

Amendment No. 1028

Assembly Amendment to Assembly Bill No. 326 First Reprint (BDR 18-318) Proposed by: Assembly Committee on Ways and Means Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE all appropriations from A.B. 326 R1.

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: 5/29/2019

A.B. No. 326—Establishes a program to provide loans to certain operators of fresh food retailers located in underserved communities and similar areas. (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~~ **Provides for tax credits for certain business entities that invest in certain** 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~~ **providing for tax credits for certain business entities that invest in certain** fresh food retailers located in underserved communities ~~in low income areas and adjacent qualified census tracts; making an appropriation;~~ **and similar areas;** 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]~~ **The Nevada New Markets Jobs Act**
3 **allows certain business entities to receive a credit against the premium tax imposed on**
4 **insurance companies in exchange for making certain investments in certain qualified**
5 **active low-income community businesses. (Chapter 231A of NRS) Existing law sets forth**
6 **the requirements for a business to qualify as a qualified active low-income community**
7 **business. (NRS 231A.110, 231A.170) Section 1.8 of this bill expands the definition of**
8 **“qualified active low-income community business” to include a qualified fresh food**
9 **retailer, [which is located in or will be] Sections 1.3 and 1.4 of this bill generally define**
10 **“qualified fresh food retailer” to mean a retail establishment that: (1) is principally**
11 **devoted to or that derives a substantial amount of its gross revenue from the sale of**
12 **certain food products; (2) meets certain requirements prescribed by federal law; and (3)**
13 **is located in an underserved community [in low income area or adjacent qualified census tract**
14 **may obtain a loan to finance the establishment or expansion of such a fresh food retailer.**
15 **Section 2 of this bill creates the Nevada Fresh Food Financing Initiative Account in the State**
16 **General Fund as a revolving loan account which must be administered by the State Treasurer**

17 and used to fund loans to such persons. Section 3 of this bill requires the State Treasurer to
18 establish the program and requires the State Treasurer to develop: (1) the criteria a person
19 must satisfy to be eligible for a loan; and (2) the procedures for applying for a loan. Under
20 section 3, the State Treasurer is authorized to approve a loan if the person satisfies certain
21 criteria established by the State Treasurer. Under section 3, if such a loan is approved: (1) the
22 person receiving the loan must enter into a loan agreement with the State Treasurer; (2) the
23 loan must be funded by the Nevada Fresh Food Financing Initiative Account created by
24 section 2; and (3) all payments of principal and interest on the loan must be deposited in the
25 Account. Section 3 authorizes the State Treasurer to enter into a public-private partnership
26 with one or more private partners to carry out the program.] or a similar area.

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.] (Deleted by amendment.)~~

3 **Sec. 1.2.** Chapter 231A of NRS is hereby amended by adding thereto the
4 provisions set forth as sections 1.3, 1.4 and 1.5 of this act.

5 **Sec. 1.3.** 1. “Fresh food retailer” means a retail establishment, whether
6 organized for profit or not for profit, which is principally devoted to the sale of
7 meat, seafood, fresh fruits and vegetables, dairy products, dry groceries and
8 household products or which derives a substantial amount of its gross revenue
9 from the sale of such products.

10 2. The term includes:

11 (a) A farmers’ market, as defined in NRS 244.336.

12 (b) A grocery store, as defined in NRS 597.225.

13 **Sec. 1.4.** “Qualified fresh food retailer” means a business that is:

14 1. A fresh food retailer;

15 2. A business described in section 45D(d)(2) of the Internal Revenue Code
16 of 1986, 26 U.S.C. § 45D(d)(2), and 26 C.F.R § 1.45D-1(d)(4); and

17 3. Located in:

18 (a) An underserved community;

19 (b) A severely distressed census tract, as defined in NRS 231A.240; or

20 (c) A census tract that is contiguous to a census tract described in paragraph
21 (a) or (b).

22 **Sec. 1.5.** “Underserved community” means a census tract determined to be
23 an area with low supermarket access by either the United States Department of
24 Agriculture as identified in the Food Access Research Atlas or through a
25 methodology that has been adopted for use by another governmental or
26 philanthropic healthy food initiative.

27 **Sec. 1.6.** NRS 231A.030 is hereby amended to read as follows:

28 231A.030 As used in this chapter, unless the context otherwise requires, the
29 words and terms defined in NRS 231A.040 to 231A.140, inclusive, and sections
30 1.3, 1.4 and 1.5 of this act have the meanings ascribed to them in those sections.

31 **Sec. 1.8.** NRS 231A.110 is hereby amended to read as follows:

32 231A.110 1. “Qualified active low-income community business” has the
33 meaning ascribed to it in section 45D of the Internal Revenue Code of 1986, 26
34 U.S.C. § 45D, and 26 C.F.R. § 1.45D-1. ~~[but]~~

35 2. The term is limited to qualified fresh food retailers and those businesses
36 specified in NRS 231A.170.

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

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

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

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

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

16 ~~6. Claims against the Account must be paid as other claims against the~~
17 ~~State are paid.~~

18 ~~7. The State Treasurer may apply for and accept gifts, grants, bequests and~~
19 ~~donations from any source for deposit into the Account.] (Deleted by~~
20 ~~amendment.)~~

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

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

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

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

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

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

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

43 ~~(a) A statement of the proposed use of the loan; and~~

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

48 ~~4. A person who operates or wishes to operate a fresh food retailer which is~~
49 ~~located in or will be located in an underserved community, low income area or~~
50 ~~adjacent qualified census tract in this State may submit an application for a loan~~
51 ~~to the State Treasurer.~~

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

1 ~~— (a) The person operates or wishes to operate a fresh food retailer which is~~
2 ~~located in or will be located in an underserved community, low-income area or~~
3 ~~adjacent qualified census tract in this State;~~

4 ~~— (b) There is adequate assurance that the loan will be repaid; and~~

5 ~~— (c) The making of the loan satisfies the criteria established by the State~~
6 ~~Treasurer pursuant to subsection 2.~~

7 ~~— 6. If the State Treasurer approves an application for a loan pursuant to this~~
8 ~~section:~~

9 ~~— (a) The State Treasurer and the applicant must execute a loan agreement~~
10 ~~that contains such terms as the State Treasurer or person deems necessary; and~~

11 ~~— (b) The State Treasurer must fund the loan from the money in the Account.~~

12 ~~— 7. The rate of interest on loans made pursuant to the program must be as~~
13 ~~low as practicable, but sufficient to pay the cost of the program.~~

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

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

29 ~~— 10. As used in this section:~~

30 ~~— (a) “Account” means the Nevada Fresh Food Financing Initiative Account~~
31 ~~created by section 2 of this act.~~

32 ~~— (b) “Adjacent qualified census tract” means a census tract that:~~

33 ~~— (1) Is contiguous to an underserved community or low-income area; and~~
34 ~~— (2) In the immediately preceding census, had a median household~~
35 ~~income of less than 120 percent of the median household income in this State or~~
36 ~~in the metropolitan area concerned, whichever is greater.~~

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

42 ~~— (1) A farmers market, as defined in NRS 244.336.~~

43 ~~— (2) A grocery store, as defined in NRS 597.225.~~

44 ~~— (d) “Low-income area” means a census tract that in the immediately~~
45 ~~preceding census had:~~

46 ~~— (1) Twenty percent or more of households with a household income~~
47 ~~below the federally designated level signifying poverty; or~~

48 ~~— (2) A median household income of less than 120 percent of the median~~
49 ~~household income in this State or in the metropolitan area concerned, whichever~~
50 ~~is greater.~~

51 ~~— (e) “Private partner” means a person with whom the State Treasurer enters~~
52 ~~into a public-private partnership.~~

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

3 ~~— (g) “Underserved community” means a census tract determined to be an area~~
4 ~~with low supermarket access by either the United States Department of~~
5 ~~Agriculture as identified in the Food Access Research Atlas or through a~~
6 ~~methodology that has been adopted for use by another governmental or~~
7 ~~philanthropic healthy food initiative. (Deleted by amendment.)~~

8 **Sec. 4.** ~~[There is hereby appropriated from the State General Fund to the~~
9 ~~Nevada Fresh Food Financing Initiative Account created by section 2 of this act the~~
10 ~~sum of \$10,000,000 for the purposes described in section 3 of this act.] (Deleted by~~
11 ~~amendment.)~~

12 **Sec. 5.** ~~[The Legislature hereby finds and declares that:~~

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

18 ~~— (b) In *Employers Insurance Company of Nevada v. State Board of Examiners*,~~
19 ~~117 Nev. 249, 258 (2001), the Nevada Supreme Court held that the State loans its~~
20 ~~credit in violation of Section 9 of Article 8 of the Nevada Constitution only when~~
21 ~~the State acts as a surety or guarantor for the debts of a company, corporation or~~
22 ~~association.~~

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

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

34 ~~— (e) In *McLaughlin v. Housing Authority of the City of Las Vegas*, 68 Nev. 84,~~
35 ~~93 (1951), and *Lawrence v. Clark County*, 127 Nev. 390, 399, 406 (2011), the~~
36 ~~Nevada Supreme Court held that when the Legislature authorizes a state agency to~~
37 ~~dispense state funds:~~

38 ~~— (1) The courts will carefully examine whether the Legislature made an~~
39 ~~informed and appropriate finding that dispensation of the state funds serves a public~~
40 ~~purpose and the State receives a valuable benefit or fair consideration in exchange~~
41 ~~for the dispensation;~~

42 ~~— (2) The courts will give great weight and due deference to the Legislature’s~~
43 ~~finding, and the courts will uphold the Legislature’s finding unless it clearly~~
44 ~~appears to be erroneous and without reasonable foundation; and~~

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

48 ~~— 2. The Legislature hereby further finds and declares that:~~

49 ~~— (a) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333 (1973), the Nevada~~
50 ~~Supreme Court held that legislation which promotes economic development and~~
51 ~~seeks to create, protect or enhance job opportunities “inures to the public benefit”~~
52 ~~and serves an important public purpose because it assists in “relieving~~
53 ~~unemployment and maintaining a stable economy.”~~

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

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

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

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

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

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

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

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

~~(Deleted by amendment.)~~

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