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# 2017 LEGISLATIVE RECAP: IMPORTANT BILLS FROM NEVADA'S 79TH LEGISLATIVE SESSION

Leonardo R. Benavides\*

## INTRODUCTION

After the “red wave” of voters swept across the nation’s midterm elections in 2014, Nevada Republicans held a bicameral majority in the 78th (2015) Legislative Session.<sup>1</sup> The subsequent 2016 presidential election tipped the balance of power as Nevada Democrats took back the majority in both houses for the 79th (2017) Legislative Session.<sup>2</sup> The Senate went from an 11-10 Republican advantage to an 11-9-1 advantage for Democrats,<sup>3</sup> and the Assembly flipped from a 25-17 Republican advantage<sup>4</sup> to a 27-15 Democrat advantage.<sup>5</sup> The issues that had previously dominated the 2015 Session,<sup>6</sup> such as tort reform, collective bargaining overhauls, and funding for Education Savings Accounts

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<sup>1</sup> Laura Myers, *Nevada Joins the Big Red Wave*, L.V. REV.-J. (Nov. 5, 2014, 1:07 AM), <https://www.reviewjournal.com/uncategorized/nevada-joins-the-big-red-wave/> [https://perma.cc/3RLC-KL24].

<sup>2</sup> Sean Whaley, *Blue Wave Hands Democrats Reins of Nevada Legislature*, L.V. REV.-J. (Nov. 9, 2016, 1:32 PM), <https://www.reviewjournal.com/news/politics-and-government/blue-wave-hands-democrats-reins-of-nevada-legislature/> [https://perma.cc/9BDS-RBK8].

<sup>3</sup> Sandra Chereb, *Nevada State Sen. Patricia Farley Bolts GOP for Independence; Will Caucus with Democrats*, L.V. REV.-J. (Nov. 14, 2016, 3:14 PM), <https://www.reviewjournal.com/news/politics-and-government/nevada/nevada-state-sen-patricia-farley-bolts-gop-for-independence-will-caucus-with-democrats/> [https://perma.cc/6VC4-DB2C]. State Senator Patricia Farley switched her affiliation from Republican to Independent to caucus with Democrats. *Id.*

<sup>4</sup> See Steve Sebelius, *Nevada Legislature 2015 ... by the Numbers*, L.V. REV.-J. (Jan 26, 2015, 11:40 AM), <https://www.reviewjournal.com/opinion/opinion-columns/steve-sebelius/nevada-legislature-2015-by-the-numbers/> [https://perma.cc/93NL-VQ3F].

<sup>5</sup> Whaley, *supra* note 2.

<sup>6</sup> See generally Thomas W. Stewart & Jenn Odell, *2015 Legislative Recap: Important Bills from Nevada’s 78th Legislative Session*, 16 NEV. L.J. 419 (2015).

(ESAs),<sup>7</sup> seemed dead-on-arrival ahead of the 2017 Session.<sup>8</sup> However, with Republican Governor Brian Sandoval at the helm for his last term,<sup>9</sup> Nevada was poised to see the 2017 Session result in a stalemate, with neither extensive Democratic reforms nor significant Democratic rollbacks to the hard-won legislative gains by Republicans back in 2015.

The 2017 Session began with the Democratic caucuses of each house electing Senator Aaron Ford as Majority Leader and Assemblyman Jason Frierson as the Assembly Speaker.<sup>10</sup> Democratic leaders then unveiled the *Nevada Blueprint*,<sup>11</sup> which detailed their legislative priorities for 2017: promoting clean energy, investing in public education, protecting voter rights, and mandating paid sick leave (among other issues).<sup>12</sup> The *Blueprint* also hinted at Democratic opposition to funding the ESA voucher program.<sup>13</sup> Meanwhile, Governor Sandoval was determined to protect his work and legacy from the 2015 Session.<sup>14</sup> He was especially determined to revive the ESA program, stating that he was committed “100 percent” to funding ESAs since they were a “big priority for [him].”<sup>15</sup> Sandoval proposed a \$60 million appropriation in his budget to fund

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<sup>7</sup> See generally *id.* at 431; see also, generally, Nevada Law Journal Staff, White Paper, *Nevada's Education Savings Accounts: A Constitutional Analysis*, NEV. SUP. CT. SUMMARIES, May 2, 2016.

<sup>8</sup> Sean Whaley & Sandra Chereb, *Democratic Party Set to Regain Control of State Assembly, Senate*, L.V. REV.-J. (Nov. 9, 2016, 12:50 AM), <https://www.reviewjournal.com/news/politics-and-government/nevada/democratic-party-set-to-regain-control-of-state-assembly-senate/> [https://perma.cc/6JMH-3Y2A].

<sup>9</sup> Sean Whaley, *Nevada Legislature Pegs \$25k for Gov. Sandoval Portrait*, L.V. REV.-J. (May 5, 2017, 2:47 PM), <https://www.reviewjournal.com/news/2017-legislature/nevada-legislature-pegs-25k-for-gov-brian-sandoval-portrait/> [https://perma.cc/DEK2-AWJK].

<sup>10</sup> *Jason Frierson Named Assembly Speaker for 2017 Nevada Legislature; Aaron Ford Named Majority Leader*, NEV. APPEAL (Nov. 10, 2016), <http://www.nevadaappeal.com/news/government/jason-frierson-named-assembly-speaker-for-2017-nevada-legislature/> [https://perma.cc/6GRF-4XK6].

<sup>11</sup> NEV. SENATE DEMOCRATS & ASSEMBLY DEMOCRATIC CAUCUS, NEVADA BLUEPRINT (2017), <http://www.nevadablueprint.com/wp-content/uploads/2017/02/nv-blueprint-2017.pdf> [https://perma.cc/QXZ4-KSNS] [hereinafter NEVADA BLUEPRINT].

<sup>12</sup> *Id.*

<sup>13</sup> Megan Messerly & Riley Snyder, *Democrats Unveil Second Iteration of the “Nevada Blueprint,”* NEV. INDEP. (Fed. 16, 2017, 3:22 PM), <https://thenevadaindependent.com/article/democrats-unveil-second-iteration-nevada-blueprint/> [https://perma.cc/2LFF-BHJV] (discussing NEVADA BLUEPRINT, *supra* note 11).

<sup>14</sup> See generally Michelle Rindels et al., *Sandoval Unleashes Veto Pen, Spikes Collective Bargaining, Prevailing Wage Rollbacks*, NEV. INDEP. (May 26, 2017, 2:30 AM), <https://thenevadaindependent.com/article/sandoval-unleashes-veto-pen-spikes-collective-bargaining-prevailing-wage-rollbacks> [https://perma.cc/QLK2-A5SG] (discussing several bills that would have “reverse[ed] the work of the Republican- controlled 2015 Legislature” but were vetoed by Sandoval).

<sup>15</sup> Michelle Rindels et al., *The Education Endgame: Will the Controversial ESA Program Finally Receive Funding?*, NEV. INDEP. (May 28, 2017, 2:30 AM), <https://thenevadaindependent.com/article/the-education-endgame-will-the-controversial-esa-program-finally-receive-funding> [https://perma.cc/QLZ5-TLU3].

ESAs, a program that Democrats vehemently opposed.<sup>16</sup> The ESA dispute hovered over most of the session as behind-the-scenes negotiations continued.<sup>17</sup>

While ESA negotiations were ongoing, the 2017 Session seemed to be at a standstill. One political pundit went so far as to describe it as the “Wasted Session.”<sup>18</sup> By May 5th (just one month before the 2017 Session’s end), the Governor had only signed ten bills into law—the second lowest number of bills signed at that point in a Nevada legislative session since 1999.<sup>19</sup> Then, on day 116 (June 1st),<sup>20</sup> the ESA negotiations reached their boiling point, and bipartisan efforts to reach a compromise broke down.<sup>21</sup> Republicans responded by twice voting against Senate Bill (S.B.) 487,<sup>22</sup> a proposed tax on recreational marijuana—killing the “pot tax” by denying Democrats the necessary two-thirds majority<sup>23</sup> (fourteen votes) and thereby creating a void in the education budget.<sup>24</sup> Senate Republicans then walked off the Senate floor, and Democrats passed their education budget without the \$60 million Governor Sandoval had requested for ESAs—and without a single Republican on the senate floor.<sup>25</sup>

Speculation about whether Governor Sandoval would veto any budget without ESA funding (a move which many thought would result in a special session) immediately followed.<sup>26</sup> However, the Governor quelled such speculation by immediately ruling out a special session.<sup>27</sup> During the last weekend of

<sup>16</sup> Editorial, *Our View: Lots of Good Ideas in Sandoval’s Last Budget*, RENO GAZETTE-J. (Jan. 23, 2017 10:03 AM), <http://www.rgj.com/story/opinion/editorials/2017/01/23/our-view-lots-good-ideas-sandovals-last-budget/96953198/> [<https://perma.cc/QJ2R-VWE4>].

<sup>17</sup> *See id.*

<sup>18</sup> Jon Ralston, *Welcome to the Wasted Session*, NEV. INDEP. (Feb. 12, 2017, 3:15 AM), <https://thenevadaindependent.com/article/welcome-wasted-session/> [<https://perma.cc/W86Z-LBRM>]; *see also* Jon Ralston, *120 Days of... Nothing*, NEV. INDEP. (June 4, 2017 3:20 AM), <https://thenevadaindependent.com/article/120-days-of-nothing> [<https://perma.cc/VJ2H-P9PT>] (“One hundred twenty days, no ESAs and nothing that significant. What a waste.”).

<sup>19</sup> Megan Messerly et al., *Legislators Moving at Slower-Than-Normal Pace with Major Policy Battles Looming*, NEV. INDEP. (May 6, 2017, 2:15 AM), <https://thenevadaindependent.com/article/legislators-moving-slower-normal-pace-major-policy-battles-looming> [<https://perma.cc/7756-R262>].

<sup>20</sup> The Nevada Constitution requires that biennial legislative sessions begin on the first Monday of February and conclude 120 days later. *See* NEV. CONST. art. IV, § 2.

<sup>21</sup> Yvonne Gonzalez & Chris Kudialis, *Squashing of Pot Tax, ESA Funding Leaves Political Leaders Fuming*, L.V. SUN (June 1, 2017, 9:00 PM), <https://lasvegassun.com/news/2017/jun/01/squashing-of-pot-tax-esa-funding-sparks-division-a/> [<https://perma.cc/DX8Q-LQLG>].

<sup>22</sup> S.B. 487, 2017 Leg., 79th Sess. (Nev. 2017) (as considered on June 1, 2017).

<sup>23</sup> NEV. CONST. art. IV, § 18 (requiring two-thirds vote for any bill which “creates, generates, or increases any public revenue in any form, including but not limited to taxes”).

<sup>24</sup> Gonzalez & Kudialis, *supra* note 21.

<sup>25</sup> *Id.*

<sup>26</sup> *See generally, e.g.,* Ben Botkin & Sandra Chereb, *Gov. Sandoval Rules Out Special Session of Nevada Legislature*, L.V. REV.-J. (June 2, 2017, 7:47 PM), <https://www.reviewjournal.com/news/2017-legislature/gov-sandoval-rules-out-special-session-of-nevada-legislature/> [<https://perma.cc/X5KQ-YKHU>].

<sup>27</sup> *See id.*

the session, legislators negotiated at a hurried pace, and the Governor even tried to trade his (reluctant) support for a pharmaceutical transparency bill<sup>28</sup> in exchange for ESA funding.<sup>29</sup> The Democrats refused the trade, and the Governor consequently vetoed the pharmaceutical transparency bill.<sup>30</sup> However, on the penultimate day, both sides reached a new budget deal.<sup>31</sup> The Democrats were able to revive the marijuana tax bill with an amendment to send marijuana-tax revenue to the rainy day fund (instead of the public education fund),<sup>32</sup> and the Governor subsequently signed both the amended marijuana tax bill and a new version<sup>33</sup> of the pharmaceutical transparency bill.<sup>34</sup> Additionally, instead of money appropriated for ESAs, Opportunity Scholarships were injected with a one-shot investment of \$20 million dollars.<sup>35</sup> The 2017 Session adjourned *sine die*<sup>36</sup> on June 5—with all the budget bills signed, and no special session needed, due to the last minute compromise.<sup>37</sup>

In sum, Governor Sandoval signed 608 bills and vetoed 41 bills.<sup>38</sup> Republi-

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<sup>28</sup> S.B. 265, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed).

<sup>29</sup> See Megan Messerly, *Sandoval Vetoes Major Pharmaceutical Transparency Legislation Citing Concerns Over ‘Nascent, Unproven and Disruptive’ Changes*, NEV. INDEP. (June 2, 2017, 10:12 PM), <https://thenevadaindependent.com/article/sandoval-vetoes-major-pharmaceutical-transparency-legislation-citing-concerns-over-nascent-unproven-and-disruptive-changes> [https://perma.cc/69D8-UY49].

<sup>30</sup> *Id.*

<sup>31</sup> Sandra Chereb et al., *Nevada Senate Reaches Deal to End Budget Stalemate*, L.V. REV.-J. (June 5, 2017, 2:13 AM), <https://www.reviewjournal.com/news/2017-legislature/nevada-senate-reaches-deal-to-end-budget-stalemate/> [https://perma.cc/7WJX-ADZ7].

<sup>32</sup> Colton Lochhead, *Nevada Marijuana Tax Bill Revived, Sent to Governor*, L.V. REV.-J. (June 5, 2017, 5:54 PM), <https://www.reviewjournal.com/news/2017-legislature/nevada-marijuana-tax-bill-revived-sent-to-governor/> [https://perma.cc/Q7ZV-HNWG].

<sup>33</sup> S.B. 539, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>34</sup> See Lochhead, *supra* note 32; Megan Messerly, *Sandoval Says He Will Be ‘Proud’ to Sign Pharmaceutical Transparency Legislation Headed to His Desk Despite Vetoing Similar Bill Last Week*, NEV. INDEP. (June 8, 2017, 2:10 AM), <https://thenevadaindependent.com/article/sandoval-says-he-will-be-proud-to-sign-pharmaceutical-transparency-legislation-headed-to-his-desk-despite-vetoing-similar-bill-last-week> [https://perma.cc/YN4Q-6WHU].

<sup>35</sup> Alison Noon, *Nevada Legislature Wraps Up with Significant Education Boost*, U.S. NEWS & WORLD REP. (June 6, 2017, 12:30 AM), <https://www.usnews.com/news/best-states/nevada/articles/2017-06-05/nevada-legislature-wraps-up-with-significant-education-boost> [https://perma.cc/B6E4-EU2R].

<sup>36</sup> *Sine die*, literally meaning “without days,” is a term of art describing the final day of a legislative session. *Glossary of Legislative Terms*, CAL. ST. LEGISLATURE, <http://www.legislature.ca.gov/quicklinks/glossary.html#S> [https://perma.cc/5VSM-QLRS] (last visited July 13, 2017).

<sup>37</sup> See Sandra Chereb, *Nevada Legislature Wraps Up ‘Great Session,’* L.V. REV.-J. (June 5, 2017, 2:10 PM), <https://www.reviewjournal.com/news/2017-legislature/nevada-legislature-wraps-up-great-session/> [https://perma.cc/QUB3-SN3F].

<sup>38</sup> Megan Messerly & Riley Snyder, *Despite Moderate Stances, Sandoval Issued Most Vetoes in Nevada History*, NEV. INDEP. (June 21, 2017, 2:10 AM), <https://thenevadaindependent.com/article/despite-moderate-stances-sandoval-issued-most-vetoes-in-nevada-history> [https://perma.cc/L527-AFEQ].

cans largely achieved their goal of preserving legislative reforms from 2015,<sup>39</sup> and Democrats likewise claimed victory.<sup>40</sup> The Governor vetoed top Democratic legislative priorities that many Republicans considered too far left for Nevada (even in the eyes of moderates like Sandoval), such as expanding Medicaid coverage,<sup>41</sup> raising Nevada's renewable portfolio standard,<sup>42</sup> and increasing minimum wage.<sup>43</sup> However, Democrats prevented new legislation and funding for the ESA program—what was perhaps the top priority of Republicans for 2017,<sup>44</sup> but what Democrats considered “an extreme school voucher program” and a “reckless experiment.”<sup>45</sup>

The bills Governor Sandoval signed into law range in issues from education to healthcare, and from criminal justice reform to the burgeoning<sup>46</sup> market of recreational marijuana.<sup>47</sup> Other legislation that passed include bills reforming payday loan practices,<sup>48</sup> making repossession of a vehicle before a default a deceptive trade practice,<sup>49</sup> and banning conversion therapy for minors.<sup>50</sup> This article, however, will focus on legislation dealing with education, healthcare, criminal justice reform, net metering, autonomous vehicles, and marijuana.

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<sup>39</sup> Colton Lockhead, *ESA Blame Game Splits Nevada GOP*, L.V. REV.-J. (June 11, 2017, 11:13 PM), <https://www.reviewjournal.com/news/2017-legislature/esa-blame-game-splits-nevada-gop/> [https://perma.cc/U2GZ-BL4J].

<sup>40</sup> Aaron D. Ford & Jason Frierson, Opinion, *Dem Leaders Tell Top Triumphs of 2017 Nevada Legislature*, RENO GAZETTE-J. (June 8, 2017, 4:21 PM), <http://www.rgj.com/story/opinion/voices/2017/06/08/dem-leaders-tell-top-triumphs-2017-nevada-legislature/382042001/> [https://perma.cc/RU5S-7C5L].

<sup>41</sup> A.B. 374, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed). *See generally* Ed Kilgore, *Nevada Is Considering a Revolutionary Health-Care Experiment*, N.Y. MAG. (June 6, 2017, 11:42 AM), <http://nymag.com/daily/intelligencer/2017/06/nevada-is-considering-a-revolutionary-health-care-experiment.html> [https://perma.cc/KPU8-AVTJ].

<sup>42</sup> A.B. 206, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed). *See generally* Yvonne Gonzalez, *Sandoval Vetoes Community Solar, Higher Clean-Energy Standard*, L.V. SUN (June 16, 2017, 7:45 PM), <https://lasvegassun.com/news/2017/jun/16/sandoval-veto-community-solar-higher-clean-energy/> [https://perma.cc/X4PM-B37X].

<sup>43</sup> S.B. 106, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed) (increasing the minimum wage of employees in private employment); *see also* A.B. 175, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed) (setting certain minimum requirements for employer-provided health insurance for purposes of determining the applicable minimum wage).

<sup>44</sup> *See* Lockhead, *supra* note 39.

<sup>45</sup> Ford & Frierson, *supra* note 40.

<sup>46</sup> Nevadans voted to legalize recreational marijuana in the 2016 elections. *See, e.g.*, Colton Lockhead, *Nevada Voters Say Yes to Legalizing Marijuana*, L.V. REV.-J. (Nov. 9, 2016, 2:59 AM), <https://www.reviewjournal.com/news/politics-and-government/nevada-voters-say-yes-to-legalizing-marijuana/> [https://perma.cc/8J7D-QTY8].

<sup>47</sup> *See* Ben Botkin, *Here Are the Winners, Losers of the 2017 Nevada Legislature Session*, L.V. REV.-J. (June 10, 2017, 5:27 PM), <https://www.reviewjournal.com/news/2017-legislature/here-are-the-winners-losers-of-the-2017-nevada-legislature-session/> [https://perma.cc/69CN-IJGH].

<sup>48</sup> A.B. 163, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>49</sup> A.B. 262, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>50</sup> S.B. 201, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

## I. EDUCATION

Unlike the preceding session, the 2017 Session was not deemed the “Education Session.”<sup>51</sup> However, the theme of education reform reverberated throughout the walls of the legislature throughout the 2017 Session, which produced legislation covering a variety of controversial topics, including: school choice bills, funding formula changes for K-12, and higher education reform. Additionally, legislators revisited controversial issues from the 2015 session: Clark County School District (CCSD) reorganization, Victory Schools, and the Achievement School Districts. This section discusses several bills pertaining to education reform.

A. *School Choice*

S.B. 302<sup>52</sup> was one of the most high-profile bills to come out of the 2015 Session.<sup>53</sup> The bill established Nevada’s ESA program,<sup>54</sup> enabling parents to start an account with the State Treasurer’s Office through which the state would deposit a percentage of the student’s share of the public education fund (an average of \$5,700 per pupil) to cover the student’s education expenses for attending private school or obtaining personal tutors.<sup>55</sup> Over 8,000 students applied to the ESA program, but before the state could distribute any funds, the Nevada Supreme Court ordered a permanent injunction against the program.<sup>56</sup> In *Schwartz v. Lopez*,<sup>57</sup> the Court held that, although ESAs did not violate a prohibition against using public money to fund sectarian schools,<sup>58</sup> State Distributive Savings Account (DSA) funds could not be used for ESA purposes without violating the Nevada Constitution.<sup>59</sup> This holding left ESAs without funding.<sup>60</sup>

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<sup>51</sup> See Editorial, *State of the State: 5 Things We’d Like to Hear Tonight*, L.V. SUN (Jan. 17, 2017, 2:00 AM), <https://lasvegassun.com/news/2017/jan/17/state-of-the-state-5-things-wed-like-hear-tonight/> [<https://perma.cc/3EZK-LG33>].

<sup>52</sup> S.B. 302, 2015 Leg., 78th Sess., 2015 Nev. Stat. 1824.

<sup>53</sup> See generally, e.g., Neal Morton, *Judge Upholds Nevada’s Controversial School Choice Bill*, L.V. REV.-J. (May 19, 2016, 9:16 AM), <https://www.reviewjournal.com/news/education/judge-upholds-nevadas-controversial-school-choice-bill/> [<https://perma.cc/NFH7-AZX P>].

<sup>54</sup> See generally *Nevada’s Education Savings Account Program: FAQs*, NEV. ST. TREASURER, [http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurergov/content/SchoolChoice/NVESA\\_FAQ.pdf](http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurergov/content/SchoolChoice/NVESA_FAQ.pdf) [<https://perma.cc/LH9E-K49V>] (last visited Nov. 6, 2017).

<sup>55</sup> See S.B. 302; see also *Education Savings Accounts (SB 302)*, ST. OF NEV. DEP’T OF EDUC., [http://www.doe.nv.gov/Legislative/Education\\_Savings\\_Accounts/](http://www.doe.nv.gov/Legislative/Education_Savings_Accounts/) [<https://perma.cc/K6E2-3YG6>] (last visited Aug. 19, 2017). See generally Stewart & Odell, *supra* note 6.

<sup>56</sup> Sandra Chereb, *Nevada Supreme Court Strikes Down School Choice Funding Method*, L.V. REV.-J. (Sept. 29, 2016, 5:26 PM), <https://www.reviewjournal.com/news/education/nevada-supreme-court-strikes-down-school-choice-funding-method/> [<https://perma.cc/RVP7-CRD7>].

<sup>57</sup> 382 P.3d 886 (Nev. 2016).

<sup>58</sup> *Id.* at 899.

<sup>59</sup> See *id.* at 901–02.

<sup>60</sup> *Id.* at 902.

However, legislators endeavored to revive ESAs through a legislative fix.<sup>61</sup> In their attempt to change the funding mechanism for ESAs, legislators set up a showdown on school choice.

1. *Education Savings Accounts — S.B. 506 (unenacted)*

Republican legislators attempted to address the Nevada Supreme Court's ruling in *Schwartz v. Lopez* through S.B. 506,<sup>62</sup> which would have removed several provisions in S.B. 302, including its unconstitutional Section 16.<sup>63</sup> Instead of funding ESAs with DSA funds, S.B. 506 would have appropriated money from the State General Fund.<sup>64</sup> To fund ESAs through S.B. 506, Governor Sandoval requested legislative approval of his proposed budget, which included a \$60 million appropriation specifically for ESAs.<sup>65</sup> Steadfast Democrats announced that they would not consider any program that gives public money to private schools,<sup>66</sup> but later began negotiating an acceptable version of ESAs to later trade for some of their own legislative priorities.<sup>67</sup> On Memorial Day, May 29, 2017, S.B. 506 received a last minute joint hearing<sup>68</sup> in which Democrats discussed the possibility of an amended S.B. 506.<sup>69</sup> Unlike S.B. 302, S.B. 506 (with the proposed amendments) would have imposed a funding limit and would not have provided for universal eligibility<sup>70</sup>—meaning not all 8,600

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<sup>61</sup> See generally Chereb, *supra* note 56.

<sup>62</sup> S.B. 506, 2017 Leg., 78th Sess. (Nev. 2017) (unenacted).

<sup>63</sup> See *id.* Senator Scott Hammond, the original sponsor of the 2015 bill, submitted a nearly identical bill, S.B. 359 2017 Leg., 78th Sess. (Nev. 2017) (unenacted), but it never received a hearing. See Nev. Legislative Counsel Bureau, *SB 359*, NEV. LEGISLATURE, <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=805> [https://perma.cc/VTV3-5J26] (last visited Oct. 9, 2017).

<sup>64</sup> S.B. 506.

<sup>65</sup> See Michelle Rindels & Jackie Valley, *Indy Primer: Education Savings Accounts in High Demand, but Promise to Be Political Flashpoint*, NEV. INDEP. (Feb. 6, 2017, 3:15 AM), <https://thenevadaindependent.com/article/indy-primer-education-savings-accounts> [https://perma.cc/DU26-GBX6].

<sup>66</sup> Messerly & Snyder, *supra* note 13 (discussing NEVADA BLUEPRINT, *supra* note 11).

<sup>67</sup> Colton Lochhead, *Dealings Continue at Nevada Legislature in Battle to Fund ESAs*, L.V. REV.-J. (May 26, 2017, 3:28 PM), <https://www.reviewjournal.com/news/2017-legislature/dealings-continue-at-nevada-legislature-in-battle-to-fund-esas/> [https://perma.cc/7KHW-2HPS].

<sup>68</sup> *J. Hearing on S.B. 506 Before the S. Comm. on Fin., and the Assemb. Comm. on Ways & Means*, 2017 Leg., 79th Sess. (Nev. May 29, 2017), <https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5747/Overview> [https://perma.cc/DQV6-UPND] [hereinafter *J. Hearing*].

<sup>69</sup> Victor Joecks, *Surprise Hearing Clouds Fate of ESAs*, L.V. REV.-J. (May 30, 2017, 6:21 PM), <https://www.reviewjournal.com/news/news-columns/victor-joecks/surprise-hearing-clouds-fate-of-esas/> [https://perma.cc/UG9A-555L] (discussing a proposed Democratic amendment to S.B. 506).

<sup>70</sup> See Conceptual Amendment to SB 506, Meeting Exhibit, *J. Hearing*, *supra* note 68. The eligibility standards under the proposed amendment were never finalized because a deal was never reached. See generally Meghin Delaney, *Nevada Scholarship Program Benefits from Political Deadlock over ESAs*, L.V. REV.-J. (June 12, 2017, 10:35 PM),



applicants would have been covered.<sup>71</sup> The Governor's chief of staff, Mike Wilden, expressed his frustration that S.B. 506's first hearing was so late in the session.<sup>72</sup> Perhaps unsurprisingly, the negotiations were ultimately unsuccessful.<sup>73</sup> Thus, school choice in 2017 came down to a bipartisan compromise on Opportunity Scholarships in place of ESAs.

## 2. Opportunity Scholarships — S.B. 555 (enacted)

A.B. 165 (2015)<sup>74</sup> established the "Opportunity Scholarships" program.<sup>75</sup> Under A.B. 165, Opportunity Scholarships can be awarded to students to attend private schools registered in the state.<sup>76</sup> These scholarships are funded by donations from businesses.<sup>77</sup> Businesses can receive a tax credit, on the state's modified business tax, for donating to one of four approved non-profit organizations in the state responsible for awarding Opportunity Scholarships.<sup>78</sup> The selected non-profit organizations must seek approval from the Department of Taxation for the credit.<sup>79</sup> Qualified students<sup>80</sup> may each receive up to about \$7,700.<sup>81</sup> A.B. 165 authorized over \$6 million for fiscal year 2017–2018 in tax credits, with each succeeding year authorized to give up to 110 percent of the prior year.<sup>82</sup> In the 2017 Session, lawmakers introduced S.B. 555,<sup>83</sup> which made several minor modifications to the original Opportunity Scholarship program. Most significantly, as part of the bipartisan compromise to fund school choice, S.B. 555 added a one-time \$20 million investment to raise the program's maximum amount of tax credits for 2017–2018 to \$26 million.<sup>84</sup>

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<https://www.reviewjournal.com/news/education/nevada-scholarship-program-benefits-from-political-deadlock-over-esas/> [<https://perma.cc/ME4U-DUPN>].

<sup>71</sup> See Joecks, *supra* note 69.

<sup>72</sup> Megan Messerly et al., *Fragile Compromise on Education Savings Accounts Seems Further Off After Democrats Call Surprise Hearing*, NEV. INDEP. (May 29, 2017, 11:12 PM), <https://thenevadaindependent.com/article/fragile-compromise-on-education-savings-account-s-seems-further-off-after-democrats-call-surprise-hearing> [<https://perma.cc/P8EX-FLQU>].

<sup>73</sup> See generally Delaney, *supra* note 70.

<sup>74</sup> A.B. 165, 2015 Leg., 78th Sess., 2015 Nev. Stat. 85.

<sup>75</sup> *Opportunity Scholarships (AB165)*, ST. OF NEV. DEP'T OF EDUC., [http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Private\\_Schools/Scholarship\\_Grants/January302017summary.pdf](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Private_Schools/Scholarship_Grants/January302017summary.pdf) [<https://perma.cc/2LFC-8NHU>] (last visited Oct. 9, 2017).

<sup>76</sup> A.B. 165; see also *Opportunity Scholarships*, *supra* note 75.

<sup>77</sup> *Opportunity Scholarships*, *supra* note 75.

<sup>78</sup> See *id.*; see also Delaney, *supra* note 70.

<sup>79</sup> Delaney, *supra* note 70; see also *Opportunity Scholarships*, *supra* note 75.

<sup>80</sup> To qualify, a student must be a member of "a household with a household income which is not more than 300 percent of the federally designated level signifying poverty." S.B. 555, 2017 Leg., 79th Sess. (Nev. 2017) (enacted) (summarizing existing law prior to enactment); see also Delaney, *supra* note 70. This amounts to an annual income of \$60,000 for a family of three and \$85,000 for a family of five. Noon, *supra* note 35.

<sup>81</sup> *Opportunity Scholarships*, *supra* note 75; see also Noon, *supra* note 35.

<sup>82</sup> See Delaney, *supra* note 70.

<sup>83</sup> S.B. 555, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>84</sup> *Id.*; Delaney, *supra* note 70.

*B. Weighted Funding Formula — S.B. 178 (enacted)*

S.B. 178 created the Account for the New Nevada Education Funding Plan, which provides guaranteed per-pupil funding for certain low-income, underperforming students in Nevada not already in “Zoom”<sup>85</sup> or “Victory”<sup>86</sup> schools.<sup>87</sup> While the normal state’s per pupil funding will be an average of \$5,897 in fiscal 2018 and \$5,967 in 2019,<sup>88</sup> the Plan’s weighted funding formula provides an additional \$1,200 for students who: (i) “score in the bottom 25 percent of state standardized tests”;<sup>89</sup> (ii) “qualify for free or reduced lunch under federal guidelines or are defined as English language learners”;<sup>90</sup> (iii) do not attend a Zoom or Victory school; and (iv) “do not have an individualized education plan.”<sup>91</sup> The Plan will assist approximately 30,000 students statewide.<sup>92</sup>

Funding for the Plan comes from \$72 million previously apportioned funds for Zoom and Victory school expansion.<sup>93</sup> However, this was not enough to cover the estimated 54,000 eligible students, so the funding will prioritize students in low-ranked schools.<sup>94</sup> In comparison, S.B. 178 originally cost \$1.4 billion with a proposed weight of 1.5 for English language learners and at-risk students over a four year period, and an increased weight to 2.0 for students with special needs, a cost that was seen as too high for the state to currently fund.<sup>95</sup> For now, the Legislature plans to fully fund the current weight of \$1,200 for all eligible students by 2022.<sup>96</sup>

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<sup>85</sup> S.B. 390, 2017 Leg., 79th Sess. (Nev. 2017) (enacted) (defining Zoom schools as elementary schools that provide a comprehensive package of programs and services for children who are English learners).

<sup>86</sup> A.B. 447, 2017 Leg., 79th Sess. (Nev. 2017) (enacted) (defining Victory Schools as schools with a high percentage of pupils who live in low income households or has one of the two lowest possible underperformance ratings designated to offer integrated student support or wrap-around services).

<sup>87</sup> S.B. 178, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>88</sup> Geoff Dorman, *Nevada Legislature Sends Budget Bills to Sandoval*, NEV. APPEAL (June 3, 2017), <http://www.nevadaappeal.com/news/government/nevada-legislature-sends-budget-bills-to-sandoval/#> [<https://perma.cc/KL2A-F9H4>].

<sup>89</sup> Meghin Delaney, *Clark County Gets \$34.2M to Help Lagging Students*, L.V. REV.-J. (July 13, 2017, 4:54 PM), <https://www.reviewjournal.com/news/education/clark-county-gets-34-2m-to-help-lagging-students/> [<https://perma.cc/Z2BP-C6YP>].

<sup>90</sup> *Id.*

<sup>91</sup> S.B. 178.

<sup>92</sup> Delaney, *supra* note 89.

<sup>93</sup> Jackie Valley, *Amended Weighted School Funding Bill Focuses on Equity, Passes Committee Vote*, NEV. INDEP. (May 18, 2017, 7:03 PM), <https://thenevadaindependent.com/article/amended-weighted-school-funding-bill-focuses-on-equity-receives-welcome-reception> [<https://perma.cc/XE6N-AEZL>].

<sup>94</sup> *Id.*

<sup>95</sup> S.B. 178, 2017 Leg., 79<sup>th</sup> Sess. (Nev. 2017) (as introduced); Meghin Delaney, *More Than \$1B Needed in Special Funding for Nevada Students*, L.V. REV.-J. (Mar. 16, 2017, 6:15 PM), <https://www.reviewjournal.com/news/politics-and-government/nevada/more-than-1b-needed-in-special-funding-for-nevada-students/> [<https://perma.cc/2DCB-42BZ>].

<sup>96</sup> Rindels & Valley, *supra* note 65.

C. *CCSD Reorganization — A.B. 469 (enacted)*

A.B. 469<sup>97</sup> finished what A.B. 394 (2015)<sup>98</sup> set out to do: finalize the break-up of the Clark County School District (CCSD)—the fifth largest school district in the nation.<sup>99</sup> The 2015 bill authorized an interim committee to develop the plan for the reorganization.<sup>100</sup> What was originally in 2015 a bill that would merely break up CCSD into smaller “precincts”<sup>101</sup> turned into something much more in 2017: a bill that would “empower”<sup>102</sup> principals of public schools in Nevada to maintain more autonomy over their campuses while the district office would oversee district-wide administrative duties.<sup>103</sup> Under A.B. 469, a district office would be required to transfer per-pupil funding to the schools, keeping only twenty percent for the first year of the biennium and fifteen percent in the second year.<sup>104</sup>

In Fall 2016, the State Board of Education approved the draft regulations from the interim advisory committee established under A.B. 394, and the Legislative Commission<sup>105</sup> formally adopted the regulations in the Nevada Administrative Code (NAC).<sup>106</sup> In order to quash a lawsuit by the Clark County School Board, the 2017 Legislature passed A.B. 469 to codify these regulations in the Nevada Revised Statutes (NRS), thereby alleviating any doubts about the legality of the regulations.<sup>107</sup> This maneuver kept the reorganization of CCSD

<sup>97</sup> A.B. 469, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>98</sup> A.B. 394, 2015 Leg., 78th Sess., 2015 Nev. Stat. 3842.

<sup>99</sup> *Fast Facts 2016-17*, CLARK COUNTY SCH. DISTRICT, static.ccsd.net/ccsd/content/media/files/fast-facts-2016-17.pdf [https://perma.cc/WY7E-69FG] (last visited Aug. 19, 2017).

<sup>100</sup> A.B. 394 § 25.

<sup>101</sup> *Id.* §§ 21–29.

<sup>102</sup> See A.B. 469 § 36 (establishing “a Program of Empowerment Schools for [Nevada’s] public schools”). This “empowerment” program originally dates back to over a decade ago, but the program was abandoned due to budget cuts. Neal Morton, *State Lawmakers to Revisit Empowerment Model for CCSD School Reform*, L.V. REV.-J. (Apr. 11, 2016, 7:33 PM), https://www.reviewjournal.com/news/education/state-lawmakers-to-revisit-empowerment-model-for-ccsd-school-reform/ [https://perma.cc/T4UG-N4EN].

<sup>103</sup> A.B. 469. See generally Steve Sebelius, *Clark County School District Reorganization Turned into Bipartisan Solution in Nevada Legislature*, L.V. REV.-J. (May 9, 2017, 9:00 PM), https://www.reviewjournal.com/opinion/opinion-columns/steve-sebelius/clark-county-school-district-reorganization-turned-into-bipartisan-solution-in-nevada-legislature/ [https://perma.cc/5V48-HWFT].

<sup>104</sup> A.B. 469 § 18.

<sup>105</sup> The Legislative Commission is a body of 12 legislators who takes action on behalf of the legislature during the interim. See, e.g., *The Legislature Between Sessions*, NEV. ST. LEGISLATURE, https://www.leg.state.nv.us/Interim/interim.cfm [https://perma.cc/A2NK-GMLU] (last visited Aug. 19, 2017).

<sup>106</sup> See Jackie Valley et al., *Despite Trustee Concerns, Legislators Push Forward with Clark County School District Reorganization Bill*, NEV. INDEP. (Mar. 30, 2017, 2:55 AM), https://thenevadaindependent.com/article/despite-trustee-concerns-legislators-push-forward-clark-county-school-district-reorganization-bill [https://perma.cc/HT6V-3T3R].

<sup>107</sup> *Id.*

on schedule, to be completed before the 2017–2018 school year.<sup>108</sup> With just a week left in the 2017 Session, A.B. 516<sup>109</sup> was introduced to delay the reorganization by one year,<sup>110</sup> and to increase the per-pupil funding that the district office withheld at thirty percent for the first year and twenty-five percent for the second year.<sup>111</sup> However, the bill never received a hearing and died just before the end of the session.<sup>112</sup>

#### *D. Designations for Underperforming Schools*

Another series of education initiatives from the 2015 Session included various designations for so-called low-achieving schools and schools with underserved populations. These special designations came with more funding and/or specialized accommodations. In 2017, after two years of results, the Legislature reevaluated these programs to decide which programs were worth extending.

##### *1. Achievement School District — A.B. 432, A.B. 103, S.B. 430*

One of the more controversial reforms from 2015 was A.B. 448,<sup>113</sup> which allowed a charter school agency to take over failing public schools, creating the “Achievement School District” (ASD).<sup>114</sup> The bill authorized the ASD’s Executive Director to designate up to six schools for conversion to “achievement charter schools” during each year of the program.<sup>115</sup> Under A.B. 448, the principal of a newly designated achievement charter school would evaluate each of the school’s employees to determine whether that employee would be invited to continue working at the school or be reassigned to another school within the district.<sup>116</sup> Employees who accepted continued employment at the newly designated charter school would be granted a leave of absence from their employment with the school district for up to six years, during which time they could elect to return to employment with the school district.<sup>117</sup> Opponents argued the bill was a “union-busting” initiative, and that it recruited outsider charter opera-

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<sup>108</sup> See A.B. 469 § 41(2). See generally Valley et al., *supra* note 106.

<sup>109</sup> A.B. 516, 2017 Leg., 79th Sess. (Nev. 2017) (unenacted).

<sup>110</sup> *Id.* § 11.

<sup>111</sup> *Id.* § 2. See generally Michelle Rindels & Riley Snyder, *New Bill Seeks to Delay Clark County School District Reorganization by a Year, Give Schools Less Budget Control*, NEV. INDEP. (May 29, 2017, 3:11 PM), <https://thenevadaindependent.com/article/new-bill-seeks-to-delay-clark-county-school-district-reorganization-by-a-year-give-schools-less-budget-control> [https://perma.cc/75A9-FN2H].

<sup>112</sup> See generally Riley Snyder et al., *Bill Delaying, Modifying School District Reorganization Dies Without a Hearing*, NEV. INDEP. (Mar. 31, 2017, 4:29 PM), <https://thenevadaindependent.com/article/bill-delaying-modifying-school-district-reorganization-dies-without-a-hearing> [https://perma.cc/ML9H-QFBQ].

<sup>113</sup> A.B. 448, 2015 Leg., 78th Sess., 2015 Nev. Stat. 3775.

<sup>114</sup> *Id.* § 17.

<sup>115</sup> *Id.* § 20.

<sup>116</sup> *Id.* § 22.

<sup>117</sup> *Id.* § 29.

tors who would not be familiar with the affected local communities.<sup>118</sup> The first six schools were supposed to be chosen by the Executive Director in early 2016, but the decisions were temporarily postponed after the Federal Bureau of Investigations raided one of the three charter managers that would have administered the program.<sup>119</sup>

Several bills proposed during the 2017 Session would have impacted the program. For instance, A.B. 432 would have delayed the program's implementation.<sup>120</sup> A.B. 103, a more extreme measure, would have out-right eliminated the program altogether.<sup>121</sup> A third bill, S.B. 430,<sup>122</sup> would have amended A.B. 448 to (among other changes) provide for mandatory performance evaluations of achievement charter schools after six years of operation.<sup>123</sup> However, despite unanimous approval in the Senate, the bill never received a hearing in the Assembly,<sup>124</sup> leaving the original ASD program unscathed by the 2017 Session.

## 2. *Victory Schools – A.B. 447 (enacted)*

A.B. 447 extended the duration of the Victory Schools program.<sup>125</sup> Established in 2015 by S.B. 432,<sup>126</sup> the program provides additional funding for certain low-performing schools with a high ratio of students living in poverty.<sup>127</sup> A.B. 447 also added a requirement that the Department of Education consult with school boards before designating schools as Victory Schools.<sup>128</sup>

## 3. *Zoom Schools – S.B. 390 (enacted)*

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<sup>118</sup> See Michelle Rindels, *Should Nevada Abolish the Achievement School District or Just Alter It?*, NEV. INDEP. (Apr. 6, 2017, 2:00 AM), <https://thenevadaindependent.com/article/nevada-abolish-achievement-school-district-just-alter> [https://perma.cc/T6L6-NSTX].

<sup>119</sup> See Ian Whitaker, *CCSD Schools: Achievement Schools Delay Relieves Officials*, L.V. SUN (Feb. 1, 2017, 2:00 AM), <https://lasvegassun.com/news/2017/feb/01/achievement-schools-delay-relieves-ccsd-officials/> [https://perma.cc/2ZV9-DX69].

<sup>120</sup> A.B. 432, 2017 Leg., 79<sup>th</sup> Sess. (Nev. 2017) (unenacted).

<sup>121</sup> A.B. 103, 2017 Leg., 79<sup>th</sup> Sess. (Nev. 2017) (unenacted).

<sup>122</sup> S.B. 430, 2017 Leg., 79<sup>th</sup> Sess. (Nev. 2017).

<sup>123</sup> *Id.* § 30.5. See generally Michelle Rindels, *Proposal Aims to Preserve Achievement School District in Spite of Repeal Efforts*, NEV. INDEP. (May 30, 2017, 8:15 AM), <https://thenevadaindependent.com/article/proposal-aims-to-preserve-achievement-school-district-in-spite-of-repeal-efforts> [https://perma.cc/KE75-XGD9].

<sup>124</sup> See Nev. Legislative Counsel Bureau, *SB 430*, NEV. LEGISLATURE, <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?ID=917> [https://perma.cc/HR5B-FT38] (last visited Aug. 20, 2017).

<sup>125</sup> A.B. 447, 2017 Leg., 79<sup>th</sup> Sess. (Nev. 2017) (enacted).

<sup>126</sup> S.B. 432, 2015 Leg., 78<sup>th</sup> Sess., 2015 Nev. Stat. 2197.

<sup>127</sup> *Id.*; *Victory Schools Program (SB 432): Overview*, ST. OF NEV. DEP'T OF EDUC., [http://www.doe.nv.gov/Legislative/Victory\\_Schools\\_Program/](http://www.doe.nv.gov/Legislative/Victory_Schools_Program/) [https://perma.cc/88ZC-3P8J] (last visited Nov. 6, 2017).

<sup>128</sup> A.B. 447 § 1.

S.B. 390 extended the duration of the Zoom Schools program,<sup>129</sup> which focuses on assisting students to become more proficient with the English language and achieve greater academic success with specialized instruction.<sup>130</sup>

*E. Teacher Evaluations – A.B. 320 (enacted)*

As amended, A.B. 320<sup>131</sup> provides that “pupil growth,” a new measure of student performance,<sup>132</sup> must account for forty percent of a teacher’s performance evaluation beginning with the 2018–2019 school year.<sup>133</sup> A.B. 320 provides that the pupil growth measure will account for twenty percent of a teacher’s evaluation for the 2017–2018 school year.<sup>134</sup> Under the as-introduced version of the bill, teacher performance would have continued to be based on “pupil achievement data,” the old measure of student performance, which would have accounted for no more than twenty percent of the teacher’s performance evaluation.<sup>135</sup>

*F. Higher-Education*

The 2017 Session also produced several higher-education funding initiatives. For instance, S.B. 546<sup>136</sup> authorized the State Board of Finance to issue bonds to raise funds for a new engineering building at the University of Nevada Reno.<sup>137</sup> Under S.B. 553,<sup>138</sup> thanks to an anonymous donor, the University of Nevada Las Vegas received a \$25 million grant (contingent on a matching private donation) for the construction of a new medical school building.<sup>139</sup> Additionally, the College of Southern Nevada and Nevada State College also re-

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<sup>129</sup> S.B. 390, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>130</sup> S.B. 504, 2013 Leg., 77th Sess., 2013 Nev. Stat. 3393; *Expand Zoom Schools Program (SB 405): Overview*, ST. OF NEV. DEP’T OF EDUC., [http://www.doe.nv.gov/Legislative/Expand\\_Zoom\\_Schools\\_Program/](http://www.doe.nv.gov/Legislative/Expand_Zoom_Schools_Program/) [<https://perma.cc/V9PK-YY9K>] (last visited Nov. 6, 2017).

<sup>131</sup> A.B. 320, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>132</sup> *See id.* § 1.1.

<sup>133</sup> *Id.* § 2.

<sup>134</sup> *Id.* § 5.9.

<sup>135</sup> *Id.* (as introduced). *See generally* Michelle Rindels, *Under Compromise Bill, Student Academic Performance Will Still Be Significant Part of Their Teacher’s Evaluation*, NEV. INDEP. (May 19, 2017, 10:15 AM), <https://thenevadaindependent.com/article/under-compromise-bill-student-academic-performance-will-still-be-significant-part-of-their-teachers-evaluation> [<https://perma.cc/752H-BREZ>].

<sup>136</sup> S.B. 546, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>137</sup> *Id.* § 10.

<sup>138</sup> S.B. 553, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>139</sup> *Id.* § 1.5. *See generally* Sean Whaley *Nevada Legislature Adds \$25M for UNLV Med School Funding – Video*, L.V. REV.-J. (June 5, 2017, 8:52 PM), <https://www.reviewjournal.com/news/2017-legislature/nevada-legislature-adds-25m-for-unlv-med-school-funding-video/> [<https://perma.cc/6H5P-JKKY>].

ceived significant funding for a joint health sciences building.<sup>140</sup>

1. *Promise Scholarship – S.B. 391 (enacted)*

Modeled after the Tennessee Promise Scholarship, promise scholarships under S.B. 391<sup>141</sup> are awarded to public-school students so they can attend community college at no cost.<sup>142</sup> The scholarship pays any remaining tuition after a student has taken advantage of any federal or state student aid.<sup>143</sup> Additionally, unlike other state scholarships or grants, students may use Promise Scholarship money for remedial courses.<sup>144</sup> The Promise scholarship also has a mentorship component that helps keep students on track to finish school at the required twelve credit minimum per semester.<sup>145</sup> Legislators appropriated \$3.5 million to fund Promise Scholarships, which will be awarded to students on a first-come, first-served basis.<sup>146</sup>

2. *Constitutional Amendment to Remove the Board of Regents – A.J.R. 5*

Assembly Joint Resolution 5 (A.J.R. 5) aimed to remove the Nevada System of Higher Education (NSHE) governing body, the Board of Regents, from the Nevada Constitution.<sup>147</sup> This resolution allows the legislature to have statutory power and oversight over the Board of Regents; it clarifies that the Board is not autonomous or immune from legislative policies.<sup>148</sup> This joint resolution came off the heels of a 2016 Las Vegas Review-Journal investigation that revealed that NSHE officials had worked with a consultant to “undermine” the Legislature’s updates to the higher-education funding formula.<sup>149</sup> For A.J.R. 5 to go into effect, it must be passed by the Legislature again in the 2019 Session

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<sup>140</sup> See S.B. 546 §§ 1, 6.

<sup>141</sup> S.B. 391, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>142</sup> *Id.* § 16; Michelle Rindels, *Proposed ‘Promise Scholarship’ Would Make Community College Free. Does Nevada Need It?*, NEV. INDEP. (Apr. 8, 2017, 2:00 AM), <https://thenevadaindependent.com/article/proposed-promise-scholarship-make-community-college-free-nevada-need> [<https://perma.cc/PZN9-3PVU>].

<sup>143</sup> S.B. 391 § 16; *see also* Rindels, *supra* note 142.

<sup>144</sup> Rindels, *supra* note 142.

<sup>145</sup> *Id.*

<sup>146</sup> See Noon, *supra* note 35.

<sup>147</sup> A.J.R. 5, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>148</sup> *Id.*

<sup>149</sup> Bethany Barnes, *Emails Show Nevada Higher Ed Agency Misled Legislature on Funding Study*, L.V. REV.-J. (Apr. 16, 2016, 7:53 PM), <https://www.reviewjournal.com/news/education/emails-show-nevada-higher-ed-agency-misled-legislature-on-funding-study/> [<https://perma.cc/FKP5-38M6>]; Megan Messerly, *Lawmakers Seek More Oversight of Nevada System of Higher Education*, L.V. SUN (Apr. 25, 2016, 2:59 PM), <https://lasvegassun.com/news/2016/apr/25/lawmakers-seek-more-oversight-of-nevada-system-of/> [<https://perma.cc/ZKY8-EM47>].

and then approved by voters in 2020.<sup>150</sup>

## II. HEALTHCARE

Healthcare was another major focus during the 2017 Session due to the potential repeal of the Affordable Care Act's (ACA) in Washington, D.C. A phase out of the Medicaid expansion, which Nevada is enrolled in, would leave up to 210,000 Nevadans without health insurance.<sup>151</sup> Nevada Democrats in both houses presented three resolutions urging Congress not to repeal the ACA or its components.<sup>152</sup> In anticipation of Congress's repeal of the ACA, Nevada legislators introduced three bills seeking to codify, under state law, various ACA components.<sup>153</sup> Governor Sandoval signed two of those bills and vetoed the other.<sup>154</sup> Additionally, one of the Session's most lobbied bills was a "first-in-the-nation"<sup>155</sup> diabetes drug transparency bill.<sup>156</sup> That bill, S.B. 265,<sup>157</sup> was originally vetoed; however, it returned to Sandoval's desk as an amendment to S.B. 539,<sup>158</sup> a bill focused on pharmacy benefit manager (PBM) transparency.<sup>159</sup> Governor Sandoval signed S.B. 539 into law on June 15.<sup>160</sup>

### A. Pharmaceutical Transparency

#### 1. S.B. 265 (Vetoed)

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<sup>150</sup> Sean Whaley, *Bill Would Give Nevada Legislature More Power Over State Higher Education System*, L.V. REV.-J. (May 8, 2017, 5:33 PM), <https://www.reviewjournal.com/news/2017-legislature/bill-would-give-nevada-legislature-more-power-over-state-higher-education-system/> [https://perma.cc/Y72U-Y4R8].

<sup>151</sup> See Yvonne Gonzalez, *Sandoval, Heller Cite Medicaid Concerns in Opposing Obamacare Repeal Bill*, L.V. SUN (June 23, 2017, 3:12 PM), <https://lasvegassun.com/news/2017/jun/23/sandoval-heller-cite-medicaid-concerns-in-opposing/> [https://perma.cc/Q8JY-U78N].

<sup>152</sup> A.J.R. 7, 2017 Leg., 79th Sess. (Nev. 2017); A.J.R. 9, 2017 Leg., 79th Sess. (Nev. 2017); S.J.R. 8, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>153</sup> A.B. 408, 2017 Leg., 79th Sess. (Nev. 2017) (healthcare coverage); S.B. 233, 2017 Leg., 79th Sess. (Nev. 2017) (preventive and reproductive care); S.B. 394, 2017 Leg., 79th Sess. (Nev. 2017) (healthcare management organizations and patient data).

<sup>154</sup> S.B. 233, 2017 Leg., 79th Sess. (Nev. 2017) (enacted); S.B. 394, 2017 Leg., 79th Sess. (Nev. 2017) (enacted); A.B. 408, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed).

<sup>155</sup> Megan Messerly et al., *Sandoval Signs Diabetes Drug Transparency, Rooftop Solar Bills into Law on Southern Nevada Swing*, NEV. INDEP. (June 15, 2017), <https://thenevadaindependent.com/article/sandoval-signs-diabetes-drug-transparency-rooftop-solar-bills-into-law-on-southern-nevada-swing> [https://perma.cc/NHG4-CWPT].

<sup>156</sup> See generally Megan Messerly, *Pharmaceutical Companies Stock up on Lobbyists as Democrats Push Bills Targeting Industry*, NEV. INDEP. (Apr. 10, 2017, 5:34 PM), <https://thenevadaindependent.com/article/pharmaceutical-companies-stock-lobbyists-democrats-push-bills-targeting-industry> [https://perma.cc/MSG8-ZFY6].

<sup>157</sup> S.B. 265, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed).

<sup>158</sup> S.B. 539, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>159</sup> See *id.*; Messerly et al., *supra* note 155.

<sup>160</sup> See generally Messerly et al., *supra* note 155.



Bill sponsor, Senator Yvanna Cancela, intended S.B. 265 to curb rising insulin costs.<sup>161</sup> The bill's original version included price controls, required the Department of Health and Human Services to keep a list of "essential" drugs used to treat diabetes, and required manufacturers to reimburse purchasers of "essential" drugs.<sup>162</sup> Specifically, the list price needed to exceed "the highest price paid for the drug in certain countries or if it exceed[ed] the annual changes in the Consumer Price Index."<sup>163</sup> The bill included another important component that required manufacturers to give customers ninety days' notice before any planned price increase.<sup>164</sup> Eventually, Senator Cancela amended the bill to exclude the reimbursement requirement after the Legislative Counsel Bureau expressed concerns over potential constitutional issues under the Interstate Commerce Clause and Supremacy Clause.<sup>165</sup>

The amended S.B. 265 focused on transparency by requiring manufacturers to disclose list prices, profits, manufacturing costs, and administrative costs such as marketing and promotion.<sup>166</sup> However, once S.B. 265 arrived at the Governor's desk, it found itself a political casualty caught up in the endgame negotiations revolving around ESAs. Governor Sandoval vetoed S.B. 265 after Democrats would not trade the bill in exchange for ESAs.<sup>167</sup> In his official veto message, Governor Sandoval cited two of his main concerns with S.B. 265 was the lack of inclusion regarding PBMs in the transparency process and the ninety day lead time notification requirement for price increases.<sup>168</sup> In particular, the Governor stated concern that the ninety day requirement could lead to drugs stockpiled and access restricted by purchasers, wholesalers, and secondary distributors.<sup>169</sup>

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<sup>161</sup> S.B. 265, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed); *see also* Hearing on S.B. 265 Before S. Comm. Health & Hum. Ser., 79th Sess., at 16 (Nev. 2017) (remarks of Yvanna Cancela, Sen.). *See generally* Megan Messerly, *Price Controls on Diabetes Drugs, Licenses for Sales Reps Key Features of Pharmaceutical Bill*, NEV. INDEP. (Mar. 15, 2017, 2:15 AM), <https://thenevadaindependent.com/article/price-controls-diabetes-drugs-licenses-sales-reps-key-features-pharmaceutical-bill> [<https://perma.cc/C7FJ-XP72>].

<sup>162</sup> Hearing on S.B. 265, *supra* note 161, at 38; Messerly, *supra* note 156.

<sup>163</sup> S.B. 265; Messerly, *supra* note 156.

<sup>164</sup> *Id.*

<sup>165</sup> Hearing on S.B. 265, *supra* note 161, at 3 (remarks of Sen. Yvanna Cancela); *see also* Megan Messerly, *Price Control Provision to Be Struck from Major Pharmaceutical Bill Ahead of Committee Vote Wednesday*, NEV. INDEP. (May 2, 2017, 3:20 PM), <https://thenevadaindependent.com/article/price-control-provision-struck-major-pharmaceutical-bill-ahead-committee-vote-wednesday> [<https://perma.cc/CC5K-YFBL>].

<sup>166</sup> S.B. 265, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>167</sup> Messerly, *supra* note 29.

<sup>168</sup> Megan Messerly, *Sandoval Says He Will Be 'Proud' to Sign Pharmaceutical Transparency Legislation Headed to his Desk Despite Vetoing Similar Bill Last Week*, NEV. INDEP. (June 8, 2017, 2:10 AM), <https://thenevadaindependent.com/article/sandoval-says-he-will-be-proud-to-sign-pharmaceutical-transparency-legislation-headed-to-his-desk-despite-vetoing-similar-bill-last-week> [<https://perma.cc/L2PY-8F5Z>].

<sup>169</sup> *Id.*

2. *S.B. 539 (With S.B. 265 Amended)*

Republicans stated that S.B. 539 needed to be passed with S.B. 265 to provide a complete picture of transparency of the pharmaceutical industry.<sup>170</sup> S.B. 539 required PBMs to disclose costs and profits as well as report yearly on negotiated rebates with manufacturers.<sup>171</sup> S.B. 539 also prohibited PBMs from preventing pharmacists from informing insured people about less expensive options.<sup>172</sup> On the eve of *sine die*, most of S.B. 265, without the ninety-day requirement, was amended into S.B. 539 after both parties came to an agreement on the budget.<sup>173</sup> Governor Sandoval signed the bill into law on June 15, 2017, officially bringing diabetes drug transparency into Nevada.<sup>174</sup>

B. *Opioid Substance Abuse – A.B. 474*

One of Governor Sandoval's main initiatives in the 2017 session was A.B. 474, with the goal to curb opioid substance abuse in Nevada.<sup>175</sup> Building off the prescription monitoring program (PMP) fortification in S.B. 459 in 2015,<sup>176</sup> A.B. 474 implements new rules for doctors. One rule requires doctors to register with PMP before allowing them to renew their controlled substance license so they can prescribe medication.<sup>177</sup> The requirement is important because the PMP database needs to be updated constantly with up to date reporting of suspected or actual overdoses in the state.<sup>178</sup> The omnibus initiative also requires healthcare providers to report drug overdoses to the Chief Medical Officer or potentially face a misdemeanor.<sup>179</sup>

Another aspect of A.B. 474 is that occupational licensing boards have access to the PMP database to investigate any potential abuse of prescriptions of

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<sup>170</sup> Alison Noon, *Nevada Senate Passes Insulin-Price Bill Tough on Drugmakers*, U.S. NEWS & WORLD REP. (May 19, 2017, 8:01 PM), <https://www.usnews.com/news/best-states/nevada/articles/2017-05-19/nevada-senate-passes-insulin-price-bill-tough-on-drugmakers> [http s://perma.cc/HYF6-9L98].

<sup>171</sup> S.B. 539, 2017 Leg., 79th Sess. (Nev. 2017); Hearing on S.B. 539 Before S. Comm. Health & Hum. Ser., 79th Sess., at 3 (Nev. May 26, 2017) (remarks of Heidi Gansert, Sen.).

<sup>172</sup> Hearing on S.B. 539, *supra* note 171, at 4.

<sup>173</sup> Megan Messerly, *Vetoed Pharmaceutical Transparency Bill Given Second Life, Grafted onto Related Republican Legislation*, NEV. INDEP. (June 4, 2017, 10:53 PM), <https://thenevadaindependent.com/article/vetoed-pharmaceutical-transparency-bill-will-be-given-second-life-grafted-onto-related-republican-legislation> [https://perma.cc/GH3Y-29TM].

<sup>174</sup> Jessie Bekker, *Sandoval Signs Bill to Increase Insulin Price Transparency*, L.V. REV.-J. (June 15, 2017, 7:18 PM), <https://www.reviewjournal.com/news/2017-legislature/sandoval-signs-bill-to-increase-insulin-price-transparency/> [https://perma.cc/EWK9-KJB6].

<sup>175</sup> A.B. 474, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>176</sup> S.B. 459, 2015 Leg., 78th Sess. (Nev. 2015); A.B. 474.

<sup>177</sup> A.B. 474; Jackie Valley & Megan Messerly, *As 'Out of Control' Opioid Epidemic Rages, Legislative and Grassroots Efforts Increase to Fight It*, NEV. INDEP. (Feb. 26, 2017, 2:40 AM), <https://thenevadaindependent.com/article/control-opioid-epidemic-rages-legislative-grassroots-efforts-increase-fight/> [https://perma.cc/QVH3-P62R].

<sup>178</sup> *Id.*

<sup>179</sup> A.B. 474.

controlled substances listed in schedule II, III, or IV.<sup>180</sup> The board may suspend a practitioner’s ability to prescribe medication if there is a risk to the public’s safety and welfare.<sup>181</sup> The bill increases substance abuse education from a one-hour to a two-hour minimum for prescribers, and patients who are prescribed a controlled substance must receive more information and evaluations.<sup>182</sup> Some of that information required in a written consent form include: proper use of the controlled substance, alternative treatments for symptoms of patient, the risk of dependency, safe storage methods, and potentials risk and benefits for using the controlled substance—among other requirements.<sup>183</sup>

### III. CRIMINAL JUSTICE REFORM

Another major policy area the 79th Legislative Session addressed was criminal justice reform as legislators worked to change decades of “tough on crime” policies that disproportionately affected communities of color and the poor.<sup>184</sup> Speaker Frierson and Majority Leader Ford pushed forward a myriad of crime reform bills that ranged from restoring a felon’s right to vote<sup>185</sup> to streamlining the criminal record sealing process.<sup>186</sup> These reforms received significant pushback from opponents.<sup>187</sup> Assemblyman Ira Hansen doubted Nevada residents were clamoring for serious violent offenders to receive the right to vote.<sup>188</sup> Minority Leader Michael Roberson referred to the policy measures as shaping the 79<sup>th</sup> Legislative Session into the “session of the felon.”<sup>189</sup> In the end, not every attempt at criminal justice reform passed, with measures banning private prisons,<sup>190</sup> vacating marijuana convictions,<sup>191</sup> and abolishing the death penalty<sup>192</sup> vetoed or unable to reach the governor’s desk.<sup>193</sup> However, several

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> Megan Messerly & Michelle Rindels, *After Decades of ‘Tough on Crime’ Policies, Democratic Lawmakers Attempt to Reshape Criminal Justice System*, NEV. INDEP. (May 14, 2017, 2:20 AM), <https://thenevadaindependent.com/article/after-decades-of-tough-on-crime-policies-democratic-lawmakers-attempt-to-reshape-criminal-justice-system> [<https://perma.cc/R24U-E4E9>].

<sup>185</sup> A.B. 181, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>186</sup> A.B. 327, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>187</sup> Megan Messerly, *In Push for Criminal Justice Reform, Democratic Leaders Advocate Voting Rights for Ex-Felons*, NEV. INDEP. (Mar. 8, 2017, 2:30 AM), <https://thenevadaindependent.com/article/push-criminal-justice-reform-democratic-leaders-advocate-voting-rights-ex-felons> [<https://perma.cc/4GB8-M94D>].

<sup>188</sup> *Id.*

<sup>189</sup> Michael Roberson (@RobersonForNV), Twitter (Apr 7, 2017, 8:46 PM), <https://twitter.com/robersonfornv/status/850555325081985026> [<https://perma.cc/K5EC-5FTZ>].

<sup>190</sup> A.B. 303, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>191</sup> A.B. 259, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>192</sup> A.B. 237, 2017 Leg., 79th Sess. (Nev. 2017).

new reforms and initiatives passed helping many Nevadans reintegrate into society.

A. *Restorative Justice: A Second Chance*

1. *Ban the Box – A.B. 384*

A.B. 384 removed the question or check box on government job applications that ask if an applicant has a prior criminal history.<sup>194</sup> The bill states that government employers may only inquire into an applicant's criminal history during the final interview, or when a conditional job offer has been extended or certified by human resources, whichever comes first.<sup>195</sup> This gives applicants an opportunity to better explain their situation and demonstrate their skills and abilities to a prospective employer.<sup>196</sup>

2. *Record Sealing – A.B. 327 and S.B. 125*

Inspired by the University of Nevada, Las Vegas, William S. Boyd School of Law's 7th Annual Community Law Day,<sup>197</sup> A.B. 327 and S.B. 125 reduce the time a person must wait before petitioning a court to seal his or her criminal records.<sup>198</sup> The length of time required before a court may seal a category A felonies are reduced from fifteen years to ten years, and for category B, C, or D felonies, a court may seal records in five years instead of twelve.<sup>199</sup> Additionally, courts may seal category E felonies in two years instead of seven years, while gross misdemeanors may be sealed in two years instead of five.<sup>200</sup>

In addition to these shortened timelines, A.B. 327 allows a person who received a dishonorable discharge from probation<sup>201</sup> to petition a court to seal his

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<sup>193</sup> Michelle Rindels & Megan Messerly, *Democrats Advance Criminal Justice Agenda, in Tempered Form*, NEV. INDEP. (June 18, 2017, 2:10 AM), <https://thenevadaindependent.com/article/democrats-advance-criminal-justice-agenda-in-tempered-form> [https://perma.cc/6WVR-JZZ9].

<sup>194</sup> A.B. 384, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>195</sup> *Id.*

<sup>196</sup> Sandra Chereb, *Lawmaker Wants to 'Ban the Box' on Nevada Job Applications*, L.V. REV.-J. (Apr. 10, 2017, 11:49 AM), <https://www.reviewjournal.com/news/2017-legislature/lawmaker-wants-to-ban-the-box-on-nevada-job-applications/> [https://perma.cc/C7ML-X4ET].

<sup>197</sup> Press Release, Univ. Nev. L.V. Boyd Sch. of L., UNLV Boyd School of Law to Hold 7th Annual Community Law Day (Aug. 8, 2016), <https://www.unlv.edu/news/release/unlv-boyd-school-law-hold-7th-annual-community-law-day> [https://perma.cc/5YG9-4JAU].

<sup>198</sup> A.B. 327, 2017 Leg., 79th Sess. (Nev. 2017); S.B. 125, 2017 Leg. 79th Sess. (Nev. 2017).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> See NEV. REV. STAT. § 176A.870 (2015) (defining a dishonorable discharge as a defendant who has not received an honorable discharge at the end of probation by failing to pay restitution or whose whereabouts are unknown).

or her record provided he or she still meets every other condition required in law for a record sealing applicant.<sup>202</sup> A dishonorably discharged probationer, however, would not have a rebuttable presumption that his or her record should be sealed, while other petitioners who satisfy all the statutory requirements do have a rebuttable presumption that their record should be sealed upon filing the petition.<sup>203</sup> Procedurally, A.B. 327 also allows an individual to seal records that would normally require petitions in multiple courts to be filed in one district court to seal all the records.<sup>204</sup> Finally, A.B. 327 removes the requirement for a hearing if the prosecuting attorney stipulates to the sealing after receiving notification that a defendant applied for a sealing of records.<sup>205</sup>

### 3. *Restoration of Civil Rights for Certain Ex-Felons – A.B. 181*

A.B. 181 restored the right to vote and right to serve on a jury to individuals who have been honorably or dishonorably discharged from probation.<sup>206</sup> These rights are restored two years after the date of discharge from probation if the offense was a category B felony.<sup>207</sup> The bill originally required a two-year wait for someone who committed a category A felony or a category B felony that resulted in substantial bodily harm, but that was amended out, so an individual who committed either offense only needs to petition the court as before.<sup>208</sup> A.B. 181's passage is estimated to help 89,000 disenfranchised Nevada residents.<sup>209</sup>

### 4. *Records Sealing for Victims of Sex Trafficking – A.B. 243*

A.B. 243 enables victims of sex trafficking or involuntary servitude to petition a court to seal their records of related trafficking, prostitution, and solicitation charges.<sup>210</sup> A petitioner could previously file a petition to vacate the judgement but was required to file a separate petition to seal his or her record.<sup>211</sup> A.B. 243 combines both petitions and aims to shield victims from background checks.<sup>212</sup> Additionally, the bill “allow[s] the filing of one petition to seal all records in district court for multiple convictions issued by more than

<sup>202</sup> See A.B. 327.

<sup>203</sup> See A.B. 327 § 4.2.

<sup>204</sup> *Id.*

<sup>205</sup> A.B. 327 § 5.

<sup>206</sup> A.B. 181, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> Yvonne Gonzalez, *Senate Hears Bill on Voting Rights for Felons in Nevada*, L.V. SUN (May 25, 2017, 2:00 AM), <https://lasvegassun.com/news/2017/may/25/senate-hears-bill-on-voting-rights-for-felons/> [<https://perma.cc/BM98-4NJJ>].

<sup>210</sup> A.B. 243, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>211</sup> Hearing on A.B. 265 Before S. Comm. Judiciary, 79th Sess., p. 5 (Nev. May 9, 2017) (remarks of Steve Yeager, Assemb.).

<sup>212</sup> *Id.*

one court.”<sup>213</sup>

## B. Sentencing Reform

### 1. Sentencing Commission – S.B. 451

S.B. 451 creates the Nevada Sentencing Commission, responsible for recommending new sentencing guidelines that are consistent throughout the state and that rectify any disparities in race, gender, or economic status.<sup>214</sup> The Advisory Commission on the Administration of Justice, led by Justice James W. Hardesty, recommended S.B. 451.<sup>215</sup> The Advisory Commission found a wide variation in sentencing among Nevada judges. For example, some judges sentenced defendants to prison thirty percent of the time compared to other judges who sentenced defendants to prison over sixty percent of the time.<sup>216</sup> The Sentencing Commission will ask the Legislature to draft a bill with its recommendations for the 80th Legislative Session in 2019.<sup>217</sup>

### 2. Reduction of Mandatory Sentences for Juvenile Offenders – A.B.218

The 79th Session did not pass many bills that reduced sentences or mandatory minimums. However, A.B. 218 does give a judge discretion to reduce the mandatory minimum for a juvenile defendant by no more than 35 percent.<sup>218</sup> Factors a judge must consider to take into consideration are the defendant’s age and potential for rehabilitation.<sup>219</sup> Likewise, A.B. 251 gives the State Board of Pardons Commissioners the discretion to commute a death or life without parole sentence for someone who was under 18 years of age when he or she committed the crime.<sup>220</sup>

## C. Police Body Cameras – S.B. 176

S.B. 176 requires police officers who routinely interact with the public to wear body cameras.<sup>221</sup> Previously, only the Nevada Highway Patrol were required to wear body cameras, whereas other police departments throughout the

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<sup>213</sup> *Id.*

<sup>214</sup> S.B. 451, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>215</sup> Press Release, S. Ct. Nev., Nevada Sentencing Commission to Bring Consistency to Sentencing Practices of Nevada Judges (June 15, 2017), [http://nvcourts.gov/Supreme/News/Nevada\\_Sentencing\\_Commission\\_to\\_Bring\\_Consistency\\_to\\_Sentencing\\_Practices\\_of\\_Nevada\\_Judges/](http://nvcourts.gov/Supreme/News/Nevada_Sentencing_Commission_to_Bring_Consistency_to_Sentencing_Practices_of_Nevada_Judges/) [https://perma.cc/TN6V-9WKH].

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> A.B. 218, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>219</sup> *Id.*

<sup>220</sup> A.B. 251, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>221</sup> S.B. 176, 2017 Leg., 79th Sess. (Nev. 2017).

state had permission to wear body cameras.<sup>222</sup> S.B. 176 allows police departments to use part of the fees collected from Nevada counties' telecommunications system surcharge to pay for body cameras.<sup>223</sup> Counties can increase the surcharge from twenty-five cents to one dollar maximum.<sup>224</sup>

#### D. *Solitary Confinement Restrictions – S.B. 402*

S.B. 402 revises the administration of disciplinary segregation and solitary confinement in jails by the Nevada Department of Corrections and private facilities or institutions.<sup>225</sup> The Bill prohibits the use of solitary confinement as a disciplinary measure without due process protections, including notice of the sanction, a hearing, and a psychological evaluation.<sup>226</sup> Additionally, a facility may not place an offender in solitary confinement solely based on his or her mental illness.<sup>227</sup> The Bill contains an exception when the offender's or staff's safety is threatened.<sup>228</sup> Inmates with mental illness in solitary confinement must receive a daily healthcare check from their health care provider.<sup>229</sup> Any offender who is isolated must now be held the minimum time required to address the disciplinary sanction.<sup>230</sup> For example, for a category C offense committed while in custody, the period an offender can be held in solitary confinement must not exceed ten days.<sup>231</sup>

### IV. NET METERING

Prior to the 2015 Legislative Session, rooftop solar customers would be reimbursed for returning excess energy back to the grid at a rate "slightly less than the retail rate."<sup>232</sup> In 2015, the Legislature gave authority to the Public Utilities Commission of Nevada (PUCN) to decide an appropriate energy rate

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<sup>222</sup> Ben Botkin, *Body Camera Bill Has ACLU, Nevada Law Enforcement on Same Page*, L.V. REV.-J. (May 11, 2017, 4:51 PM), <https://www.reviewjournal.com/news/2017-legislature/body-camera-bill-has-aclu-nevada-law-enforcement-on-same-page/> [<https://perma.cc/MUD3-RLLJ>] ("The bill allows counties to increase the maximum allowable monthly surcharge on telecommunications systems from 25 cents to a maximum of \$1. The fee is used to finance emergency 911 systems, but the bill allows the fees to also be used for body cameras and police dash cams and costs of maintaining them and storing the data.").

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> S.B. 402, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Riley Snyder, *Despite Major Vetoes, Lawmakers Advanced Pro-Renewable Energy Agenda*, NEV. INDEP. (June 19, 2017, 2:00 AM), <https://thenevadaindependent.com/article/despite-major-vetoes-lawmakers-advanced-pro-renewable-energy-agenda> [<https://perma.cc/UQ4V-EXMH>].

and credit for net metering customers.<sup>233</sup> Then, as rooftop users were near the statutory cap, the PUCN slashed the rates.<sup>234</sup> The PUCN's deemed that action a "cost-shift" to prevent consumers without rooftop solar from subsidizing those that did have solar panels installed.<sup>235</sup> Additionally, there was no grandfather clause for existing solar panel owners so their expensive installation costs would no longer be offset by the credit from returning excess energy.<sup>236</sup> Demand for rooftop solar cratered and a mass exodus of rooftop solar jobs from Nevada ensued with legislators left looking for a fix.<sup>237</sup>

A.B. 405 resurrected reimbursement rates for rooftop customers with rooftop solar customers—now reimbursed at ninety-five percent of the retail rate for excess energy returned to the grid.<sup>238</sup> For every additional eighty megawatts of capacity added by solar panels to the grid as more people install rooftop solar, the reimbursement rate would fall to a lower percentage, or tier.<sup>239</sup> For example, after the first eighty megawatts of solar capacity are added to the grid, the reimbursement rate would fall from ninety-five percent to eighty-eight percent with the next tier at eighty-one percent of the retail rate following an additional eighty megawatts.<sup>240</sup> The bill also includes a provision for rooftop solar customers to continue receiving reimbursements from future electricity providers if voters approve the energy deregulation ballot initiative in 2018.<sup>241</sup>

## V. AUTONOMOUS VEHICLES

Nevada was the first state in the country to authorize autonomous, or self-driving, vehicles by law in 2011.<sup>242</sup> That law required a human operator to take control if needed, but A.B. 69 allows an autonomous vehicle to drive itself, even on the highway, if the car can "achieve[] a minimal risk condition upon a failure of its automated driving system."<sup>243</sup> A.B. 69 also authorizes taxis and

<sup>233</sup> S.B. 374, 2015 Leg., 78th Sess. (Nev. 2015) (enacted).

<sup>234</sup> See Michelle Rindels, *Bills Seek to Kick-Start Nevada's Diminished Rooftop Solar Industry*, NEV. INDEP. (Mar. 27, 2017, 2:20 AM), <https://thenevadaindependent.com/article/bills-see-kick-start-nevadas-diminished-rooftop-solar-industry> [<https://perma.cc/R9HD-APJ3>]; see also Snyder, *supra* note 232.

<sup>235</sup> *Id.*

<sup>236</sup> See *id.*

<sup>237</sup> *Id.*

<sup>238</sup> Snyder, *supra* note 232.

<sup>239</sup> Snyder, *supra* note 232.

<sup>240</sup> S.B. 405, 2017 Leg., 79th Sess. (Nev. 2017).

<sup>241</sup> *Id.*

<sup>242</sup> See A.B. 511, 2011 Leg., 76th Leg. (Nev. 2011); *Autonomous Vehicles: Self-Driving Vehicles Enacted Legislation*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx> [<https://perma.cc/23QE-4JGE>] (last visited July 17, 2017).

<sup>243</sup> A.B. 69, 2017 Leg., 79th Sess. (Nev. 2017) (enacted); see also NEV. REV. STAT. § 482A.070 (2015) (stating that a human operating an autonomous vehicle must be capable of "taking over immediate manual control of the autonomous vehicle in the event of a failure of the autonomous technology or other emergency")



transportation network companies (TNCs), like Uber and Lyft, to use self-driving cars.<sup>244</sup> The bill mimics what other states have done since the original 2011 law's passage.<sup>245</sup> Representatives intend to bring Nevada back to the forefront as a leader of autonomous car technology in the country.<sup>246</sup>

#### A. *Safety*

Steve Hill, the executive Director of Governor's Office of Economic Development, noted that an autonomous vehicle's computer can calculate reactions "more quickly and thoroughly than a human driver".<sup>247</sup> A.B. 69 defines "dynamic driving task" as all functions required to operate a fully autonomous vehicle in the highway aside from planning functions such as selecting the destination to start the vehicle.<sup>248</sup> A.B. 69 also defines the "minimal risk condition" needed to operate a driverless autonomous car on the highway as when the car experiences a failure in its system and is unable to complete its dynamic driving task, the vehicle achieves a reasonable "safe state" which may include, but is not limited to, bringing the vehicle to complete stop.<sup>249</sup> This condition allows a fully autonomous vehicle to only be tested on a highway—but even then, the vehicle must have the capability comply with the state's traffic and vehicle laws.<sup>250</sup> For commercial fleets, the Nevada Transportation Authority controls regulatory oversight, and will issue valid permits.<sup>251</sup>

#### B. *Liability*

An automated system manufacturer or developer is not liable for any damages if the system is modified by a third party and a defect from that modification caused that damage.<sup>252</sup> The onus is also on a person testing an autonomous vehicle to report a car crash to the Nevada Department of Motor Vehicles within ten days. Failure to report that crash, as well as any other A.B. 96 violation, can result in a fine up to \$2,500.<sup>253</sup> Bill proponents maintain that traffic law

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<sup>244</sup> A.B. 69, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>245</sup> Jason Hidalgo & Seth A. Richardson, *Nevada, Once a Leader for Self-Driving Cars, Is Now Playing Catch Up with Other States*, RENO GAZETTE-J. (Apr. 20, 2017, 2:49 PM), <http://www.rgj.com/story/money/business/2017/04/20/nevada-once-leader-self-driving-cars-now-playing-catch-up-other-states/305481001/> [<https://perma.cc/G78M-CZ6V>].

<sup>246</sup> *Id.*

<sup>247</sup> See Megan Messerly, *Humans May No Longer Be Needed to Operate Autonomous Vehicles in Nevada*, NEV. INDEP. (Mar. 24, 2017, 2:30 AM), <https://thenevadaindependent.com/article/humans-may-no-longer-needed-operate-autonomous-vehicles-nevada/> [<https://perma.cc/CKU3-QZ6E>].

<sup>248</sup> A.B. 69 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

compliance and the legal process of car accidents will not change.<sup>254</sup> A company that certifies an autonomous vehicle would be liable for fees or fines stemming from an accident that was a result of vehicle.<sup>255</sup> It remains to be seen if the public will trust autonomous vehicles or if the industry will succeed. In the meantime, Nevada has firmly stationed itself at the forefront should the technology flourish.

## VI. MARIJUANA

Nevada voters said yes to legalizing recreational marijuana in the November 2016 elections.<sup>256</sup> That led to an array of questions that the Legislature tried to solve to navigate the brand-new market. Representatives proposed twenty-three different bills concerning marijuana with varying degrees of success.<sup>257</sup> While proposals assigning medical marijuana regulation to the Department of Taxation were passed,<sup>258</sup> other more ambitious bills legalizing pot lounges,<sup>259</sup> medical marijuana apprenticeships,<sup>260</sup> and marijuana massages<sup>261</sup> failed.

### A. *Excise Tax on Recreational Marijuana – S.B. 487*

A tax originally proposed by Governor Sandoval to help fund education, S.B. 487 was a focal point of negotiations between both parties as the fight for Educational Savings Accounts threatened to kill the tax.<sup>262</sup> The bill was revived as part of the endgame negotiations after twice falling short of the fourteen votes needed for the two-thirds majority rule.<sup>263</sup> Instead of recreational marijuana taxes funding the Distributive School Account, the proceeds were sent to the rainy day fund.<sup>264</sup> The bill's sponsor, State Senator Julia Ratti, reasoned that with profits of such a new industry an unknown variable, it was fiscally respon-

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<sup>254</sup> Messerly, *supra* note 247.

<sup>255</sup> *Id.*

<sup>256</sup> Lochhead, *supra* note 46.

<sup>257</sup> Michelle Rindels, Megan Messerly & Riley Snyder, *There Are 23 Marijuana Bills this Session. What's in Them?*, NEV. INDEP. (Apr. 12, 2017, 2:10 AM), <https://thenevadaindependent.com/article/23-marijuana-bills-session-whats> [<https://perma.cc/L92Q-BYX3>].

<sup>258</sup> A.B. 422, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>259</sup> S.B. 236, 2017 Leg., 79th Sess. (Nev. 2017) (unenacted).

<sup>260</sup> S.B. 416, 2017 Leg., 79th Sess. (Nev. 2017) (vetoed).

<sup>261</sup> S.B. 396, 2017 Leg., 79th Sess. (Nev. 2017) (enacted as amended) (Amendment No. 330 amended S.B. 396 to remove provisions authorizing use of marijuana in massages).

<sup>262</sup> Lochhead, *supra* note 32.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* See also LEGISLATIVE COUNSEL BUREAU RESEARCH DIVISION, POLICY AND PROGRAM REPORT (2016), <https://www.leg.state.nv.us/Division/Research/Publications/PandPReport/19-RB.pdf> [<https://perma.cc/77Z8-4SWT>] (defining the rainy day fund, or the Account to Stabilize the Operation of State Government, as a source of money that can be used under certain circumstances to offset a budget shortfall or a fiscal emergency).

sible to not have services reliant on this tax.<sup>265</sup>

The one new tax measure passed in the 2017 session, S.B. 487 adds a ten percent excise tax to each retail recreational marijuana sale.<sup>266</sup> The bill also equalizes the tax rate on wholesale for cultivation of both medical and recreational marijuana at fifteen percent.<sup>267</sup>

#### B. *DUI Marijuana Blood Test – A.B. 135*

A.B. 135 eliminates the use of urine samples to test intoxication levels of marijuana in a DUI case and leaves blood tests as an appropriate method.<sup>268</sup> The measure states that the blood level cannot exceed tetrahydrocannabinol (THC) limits of two milliliters for delta-9-THC and five milliliters for 11-OH-THC in terms of nanograms per milliliter.<sup>269</sup> Proponents argued that urine testing only verifies that an individual has used marijuana, not if the individual were actually impaired at the time.<sup>270</sup> Still, there are lingering questions about whether a blood test shows actual impairment and whether that impairment is above the current legal THC levels.<sup>271</sup>

#### C. *Marijuana Packaging – S.B. 344*

S.B. 344 focused on marijuana-infused and edible marijuana product labeling and presentation so as not to appeal to children.<sup>272</sup> Lollipops or products featuring images that may appeal to children, such as cartoon characters, mascots, or action figures, are illegal under this measure.<sup>273</sup> Additionally, edible marijuana products like brownies or cookies must be in an opaque bag or container to hide it from children's view.<sup>274</sup> Further, THC serving amounts must be stated on the packaging label with a warning clearly stating that the package contains marijuana.<sup>275</sup> Finally, the bill prohibits local governments from passing laws in conflict with state regulation of marijuana establish-

<sup>265</sup> Jenny Kane, *How Nevada's New Marijuana Law Will Affect You*, RENO GAZETTE-J. (June 5, 2017, 5:56 PM), <http://www.rgj.com/story/news/marijuana/2017/06/06/how-nevadas-new-marijuana-laws-affect-you/370873001/> [<https://perma.cc/SVF6-9BSE>].

<sup>266</sup> S.B. 487, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>267</sup> *Id.*

<sup>268</sup> A.B. 135, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>269</sup> *Id.*

<sup>270</sup> Ray Hagar, *Nevada's New DUI Marijuana Is an Improvement but Still Poses Concerns*, RENO GAZETTE-J. (May 12, 2017, 7:19 PM), <http://www.rgj.com/story/news/2017/05/12/nevadas-new-dui-marijuana-testing-improvement-still-poses-concerns/101622090/> [<https://perma.cc/447J-EKKJ>].

<sup>271</sup> *Id.* See generally, e.g. Andrea Roth, *The Uneasy Case for Marijuana as Chemical Impairment Under a Science-Based Jurisprudence of Dangerousness*, 103 CALIF. L. REV. 841 (2015).

<sup>272</sup> S.B. 344, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

ments.<sup>276</sup>

*D. Tribal Compacts – S.B. 375*

S.B. 375 allows the Governor to enter into a compact with any of the twenty-seven federally recognized Nevada tribes<sup>277</sup> for the use, taxation, and regulation of marijuana.<sup>278</sup> Tribes that open dispensaries or cultivate marijuana must follow the same safety standards as state-licensed businesses.<sup>279</sup> The past few years, tribes have operated under the Wilkinson Memo, which the Obama administration interpreted to give tribes the freedom to use marijuana under state law.<sup>280</sup> The current Presidential administration seeks to enforce federal law prohibiting marijuana,<sup>281</sup> but one argument is that if a tribe is not using federal funding for marijuana related activities, then it is not an issue.<sup>282</sup> According to the bill sponsor, Senator Tick Segerblom, if there are legal issues with the federal government, then the tribe would be in charge of its own defense.<sup>283</sup>

CONCLUSION

The 2017 legislative session brought incremental, and necessary, changes to education, healthcare, and criminal justice. It also built upon some 2015 session reforms. Nevada's representatives helped usher in the nascent marijuana and autonomous vehicle industries while also reviving the rooftop solar industry. Time will tell if school choice will again be a priority for the 2019 Legislative Session, or if the marijuana tax raises revenue as estimated. Additionally, initiatives like the weighted funding formula and insulin transparency set the foundation in place for bigger reforms and initiatives down the road. Governor Sandoval's "all-of-the-above" school-reform approaches to opportunity scholarships, Zoom Schools, Victory Schools, and the Achievement School District will continue to try and bring Nevada out from the bottom of national education rankings. Lives will change due to the reforms made in criminal justice with

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<sup>276</sup> *Id.*

<sup>277</sup> S.B. 375, 2017 Leg., 79th Sess. (Nev. 2017) (enacted); Chris Kudialis, *Nevada Tribes a Step Closer to Legally Growing, Selling Marijuana*, L.V. SUN (June 2, 2017, 6:30 PM), <https://lasvegassun.com/news/2017/jun/02/nevada-tribes-closer-legally-growing-marijuana/> [<https://perma.cc/VTZ4-26WZ>].

<sup>278</sup> S.B. 375, 2017 Leg., 79th Sess. (Nev. 2017) (enacted).

<sup>279</sup> Jenny Kane, *Could Nevada's Tribal Lands Be the Next Marijuana Frontier?*, RENO GAZETTE-J. (Apr. 10, 2017, 12:26 PM), <http://www.rgj.com/story/news/marijuana/2017/04/10/could-nevadas-tribal-lands-next-marijuana-frontier/304759001/> [<https://perma.cc/4PVF-JDNT>].

<sup>280</sup> *Id.*

<sup>281</sup> Avantika Chilkoti, *As States Keep Saying Yes to Marijuana, Jeff Sessions Says No*, BOS. GLOBE (July 15, 2017), <https://www.bostonglobe.com/news/nation/2017/07/15/states-keep-saying-yes-marijuana-attorney-general-says/tM5Coc9cDrjNt2mRXGF56H/story.html>.

<sup>282</sup> See Kane, *supra* note 265 (noting that for several years tribes have operated under state marijuana laws).

<sup>283</sup> *Id.*

“ban the box” and a streamlined record sealing process ensuring people get a second chance at life after prison. Initiatives such as solitary confinement reform and the requirement for policy to wear body cameras could lead to lives saved and restore trust in public institutions. All in all, not a bad job for the purported “wasted session” that was the 79th Legislative Session of Nevada.