SUMMARY—Establishes a program to provide loans to certain operators of grocery stores located in underserved communities. (BDR 18-318)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Contains Appropriation not included in Executive Budget.

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 located in underserved communities; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

This bill requires the State Treasurer to develop and carry into effect a program under which a person who operates or wishes to operate a grocery store which is located in or will be located in an underserved community may obtain a loan to finance the establishment or expansion of such a grocery store. Section 2 of this bill creates the Nevada Fresh Food Financing Initiative Account in the State General Fund as a revolving loan account which must be administered by the State Treasurer and used to fund loans to such persons. Section 3 of this bill requires the State Treasurer to establish the program and requires the State Treasurer to develop: (1) the criteria a person must satisfy to be eligible for a loan; and (2) the procedures for applying for a loan. Under section 3, the State Treasurer is authorized to approve a loan if the person satisfies certain
criteria established by the State Treasurer. Under section 3, if such a loan is approved: (1) the person receiving the loan must enter into a loan agreement with the State Treasurer; (2) the loan must be funded by the Nevada Fresh Food Financing Initiative Account created by section 2; and (3) all payments of principal and interest on the loan must be deposited in the Account.

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

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

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

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

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

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

5. Claims against the Account must be paid as other claims against the State are paid.
6. The State Treasurer may apply for and accept gifts, grants, bequests and donations from any source for deposit into the Account.

Sec. 3. 1. The State Treasurer shall develop and carry into effect a program under which a person who operates or wishes to operate a grocery store which is located in or will be located in an underserved community in this State may obtain a loan of money distributed from the Account to finance the establishment or expansion of such a grocery store.

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

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

   (b) Expand employment opportunities or relieve unemployment or underemployment in underserved communities; and

   (c) Encourage economic growth and maintain a stable economy.

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

   (a) A statement of the proposed use of the loan; and
Such other information as the State Treasurer deems necessary to determine whether the making of the loan to the applicant satisfies the criteria established by the State Treasurer pursuant to subsection 2 and whether the applicant is qualified for the loan.

4. A person who operates or wishes to operate a grocery store which is located in or will be located in an underserved community in this State may submit an application for a loan to the State Treasurer.

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

(a) The person operates or wishes to operate a grocery store which is located in or will be located in an underserved community in this State;

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

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

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

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

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

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

8. After deducting the costs directly related to administering the program, payments of principal and interest on loans made to a person who operates or wishes to operate a grocery
store which is located in or will be located in an underserved community in this State from money distributed from the Account must be deposited in the State General Fund for credit to the Account.

9. As used in this section:

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

(b) “Grocery store” means a store which is principally devoted to the sale of food for human consumption off the premises or which derives a substantial amount of its gross revenue from the sale of food for human consumption off the premises, regardless of whether the store is also devoted to or derives gross revenue from the sale of nonfood items. The term does not include:

(1) A convenience store, as defined in NRS 597.225.

(2) A store at which the sale of food for human consumption off the premises is incidental to the principal purpose of the store.

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

Sec. 4. There is hereby appropriated from the State General Fund to the Nevada Fresh Food Financing Initiative Account created by section 2 of this act the sum of $10,000,000 for the purposes described in section 3 of this act.
Sec. 5. 1. The Legislature hereby finds and declares that:

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

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

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

(d) In *Lawrence v. Clark County*, 127 Nev. 390, 405 (2011), the Nevada Supreme Court held that the State does not donate, loan or “gift” its money in violation of Section 9 of Article 8 of the Nevada Constitution when the State dispenses state funds for a public purpose and the State receives a valuable benefit or fair consideration in exchange for the dispensation of the state funds.
(e) In *McLaughlin v. Housing Authority of the City of Las Vegas*, 68 Nev. 84, 93 (1951), and *Lawrence v. Clark County*, 127 Nev. 390, 399, 406 (2011), the Nevada Supreme Court held that when the Legislature authorizes a state agency to dispense state funds:

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

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

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

2. The Legislature hereby further finds and declares that:

(a) In *State ex rel. Brennan v. Bowman*, 89 Nev. 330, 333 (1973), the Nevada Supreme Court held that legislation which promotes economic development and seeks to create, protect or enhance job opportunities “inures to the public benefit” and serves an important public purpose because it assists in “relieving 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 grocery stores which are located in underserved communities because:
(1) Such grocery stores are more likely to employ persons who reside in the underserved communities in which the grocery stores 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 grocery stores 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 grocery stores which are located in or will be located in underserved communities in this State may obtain loans from the program to finance the establishment or expansion of such grocery stores.

(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 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.

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