

# 2015 LEGISLATIVE RECAP: IMPORTANT BILLS FROM NEVADA'S 78TH LEGISLATIVE SESSION

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## INTRODUCTION

The 78th Legislative Session adjourned *sine die*<sup>1</sup> on June 1, 2015, after 120 days of whirlwind activity throughout the capital.<sup>2</sup> The “red wave” of the 2014 election brought swift change to the legislature, as an overwhelming number of Republicans were elected into seats previously under Democratic control.<sup>3</sup> The Assembly saw the greatest change, as Republicans picked up an additional ten seats resulting in a margin of twenty-five Republican seats to seventeen Democratic seats; the Senate also converted to Republican control with a margin of eleven seats to ten.<sup>4</sup> Further, the Republicans swept all six of the constitutional

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<sup>1</sup> *Sine die*, literally meaning “without days,” is a term of art describing the last day of a legislative session. See, e.g., *Glossary of Legislative Terms*, CAL. ST. LEGISLATURE, <http://www.legislature.ca.gov/quicklinks/glossary.html#S> (last visited Oct. 9, 2015).

<sup>2</sup> See NEV. CONST. art. IV, § 2 (requiring biennial legislative sessions beginning on the first Monday of February and lasting 120 days).

<sup>3</sup> Ray Hagar, *Red Wave: GOP Sweeps State, Local Elections*, RENO GAZETTE-J. (Nov. 5, 2014, 2:35 AM), <http://www.rgj.com/story/news/politics/2014/11/05/dickman-upset-daly-lead-gop-assembly-surge/18522049>.

<sup>4</sup> See Sean Whaley, *GOP Takes Control of Nevada Legislature*, L.V. REV.-J. (Nov. 4, 2014, 1:20 AM), <http://www.reviewjournal.com/news/nevada-legislature/gop-takes-control-nevada-legislature>.

offices, making this the first time since 1929 that Nevada has had a Republican governor and Republican control of both houses.<sup>5</sup>

Despite complete party control, however, there continued to be challenges among Republicans in the legislature, and particularly in the Assembly. The legislature was comprised of a high number of first-time legislators, and no committee chair in either house had previously chaired a committee.<sup>6</sup> Further, party in-fighting in the Assembly led to additional tension, particularly when considering a revenue plan, as several Assembly Republicans held their commitment to a tax pledge and refused to vote for increased taxes or fees of any kind.<sup>7</sup>

Ultimately, however, the caucuses were able to negotiate and compromise, and the Session saw much needed improvements to the State's education system funded by the largest tax increase<sup>8</sup> and the largest budget<sup>9</sup> in Nevada history. The "most-lobbied [bill] of the session"<sup>10</sup> led to Uber, Lyft, and other ride-sharing companies being allowed to operate in the state. Further, changes to construction defect and super-priority lien foreclosure statutes changed the legal landscape for Nevada homeowners, while reform to the tort liability laws changed the legal landscape for all Nevadans. Finally, in addition to the bills detailed below, the legislature passed various other measures, including authorization for the use of police body cameras;<sup>11</sup> funding for a medical school at the University of Nevada, Las Vegas (UNLV);<sup>12</sup> and significant changes to the Nevada Public Employee Retirement System.<sup>13</sup>

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<sup>5</sup> Hagar, *supra* note 3.

<sup>6</sup> *Conservative Wave Sweeps Nevada Legislature*, L.V. SUN (Feb. 2, 2015, 2:34 PM), <http://lasvegassun.com/news/2015/feb/02/conservative-wave-sweeps-nevada-legislature>; Steve Sebelius, *Nevada Legislature 2015 . . . By the Numbers*, L.V. REV.-J. (Jan. 26, 2015, 11:40 AM), <http://www.reviewjournal.com/columns-blogs/politics/slash-politics/nevada-legislature-2015-numbers>.

<sup>7</sup> Ray Hagar, *Nevada Senate Passes Sandoval Tax Plan 17-4*, RENO GAZETTE-J. (Apr. 22, 2015, 3:30 PM), <http://www.rgj.com/story/news/politics/2015/04/21/nevada-budget-bluster-expected-ray-hagar-sandoval-senate/26127581>.

<sup>8</sup> Ray Hagar & Anjeanette Damon, *Update: 'Historic' Tax Hike for Education Heads to Governor*, RENO GAZETTE-J. (June 1, 2015, 2:00 PM), <http://www.rgj.com/story/news/politics/2015/05/31/nevada-legislature-final-days/28264109>.

<sup>9</sup> Sandra Chereb & Sean Whaley, *Nevada Legislature OKs Record Budget, Adjourns*, L.V. REV.-J. (June 2, 2015, 1:28 AM), <http://www.reviewjournal.com/news/nevada-legislature/nevada-legislature-oks-record-budget-adjourns>.

<sup>10</sup> Michelle Rindels, *Nevada Senate Passes Bill Regulating Uber, Other Firms*, RENO GAZETTE-J. (May 11, 2015, 6:36 PM), <http://www.rgj.com/story/news/politics/2015/05/11/nevada-senate-passes-bill-regulating-uber-firms/27153273>.

<sup>11</sup> Assemb. B. 162, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>12</sup> S.B. 514, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>13</sup> Assemb. B. 180, 2015 Leg., 78th Sess. (Nev. 2015); S.B. 12, 2015 Leg., 78th Sess. (Nev. 2015); S.B. 420, 2015 Leg., 78th Sess. (Nev. 2015); S.B. 513, 2015 Leg., 78th Sess. (Nev. 2015).

Despite the wide array of pressing issues, the entire session was seemingly dominated by discussion of the impending tax plan. Indeed, though Governor Brian Sandoval dubbed 2015 the “Education Session,” the likelihood of large-scale changes to the tax code loomed throughout the Session. Accordingly, the tax plan will be detailed first, followed by other substantive reforms.

## I. TAXES

In his 2015 State of the State address, Governor Sandoval called for a “broad-based solution” to increase funding of Nevada’s education system.<sup>14</sup> Amid much fanfare, and joined by three former Nevada governors, Sandoval presented his plan to the Senate Committee on Revenue and Economic Development as S.B. 252.<sup>15</sup> The bill sparked presentations of other tax plans, most notably including A.B. 464, led by Assembly Tax Chairman Derek Armstrong, Boyd ’10, and S.B. 378, led by Senator Pat Spearman.<sup>16</sup> There were also presentations of several alternative budgets by conservative politicians that failed to gain traction.<sup>17</sup> The important provisions of the relevant bills, detailed below, were eventually amalgamated and the combined language was inserted into S.B. 483, an omnibus sunset tax bill.<sup>18</sup> The S.B. 483 tax plan eventually passed both houses and was signed into law June 9, 2015.<sup>19</sup>

### A. S.B. 252

The main provision of S.B. 252 was a graduated increase to Nevada companies’ business license fee.<sup>20</sup> The plan, crafted with the help of Jeremy Aguero, Boyd ’04, contemplated a tiered business license fee ranging from \$400 to \$4 million annually, based on Nevada revenue and industry type.<sup>21</sup> The

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<sup>14</sup> Governor Brian Sandoval, State of the State Address 11 (Jan. 15, 2015) (transcript available at <http://gov.nv.gov/uploadedFiles/govnv.gov/Content/About/2015-SOS.pdf>).

<sup>15</sup> See generally *Joint Hearing on S.B. 252 Before the S. Comm. on Revenue & Econ. Dev. and the Assemb. Comm. on Taxation*, 2015 Leg., 78th Sess. 2 (Nev. 2015), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/REV/Final/581.pdf>.

<sup>16</sup> For additional clarification of the different tax plans as introduced, see Riley Snyder & Michelle Rindels, *3 Nevada Tax Plans Are on the Table. How Do They Compare?*, L.V. SUN (Mar. 23, 2015, 5:40 PM), <http://lasvegassun.com/news/2015/mar/23/assembly-gop-introduce-alternative-sandoval-tax-pl>.

<sup>17</sup> See, e.g., Sandra Chereb, *Conservative Nevada Lawmakers Pitch Alternative Budget*, L.V. REV.-J. (Mar. 30, 2015, 9:20 PM), <http://www.reviewjournal.com/news/nevada-legislature/conservative-nevada-lawmakers-pitch-alternate-budget>; Laura Myers, *Treasurer, Controller Offer Alternative Nevada Budget*, L.V. REV.-J. (Feb. 9, 2015, 10:13 AM), <http://www.reviewjournal.com/news/nevada-legislature/treasurer-controller-offer-alternative-nevada-budget>.

<sup>18</sup> See S.B. 483, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>19</sup> See Hagar & Damon, *supra* note 8.

<sup>20</sup> S.B. 252, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>21</sup> See Snyder & Rindels, *supra* note 16.

business license fee was estimated to raise about \$438 million over two years.<sup>22</sup> The bill also included small raises to the modified business tax of mining companies, and made sunseting taxes permanent.<sup>23</sup> The plan was expected to raise \$7.3 billion in total revenue for the state over the biennium.<sup>24</sup> Concerns over the difficulty of implementation and administration, however, led to calls for a more simplified tax plan.

*B. A.B. 464*

A.B. 464 focused on a more streamlined approach to business tax collection.<sup>25</sup> The bill contemplated uniform modifications of the modified business tax and the business license fee.<sup>26</sup> The modified business tax would have changed from 1.17 percent for general businesses and 2 percent for financial institutions to 1.56 percent for all businesses.<sup>27</sup> Additionally, the bill would have raised the business license fee to \$500 annually for corporations and \$300 for all other business entities.<sup>28</sup> The bill was expected to raise roughly \$7.4 billion over the biennium.<sup>29</sup>

*C. S.B. 378*

Senator Spearman's plan, S.B. 378, also focused on the ease of implementation. It contemplated (1) a repeal of the modified business tax; (2) an increase of the business license fee only for companies incorporated in Nevada that do not conduct trade in Nevada; and (3) an implementation of a gross receipts tax of 0.47 percent on all Nevada businesses earning over \$25,000 annually.<sup>30</sup> Senator Spearman noted her plan would also raise about \$7.3 billion over the biennium.<sup>31</sup>

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<sup>22</sup> *Id.*; see *Joint Hearing on S.B. 252*, *supra* note 15, at 14 (statement of Chris Nielsen, Deputy C. of Staff, Office of the Governor).

<sup>23</sup> S.B. 252.

<sup>24</sup> Snyder & Rindels, *supra* note 16.

<sup>25</sup> See Kyle Roerink, *New Taxes Pass Assembly; No-Tax Republicans Can't Undermine Sandoval, L. V. SUN* (May 31, 2015, 9:03 PM), <http://lasvegassun.com/news/2015/may/31/new-taxes-pass-assembly-no-tax-republicans-cant-un/>.

<sup>26</sup> Assemb. B. 464, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Snyder & Rindels, *supra* note 16.

<sup>30</sup> S.B. 378, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>31</sup> Snyder & Rindels, *supra* note 16.

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*D. S.B. 483*

Finally, following various amendments and procedural votes in both houses concerning the three bills, the important provisions of each bill were amended into S.B. 483, which provides the following:

*1. Commerce Tax*

Perhaps most importantly, “this bill imposes an annual commerce tax on each business entity . . . whose Nevada gross revenue in a fiscal year exceed \$4,000,000” at varying rates depending on the industry.<sup>32</sup>

*2. Modified Business Tax (MBT)*

Before July 1, 2015, section 363B.110 of the Nevada Revised Statutes (NRS) imposed the Modified Business Tax (MBT) on most businesses at the rate of 1.17 percent of the total wages paid by the business each calendar quarter that exceed \$85,000.<sup>33</sup> S.B. 483 revised the MBT statutes, which now:

- require the mining industry to pay the payroll tax at the same rate as financial institutions under existing law;
- impose the payroll tax on all other businesses at the rate of 1.475 percent of the total wages paid exceeding \$50,000 quarterly;
- authorize a business to subtract fifty percent of its paid commerce tax as a credit when determining the amount of tax due on the total wages; and
- require a reduction in the tax rate on the total wages paid by all businesses in Nevada if the combined revenue from the commerce tax and the tax on the total wages by a business meet or exceed a four percent surplus over projected budgetary needs.<sup>34</sup>

*3. Business License Fee*

Prior to this legislative session, NRS sections 76.100 and 76.130 imposed an annual fee of \$200 for a state business license.<sup>35</sup> However, S.B. 483:

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<sup>32</sup> S.B. 483, 2015 Leg., 78th Sess. (Nev. 2015) (“Nevada gross revenue of a business entity is determined by taking the amount of its gross revenue, as defined in section 8 of this bill, making various adjustments to that amount under section 21 of this bill, and then situsing that adjusted amount to this State pursuant to section 22 of this bill. Sections 24–49 of this bill set forth the rate of the commerce tax for the industry in which a business entity is primarily engaged,” as defined by the NAICS code.).

<sup>33</sup> NEV. REV. STAT. § 363B.110 (2013) (amended 2015). Existing law also imposed an excise tax on financial institutions at the rate of two percent of the total wages paid each quarter. *Id.* § 363A.130.

<sup>34</sup> See S.B. 483 §§ 62, 67–70.

<sup>35</sup> See NEV. REV. STAT. §§ 76.100, 76.130 (2013) (amended 2015).

- increases the annual state business license fee to \$500 for all corporations organized pursuant to Nevada law and all foreign corporations transacting in Nevada; and
- maintains the existing \$200 state business license fee for all other business entities (e.g., LLCs, etc.).<sup>36</sup>

#### 4. *Additional Provisions*

S.B. 483 also extended or permanently increased certain sunseting taxes. For example, the excise tax on cigarettes increased to \$1.80 per pack,<sup>37</sup> the annual filing fee for the required list of the directors and officers of an entity increased by \$25,<sup>38</sup> and the \$100 administrative fee on guilty and/or nolo contendere pleas is now in effect until 2017.<sup>39</sup>

## II. EDUCATION

Along with his declaration that 2015's legislative session was to be the "Education Session,"<sup>40</sup> Governor Sandoval laid out a sweeping K-12 education reform plan during his State of the State address.<sup>41</sup> Motivated by the ever-changing population of Nevada students, the Governor sought to modernize the K-12 education system by providing more opportunity and investment for every child.<sup>42</sup> The Education Session reforms focused on key areas such as improving failing and underperforming schools, enhancing teacher performance and incentives for teachers, cultivating a safe learning environment, and providing greater school choice for Nevada families.

### A. *Improving Failing and Underperforming Schools*

Many of the education reforms passed in the 78th Legislative Session focused on improving failing and underperforming schools in Nevada. Both political parties agreed upon the need to focus on ways to increase student success.<sup>43</sup> This consensus led to many reforms, including new programs, additional and expanded designations for underperforming schools, a required study to ana-

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<sup>36</sup> S.B. 483 §§ 74, 75.

<sup>37</sup> *Id.* §§ 71–73.

<sup>38</sup> *Id.* §§ 75.5, 76.1–76.8.

<sup>39</sup> *Id.* § 109.

<sup>40</sup> See Ian Whitaker, *How Education Legislation Has Fared So Far This Session*, L.V. SUN (Apr. 2, 2015, 2:00 AM), <http://lasvegassun.com/news/2015/apr/02/halfway-through-how-education-legislation-has-fared>.

<sup>41</sup> See generally Governor Brian Sandoval, *supra* note 14.

<sup>42</sup> See *id.* at 9.

<sup>43</sup> Geoff Dorman, *Nevada Legislature: \$1.1 Billion 'Nevada Revenue Plan' Approved; Largest One-Time Tax Increase in History of State*, NEV. APPEAL (June 2, 2015), <http://www.nevadaappeal.com/news/government/16618284-113/nevada-legislature-11-billion-nevada-revenue-plan-approved>.

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lyze potential benefits of restructuring the Clark County School District, and a long overdue modernization of the Nevada Plan.<sup>44</sup>

*1. New Programs for Struggling Students*

S.B. 391, also known as the “Read by Grade Three” bill, created a program that requires all students be proficient in reading by the end of third grade.<sup>45</sup> Students who do not meet this requirement will be held back and required to repeat the grade.<sup>46</sup> The bill includes early identification of students not on track to meet this goal, parental notification, and intensive reading interventions for students in need of additional support.<sup>47</sup> The bill also includes appropriations for the initiatives, allowing the Nevada Department of Education to “establish a grant program to augment reading proficiency programs in schools” and “support activities found to be effective in improving” reading skills in young students.<sup>48</sup>

S.B. 503 enacted reforms to the “Breakfast After the Bell” program, providing a greater number of low-income students with access to breakfast at the start of the school day.<sup>49</sup> The program applies to schools where seventy percent or more of students are identified as eligible for free or reduced-price lunch.<sup>50</sup> The Nevada Department of Agriculture will monitor the implementation of S.B. 503.<sup>51</sup>

UNLV Boyd School of Law Professor Sylvia Lazos played a vital role in developing A.B. 30,<sup>52</sup> which mandates that the Nevada State Board of Education develop a plan to assist high school students in need of remedial learning, and addresses literacy among English Language Learners (ELL).<sup>53</sup>

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<sup>44</sup> See *2015 Legislative Summary*, NEV. SYS. HIGHER EDUC., <http://system.nevada.edu/Nshe/index.cfm/data-reports/legislative-reports1/2015-legislative-summary/#education> (last visited Oct. 11, 2015).

<sup>45</sup> S.B. 391, 2015 Leg., 78th Sess. (Nev. 2015); *Read By Grade Three (SB 391)*, NEV. DEP’T EDUC., [http://www.doe.nv.gov/Legislative/Read\\_by\\_Grade\\_Three](http://www.doe.nv.gov/Legislative/Read_by_Grade_Three) (last visited Oct. 11, 2015).

<sup>46</sup> S.B. 391.

<sup>47</sup> *Id.*

<sup>48</sup> *Read By Grade Three (SB 391)*, *supra* note 45.

<sup>49</sup> S.B. 503, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>50</sup> *Id.* A list of eligible schools can be found at <http://nutrition.nv.gov/data>.

<sup>51</sup> NEV. DEP’T OF AGRIC., FREQUENTLY ASKED QUESTIONS: SENATE BILL 503—BREAKFAST AFTER THE BELL (2015), <http://agri.nv.gov/uploadedFiles/agrinvgov/Content/Media/SB%20503%20FAQ.pdf>.

<sup>52</sup> See *Hearing on Assemb. B. 30 Before the Assemb. Comm. on Educ.*, 2015 Leg., 78th Sess. 17–18 (Nev. 2015) (statement of Sylvia Lazos, Latino Leadership Council), <http://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/ED/Final/149.pdf>.

<sup>53</sup> *Assemb. B. 30*, 2015 Leg., 78th Sess. (Nev. 2015).

## 2. Designations for Underperforming Schools

Along with specific programs, the legislature created additional designations for underperforming schools, while also expanding current programs that are measurably promoting student improvement and success.

### a. Zoom Schools

S.B. 405 is an expansion of the “Zoom Schools” program enacted during the 77th Legislative Session in 2013, which provides intensive services to ELL students in elementary school.<sup>54</sup> Increasing appropriations for Zoom Schools by \$50 million per year, S.B. 405 will fund twenty-four additional schools in the first year of the biennium, twice the current number, and will expand the program to middle schools, junior highs, and high schools.<sup>55</sup>

### b. Victory Schools

Similarly, the legislature passed S.B. 432, which creates Victory Schools.<sup>56</sup> Governor Sandoval appropriated \$25 million per year in the State General Fund for this mandate, which is designed to meet student needs at the lowest performing schools within the highest poverty zip codes throughout Nevada.<sup>57</sup> These schools will receive resources to assist in wraparound services<sup>58</sup> and family engagement, as well as assistance in preparing students for rigorous curriculum throughout their education.<sup>59</sup> The initiative also seeks to ensure students graduating from high school leave with the necessary skills to succeed.<sup>60</sup>

### c. Achievement School District

A.B. 448 “creates the Achievement School District within the Department of Education.”<sup>61</sup> A.B. 448 allows certain failing traditional public schools to be taken over by a charter school agency, and sets forth the criteria for the inclu-

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<sup>54</sup> S.B. 405, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>55</sup> *Id.*; *Expand Zoom Schools Program (SB 405)*, NEV. DEP’T EDUC., [http://www.doe.nv.gov/Legislative/Expand\\_Zoom\\_Schools\\_Program](http://www.doe.nv.gov/Legislative/Expand_Zoom_Schools_Program) (last visited Oct. 12, 2015).

<sup>56</sup> S.B. 432, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>57</sup> *Victory Schools Program (SB 432)*, NEV. DEP’T EDUC., [http://www.doe.nv.gov/Legislative/Victory\\_Schools\\_Program](http://www.doe.nv.gov/Legislative/Victory_Schools_Program) (last visited Oct. 12, 2015). For a list of designated Victory schools, see *id.*

<sup>58</sup> Wraparound services frequently include social workers, truancy programs, surrogate parent programs, and more. See *Wraparound Services*, CLARK CTY. SCH. DIST., <http://ccsd.net/divisions/student-support-services-division/wraparound-services> (last visited Oct. 12, 2015).

<sup>59</sup> *Victory Schools Program (SB 432)*, *supra* note 57.

<sup>60</sup> Memorandum from Dale A.R. Erquiaga, Superintendent of Pub. Instruction, Nev. Dep’t of Educ., to All School Districts and Charter Schools (July 1, 2015) [http://www.doe.nv.gov/News\\_Media/Guidance\\_Memos/2015/Guidance\\_Memo\\_15-07\\_SB432\\_Victory](http://www.doe.nv.gov/News_Media/Guidance_Memos/2015/Guidance_Memo_15-07_SB432_Victory).

<sup>61</sup> Assemb. B. 448, 2015 Leg., 78th Sess. (Nev. 2015).

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sion of certain chronically underperforming schools to be managed as an achievement district charter school.<sup>62</sup> The bill also includes provisions for how the schools must be operated, staffed, and financed, as well as the process for schools to leave the Achievement School District.<sup>63</sup> In the first year of the biennium, six of the state's seventy-eight failing schools will be designated to the Achievement School District.<sup>64</sup>

### 3. *Restructuring the Clark County School District*

Further, in a last-minute compromise, the legislature passed A.B. 394, which seeks to break up the Clark County School District, the fifth largest district in the nation,<sup>65</sup> into smaller precincts by the 2018–19 school year.<sup>66</sup> The bill includes a provision that requires the Legislative Commission to approve the break-up plan during the 2017 session.<sup>67</sup>

### 4. *Modernizing the Nevada Plan*

Acknowledging that students need varying resources to be successful in the classroom, the legislature passed S.B. 508.<sup>68</sup> S.B. 508 makes significant updates to the Nevada Plan by amending several NRS sections, including 387.121.<sup>69</sup> The Nevada Plan is the primary funding mechanism for K-12 education, and includes state and local revenue.<sup>70</sup> As a result of wide local variations in wealth and cost per pupil, the Nevada Plan provides each school district its own basic support guarantee per pupil through a complex calculation not delineated in the statute.<sup>71</sup> S.B. 508 changes the Nevada Plan (the average basic support guarantee per pupil) by beginning to evaluate the process of determining per pupil funding. The reforms are particularly aimed at ensuring schools have the funds necessary to meet the unique needs of certain categories of students, including those with disabilities, at-risk students, English language learners,

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *See id.* As of the time of this writing, the Nevada Department of Education has not chosen the six schools which will be designated as part of the Achievement School District. A list of the 78 underperforming schools can be found at <https://www.scribd.com/doc/252856125/2015-16-Underperforming-Nevada-Schools>.

<sup>65</sup> *Police Services*, CLARK CTY. SCH. DIST., <https://www.ccsd.net/departments/police-services/department-history> (last visited Oct. 12, 2015).

<sup>66</sup> Assemb. B. 394, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>67</sup> *Id.* The bill calls for the creation of an advisory committee comprised of eight legislators and one citizen to conduct a study, develop a plan, and weigh the impact of a breakup on central office functions, curriculum, employee unions, financial equity, real estate, and other issues. *Id.*

<sup>68</sup> S.B. 508, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>69</sup> *Id.*; NEV. REV. STAT. § 387.121 (2013) (amended 2015).

<sup>70</sup> *See* S.B. 508.

<sup>71</sup> *See id.*

and gifted and talented students.<sup>72</sup> The legislation aims to address the diverse needs of Nevada students by revising the student funding formula originally enacted in 1967.<sup>73</sup>

*B. Teacher Performance and Incentives for Teachers*

Aside from the reforms designed to improve failing and underperforming schools, the legislature passed several new initiatives that seek to improve teacher performance and address the shortage of teachers across Nevada.

Lieutenant Governor Mark Hutchison sponsored S.B. 92, which gives school boards of trustees the ability to offer incentives in order to motivate teachers and education professionals to seek employment at turnaround<sup>74</sup> schools, and provides more latitude in hiring and firing decisions at those schools.<sup>75</sup> Significantly, S.B. 92 eliminates the “Last In, First Out” policy, where teachers with the least seniority are first to be laid off in a reduction-in-force, and requires school district boards of trustees to make such decisions based on performance under the statewide evaluation system.<sup>76</sup>

Acknowledging that the key to student success is effective teaching, S.B. 474 created the Great Teaching and Leading Fund, which provides \$9.8 million of new funding for teacher and administrator incentives.<sup>77</sup> The State Board of Education will provide annual priorities for the use of the Fund; in the first year, the Fund will focus on professional development.<sup>78</sup> The bill also requires the board of trustees of each school district and governing body of each charter

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<sup>72</sup> *Id.*

<sup>73</sup> Press Release, Nev. Governor Brian Sandoval, Sandoval Joins Educators and Legislators to Sign Historic Education Reform Bills (June 12, 2015), <http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Joins-Educators-and-Legislators-to-Sign-Historic-Education-Reform-Bills/>.

<sup>74</sup> The turnaround model is one of four strategies that qualify for grant money under the Race to the Top and the School Improvement Grant programs sponsored by the U.S. Department of Education. The turnaround model generally involves the following: “Replace the principal, rehire no more than 50 percent of the staff and grant the principal sufficient operational flexibility . . . to fully implement a comprehensive approach to substantially improving student outcomes.” REFORM SUPPORT NETWORK, U.S. DEP’T EDUCATION, RACE TO THE TOP HIGHLIGHTS: THIRD-PARTY PROVIDERS AND SCHOOL TURNAROUND 1 n.1 (2013), <https://www2.ed.gov/about/inits/ed/implementation-support-unit/tech-assist/third-party-providers-school-turnaround.pdf>.

<sup>75</sup> S.B. 92, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>76</sup> *Id.*; *Hearing on S.B. 92 Before the Sen. Comm. on Edu.*, 2015 Leg., 78th Sess. 3 (Nev. 2015) (statement of Mark A. Hutchinson, Lieutenant Governor), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/ED/Final/1299.pdf>.

<sup>77</sup> S.B. 474, 2015 Leg., 78th Sess. (Nev. 2015); *Great Teaching and Leading Fund (SB 474)*, NEV. DEP’T EDUC., [http://www.doe.nv.gov/Legislative/Great\\_Teaching\\_and\\_Leading\\_Fund](http://www.doe.nv.gov/Legislative/Great_Teaching_and_Leading_Fund) (last visited Oct. 13, 2015).

<sup>78</sup> *Great Teaching and Leading Fund (SB 474)*, *supra* note 77.

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school to provide teachers and administrators access to high-quality ongoing professional development.<sup>79</sup>

Following his State of the State Address, Governor Sandoval introduced A.B. 483, a “Pay-for-Performance” bill, which requires school districts to reward their top performing teachers through salary increases.<sup>80</sup> The compensation plan is exempt from collective bargaining, which ensures that school districts will be required to set aside sufficient funding to provide bonuses.<sup>81</sup>

Along with the need to incentivize current teachers to stay in Nevada, massive teacher shortages across the state made it clear that Nevada needed a way to attract more teachers to the profession, and to the state.<sup>82</sup> With this goal in mind, Governor Sandoval proposed S.B. 511, the Teach Nevada Scholarship Program, late in the session.<sup>83</sup> The scholarship program “[c]ombats the teacher pipeline crisis by establishing a long-term strategy to recruit future teachers,”<sup>84</sup> and seeks to provide “scholarships to students pursuing teaching degrees at a university, college or other provider of an alternative licensure program” in Nevada.<sup>85</sup> The scholarship offers up to \$3,000 per semester; students are able to earn three-quarters of the scholarship while in school, while the remaining quarter of the funds will be placed in a trust account and awarded to the student after teaching in Nevada for five years.<sup>86</sup> Further, the Department of Education sponsored A.B. 27, a measure that allows immigrants with work permits to get a teaching license if a district has a teacher shortage of any kind.<sup>87</sup>

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<sup>79</sup> S.B. 474.

<sup>80</sup> Assemb. B. 483, 2015 Leg., 78th Sess. (Nev. 2015); Press Release, Nev. Governor Brian Sandoval, Sandoval Joins Educators and Legislators to Sign Historic Education Reform Bills (June 12, 2015), <http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Joins-Educators-and-Legislators-to-Sign-Historic-Education-Reform-Bills>.

<sup>81</sup> *See id.*

<sup>82</sup> Eric Westervelt, *Las Vegas: Betting On New Teachers But Coming Up Short*, NPR (May 6, 2015, 4:19 PM), <http://www.npr.org/sections/ed/2015/05/06/402887228/las-vegas-betting-on-new-teachers-but-coming-up-short>.

<sup>83</sup> *See* S.B. 511, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>84</sup> *Teach Nevada Scholarships and Incentives (SB 511)*, NEV. DEP’T EDUC., [http://www.doe.nv.gov/Legislative/Teach\\_Nevada\\_Scholarships\\_and\\_Incentives](http://www.doe.nv.gov/Legislative/Teach_Nevada_Scholarships_and_Incentives) (last visited Oct. 13, 2015).

<sup>85</sup> S.B. 511.

<sup>86</sup> *See id.*; Press Release, Nev. Governor Brian Sandoval, Sandoval and Legislative Leadership Announce Teach Nevada Scholarship Program (May 22, 2015), <http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-and-Legislative-Leadership-Announce-Teach-Nevada-Scholarship-Program>.

<sup>87</sup> Assemb. B. 27, 2015 Leg., 78th Sess. (Nev. 2015). Previously existing law allowed the state superintendent to give a teaching license to immigrants with a work permit only if there was a teacher shortage in the specific “subject area for which the person is qualified.” NEV. REV. STAT. § 391.060 (2013) (amended 2015).

### C. *Safe Learning Environment*

In response to several recent tragedies, including student suicides, the legislature passed and the Governor signed multiple anti-bullying bills, seeking to increase safety in schools.<sup>88</sup> S.B. 504, introduced by Governor Sandoval, includes an appropriation of \$300,000 each year to create the Office for a Safe and Respectful Learning Environment within the Department of Education.<sup>89</sup> In response to testimony that bullying often occurs via social media, and not necessarily solely during the school day, the bill sets up a twenty-four-hour hotline to report incidents of bullying.<sup>90</sup> The law also imposes strict requirements on school officials to report and investigate bullying—school administrators must conduct an investigation within forty-eight hours and notify parents the same day a bullying incident is reported.<sup>91</sup> S.B. 504 also provides social worker grants of \$5.6 million in fiscal year 2016, and \$11.2 million in 2017 to address the problem.<sup>92</sup>

Similarly, S.B. 338, sponsored by Senator Debbie Smith and Senator Joyce Woodhouse, created the “Safe-to-Tell” program.<sup>93</sup> This program requires the Office for a Safe and Respectful Learning Environment to establish a mechanism for anonymous reporting of any actual or threatened dangerous, violent, or unlawful activity on school property.<sup>94</sup>

### D. *School Choice*

As Nevada education continues to be ranked at the bottom of the nation,<sup>95</sup> the 78th Legislative Session passed numerous bills in hopes of giving parents more access to school choice.

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<sup>88</sup> See Sandra Chereb, *Nevada Gov. Brian Sandoval Signs Anti-Bullying Legislation*, L.V. REV.-J. (May 20, 2015, 2:53 PM), <http://www.reviewjournal.com/news/nevada-Legislature/nevada-gov-brian-sandoval-signs-anti-bullying-legislation>; Anh Gray & Michelle Bliss, *Nevada Lawmakers Consider Anti-Bullying Bill*, NPR (Apr. 2, 2015), <http://kunr.org/post/nevada-lawmakers-consider-anti-bullying-bill>.

<sup>89</sup> S.B. 504, 2015 Leg., 78th Sess. (Nev. 2015); *Social Worker Grants (SB 504)*, NEV. DEP'T EDUC., [http://www.doe.nv.gov/Legislative/Social\\_Worker\\_Grants](http://www.doe.nv.gov/Legislative/Social_Worker_Grants) (last visited Oct. 13, 2015).

<sup>90</sup> See S.B. 504.

<sup>91</sup> *Id.*

<sup>92</sup> *Social Worker Grants (SB 504)*, *supra* note 89.

<sup>93</sup> S.B. 338, 2015 Leg., 78th Sess. (Nev. 2015).

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

<sup>95</sup> See ANNIE E. CASEY FOUND., *KIDS COUNT DATA BOOK: STATE TRENDS IN CHILD WELL-BEING 27* (2014), <http://www.aecf.org/resources/the-2014-kids-count-data-book/#state-rankings>. The most recent Annie E. Casey Foundation report ranks Nevada fiftieth in Education. *Id.*

### 1. *Education Savings Accounts*

Perhaps the most controversial of the school choice reforms, S.B. 302 allows for the creation of education savings accounts for certain Nevada students.<sup>96</sup> Under S.B. 302, a student enrolled in a Nevada public school for one hundred consecutive school days has the option to use all or a portion of the student's share of his or her state per-pupil funding to cover education expenses, including private school tuition or homeschooling.<sup>97</sup> S.B. 302 makes Nevada the first state to offer this type of school choice option to all students and is considered the most far-reaching school choice law in the nation.<sup>98</sup> Current per-pupil funding is about \$5,000 annually; S.B. 302 designates that special education students and those in poverty would be eligible for 100 percent of the per-pupil funding amount, while all other students would receive ninety percent.<sup>99</sup> The bill requires that participating private schools meet certain requirements and maintain compliance, such as requiring participating students to complete standardized tests in math and English.<sup>100</sup>

### 2. *Nevada Educational Choice Scholarship*

Nevada lawmakers also passed A.B. 165, which created the Nevada Educational Choice Scholarship and made Nevada the fifteenth state in the nation to pass a tax credit scholarship program.<sup>101</sup> A.B. 165 provides tax credits (up to \$5 million in fiscal year 2015–16) to businesses and individuals who donate to non-profit organizations that award tuition scholarships to students who come from homes at 300 percent of the poverty level or lower.<sup>102</sup> The Nevada Department of Education is responsible for determining the maximum amount of scholarship funding any one student may receive.<sup>103</sup>

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<sup>96</sup> See Terri Hendry, *Questions Surround New Law that Gives State Money to Pay for Private School*, MYNEWS4.COM (June 19, 2015, 6:45 PM), <http://www.mynews4.com/mostpopular/story/State-money-for-private-school/Obqo6UOhA0e7CyqwTcXKtw.aspx>.

<sup>97</sup> S.B. 302, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>98</sup> See Nat Malkus, *Education's Wild West*, U.S. NEWS & WORLD REP. (June 23, 2015, 12:30 PM), <http://www.usnews.com/opinion/knowledge-bank/2015/06/23/nevada-school-choice-accounts-are-the-new-frontier-in-education>. The four other states that currently have school choice programs are Arizona, Florida, Mississippi, and Tennessee. See, e.g., *Fast Facts*, FRIEDMAN FOUND. FOR EDUC. CHOICE, <http://www.edchoice.org/our-resources/fast-facts> (last visited Oct. 17, 2015).

<sup>99</sup> See S.B. 302; Malkus, *supra* note 98.

<sup>100</sup> S.B. 302.

<sup>101</sup> See Assemb. B. 165, 2015 Leg., 78th Sess. (Nev. 2015); *Scholarship Tax Credits*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/education/school-choice-scholarship-tax-credits.aspx> (last visited Oct. 13, 2015).

<sup>102</sup> Assemb. B. 165.

<sup>103</sup> *Id.* For the 2015–16 school year, the Nevada Department of Education set the maximum amount of scholarship funding per student at \$7,755.00. *Id.*

### 3. *Broader Access to Charter Schools*

In an effort to increase local access to charter schools, the legislature enacted S.B. 208.<sup>104</sup> The law requires new charter schools to notify parents within three miles of the charter school of when it will begin accepting applications for enrollment. Notice must be sent at least forty-five days before application acceptance begins.<sup>105</sup>

Virtually all of the Governor's education and spending reform initiatives were passed with bipartisan support during the 78th Legislative Session.<sup>106</sup> In addition to the above bills, several other new and expanding programs were created, including an appropriations bill that provides over \$170 million to expand all-day kindergarten to every school in the state and \$10 million in funding for gifted and talented students.<sup>107</sup>

## III. RIDE SHARING

In "one of the most heavily-lobbied fights at the Legislature this session,"<sup>108</sup> the legislature considered several bills and amendments before ultimately approving ride-sharing companies in Nevada.<sup>109</sup> Ride-sharing companies, such as Uber and Lyft, offer smartphone and Internet apps that connect vehicle owners and drivers with people who need a ride on a short-term basis.<sup>110</sup> These apps allow riders to use smartphone technology to connect directly with drivers in real time, eliminating "the need to rely on spotty dispatch service or hail a cab on the street."<sup>111</sup>

After expanding in various cities across America, Uber launched in Nevada on October 24, 2014. Within hours, regulatory officers from the Nevada Taxicab Authority were writing citations and impounding the cars of Uber driv-

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<sup>104</sup> See S.B. 208, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>105</sup> *Id.*

<sup>106</sup> See Paul Nelson, *Legislative Session Proves Successful for Governor Sandoval*, KTVN.COM (June 2, 2015, 6:02 PM), <http://www.ktvn.com/story/29223549/legislative-session-proves-successful-for-governor-sandoval>.

<sup>107</sup> S.B. 515, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>108</sup> Conor Shine, *County Commission Passes Resolution Supporting Strict Regulations for Uber*, L.V. SUN (May 5, 2015, 3:12 PM), <http://lasvegassun.com/news/2015/may/05/county-commission-uber-nevada>.

<sup>109</sup> See Kevin Bolinger, *Safety Provisions Keep Uber's Future in NV Up in the Air*, FOX 5 VEGAS (June 25, 2015, 9:06 PM), <http://www.fox5vegas.com/story/28827039/safety-provisions-keep-ubers-future-in-nv-up-in-the-air>.

<sup>110</sup> See *The Company*, UBER, <https://uber.com/about>.

<sup>111</sup> ANDREW MOYLAN ET. AL., R STREET POLICY STUDY NO. 29, RIDESCORE 2014; HIRED DRIVER RULES IN U.S. CITIES 1 (2014), <http://www.rstreet.org/wp-content/uploads/2014/11/RSTREET29.pdf>.

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ers.<sup>112</sup> “In November, a judge issued a preliminary injunction banning Uber,” despite its popularity.<sup>113</sup> Uber and other ride-sharing companies then set their sights on the legislature, hoping to utilize big-name lobbyists to influence state law.<sup>114</sup>

Initially the legislation was split into two bills: S.B. 439, which contained regulatory language, and S.B. 440, which contained insurance requirement provisions. The latter bill originally contained insurance requirements taken directly from the National Transportation Network Company Model Policy. However, many lawmakers expressed the sentiment that Nevada is a unique market that requires unique regulations, particularly in regards to safety.<sup>115</sup> Despite several rounds of negotiations, legislators were unable to come to a consensus, and Nevada lawmakers amended both the regulatory provisions of S.B. 439 and the insurances requirements of S.B. 440 into one package: A.B. 175.

A.B. 175 passed on May 23, 2015, amid great confusion in the Assembly.<sup>116</sup> The bill authorizes ride-sharing companies like Uber and Lyft to operate in Nevada.<sup>117</sup> It also includes a three percent tax on fares (extended also to taxis and limousines), which is slated to raise new revenue, including the \$19 million needed to fund the new medical school at UNLV.<sup>118</sup>

However, the legislators were not satisfied with the end result of A.B. 175, and amended additional provisions into another bill, A.B. 176, which places ride-sharing companies under the jurisdiction of the Nevada Transportation Authority.<sup>119</sup>

## IV. CONSTRUCTION DEFECT

Signed into law on February 24, 2015, A.B. 125, which made substantial changes to the construction defect provisions of NRS Chapter 40, was the first

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<sup>112</sup> Conor Shine, *Multiple Drivers Cited Within Hours of Uber Launch*, L.V. SUN (Oct. 24, 2014, 4:44 PM), <http://www.lasvegassun.com/news/2014/oct/24/three-las-vegas-uber-drivers-cited-within-hours-ri>.

<sup>113</sup> Tracey Lien, *Uber Gets Big Win in Nevada as Legislature OKs Bill Authorizing Service*, L.A. TIMES (May 27, 2015, 5:24 PM), <http://www.latimes.com/business/la-fi-uber-nevada-20150528-story.html>.

<sup>114</sup> *Id.*

<sup>115</sup> *See, e.g.*, Richard N. Velotta, *Will ‘Uber Bill’ Make It Through the Senate?*, L.V. REV.-J. (Apr. 9, 2015, 4:31 PM), <http://www.reviewjournal.com/news/traffic-transportation/will-uber-bill-make-it-through-senate>.

<sup>116</sup> *See* Assemb. B. 175, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>117</sup> *See id.*

<sup>118</sup> *Id.*; Sandra Chereb, *Senate Revives Bill Authorizing Ride-Sharing Companies Such As Uber*, L.V. REV.-J. (May 7, 2015, 5:16 PM), <http://www.reviewjournal.com/news/nevada-legislature/senate-revives-bill-authorizing-ride-sharing-companies-such-uber>.

<sup>119</sup> Assemb. B. 176, 2015 Leg., 78th Sess. (Nev. 2015).

“big bill” of the 2015 Legislative Session.<sup>120</sup> Chapter 40 governs “actions and proceedings in particular cases concerning property,” and details specific causes of action, elements, and remedies for many things, including construction defect in Nevada.<sup>121</sup>

Among the various changes, A.B. 125 provides a more concise definition of “constructional defect,” shortens the statute of limitations for construction defect cases, places a higher burden of proof upon claimants in construction defect cases, and makes attorneys fees harder to recover.

#### A. *New “Constructional Defect” Definition*

Amending the existing definition, this bill defines “constructional defect” as a defect “(1) which presents an unreasonable risk of injury to a person or property; or (2) which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance.”<sup>122</sup>

#### B. *Changes to Controlling Party Indemnification Provisions*

Further, section 2 establishes that any provision in a contract for residential construction that requires a subcontractor to indemnify a controlling party (the party being identified in the law suit) for the negligence or actions of the controlling party is void and unenforceable.<sup>123</sup> A provision is also void and unenforceable if it concerns a subcontractor’s work “which has been altered or modified by another trade or the controlling party.”<sup>124</sup> Alternatively, a provision that requires a subcontractor hold harmless a controlling party from any liability related to the subcontractor’s scope of work, negligence, or intentional act or omission, is neither void nor unenforceable.<sup>125</sup>

#### C. *“Duty to Defend” Requirements for Subcontractors Modified*

A.B. 125 further provides that

the duty of the subcontractor to defend the controlling party arises upon presentation of a notice . . . containing a particular claim, action or cause of action from which it can be reasonably inferred that an alleged constructional defect was caused by or attributable to the subcontractor’s work, negligence, or wrongful act or omission.<sup>126</sup>

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<sup>120</sup> See Sean Whaley, *Sandoval Signs Bill to Reform Nevada Construction Defect Law*, L.V. REV.-J. (Feb. 24, 2015, 6:32 PM), <http://www.reviewjournal.com/news/nevada-legislature/sandoval-signs-bill-reform-nevada-construction-defect-law>.

<sup>121</sup> NEV. REV. STAT. §§ 40.005–.770 (2013) (amended 2015).

<sup>122</sup> Assemb. B. 125, 2015 Leg., 78th Sess. § 6 (Nev. 2015)

<sup>123</sup> *Id.* § 2.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

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*D. Fees and Costs are now Harder to Recover*

In order to minimize attorneys' fees and costs, the bill adds language providing that if a controlling party gives notice to a subcontractor for claims relating to that subcontractor, the claim is covered by the subcontractor's commercial general liability policy, and the controlling party is named as an additional insured:

(1) The controlling party . . . must pursue available means of recovery of its defense fees and costs under the policy before the controlling party is entitled to pursue a claim against the subcontractor.

(2) If the insurer has not assumed the controlling party's defense and reimbursed the controlling party for the defense obligation of the subcontractor . . . the controlling party has the right to pursue a claim against the subcontractor for reimbursement of that portion of the attorney's fees and costs incurred by the controlling party which are attributable to the claims . . . related to or connected with the subcontractor's scope of work, negligence, or intentional act or omission.<sup>127</sup>

Additionally, the bill removes provisions allowing a claimant to recover "reasonable fees" as part of the claimant's damages.<sup>128</sup>

*E. Notice of Construction Defect Must Include Specific Detail/Location of Each Defect*

Further, notice requirements in construction defect cases are now heightened, and must include greater levels of detail.<sup>129</sup> The bill requires a notice to (1) state in specific detail each defect to each residence or appurtenance subject to the notice; (2) state the exact location of each defect; and (3) include the owner of the residence or appurtenance's signed statement verifying each defect.<sup>130</sup>

*F. Notice of "Similarly Situated" Homeowners with Common Defects No Longer Allowed*

Further, the bill removes statutory language previously allowing one notice to be sent concerning similarly situated owners of residences in a single development that may have common construction defects.<sup>131</sup> A.B. 125 also superseded a recent Nevada Supreme Court decision,<sup>132</sup> by establishing that a home-

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* § 8.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* §§ 5, 8–13, 22.

<sup>132</sup> See *D.R. Horton, Inc. v. Eighth Jud. Dist. Ct.*, 215 P.3d 697, 700 (Nev. 2009) (holding "a homeowners' association has standing to assert constructional defect claims in a representative capacity on behalf of individual units").

owners' association "may not pursue a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association."<sup>133</sup>

*G. Statute of Limitations is Now Six Years, May Not be Tolled for More Than One Year*

Finally, A.B. 125 mandates a six-year statute of repose for all actions for damages under the construction defect definitions in the bill.<sup>134</sup> The bill "establishes a [one]-year grace period during which a person may commence an action under the existing statutes of repose, if the action accrued before the effective date of this bill."<sup>135</sup>

V. SUPER-PRIORITY LIENS

Codified in NRS Chapter 116, "super-priority liens" are liens levied against homes by a homeowners association (HOA) for nine months of unpaid HOA dues (more commonly known as "assessments") immediately preceding an HOA nonjudicial foreclosure.<sup>136</sup> Nevada courts have ruled, most notably in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*,<sup>137</sup> that these liens are given priority over all other liens, including mortgages and other liens generally thought to have priority during foreclosure. If the HOA forecloses, the super-priority lien wipes out all junior liens, including, but not limited to, mortgages. This allows the HOA to sell the home at foreclosure to recover unpaid assessments. The issue remains heavily litigated.<sup>138</sup>

Accordingly, the opacity of nonjudicial super-priority lien foreclosure provisions in the wake of *SFR Investments* prompted several legislators to begin a working group to provide clarity to HOA foreclosure mediation statutes in NRS Chapter 116.<sup>139</sup> S.B. 306 was the end result of that working group. S.B. 306 made wholesale changes to the statutory HOA nonjudicial foreclosure process, including capping collection costs, specifying higher notice requirements, and implementing a right of redemption for lenders and homeowners.

<sup>133</sup> Assemb. B. 125 §§ 5, 20.

<sup>134</sup> *Id.* § 17.

<sup>135</sup> *Id.* § 21.

<sup>136</sup> See NEV. REV. STAT. § 116.3116 (2013).

<sup>137</sup> 334 P.3d 408, 418 (Nev. 2014).

<sup>138</sup> For a detailed explanation of the history and current state of Nevada's HOA super priority lien foreclosure process, see Kylee Gloeckner, Note, *Nevada's Foreclosure Epidemic: Homeowner Associations' Super-Priority Liens Not So "Super" for Some*, 15 NEV. L.J. 326 (2015).

<sup>139</sup> See *Hearing on S.B. 305 Before the S. Comm. on Judiciary*, 2015 Leg., 78th Sess. 2 (Nev. 2015) (statement of Aaron D. Ford, Sen.), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/829.pdf>.

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A. *Limits on Collection Costs*

S.B. 306 authorizes a cap on the collection costs of enforcing the association's lien to be included in the super-priority lien (totaling roughly \$1,365 plus the past due assessments). The collection costs cannot include attorneys' fees.

The costs must not exceed an amount specified for each stage in the foreclosure process:

- (a) For a demand or intent to lien letter, \$150.
- (b) For a notice of delinquent assessment, \$325.
- (c) For an intent to record a notice of default letter, \$90.
- (d) For a notice of default, \$400.
- (e) For a trustee's sale guaranty, \$400.<sup>140</sup>

Additionally, the bill provides that any payment of an amount included in the association's lien by the holder of a subordinate lien on the unit "becomes a debt due from the unit's owner to the holder of the lien."<sup>141</sup>

B. *Increased Notice Requirements*

The holders of the security interest (i.e., the first deed of trust) in *SFR Investments* voiced concern that the nonjudicial foreclosures were done without providing adequate notice.<sup>142</sup> Thus, changes were made to the foreclosure statutes requiring more notice by HOAs to lenders and homeowners in order to ensure due process concerns were assuaged.<sup>143</sup> Major notice revisions include requirements to:

- Mail a copy of the notice of default and election to sell and the copy of the notice of sale to each holder of a recorded security interest before the association may sell the unit;<sup>144</sup>
- Publish, post, and give notice of the foreclosure sale of a unit by an association in a manner similar to the publishing, posting, and giving of notice of the nonjudicial foreclosure sale of real property secured by a deed of trust;<sup>145</sup>
- Conduct the foreclosure sale at the same location that a nonjudicial foreclosure sale of real property secured by a deed of trust must be conducted;<sup>146</sup>
- Postpone and reschedule any sale that has been postponed three times; sale is postponed by oral proclamation, the sale must be postponed to a later date at the same time and location; and,<sup>147</sup>

<sup>140</sup> S.B. 306, 2015 Leg., 78th Sess. § 1 (Nev. 2015).

<sup>141</sup> *Id.*

<sup>142</sup> *SFR Investments*, 334 P.3d at 418.

<sup>143</sup> *Hearing on S.B. 305*, *supra* note 140, at 3–4.

<sup>144</sup> S.B. 306 § 2.

<sup>145</sup> *Id.* § 4.

<sup>146</sup> *Id.* § 5.

<sup>147</sup> *Id.*

- Announce at the sale whether or not the super-priority lien has been satisfied.<sup>148</sup>

### C. Right of Redemption

S.B. 306 further implements a “right of redemption” that allows lenders or homeowners to pay off the back-owed assessments in order to stop the foreclosure process.<sup>149</sup> Specifically, S.B. 306 provides that if the holder of the first security interest pays the amount of the super-priority lien no later than five days before the date of sale, the foreclosure of the association’s lien does not extinguish the first security interest.<sup>150</sup> Additionally, the bill provides that after a foreclosure sale, the unit’s owner or a holder of a security interest on the unit may redeem the unit by paying the assessment to the purchaser within sixty days after the sale.<sup>151</sup>

## VI. TORT REFORM

After decades of Democrat control, the Republican majority was finally successful in making numerous changes to tort liability statutes throughout the NRS. The Republican majority made several changes to the tort liability statutes during the Session, including:

S.B. 134 modified the required appellate bond amount, and provided that an appeal bond is limited to the lesser of one million or the amount of judgment for small businesses, and fifty million or the amount of judgment for all other appellants.<sup>152</sup>

S.B. 160 modified NRS Chapters 41 and 207 to repeal trespasser liability provisions set forth in *Moody v. Manny’s Auto Repair*, where the NV Supreme Court held that property owners owe a duty of care to all persons on property, including trespassers.<sup>153</sup> The law also codified the attractive nuisance doctrine for premises liability.<sup>154</sup> Premises owners now only owe a duty of care to invitees, as opposed to trespassers.<sup>155</sup>

S.B. 244 enacted Nevada’s version of the Transparency In Private Attorney Contracting (TIPAC) model bill, which limits the ability of the Attorney General to hire a firm to represent the State on a contingency contract.<sup>156</sup> The At-

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

<sup>149</sup> *Id.* § 6.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> S.B. 134, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>153</sup> 871 P.2d 935, 943 (Nev. 1994).

<sup>154</sup> S.B. 160, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>155</sup> *Id.*

<sup>156</sup> See S.B. 244, 2015 Leg., 78th Sess. (Nev. 2015)

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torney General must now get the express consent of the Governor or the Interim Finance Committee to enter into such a contract.<sup>157</sup>

Finally, S.B. 292 made changes to medical and dental malpractice statutes. The bill (1) combines medical and dental malpractice into “professional negligence”; (2) specifies that “provider of healthcare” now includes physician assistants, clinics, surgery centers, physicians’ professional corporations, and group practices that employ health care professionals; (3) mandates that a \$350,000 limit on noneconomic damages applies regardless of the number of plaintiffs, defendants, or liability theories; (4) requires malpractice claims to list each name and specific act of alleged negligence; (5) negates the rebuttable presumption that if personal injury or death was caused by negligence, then testimony or an affidavit filed by an expert witness establishes negligence.<sup>158</sup>

These bills represented wholesale changes to various tort liability provisions throughout the NRS, and will likely impact litigation in Nevada for the foreseeable future.

## VII.NET METERING

Net metering was another highly contentious topic in the 78th Legislative Session, as net metering customers in Nevada grew close to the existing three percent cap set in 2013 during the 77th Legislative Session.<sup>159</sup> Net metering allows individuals who install rooftop solar panels to receive a credit from the utility company for any excess energy generated.<sup>160</sup> Just over half of the states, including Nevada, have solar program caps that “limit the total amount of net metered generating capacity that can be installed.”<sup>161</sup>

S.B. 374 serves as a compromise bill between the rooftop solar industry and the Nevada utility company NV Energy.<sup>162</sup> The bill seeks to establish a fair system that will allow the rooftop solar industry to continue to create jobs and grow in Nevada while protecting non-solar ratepayers.<sup>163</sup> S.B. 374 gives authority to the Public Utilities Commission of Nevada (PUCN) to decide an appropriate energy rate and fair credits for net metering customers, and requires a

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<sup>157</sup> See *id.* § 6.

<sup>158</sup> S.B. 292, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>159</sup> See Sean Whaley & Laura Myers, *Nevada Could Lose 6,000 Jobs Without Net-Metering Cap Hike*, L.V. REV.-J. (Apr. 17, 2015, 1:49 PM), <http://www.reviewjournal.com/business/energy/nevada-could-lose-6000-jobs-without-net-metering-cap-hike>.

<sup>160</sup> *Id.*

<sup>161</sup> J. HEETER ET AL., NAT’L RENEWABLE ENERGY LAB., NREL/TP-6A20-61858, STATUS OF NET METERING: ASSESSING THE POTENTIAL TO REACH PROGRAM CAPS, at v (2014), <http://www.nrel.gov/docs/fy14osti/61858.pdf>.

<sup>162</sup> See S.B. 374, 2015 Leg., 78th Sess. (Nev. 2015).

<sup>163</sup> Press Release, Nev. Governor Brian Sandoval, Sandoval Signs Additional Legislation into Law (June 5, 2015), <http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Signs-Additional-Legislation-into-Law-Today>.

study to establish a tariff for net metering by the end of 2015.<sup>164</sup> The bill also establishes a temporary tariff on those customers in excess of the three percent cap, which will be in effect until the PUCN can create new regulations.<sup>165</sup> Currently, both NV Energy and solar companies are submitting regulatory filings with the PUCN in hopes of influencing the ultimate cap and rate decision.

#### CONCLUSION

Throughout the session, 1,013 bills were introduced, (498 in the Assembly and 515 in the Senate), along with innumerable amendments and versions of those bills. The 78th Legislative Session saw massive changes to, among a myriad of other issues, Nevada's tax code, education system, and solar energy policy. Additionally, the legislature passed revisions to the statutory framework for construction defect, super-priority liens, and tort liability. Lawmakers also paved the way for ride-sharing services like Uber and Lyft to operate throughout the state. After 120 days of fervent advocacy and compromise, the 78th Legislative Session adjourned on June 1, 2015, marking another successful legislative session here in the Silver State.

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<sup>164</sup> S.B. 374.

<sup>165</sup> *Id.*