

Amendment No. 363

Assembly Amendment to Assembly Bill No. 326	(BDR 18-318)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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.

SJQ/AAK



Date: 4/15/2019

A.B. No. 326—Establishes a program to provide loans to certain operators of grocery stores located in underserved communities.
(BDR 18-318)



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 ~~grocery stores~~ **fresh food retailers** located in underserved communities, ~~and~~ **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 ~~grocery stores~~ **fresh food retailers** located in underserved communities ~~and~~ **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 under
2 which a person who operates or wishes to operate a ~~grocery store~~ **fresh food retailer** which
3 is located in or will be located in an underserved community, **low-income area or adjacent**
4 **qualified census tract** may obtain a loan to finance the establishment or expansion of such a
5 ~~grocery store~~ **fresh food retailer**. **Section 2** of this bill creates the Nevada Fresh Food
6 Financing Initiative Account in the State General Fund as a revolving loan account which
7 must be administered by the State Treasurer and used to fund loans to such persons. **Section 3**
8 of this bill requires the State Treasurer to establish the program and requires the State
9 Treasurer to develop: (1) the criteria a person must satisfy to be eligible for a loan; and (2) the
10 procedures for applying for a loan. Under **section 3**, the State Treasurer is authorized to
11 approve a loan if the person satisfies certain criteria established by the State Treasurer. Under
12 **section 3**, if such a loan is approved: (1) the person receiving the loan must enter into a loan
13 agreement with the State Treasurer; (2) the loan must be funded by the Nevada Fresh Food
14 Financing Initiative Account created by **section 2**; and (3) all payments of principal and
15 interest on the loan must be deposited in the Account. **Section 3 authorizes the State**
16 **Treasurer to enter into a public-private partnership with one or more private partners**
17 **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 thereto the
2 provisions set forth as sections 2 and 3 of this act.

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

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

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

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

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

18 *6. Claims against the Account must be paid as other claims against the*
19 *State are paid.*

20 ~~6.~~ 7. *The State Treasurer may apply for and accept gifts, grants, bequests*
21 *and donations from any source for deposit into the Account.*

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

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

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

35 (b) *Expand employment opportunities or relieve unemployment or*
36 *underemployment in underserved communities ~~and~~, low-income areas and*
37 *adjacent qualified census tracts;*

38 (c) *Encourage economic growth and maintain a stable economy ~~and~~;*

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

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

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

45 (b) *Such other information as the State Treasurer deems necessary to*
46 *determine whether the making of the loan to the applicant satisfies the criteria*
47 *established by the State Treasurer pursuant to subsection 2 and whether the*
48 *applicant is qualified for the loan.*

1 4. A person who operates or wishes to operate a ~~[grocery store]~~ fresh food
2 retailer which is located in or will be located in an underserved community, low-
3 income area or adjacent qualified census tract in this State may submit an
4 application for a loan to the State Treasurer.

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

7 (a) The person operates or wishes to operate a ~~[grocery store]~~ fresh food
8 retailer which is located in or will be located in an underserved community, low-
9 income area or adjacent qualified census tract in this State;

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

11 (c) The making of the loan satisfies the criteria established by the State
12 Treasurer pursuant to subsection 2.

13 6. If the State Treasurer approves an application for a loan pursuant to this
14 section:

15 (a) The State Treasurer and the applicant must execute a loan agreement
16 that contains such terms as the State Treasurer or person deems necessary; and

17 (b) The State Treasurer must fund the loan from the money in the Account.

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

20 8. After deducting the costs directly related to administering the program,
21 payments of principal and interest on loans made to a person who operates or
22 wishes to operate a ~~[grocery store]~~ fresh food retailer which is located in or will
23 be located in an underserved community, low-income area or adjacent qualified
24 census tract in this State from money distributed from the Account must be
25 deposited in the State General Fund for credit to the Account.

26 9. The State Treasurer may enter into a public-private partnership with one
27 or more private partners, including, without limitation, a nonprofit corporation
28 and a community development entity, to administer the program developed
29 pursuant to subsection 1. The public-private partnership must be structured to
30 facilitate the efficient and effective administration of the program in accordance
31 with the provisions of this section. The State Treasurer may delegate to a private
32 partner any of his or her administrative powers and duties specified in this
33 section or any regulations adopted pursuant thereto as the State Treasurer deems
34 necessary.

35 10. As used in this section:

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

38 (b) ~~“Grocery store” means a store.~~ “Adjacent qualified census tract” means
39 a census tract that:

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

41 (2) In the immediately preceding census, had a median household
42 income of less than 120 percent of the median household income in this State or
43 in the metropolitan area concerned, whichever is greater.

44 (c) “Fresh food retailer” means a retail establishment, whether organized for
45 profit or not-for-profit, which is principally devoted to the sale of ~~[food for~~
46 human consumption off the premises] meat, seafood, fresh fruits and vegetables,
47 dairy products, dry groceries and household products or which derives a
48 substantial amount of its gross revenue from the sale of ~~[food for human~~
49 consumption off the premises, regardless of whether the store is also devoted to or
50 derives gross revenue from the sale of nonfood items.] such products. The term
51 ~~[does not include:]~~ includes:

52 (1) A ~~[convenience store,]~~ farmers market, as defined in NRS ~~[597.225,]~~
53 244.336.

1 (2) A **grocery store** [at which the sale of food for human consumption off
2 the premises is incidental to the principal purpose of the store.], as defined in
3 NRS 597.225.

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

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

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

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

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

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

20 **Sec. 4.** There is hereby appropriated from the State General Fund to the
21 Nevada Fresh Food Financing Initiative Account created by section 2 of this act the
22 sum of \$10,000,000 for the purposes 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 provision
25 commonly known as a “gift clause” which restricts the State under certain
26 circumstances from donating or loaning the State’s money or credit to any
27 company, association or corporation, except corporations formed for educational or
28 charitable purposes.

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

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

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

45 (e) In *McLaughlin v. Housing Authority of the City of Las Vegas*, 68 Nev. 84,
46 93 (1951), and *Lawrence v. Clark County*, 127 Nev. 390, 399, 406 (2011), the
47 Nevada Supreme Court held that when the Legislature authorizes a state agency to
48 dispense state funds:

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

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

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

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

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

13 (b) To promote, develop and maintain a stable economy in this State, it is
14 necessary and essential for the State to incentivize the establishment and expansion
15 of ~~grocery stores~~ fresh food retailers which are located in underserved
16 communities, low-income areas or adjacent qualified census tracts because:

17 (1) Such ~~grocery stores~~ fresh food retailers are more likely to employ
18 persons who reside in the ~~underserved~~ communities in which the ~~grocery stores~~
19 fresh food retailers are located, including persons who are socially or
20 economically disadvantaged, and therefore relieve unemployment in many
21 segments of the population of this State that traditionally have experienced high
22 rates of unemployment and underemployment; and

23 (2) Such ~~grocery stores~~ fresh food retailers promote the public health of
24 the residents of this State by providing access to healthy food options, thereby
25 leading to a healthier population and more productive workforce.

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

27 (a) The purpose of this act is to develop and carry into effect a state program
28 under which persons who operate or wish to operate ~~grocery stores~~ fresh food
29 retailers which are located in or will be located in underserved communities, low-
30 income areas or adjacent qualified census tracts in this State may obtain loans
31 from the program to finance the establishment or expansion of such ~~grocery~~
32 ~~stores~~ fresh food retailers.

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

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

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

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