

ASSEMBLY BILL NO. 326—ASSEMBLYMEN MCCURDY, PETERS,
FUMO, WHEELER, ROBERTS; BILBRAY-AXELROD, DALY,
DURAN, FLORES, JAUREGUI, MONROE-MORENO, NEAL,
SWANK, WATTS AND YEAGER

MARCH 18, 2019

JOINT SPONSOR: SENATOR CANCELA

Referred to Committee on Government Affairs

SUMMARY—Establishes a program to provide loans to certain operators of fresh food retailers located in underserved communities and similar areas. (BDR 18-318)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Contains Appropriation not included in Executive Budget.

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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 State Treasurer to develop and carry out a program to provide loans to persons who operate or wish to operate fresh food retailers located in underserved communities, low-income areas and adjacent qualified census tracts; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 This bill requires the State Treasurer to develop and carry into effect a program
2 under which a person who operates or wishes to operate a fresh food retailer which
3 is located in or will be located in an underserved community, low-income area or
4 adjacent qualified census tract may obtain a loan to finance the establishment or
5 expansion of such a fresh food retailer. **Section 2** of this bill creates the Nevada
6 Fresh Food Financing Initiative Account in the State General Fund as a revolving
7 loan account which must be administered by the State Treasurer and used to fund
8 loans to such persons. **Section 3** of this bill requires the State Treasurer to establish
9 the program and requires the State Treasurer to develop: (1) the criteria a person
10 must satisfy to be eligible for a loan; and (2) the procedures for applying for a loan.
11 Under **section 3**, the State Treasurer is authorized to approve a loan if the person



12 satisfies certain criteria established by the State Treasurer. Under **section 3**, if such
13 a loan is approved: (1) the person receiving the loan must enter into a loan
14 agreement with the State Treasurer; (2) the loan must be funded by the Nevada
15 Fresh Food Financing Initiative Account created by **section 2**; and (3) all payments
16 of principal and interest on the loan must be deposited in the Account. **Section 3**
17 authorizes the State Treasurer to enter into a public-private partnership with one or
18 more private partners to carry out the program.

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

1 **Section 1.** Chapter 226 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *The Nevada Fresh Food Financing Initiative*
4 *Account is hereby created in the State General Fund as a*
5 *revolving loan account. The Account must be administered by the*
6 *State Treasurer.*

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

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

12 *4. Money in the Account must be used by the State Treasurer*
13 *to develop and carry into effect the program developed by the State*
14 *Treasurer pursuant to section 3 of this act.*

15 *5. For each fiscal year, the State Treasurer shall use not*
16 *more than 5 percent of the balance of the Account on the first day*
17 *of the fiscal year or \$300,000, whichever is greater, on*
18 *administrative expenses relating to the program developed*
19 *pursuant to section 3 of this act, including, without limitation,*
20 *marketing expenses, technical assistance and conducting*
21 *community outreach.*

22 *6. Claims against the Account must be paid as other claims*
23 *against the State are paid.*

24 *7. The State Treasurer may apply for and accept gifts, grants,*
25 *bequests and donations from any source for deposit into the*
26 *Account.*

27 **Sec. 3. 1.** *The State Treasurer shall develop and carry into*
28 *effect a program under which a person who operates or wishes to*
29 *operate a fresh food retailer which is located in or will be located*
30 *in an underserved community, low-income area or adjacent*
31 *qualified census tract in this State may obtain a loan of money*
32 *distributed from the Account to finance the establishment or*
33 *expansion of such a fresh food retailer.*



1 2. *The State Treasurer shall establish the criteria which must*
2 *be used by the program to determine whether to make a loan to a*
3 *person described in subsection 1 and the criteria which such a*
4 *person must meet to qualify for a loan under the program. In*
5 *establishing such criteria, the State Treasurer shall consider,*
6 *without limitation, whether the making of the loan will assist the*
7 *State to:*

8 (a) *Promote the public health of residents of this State by*
9 *providing access to healthy food options;*

10 (b) *Expand employment opportunities or relieve*
11 *unemployment or underemployment in underserved communities,*
12 *low-income areas and adjacent qualified census tracts;*

13 (c) *Encourage economic growth and maintain a stable*
14 *economy; and*

15 (d) *Expand access to healthy and nutritious food to*
16 *underserved communities, low-income areas or adjacent qualified*
17 *census tracts.*

18 3. *The State Treasurer shall establish procedures for*
19 *applying for a loan from the program. The procedures must*
20 *require an applicant to submit an application for a loan that*
21 *includes, without limitation:*

22 (a) *A statement of the proposed use of the loan; and*

23 (b) *Such other information as the State Treasurer deems*
24 *necessary to determine whether the making of the loan to the*
25 *applicant satisfies the criteria established by the State Treasurer*
26 *pursuant to subsection 2 and whether the applicant is qualified for*
27 *the loan.*

28 4. *A person who operates or wishes to operate a fresh food*
29 *retailer which is located in or will be located in an underserved*
30 *community, low-income area or adjacent qualified census tract in*
31 *this State may submit an application for a loan to the State*
32 *Treasurer.*

33 5. *The State Treasurer may approve an application for a loan*
34 *submitted pursuant to subsection 4 if the State Treasurer finds*
35 *that:*

36 (a) *The person operates or wishes to operate a fresh food*
37 *retailer which is located in or will be located in an underserved*
38 *community, low-income area or adjacent qualified census tract in*
39 *this State;*

40 (b) *There is adequate assurance that the loan will be repaid;*
41 *and*

42 (c) *The making of the loan satisfies the criteria established by*
43 *the State Treasurer pursuant to subsection 2.*

44 6. *If the State Treasurer approves an application for a loan*
45 *pursuant to this section:*



1 (a) *The State Treasurer and the applicant must execute a loan*
2 *agreement that contains such terms as the State Treasurer or*
3 *person deems necessary; and*

4 (b) *The State Treasurer must fund the loan from the money in*
5 *the Account.*

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

9 8. *After deducting the costs directly related to administering*
10 *the program, payments of principal and interest on loans made to*
11 *a person who operates or wishes to operate a fresh food retailer*
12 *which is located in or will be located in an underserved*
13 *community, low-income area or adjacent qualified census tract in*
14 *this State from money distributed from the Account must be*
15 *deposited in the State General Fund for credit to the Account.*

16 9. *The State Treasurer may enter into a public-private*
17 *partnership with one or more private partners, including, without*
18 *limitation, a nonprofit corporation and a community development*
19 *entity, to administer the program developed pursuant to subsection*
20 *1. The public-private partnership must be structured to facilitate*
21 *the efficient and effective administration of the program in*
22 *accordance with the provisions of this section. The State Treasurer*
23 *may delegate to a private partner any of his or her administrative*
24 *powers and duties specified in this section or any regulations*
25 *adopted pursuant thereto as the State Treasurer deems necessary.*

26 10. *As used in this section:*

27 (a) *“Account” means the Nevada Fresh Food Financing*
28 *Initiative Account created by section 2 of this act.*

29 (b) *“Adjacent qualified census tract” means a census tract*
30 *that:*

31 (1) *Is contiguous to an underserved community or low-*
32 *income area; and*

33 (2) *In the immediately preceding census, had a median*
34 *household income of less than 120 percent of the median*
35 *household income in this State or in the metropolitan area*
36 *concerned, whichever is greater.*

37 (c) *“Fresh food retailer” means a retail establishment,*
38 *whether organized for profit or not-for-profit, which is principally*
39 *devoted to the sale of meat, seafood, fresh fruits and vegetables,*
40 *dairy products, dry groceries and household products or which*
41 *derives a substantial amount of its gross revenue from the sale of*
42 *such products. The term includes:*

43 (1) *A farmers market, as defined in NRS 244.336.*

44 (2) *A grocery store, as defined in NRS 597.225.*



1 (d) “Low-income area” means a census tract that in the
2 immediately preceding census had:

3 (1) Twenty percent or more of households with a household
4 income below the federally designated level signifying poverty; or

5 (2) A median household income of less than 120 percent of
6 the median household income in this State or in the metropolitan
7 area concerned, whichever is greater.

8 (e) “Private partner” means a person with whom the State
9 Treasurer enters into a public-private partnership.

10 (f) “Public-private partnership” means a contract entered into
11 by the State Treasurer and a private partner pursuant to this
12 section.

13 (g) “Underserved community” means a census tract
14 determined to be an area with low supermarket access by either
15 the United States Department of Agriculture as identified in the
16 Food Access Research Atlas or through a methodology that has
17 been adopted for use by another governmental or philanthropic
18 healthy food initiative.

19 **Sec. 4.** There is hereby appropriated from the State General
20 Fund to the Nevada Fresh Food Financing Initiative Account created
21 by section 2 of this act the sum of \$10,000,000 for the purposes
22 described in section 3 of this act.

23 **Sec. 5.** 1. The Legislature hereby finds and declares that:

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

29 (b) In *Employers Insurance Company of Nevada v. State Board*
30 *of Examiners*, 117 Nev. 249, 258 (2001), the Nevada Supreme Court
31 held that the State loans its credit in violation of Section 9 of Article
32 8 of the Nevada Constitution only when the State acts as a surety or
33 guarantor for the debts of a company, corporation or association.

34 (c) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333
35 (1973), the Nevada Supreme Court held that the State does not loan
36 its credit in violation of Section 9 of Article 8 of the Nevada
37 Constitution when the State issues revenue bonds which are not
38 backed or guaranteed by the State’s general credit or taxing powers
39 but are payable solely from revenues derived from the projects or
40 programs financed by the revenue bonds.

41 (d) In *Lawrence v. Clark County*, 127 Nev. 390, 405 (2011), the
42 Nevada Supreme Court held that the State does not donate, loan or
43 “gift” its money in violation of Section 9 of Article 8 of the Nevada
44 Constitution when the State dispenses state funds for a public



1 purpose and the State receives a valuable benefit or fair
2 consideration in exchange for the dispensation of the state funds.

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

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

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

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

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

21 (a) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333
22 (1973), the Nevada Supreme Court held that legislation which
23 promotes economic development and seeks to create, protect or
24 enhance job opportunities "inures to the public benefit" and serves
25 an important public purpose because it assists in "relieving
26 unemployment and maintaining a stable economy."

27 (b) To promote, develop and maintain a stable economy in this
28 State, it is necessary and essential for the State to incentivize the
29 establishment and expansion of fresh food retailers which are
30 located in underserved communities, low-income areas or adjacent
31 qualified census tracts because:

32 (1) Such fresh food retailers are more likely to employ
33 persons who reside in the communities in which the fresh food
34 retailers are located, including persons who are socially or
35 economically disadvantaged, and therefore relieve unemployment in
36 many segments of the population of this State that traditionally have
37 experienced high rates of unemployment and underemployment; and

38 (2) Such fresh food retailers promote the public health of the
39 residents of this State by providing access to healthy food options,
40 thereby leading to a healthier population and more productive
41 workforce.

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

43 (a) The purpose of this act is to develop and carry into effect a
44 state program under which persons who operate or wish to operate
45 fresh food retailers which are located in or will be located in



1 underserved communities, low-income areas or adjacent qualified
2 census tracts in this State may obtain loans from the program to
3 finance the establishment or expansion of such fresh food retailers.

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

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

11 (2) The loans from the program will increase employment
12 opportunities for residents of this State who reside in underserved
13 communities, low-income areas and adjacent qualified census tracts
14 and will increase the overall public health of the people of this State
15 by providing access to healthy food options, relieving
16 unemployment, encouraging economic growth and maintaining a
17 stable economy.

18 **Sec. 6.** This act becomes effective on July 1, 2019.

