

Nevada State Legislature 2017 End-of-Session and 2017-2018 Interim Report

Prepared for:

Southern Nevada Home Builders
Association

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1. Overview of the 2017 Legislative Session

Makeup of the 2017 Legislature

In 2015, both the Senate and Assembly were controlled by Republicans. The elections in November 2016 upended the Republican control resulting in Democratic control of both houses. In the Senate, there were 11 Democrats, 1 Independent, and 9 Republicans. The independent Senator caucused and voted with the Democrats, giving the Democrats effectively a 12-9 majority. The Senate Democrats were led by first-time majority leader Aaron Ford. The Republicans were led by veteran leader Michael Roberson.

In the Assembly, there were 27 Democrats and 15 Republicans. The Democrats were led by first-time Speaker Jason Frierson. The Republicans were led by veteran leader Paul Anderson.

Budget

For the first time in several legislative sessions, budget and tax challenges did not dominate the legislative session. The 2015-2017 budget was \$20,939,658,381. The Governor proposed an 11.7% increase in funding for the 2017-2019 budget, based on forecasted increases in tax revenues. The Economic Forum projected increase in general fund revenues in 2018 of 2.8%, and in 2019 of 3.6%. The Governor's recommended budget was largely accepted by the Legislature, with slight modifications.

Taxes

The 2015 session was dominated by the Governor's proposal to enact a gross-receipts based tax to provide additional funding for education. With the economy improving and tax revenues expected to increase in 2018-2019, there was little appetite for major tax reform by either the Governor or the Legislature.

However, there was significant discussion on the Nevada property tax. Nevada has a property tax cap on property tax bills, but not property valuation. Consequently, when property values decreased during the recession, the property tax cap on bills precluded property taxes from significantly increasing as property values recovered. Because property tax is a significant funding source for local government, there was some discussion about how to address what some saw as artificially low local government revenues.

Several options were debated, including elimination or modification to the property tax cap. Ultimately, the Legislature passed SCR 14, which would eliminate accumulated depreciation on property values upon the sale or transfer of a property. If SCR 14 is passed again by the Legislature in 2019, it will be on the general election ballot in 2020 for approval by the voters.

Marijuana

In November of 2016, Nevada voters approved the legalization of recreational marijuana, joining California, Massachusetts and Maine. A significant amount of time in the 2017 legislative session was devoted to the implementation of rules and procedures on the sale of recreational marijuana.

Although state authorities were provided until the end of 2017 to enact rules and regulations, the Governor proposed an “early start” program to have recreational marijuana sales in place by July 1, 2017, primarily to collect tax revenues on the sale.

Several bills were introduced and administrative regulations were adopted by the Nevada Tax Commission. Some of the more significant legislation gave authority over the recreational marijuana program to the Nevada Department of Taxation, imposed a 10% excise tax on the sale of recreational marijuana with the proceeds going to education, and addressed driving while under the influence of marijuana. The adopted regulations were challenged in court by a group of marijuana distributors who alleged that the state was arbitrarily denying distributor licenses.

The recreational marijuana tax bill became hotly contested in the final days of the session as Democrats and Republicans were unable to agree on education funding in the budget. Republicans refused to vote for the bill and it initially failed to pass. Ultimately, as part of the budget compromise, the tax bill was passed, but the proceeds were directed to the state rainy day fund instead of education.

State Employee Raises

During the recession, state employees experienced pay cuts and furloughs to help the state through a budget crisis. The Governor’s recommended budget included 2% cost of living increases for state employees in each year of the upcoming biennium. On the final day of the session, the Legislature passed an additional 1% pay increase over the biennium for state employees.

ESA/Opportunity Scholarship

A significant number of political disputes arose over the Governor's proposal to appropriate \$60 million to Educations Savings Accounts (ESA) to provide parents and students with flexibility on school choice. Democrats largely opposed the measure and refused to give the legislation a hearing until the end of the session. Ultimately, the Governor and Legislature were unable to agree on terms to fund ESAs, and compromised with a \$20 million increase to the Opportunity Scholarship program. That program allows Nevada businesses to donate to private scholarships in exchange for tax credits.

Health Care

Issues dominating the deliberations about health care services and delivery included workforce, development and distribution, scope of practice, insurance, network adequacy, mental health, opioids and substance abuse, pharmaceuticals and pharmaceutical pricing transparency, "Medicaid for all" plan design, Medicaid managed care expansion, and embedding parts of the ACA in Nevada law as a hedge against changes at the federal level. The conversations were fragmented among the Health committees and the Commerce committees and spilled into Finance and Ways and Means where funding discussions often led to a re-hash of policy issues.

Energy

In November 2016 Nevada voters overwhelmingly approved the passage of a ballot question to implement energy deregulation in Nevada. Although not effective until a second passage in November 2018, the ballot question triggered significant discussion on energy issues during the session.

Early in the session, the Governor created the Energy Choice Committee, composed of 25 members from both the public and private sector and chaired by the Lt. Governor. The Committee will meet into 2018 and prepare recommendations for the Governor and Legislature on how to best prepare for the possibility of a deregulated energy market.

Other significant energy legislation was passed by the Legislature and approved by the Governor in 2017, including some of the following legislation:

- Reinstatement of the net metering program for customers who install rooftop solar
- A requirement that the PUCN make determinations regarding the value of establishing targets for the procurement of energy storage systems
- A requirement that the PUCN give preference to energy sources with the greatest economic and environmental benefits to Nevada during the integrated resource planning process
- A requirement that a utility submit to the PUCN, as part of its distributed resources plan, information on cost-effective methods to utilize distributed resources
- A requirement that the PUCN establish annual energy savings goals for utilities, and requires utilities to develop and implement an energy efficiency plan
- A consolidation of existing energy incentive programs and authorization for the PUCN to award incentives for the installation of solar and distributed generation to low-income customers
- Creation of the Electric Vehicle Infrastructure Demonstration Program
- A requirement that a utility, as part of an integrated resource plan, meet targets related to energy efficiency and conservation for low-income customers
- An establishment of the Nevada Clean Energy Fund
- Authorization for a local government to create a local improvement district including an energy efficiency improvement project or a renewable energy project
- Establishment of the Legislative Committee on Energy to conduct a study regarding the impacts of deregulation of the Nevada energy market, and to review the work of the Governor's Committee on Energy Choice

Senator Manendo

Most legislative sessions involve some level of personal issues for a legislator. In 2017, Senator Mark Manendo was the subject of an internal investigation into allegations of sexual harassment. While the investigation was still pending at the conclusion of the session, Majority Leader Ford took the unusual step of formally admonishing Senator Manendo on the Senate Floor in the final days of the session.

The Legislature also introduced and passed ACR 17, establishing a code of ethics and standards for legislators and lobbyists, along with a mechanism by which complaints can be filed anonymously.

Legislative Commission

The Legislative Commission is an interim body that primarily reviews and approves administrative regulations. The Legislative Commission is historically a balanced bi-partisan Commission, with 6 Assembly representatives (3 Democrat and 3 Republican) and 6 Senate representatives (3 Democrat and 3 Republican). During the 2017 session, the Democrats took the unusual move of disregarding the standing rule on bi-partisan equality and appointed the Independent Senator to a spot formerly held by a Republican Senator. Because the Independent Senator both caucuses and votes with the Democrats, the legislative commission is effectively controlled by the Democrats by a 7-5 majority. It bears noting that the questionable legality of the appointments for the interim may subject any actions of the legislative commission to a legal challenge.

Veto

Over the past several sessions, with the exception of 2015, the Governor's Office has been held by a Republican and the Legislature has been controlled by the Democrats. This resulted in political friction and a significant number of gubernatorial vetoes. The 2017 session was no exception.

In the 2017 legislative session, the Governor vetoed 41 bills. This compares to 2011 (36 vetoes), 2013 (17 vetoes), and 2015 (6 vetoes) and is just shy of the modern-day record for vetoes in a single session, which was set by Governor Gibbons in 2009 with 48 vetoes.

The following bills were vetoed by Governor Sandoval in 2017:

- **IP 1:** This legislation would have changed voter registration at the DMV from "opt-in" to "opt-out." The Governor cited a concern over voter choice and a risk of registering ineligible voters. The Governor also noted the various other readily accessible means for citizens to register to vote in Nevada.
- **AB 101:** This legislation would have modified how a state agency used a hunting fee to manage predatory wildlife. The Governor stated that there was no clear justification for the revisions proposed in the legislation and that it was unclear if the legislation would result in any meaningful improvements.
- **AB136:** This legislation would have revised the factors that are considered by the court in deciding whether to release a person without bail. The Governor cited a concern that the

legislation would incorporate a new and unproven method for determining whether a criminal defendant should be released from custody without posting bail.

- **AB 154:** This legislation would have reversed a change on prevailing wage that was enacted in 2015 and would have allowed districts and the Nevada System of Higher Education to pay workers 100 percent of prevailing wage on school construction projects. The Governor stated that there was no justification to reverse the 2015 compromise and noted that it would likely add costs to school construction.
- **AB 175:** This legislation would have established the minimum level of health benefits an employer must make available to an employee in order to pay the minimum wage that is lower than the minimum wage otherwise required to be paid to the employee. The Governor cited a concern over harming Nevada's businesses, low-wage workers and economic growth. The Governor also noted that the legislation is constitutionally suspect.
- **AB 188:** This legislation would have reduced the credit hours required for eligibility for a grant awarded under the Silver State Opportunity Grant Program. The Governor expressed his concern that the legislation may lead to unintended outcomes and discourage timely post-secondary education completion.
- **AB 206:** This bill would have increased the state renewable energy portfolio standard, and would also have required large scale customers who have exited from NV Energy to comply with the standard. The Governor noted a concern over whether the bill will work within the possibility of pending energy deregulation and ordered the Committee on Energy Choice to study the impacts of an increased RPS.
- **AB 259:** This legislation would have allowed a person who was convicted of a marijuana misdemeanor to have their conviction vacated and their records sealed. The Governor noted that the legislation makes changes to Nevada's record-sealing law and gives a judge unwarranted discretion to depart from statutory minimum prison sentences.
- **AB 271:** This legislation would have made several changes to collective bargaining negotiations between local government employers and employee organizations. The Governor stated that he could not support the legislation because it reversed several provisions of a bipartisan collective bargaining compromise that was enacted during the 2015 legislative session.
- **AB 272:** This legislation would have authorized counties and city clerks to establish polling places where any registered voter of the county or city may vote. The Governor noted that because Nevada has "no-excuse" absentee voting and two weeks of early voting, there is no compelling reason to change the current system.
- **AB 277:** This legislation would have imposed various restrictions on any development within ½ mile of a national recreation area. The Governor noted that the legislation may not meet constitutional requirements, citing that a similar law was deemed unconstitutional by the Nevada Supreme Court in 2013. The Governor expressed that while he supported the intention of the legislation, he could not support it due to constitutional concerns.

- **AB 290:** This legislation would have made changes to collective bargaining by local governments. The Governor stated that he could not support the legislation because it reversed several provisions of a bipartisan collective bargaining compromise that was enacted during the 2015 legislative session and noted that he had vetoed two similar pieces of legislation, AB 271 and SB 356, for the same reasons.
- **AB 303:** This legislation would have banned the use of private prisons in Nevada. The Governor cited a concern over limiting the discretion of the Director of the Department of Corrections and noted that there is no way to predict whether private prisons may be needed in the future. The Governor also stated that having options is critical for the management of the state's prison system.
- **AB 348:** This legislation would have established state standards for sex education courses and would require families to "opt out" rather than "opt in." The Governor stated that the legislation would upset the school-parent balance and could potentially deprive parents an opportunity to provide consent for their children to receive sex education. The Governor also expressed that a uniform approach to sex education would be ill-advised.
- **AB 350:** This legislation would have required state agencies to allow unions to give a presentation during new employee orientation. The Governor stated that the legislation would create a process that could end in collective bargaining for all state employees and would create mandates that are inconsistent with bipartisan reforms that were enacted in 2015.
- **AB 364:** This legislation would have directed NDOT to conduct a study about traffic and safety on the roads in eastern Clark County. The Governor stated that the legislation was redundant and unnecessary and intruded on policy issues reserved to the executive branch and the Nevada Transportation Board of Directors.
- **AB 374:** This bill would have created the Nevada Care Plan, providing similar benefits to Medicaid but open to anyone. The Governor noted a concern over unintended consequences over addressing such a significant issue without further study.
- **AB 376:** This legislation would have required a criminal complaint to be filed within 72 hours after a person is arrested without a warrant. The Governor noted that the legislation departs from the current system that gives a judge discretion and sets up a rigid timeline. The Governor expressed a concern that the timeline could be unworkable for certain cases.
- **AB 382:** This legislation would have limited out-of-network payments to the greater of 125% of Medicare or the average amount the third party has negotiated with other providers in the same category. The Governor stated that the legislation would disrupt the healthcare market and would force hospitals to accept below the market payment for their services. The Governor cited a concern over doctors leaving the state and making the doctor shortage even worse.
- **AB 403:** This legislation would have authorized the Legislative Commission to suspend or nullify a regulation of a State agency, and would have precluded judicial review of any such

actions. The Governor stated that this legislation would upset the established balance between Nevada's three branches of government and would encroach upon the constitutional space reserved for the executive and judicial branches of government. He expressed that the legislation was unnecessary and likely unconstitutional.

- **AB 407:** This legislation would have designated UNLV and the Desert Research Institute as land-grant universities. The Governor cited a concern that splitting federal funding currently directed to UNR could result in less federal money for all facilities. The Governor also noted that this could cripple existing programs at UNR and may not provide enough funding to restart programs elsewhere.
- **AB 408:** This bill would have required Medicaid to cover certain preventative health services and codified other parts of the Affordable Care Act. The Governor cited concerns over codifying requirements that may be imprudent or unaffordable, and noted that certain other aspects of the Affordable Care Act have already been codified.
- **AB 427:** This legislation would have removed the requirement that a person who has been convicted of certain felony drug offenses complete a drug treatment program before becoming eligible for Temporary Assistance for Needy Families or Supplemental Nutrition Assistance Program benefits. The Governor noted that the legislation would remove tools and incentives for drug offenders to receive necessary treatment for addiction and rebuild their lives.
- **AB 438:** This legislation would have allowed the court to reduce or suspend the sentence of someone who is convicted of possession of certain controlled substances and would have reduced the penalty for knowingly using a controlled substance. The Governor cited a concern that the legislation would endanger the safety of the state's communities and eliminate the incentive for offenders to cooperate with law enforcement. He stated that the legislation would send the wrong message at a time when Nevada is struggling with an opioid epidemic.
- **AB 445:** This legislation would have reduced the insurance requirements for transportation network companies. The Governor cited a concern that it would have serious consequences for public safety and victim compensation.
- **SB 106:** This legislation would have increased the minimum wage in Nevada. The Governor cited a concern over placing a burden on small businesses and noted that the legislation could result in high costs of goods and services. The Governor also stated that it could undermine Nevada's economic recovery.
- **SB 140:** This legislation would have provided for early release of older, non-violent inmates and would allow them to spend the duration of their sentence in house arrest. The Governor stated that age alone is not a compelling reason to give someone more benefits than another and expressed his concern for fairness and public safety.
- **SB 173:** This legislation would have eliminated the prevailing wage exemption for charter schools operating within the Achievement School District. The Governor cited a concern that

the legislation would result in high construction costs for school facilities and would make it more difficult for institutions to fully leverage their resources.

- **SB 196:** This legislation would have required private employers to provide paid sick leave to full-time employees. The Governor expressed a concern that this legislation would present an economic burden on small businesses, upset competition for employees, and hinder Nevada's business friendly reputation.
- **SB 265:** This legislation would have required drug manufacturers of diabetes drugs to disclose information about their costs and profits. The Governor noted that the legislation did not consider market dynamics and could pose serious consequences for Nevada's consumers, such as causing the cost of diabetes drugs to increase. The Governor also stated that constitutional and other legal considerations have been raised regarding the legislation and that there is insufficient evidence that the provisions will lead to lower drug costs.
- **SB 356:** This legislation would have made various changes to collective bargaining. The Governor stated that he could not support the legislation because it reversed SB241 from 2015, a bipartisan collective bargaining compromise, and noted that he had vetoed a similar piece of legislation, AB 271, for the same reason. The Governor also noted that the legislation passed on a strict, party-line vote, while the legislation in 2015 was nearly unanimous.
- **SB 357:** This legislation would have required contractors on public works projects that cost \$1 million or more to use apprentices for at least 3 percent of the total work hours. The Governor cited a concern that there may not be an adequate supply of apprentices and stated that the provisions of the legislation were restrictive and burdensome.
- **SB 374:** This legislation would have prevented professional licensing boards from disciplining members who use medical marijuana. The Governor stated that he believes it is unwise to limit professional licensing board discretion over the use of recreational marijuana by a licensee and that it was imprudent to expand possible uses of recreational marijuana.
- **SB 384:** This legislation would have restricted public access to information on retired public employees. The Governor cited a concern that the legislation would limit the public's right to access public information and would upset the established balance between privacy and transparency.
- **SB 392:** This bill would have authorized community solar gardens, which would have required utility reimbursement to providers in a similar fashion to net metering. The Governor expressed a concern over disruption to the state energy market and a concern over negatively impacting large scale solar operations.
- **SB 397:** This legislation would have revised several provisions relating to unlawful employment practices and governing the filing of complaints of employment discrimination with the Nevada Equal Rights Commission. The Governor expressed that the legislation expands the authority and jurisdiction of the Commission beyond what is necessary and encroaches upon matters that are reserved with the courts. The Governor also cited concerns

over expanded disciplinary powers, enhanced penalties, and the uncertainty of an increase in the filing of frivolous complaints.

- **SB 416:** This legislation would have established medical marijuana apprenticeship programs. The Governor noted that it is unclear if the legislation is consistent with federal regulations and expressed a concern that the legislation may do more harm than good by establishing apprenticeship programs within an industry for which the federal government has not signaled clear approval.
- **SB 427:** This legislation would have required all freight trains to operate with a crew of at least two people. The Governor stated that the legislation was not necessary and would make Nevada an outlier state on the issue. The Governor also noted that two-person crews are already the standard in Nevada and cited a concern over impeding technological advancements and full negotiations.
- **SB 434:** This legislation would have required the city council of Reno and Sparks to appoint the City Attorney. The Governor noted that neither the City of Reno nor the City of Sparks asked for or supported the change.
- **SB 464:** This legislation would have required the Las Vegas Convention and Visitors Authority to enter into a project labor agreement for the construction work on the Las Vegas Convention Center. The Governor stated that the legislation would reverse a bipartisan measure from the 2015 Legislation Session and would add a provision that was previously rejected during the 2016 Special Session.
- **SB 469:** This legislation would have decreased the budgeted ending fund balance that is not subject to collective bargaining. The Governor noted that this legislation would undo a bipartisan compromise made during the 2015 Legislation Session without sufficient evidence that such a rollback was necessary.

3. Planning for the Future

McDonald Carano recommends consideration of the following strategies for the 2017-2018 interim period, the 2018 elections, and the 2019 legislative session:

- **Develop and Strengthen Legislative Relationships:** Term limits and election volatility will continue the trend of significant numbers of new and relatively new legislators. Seeing freshman legislators chair committees has gone from being unheard of to a common practice. Building relationships with legislators and legislative candidates at an early stage is important to long-term success.
- **Develop and Strengthen Executive Branch Relationships:** Working with executive branch agencies and regulatory bodies is a critical part of success in Nevada. With term limits, Nevada will elect a new Governor in 2018, who will have the authority to appoint individuals to key executive branch positions.
- **Monitor and Participate in the Administrative Regulatory Process:** During the interim period, executive branch agencies will continue to promulgate administrative regulations. The administrative regulation process is a public process which allows significant participation by interested parties.
- **Monitor and Participate in Interim Committees:** Standing committees such as the Legislative Commission and the Interim Finance Committee meet regularly during the interim period and often enact policies with broad impacts on Nevada businesses. Other committees such as the Governor's Committee on Energy Choice and the Legislative Committee on Energy will be considering and making recommendations on the future of energy policy in Nevada, which impacts every direct and indirect energy customer. Many other specialized interim committees will meet during the interim and make recommendations for legislation in 2019.
- **Consider a Political Campaign Contribution Strategy:** As elected officials begin to focus on the 2018 election cycle, their focus will switch to requests for financial support. We help our clients develop a sound strategic strategy for political contributions at both the state and local levels.
- **Establish 2019 Legislative Priorities:** Whether seeking to pass legislation in 2019 or playing defense, the sooner a strategy is developed for 2019 the more successful it will be. We help our clients develop a strategy for 2019 designed to maximize the chances of success.

4. The 2017-2018 Interim Period

There are many interim legislative, executive and advisory committees. The following is a description of some of the pertinent interim committees.

Interim Finance Committee

The Interim Finance Committee (IFC) makes appropriations from the state contingency fund and handles other fiscal matters between legislative sessions. The IFC is composed of the membership of the Senate and Assembly money committees.

Legislative Commission

The Legislative Commission administers general matters for the Legislature during an interim period, including review of legislative audits, litigation, interim studies, and the review and approval of administrative regulations. The Legislative Commission is composed of 12 members, with 6 from each house. The Legislative Commission is typically a purely bi-partisan commission, with an equal number of Republicans and Democrats. However, for the 2017-2018 interim period, Democrats broke with tradition and appointed an Independent who caucuses with the Democrats to a historically Republican slot, giving the Democrats an effective 7-5 majority on the Legislative Commission.

Governor's Committee on Energy Choice

To help plan for the possibility of energy deregulation in Nevada, the Governor appointed a 25-member committee to review and make recommendations on energy policy to the Governor and the Legislature. The Committee is chaired by the Lt. Governor. The Committee is tasked to provide recommendations by July 1, 2018.

Legislative Committee on Energy

The 2017 Legislature tasked the existing Legislative Committee on Energy with consideration of issues relating to possible deregulation and with a review of the Governor's Committee on Energy Choice. The Committee is composed of 6 legislators, 3 from each house.

Other Statutory Committees

- Legislative Committee on Education
- Legislative Committee on Health Care
- Legislative Committee on Public Lands
- Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs
- Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency
- Committee on High Level Radioactive Waste
- Commission on Special License Plates
- Advisory Commission on the Administration of Justice

Non-Legislative Committees and Interim Studies

- Committee to Study the Cost and Affordability of Higher Education (Appointed by Legislative Commission)
- Task Force on Financial Security
- Committee to Study Affordable Housing (Appointed by the Legislative Commission)
- Committee to study salaries for employees in the unclassified and non-classified service of the State (Appointed by the Legislative Commission)
- Advisory Board on Maternal and Child Health
- Advisory Committee for a Veterans' Cemetery in Northern Nevada
- Advisory Committee for a Veterans' Cemetery in Southern Nevada
- Advisory Committee for the Prevent and Treatment of Stroke and Heart Disease
- Advisory Committee on Nevada Criminal Justice Information Sharing
- Advisory Committee to Study Laws Concerning Sex Offender Registration
- Advisory Council on Mortgage Investments and Mortgage Lending
- Advisory Council on Parental Involvement and Family Engagement
- Advisory Council on the State Program for Wellness and the Prevention of Chronic Disease
- Advisory Task Force on Educator Professional Development
- Board of Directors of the Silver State Health Insurance Exchange
- Board of Economic Development
- Commission on Educational Technology
- Commission on Ethics
- Commission on Nuclear Projects
- Council to Establish Academic Standards for Public Schools
- Economic Forum
- Education Commission of the States
- Gaming Policy Committee
- Governor's Workforce Development Board
- Information Technology Advisory Board
- National Conference of Commissioners on Uniform State Laws
- Nevada Advisory Council on Federal Assistance
- Nevada AIDS Advisory Task Force
- Nevada Commission for the Reconstruction of the V&T Railroad
- Nevada Commission on Aging
- Nevada Commission on Homeland Security
- Nevada Commission on Minority Affairs
- Nevada Silver Haired Legislative Forum
- Nevada State Council for Interstate Juvenile Supervision

- Nevada Veterans' Services Commission
- Nevada Youth Legislature
- P-20W Advisory Council
- Safe-to-Tell Program Advisory Committee
- State Council for the Coordination of the Interstate Compact on Educational Opportunity for Military Children
- State Public Charter School Authority
- Statewide Council for the Coordination of the Regional Training Programs
- Task Force on Alzheimer's Disease
- Technological Crime Advisory Board