(c) A description of the federal and state income tax consequences of an Individual Retirement Account, which may consist of or include the disclosure statement required to be distributed by the Trustee by the Internal Revenue Code and the Treasury Regulations adopted thereunder;

(d) A statement that covered employees seeking financial advice should contact their own financial advisors and that covered employers are not in a

1 *position to provide financial advice and that covered employers are not liable for*
2 *decisions covered employees make concerning the Program;*

3 *(e) A statement that the Program is not an employer-sponsored retirement*
4 *plan;*

5 *(f) A statement that neither the Program nor the covered employee's*
6 *Individual Retirement Account established or maintained through the Program is*
7 *guaranteed by the State; and*

8 *(g) A statement that:*

9 *(1) Neither a covered employer nor the State will monitor or has an*
10 *obligation to monitor the covered employee's eligibility under the Internal*
11 *Revenue Code to make contributions to an Individual Retirement Account or to*
12 *monitor whether the covered employee's contributions to the Individual*
13 *Retirement Account established or maintained for the covered employee through*
14 *the Program exceed the maximum permissible Individual Retirement Account*
15 *contribution;*

16 *(2) It is the covered employee's responsibility to monitor such matters;*
17 *and*

18 *(3) Neither the State nor the covered employer will have any liability with*
19 *respect to any failure of the covered employee to be eligible to make Individual*
20 *Retirement Account contributions or for making any contribution in excess of the*
21 *maximum Individual Retirement Account contribution.*

22 *10. The Board shall prepare or cause to be prepared information, forms or*
23 *instructions to be furnished to covered employees at such times as the Board*
24 *determines that provide the covered employee with the procedures for, without*
25 *limitation:*

26 *(a) Making contributions to the covered employee's Individual Retirement*
27 *Account established or maintained through the Program, including, without*
28 *limitation, a description of the default contribution rate, any automatic escalation*
29 *rate or frequency and the covered employee's right to elect to make no*
30 *contribution or to change the contribution rate;*

31 *(b) Making an investment election with respect to the covered employee's*
32 *Individual Retirement Account established or maintained through the Program,*
33 *including a description of the default investment fund; and*

34 *(c) Making transfers, rollovers, withdrawals and other distributions from the*
35 *covered employee's Individual Retirement Account.*

36 *11. Each covered employer shall deliver or facilitate the delivery of the*
37 *items set forth in subsections 9 and 10, and any other information required by the*
38 *Board, to each covered employee at such time and in such manner as determined*
39 *by the Board.*

40 *12. The Program shall be designed and operated in a manner that will*
41 *cause it not to be an employee pension benefit plan within the meaning of section*
42 *3(2) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §*
43 *1002(2).*

44 *Sec. 24. 1. The Nevada Employee Savings Trust Administrative Fund is*
45 *hereby created in the State Treasury.*

46 *2. The Board shall administer the Administrative Fund.*

47 *3. The Board shall deposit in the Administrative Fund ~~the~~ all money*
48 *received for the Program, including, without limitation:*

49 *(a) Money appropriated to the Administrative Fund by the Legislature;*

50 *(b) Money transferred to the Administrative Fund from the Federal*
51 *government, other State agencies, or local governments;*

52 *(c) Any gifts, donations, grants or other money designated for the*
53 *Administrative Fund from the State, or any unit of federal or local government,*

1 or any other person, firm, partnership, corporation, or other entity solely for
2 deposit into the Administrative Fund, whether for investment or administrative
3 expenses; and

4 ~~(d) [Money from the payment or application, account, administrative, or~~
5 ~~other fees and the payment of other money due the Board;~~

6 ~~== (e) Money collected for the Administrative Fund from contributions to, or~~
7 ~~investment returns or assets of, the Program or other money collected by or for~~
8 ~~the Program or pursuant to arrangements established under the Program; and~~

9 ~~== (f) Earnings on money in the Administrative Fund.~~

10 4. The Board shall use the money in the Administrative Fund solely to pay
11 the administrative costs and expenses of the Program and the administrative costs
12 and expenses the Board incurs in the performance of its duties.

13 Sec. 25. 1. The Board may, to enable or facilitate the start-up and
14 continuing operation, maintenance, administration, and management of the
15 Program until the Board determines that the Program has accumulated sufficient
16 balances and is able to generate sufficient funding ~~[through fees assessed on~~
17 ~~Program accounts]~~ for the Program to be financially self-sustaining;

18 (a) Borrow money from the State, any unit of federal, State, or local
19 government, or any other person, firm, partnership, corporation or entity; or

20 (b) Enter into long-term procurement contracts with one or more financial
21 providers if the Board determines that the fee structure of a contract allows or
22 assists the Program to minimize or avoid the need to borrow money pursuant to
23 paragraph (a) or to rely upon general assets of the State.

24 2. Money borrowed pursuant to subsection 1 must:

25 (a) Be borrowed in the name of the Program and Board only;

26 (b) Be repaid solely from the revenues of the Program; and

27 (c) Not be repaid unless the money was offered contingent upon the promise
28 of such repayment.

29 3. Within the limits of legislative appropriations, the State may pay on
30 behalf of the Board administrative costs associated with the creation,
31 maintenance, operation, and management of the Program and Trust until the
32 Board determines that sufficient assets are available in the Administrative Fund
33 for that purpose. Thereafter, all administrative costs of the Administrative Fund,
34 including any repayment of start-up money provided by the State, must be repaid
35 only out of money on deposit therein.

36 Sec. 26. 1. The Nevada Employee Savings Trust is hereby created as an
37 instrumentality of the State.

38 2. The Board shall appoint an institution qualified to act as a trustee of
39 Individual Retirement Account trusts or an insurance company that issues
40 annuity contracts pursuant to section 408 of the Internal Revenue Code and
41 licensed to do business in the State of Nevada to act as Trustee of the Trust.

42 3. The assets of Individual Retirement Accounts established or maintained
43 for covered employees must be allocated to the Trust and may be combined for
44 investment purposes. Trust assets must be managed and administered for the
45 exclusive purposes of providing benefits to covered employees and defraying
46 reasonable expenses of administering and managing the investments, Individual
47 Retirement Accounts, Board, Program and Trust.

48 4. The Board shall establish within the Trust one or more investment funds,
49 each pursuing an investment strategy and policy established by the Board. The
50 underlying investments of each investment fund must be diversified so as to
51 minimize the risk of large losses under any circumstances. The Board may, at
52 any time or from time to time, add, replace or remove any investment fund.

1 5. *The Board may allow covered employees to allocate assets of their*
2 *Individual Retirement Accounts among such investment funds and in such case,*
3 *the Board also may designate an investment fund as a default investment for the*
4 *Individual Retirement Accounts of covered employees who do not make an*
5 *investment choice.*

6 6. *The Board, in consultation with such third-party professional investment*
7 *advisers, managers or consultants as it may retain, shall select the underlying*
8 *investments of each investment fund. Such underlying investments may include,*
9 *without limitation, shares of mutual funds and exchange-traded funds, publicly*
10 *traded equity and fixed-income securities, and other investments available for*
11 *investment by the Trust. An investment fund may not invest in any bond, debt*
12 *instrument or other security issued by the State.*

13 7. *The Board may, in its discretion, retain an investment adviser to select*
14 *and manage the investments of an investment fund on a discretionary basis,*
15 *subject to the Board's ongoing review and oversight. An investment advisor*
16 *retained pursuant to this subsection must be:*

17 (1) *An investment adviser registered as such under the Investment*
18 *Advisers Act of 1940, 15 U.S.C. §§ 80b-1 et seq.; or*

19 (2) *A bank or other institution exempt from registration under the*
20 *Advisers Act.*

21 8. *The Trustee shall be subject to directions of the Board or of an*
22 *investment adviser pursuant to this section and shall otherwise have no*
23 *responsibility for the selection, retention, or disposition of the investments or*
24 *assets of the Trust.*

25 9. *The assets of the Trust must at all times be preserved, invested, and*
26 *expended solely for the purposes of the Trust and no property rights therein shall*
27 *exist in favor of the State or any covered employer. Trust assets must not be*
28 *transferred or used by the State for any purposes other than the purposes of the*
29 *Trust or paying the expenses of operating the Program. Amounts deposited with*
30 *the Trustee do not constitute property of the State and must not be commingled*
31 *with State money and the State has no claim to or against, or interest in, the*
32 *assets of the Trust.*

33 10. *The assets of the Trust must at all times be held separate and apart from*
34 *the assets of the State. The State, Program, Board, any member of the Board or*
35 *any covered employer shall not guaranty any investment, rate of return, or*
36 *interest on amounts held in the Trust, an investment fund, or any Individual*
37 *Retirement Account. The State, Program, Board, any member of the Board or*
38 *any employer is not be liable for any losses incurred by Trust investments or*
39 *otherwise by any covered employee or other person as a result of participating in*
40 *the Program.*

41 11. *The provisions of chapter 90 of NRS, the Uniform Securities Act, do not*
42 *apply to the Trust, any investment fund, or any interest held by an Individual*
43 *Retirement Account in the Trust or such investment fund.*

44 12. *The Trust and each investment fund is exempt from all taxation by this*
45 *State and any political subdivision thereof.*

46 **Sec. 27.** *Except to the extent necessary to administer the Program,*
47 *personally identifiable information relating to individual participants in the*
48 *program, including, without limitation the name, physical and electronic mail*
49 *address, telephone number and other personally identifiable information of the*
50 *participant, and information relating to individual accounts established or*
51 *maintained through the Program, including, without limitation, the identity or*
52 *amount of any investment, contribution, or earnings attributable to an account, is*
53 *confidential and must be maintained as confidential, unless the person who*

1 *provides the information or is the subject of the information expressly agrees in*
2 *writing to the disclosure of the information.*

3 **Sec. 28. 1. A covered employer or other employer may not be held liable**
4 **for:**

5 (a) *An employee's decision to participate in or opt out of the Program;*
6 (b) *A participant's or the Board's investment decisions;*
7 (c) *The administration, investment, investment returns, or investment*
8 *performance of the Program, including, without limitation, any interest rate or*
9 *other rate of return on any contribution or account balance, provided they played*
10 *no role;*

11 (d) *The design of the Program or the benefits paid to participants;*
12 (e) *A person's awareness of or compliance with the conditions and other*
13 *provisions of the Internal Revenue Code that determine which persons are*
14 *eligible to make tax-favored contributions to Individual Retirement Accounts, in*
15 *what amount, and in what time frame and manner; or*

16 (f) *Any loss, failure to realize any gain, or any other adverse consequences,*
17 *including, without limitation, any adverse tax consequences or loss of favorable*
18 *tax treatment, public assistance, or other benefits, incurred by any person as a*
19 *result of participating in the Program.*

20 2. *A covered employer or other employer must not be deemed to be a*
21 *fiduciary in relation to the Program.*

22 **Sec. 29. 1. The State and any employee or officer thereof, and the Board**
23 **and a member of the Board or employee thereof, and the Program:**

24 (a) *Have no responsibility for compliance by persons with the conditions and*
25 *other provisions of the Internal Revenue Code that determine which persons are*
26 *eligible to make tax-favored contributions to Individual Retirement Accounts, in*
27 *what amount, and in what time frame and manner;*

28 (b) *Have no duty, responsibility, or liability to any party for the payment of*
29 *any benefits through the Program, regardless of whether sufficient money is*
30 *available through the Program to pay such benefits;*

31 (c) *Do not and shall not guarantee any interest rate or other rate of return on*
32 *or investment performance of any contribution or account balance; and*

33 (d) *Are not and shall not be liable or responsible for any loss, deficiency,*
34 *failure to realize any gain, or any other adverse consequences, including without*
35 *limitation any adverse tax consequences or loss of favorable tax treatment, public*
36 *assistance or other benefits, incurred by any person as a result of participating in*
37 *the Program.*

38 2. *The debts, contracts, and obligations of the Board, Program or Trust are*
39 *not the debts, contracts, and obligations of the State, and neither the faith and*
40 *credit nor the taxing power of the State is pledged directly or indirectly to the*
41 *payment of the debts, contracts, and obligations of the Board, Program or Trust.*

42 **Sec. 30. 1. Each member of the Board, the Trustee, and each investment**
43 **adviser or other person who has control of the assets of the Trust is a fiduciary**
44 **with respect to the Trust and each Individual Retirement Account established and**
45 **maintained through the Program.**

46 2. *Each fiduciary shall discharge its duties with respect to the Program*
47 *solely in the interests of covered employees and with the care, skill, prudence and*
48 *diligence under the circumstances then prevailing that a prudent person acting in*
49 *a like capacity and familiar with those matters would use in the conduct of an*
50 *enterprise of like character and aims.*

51 **Sec. 31. A member of the Board and a person who serves on the staff of the**
52 **Board or as an administrator of the Program shall not:**

1 1. *Directly or indirectly have any interest in the making of any investment*
2 *under the Program or in any gains or profits accruing from such an investment;*

3 2. *Borrow any Program-related money or deposits, or use any such money*
4 *or deposits in any manner, for himself or herself or as an agent or partner of*
5 *others; or*

6 3. *Become an endorser, surety or obligor on any investment made through*
7 *the Program.*

8 **Sec. 32.** 1. *The Board shall cause an accurate account of all the*
9 *activities, operations, receipts, and expenditures of the Board, Program and Trust*
10 *to be maintained. Each year, a full audit of the books and accounts of the Board,*
11 *Program and Trust pertaining to those activities, operations, receipts and*
12 *expenditures, personnel, services, or facilities shall be conducted by a certified*
13 *public accountant and shall include, but not be limited to, direct and indirect*
14 *costs attributable to the use of outside consultants, independent contractors, and*
15 *any other persons who are not State employees for the administration of the*
16 *Program. For the purposes of the audit, the auditors shall have access to the*
17 *properties and records of the Board, Program and Trust and may prescribe*
18 *methods of accounting and the rendering of periodic reports in relation to*
19 *projects undertaken by the Board, Program and Trust.*


20 2. *Not later than August 1 of each year, the Board shall submit to the*
21 *Governor, the State Controller and the Director of the Legislative Counsel*
22 *Bureau for transmittal to the Legislature or, if the Legislature is not in session, to*
23 *the Legislative Commission, an audited financial report, prepared in accordance*
24 *with generally accepted accounting principles, detailing the activities, operations,*
25 *receipts, and expenditures of the Board, Program and Trust during the*
26 *immediately preceding calendar year. The report shall also include projected*
27 *activities of the Program for the current calendar year.*

28 3. *The Board shall prepare an annual report on the operation of the*
29 *Program to be available to all citizens and provided to appropriate state officers.*

30 **Sec. 33.** *This chapter being necessary to secure the public health, safety,*
31 *convenience and welfare, its provisions must be liberally construed to effect its*
32 *purposes.*

33 **Sec. 34.** NRS 239.010 is hereby amended to read as follows:

34 239.010 1. Except as otherwise provided in this section and NRS 1.4683,
35 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516,
36 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150,
37 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,
38 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345,
39 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260,
40 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690,
41 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,
42 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044,
43 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156,
44 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165,
45 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,
46 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131,
47 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130,
48 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473,
49 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
50 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 241.039,
51 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140,
52 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281.805, 281A.350,
53 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110,

287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503,
293.504, 293.558, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110,
332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725,
338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,
353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138,
366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.008,
379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501,
388.503, 388.513, 388.750, 388A.247, 388A.249, 391.035, 391.120, 391.925,
392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335,
392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405,
396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484,
412.153, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236,
427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407,
432B.430, 432B.560, 432B.5902, 433.534, 433A.360, 437.145, 439.840, 439B.420,
440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 445A.665,
445B.570, 449.209, 449.245, 449A.112, 450.140, 453.164, 453.720, 453A.610,
453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846,
463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.365,
480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363,
483.575, 483.659, 483.800, 484E.070, 485.316, 501.344, 503.452, 522.040,
534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110,
599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015,
616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110,
624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047,
629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125,
632.405, 633.283, 633.301, 633.524, 634.055, 634.214, 634A.185, 635.158,
636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
640A.220, 640B.730, 640C.400, 640C.600, 640C.620, 640C.745, 640C.760,
640D.190, 640E.340, 641.090, 641.325, 641A.191, 641A.289, 641B.170,
641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180, 645.625,
645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130,
645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945,
647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105,
661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450,
673.480, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159,
679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410,
681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,
687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117,
692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480,
693A.615, 696B.550, 696C.120, 703.196, 704B.320, 704B.325, 706.1725,
706A.230, 710.159, 711.600  *and section 27 of this act and* sections 35, 38 and
41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of
Nevada 2013 and unless otherwise declared by law to be confidential, all public
books and public records of a governmental entity must be open at all times during
office hours to inspection by any person, and may be fully copied or an abstract or
memorandum may be prepared from those public books and public records. Any
such copies, abstracts or memoranda may be used to supply the general public with
copies, abstracts or memoranda of the records or may be used in any other way to
the advantage of the governmental entity or of the general public. This section does
not supersede or in any manner affect the federal laws governing copyrights or
enlarge, diminish or affect in any other manner the rights of a person in any written
book or record which is copyrighted pursuant to federal law.

1 2. A governmental entity may not reject a book or record which is
2 copyrighted solely because it is copyrighted.

3 3. A governmental entity that has legal custody or control of a public book or
4 record shall not deny a request made pursuant to subsection 1 to inspect or copy or
5 receive a copy of a public book or record on the basis that the requested public
6 book or record contains information that is confidential if the governmental entity
7 can redact, delete, conceal or separate the confidential information from the
8 information included in the public book or record that is not otherwise confidential.

9 4. A person may request a copy of a public record in any medium in which
10 the public record is readily available. An officer, employee or agent of a
11 governmental entity who has legal custody or control of a public record:

12 (a) Shall not refuse to provide a copy of that public record in a readily
13 available medium because the officer, employee or agent has already prepared or
14 would prefer to provide the copy in a different medium.

15 (b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare
16 the copy of the public record and shall not require the person who has requested the
17 copy to prepare the copy himself or herself.

18 **Sec. 35.** 1. Except as otherwise provided in this section, the Board of
19 Trustees of the Nevada Employee Savings Trust shall establish the Nevada
20 Employee Savings Trust Program and implement its provisions so that covered
21 employees are able to make contributions to an Individual Retirement Account
22 through the Program not later than July 1, 2021.

23 2. The Board may establish different classes of employees based on
24 characteristics selected by the Board, including, without limitation, the size or type
25 of their employers or the number of employees employed, and implement the
26 Program in phases, so that the ability of covered employees to contribute to an
27 Individual Retirement Account through the Program first applies on different dates
28 for different classes of employees, but such an implementation must be
29 substantially complete not later than July 1, 2023.

30 3. The Board shall not implement the Program if, and to the extent that, it
31 determines that the Program is preempted by the Employee Retirement Income
32 Security Act of 1974, 29 U.S.C. §§ 1001 et seq. If the Board determines that one or
33 more provisions of the Program are preempted by Employee Retirement Income
34 Security Act of 1974, the Board shall implement the remaining provisions of the
35 Program to the extent practicable.

36 4. The Board shall not implement a provision of the Program that authorizes
37 an arrangement by which an employer facilitates access for an employee to
38 contribute to an Individual Retirement Account by means of a payroll deduction if
39 the Board determines that the arrangement is an employee pension benefit plan
40 within the meaning of Section 3(2) of the Employee Retirement Income Security
41 Act of 1974, 29 U.S.C. § 1002(2).

42 **Sec. 36.** As soon as practicable on or after the effective date of this act, the
43 Governor, Majority Leader of the Senate and Speaker of the Assembly shall
44 appoint the members of the Board of Trustees of the Nevada Employee Savings
45 Trust pursuant to section 19 of this act.

46 **Sec. 37.** The provisions of subsection 1 of NRS 218D.380 do not apply to
47 any provision of this act which adds or revises a requirement to submit a report to
48 the Legislature.

49 **Sec. 38.** This act becomes effective upon passage and approval.