

# Solutions 2013



A Sourcebook for  
Nevada Policymakers



## Foreword

**W**hen current and would-be policymakers look ahead to the 2013 Nevada Legislature, the challenges facing the Silver State are truly daunting.

America's Great Recession still takes its heaviest toll within our borders. Not only national mistakes, however, are behind this. It's also a legacy of bad decisions by previous state legislatures.

Unemployment remains in double digits. The state's high school graduation rate now trails those of all other states. Nevada taxpayers spend more on education than do taxpayers of neighboring states, yet student test scores are among the region's worst. The state's two flagship universities graduate only 12 percent of their students within four years.

Medicaid costs are increasing at an unsustainable rate — a problem that will worsen greatly, should ObamaCare's mandates take effect. Nevada's Public Employees' Retirement System is dramatically underfunded, and the contributions required to even attempt restoring its solvency are already damaging local governments' ability to provide basic services. The quality of state services, too, has fallen — even as Nevadans' tax burden has increased.

In short, the state of our beloved state is a mess.

Finding a way through such a thicket of interrelated problems is not an easy task. That's why it's with such pride that I present *Solutions 2013* — a compilation of the best research and policy recommendations on these and many other issues. My colleague and NPRI's deputy policy director, Geoffrey Lawrence, has worked tirelessly on these questions for months, devouring position papers and journal articles and consulting the best policy minds in the nation.

The result is a sourcebook of solutions that, if followed, will ensure a return to prosperity in Nevada.

I hope that you will recognize this document for what it is: a resource for any policymaker or legislative candidate who is serious about solving the Silver State's many problems. Shortcomings in current policy design are highlighted and ways to overcome them are spelled out. Many of the entries cite draft legislation already created. All can be submitted directly by reform-minded policymakers as bill draft requests for the new legislative session.

This collection dispels many popular misconceptions about Nevada, while highlighting new approaches to policymaking. My hope is that, regardless of where your political sympathies may lie, you will consider these ideas on their merits.

Our state still has an exceedingly bright future. It just requires some intelligent solutions.



Andy Matthews  
President  
Nevada Policy Research Institute

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# Spending Trends

Over the past two decades, lawmakers have more than tripled the size of Nevada's general fund, growing state spending from \$1.0 billion in FY 1994 to \$3.1 billion for FY 2013.

During these years, the Silver State's population has grown significantly, creating additional demand for public services. Lawmakers, however, increased spending at a rate far greater than population growth and inflation combined — meaning that Nevadans face a much higher per-capita cost of government today than they did 20 years ago.

## Key Points

**General fund spending is only one component of total spending.** Public attention often focuses exclusively on the state's general fund, because this spending falls under the direct control of lawmakers every two years. However, general fund spending accounts for only about 40 percent of total state spending.

In addition to the general fund, state spending includes federal dollars that are received to help pay for state-administered entitlement programs like Medicaid. Lawmakers have also established, and bear responsibility for, many secondary accounts like the highway fund and the permanent school fund, through which additional billions are spent annually.

**The 2003 tax hikes drove the growth in per-capita spending.** Between FY 1994 and FY 2003, inflation-adjusted, per-capita, general fund spending remained relatively constant. However, following the record-breaking tax increases of 2003, lawmakers began spending significantly more on a per-capita basis. Between FY 2003 and FY 2009, inflation-adjusted general fund spending per capita grew 18.4 percent as lawmakers increased employee pay and benefits, expanded the class-size reduction program, instituted limited full-day kindergarten programs in Clark and Washoe counties and began financing the Millennium Scholarship out of the general fund.

**Despite recent reductions, current spending still outpaces historical levels.** Although lawmakers were compelled to reduce per-capita spending for the 2011-13 biennium due to negative revenue growth

during the Great Recession, inflation-adjusted, per-capita spending remains higher than at any point in the decade prior to the 2003 tax hikes.

In fact, since the 2003 tax hikes, lawmakers have spent a cumulative \$5.5 billion beyond the inflation-adjusted, per-capita spending levels that existed in the decade beginning in FY 1994 and ending in FY 2003.

## Recommendations

**Enact meaningful spending controls to protect taxpayers.** In successive legislative sessions, lawmakers have debated whether to enact a constitutional limitation on the growth in state spending. The proposed "Tax and Spending Control" (TASC) amendment would ensure that the real, per-capita cost of government does not increase over time by prohibiting lawmakers from increasing spending faster than the rate of population growth combined with inflation.

Opponents of TASC have argued that Nevada's spending already has population-growth and inflation controls on it since the governor's Executive Budget proposal is prohibited from exceeding the per-capita spending level that occurred in the 1975-77 biennium, indexed for inflation. However, this limitation is meaningless because lawmakers are free to add as much spending as they like to the governor's proposal with no restraint whatsoever.<sup>1</sup>

With TASC in place, lawmakers who are convinced of the merits of higher spending on a given program would first need to find savings elsewhere in the budget.

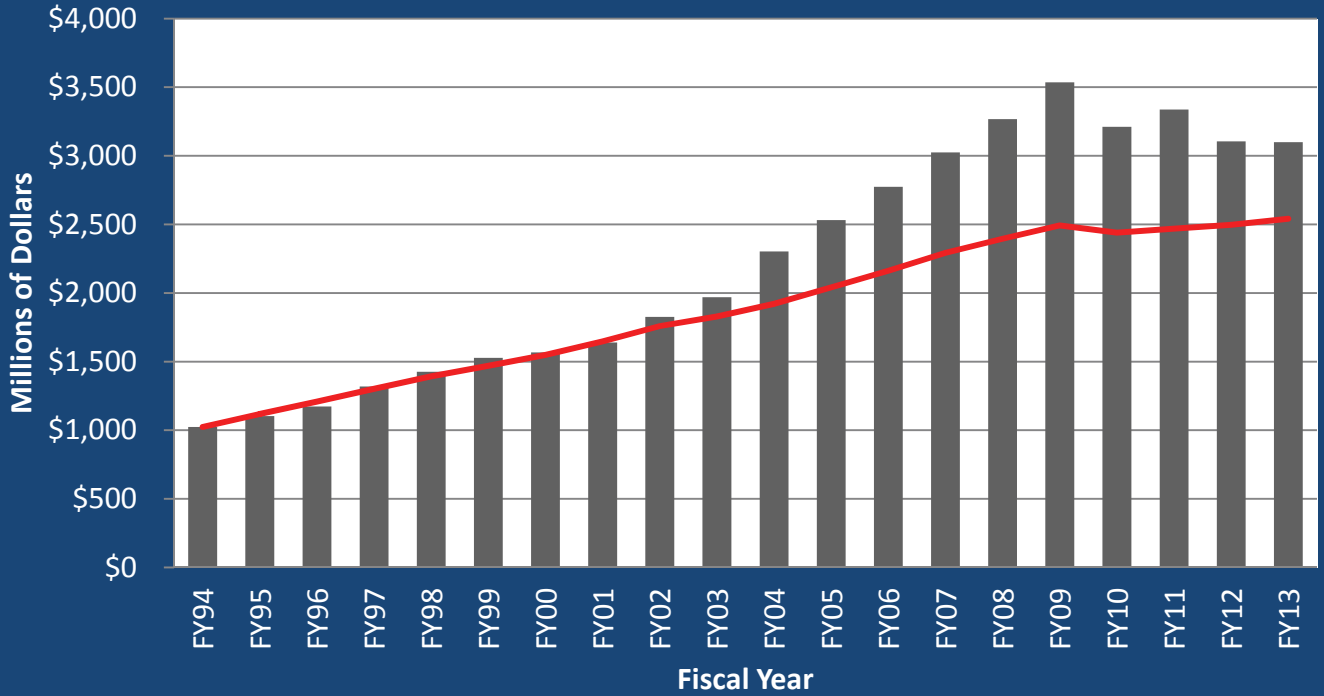
TASC would offer long-term certainty to potential investors and job-creators in Nevada by curtailing the perpetual drive for new taxes.

As such, its enactment should be viewed not only as a centerpiece for fiscal policy, but also as a linchpin for economic development in the Silver State.

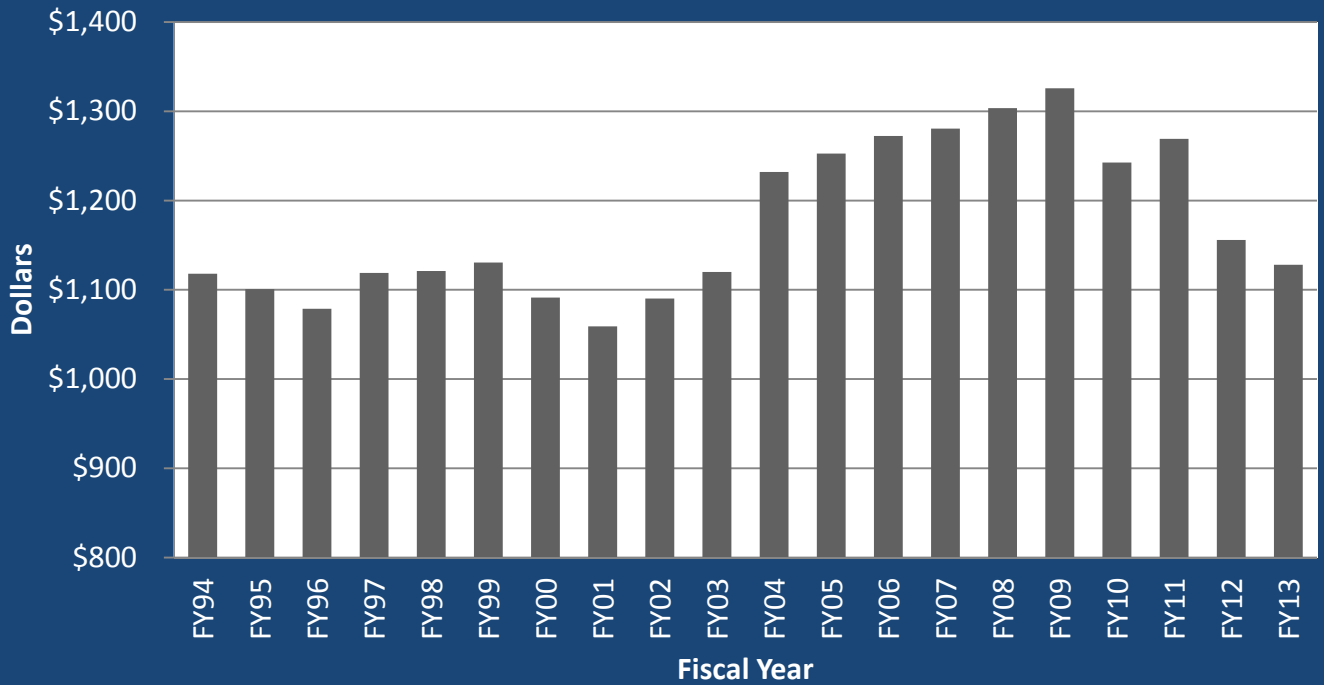
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<sup>1</sup> Geoffrey Lawrence, "Better Budgeting for Better Results," Nevada Policy Research Institute policy study, 2011.

## GF Appropriations vs. TASC (indexed to FY93)



## Inflation-adjusted, per capita GF appropriations, FY93 - FY13 (FY12 dollars)



Source: Nevada Legislature, Legislative Counsel Bureau, Fiscal Division, Appropriations Reports.

# Structural Reform: Charter Agencies

Nevada's state government, like those of most other states, has over time turned into a collection of rigid bureaucracies conditioned to emphasize strict adherence to legislatively prescribed processes, rather than achieving quantifiable results.

The new performance-based budgeting process, now required as a result of 2011 legislation, will finally begin to change this culture. This new accountability, however, will be meaningless if agency directors do not gain the flexibility needed to determine the best way to accomplish the Legislature's objectives.

Lawmakers should recognize that those with the greatest knowledge and insight into how public services can most effectively be delivered are often the employees of the state agencies. The top-down approach to governance that lawmakers have historically imposed fails to take advantage of the state's most valuable asset — the specialized knowledge of its employees.

The task of lawmakers should be restricted to setting broad policy goals, while specific decisions over the means for achieving those goals should be left to the agencies themselves.

## Key Points

**Extend school principals' "empowerment" model to agency directors.** In Iowa, lawmakers looking to increase the cost-effectiveness of government experimented by highlighting broad policy objectives and allowing agency directors to determine the best means of achieving those objectives.

To ensure accountability, annual contracts were signed by agency directors, specifying the performance metrics they would be responsible for meeting at the risk of dismissal. They further agreed to reduced general fund allocations.

In exchange, directors gained the freedom to hire and fire employees, upgrade their agencies' technology infrastructure, purchase equipment and outsource certain agency functions as they saw fit — without going through the state's central purchasing or personnel departments.

Further, agencies that met their goals, below budget, retained half the savings with the remainder reverting to the state's general fund. Agency directors could use these savings to reward employees with bonuses or to purchase efficiency-enhancing capital equipment.

The results have been phenomenal. Even as Iowans saved millions of dollars, they saw remarkable improvements in the quality of public services. Iowa's "charter agency" approach has since been recognized with an Innovations in American Government Award from Harvard University's Kennedy School of Government.<sup>1</sup>

## Recommendations

**Clarify the goals and metrics.** Nevada's new performance-based budgeting approach will place agency directors before lawmakers, reporting on the progress made toward specific objectives. It will be up to lawmakers to clearly outline the policy objectives they most highly value and to identify appropriate metrics for evaluating progress toward those goals.

**Create a "charter agency" framework and allow agency directors to opt in.** The charter agency framework can be modeled after the 2003 enabling legislation from Iowa, SF 453 and HF 837. Agency directors who opt in should be signed to performance contracts that outline their responsibilities for meeting legislatively defined goals. These contracts should reward each increase in agency excellence with more and more agency discretion.

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<sup>1</sup> Harvard University, John F. Kennedy School of Government, "Innovation in State Government: Iowa Charter Agencies," 2005.



# Charter agency successes in Iowa

## Department of Natural Resources

- Reduced turnaround time for air-quality construction permits from 62 days to six days and eliminated a backlog of 600 applications in six months.
- Reduced turnaround time for wastewater construction permits from 28 months to 4.5 months.
- Reduced turnaround time for landfill permits from 187 days to 30 days.
- Reduced time for processing corrective-action decisions on leaking underground storage tanks from 1,124 days to 90 days.
- Accomplished all reductions without compromising environmental standards or quality.

## Department of Corrections

- Reduced the probation failure rate by 17 percent.
- Increased the number of female inmates receiving meaningful work experience by 50 percent while reducing operating costs by \$700,000 per year.
- Increased the number of parole recommendations by 5 percent in one year.

## Department of Revenue

- Raised the rate of income-tax returns filed electronically from 55 percent to 67 percent.
- Increased the number of personal income-tax filings completed within 45 days from 75 percent to 94 percent.

## Department of Human Services

- Reduced the average child-welfare stay in shelter care by 10 days.
- Increased the number of children with health care coverage by 12 percent in FY05 alone.

## Iowa Veterans Home

- Reduced the number of residents experiencing moderate to severe pain by 50 percent.
- Reduced admission waiting times by increasing the rate of admissions processed within 30 days from 69 percent in FY04 to 90 percent in FY05.

## Alcoholic Beverages Division

- Increased general fund revenue by \$9.7 million in FY04 and \$11.6 million in FY05.

**Source:** Jim Chrisinger, Team Leader for Accountability and Results at the Iowa Department of Management, Speech to Manhattan Institute, March 16, 2006.

# Structural Reform: Auditing

Entrepreneurs in the private sector often hire consultants to advise them on how best to streamline operations and deliver goods to market as efficiently as possible.

Public-sector entrepreneurs who direct charter agencies<sup>1</sup> could benefit from similar advice. The State of Nevada can ensure such valuable support for its new charter agency directors by establishing a new, independent, state auditor position with the authority and funding to conduct performance audits.

## Key Points

**Auditors should always remain free of political influence.** Currently, the only state auditing offices in Nevada serve at the pleasure of incumbent politicians. The Audit Division of the Legislative Counsel Bureau is directly subordinate to legislative leadership, while the Department of Administration's Division of Internal Audits is ultimately subordinate to the governor.

This subordination compromises auditors' ability to choose which government agencies or functions should be reviewed as well as the integrity of their findings — which become subject to potential suppression by interested politicians. For this reason, state audit functions should be consolidated into a single, independent state auditor's office.

**Performance audits are different from financial audits.** Financial audits merely review and reconcile accounting statements and practices without evaluating the relative effectiveness of each spending item. Performance audits go a step further by identifying the organizational structures and spending practices that would achieve optimal results.

**Performance audits can identify substantial cost savings while simultaneously improving performance.** In 2005, citizens in the State of Washington expanded the powers of that state's independent auditor to conduct performance audits for all state and local governments. To date, the office has conducted 30 performance audits and has conducted reviews of more than 80 state and local governments, programs and services.

These performance audits and reviews have identified nearly \$1 billion in potential five-year savings and increased revenue. What's more, the auditor's advice has been accepted with enthusiasm, as 86 percent of recommendations have been fully or partially implemented.<sup>2</sup>

**Performance audits are a natural complement to charter agencies.** While a performance audit can be valuable to any organization, the organizational structure of charter agencies especially aligns the incentives facing agency directors with those of lawmakers and taxpayers. When agency directors and their employees see a direct financial benefit — and not a loss — as the result of increased cost-effectiveness, they have every motivation to actively solicit and aggressively implement the recommendations of performance auditors.

## Recommendations

**Establish an independent state auditor's office.** The position of an elected, independent state auditor should be established under Nevada law, free of manipulation by incumbent politicians. The state auditor should be free to select any state or local government or program for review. Existing auditors' offices in the legislative and executive branches should be consolidated with the office of the state auditor.

**Endow the state auditor with the funding and authority to conduct performance audits.** The 2005 enabling law for performance auditing in the State of Washington, Initiative 900,<sup>3</sup> should serve as a model for instituting performance audits in Nevada.

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<sup>2</sup> Washington State Auditor's Office, "About Performance Audit," 2011.

<sup>3</sup> Sam Reed, Secretary of State, State of Washington, Initiative 900, 2005.

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<sup>1</sup> See "Structural Reform: Charter Agencies," page 6.

## Performance Audits in Washington

Name of Audit	Audit's Findings
Department of Transportation — Congestion Management	Provided recommendations for reducing road congestion 20 percent through low-cost measures; <b>Economic impact: \$3 billion</b>
Collection of State Debt at Six State Agencies	<b>Uncollected debt: \$319.4 million</b> within four agencies
Port of Seattle Construction Management	<b>Unnecessary spending: \$97.2 million</b> due to inadequate oversight
King County Solid Waste and Wastewater Treatment Utility Operations	<b>Potential savings: \$78.8 million to \$82.4 million;</b> <b>Additional Revenue: \$4.8 million to \$6.8 million</b>
Opportunities for the State to Help School Districts Minimize the Costs and Interest Paid on Bond Debt	<b>Cost Avoidance: \$44.6 million to \$79.4 million</b> by following best practices
Administrative and Support Services at the 10 largest K-12 School Districts	<b>Unnecessary costs: \$54 million</b> within eight school districts
Department of Transportation — Washington State Ferries	<b>Potential savings: \$50.2 million</b> through better management practices
Department of Transportation — Highway Maintenance and Construction Management	<b>Cost avoidance: \$42 million</b> by improving inventory and supply management
Educational Service Districts	Provided recommendations for better coordinating services and reducing administrative costs; <b>Cost avoidance: \$25.3 million</b>
Seattle Public Utility Operations	<b>Potential savings: \$17.6 million to \$24.4 million</b> by restructuring operations
Department of Transportation — Administration & Overhead	<b>Cost avoidance: \$18.1 million</b> by centralizing functions and avoiding redundancy
Three Public Hospital Districts	<b>Potential savings: \$8.4 million</b> through organizational efficiencies
Sound Transit's Link Light Rail	<b>Unnecessary spending: \$5.1 million</b> due to poor construction management
Department of General Administration Motor Pool	<b>Cost avoidance: \$2.3 million</b> by changing purchasing methods and reassigning underused vehicles
Department of Commerce User Fees	<b>Could reduce general fund spending: \$2.2 million to \$2.4 million</b> if fees were charged for four programs
King County Rural Library District Construction Management Practices	<b>One-time savings: \$715,000 to \$1.3 million;</b> <b>Potential ongoing savings: \$1.1 million</b> subject to price increases and labor disputes
Use of Impact Fees in Federal Way, Olympia, Maple Valley, Redmond and Vancouver	<b>One-time savings: \$1.18 million to \$1.34 million</b> by more effectively calculating impact fees
Seattle Public Schools Construction Management	<b>Cost avoidance: \$1.2 million</b> by implementing best practices
Travel Practices at 13 School Districts	<b>Cost avoidance: \$1.1 million</b> by implementing best practices
Department of Fish and Wildlife Vehicle Use	<b>Net cost avoidance: \$1 million</b> by improving fleet management practices

Source: Washington State Auditor's Office.

# Competition and Performance-based Budgeting

Performance-based budgeting is an approach to budgeting that ranks expenditures in order of their priority — increasing governmental accountability for the efficient use of tax dollars.

Under this approach, policymakers:

- 1) outline their broad policy goals, in order of priority,
- 2) define the performance metrics that will be used to measure progress toward those goals, and
- 3) direct public monies specifically toward the accomplishment of those top goals.

In 2011, Gov. Brian Sandoval submitted the Silver State's first performance-based Executive Budget document.<sup>1</sup> Later that year, Nevada lawmakers passed a bill that institutionalized the performance-based approach into state law.<sup>2</sup>

However, the legislation passed in 2011 fails to envision the performance-based approach in its highest form, which entails a competitive bidding process.

## Key Points

**Prioritize the results, not the intentions.** A performance-based budgeting process cannot succeed unless policymakers first establish their broad policy goals. Policymakers should be discriminating with the use of tax dollars, recognizing that the *results* of state programs — and not just policymaker intentions — are what matter. Not every spending program will produce, or has produced, a result that taxpayers value.

**There is no entitlement to public money.** Bureaucrats approaching lawmakers with funding requests often do so with the expectation that just because a program has existed in the past, it should continue to receive funding in the future — regardless of its results.

The burden of proof should be on the agency directors to demonstrate that each program operating within an

agency reflects lawmakers' broad policy goals and is a worthwhile use of tax dollars. In effect, agency directors should "sell" their product to lawmakers, who, in turn, should act as taxpayers' vigilant stewards.

**Government monopoly is not the only way to provide public services.** If lawmakers are convinced that a particular result merits the use of tax dollars, they should then "shop" for the most cost-effective supplier of that result. That supplier may not always be an existing state office.

Once lawmakers have decided on a list of worthwhile programs, they should issue a request for proposals to administer those programs. Any state agency or local government should be free to bid to administer a program — as should any potential private-sector or non-profit competitor. Lawmakers can then select from among the most cost-effective bids.

**Competition spurs innovation.** When the State of Washington pioneered the performance-based budgeting process in 2003, its policymakers realized significant cost savings through submitting the delivery of public services to a competitive process. Facing competition, state agencies reinvented themselves to become more efficient — partnering with other agencies to streamline operations and avoid duplication.

As a result, Washington taxpayers were able to save more than \$2 billion over just the 2003-05 budget cycle, while also receiving far greater value from their state government.<sup>3</sup>

## Recommendations

**Incorporate a competitive bidding process into the performance-based budgeting method.** Nevada taxpayers deserve the highest value possible for their tax dollars. Competitive bidding is crucial to that effort.

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<sup>1</sup> State of Nevada, Department of Administration, Division of Budget and Planning, "2011-2013 Executive Budget: Priorities and Performance Budget."

<sup>2</sup> Nevada Legislature, 76<sup>th</sup> Session, Assembly Bill 248.

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<sup>3</sup> State of Washington, Office of Financial Management, "Priorities of Government" website, accessed Oct. 2011; see also, David Osborne, "The Next California Budget: Buying Results Citizens Want at a Price They Are Willing to Pay," Reason Foundation, 2010.

## Washington lawmakers' statements of prioritized policy objectives

1. Washingtonians value world-class student achievement in early education, elementary, middle and high schools and postsecondary institutions.
2. We must improve the health of Washingtonians and support and keep safe our children and adults who are unable to care for themselves.
3. Washington must promote economic development in a growing competitive environment.
4. Efficient state government services are important to the people of Washington state.
5. It is our responsibility to provide for the public safety of people and property in Washington state.
6. Protect natural resources, cultural and recreational opportunities.

## Washington's 2009-2011 Purchase Plan for Student Achievement (Sample Items)

Priority	Rank	Agency Name	Activity	Strategy	Current/ New
High		Supt of Public Instruction	Bilingual Education	Give students individual attention	Current
High		Supt of Public Instruction	General Apportionment	Provide general education support	Current
High		Supt of Public Instruction	Learning Assistance	Give students individual attention	Current
High		Supt of Public Instruction	Special Education	Give students individual attention	Current
Low	18	Supt of Public Instruction	General Apportionment	Provide general education support	K-4 enhancement
Low	19	Supt of Public Instruction	General Apportionment	Provide general education support	All-day K
Low	20	Department of Early Learning	Early Learning Programs	Support early education and learning	Current
Low	21	Supt of Public Instruction	General Apportionment	Provide general education support	Skills centers
Low	22	Supt of Public Instruction	Student Health	Provide general education support	Current
Low	23	Supt of Public Instruction	Professional Development	Strategic and individualized preparation for education staff	Current
Buy Next	54	Supt of Public Instruction	Local Effort Assistance	Provide general education support	Current
Buy Next	55	Supt of Public Instruction	Student Achievement Fund	Provide general education support	Current
Buy Next	56	Supt of Public Instruction	Curriculum and Instruction - Programs	Align curriculum, Instruction and Assessment	Math and Science Standards
Buy Next	57	Supt of Public Instruction	Highly Capable Student Education	Support parent and community connections	Current
Do Not Buy	73	Supt of Public Instruction	Vocational Student Leadership	Support parent and community connections	Current
Do Not Buy	74	Department of Early Learning	Child Care and Early Learning Quality Initiatives		QRIS Pilot Expansion
Do Not Buy	75	State School for the Blind	Off-Campus Services to Students/Districts	Support parent and community connections	Teacher Recruitment

Source: State of Washington, Office of Financial Management.

# Total Tax Burden

Much confusion exists concerning the actual tax burden facing Silver State residents. In popular narrative, Nevada is often referred to as a low-tax, business-friendly state. However, the state tax burden, in isolation, is not what taxpayers find most relevant: It is the *total* tax burden — including the taxes assessed at federal, state and local levels.

It is this total tax burden that impacts human behavior — distorting investment and employment patterns and shifting consumer demand toward tax-exempt purchases. Differences in the tax burden across city, county, state and even national boundaries prompt both businesses and individuals to relocate with increasing frequency.

In fact, there has been a sizable population shift within the United States over the past decade as individuals have moved from high-tax states to low-tax states. Over this time, nearly one person per minute has left the 10 highest taxing states for states with lower tax burdens.<sup>1</sup>

While attention in Nevada is often drawn to a relatively low *state*-level tax burden, the uncommonly high *local* tax burden faced by Silver State residents offsets this supposed advantage and undermines state competitiveness.

## Key Facts

**Nevadans face the ninth highest local-government tax burden in the country.** Tax collection data from the U.S. Census Bureau shows that Nevada's relatively low state tax burden is offset by a relatively high local tax burden.<sup>2</sup>

**Total per-capita government revenues in Nevada are near the national median.** When both state and local government revenues are considered together, Nevada is neither a particularly low-tax state, nor a particularly high-tax state. Silver State governments collected \$5,742 for every man, woman and child in the state in 2009 — good for 29<sup>th</sup> highest in the nation.<sup>3</sup>

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<sup>1</sup> Richard Vedder, "High Tax Burdens Lead to Population Losses," *Inside ALEC*, April 2010.

<sup>2</sup> U.S. Department of Commerce, U.S. Census Bureau, State and Local Government Finance.

<sup>3</sup> *Ibid.*

**Nevada's tax burden is higher than four of five contiguous states.** Among Nevada's neighbors, only California levies a higher tax burden upon its people. Oregon, Utah, Idaho and Arizona governments, respectively, collect \$240, \$585, \$964 and \$1,165 less per capita than do Nevada governments.

What's more, each of these states boasts higher student achievement<sup>4</sup> and lower crime rates than Nevada.<sup>5</sup> Nevada's relatively high regional tax burden and subpar results render the state a less attractive destination for investment than most of its neighbors.

**A leading reason for high costs at the local-government level is the extravagance of employee pay.** Local-government employee wages in Nevada in 2009 were 31 percent higher than the national average.<sup>6</sup> If local-government workers in Nevada earned merely the national median wage for local-government workers, Silver State taxpayers would realize a two-year savings approaching \$2.3 billion.<sup>7</sup>

## Recommendations

**Control local-government spending.** Through constitutional provision or statute, limit the growth in local-government spending to the rate of population growth plus inflation. Also, reform or repeal NRS 288, Nevada's collective bargaining statute, to eliminate upward pressure on local-government spending from special-interest groups.

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<sup>4</sup> U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

<sup>5</sup> U.S. Department of Commerce, U.S. Census Bureau, The 2012 Statistical Abstract.

<sup>6</sup> Based on data from U.S. Census Bureau: Government Employment and Payroll.

<sup>7</sup> Geoffrey Lawrence, "Better Budgeting for Better Results," Nevada Policy Research Institute policy study, 2011.

## State and local government revenue per capita, from own sources, 2009

State	State revenue, per capita	Rank	State	Local revenue, per capita	Rank	State	State + local revenue, per capita	Rank
AK	\$13,086	1	DC	\$10,477	1	AK	\$16,347	1
WY	\$6,814	2	NY	\$4,890	2	WY	\$11,557	2
DE	\$5,790	3	WY	\$4,743	3	DC	\$10,477	3
ND	\$5,509	4	NJ	\$3,473	4	NY	\$9,284	4
VT	\$5,475	5	FL	\$3,450	5	ND	\$7,727	5
HI	\$5,357	6	CA	\$3,385	6	NJ	\$7,693	6
MA	\$4,465	7	CO	\$3,309	7	CT	\$7,357	7
CT	\$4,423	8	AK	\$3,261	8	DE	\$7,296	8
NY	\$4,394	9	<b>NV</b>	<b>\$3,124</b>	<b>9</b>	HI	\$7,118	9
NJ	\$4,220	10	IL	\$2,996	10	MA	\$6,993	10
NM	\$4,188	11	NE	\$2,943	11	CA	\$6,788	11
WV	\$4,032	12	CT	\$2,934	12	MN	\$6,598	12
MN	\$3,995	13	WA	\$2,856	13	VT	\$6,547	13
RI	\$3,900	14	KS	\$2,783	14	RI	\$6,431	14
ME	\$3,825	15	TX	\$2,748	15	MD	\$6,324	15
MT	\$3,707	16	IA	\$2,724	16	WA	\$6,261	16
MD	\$3,667	17	MD	\$2,657	17	KS	\$6,246	17
WI	\$3,658	18	LA	\$2,655	18	IA	\$6,240	18
AR	\$3,551	19	OH	\$2,620	19	WI	\$6,126	19
IA	\$3,516	20	NH	\$2,608	20	NE	\$6,078	20
KS	\$3,463	21	MN	\$2,603	21	CO	\$6,041	21
VA	\$3,421	22	VA	\$2,583	22	VA	\$6,004	22
WA	\$3,405	23	GA	\$2,574	23	ME	\$5,971	23
CA	\$3,403	24	RI	\$2,531	24	IL	\$5,966	24
PA	\$3,365	25	MA	\$2,528	25	LA	\$5,925	25
MI	\$3,321	26	PA	\$2,500	26	FL	\$5,906	26
OK	\$3,292	27	IN	\$2,468	27	PA	\$5,865	27
LA	\$3,270	28	WI	\$2,468	28	NM	\$5,858	28
KT	\$3,242	29	SC	\$2,409	29	<b>NV</b>	<b>\$5,742</b>	<b>29</b>
UT	\$3,226	30	OR	\$2,395	30	MT	\$5,683	30
IN	\$3,201	31	MO	\$2,341	31	IN	\$5,669	31
NE	\$3,135	32	AZ	\$2,281	32	OH	\$5,667	32
OR	\$3,107	33	MI	\$2,254	33	MI	\$5,575	33
OH	\$3,047	34	NC	\$2,244	34	WV	\$5,505	34
IL	\$2,970	35	SD	\$2,221	35	OR	\$5,502	35
SC	\$2,946	36	ND	\$2,218	36	NH	\$5,453	36
MS	\$2,917	37	TN	\$2,193	37	SC	\$5,355	37
NC	\$2,914	38	ME	\$2,146	38	OK	\$5,229	38
NH	\$2,845	39	AL	\$2,137	39	TX	\$5,196	39
AL	\$2,841	40	MS	\$2,078	40	NC	\$5,158	40
ID	\$2,754	41	ID	\$2,024	41	UT	\$5,157	41
CO	\$2,732	42	MT	\$1,976	42	MS	\$4,995	42
SD	\$2,712	43	OK	\$1,937	43	AL	\$4,978	43
<b>NV</b>	<b>\$2,618</b>	<b>44</b>	UT	\$1,931	44	SD	\$4,933	44
MO	\$2,477	45	HI	\$1,761	45	KT	\$4,909	45
FL	\$2,456	46	NM	\$1,670	46	MO	\$4,818	46
TX	\$2,448	47	KT	\$1,667	47	ID	\$4,778	47
TN	\$2,406	48	DE	\$1,506	48	GA	\$4,765	48
AZ	\$2,296	49	WV	\$1,473	49	AR	\$4,751	49
GA	\$2,191	50	AR	\$1,200	50	TN	\$4,599	50
DC	\$0	51	VT	\$1,072	51	AZ	\$4,577	51

Source: U.S. Census Bureau, State and Local Government Finance.

# Tax Reform

For decades, Nevada lawmakers have discussed the possibility of tax “reform.” Indeed, they have commissioned a growing library of studies to examine tax-reform possibilities only to later ignore the recommendations of those studies.

It should be noted that Nevada’s most prominent fiscal challenges have occurred on the spending side of the ledger — not the revenue side. After all, per-capita state and local government revenues in Nevada outpace those in four of Nevada’s five immediate neighbors.<sup>1</sup> Given this reality, there is little reason to believe that Silver State government suffers from insufficient revenue.

Nevertheless, NPRI recognizes that no tax structure is perfect and that Nevada’s taxing system could be improved, on a revenue-neutral basis, by designing reform around the considerations outlined here.

## Key Points

**Tax reform should minimize revenue volatility.** Volatility in tax revenues exacerbates the tax-and-spend cycle. During periods of economic growth, upward volatility showers legislatures with unusually high revenues. Lawmakers have historically committed these revenues to expand government programs and liabilities, even though such expansion regularly proves unsustainable when economic recession arrives.

When recessions do occur, downward volatility enlarges the deficit between revenues and the inflated spending levels previously committed to by lawmakers during the period of economic growth. Lawmakers have historically responded to this deficit by calling for new or higher taxes — only to once again over-commit tax dollars as soon as economic growth returns.

**The tax structure should be designed to minimize distortions in economic behavior.** Taxes that penalize specific behaviors or consumption patterns discourage individuals from engaging in those behaviors. This causes a destruction of jobs and wealth as individuals are pushed away from welfare-maximizing behaviors and toward second-best alternatives. For instance, taxes on savings and investments, such as capital gains taxes,

discourage individuals from saving and encourage immediate consumption.

### **Compliance costs should be kept to a minimum.**

Complicated taxing mechanisms, such as the federal income tax, carry additional costs as filers must devote thousands of man-hours to understand the tax code and ensure compliance. The Tax Foundation estimates, for example, that compliance costs associated with the federal income tax will amount to \$377 billion in 2013 — more than one-fifth of the total revenue collected from the tax!<sup>2</sup>

Nevada lawmakers should avoid tax instruments that use complex arrays of deductions and stratified income brackets.

**Reform should protect tax equity.** Taxpayers in similar circumstances should face similar tax burdens (horizontal equity). Taxpayers at different points along the income scale should also face a proportionally similar tax burden to ensure economic efficiency (vertical equity). Tax structures that are either overly regressive or overly progressive can obstruct economic growth.

## Recommendations

**If lawmakers are to pursue tax reform, it should be on a revenue-neutral basis.** As this publication makes clear, current tax revenues in the Silver State are already more than adequate to provide high-quality government services.

To the extent Silver State governments have failed to deliver high-quality services, the failure has resulted from poor policy design or implementation. The recommendations in this volume will correct for this.

**All four major objectives of tax reform can be accomplished through a revenue-neutral expansion of the sales tax base.** NPRI has laid out a plan for expanding the sales-tax base with a consequent lowering of the statewide sales tax rate to 3.5 percent and eliminating other taxes, including the Modified Business Tax.<sup>3</sup>

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<sup>2</sup> Tax Foundation, Tax Data, Total Federal Income Tax Compliance Costs 1990-2015.

<sup>3</sup> Geoffrey Lawrence, “One Sound State, Once Again,” Nevada Policy Research Institute policy study, 2010.

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<sup>1</sup> See “Total Tax Burden,” page 12.



## Volatility levels of major tax instruments in NV, FY99-FY09

Tax instrument	Short-run elasticity with regard to NV personal income	Short-run elasticity with regard to U.S. personal income
Taxable Gaming Revenues	0.595	1.949
Sales & Use Taxes	1.031	2.211
Modified Business Tax	1.731	2.270
Insurance Premium Tax	1.193*	1.538*
Real Property Transfer Tax	-1.070**	-1.103
Liquor Tax	0.639	1.706
Cigarette Tax	0.305	1.204
Live Entertainment Tax	1.409	1.883
Governmental Services Tax	2.146*	1.297*
<i>Corporate Income Tax (National Average)***</i>	-	2.61

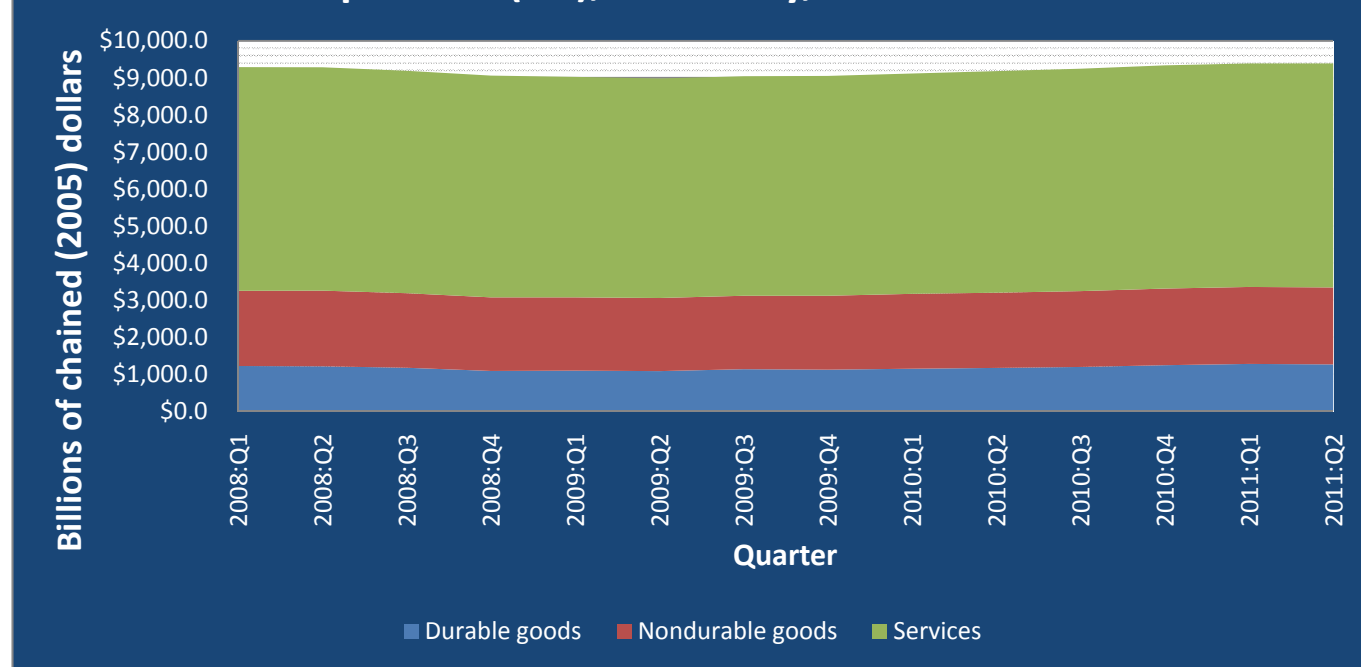
\*Less statistical probability; indicating that variability is likely not associated with the business cycle.

\*\*Declining sales in the real estate market preceded the decline in the overall economy, creating the statistical illusion that revenues from this tax instrument are counter-cyclical.

\*\*\*Volatility values for state corporate income taxes were generated by analysts at the Federal Reserve Bank of Kansas City.

**Source:** Geoffrey Lawrence, "One Sound State, Once Again," NPRI policy study, 2010.

## Personal consumption expenditures by major type of product (US), Quarterly, 2008-2011



**Source:** U.S. Department of Commerce, Bureau of Economic Analysis.

# Business Margin Tax

In 2011, some lawmakers proposed a new tax instrument to be levied against Nevada businesses. Modeled after a Texas tax instrument of the same name, the proposed business margin tax would be assessed against firms with total taxable year revenue exceeding \$1,000,000. For these firms, the proposed tax rate of 0.8 percent would be assessed against the least of:

- A) 70 percent of total revenue,
- B) Total revenue minus wages, or
- C) Total revenue minus the cost of goods sold

Proponents said the margin tax was intended to eventually replace Nevada's tax on private-sector payroll, the Modified Business Tax. However, while repeal of the MBT should be considered, the margin tax proposal is likely an inferior alternative.

## Key Points

**The business margin tax is a hybrid, combining negative features of both corporate-income and gross-receipts taxes.** According to the Tax Foundation, "the Texas 'margin' tax is really a badly designed corporate income tax."<sup>1</sup> However, the margin tax would create a tax liability even for businesses that operate at a financial loss, meaning the tax also possesses the negative attributes of gross receipts taxation.

**Corporate income taxes exacerbate revenue volatility.** Numerous analyses, including those of the Tax Foundation<sup>2</sup> and NPRI,<sup>3</sup> have shown that state corporate income tax revenues are extremely volatile and would be far more volatile than any tax instrument currently employed in Nevada. This volatility renders financial planning more difficult, particularly in states like Nevada that craft biennial budgets.

**Gross-receipts taxes are "distortive and destructive."** The Tax Foundation calls gross-receipts taxation "distortive and destructive," because such taxes "pyramid," as they are assessed at every level of production. Thus, highly complex goods that require multiple stages of production are repeatedly subjected

to the tax. This results in a higher effective tax rate on more complex goods, which distorts economic behavior and would retard Nevada's economic diversification. As the Tax Foundation says, "Gross receipts taxes do not belong in any program of tax reform."<sup>4</sup>

**A margin tax imposes high compliance costs.** Margin taxes are extremely complicated — a complication compounded by the vague legal definitions of terms such as "cost of goods sold." Consequently, high compliance costs accompany margin taxes, imposing disproportionate burdens on small businesses, which lack the accounting expertise to navigate the tax.

**The Texas margin tax is rife with problems.** In 2009, Texas lawmakers heard over 100 bills to modify or repeal that state's margin tax — at the time only three years old.<sup>5</sup> The tax has consistently underperformed revenue projections and is widely perceived as unfair to small or struggling businesses.

## Recommendations

**Reject any proposal for a Texas-style margin tax.** Tax scholar John L. Mikesell has appropriately referred to the margin tax as a "badly designed business profits tax ... combin[ing] all the problems of minimum income taxation in general — excess compliance and administrative cost, penalization of the unsuccessful business, undesirable incentive impacts, doubtful equity basis — with those of taxation according to gross receipts."<sup>6</sup>

The Tax Foundation also declares, "there is no sensible case for gross receipts taxation, or modified gross receipts taxes such as a Texas-style margin tax."<sup>7</sup>

Indeed, there is broad consensus among tax economists that gross receipts or margin taxes are more destructive than alternative tax instruments yielding the same amount of revenue. As such, Nevada lawmakers should never consider the imposition of a margin tax in the Silver State.

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<sup>4</sup> Henchman, note 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> John L. Mikesell, "Gross Receipts Taxes in State Government Finances," Tax Foundation & Council on State Taxation Background Paper No. 53, 2007.

<sup>7</sup> Henchman, note 1.

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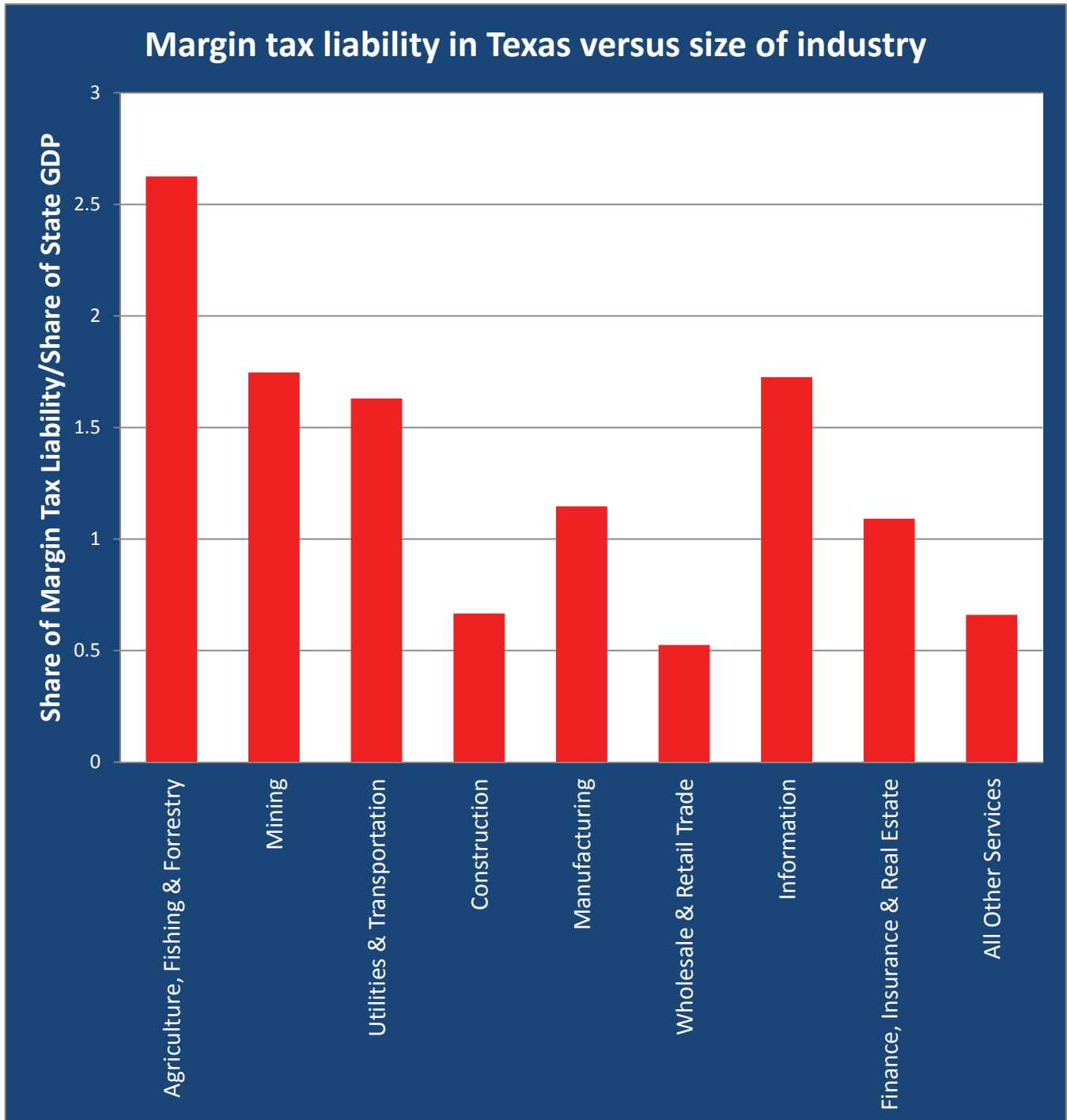
<sup>1</sup> Joseph Henchman, "Nevada May Consider New Business Taxes," Tax Foundation Fiscal Fact No. 270, 2011.

<sup>2</sup> *Ibid.*

<sup>3</sup> Geoffrey Lawrence, "One Sound State, Once Again," Nevada Policy Research Institute policy study, 2010.

**Texas margin tax creates inequitable tax liability.** The margin tax allows industries that are either heavily labor-intensive or heavily capital-intensive to declare higher exemptions. Industries that employ similar levels of labor as capital are unable to declare higher exemptions and face a larger tax liability. As a result,

some industries face a tax liability disproportionate to their share of the state economy. The share of margin tax revenues paid by Texas' agriculture industry, for instance, is 2.6 times greater than its share of economic output



Source: Texas Legislature, 79<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session, Legislative Budget Board, House Bill 3, Tax/Fee Equity Note, 2006.

# State Lottery

From session to session, Nevada lawmakers have repeatedly considered the creation of a state-run lottery to provide additional state revenue. However, in so doing, lawmakers have deliberately ignored the advice of their own consultants.

In 1988, Nevada lawmakers commissioned a tax study from the Urban Institute and Price Waterhouse.<sup>1</sup> This study is still regarded as the most significant and comprehensive examination of Nevada’s fiscal structure.

The study contains an entire chapter that examines whether Nevada should adopt a state-run lottery and concludes that the state should not do so for several reasons.

## Key Points

### **State-run lotteries do not generate significant revenues.**

Lottery revenues account for less than three percent of total tax revenues, on average, in states that administer these games.<sup>2</sup>

### **State-run lotteries are not stable revenue sources.**

Nationwide, state lottery revenues fluctuate dramatically from year to year — for many reasons. Data shows that lottery revenues have increased by as much as 250 percent year-over-year, and have decreased by as much as 50 percent year-over-year. This high degree of volatility renders budgetary planning based on these revenues extremely difficult.<sup>3</sup>

### **State-run lotteries are a highly regressive form of**

**taxation.** Studies indicate that individuals at the bottom of the income scale spend a far higher percentage of their income on state lottery purchases, making state lotteries a highly regressive implicit tax. In fact, as Price Waterhouse says, “The information indicates that as a tax, lotteries are among the most regressive.”<sup>4</sup>

**In Nevada, a state-run lottery would compete directly with the private sector.** Nevada is most unique among the states, because of the extent that private-sector gaming is a legal enterprise. A state-run lottery would compete directly with private forms of lottery such as keno. Moreover, the state already draws revenue from these private-sector games through its array of gaming taxes.

## Recommendations

**Do not create a state-run lottery.** As Price Waterhouse — the Nevada Legislature’s own tax consultant — has concluded, “A state-run lottery fails every test of a ‘good’ tax policy. In Nevada, gaming should be left to the private sector.”<sup>5</sup>

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<sup>1</sup> Ed. Robert D. Ebel, *A Fiscal Agenda for Nevada*, The Urban Institute and Price Waterhouse, Prepared for the Nevada Legislature, University of Nevada Press, Reno, 1990.

<sup>2</sup> *Ibid*, p. 418.

<sup>3</sup> *Ibid*, p. 420.

<sup>4</sup> *Ibid*, p. 422.

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<sup>5</sup> *Ibid*, p. 17.

## State lottery revenues, by state, 2009

State	Income	Prizes	Administration	Net Proceeds
Alabama	---	---	---	---
Alaska	---	---	---	---
Arizona	\$452,014,000	\$282,483,000	\$42,497,000	\$127,034,000
Arkansas	---	---	---	---
California	\$2,747,141,000	\$1,556,121,000	\$175,119,000	\$1,015,901,000
Colorado	\$456,883,000	\$301,506,000	\$37,863,000	\$117,514,000
Connecticut	\$935,532,000	\$604,712,000	\$39,299,000	\$291,521,000
Delaware	\$429,703,000	\$66,797,000	\$48,304,000	\$314,602,000
Florida	\$3,723,641,000	\$2,340,372,000	\$130,414,000	\$1,252,855,000
Georgia	\$3,158,198,000	\$2,148,681,000	\$148,427,000	\$861,090,000
Hawaii	---	---	---	---
Idaho	\$129,227,000	\$84,997,000	\$5,288,000	\$38,942,000
Illinois	\$2,077,166,000	\$1,225,864,000	\$65,096,000	\$786,206,000
Indiana	\$682,157,000	\$453,225,000	\$50,903,000	\$178,029,000
Iowa	\$228,038,000	\$138,425,000	\$30,755,000	\$58,858,000
Kansas	\$211,009,000	\$130,911,000	\$20,559,000	\$59,539,000
Kentucky	\$714,786,000	\$470,437,000	\$38,264,000	\$206,085,000
Louisiana	\$357,467,000	\$193,332,000	\$30,836,000	\$133,299,000
Maine	\$197,147,000	\$131,544,000	\$14,749,000	\$50,854,000
Maryland	\$1,576,186,000	\$1,025,901,000	\$58,717,000	\$491,568,000
Massachusetts	\$4,162,355,000	\$3,217,784,000	\$99,599,000	\$844,972,000
Michigan	\$2,377,437,000	\$1,436,372,000	\$74,816,000	\$866,249,000
Minnesota	\$429,025,000	\$310,376,000	\$23,975,000	\$94,674,000
Mississippi	---	---	---	---
Missouri	\$908,938,000	\$629,277,000	\$34,062,000	\$245,599,000
Montana	\$41,334,000	\$23,080,000	\$8,038,000	\$10,216,000
Nebraska	\$115,577,000	\$71,861,000	\$15,141,000	\$28,575,000
Nevada	---	---	---	---
New Hampshire	\$226,862,000	\$142,050,000	\$16,534,000	\$68,278,000
New Jersey	\$2,363,779,000	\$1,421,294,000	\$71,864,000	\$870,621,000
New Mexico	\$134,593,000	\$79,896,000	\$14,000,000	\$40,697,000
New York	\$6,820,833,000	\$4,003,267,000	\$311,195,000	\$2,506,371,000
North Carolina	\$1,202,654,000	\$741,270,000	\$54,825,000	\$406,559,000
North Dakota	\$20,712,000	\$11,315,000	\$3,705,000	\$5,692,000
Ohio	\$2,267,618,000	\$1,459,048,000	\$122,467,000	\$686,103,000
Oklahoma	\$193,165,000	\$95,923,000	\$13,532,000	\$83,710,000
Oregon	\$887,364,000	\$211,928,000	\$80,106,000	\$595,330,000
Pennsylvania	\$2,864,359,000	\$1,852,499,000	\$74,057,000	\$937,803,000
Rhode Island	\$494,345,000	\$144,857,000	\$9,118,000	\$340,370,000
South Carolina	\$933,851,000	\$633,196,000	\$42,518,000	\$258,137,000
South Dakota	\$148,753,000	\$23,318,000	\$7,075,000	\$118,360,000
Tennessee	\$1,016,357,000	\$705,781,000	\$50,229,000	\$260,347,000
Texas	\$3,532,042,000	\$2,299,752,000	\$192,163,000	\$1,040,127,000
Utah	---	---	---	---
Vermont	\$90,340,000	\$60,737,000	\$8,515,000	\$21,028,000
Virginia	\$1,288,722,000	\$781,022,000	\$71,836,000	\$435,864,000
Washington	\$456,968,000	\$301,280,000	\$42,381,000	\$113,307,000
West Virginia	\$799,938,000	\$119,449,000	\$33,227,000	\$647,262,000
Wisconsin	\$473,414,000	\$279,599,000	\$32,156,000	\$161,659,000
Wyoming	---	---	---	---

**Source:** U.S. Department of Commerce, U.S. Census Bureau, State Government Finances, Income and Apportionment of State-Administered Lottery Funds.

# PERS: Assessing the Liability

Official financial statements from the Nevada Public Employees' Retirement System indicate that, at the close of FY 2010, the system held \$24.7 billion in assets versus \$35.1 billion in liabilities. This ratio would mean that PERS has a funding ratio of 70.5 percent and an unfunded liability of \$10.4 billion.<sup>1</sup>

The actuarial accounting method used by PERS and other public-sector pension programs, however, is at odds with the real-world methods of accounting for risk required for private-sector plans. The PERS method glosses over most of the system's unfunded liability by assuming unreasonable rates of return.

Market-based accounting—which is endorsed by the vast majority of financial economists, is used by financial markets to value liabilities and is required of private-sector pensions — shows that PERS' official liability estimates are dramatically understated. The true value of the system's unfunded liability at the close of FY 2010 was about \$41.0 billion.<sup>2</sup>

## Key Points

### **Actuarial accounting conflates assets and liabilities.**

PERS accounting methods discount the value of expected future liabilities by the system's assumed annual rate of return on investments (8 percent) to calculate the present value of liabilities. Economists, however, agree that liabilities should be calculated independently of assets, which are uncertain over time; liabilities can be calculated with more certainty.

### **PERS does not account for risk in its investment portfolio.**

If retirement benefits promised to government workers in the Silver State are regarded as a zero-risk guarantee, then PERS accounting should backstop these benefits with zero-risk investments, or at least investments that are price-adjusted for risk.

The retirement system's current accounting practices treat high-risk investments the same as low-risk investments. This failure to account for the pricing of risk forces a contingent liability onto taxpayers.

**PERS accounting encourages risky behavior.** Because PERS does not price for risk, its administrators can — on paper — strengthen PERS's financial position simply by investing its resources in increasingly risky assets and assuming higher rates of return. PERS accounting practices allow administrators to incorporate these illusory gains into the balance sheet immediately — independently of whether or not those gains will actually be realized in the marketplace. In reality, therefore, this practice just increases the contingent liability faced by taxpayers.

**PERS's expected rate of return is unrealistic.** PERS assumes that it can receive an 8 percent return on investments every year. However, PERS returns over the past 10 years have averaged only 3.8 percent.

PERS is unlikely to again see the higher return rates earned in decades past. The yield on a 10-year federal Treasury bond—the zero-risk baseline for earnings—has fallen from the 8-plus percentage point range of 20 years ago to around 3 percent today.

Therefore, the PERS-assumed rate of return should be adjusted downward to reflect today's lower yield on zero-risk assets. This will re-incorporate the contingent liability that PERS has pushed off onto taxpayers and reveal the true size of the system's unfunded liability — currently estimated at \$41.0 billion.<sup>3</sup>

## Recommendations

### **Require PERS to incorporate a market-based accounting approach.**

If policymakers and taxpayers want to uphold the promises made to public employees in Nevada, they first need to have a clear understanding of what those promises entail. The current PERS accounting method obscures the magnitude of those commitments.

Federal Reserve Board economists, along with many others, have recently been urging this shift in accounting practices for public pension systems.<sup>4</sup>

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<sup>3</sup> *Ibid.*

<sup>4</sup> See, e.g., Donald Kohn, "Statement at the National Conference on Public Employee Retirement Systems Annual Conference," May 20, 2008; David Wilcox, "Testimony before the Public Interest Committee Forum sponsored by the American Academy of Actuaries," September 4, 2008.

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<sup>1</sup> Nevada PERS, Comprehensive Annual Financial Report, FY 2010.

<sup>2</sup> Andrew Biggs, "Reforming Nevada's Public Employees Pension Plan," NPRI policy study, 2011.

**Summary data for Nevada PERS financing under current valuation practices,  
as of June 30, 2010.**

	<b>Regular</b>	<b>Police/Fire</b>	<b>Total</b>
Employer normal cost	\$712,018,796	\$271,754,563	\$983,773,359
Employee contribution	\$90,295,302	\$16,741,883	\$107,037,185
Total normal cost	\$802,314,098	\$288,496,446	\$1,090,810,544
Unfunded liability	\$7,950,505,956	\$2,401,769,113	\$10,352,275,069
Annual amortization payment	\$387,114,092	\$116,943,334	\$504,057,426
Payroll	\$4,943,566,092	\$968,353,118	\$5,911,919,210
<b>Percent of payroll</b>			
Employer normal cost	14.4%	28.1%	16.6%
Employee contribution	1.8%	1.7%	1.8%
Total normal cost	16.2%	29.8%	18.5%
Unfunded liability	160.8%	248.0%	175.1%
Annual amortization payment	7.8%	12.1%	8.5%
Total employer cost	22.2%	40.1%	25.2%
<b>Source:</b> Nevada PERS CAFR, June 30, 2010.			

**Contributions that would be required for Nevada PERS under market valuation, as of  
June 30, 2010.**

	<b>Regular</b>	<b>Police/Fire</b>	<b>Total</b>
Employer normal cost	\$2,171,657,328	\$828,851,417	\$3,000,508,745
Employee contribution	\$275,400,671	\$51,062,743	\$326,463,414
Total normal cost	\$2,447,057,999	\$879,914,160	\$3,326,972,159
<i>Market assets (approx)</i>	<i>\$16,628,121,287</i>	<i>\$4,278,161,818</i>	<i>\$20,906,283,105</i>
<i>Market liabilities</i>	<i>\$48,709,012,854</i>	<i>\$13,160,388,448</i>	<i>\$61,869,401,302</i>
<i>Unfunded liability</i>	<i>\$32,080,891,566</i>	<i>\$8,882,226,630</i>	<i>\$40,963,118,197</i>
Annual amortization payment	\$2,140,740,929	\$646,696,637	\$2,787,437,566
Payroll	\$4,943,566,092	\$968,353,118	\$5,911,919,210
<b>Percent of payroll</b>			
Employer normal cost	44%	86%	51%
Employee contribution	6%	5%	6%
Total normal cost	49%	91%	56%
Unfunded liability	649%	917%	693%
Annual amortization payment	43%	67%	47%
Total employer cost	87%	152%	98%
<b>Source:</b> Andrew Biggs, "Reforming Nevada's Public Employees Pension Plan," NPRI Policy Study, 2011.			

## PERS: Structure of benefits

When taxpayers' contingent liability for Nevada's Public Employees' Retirement System is accounted for — through a market-based accounting technique — the system's unfunded liability currently approaches \$41 billion.<sup>1</sup>

That amount is nearly seven times the annual payroll of all state and local governments that participate in PERS. Put another way, PERS's unfunded liability is slightly larger than all spending from the state general fund between FY 1986 and FY 2010 — a period of 25 years.

Obviously, an unfunded liability of such size means that Silver State taxpayers face a tremendous challenge in meeting obligations promised to Nevada's current and past public-sector workers. Moreover, given such a burden, Silver State taxpayers cannot allow PERS's unfunded liability to continue growing.

Reversing the growth in unfunded pension liabilities will require a significant restructuring of benefits.

### Key Points

**Defined-benefits (DB) pension plans leave taxpayers vulnerable.** The growing unfunded liability to which Nevada taxpayers are exposed stems from the fact that the pension benefits promised to retirees are certain, while PERS's investment returns are not. When a year's investment returns fall short, PERS increases taxpayers' required annual contributions to make up the difference. Thus, taxpayers — in addition to bearing the risk on their own retirement savings — are forced to bear PERS's investment risks as well.

**Defined-contribution (DC) retirement plans offer taxpayers greater assurance.** DC plans inoculate taxpayers from PERS investment risk. Similar to a private-sector 401(k), in a DC plan taxpayers would contribute a set amount into government workers' personal retirement accounts, and then, government workers would assume their own investment risk — as do most private-sector workers.

**DC plans benefit government workers.** If Nevada shifted to a DC retirement system, government workers would see many important benefits. First, DC plans are both

personal and portable. Under the current, collectivized DB system, workers cannot take their retirement savings with them if they change jobs, resulting in "job lock." Portability of retirement benefits can make public service more attractive to younger workers.

Second, retirement savings in a DC account are a tangible asset that retirees can pass on to their children in case of death. This is not true of a DB plan. In the case of early or untimely death, retirees in a DB program lose their claim to full pension benefits even though they may name a "survivor" to receive partial benefits. In this case, retirees can become net losers, having contributed more money into the collectivized system than they and their survivors will ever receive.

**Shifting to a DC plan can be costly in the short term.** As PERS administrators have noted, an abrupt, ill-planned shift to a DC plan could accelerate the amortization schedule of the unfunded liabilities that Nevada's DB plan has already incurred. Such a shift would require larger taxpayer contributions until PERS collects enough assets to cover its accrued liabilities. Although already destined to incur these costs, taxpayers would have to do so on a shorter timeline.

**A hybrid approach allows such short-term costs to be avoided.** Utah created one such hybrid plan in 2010. It allows workers to participate in either a DB or DC retirement plan but it limits taxpayer contributions in either case to 10 percent of the workers' pay. Because Utah will continue its DB plan on an optional basis, its taxpayers will be able to avoid an accelerated amortization schedule for the DB system's accrued unfunded liability.

### Recommendations

**Restructure pension benefits around a Utah-style hybrid system.** Nevada lawmakers should protect Silver State taxpayers from the open-ended liabilities associated with DB pension plans by adopting pension reform along the lines of Utah's hybrid system. Utah's system was put in place with the enactment of Senate Bill 63 from Utah's 2010 General Legislative Session, which should serve as a model to guide Nevadans.<sup>2</sup>

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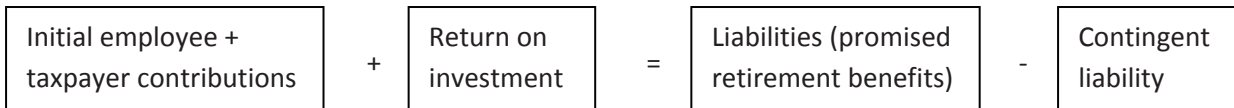
<sup>1</sup> See "PERS: Assessing the Liability," page 20.

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<sup>2</sup> Utah Legislature, 2010 General Session, Senate Bill 63, Third Substitute.



## Current structure of NV PERS

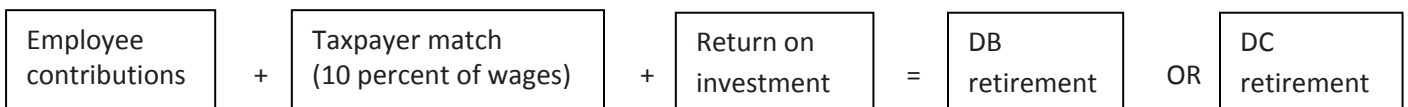


1. **Initial contributions.** State employees contribute a percentage of their salary toward retirement and that amount is matched by state taxpayers. These contributions currently total to 23.75 percent of wages for regular employees and 39.75 percent of wages for police and firefighters.

At the local government level, retirement contribution rates are subject to collective bargaining agreements and, in many cases, retirement benefits are completely funded by taxpayers with public employees making no contribution toward their own retirement.

2. **Return on investment.** PERS administrators invest the retirement fund contributions made by employees and taxpayers in a combination of stocks, bonds and private equities in order to gain capital earnings. Currently, PERS's targeted rate of return is 8 percent per annum, although PERS's average annual yield over the past 10 years has been only 3.8 percent.
3. **Liabilities.** PERS is responsible for paying retirement benefits to participating employees calculated as a percentage of their highest-earning 36 consecutive months of employment. Calculating the total future liability facing PERS can be difficult because so many variables are involved, including: length of career, life expectancy, future pay raises, etc.
4. **Contingent liability.** Any time PERS's investment earnings fall short of its annual 8 percent target, its assets fail to keep up with its accrued liabilities (the retirement promises made to government workers). As a result, a corresponding share of PERS liabilities becomes "unfunded." To account for this unfunded liability, PERS increases the mandatory taxpayer contribution rates in subsequent years. Over time, retirement contributions grow to consume an ever larger proportion of state and local government finances — especially within local governments whose collective bargaining agreements exempt workers from contributing to their own retirement.

## Structure of PERS under Utah reform model



# Local Government Debt

Cities, counties and school districts in Nevada are legal subdivisions of the state. Unlike many states, Nevada has no municipal bankruptcy statute to allow mismanaged local governments to restructure debt obligations. This means that the liability of poor fiscal management at the local-government level ultimately falls upon state taxpayers.

As such, state lawmakers must remain vigilant over local-government finances and indebtedness. Lawmakers are responsible for developing the finance rules within which local governments must operate and for monitoring local governments to ensure that these statutory parameters are effectively safeguarding taxpayers' interests.

## Key Points

**Current local-government debt restrictions are tied to property values.** Because significant shares of local-government revenues are generated through property taxes, local-government debt limits are expressed as a percentage of the total assessed valuation (AV) within each jurisdiction. The limits are as follows:

<b>Counties:</b>	10% of AV
<b>Cities:</b>	Depends on charter
<b>School Districts:</b>	15% of AV
<b>Towns:</b>	25% of AV
<b>General Improvement Districts:</b>	50% of AV
<b>Library Districts:</b>	10% of AV
<b>Hospital Districts:</b>	10% of AV
<b>Convention Centers:</b>	10% of AV
<b>Fire Protection Districts:</b>	5% of AV

**Revenue bonds and other special obligations do not count toward debt limits.** Current statutory language exempts revenue bonds and similar special obligations from debt-limit restrictions even though these obligations can encumber local-government finances. For example, revenue bonds issued by redevelopment agencies against future appreciation in property values can encumber, for decades, revenue that would otherwise be available to finance core government services.

**To meet debt obligations, Nevada's local governments must pay more than \$2 billion annually.** The minimum

debt payment for all local governments combined will be \$2.019 billion for FY12 and \$2.168 billion for FY13.<sup>1</sup> These figures amount to 65.0 and 69.9 percent of total state general fund spending projected for those years, respectively.

**In total, local-government debt is nearing \$23 billion.** As of June 30, 2011, the total of outstanding local-government obligations in Nevada was \$22.680 billion. That amount is 24.5 percent of the statewide assessed valuation total of \$92.694 billion.

## Recommendations

**Reduce construction costs by repealing prevailing wage requirements.** The bulk of local-government bonds are issued to finance the construction of public infrastructure. These costs — and the bond issues required to finance them — can be dramatically reduced by repealing the state's prevailing wage requirements, which artificially inflate labor costs by about 45 percent, on average.<sup>2</sup>

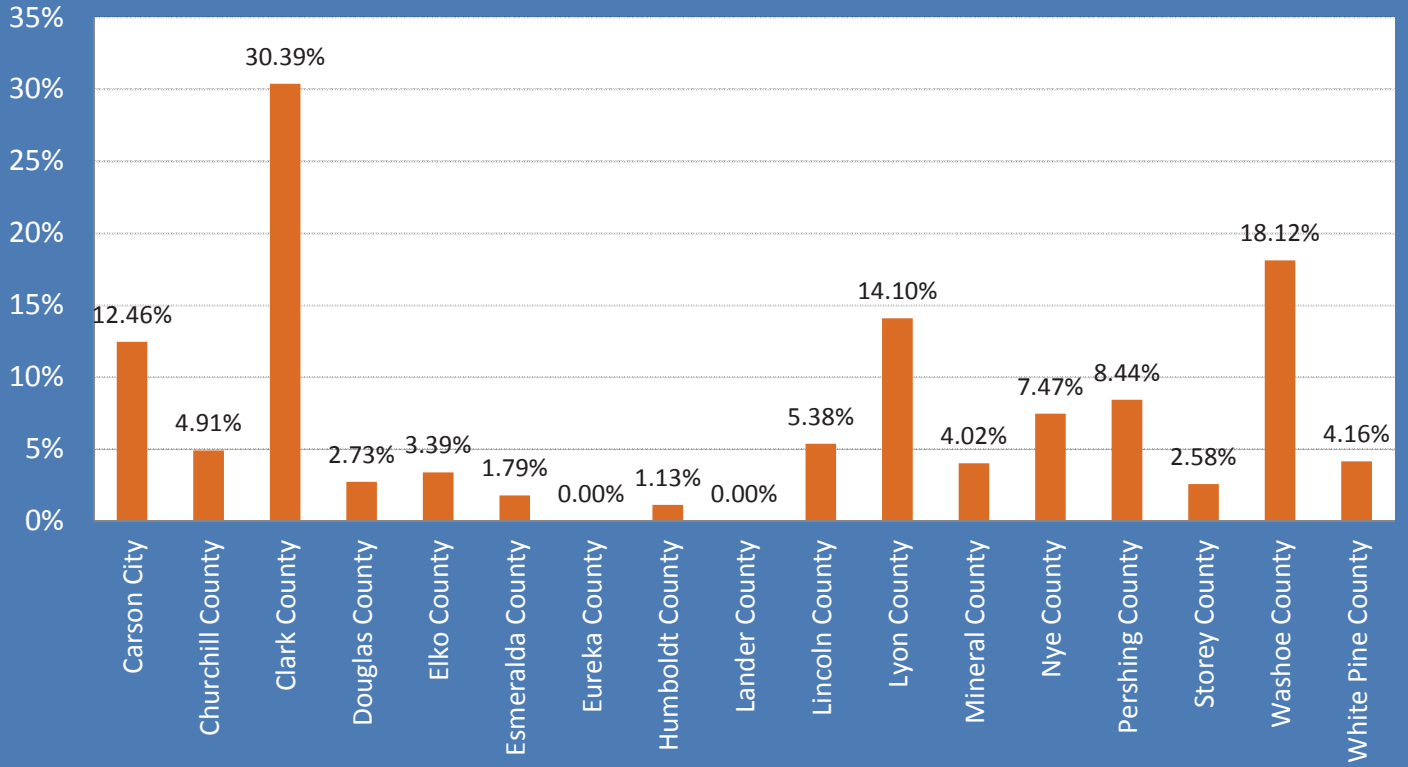
**Consider enacting a municipal bankruptcy statute.** State taxpayers should not be forced to act as a backstop for poor fiscal management by local politicians. Instead, local politicians who make elaborate and unaffordable promises should openly face the market discipline imposed by investors who must consider default risk.

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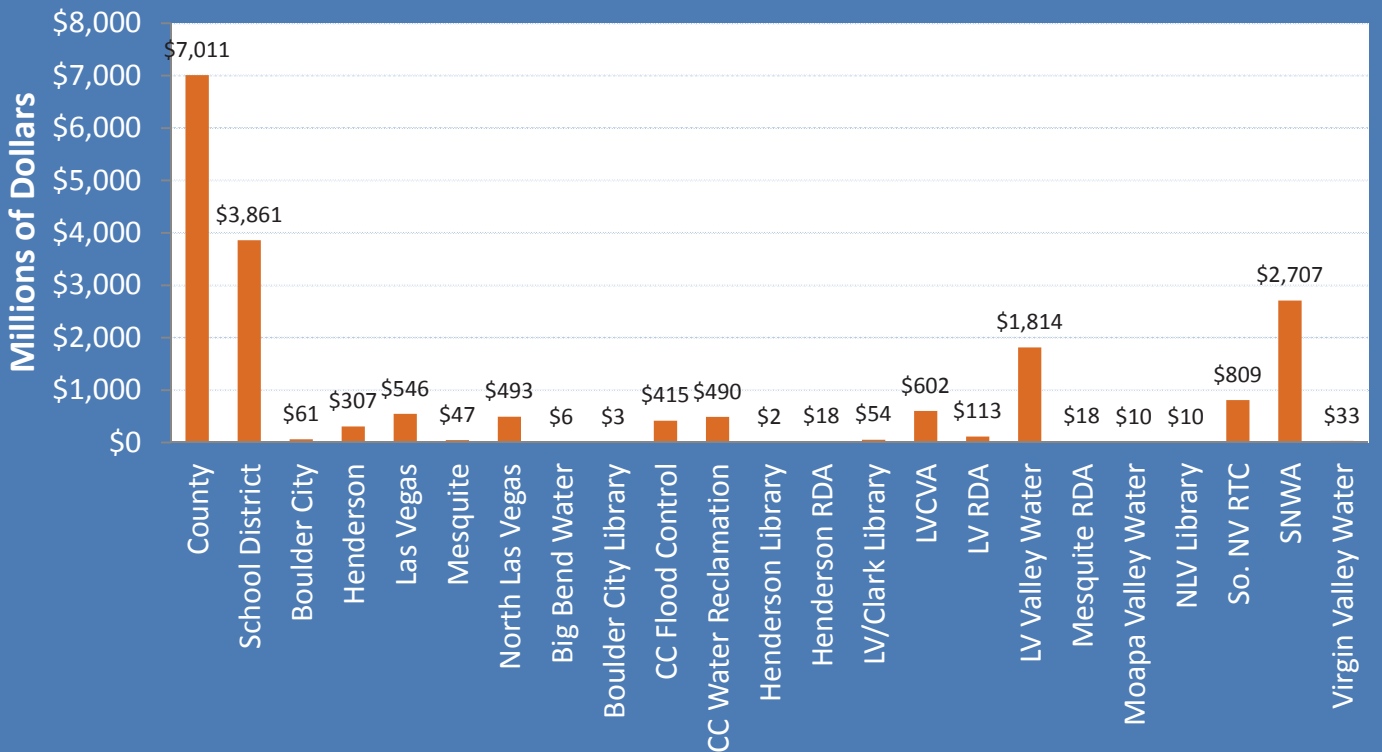
<sup>1</sup> State of Nevada, Department of Taxation, Division of Assessment Standards, "FY 2010-2011 Report of Local Government Indebtedness," 2011.

<sup>2</sup> See "Prevailing Wage," page 52.

## Total debt to assessed valuation, by county, FY 2011



## Outstanding obligations in Clark County, FY11



Source: State of Nevada, Department of Taxation, "FY 2010-2011 Report of Local Government Indebtedness."

# K-12 Financial Transparency

How much do Silver State taxpayers spend to educate each child in the state’s K-12 education system?

This simple and objective question brings forth a multitude of answers depending on who is asked — even if everyone is supplied with the same dataset. The reason? School administrators, union bosses and federal and state bureaucrats all exclude particular categories of spending. They do so for various reasons.

Some only count money that is supplied directly by the state, while ignoring amounts supplied by federal and local taxpayers. Others ignore spending on employee benefits, school construction and/or bond debt repayment — even though all these expenditures are necessary for a school to operate.

Before lawmakers can make intelligent decisions on education policy, they must be armed with accurate information. They must know how much is already being spent and what the results have been.

## Key Points

**“Basic support per student” accounts for less than half of per-pupil spending.** The “Nevada Plan” for school finance requires lawmakers to establish, for each school year, a basic support per-student amount that the state guarantees to school districts. In FY12 and FY13, this amount will be \$5,263 and \$5,374, respectively.

However, these amounts only reflect moneys collected through a 2.25 percent statewide sales tax (2.6 percent through the end of FY13), a 25-cent property tax assessment, and a supplemental allocation from the state’s general fund (via the Distributive School Account). These figures exclude all spending from federal sources, other local sources and from the general fund’s class-size reduction program.

**Per-pupil spending figures from the U.S. Department of Education are better, but not perfect.** Federal bureaucrats ignore spending on many necessary items when they calculate per-pupil spending numbers. In addition, by the time federal authorities report the data it is several years old. In spite of these limitations, these

figures are substantially higher than what Nevada lawmakers are often told.<sup>1</sup>

## **Lack of uniformity in school district financial reporting makes it difficult to compare spending across districts.**

While NRS 387 requires Nevada school districts to submit their budgets on the same form, districts’ sub-accounts vary widely, do not correlate with each other, and, for any understanding, necessitate detailed, case-by-case scrutiny. It’s a situation that limits both transparency and public accountability.

**Nevada’s largest districts actually spend between \$11,000 and \$14,000 per pupil each year.**<sup>2</sup> When all expenditures are considered, the Clark and Washoe County school districts have in recent years spent much more than lawmakers are often led to believe.

## Recommendations

### **Strengthen reporting requirements in NRS 387.303.**

When school districts submit financial data to the state, they should be required to conform to a single classification of account names so that expenditures can easily be compared across districts. They should also be required to submit to lawmakers per-pupil spending figures that reflect *all* expenditures.

### **Enact the “Financial Transparency in Education Act.”**

Model legislation from the Cato Institute would help lawmakers and taxpayers navigate school district finances.<sup>3</sup> In addition to unifying reporting requirements, it would require each school district to maintain a searchable online database of district finances, prominently displaying the total amounts of per-pupil spending.

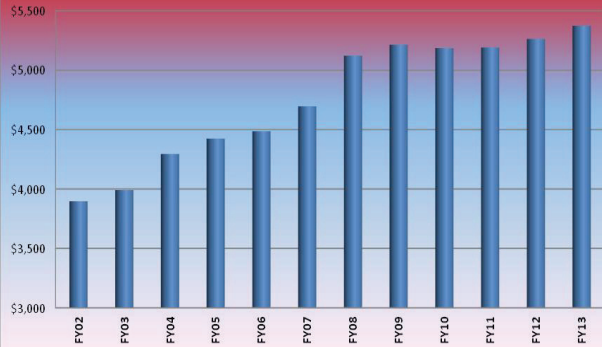
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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics.

<sup>2</sup> From school districts’ amended final budgets.

<sup>3</sup> Adam Schaeffer, “They Spend WHAT? The Real Cost of Public Schools,” Cato Institute Policy Analysis No. 662, 2010.

**Basic support per pupil, FY02-FY13**



**Per-pupil spending reported by U.S. DOE, FY02-FY08**



**Total per-pupil spending, Clark County School District**



**Total per-pupil spending, Washoe County School District**



# Education Spending Versus Student Performance

Lawmakers often hear that the only way to boost educational performance is through massive increases in K-12 spending. These claims are made by advocates who simultaneously and systematically underreport the true levels of per-pupil funding in Nevada.

It may seem self-evident that a greater input of funding should yield a superior educational output, or that lawmakers can “purchase” better educational results by simply allocating more money. However, ample historical evidence reveals that spending increases have failed to translate into improved student performance — indicating that the problem is more related to structure than funding.

Moreover, research from around the country has regularly shown that spending levels have little to no correlation with student performance.

## Key Points

**Nevada has nearly tripled per-pupil funding, on an inflation-adjusted basis, while educational quality has deteriorated.** The U.S. Department of Education reports that, between FY1960 and FY2008, real, per-pupil funding for “current expenditures” (not accounting for employee benefits, capital outlays and debt repayment) increased from \$3,144 to \$9,015.<sup>1</sup> Over the same time period, test scores have remained flat while graduation rates have dramatically declined.<sup>2</sup>

**The highest spending states have some of the worst results.** No state spends more per pupil than the District of Columbia, which also suffers the nation’s *worst* test scores — more than two full grade levels below the national average on eighth-grade reading and math tests. Other high-spending states with mediocre results include California, New York, Hawaii and Rhode Island.<sup>3</sup>

**Ten of 12 states that spend less than Nevada boast higher test scores.** According to the U.S. Department of Education, Arizona, Arkansas, Idaho, Indiana, Kentucky, Mississippi, North Carolina, Oklahoma, South Dakota,

Tennessee, Utah and West Virginia all spent less per pupil in FY08 than did Nevada. All except Mississippi and West Virginia performed better on *both* the eighth-grade NAEP math and reading tests, while West Virginia still outperformed Nevada on the reading test.<sup>4</sup>

**Nevada is a high spender for its neighborhood, but a low performer.** Among Nevada’s five regional neighbors, only California and Oregon spend more per pupil. However, of the five, *only* California has lower test scores.<sup>5</sup>

**Student achievement is directly correlated with genuine education reform.** Much more than per-pupil spending levels, specific education reforms have been shown to lead directly to greater student achievement. These reforms include school-choice programs, alternative teacher certification, grading schools and teachers based upon student performance, open enrollment and maintaining strict academic standards.<sup>6</sup>

## Recommendations

**Current per-pupil spending levels are appropriate to the region.** Nevadans already spend more per pupil than a majority of their regional neighbors. Yet, children in Nevada outscore only those of California — another high-spending state. The problem appears to be structural, not funding-related.

**Build on reforms enacted in 2011.** In 2011, lawmakers agreed to legislation creating an alternative teacher-certification program, a statewide charter school authority, a meaningful evaluation system for teachers and a teacher merit-pay program. Lawmakers need to remain vigilant so that the regulations implementing these changes are not written so narrowly as to reduce their impact.

Moreover, those reforms should be regarded as merely the beginning and not the end. School choice programs — such as tax-credit scholarship programs — and the expansion of online learning will boost student achievement very cost-effectively.

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Matthew Ladner, Ph.D. et al., “Report Card on American Education: Ranking State K-12 Performance, Progress and Reform, 16<sup>th</sup> Edition,” American Legislative Exchange Council, 2010.

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

State	Total per-pupil spending (FY08)		NAEP Eighth Grade Reading Scores (2009)		NAEP Eighth Grade Math Scores (2009)	
	Rank	Rank	Rank	Rank	Rank	Rank
Alabama	\$10,481	37	255	44	269	49
Alaska	\$17,299	5	259	38	283	30
Arizona	\$9,641	45	258	41	277	39
Arkansas	\$9,966	43	258	40	276	40
California	\$11,458	24	253	48	270	46
Colorado	\$11,061	32	266	22	287	15
Connecticut	\$16,530	6	272	3	289	10
Delaware	\$14,481	10	265	25	284	29
District of Columbia	\$20,066	1	242	51	254	51
Florida	\$11,626	22	264	31	279	34
Georgia	\$11,498	23	260	35	278	38
Hawaii	\$12,877	14	255	43	274	44
Idaho	\$8,525	49	265	29	287	16
Illinois	\$11,874	21	265	26	282	32
Indiana	\$10,040	42	266	23	287	17
Iowa	\$11,126	30	265	28	284	27
Kansas	\$11,009	33	267	18	289	11
Kentucky	\$10,076	41	267	19	279	35
Louisiana	\$11,329	26	253	49	272	45
Maine	\$12,696	15	268	13	286	19
Maryland	\$15,032	8	267	14	288	12
Massachusetts	\$14,240	11	274	1	299	1
Michigan	\$11,445	25	262	32	278	36
Minnesota	\$11,943	20	270	7	294	2
Mississippi	\$8,587	48	251	50	265	50
Missouri	\$11,070	31	267	17	286	22
Montana	\$10,941	34	270	8	292	7
Nebraska	\$12,287	17	267	15	284	26
<b>Nevada</b>	<b>\$10,377</b>	<b>39</b>	<b>254</b>	<b>47</b>	<b>274</b>	<b>43</b>
New Hampshire	\$13,007	13	271	6	292	6
New Jersey	\$18,971	2	273	2	293	5
New Mexico	\$10,798	35	254	46	270	48
New York	\$18,073	3	264	30	283	31
North Carolina	\$9,045	46	260	37	284	25
North Dakota	\$10,378	38	269	11	293	4
Ohio	\$11,982	19	269	10	286	23
Oklahoma	\$8,372	50	259	39	276	41
Oregon	\$11,156	28	265	27	285	24
Pennsylvania	\$13,712	12	271	5	288	13
Rhode Island	\$14,897	9	260	34	278	37
South Carolina	\$11,128	29	257	42	280	33
South Dakota	\$9,684	44	270	9	291	8
Tennessee	\$8,746	47	261	33	275	42
Texas	\$10,596	36	260	36	287	18
Utah	\$7,756	51	266	24	284	28
Vermont	\$15,465	7	272	4	293	3
Virginia	\$12,030	18	266	21	286	21
Washington	\$11,200	27	267	16	289	9
West Virginia	\$10,341	40	255	45	270	47
Wisconsin	\$12,312	16	266	20	288	14
Wyoming	\$17,478	4	268	12	286	20

Source: U.S. Dept. of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

## School Choice

In virtually every aspect of life, Nevadans demand choice. They expect a choice of grocers, retailers, food service providers, health care specialists and automobile manufacturers. Choice begets accountability, because producers of these goods quickly learn that, to attract and retain customers, they must offer a product consumers are willing to pay for.

Yet, in the realm of education — arguably the most significant area of an individual’s life — Nevadans have been deprived of choice. Instead, they have been forced into a state-run monopoly. The outcome has been predictable: As the monopoly has protected poor educators from the accountability that choice imposes on grocers and retailers, the quality of Nevada’s K-12 education system has continuously deteriorated. If Nevada’s public school system is to prepare the next generation of Nevadans to compete in a global economy and, hopefully, lead the way into a new era of successful entrepreneurship, then greater accountability is required. The best means of achieving that is through choice.

It is important to remember that public schools are not necessarily synonymous with a government monopoly on schools. Just as Albertson’s and Food 4 Less serve the public as privately owned grocers, so, too, can private schools play an important role in providing for the public’s education needs by expanding the realm of school choice.

### Key Points

**Private schools cost less.** Nevada’s largest school districts currently spend between \$11,000 and \$14,000 per pupil when all expenditures are considered. On the other hand, 84 percent of private schools nationwide charge tuition rates of less than \$10,000.<sup>1</sup>

**Private schools yield better results.** Nationwide, students in private schools score almost two grade levels higher on standardized math and reading tests than do their government-school peers.<sup>2</sup> Also, graduation rates and the likelihood of attending college are far higher among private-school students.<sup>3</sup>

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

**Every child can learn.** It’s not just the wealthy elite who perform well in private schools. Low-income beneficiaries of school choice programs in Washington, D.C., Milwaukee, Florida and elsewhere have shown significant improvement after participating in choice programs for only a few years.<sup>4</sup>

**Choice improves government schools.** Despite opponents’ claims that choice programs “cream” the best students away from government-run schools, empirical evidence shows that the presence of alternatives leads to higher test scores and graduation rates for those who choose to remain in a government school.<sup>5</sup>

### Recommendations

**Create a Public Education Tax Credit.** Allow businesses facing a tax liability in Nevada — such as the Modified Business Tax, sales tax or gaming tax — to receive a dollar-for-dollar tax credit for donations into a scholarship fund that would finance the educational dreams of Nevada’s children. NPRI has already designed such a plan, which can be found on its website.<sup>6</sup>

**Establish a “Recovery School District.”** Taxpayers should not be forced to subsidize failure factories. If a government school cannot meet the educational needs of Nevada families, then it should close and have its staff reorganized and, potentially, be converted into a charter school. Lawmakers can model this change after Louisiana’s Recovery School District — a special statewide school district that helps failing schools transition into successful charter schools.

**Expand the universe of charter schools.** Charter schools are an important component of school choice. State laws governing charter schools should grant as much flexibility as possible to administrators and allow for open entry of online charter schools.

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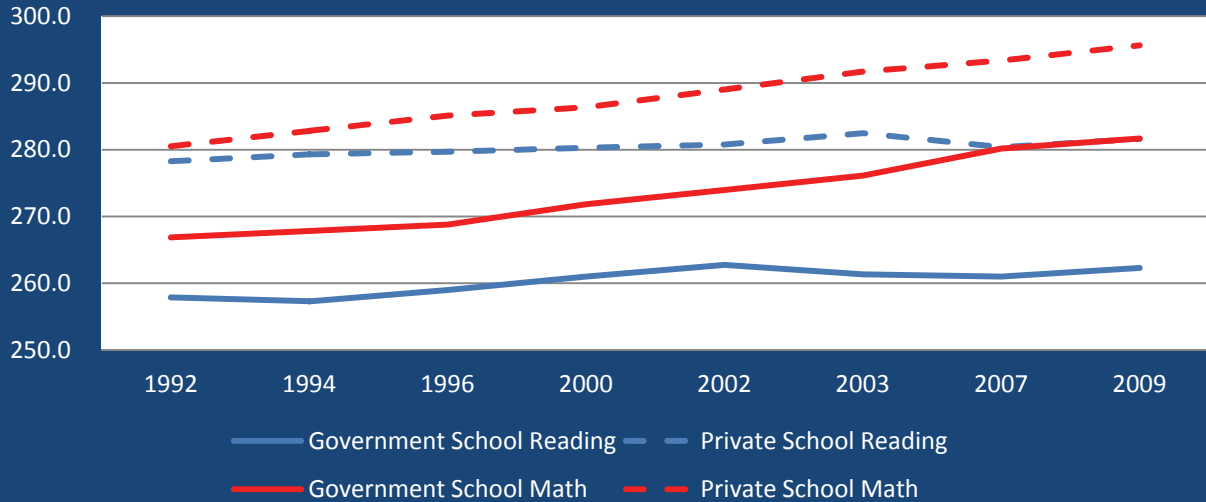
<sup>4</sup> See, e.g., Greg Forster, Ph.D., “A Win-Win Solution: The Empirical Evidence on School Vouchers,” The Foundation for Educational Choice, 2011.

<sup>5</sup> *Ibid.*

<sup>6</sup> Andrew Coulson, “Choosing to Save: The Fiscal Impact of Education Tax Credits on the State of Nevada,” Nevada Policy Research Institute policy study, 2009.



## Eighth-Grade Reading and Math NAEP Scores



## Estimated Annual Savings from Public Education Tax Credit

Year	Net Annual Savings	Total Public School Spending per Pupil	Private School Enrollment	Public School Enrollment	Existing Priv. Students Eligible if prev. year grade <=
0	0	\$10,019	30,745	425,872	N/A
1	\$9,398,565	\$10,105	38,217	418,400	Kindergarten
2	\$21,839,268	\$10,208	46,788	409,829	1
3	\$38,725,997	\$10,336	56,966	399,651	2
4	\$60,300,016	\$10,493	68,838	387,779	3
5	\$86,552,205	\$10,686	82,402	374,215	4
6	\$117,142,801	\$10,917	97,534	359,083	5
7	\$83,723,768	\$11,192	113,974	342,643	12
8	\$131,741,506	\$11,513	131,331	325,286	12
9	\$180,922,914	\$11,879	149,108	307,509	12
10	\$229,757,936	\$12,286	166,760	289,857	12
11	\$276,778,346	\$12,729	183,756	272,861	12
12	\$320,728,025	\$13,195	199,642	256,975	12
13	\$360,682,852	\$13,672	214,085	242,532	12
14	\$396,099,637	\$14,145	226,886	229,731	12
15	\$426,797,480	\$14,599	237,983	218,634	12
16	\$452,892,091	\$15,024	247,415	209,202	12
17	\$474,709,114	\$15,409	255,301	201,316	12
18	\$492,698,393	\$15,750	261,803	194,814	12
19	\$507,362,544	\$16,046	267,104	189,513	12
20	\$519,204,957	\$16,297	271,385	185,232	12
21	\$528,696,613	\$16,506	274,815	181,802	12
22	\$536,258,177	\$16,679	277,549	179,068	12
23	\$542,253,093	\$16,820	279,716	176,901	12
24	\$546,987,769	\$16,933	281,427	175,190	12
25	\$550,715,826	\$17,024	282,775	173,842	12

# Class-Size Reduction

Nevada's class-size reduction program, first implemented in FY 1991, is now entering its 21st year. The program was sold on the expectation that reducing pupil-to-teacher ratios in grades K-3 would significantly improve Nevada students' achievement.

To date, Nevadans have spent \$2.21 billion from the state general fund to hire and retain additional teachers under the program. This figure excludes the costs borne by local school districts for the construction of additional classroom space, heating and cooling that space, and other additional operating expenditures.<sup>1</sup>

Repeated evaluations commissioned by the Nevada Department of Education and other, national entities have regularly shown that the program *does not* lead to higher student achievement, despite massive expenditures of public funds. Given that the 1988 interim legislative study committee which conceived of the program touted it as a means of boosting student achievement, it seems clear that the program has failed to achieve its objective.

## Key Points

**Students in larger classes have outperformed students in smaller classes.** The state's own evaluations have shown that students in class sizes of one to 15 have dramatically underperformed their peers in larger class sizes on both reading and math tests.<sup>2</sup>

The program's architects believed that smaller class sizes would increase the level of attention given by a teacher to each student — yielding higher achievement. The failure of the program to achieve this objective most likely has to do with the well-documented fact that no school-controlled variable bears a greater relationship to student achievement than teacher quality. Yet, standout teachers — like standout surgeons and engineers — are necessarily in limited supply. Hiring more teachers to fill additional classrooms does little more than dilute the teacher talent pool — exposing more students to lower-quality teachers.

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<sup>1</sup> Nevada Legislature, Legislative Counsel Bureau, Senate Human Resources Committee, "Background Paper 01-2: Nevada's Class-Size Reduction Program: Program Data and Summary of Evaluation Reports," 2001.

<sup>2</sup> *Ibid.*

**Class-size reduction funds could be used more productively elsewhere.** Whatever the reasons for the program's failure, one truth is clear: Every dollar that lawmakers commit to class-size reduction is a dollar that cannot be spent elsewhere.

## Recommendations

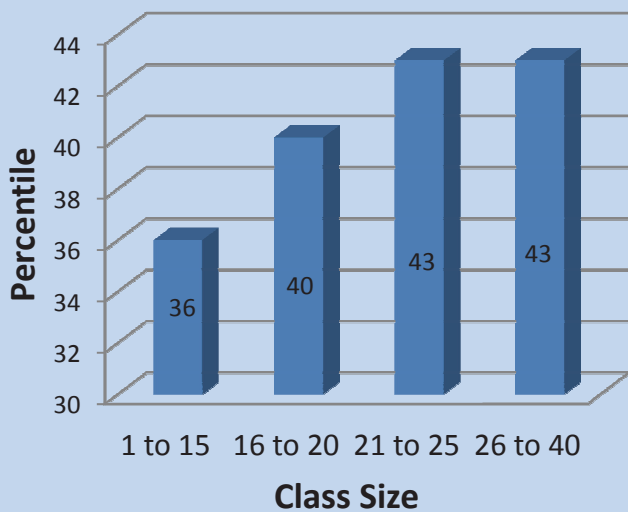
### **Eliminate the class-size reduction program.**

Public obligations in Nevada are growing rapidly as the rate of taxpayer contribution to the Public Employees' Retirement System continues to rise and as the state faces new Medicaid obligations due to the federal Patient Protection and Affordable Care Act.

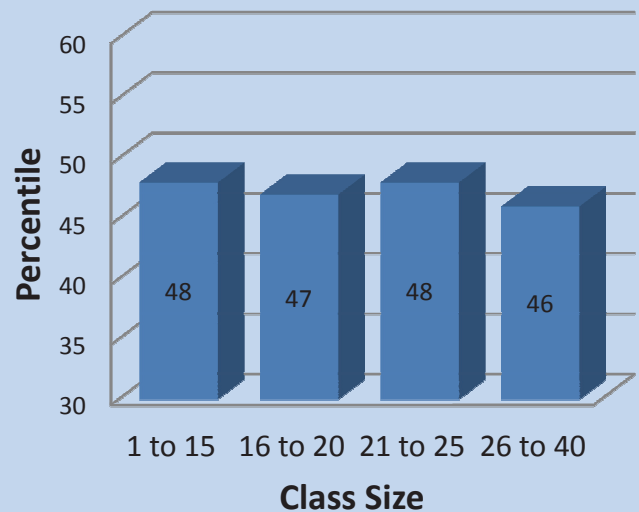
To meet these commitments, lawmakers will have to sacrifice spending elsewhere. Why not begin with a program that has not only failed to meet its objective, but which may have exacerbated the problem?

## Results of First Evaluation Report of Class-Size Reduction Program\*

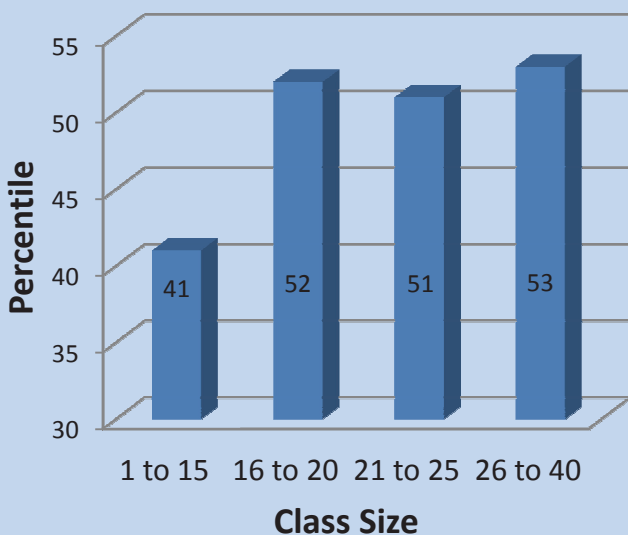
**Reading, average percentile score for Washoe and rural counties (second grade)**



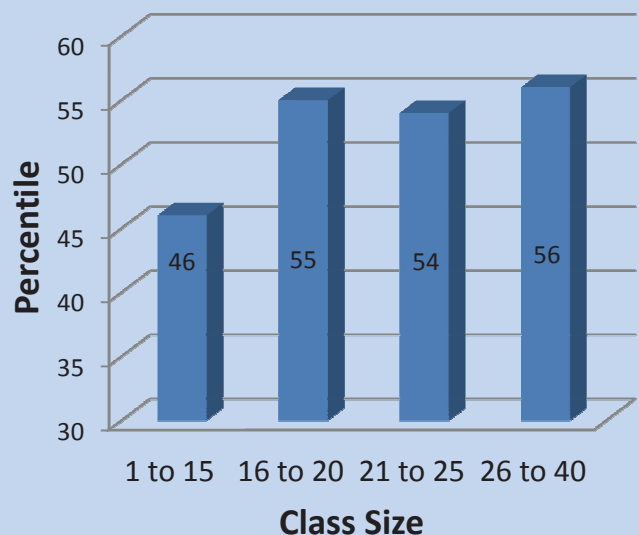
**Math, average percentile score for Washoe and rural counties (second grade)**



**Reading, average percentile score for Clark County (second grade)**



**Math, average percentile score for Clark County (second grade)**



\*Following the first evaluation report, the methodology was changed to cast the results more favorably for the class-size reduction program.

# Vocational Education

Nevada's K-12 educational curriculum emphasizes preparing students for advancement to higher education at the expense of preparing students for the job market.

Certainly, a college-preparation track is a necessary and valuable component of the K-12 curriculum. However, often neglected are the “forgotten half” of students who are unlikely to attend college.<sup>1</sup> For these students, formal training in a skilled trade that will provide meaningful employment upon graduation is the highest value that the educational system can offer.

Unfortunately, school districts in Nevada have been slow to attend to this demographic — leaving many graduates unprepared for the job market.

## Key Points

### **Most employers are seeking skills, not degrees.**

According to statistics from the U.S. Department of Labor, only 21.75 percent of jobs nationwide require applicants to hold a bachelor's degree or higher in order to be competitive. By 2018, this figure will increase only slightly — to 22.97 percent.<sup>2</sup>

The most prevalent qualification, for 72.19 percent of jobs in today's economy, is on-the-job training or related work experience. Possession of a postsecondary vocational credential accounts for an additional 6.03 percent of jobs.<sup>3</sup>

### **The proportion of Nevada residents holding degrees is in accord with employer demand.**

Despite the many problems with public education in the Silver State, the U.S. Census Bureau reports that 21.5 percent of Nevadans age 25 and older hold a bachelor's degree or higher.<sup>4</sup> This falls within a quarter-percentage point of employer demand for degreed professionals.

### **At-risk students are most likely to excel in vocational education programs.**

With the lowest high-school

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<sup>1</sup> Robert Schmidt, “Teaching the Forgotten Half: Career and Vocational Education in Nevada's High Schools,” NPRI policy study, 2006.

<sup>2</sup> U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections Program, “National Employment Matrix, 2008-2018.”

<sup>3</sup> *Ibid.*

<sup>4</sup> U.S. Department of Commerce, U.S. Census Bureau, American Community Survey, 2005-2009.

graduation rate in the nation, Nevada's public schools suffer from extraordinarily high dropout rates. Research has shown that students suffering from one or more “at-risk” conditions have a more difficult time staying on task during academic activities and are less likely to graduate.<sup>5</sup> These students, however, have performed much better when enrolled in vocational training programs.<sup>6</sup>

It is better to prepare at-risk students for meaningful employment upon graduation than to allow their academic frustrations to result in higher dropout rates and reduced lifetime earning potentials.

## Recommendations

### **Encourage systematic integration of vocational training into the educational curricula.**

To prepare many more students for success in the labor market, the Nevada Legislature should incentivize Nevada school districts to replicate statewide the highly successful model provided by Reno's Academy for Career Education (ACE High School) charter school. Enthusiastically backed by private-sector professionals, ACE cost-effectively integrates sound, professional career training into a rigorous academic curriculum — reflecting exactly the kind of reforms that have proven most effective in national longitudinal studies.<sup>7</sup> The Lone Star State's Achieve Texas program<sup>8</sup> can provide Nevada lawmakers and local groups with additional, highly valuable guidance — including a statewide career initiative model for the Nevada Department of Education.

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<sup>5</sup> See, e.g., Greg Druian and Jocelyn Butler, “*Effective Schooling Practices and At-Risk Youth: What the Research Shows*,” Office of Educational Research and Improvement (OERI), U.S. Department of Education, 1987.

<sup>6</sup> James Kauffman and Daniel Hallahan, Teaching Children with Learning Disabilities, Merrill, 1976.

<sup>7</sup> Marisa Castellano, “The Effect of CTE-Enhanced Whole-School Reform on Student Coursetaking and Performance in English and Science,” National Research Center for Career and Technical Education, Univ. of Minnesota, 2004.

<sup>8</sup> Texas Education Agency, Achieve Texas, “Achieve Texas in Action: A Best Practices Guide for Educators and Local Partners,” 2010.

## U.S. Occupations with the largest job growth, 2008-2018

Rank	Occupation	Employment		Change		Most Prevalent Training
		2008	2018	Number	%	
1.	Registered nurses	2,618,700	3,200,200	581,500	22.20	Associate degree
2.	Home health aides	921,700	1,382,600	460,900	50.01	Short-term on-the-job training
3.	Customer service representatives	2,252,400	2,651,900	399,500	17.74	Moderate-term on-the-job training
4.	Combined food preparation and serving workers, including fast food	2,701,700	3,096,000	394,300	14.59	Short-term on-the-job training
5.	Personal and home care aides	817,200	1,193,000	375,800	45.99	Short-term on-the-job training
6.	Retail salespersons	4,489,200	4,863,900	374,700	8.35	Short-term on-the-job training
7.	Office clerks, general	3,024,400	3,383,100	358,700	11.86	Short-term on-the-job training
8.	Accountants and auditors	1,290,600	1,570,000	279,400	21.65	Bachelor's degree
9.	Nursing aides, orderlies, and attendants	1,469,800	1,745,800	276,000	18.78	Postsecondary vocational award
10.	Postsecondary teachers	1,699,200	1,956,100	256,900	15.12	Doctoral degree
11.	Construction laborers	1,248,700	1,504,600	255,900	20.49	Moderate-term on-the-job training
12.	Elementary school teachers, except special education	1,549,500	1,793,700	244,200	15.76	Bachelor's degree
13.	Truck drivers, heavy and tractor-trailer	1,798,400	2,031,300	232,900	12.95	Short-term on-the-job training
14.	Landscaping and groundskeeping workers	1,205,800	1,422,900	217,100	18.00	Short-term on-the-job training
15.	Bookkeeping, accounting, and auditing clerks	2,063,800	2,276,200	212,400	10.29	Moderate-term on-the-job training
16.	Executive secretaries and administrative assistants	1,594,400	1,798,800	204,400	12.82	Work experience in a related occupation
17.	Management analysts	746,900	925,200	178,300	23.87	Bachelor's or higher degree, plus work experience
18.	Computer software engineers, applications	514,800	689,900	175,100	34.01	Bachelor's degree
19.	Receptionists and information clerks	1,139,200	1,312,100	172,900	15.18	Short-term on-the-job training
20.	Carpenters	1,284,900	1,450,300	165,400	12.87	Long-term on-the-job training
21.	Medical assistants	483,600	647,500	163,900	33.90	Moderate-term on-the-job training
22.	First-line supervisors/managers of office and administrative support workers	1,457,200	1,617,500	160,300	11.00	Work experience in a related occupation
23.	Network systems and data communications analysts	292,000	447,800	155,800	53.36	Bachelor's degree
24.	Licensed practical and licensed vocational nurses	753,600	909,200	155,600	20.65	Postsecondary vocational award
25.	Security guards	1,076,600	1,229,100	152,500	14.16	Short-term on-the-job training
26.	Waiters and waitresses	2,381,600	2,533,300	151,600	6.37	Short-term on-the-job training
27.	Maintenance and repair workers, general	1,361,300	1,509,200	147,900	10.86	Moderate-term on-the-job training
28.	Physicians and surgeons	661,400	805,500	144,100	21.79	First professional degree
29.	Child care workers	1,301,900	1,443,900	142,100	10.91	Short-term on-the-job training
30.	Teacher assistants	1,312,700	1,447,600	134,900	10.28	Short-term on-the-job training

Source: U.S. Department of Labor, Bureau of Labor Statistics, "National Employment Matrix, 2008-2018."

# Alternative Teacher Certification

In 2011, Nevada lawmakers passed landmark legislation — SB 315 — creating an alternative route to licensure for public school teachers in the state.<sup>1</sup> The legislation instructs the Commission on Professional Standards in Education to create an alternative path to licensure with the following conditions:

- The required education and training may be provided by any qualified provider, *which has been approved by the Commission*, including institutions of higher education and other providers that operate independently of an institution of higher education;
- The education and training required under the alternative route to licensure may be completed in two years or less; and
- Upon an individual’s completion of the alternative education and training requirements, and the satisfaction of all other requirements for licensure, the person *must* be issued a regular license.<sup>2</sup>

## Key Points

**Traditional certification has no bearing on student achievement.** Researchers at the Brookings Institution have tracked the impact of traditional teacher certification on student achievement. Their results show that students of teachers who have received a license through alternative means perform no worse than students of traditionally certified teachers. In fact, Brookings’ study shows that even students of *unlicensed* teachers perform no worse than students of traditionally certified teachers — indicating that licensure has no bearing at all on student achievement.<sup>3</sup>

**Strict certification requirements create an artificial shortage of teachers.** Given that teacher licensure has no tangible benefit for children, the primary function of licensing is to exclude potential teachers from the

marketplace and thus increase the bargaining power of incumbent teachers. Thus, strict licensure requirements elevate the labor costs facing school districts while simultaneously depressing teacher quality.

**Certification requirements exclude minority teachers from the classroom.** Harvard education scholar Paul Peterson has shown that, in states with genuine, undiluted alternative teacher-certification programs, the proportion of minority teachers is more likely to reflect the state’s demographics. In states without genuine alternative teacher certification, minorities are likely to be underrepresented among the teacher labor force — indicating that licensure requirements operate to statistically exclude minorities from the classroom.<sup>4</sup>

**Alternative certification programs lead to greater student achievement.** While certification has been shown to have no bearing on student achievement, the presence of a genuine path to alternative certification allows more highly qualified professionals to enter the teaching profession, benefitting students. Test score data from the U.S. Department of Education shows that states with genuine alternative certification have increased student achievement at a far greater pace.<sup>5</sup>

## Recommendations

**Ensure that the Commission on Professional Standards faithfully expands the scope of alternative teacher certification.** Key language contained in SB 315 leaves the determination of what constitutes a “qualified provider” of teacher education and training to the discretion of the Commission on Professional Standards in Education. This discretion could allow industry insiders sitting on the Commission to protect incumbent teachers from competition, by excluding from licensure teachers who have received otherwise adequate training. The insiders need only refuse to recognize the provider of such training as “qualified.”

Lawmakers need to ensure that Commission members do not exploit this language as a protectionist measure for incumbent teachers to the detriment of Nevada’s schoolchildren.

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<sup>1</sup> Nevada Legislature, 76<sup>th</sup> Session, Senate Bill 315.

<sup>2</sup> *Ibid.*

<sup>3</sup> Robert Gordon et al., “Identifying Effective Teachers Using Performance on the Job,” Brookings Institution, The Hamilton Project, Discussion Paper 2006-01, 2006.

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<sup>4</sup> Paul Peterson, “What Happens When States Have Genuine Alternative Certification,” *Education Next*, Vol. 9, No. 1, 2009.

<sup>5</sup> *Ibid.*

## Alternative certification and minority teacher representation (States with genuine alternative certification are shaded)

State	Percentage of minority teachers	Over 21 minority population percentage	Index of Representation
Louisiana	27.4	35.8	0.77
Alabama	21.2	28.6	0.74
Florida	24.8	34.2	0.73
Maryland	23.9	34.7	0.69
Mississippi	26.7	38.6	0.69
New Mexico	29.7	44.4	0.67
Tennessee	13.6	19.8	0.69
Texas	31.3	45.8	0.68
California	22.8	40.5	0.56
Georgia	20.2	36.3	0.56
Michigan	11.1	18.4	0.60
Montana	1.6	2.7	0.59
North Carolina	16.7	27.9	0.60
Pennsylvania	8	14.4	0.56
South Carolina	17.9	32.6	0.55
Virginia	16.1	25.8	0.62
West Virginia	2.6	4.3	0.60
Arkansas	10	20.3	0.49
Delaware	11.8	26.4	0.45
New Jersey	13	28.5	0.46
Ohio	7.5	14.6	0.51
Wisconsin	4.7	10.4	0.45
Arizona	13.4	30.9	0.43
Colorado	8	22.8	0.35
Hawaii	3.7	8.7	0.43
Indiana	5.5	13.4	0.41
Maine	0.7	1.9	0.37
Massachusetts	6	13.9	0.43
Missouri	6.3	14.4	0.44
New York	11.8	31.5	0.37
Oregon	4.3	11.4	0.38
Alaska	2.4	8.7	0.28
Connecticut	6.1	20.3	0.30
Illinois	9.6	29	0.33
Kentucky	3.2	9.7	0.33
Nevada	8.9	30	0.30
Oklahoma	4.2	14.3	0.29
Vermont	0.5	1.8	0.28
Wyoming	2.2	7.5	0.29
Idaho	1.6	9.3	0.17
Iowa	1.1	6.1	0.18
Kansas	3.1	14.2	0.22
Minnesota	1.6	8.1	0.20
Nebraska	2	11.3	0.18
New Hampshire	0.8	3.2	0.25
North Dakota	0.4	2.4	0.17
Rhode Island	2.6	15.7	0.17
South Dakota	0.6	2.8	0.21
Washington	2.7	12.3	0.22
Utah	1.5	11.4	0.13

**Source:** Paul Peterson, "What Happens When States Have Genuine Alternative Certification," 2009.

## Early Education

In 2010, a report from a legislatively created “Nevada Vision Stakeholder Group” outlined the group’s designs for expanding the scope of state government. Featured prominently in that report were calls for new spending on early childhood education programs. “College readiness,” asserted the authors, “begins in preschool.”<sup>1</sup>

The report cites the federal Head Start program, the largest and most significant early-childhood education program in the United States. The reference is unintentionally ironic, given that repeated evaluations of Head Start’s effectiveness by the U.S. Department of Health and Human Services have concluded that, despite the program’s expenses, Head Start produces no long-term benefit for children.

### Key Points

**Educational policies should be judged by how they impact students over a lifetime.** The Nevada Constitution charges lawmakers to encourage “the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements” through public instruction. Indeed, Nevada’s constitutional framers understood clearly the multiple objectives of an educational system. It should imbue students with marketable job skills, foster academic achievement, encourage intellectual curiosity and creativity, while fostering ethical interaction with others.

Evaluations of specific educational policies should measure each policy’s ability to enhance these outcomes for graduates over the course of a lifetime.

**Early education provides no long-term benefit.** While empirical evidence has shown early education programs provide students a temporary boost in academic performance, that boost disappears by the end of the first grade. As federal researchers concluded of the Head Start program in 1985:

In the long run, cognitive and socio-emotional test scores of former Head Start students do not

remain superior to those of disadvantaged children who did not attend Head Start.<sup>2</sup>

A more recent evaluation was concluded in 2010 that reached similar conclusions:

In sum, this report finds that providing access to Head Start has benefits for both 3-year-olds and 4-year-olds in the cognitive, health, and parenting domains, and for 3-year-olds in the social-emotional domain. However, the benefits of access to Head Start at age four are largely absent by 1st grade for the program population as a whole.<sup>3</sup>

Likewise, states with universal early-education programs have seen no observable academic benefit. Test-score trends in Georgia and Oklahoma — home to the nation’s oldest universal early-education programs — have closely mirrored national trends.

Following a slate of 1998 reforms, Florida has seen tremendous gains in academic achievement, as measured by the National Assessment of Educational Progress. Yet universal early education gets none of the credit. It was not even implemented until 2005, and participating students did not take the NAEP tests until 2010 — well after the remarkable rise in Florida’s NAEP scores.<sup>4</sup>

### Recommendations

**Do not implement universal early education.** With so many demands on public resources in Nevada, lawmakers cannot afford to spend tens of millions of dollars on programs they know will fail to achieve their goals. Early education does not improve educational outcomes over a graduate’s lifetime — the measure of success for all educational programs.

Lawmakers should instead commit funding to programs that produce a measurable, positive impact.

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<sup>2</sup> Ruth McKey et al., “The Impact of Head Start on Children, Families and Communities: Final Report of the Head Start Evaluation, Synthesis and Utilization Project,” Prepared for U.S. Department of Health and Human Services, 1985.

<sup>3</sup> Michael Puma et al., “Head Start Impact Study, Final Report,” Prepared for U.S. Department of Health and Human Services, 2010.

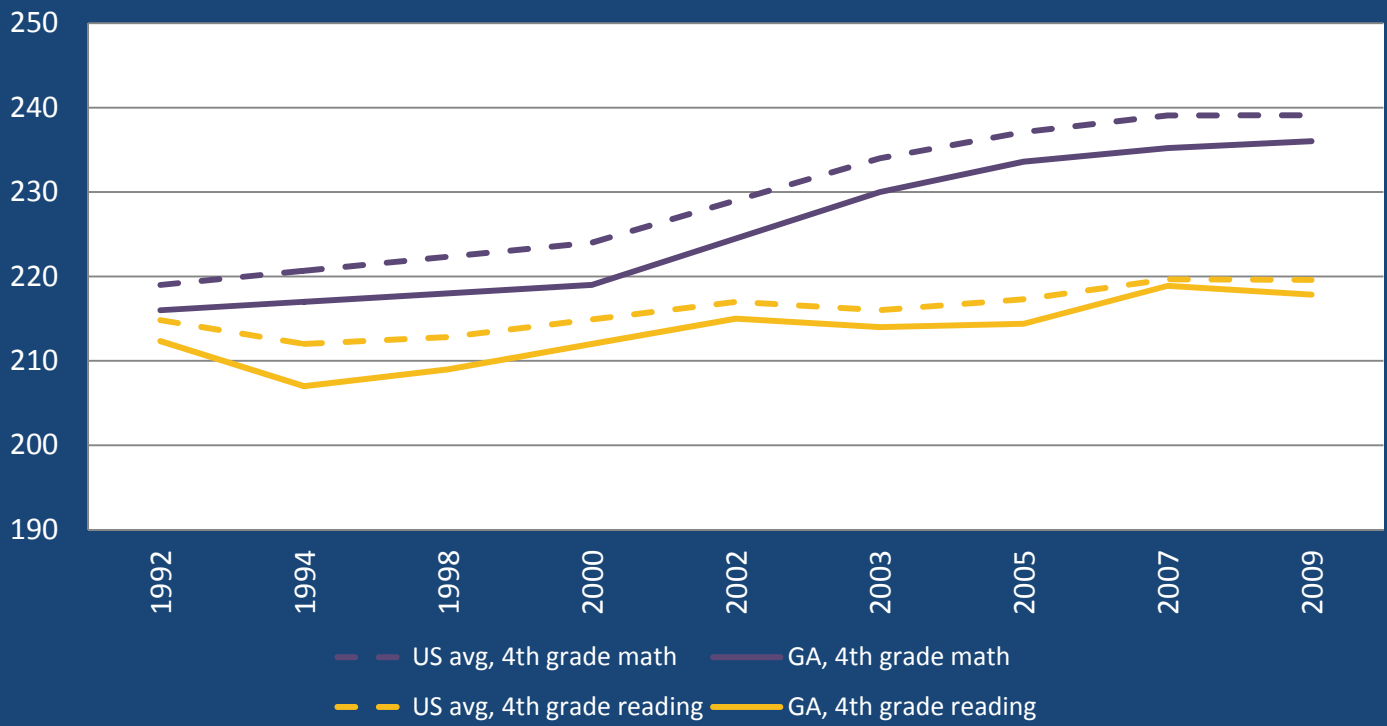
<sup>4</sup> Victor Joecks, “Pre-K Doesn’t Give Children a Lasting Head Start,” NPRI Commentary, 2011.

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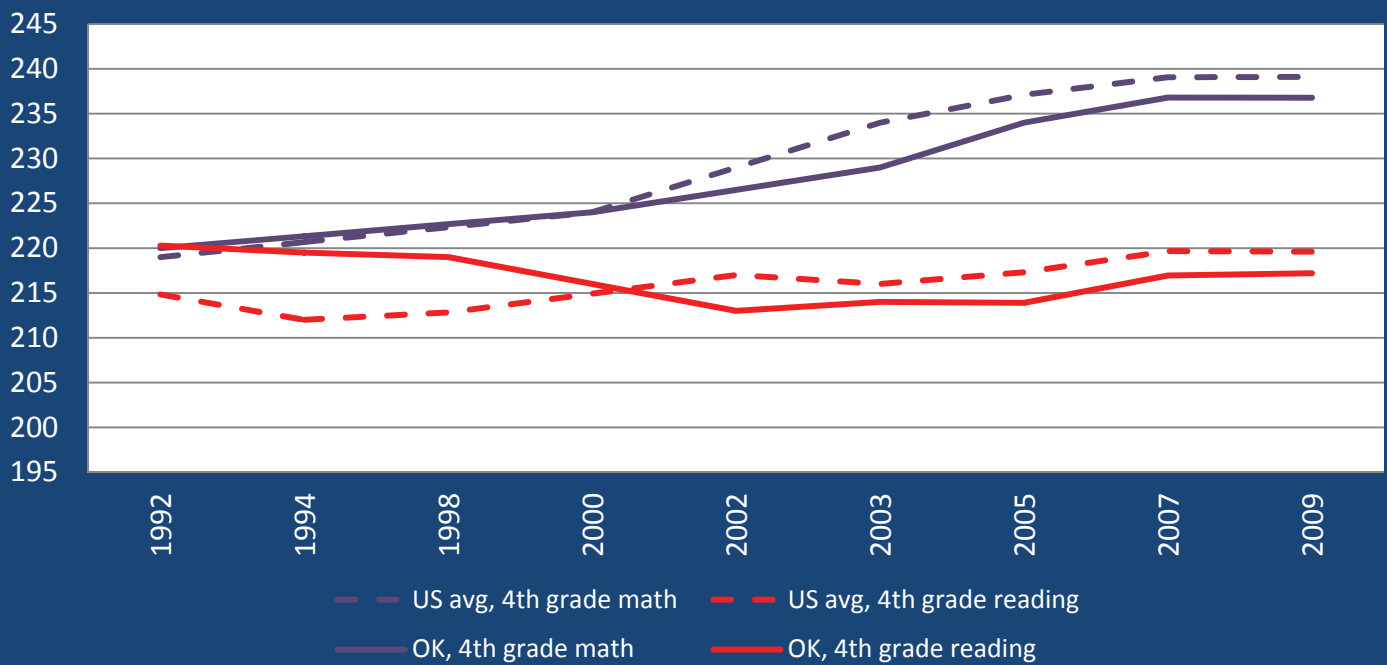
<sup>1</sup> Nevada Legislature, 75<sup>th</sup> Session, Interim Finance Committee, Nevada Vision Stakeholder Group, Consultant’s Report, “Envisioning Nevada’s Future,” 2010.



### NAEP scores in Georgia vs. U.S. avg. (Implemented universal pre-K in 1992)



### NAEP scores in Oklahoma vs. U.S. avg. (Implemented universal pre-K in 1998)



Source: U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

## NSHE Finance

State financial support for the Nevada System of Higher Education (NSHE) has grown from \$431 million in FY 2000 to \$798 million in FY 2010. Over the same period, the number of full-time equivalent students served by NSHE has grown from 48,688 to 69,154. This means that state support for each full-time student grew from \$8,852 in FY 2000 to \$11,568 in FY 2010 — an increase of 30.7 percent.

State support includes in-state tuition charges which are funneled through the general fund and then reallocated back to NSHE institutions.

In addition, NSHE institutions receive a significant amount of self-supported funds. In FY 2000, these totaled \$402 million and, by FY 2010, they totaled \$924 million. This brought total spending in each of these years to \$833 million and \$1.724 billion, respectively — or \$17,106 and \$24,936 per full-time student.

Yet, the share of these costs borne directly by students is remarkably low when NSHE institutions are compared to public universities around the nation.

### Key Points

**Nevadans face some of the lowest in-state tuition rates in the nation.** According to the U.S. Department of Education, the average cost of in-state tuition and fees to attend a four-year, public university in Nevada was \$3,559 for the 2009-10 school year. That amount was the third lowest in the nation, \$2,649 below the national median.<sup>1</sup>

**Use of general-fund dollars for NSHE is regressive.** Studies show that children of more affluent families are far more likely to attend college than children of low-income families.<sup>2</sup> Yet, state taxes in Nevada are paid by individuals at every point on the income scale. Therefore, general-fund spending on NSHE tends to have a statistically regressive impact, transferring resources from the less to the more wealthy.

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

<sup>2</sup> See, e.g., Jacqueline E. King, "Improving the Odds: Factors that Increase the Likelihood of Four-Year College Attendance Among High School Seniors," College Entrance Examination Board, 1996.

**NSHE fails the majority of its students.** Among students who enroll as first-time college freshmen at the University of Nevada, Reno, only 46.3 percent graduate within six years. At the University of Nevada, Las Vegas, the rate is even lower — at 39.4 percent. At both universities, the four-year graduation rate is a meager 12 percent.<sup>3</sup>

**Subsidized tuition rates discourage private competition.** The high degree of subsidization for NSHE institutions impairs the ability of high-quality private universities to come to Nevada and compete for students. This absence of competition, in turn, allows NSHE's poor performance to continue, unchecked.

Many of the nation's most successful public universities — from the University of California, Berkeley to Penn. State University — achieved prominence as a result of competing directly with major private universities nearby. Not coincidentally, these top-ranked public universities also charge tuition rates that are less dramatically subsidized than those found in Nevada.

### Recommendations

**Fund students, not institutions.** Instead of subsidizing a failing state monopoly on higher education, lawmakers should harness the power of markets to raise the quality of Nevada's higher education marketplace. This can be done by determining a value of state support to be guaranteed each full-time student and then allocating funds to institutions in accord with their in-state student enrollment.

Any university in Nevada whose quality attracts students — whether an NSHE institution or not — should be eligible to receive this support. Over time, this will allow top-notch private universities to develop within the state, bringing the competition in the higher-education marketplace that Nevada desperately needs.

**Allow regents to set and keep tuition rates.** The combination of tuition and per-pupil state support attracted by each institution should remain with the institution itself and not pass through the state general fund.

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<sup>3</sup> The Education Trust, College Results Online Databank, dataset for 2009.

## Average undergraduate tuition and fees for full-time students at public universities

State	Public, 4-year			Public, 2-year		
	In-state, 2008-2009	In-state, 2009-2010	Out-of-state, 2009-2010	In-state, 2008-2009	In-state, 2009-2010	Out-of-state, 2009-2010
Alabama	\$5,554	\$6,061	\$15,202	\$2,826	\$2,834	\$6,141
Alaska	\$5,008	\$5,246	\$15,246	\$3,289	\$3,900	\$4,300
Arizona	\$5,589	\$6,720	\$20,116	\$1,610	\$1,652	\$7,129
Arkansas	\$5,748	\$5,846	\$12,610	\$2,119	\$2,188	\$3,915
California	\$5,266	\$6,240	\$24,319	\$586	\$719	\$5,413
Colorado	\$5,693	\$6,188	\$23,567	\$2,198	\$2,446	\$7,443
Connecticut	\$7,883	\$8,375	\$23,348	\$2,983	\$3,199	\$9,559
Delaware	\$8,306	\$9,026	\$21,598	\$2,684	\$2,816	\$6,524
District of Columbia	\$3,140	\$5,370	\$12,300	-	-	-
Florida	\$3,293	\$3,452	\$13,798	\$2,106	\$2,480	\$9,064
Georgia	\$4,261	\$4,839	\$18,158	\$1,904	\$2,324	\$7,380
Hawaii	\$5,326	\$5,943	\$17,755	\$1,757	\$1,955	\$6,589
Idaho	\$4,610	\$4,883	\$14,376	\$2,240	\$2,420	\$6,939
Illinois	\$9,860	\$10,443	\$24,179	\$2,520	\$2,670	\$8,342
Indiana	\$6,920	\$7,306	\$22,397	\$2,930	\$3,090	\$6,306
Iowa	\$6,434	\$6,712	\$20,054	\$3,418	\$3,549	\$4,595
Kansas	\$5,733	\$6,052	\$15,745	\$2,090	\$2,212	\$3,548
Kentucky	\$6,843	\$7,165	\$16,121	\$2,930	\$3,026	\$10,299
Louisiana	\$4,079	\$4,282	\$11,839	\$1,703	\$1,849	\$3,929
Maine	\$8,045	\$8,504	\$21,586	\$3,273	\$3,303	\$5,853
Maryland	\$7,252	\$7,321	\$18,857	\$3,061	\$3,099	\$7,399
Massachusetts	\$8,207	\$9,221	\$20,584	\$3,252	\$3,522	\$7,991
Michigan	\$9,075	\$9,638	\$26,696	\$2,254	\$2,312	\$5,011
Minnesota	\$8,284	\$8,728	\$12,805	\$4,611	\$4,791	\$5,381
Mississippi	\$4,953	\$5,046	\$12,668	\$1,769	\$1,837	\$3,657
Missouri	\$6,925	\$7,047	\$14,813	\$2,458	\$2,406	\$4,651
Montana	\$5,461	\$5,612	\$17,578	\$3,082	\$3,121	\$7,972
Nebraska	\$5,883	\$6,229	\$14,969	\$2,212	\$2,248	\$3,054
<b>Nevada</b>	<b>\$3,316</b>	<b>\$3,559</b>	<b>\$15,219</b>	<b>\$1,920</b>	<b>\$2,010</b>	<b>\$8,198</b>
New Hampshire	\$10,183	\$10,958	\$22,026	\$5,999	\$6,296	\$13,817
New Jersey	\$10,366	\$10,680	\$21,075	\$3,195	\$3,388	\$6,122
New Mexico	\$4,414	\$4,655	\$13,880	\$1,273	\$1,338	\$3,493
New York	\$5,098	\$5,720	\$13,167	\$3,520	\$3,724	\$6,725
North Carolina	\$4,376	\$4,559	\$16,411	\$1,404	\$1,639	\$7,054
North Dakota	\$5,780	\$5,968	\$14,837	\$4,116	\$3,873	\$8,500
Ohio	\$8,043	\$8,058	\$20,187	\$3,155	\$3,014	\$6,728
Oklahoma	\$5,011	\$4,955	\$13,538	\$2,533	\$2,423	\$6,003
Oregon	\$6,274	\$6,941	\$21,656	\$2,942	\$3,220	\$6,456
Pennsylvania	\$10,148	\$10,550	\$20,273	\$3,300	\$3,454	\$10,246
Rhode Island	\$7,663	\$8,435	\$24,642	\$3,090	\$3,376	\$9,008
South Carolina	\$8,985	\$9,439	\$22,062	\$3,355	\$3,477	\$7,224
South Dakota	\$5,748	\$6,128	\$7,820	\$3,945	\$4,357	\$4,583
Tennessee	\$5,682	\$6,048	\$18,991	\$2,778	\$2,941	\$11,460
Texas	\$6,023	\$6,350	\$16,823	\$1,473	\$1,512	\$4,061
Utah	\$4,236	\$4,532	\$13,545	\$2,571	\$2,734	\$7,566
Vermont	\$11,339	\$12,008	\$28,503	\$4,684	\$4,876	\$9,652
Virginia	\$7,427	\$7,795	\$22,512	\$2,665	\$2,853	\$7,266
Washington	\$5,688	\$6,032	\$21,058	\$2,841	\$3,025	\$5,861
West Virginia	\$4,708	\$4,899	\$14,623	\$2,785	\$2,847	\$7,694
Wisconsin	\$6,552	\$6,963	\$17,982	\$3,521	\$3,543	\$8,680
Wyoming	\$3,057	\$3,162	\$9,498	\$2,009	\$2,120	\$5,393

Source: U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

# Millenium Scholarship

The Governor Guinn Millennium Scholarship program was created by lawmakers in 1999 to provide up to \$10,000 to Nevada high school graduates who choose to attend college within the state's higher education monopoly.

Gov. Guinn intended these scholarships to be funded completely out of revenues received through the state's tobacco settlement fund. However, tobacco settlement money soon became insufficient to finance the scholarship program.

To bridge this funding gap in 2009, lawmakers approved a \$7.6 million transfer from the unclaimed property fund and, in 2011, approved a \$10 million allocation from the state general fund. Despite these legislative commitments of taxpayer dollars, the scholarship fund is likely to become insolvent by 2015 without continued general-fund support.

If lawmakers want to continue the Millennium Scholarship program, it must again become financially independent, as it was originally promised to be.

## Key Points

**Nevadans already face some of the lowest in-state tuition rates in the nation.** According to the U.S. Department of Education, the average cost of in-state tuition and fees to attend a four-year, public university in Nevada during the 2009-10 school year was \$3,559. That amount was the third lowest in the nation and \$2,649 below the national median.<sup>1</sup> In other words, tuition for public universities in Nevada is already disproportionately subsidized.

**The Millennium Scholarship's qualifying threshold is too low.** As currently structured, Nevada high school students become eligible to receive up to \$10,000 through the merit-based Millennium Scholarship program if they complete certain high school coursework and meet the threshold requirement of a 3.25 high school grade point average. Students need not compete for Millennium Scholarships – they are automatically granted to students who meet the threshold requirements.

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2010.

Far more students meet these requirements than the program can support using its own finances. Indeed, the threshold requirements for obtaining a merit-based scholarship to the Nevada System of Higher Education (NSHE) are lower than the basic admission standards of many top-ranked public universities.

**One-quarter of Millennium Scholars require remediation.** More students qualify for the Millennium Scholarship than are actually capable of completing college-level coursework. According to NSHE data, 27.3 percent of Millennium Scholars were incapable of completing college-level coursework in 2010 and required remediation.<sup>2</sup>

**NSHE's metrics for success are meaningless.** NSHE administrators have testified that Millennium Scholars are more likely to persist in college and graduate from NSHE than non-Millennium Scholars.<sup>3</sup> This, NSHE administrators believe, demonstrates the program's effectiveness.

However, all these metrics say is that students who are better prepared to complete college-level work tend to be more successful in college. They say nothing about the impact of the scholarship itself.

## Recommendations

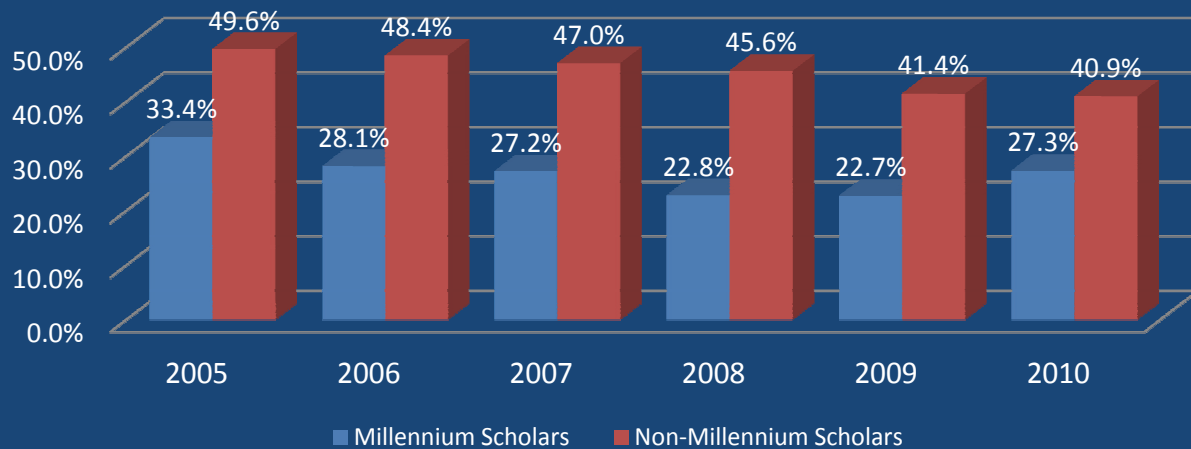
**Eliminate general-fund subsidies, eliminate the low eligibility threshold and, instead, encourage competition for the originally available funds.** If the Millennium Scholarship is to be solvent in the long term, the total value of scholarships awarded must be restricted to the program's independent revenue sources. Lawmakers should end general-fund support for the Millennium Scholarship and encourage the best students to compete for the tobacco settlement asset revenues that were originally intended to support the program.

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<sup>2</sup> Nevada Legislature, 76<sup>th</sup> Session, "NSHE Presentation to the Senate and Assembly Committees on Education," February 2011.

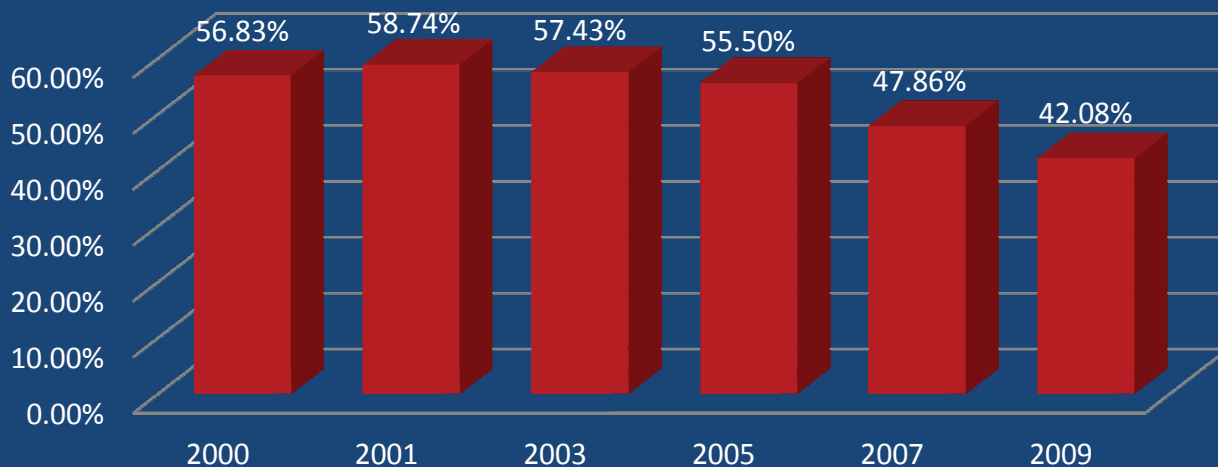
<sup>3</sup> *Ibid.*

## Percentage of students needing at least one remedial mathematics or English course



	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>NV high school GPA requirement</b>	3.00	3.00	3.00	3.00	3.00	3.10	3.10	3.25	3.25
<b>MS-eligible graduates</b>	7,361	7,909	8,204	8,702	9,086	8,631	8,755	8,174	8,786
<b>Activated scholarships</b>	5,657	6,028	6,221	6,554	6,626	6,179	6,194	5,677	5,947
<b>Yearly amount distributed to date</b>	\$30.5 million	\$32.1 million	\$33.2 million	\$28.1 million	\$27.1 million	\$23.7 million	\$22.2 million	\$19.7 million	\$17.0 million
<b>Bachelor's degrees earned</b>	2,331	2,282	2,412	1,976	2,015	1,794	1,330	434	37

## Percentage of NV high school graduates eligible for Millennium Scholarship



## Prepaid Tuition

NRS Chapter 353B creates a college savings plan, including a prepaid tuition program that purportedly allows Nevada families to safeguard against future tuition increases by purchasing future semesters' tuition at current prices.

The major marketing materials used by the state treasurer to promote the program, however, fail to mention that the prepaid tuition account is a trust fund that does not have the backing of the State of Nevada. Instead, the trust fund is governed by a board of trustees who assume the fiduciary responsibility of ensuring that the program maintains enough assets to cover its liabilities. As state law makes clear: "An act or undertaking of the Board does not constitute a debt of the State of Nevada, or any political subdivision thereof, or a pledge of the full faith and credit of the State of Nevada, or of any political subdivision thereof, and is payable solely from the Trust Fund."<sup>1</sup>

If the Board, at any time, fails to accurately match assets to liabilities, then the Trust Fund will become incapable of delivering the tuition promises made to participants.

### Key Points

**Trust fund assets are currently insufficient.** According to the prepaid tuition program's actuaries, "The Nevada Prepaid Tuition Program does not have sufficient assets, including the value of future installment payments, to cover the actuarially estimated value of the tuition obligations under all contracts outstanding as of the valuation date. Absent the addition of sufficient funds to the Stabilization Reserve, or experience which is better than assumed, there will be a shortfall which is not backed by the full faith and credit of the State of Nevada."<sup>2</sup> The amount of the reported unfunded liability is \$16.3 million.<sup>3</sup>

In other words, Nevadans who have purchased contracts with the prepaid tuition program now face the likelihood that the fund will be unable to provide the future tuition credits they've purchased.

**Money that might have made the Trust Fund whole was instead taken by lawmakers to bail out the Millennium Scholarship program.** The state treasurer maintains an endowment fund within the College Savings Trust Fund. At its April 2010 meeting, the board of trustees voted unanimously to transfer \$1.32 million annually for 10 years from the endowment fund into the prepaid tuition program in order to restore the program's solvency.<sup>4</sup> Lawmakers serving on the Interim Finance Committee, however, acted against the will of the Board in July 2010, seizing this money from the endowment fund and transferring it to the insolvent Millennium Scholarship fund.<sup>5</sup>

**Prepaid tuition programs in other states have recently declared insolvency – leading to taxpayer bailouts and massive lawsuits.** In 2010, Alabama lawmakers approved a public bailout of that state's prepaid tuition program in the amount of \$548 million over 13 years. Program managers, however, warned that they would still need an additional \$338 million to make the program whole. Alabama families who had purchased contracts through the program filed a class-action lawsuit in 2011, after realizing that the prepaid tuition program would renege on its promises.

### Recommendations

**Repeal NRS 353B.350(5)(b) and end all transfers out of the College Savings Trust Fund.** In 2009, Nevada lawmakers gave themselves permission to transfer money out of the College Savings Trust Fund and use it for more politically salient purposes with the passage of SB 428.<sup>6</sup> The trust that Nevada families have been invited to place in the College Savings Board — that it will faithfully steward those families' college savings — should not be so frivolously compromised by lawmakers.

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<sup>1</sup> NRS 353B.130.

<sup>2</sup> Alan Perry and Jill Stanulis, "Actuarial Valuation of the Nevada Prepaid Tuition Program, June 30, 2010," Milliman, Prepared for the Nevada Prepaid Tuition Program, 2010.

<sup>3</sup> *Ibid.*

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<sup>4</sup> The Board of Trustees of the College Savings Plans of Nevada, Minutes of Board Meeting April 28, 2010.

<sup>5</sup> Nevada Legislature, Legislative Counsel Bureau, Minutes of the July 21, 2010 Meeting of the Interim Finance Committee.

<sup>6</sup> Nevada Legislature, 75<sup>th</sup> Session, Senate Bill 428.

## Nevada Prepaid Tuition Program participants, as of June 30, 2010

Matriculation year	University plan (4 years)	Community college plus university plan	Community college plan	University plan (2 year)	University plan (1 year)	Total
2002	15	4	1	-	-	20
2003	33	9	3	-	-	45
2004	79	17	6	-	-	102
2005	126	12	7	3	-	148
2006	212	35	13	5	-	265
2007	341	56	12	7	-	416
2008	369	54	26	14	-	463
2009	432	68	23	20	-	543
2010	502	61	20	24	-	607
2011	499	69	24	20	-	612
2012	535	64	35	20	-	654
2013	582	66	28	24	3	703
2014	535	60	22	33	7	657
2015	535	49	41	26	2	653
2016	577	62	27	27	2	695
2017	508	65	27	28	-	628
2018	514	51	23	21	-	609
2019	431	34	15	19	-	499
2020	242	42	14	17	-	315
2021	251	33	20	23	3	330
2022	231	26	11	17	1	286
2023	166	23	8	10	-	207
2024	137	22	2	9	-	170
2025	93	15	7	8	1	124
2026	86	12	9	9	3	119
2027	45	!!	~	!!	.3-	63
<b>Total</b>	<b>8,076</b>	<b>1,017</b>	<b>426</b>	<b>389</b>	<b>25</b>	<b>9,933</b>
Estimated number of years of university tuition in force						32,264
Estimated number of years of community college tuition in force						2,510

**Source:** Milliman, "Actuarial Valuation of the Nevada Prepaid Tuition Program, June 30, 2010."

## Nevadans Speak

### Judy Bundorf lives near Searchlight now, and hopes to continue doing so

No doubt state lawmakers meant well, but when they passed their renewable-energy mandates, I doubt they realized the kind of burdens they were placing on the backs of Nevada residents.



A good example is the industrial-scale Duke Energy wind farm being imposed on those of us who live near Searchlight. As proposed — 87 turbines, each as tall as the Palms Hotel, scattered over 29 square miles next to our homes and the Lake Mead National Recreation Area — the project, for us, means lowered property values, genuine health issues (from the constant whump-whump-

whump of the huge wind turbines), destruction of the view shed and of the peace and quiet of a rural lifestyle, plus untold damage to the flora and fauna of an unspoiled desert.

During the construction period, of course, there would be a great deal of blasting for the turbines' foundations, potentially damaging to structures and, particularly, private water wells. The road between Searchlight and Cottonwood Cove on Lake Mohave — a narrow, two-lane highway already in poor condition — would be a primary construction route. The heavy machine traffic would, no doubt, destroy it, leaving the state and county to repair the damages.

Making this all especially senseless is the fact that, as any energy professional will tell you, wind energy is basically useless for the main need that Nevada, and energy markets generally, have — the peak demand that shoots up on hot summer days. Windmills generate most of their energy NOT when you need it, on hot summer days, but at night and in the winter, when it's not needed. On hot summer days, with their high barometric pressure, you don't get much wind-generation at all.

Really, the state legislature should revisit the legislation it has passed, this time weighing more closely the actual needs of our state and its citizens.

### Jeff Ecker is general manager of Paymon's Mediterranean Cafe

In the restaurant industry we are subject to some fees and costs specific to our industry that make it difficult to operate. With minimum wage one dollar over the Federal Minimum Wage requirement and without a tip tax credit, Nevada becomes very unfavorable for potential incoming restaurants. We pay our non-tipped employees well above the minimum wage because it is a competitive business. But why do we pay the high rate of Nevada's minimum wage when those wages essentially only go to tipped employees? This law penalizes restaurant operators and puts Nevada at a huge disadvantage in attracting more restaurants to open here, thus creating more jobs.



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### Jeff Church is both a retired Reno Police sergeant and a retired U.S. Air Force Lt. Col.

As a retired Reno Police Sergeant, I appreciate the excellent benefits and the support we receive from the community. Officers face many physical and

psychological dangers. Out of a department of less than 300, five officers have died in the line of duty since 1978. Many others have received severe injuries on duty.

A lifetime presumption for Heart and Lung claims, however, is excessive, especially for those who only served a few years. These generate giant unfunded liabilities that governments must report on their books, affecting their credit ratings. This is an 800-pound gorilla that will hammer taxpayers



not even born yet and city councils still to come.



## Nevadans Speak

### **Kevinn Donovan has four children, oversees construction contracts for a living and knows school-district waste when he sees it**



**P**arents at my children's school were recently asked to buy tens of thousands of dollars' worth of computers, after the school district told the principal that there was no money to replace the school's old and failing PCs. But meeting minutes of the district's Bond Oversight Committee, which I receive (trying to stay informed), showed that the district was sitting on \$58 million in reserves available for capital improvements, such as those computers.

It raises the question: What other buckets are being used as placeholders for reserve funds?

This kind of lack of district transparency — and candor — is really frustrating for parents who care deeply about their kids and education, and who know they must stand up for their kids, as the kids themselves cannot. I see many parents at school-board meetings, attempting to bring real professional skill sets, for free, to the district, but who get seriously turned off by the condescending treatment they get from trustees and staff. The attitude is, "You couldn't possibly know what we're dealing with, because we've got a

\$3 billion budget." However, many individuals in town deal with those kind of budgets daily. I know what billion-dollar budgets look like — and how easy it is to screw 'em up.

Lawmakers, I believe, should require school districts to put their budgets online. Not the re-cap budget, not the fluffy pie-graph budget, not the executive summary, but the actual line-item budget. Having seen it once, for just one department, I think you'd be shocked. That kind of budget transparency, I think, could really benefit public education in Nevada.

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### **Wade Pope is the Western Regional VP for Roche Constructors**

**A**s a general contractor and also a Nevada taxpayer, I can tell you that in my industry the single biggest issue that negatively impacts taxpayers is the prevailing wage. As it currently is constituted, prevailing wage drives up the cost of construction labor by at least 40 percent. Contractors are indifferent to the issue when bidding, since on prevailing wage jobs they just pay the amount they are contractually told to pay. In fact, some contractors like prevailing wage because it levels the playing field for

bids, since everyone is paying the same rate. From the perspective of taxpayers, however, it is absurd. The taxpayer is spending 40 percent more for the exact same worker just because he or she is doing a project paid for by tax dollars. That is pretty hard to understand. If the public fully understood how prevailing wage works I am sure we would have a major uprising.

Legislators — as good stewards of taxpayer dollars — can save millions by reforming the prevailing wage law.



# Medicaid Spending & PPACA

Medicaid is a state-run program that provides health care services to poor, elderly and disabled populations.

States are not obliged to operate Medicaid programs, but Congress offers matching grants to states that do. The grants are apportioned according to a formula that is based on a state's median, per-capita income level. But in no case does federal funding fall below 50 percent of the program's costs.

The federal contribution rate is called the Federal Medical Assistance Percentage, or FMAP. For Nevada during the 2011-13 budget cycle the rate is 59.26 percent. This means that Nevada taxpayers are *directly* liable for only 40 percent of the program's costs, although *indirectly* they finance the remainder in their capacity as federal taxpayers.

Notwithstanding the federal contributions, Medicaid imposes a large and growing liability on the state budget. Nationwide, Medicaid spending has become the fastest growing expenditure within state budgets.

What's more, this rapid spending growth is projected to spike even further in coming years as provisions of the federal Patient Protection and Affordable Care Act (PPACA) become effective.

## Key Points

**Medicaid spending is already on an unsustainable trajectory in Nevada.** Medicaid expenditures consume an increasing share of state income in Nevada, having risen faster than the state's gross domestic product. If left unchecked, Medicaid spending would eventually crowd out all other government functions in Nevada.

**PPACA will impose much higher Medicaid costs on Nevada taxpayers, beginning in 2014.** PPACA seeks to expand medical coverage to the uninsured by pushing more individuals into state Medicaid programs. It does this in two ways.

First, it will raise the ceiling on eligibility requirements to 133 percent of the federal poverty line, bringing 239,000 additional enrollees into Nevada Medicaid by 2014. For the first three years, state taxpayers will not directly pay the costs of caring for these new enrollees as it will be borne entirely by federal taxpayers. In the

fourth year, however, the federal contribution is scheduled to fall to 85 percent and perhaps even lower, given the fiscal challenges faced by Congress.

Second, the individual mandate included in PPACA will, in 2014, induce 65,000 new enrollments by individuals who were eligible under the old rules, but, for whatever reason, elected not to enroll. For these new enrollees, only the standard FMAP will apply — meaning that state taxpayers will face a large and immediate new liability.

In total, Nevada Medicaid enrollment is expected to balloon in 2014 from 319,000 to 624,000 as a result of PPACA. By 2023, the number of enrollees is projected to exceed 800,000. By 2023, PPACA is expected to increase the cost of Medicaid to Nevada taxpayers by a cumulative \$5.4 billion.<sup>1</sup>

## Recommendations

**Enact the Health Care Freedom Act.** Most of the new costs that would be imposed on the states by PPACA result from its individual-mandate provision.

In response to legal challenges from several of the states, the U.S. Eleventh Circuit Court of Appeals ruled in August 2011 that the individual mandate is unconstitutional. Other circuits held it constitutional. How the U.S. Supreme Court will rule is still unclear.

Lawmakers in at least 10 states have preemptively passed legislation to defend citizens' right not to enroll in Medicaid if they do not wish to do so. Given studies showing that health outcomes may be worse for Medicaid enrollees than for the uninsured, discerning individuals have an obvious incentive to not enroll in the program.<sup>2</sup>

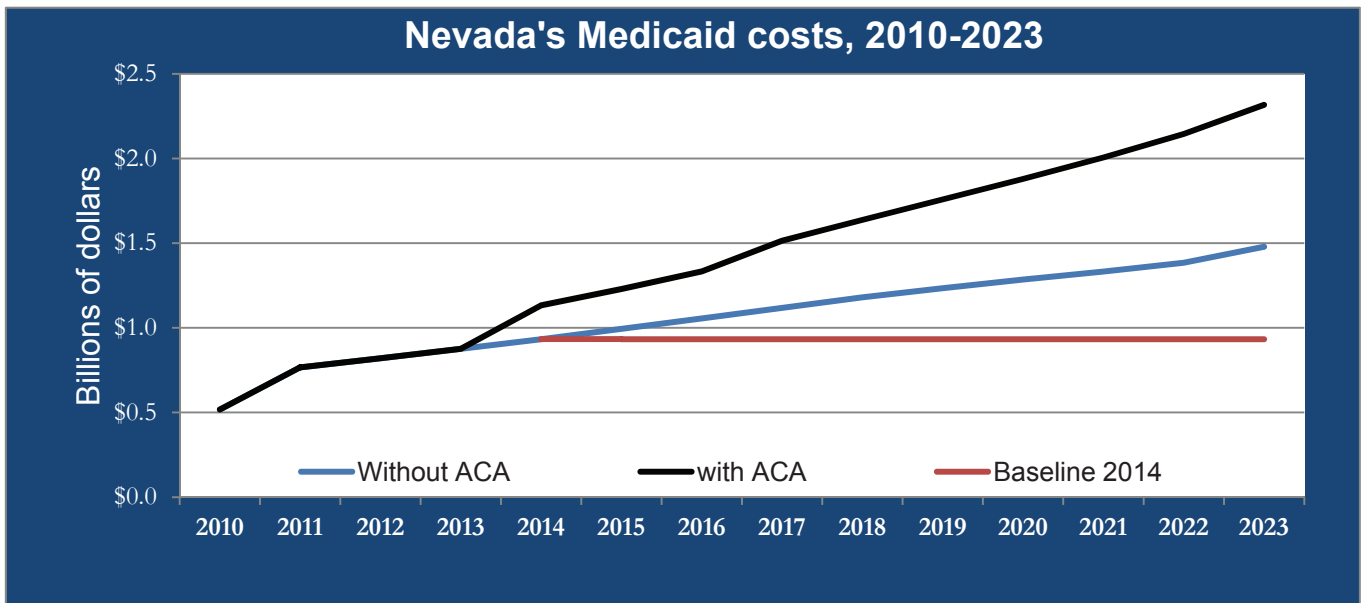
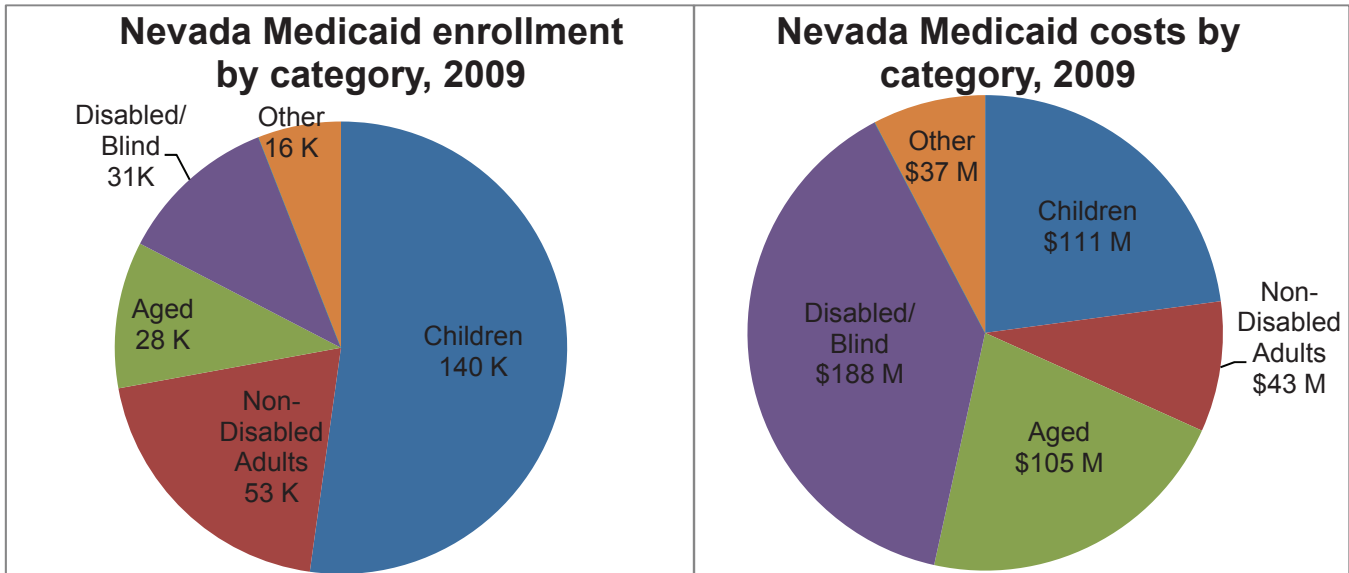
The Health Care Freedom Act — for which model legislation is available from the American Legislative Exchange Council — would assert the same liberty for Nevadans.<sup>3</sup>

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<sup>1</sup> Jagadeesh Gokhale et al., "The Impact of ObamaCare on Nevada's Medicaid Spending," Nevada Policy Research Institute policy study, 2011.

<sup>2</sup> Damien LaPar et al., "Primary Payer Status Affects Mortality for Major Surgical Operations," University of Virginia, 2010.

<sup>3</sup> American Legislative Exchange Council, "Freedom of Choice in Health Care Act," 2010.



Medicaid enrollments with and without PPACA by category						
	2014		2020		2023	
	Without	With	Without	With	Without	With
Children	166,000	255,000	200,000	301,000	217,000	324,000
Non-Disabled Adult	61,000	259,000	73,000	289,000	80,000	306,000
Aged	41,000	45,000	66,000	73,000	78,000	88,000
Disabled/Blind	31,000	43,000	25,000	48,000	22,000	50,000
Other	21,000	22,000	29,000	30,000	34,000	35,000
<b>Total</b>	<b>319,000</b>	<b>624,000</b>	<b>392,000</b>	<b>740,000</b>	<b>431,000</b>	<b>802,000</b>
Enrollment increase due to PPACA	304,000		348,000		371,000	

(Enrollment totals may contain rounding errors.)

# Medicaid Reform

Even prior to passage of the unfunded federal mandate for increased Medicaid benefits in the Patient Protection and Affordable Care Act (PPACA), state costs for Medicaid were rising unsustainably. Even without PPACA, Nevada's Medicaid costs were projected to grow faster than the most optimistic assumptions of the state's gross domestic product.<sup>1</sup>

Currently, with PPACA mandates in place, the number of Medicaid enrollees in Nevada is projected to increase from 268,000 in 2009 to about 802,000 by 2023.<sup>2</sup>

The cost increases entailed by such enrollment growth make it essential that lawmakers reform Nevada Medicaid, if only to maintain the program's affordability.

## Key Points

**Access to insurance and access to care are not always synonymous.** While Medicaid was intended to ensure access to health care for highly vulnerable populations, policymakers' traditional approach to controlling Medicaid costs — reducing reimbursement rates of health-care providers — works against this end. Given the very real prospect of being short-changed, many providers elect not to accept new Medicaid patients at all. Recent surveys indicate that only 40 percent of physicians accept all new Medicaid patients.<sup>3</sup>

**As currently structured, Medicaid benefits may not be beneficial.** Researchers at the University of Virginia have found, when it comes to health outcomes, it is better to be uninsured than on Medicaid. After examining a broad survey of surgical outcomes and adjusting for age and risk factors, their 2010 analysis finds that "surgical patients on Medicaid are 13% more likely to die than those with no insurance at all, and 97% more likely to die than those with private insurance."<sup>4</sup>

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<sup>1</sup> Jagadeesh Gokhale et al., "The Impact of ObamaCare on Nevada's Medicaid Spending," Nevada Policy Research Institute policy study, 2011.

<sup>2</sup> *Ibid.*

<sup>3</sup> See, e.g., Elyn Boukus et al., "A Snapshot of US Physicians: Key Findings from the 2008 Health Tracking Physician Survey," Center for Studying Health System Change data bulletin No. 35, 2009.

<sup>4</sup> Damien LaPar et al., "Primary Payer Status Affects Mortality for Major Surgical Operations," University of Virginia, 2010.

## **Cost inflation results from a lack of price sensitivity.**

Health-care costs in the United States have skyrocketed in recent decades, as third-party payers finance more and more health-care costs. When individuals do not directly bear a significant share of treatment costs, they are more likely to approve unnecessary treatments. Those additional costs are then borne collectively — requiring higher premiums all around.

**Price competition controls cost growth.** The American health-care industry is suffering under a government-induced price-system failure. Consumers have become insensitive to the prices of procedures and, as a result, do not shop among providers for the best value. This lack of consumer discipline allows providers to raise prices without restraint. In short, price signals in the health-care industry no longer convey the information necessary for individuals to effectively coordinate their resources and desires.

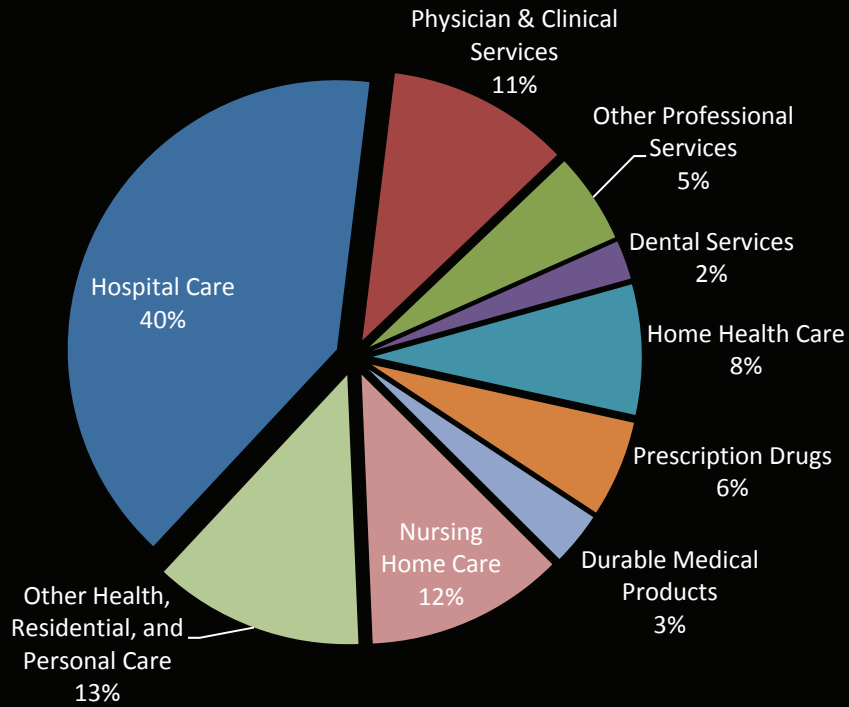
## Recommendations

**Restructure Medicaid benefits around a "Health Opportunity Account (HOA)."** The federal Deficit Reduction Act of 2005 allowed states, for the first time, to incorporate the benefits of private-sector health savings accounts into the way Medicaid benefits are delivered. States can now submit a state plan amendment to the Center for Medicaid Services to establish HOAs.

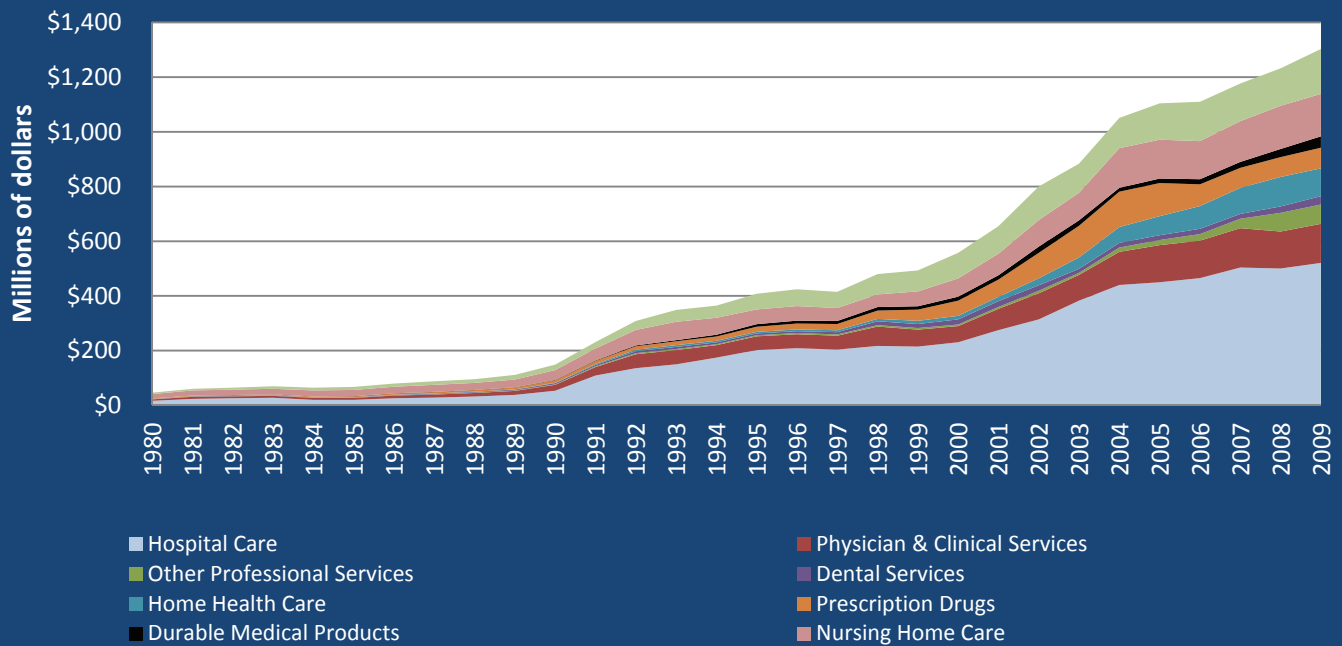
States that elect to establish HOAs deposit Medicaid dollars into a beneficiary's private account. The beneficiary can then use those dollars to purchase medical services directly. If the beneficiary uses Medicaid providers, the account is debited at standard Medicaid rates. For non-participating providers, the account is debited at a higher rate. When a beneficiary's income rises and Medicaid eligibility ends, 25 percent of the balance remaining in the account returns to the state. The remainder is available to the beneficiary for the purchase of health coverage, job training or college tuition.

HOAs cut through the bureaucracy and allow beneficiaries to purchase coverage directly. They also make beneficiaries price sensitive for health services, leading to more judicious behavior and better cost control.

## Medicaid expenditures in Nevada, 2009



## Medicaid spending in Nevada, 1980 - 2009



Source: U.S. Dept. of Health and Human Services, Center for Medicaid Services, National Health Expenditure Data, 2009.

# Minimum Wage

The Nevada Constitution was amended in 2006 to impose a statewide minimum wage rate that is indexed to both changes in the consumer price index and increases in the federal minimum wage rate.

For FY 2012, the Nevada Labor Commissioner has decreed that the official state minimum wage amounts to \$7.25 per hour for employers who provide qualifying health-care benefits and \$8.25 per hour for those who do not.<sup>1</sup>

## Key Points

### **Market wages are a function of productivity.**

Individuals who earn higher wages in the market do so precisely because they possess the skills or education to produce goods or services that are highly valued within society.

**In the long run, competitive markets render fair value for labor.** There is no such thing as “exploitation of the workers” in a competitive marketplace; if a worker is paid less than the value of his or her labor, competing employers will bid him or her away. The only potential obstacle that can lead to worker exploitation is government protection of an employer’s monopoly status — such as onerous regulations that impede a potential competitor from entering the marketplace.

### **Minimum wage laws create higher unemployment.**

There are few topics of genuine consensus among economists. Yet, all major schools of economic thought recognize that minimum wage laws, if effective, artificially raise the price of labor above the market-clearing price, leading to the unemployment or underemployment of workers.

**Minimum wage laws harm the same workers they supposedly are intended to benefit.** The workers who are most likely to suffer unemployment as a result of minimum wage laws are those who earn wages below the newly mandated “minimum.” Employers will not consider these workers for employment at higher wage rates precisely because they do not produce enough value to justify the additional expense.

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<sup>1</sup> State of Nevada, Office of the Labor Commissioner, “Minimum Wage 2011 Annual Bulletin.”

**Minimum wage laws disproportionately harm minorities.** Minorities, teenagers and women are the demographic groups most likely to earn wage rates that fall below the minimums set by state or federal governments. As a result, these groups are most likely to experience unemployment as a result of minimum wage policies. Data from the U.S. Department of Labor shows, for instance, that the unemployment rate for teenage blacks is more than twice as high as that for teenage whites.<sup>2</sup>

Early proponents for minimum wage laws understood that a minimum wage would drive minorities, teenagers and women out of work. Yet, rather than view this result as problematic, these early advocates saw such unemployment of what they called “parasitic labor” as a primary virtue of the minimum wage.<sup>3</sup> Recognizing this ignominious motivation, Nobel laureate Milton Friedman classified the minimum wage law “as one of the most, if not the most, anti-black laws on the statute books.”

## Recommendations

**Amend the state constitution to repeal the Nevada minimum wage law.** Nevadans are facing the nation’s highest unemployment rate.<sup>4</sup> The state’s minimum wage law only exacerbates this problem — artificially imposing even more joblessness. Moreover, the individuals who suffer most as a result of minimum wage laws are those who can least afford it.

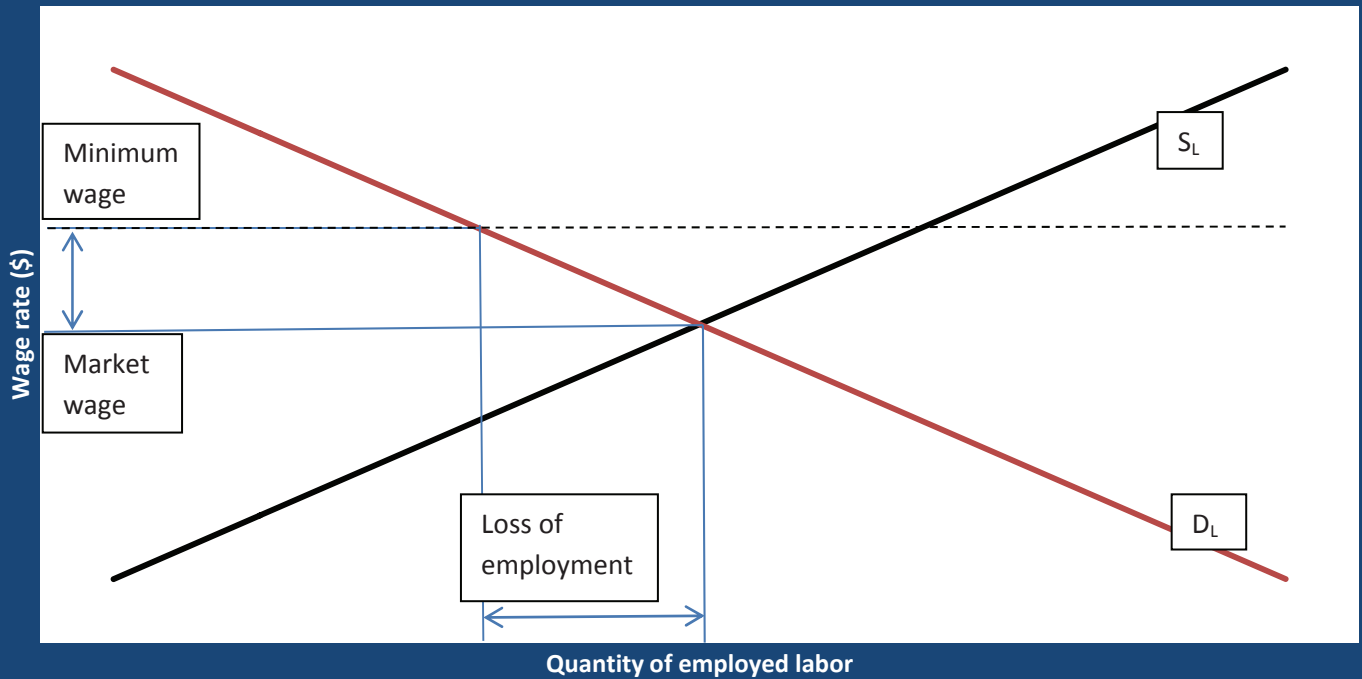
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<sup>2</sup> U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey.

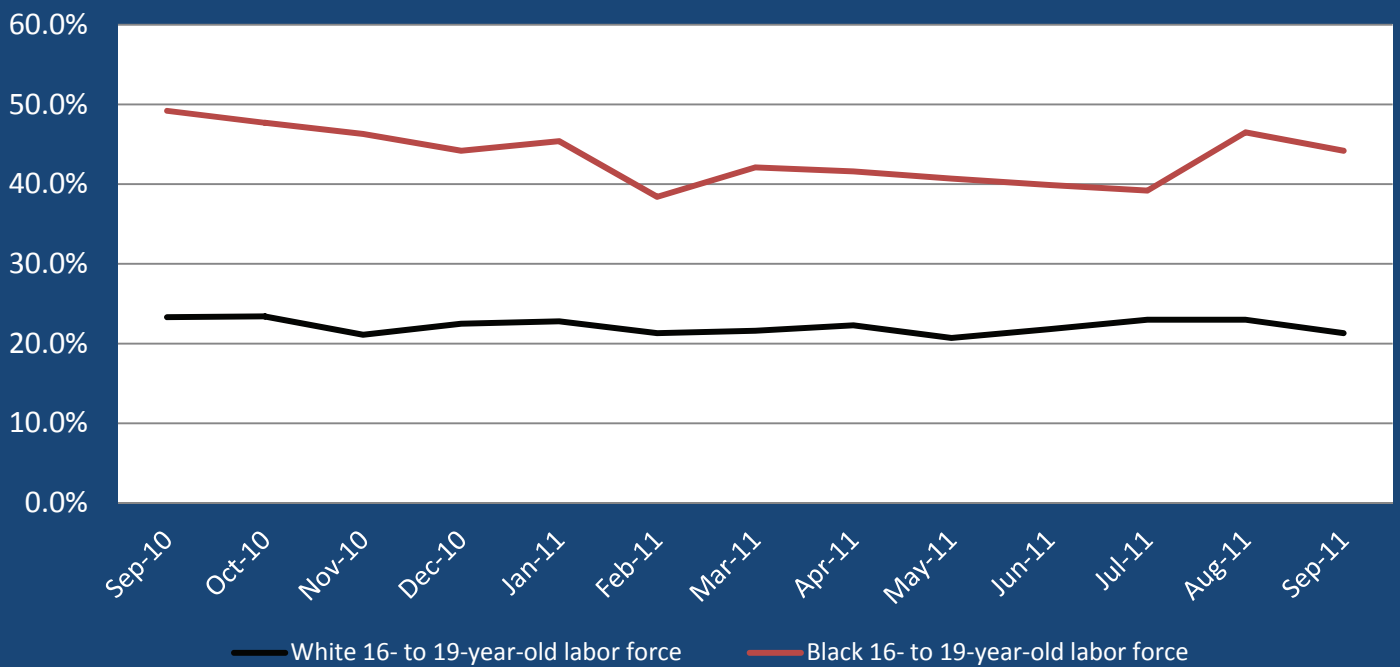
<sup>3</sup> See, e.g., Sidney Webb and Beatrice Potter Webb, 1897, Industrial Democracy, pp. 766-789.

<sup>4</sup> U.S. Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, September 2011.

## Effect of minimum wage on labor market



## Seasonally adjusted unemployment rates for teenage workers



Source: U.S. Department of Labor, Bureau of Labor Statistics

# Prevailing Wage

Since 1937, Nevada law has required that workers constructing state-funded public works projects receive a special kind of minimum wage, called “prevailing wage.”

To the uninitiated, prevailing wage laws sound like they are intended to ensure that workers receive wages reflective of the local labor market. The Nevada Labor Commissioner, however, administers these laws in a way that ensures trade unions are able to control state-mandated prevailing wage rates.

This bias in favor of trade unions leads to wage rates far above those found on the local labor market. This inflates the labor cost component of public works projects — straining taxpayer resources and ultimately limiting the number of projects that can be completed.

## Key Points

**Survey methodology is flawed.** State-mandated prevailing wage rates are determined through a survey administered by the Labor Commissioner. The way the Labor Commissioner structures the survey, however, leads to a “sampling error” — meaning that the representation of unions among the responses is far higher than among the actual population. For a number of reasons, nonunion contractors incur far higher accounting costs to complete the survey than union contractors.<sup>1</sup>

After the Labor Commissioner’s survey has systematically excluded most nonunion contractors, if at least 50 percent of reported billable hours for a given job classification were subject to a collective bargaining agreement, the survey results are dismissed. In that case, Nevada Administrative Code 338 stipulates that the “prevailing wage” must equal the union wage.

**State-mandated prevailing wages are 45 percent higher than market wages, on average.** The flawed survey methodology allows unions to unilaterally dictate wage rates paid on public works projects in Nevada. As a result, workers on these projects typically receive a “wage premium.”

The magnitude of the wage premium can be approximated by comparing prevailing wage rates with wage rates paid in the local marketplace, as reported by the Nevada Department of Employment, Training and Rehabilitation. These figures show that, on average, workers receive a 44.2 percent wage premium in Northern Nevada and a 45.8 percent wage premium in Southern Nevada.<sup>2</sup>

**Wage premiums cost taxpayers a combined \$1 billion in 2009 and 2010.** When the wage-premium ratios are applied to the total cost of public works projects undertaken in 2009 and 2010, wage premiums cost taxpayers nearly \$1 billion in 2009 and 2010 alone.<sup>3</sup>

**Prevailing wage laws are racially discriminatory.** Prevailing wage laws in the states are modeled after the federal Davis-Bacon Act of 1931, which effectively required union wages on federally funded projects.

The explicit intent of the Davis-Bacon Act was to prevent contractors who employed black labor from winning federal contracts. At the time, trade unions systematically excluded blacks from membership. The Davis-Bacon Act aimed to undermine the competitiveness of black workers and ensure that unionized, white labor received federal contracts.

Today, black workers remain statistically less likely to belong to a trade union and repeal of prevailing wage laws is “associated with...a significant narrowing of the black/nonblack wage differential for construction workers.”<sup>4</sup>

## Recommendations

**Repeal Nevada’s prevailing wage laws.** In recognition of the racial discrimination, job loss, expense and other economic distortions that result from prevailing wage laws, 10 states have repealed these laws since 1978.<sup>5</sup> Nevada should become the 11th.

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Daniel P. Kessler and Lawrence Katz, “Prevailing Wage Laws and Construction Labor Markets,” National Bureau of Economic Research Working Paper No. 7454.

<sup>5</sup> Lawrence, note 1.

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<sup>1</sup> Geoffrey Lawrence, “Who Really Prevails Under Prevailing Wage?” Nevada Policy Research Institute, 2011.



**Prevailing Wage Versus Market Wage (Reported by DETR), by Job Classification,  
Clark County, 2011**

<b>Job Classification (Journeymen)</b>	<b>Prevailing Wage</b>	<b>DETR Average Wage</b>	<b>DETR Wage + 40 percent (accounting for benefits)</b>
Alarm Installer	\$55.95	\$24.59	\$34.43
Bricklayer	\$44.71	\$20.07	\$28.10
Carpenter	\$48.95	\$26.57	\$37.20
Cement Mason	\$46.28	\$22.63	\$31.68
Electrician - Communication	\$39.83	\$25.33	\$35.46
Electrician - Wireman	\$56.31	\$30.01	\$42.01
Floor Coverer	\$47.32	\$23.63	\$33.08
Glazier	\$57.51	\$28.10	\$39.34
Iron Worker	\$56.74	\$26.25	\$36.75
Laborer	\$42.94	\$19.15	\$26.81
Mechanical Insulator	\$56.23	\$21.42	\$29.99
Millwright	\$49.95	\$31.07	\$43.50
Operating Engineer	\$55.67	\$29.23	\$40.92
Painter	\$46.64	\$24.37	\$34.12
Plumber/Pipefitter	\$56.52	\$28.25	\$39.69
Refrigeration	\$35.17	\$21.28	\$29.79
Roofer	\$31.91	\$18.62	\$26.07
Sheet Metal Worker	\$59.52	\$34.86	\$48.80
Surveyor	\$57.59	\$29.70	\$41.58
Taper	\$46.64	\$21.03	\$29.44
Tile Setter	\$34.63	\$23.56	\$32.98
Truck Driver	\$46.13	\$22.45	\$31.43

**Prevailing Wage Versus Market Wage (Reported by DETR), by Job Classification,  
Washoe County, 2011**

<b>Job Classification (Journeymen)</b>	<b>Prevailing Wage</b>	<b>DETR Average Wage</b>	<b>DETR Wage + 40 percent (accounting for benefits)</b>
Alarm Installer	\$27.95	\$21.48	\$30.07
Carpenter	\$38.80	\$23.60	\$33.04
Cement Mason	\$34.40	\$25.45	\$35.63
Electrician - Communication	\$29.36	\$18.01	\$25.21
Electrician- Wireman	\$50.78	\$25.21	\$35.29
Iron Worker	\$56.74	\$34.02	\$47.63
Laborer	\$30.82	\$17.89	\$25.05
Operating Engineer	\$43.08	\$25.53	\$35.74
Painter	\$32.74	\$18.74	\$26.24
Plumber/Pipefitter	\$45.20	\$33.47	\$46.86
Refrigeration	\$41.58	\$27.28	\$38.19
Roofer	\$41.58	\$27.28	\$38.19
Sheet Metal Worker	\$48.35	\$17.90	\$25.06
Surveyor	\$27.88	\$39.80	\$55.72
Taper	\$36.28	\$19.38	\$27.13
Tile Setter	\$32.87	\$20.86	\$29.20

# Collective Bargaining

NRS Chapter 288 requires that “every local government employer shall negotiate in good faith...concerning the mandatory subjects of bargaining...with the designated representatives of the recognized employee organization.”

These “mandatory subjects” that must be collectively bargained include:

1. Wage rates
2. Sick leave
3. Vacation leave
4. Holidays
5. Other paid or nonpaid leaves of absence
6. Insurance benefits
7. Total hours of work required in a day or week
8. Total number of days’ work per year
9. Discharge and disciplinary procedures
10. Recognition clause
11. Methods for classifying employees in the bargaining unit
12. Deduction of dues for the recognized employee organization
13. Protection of employees from discrimination due to union membership
14. No-strike provisions
15. Grievance and arbitration procedures
16. General savings clauses
17. Duration of collective bargaining agreement (CBA)
18. Safety of employees
19. Teacher preparation time
20. Materials and supplies for classrooms
21. Policies for reassigning teachers
22. Procedures for workforce reduction

## Key Points

**Nevada’s local governments face high labor costs.** In Nevada, only local governments must collectively bargain with employees; unionization is not permitted for state employees. The result of this difference is apparent in the labor costs that local governments face relative to state agencies or employers in the private sector.

While state workers and private-sector workers are the 18<sup>th</sup> and 27<sup>th</sup> highest paid in the nation, respectively, Nevada’s local government workers receive the seventh highest salaries nationwide. Nevada’s local government workers receive more pay than their peers in states with

much higher living costs, like Connecticut and Massachusetts.<sup>1</sup>

**Employees’ ability to opt out of paying union dues is compromised.** Most local government CBAs in Nevada significantly advantage union bosses and union members over non-union employees in multiple ways. This biases the work environment and leads to more employee dues flowing into union activities. In some cases, employees who do not want to pay union dues are nevertheless trapped into doing so by small windows of time each year when they may opt-out of paying these dues. For teachers in Clark County, for example, this period is currently July 1 to July 15 — dates chosen by union bosses because teachers are on vacation.<sup>2</sup>

**Union dues are used for political purposes that employees may disagree with.** A significant portion of the dues that union bosses extract from employees are used to finance political campaigns and contributions to candidates that many employees do not support.<sup>3</sup> This constitutes “forced speech” and is an affront to workers’ First Amendment rights.

**NRS 288 effectively turns government officials into collection agents for unions.** NRS 288’s requirement that deduction of union dues by government payroll departments be a mandatory subject of bargaining places undue pressure on public officials to collaborate with private organizations often hostile to good public policy. It also privileges union bosses over taxpayers.

## Recommendations

### **Pass legislation to protect employee paychecks.**

Employees should not be pressured to pay dues that may be used for purposes with which they disagree for any period of time. A Paycheck Protection measure would make it illegal for unions to collect dues from an employee without first gaining the employee’s express, written consent. Model legislation is available from the American Legislative Exchange Council.

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<sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2010.

<sup>2</sup> Negotiated Agreement between the Clark County Education Association and the Clark County School District, 2010-2011.

<sup>3</sup> To view unions’ campaign contributions, see financial disclosure reports filed with the Nevada Secretary of State.

## Average annual pay of workers (excluding benefits), by state, 2010

State	State employees	Rank	State	Local government employees	Rank	State	Employees in private industry	Rank
NJ	\$63,263	1	DC	\$74,812	1	DC	\$73,072	1
CT	\$60,466	2	NJ	\$56,993	2	NY	\$61,548	2
IL	\$60,070	3	CA	\$54,504	3	CT	\$60,396	3
CA	\$58,951	4	HI	\$54,477	4	MA	\$58,359	4
RI	\$58,945	5	RI	\$52,975	5	NJ	\$55,736	5
MA	\$56,277	6	NY	\$52,650	6	CA	\$52,553	6
IA	\$56,250	7	<b>NV</b>	<b>\$52,088</b>	<b>7</b>	IL	\$49,523	7
MI	\$55,810	8	MD	\$50,253	8	MD	\$49,496	8
NY	\$55,034	9	CT	\$50,140	9	VA	\$49,138	9
MN	\$54,488	10	MA	\$49,778	10	DE	\$48,592	10
PA	\$51,723	11	WA	\$47,655	11	CO	\$47,916	11
AK	\$51,541	12	DE	\$47,156	12	WA	\$47,861	12
CO	\$51,206	13	FL	\$45,258	13	TX	\$47,610	13
WA	\$51,006	14	IL	\$44,450	14	AK	\$47,150	14
WI	\$50,977	15	MI	\$43,898	15	MN	\$46,984	15
WY	\$50,846	16	PA	\$43,747	16	NH	\$46,287	16
OH	\$50,618	17	AK	\$43,569	17	PA	\$45,325	17
<b>NV</b>	<b>\$50,125</b>	<b>18</b>	OR	\$42,735	18	GA	\$44,311	18
VT	\$48,681	19	AZ	\$41,742	19	MI	\$43,631	19
DE	\$48,516	20	OH	\$41,602	20	AZ	\$42,860	20
MD	\$47,597	21	CO	\$41,469	21	RI	\$42,525	21
NH	\$47,377	22	MN	\$40,998	22	TN	\$41,760	22
UT	\$47,184	23	WY	\$40,138	23	LA	\$41,470	23
KS	\$46,809	24	VA	\$39,914	24	WY	\$41,258	24
AL	\$46,504	25	TX	\$39,872	25	OH	\$41,040	25
LA	\$46,168	26	NH	\$39,716	26	OR	\$40,984	26
NM	\$46,118	27	NC	\$38,499	27	<b>NV</b>	<b>\$40,899</b>	<b>27</b>
TX	\$45,279	28	WI	\$38,427	28	NC	\$40,874	28
NE	\$44,786	29	SC	\$37,762	29	MO	\$40,852	29
AZ	\$44,745	30	GA	\$36,531	30	FL	\$40,562	30
NC	\$44,544	31	AL	\$36,167	31	WI	\$39,556	31
VA	\$44,361	32	TN	\$36,118	32	KS	\$39,431	32
ND	\$43,421	33	VT	\$36,067	33	HI	\$39,294	33
ME	\$42,770	34	LA	\$36,065	34	AL	\$39,270	34
FL	\$42,752	35	NE	\$36,049	35	IN	\$39,226	35
OR	\$42,173	36	MO	\$36,042	36	UT	\$38,936	36
HI	\$41,980	37	KY	\$35,928	37	VT	\$38,636	37
KY	\$41,614	38	IA	\$35,815	38	KY	\$38,373	38
SC	\$41,386	39	IN	\$35,637	39	ND	\$38,028	39
IN	\$41,378	40	NM	\$35,319	40	OK	\$38,011	40
MT	\$41,303	41	ME	\$34,618	41	NM	\$37,927	41
SD	\$41,185	42	MT	\$33,898	42	IA	\$37,429	42
AR	\$40,214	43	OK	\$33,107	43	WV	\$36,991	43
MS	\$39,975	44	AR	\$33,022	44	SC	\$36,785	44
OK	\$39,651	45	WV	\$33,022	45	NE	\$36,686	45
TN	\$39,568	46	UT	\$32,471	46	ME	\$36,582	46
WV	\$39,389	47	MS	\$32,082	47	AR	\$35,814	47
GA	\$39,373	48	ND	\$31,829	48	ID	\$34,611	48
ID	\$39,359	49	KS	\$31,238	49	SD	\$33,887	49
MO	\$37,515	50	ID	\$31,069	50	MS	\$33,537	50
DC	-	51	SD	\$29,731	51	MT	\$33,244	51

Source: U.S. Dept of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages.

# Heart & Lung

According to NRS 617.453-617.487, it is “conclusively presumed” that public safety officers in Nevada who contract heart disease, lung disease or hepatitis at any point in their lifetime did so as a result of their occupation — making each such individual eligible for permanent disability benefits, complete medical coverage and potential indemnity. These benefits must be provided by taxpayers in the city or county where the officer was employed.

Prior to 1989, the burden of proof fell on employees to demonstrate that they had been exposed to dangerous materials in the course of their duties which increased the likelihood of contracting disease. During the 65<sup>th</sup> Session, however, lawmakers amended NRS 617 to remove this burden of proof and make retired public safety workers who contract one of these diseases — even if the result of old age or an unhealthy lifestyle — eligible for the same benefits as those who legitimately contract disease through the course of their duties.

## Key Points

**Heart and lung disease are among the most common causes of death nationwide.** According to the Centers for Disease Control, heart and lung disease were, respectively, the first and third most common causes of death in the United States for 2009.<sup>1</sup>

Because heart and lung disease are so pervasive within the general population, Nevada’s “conclusive presumption” that public safety officers get these diseases as a result of their occupation means that many individuals who would have contracted these diseases regardless of their occupation become eligible for occupational disease benefits.

**Presumptive liabilities exceed \$2.4 billion for just six jurisdictions.** It’s difficult to calculate a finite figure for the heart and lung liabilities facing Nevada’s local governments because these liabilities are open-ended — employees can file a claim decades after retirement, provided that they served in municipal police or fire positions for at least five years. (For non-public safety personnel, occupational disease claims must be filed within five years of retirement.)

<sup>1</sup> U.S. Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Reports, 2009.

Nevertheless, the cities of Henderson, Las Vegas, North Las Vegas, Reno and Sparks and the Las Vegas Metropolitan Police Department jointly commissioned a series of actuarial studies in 2008 that remain the most authoritative source for quantifying heart and lung liabilities. These studies conclude that the combined unfunded liability facing the six jurisdictions exceeds \$2.4 billion.<sup>2</sup>

**Nevada is the only state in the union with a lifetime manifestation period.** While some other states have presumptive benefits statutes, none are as generous as Nevada’s. Nevada is the only state that does not cap the manifestation period for the onset of occupational diseases. In California, all claims must be made within five years from last employment.

## Recommendations

**Repeal the conclusive presumption provisions.** Officers who contract diseases in the course of duty deserve to receive compensation from their employer and to receive medical treatment. Nevada’s conclusive presumption statutes, however, make a mockery of that legitimate obligation by entitling retirees who contract disease as a result of unhealthy lifestyles to the same benefits. Local taxpayers should not be forced to subsidize poor decision-making by public-sector retirees.

**Cap the manifestation period.** The open-ended nature of heart and lung liabilities makes it nearly impossible for local governments to accurately account for these liabilities. Forty-nine states limit the manifestation period. Nevada should as well.

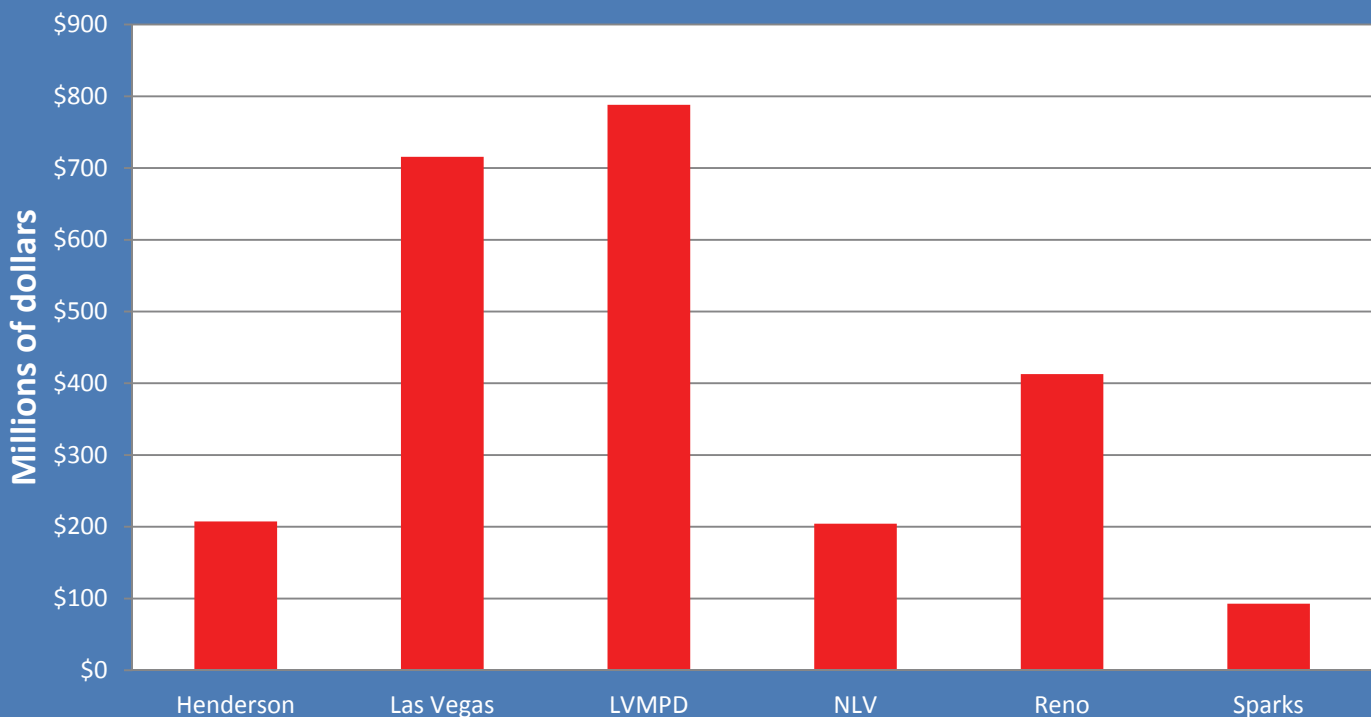
<sup>2</sup> Scott Lefkowitz, “Unpaid Benefit Costs for Heart Disease, Lung Disease, Hepatitis, and Cancer Claims, as of June 30, 2008,” Oliver Wyman Actuarial Consulting, Inc., Prepared for Cities of Henderson, Las Vegas, North Las Vegas, Reno and Sparks and the Las Vegas Metropolitan Police Department.

## Leading causes of death in the United States, 2009

Cause of death	Number of mortalities
<b>1. Heart disease</b>	<b>598,607</b>
2. Cancer	568,668
<b>3. Lung disease</b>	<b>137,082</b>
4. Stroke	128,603
5. Accidental injury	117,176
6. Alzheimer's disease	78,889
7. Diabetes	68,504
8. Influenza and pneumonia	53,582
9. Kidney disease	48,714
10. Suicide	36,547
11. Blood Poisoning	35,587
12. Liver disease	30,444
13. Hypertensive renal disease	25,651
14. Parkinson's disease	20,552
15. Homicide	16,591

Source: U.S. Centers for Disease Control and Prevention, National Center for Health Statistics.

## Actuarial heart & lung liability by city (as of FY08)



Source: Oliver Wyman Actuarial Consulting, Inc.

# Double Dipping

Originally passed in 1947, the Nevada Public Employees' Retirement Act specifically prohibited public-sector retirees from receiving pension benefits if they accept new "employment or an independent contract with a public employer" that pays one-half or more of the average salary for state and local workers, excluding public safety officers. This limitation was intended to prevent abuse of the pension system by workers who had no intention of retiring.

In 2001, however, lawmakers created an end-run — NRS 286.523 — around this prohibition, to allow public-sector workers to receive pension payments without ever leaving their salaried positions. To do so, workers must only convince their superiors to classify their position as one that suffers from a "critical labor shortage" (CLS). Once the position has been thus classified, a worker can immediately declare retirement and start collecting pension benefits while remaining in his position and receiving a full salary.

## Key Points

### **Abuse of the CLS exemption has been rampant.**

Lawmakers' intent in crafting the CLS exemption was to alleviate a perceived shortage of teachers during the 2001-03 biennium by allowing school districts to re-employ retired teachers.

The first positions to be classified as CLS positions, however, were those held by high-ranking political appointees within the Guinn administration — including one cabinet-level appointee. On Jan. 10, 2001 — immediately after the CLS law became effective — the Board of Examiners classified the director of public safety and deputy director of public safety positions as CLS. The next day, incumbents Richard Kirkland and David Kieckbusch officially retired, and two days later they each resumed their positions with CLS status. Records show Kirkland began receiving \$70,000 in annual pension benefits in addition to his cabinet-level salary of \$103,301 as a result of the change.<sup>1</sup>

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<sup>1</sup> Nevada Public Employees' Retirement System, "Critical Labor Shortage Estimated Cost through Nov. 1, 2008," Presented to Legislative Interim Retirement and Benefits Committee Dec. 15, 2008; see also, Martha Bellisle, "Nevada's Pension Laws Allow Double-Dipping," *Reno Gazette-Journal*, 30 May 2011.

**As CLS induces more workers to declare retirement, PERS realizes a financial loss.** An actuarial review commissioned by PERS shows Kirkland and Kieckbusch were not alone in abusing the CLS exemption. Nearly 44 percent of the workers who have filled CLS positions did so without ever leaving the workforce. PERS' actuaries conclude that the retirees who "immediately returned to their positions would not have otherwise retired if there was no opportunity to be rehired under critical labor shortage exemption."<sup>2</sup>

As a result, PERS made avoidable pension payments of \$54 million to these workers between 2001 and 2008. PERS administrators have testified that these CLS-related payments exacerbate PERS's unfunded liability and resulted in higher contribution rates from state and local governments to keep the fund solvent. PERS actuaries declare that the CLS exemption is directly responsible for raising contribution rates by 0.33 percent of payroll.<sup>3</sup>

**Lawmakers acted against the advice of the Retirement Board.** The CLS exemption would have expired prior to FY 2010 if lawmakers had not reauthorized it. Because of the exemption's detrimental effects on PERS finances, the Retirement Board had recommended its discontinuation.<sup>4</sup> Despite this recommendation and the labor-force reductions required at that time due to recession — which should have undermined the very concept of a "labor shortage" — lawmakers during the 2009 session reauthorized the CLS exemption.

## Recommendations

**Immediately discontinue the CLS exemption.** The Silver State suffers from an effective unemployment rate of 23.3 percent.<sup>5</sup> Even if Nevada suffered from a labor shortage a decade ago, that certainly is no longer the case. Unfortunately, the CLS exemption has, in practice, become little more than a mechanism for well-connected bureaucrats and even political appointees to loot the assets held by PERS. The CLS exemption leads to cronyism and corruption. It should be discontinued immediately.

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<sup>2</sup> Nevada Legislature, Minutes of the Legislative Interim Retirement and Benefits Committee, Dec. 15, 2008.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Alternative Measures of Labor Underutilization for States."

## Sampling of retirees who were immediately rehired under CLS status

Employer	Position	Date Retired	Date Employed as CLS
State	Deputy Director, Public Safety	7/11/2001	7/13/2001
State	Senior Judge	1/2/2005	1/3/2005
State	Director, Public Safety	7/11/2001	7/13/2001
Storey County	Wastewater Treatment Op	8/30/2008	8/30/2008
JRS	Senior Judge	1/5/2009	1/5/2009
Battle Mtn Gen Hosp	Chief Risk Officer	8/2/2008	8/2/2008
State	Senior Judge	2/12/2006	2/12/2006
Clark Co SD	Teacher Development Mentor	7/11/2006	10/5/2006
State	Senior Judge	3/2/2007	3/2/2007
Mt Grant Gen Hosp	Medical Records Tech	9/1/2008	9/1/2008
JRS	Senior Judge	1/21/2006	1/21/2006
Grover C Dils Med	Registered Nurse	12/2/2004	12/3/2004
Clark Co SD	Project Facilitator	10/4/2007	9/17/2007
Canyon GID	Manager	1/1/2005	1/1/2005
Lander County	Detentions Sergeant	12/1/2007	12/3/2007
City of Reno	Land Use Attorney	6/28/2005	6/29/2005
Clark Co SD	Psychologist	2/5/2004	2/5/2004
Storey Co SD	SC On-Line Coordinator	9/1/2008	9/1/2008
JRS	Senior Judge	1/5/2009	1/5/2009
State	Highway Patrol Trooper	11/26/2001	11/27/2001
JRS	Senior Judge	5/19/2009	5/20/2009
Mineral County	Building Inspector	8/30/2008	9/9/2008
JRS	Senior Judge	7/1/2008	8/1/2008
Clark Co SD	Nurse	12/10/2008	11/17/2008
Clark Co Health	Vector Control Entomol	6/30/2005	7/1/2005
JRS	Senior Judge	1/5/2009	2/1/2009
Mineral County	Juvenile Master	1/1/2007	1/2/2007
State	Senior Judge	1/3/2005	1/4/2005
Clark Co SD	Psychologist	9/1/2006	8/23/2006
Battle Mtn Gen Hosp	ER Nurse	9/1/2008	9/1/2008
JRS	Senior Judge	1/5/2009	1/5/2009
Clark Co SD	Nurse	9/1/2006	8/23/2006
Team A Charter	Psychologist	9/1/2006	9/1/2006
Clark Co SD	Psychologist	9/1/2008	8/20/2008
SNHD	Vax Computer Programmer	7/12/2008	8/1/2008
Clark Co SD	Psychologist	9/1/2006	8/23/2006
State	Senior Judge	7/1/2005	7/1/2005
Mt Grant Hosp	Insurance/Admitting Super	8/16/2008	8/27/2008
Clark Co SD	Psychologist	8/22/2008	8/20/2008
State	Senior Judge	1/14/2006	1/14/2006
Humboldt Co SD	Principal	7/1/2008	7/1/2008
State	Parole Board Member	8/6/2001	8/7/2001
Clark Co SD	Psychologist	9/1/2008	8/20/2008
Douglas Sewer Imp	District Controller	2/8/2004	2/8/2004
NSHE	Visiting Professor	9/1/2003	10/8/2003
JRS	Senior Judge	1/3/2005	1/4/2005
NSHE	Tech Prep Coordinator	9/1/2004	10/14/2004

Source: Nevada Public Employees' Retirement System.

# Economic Development

In 2011, lawmakers enacted a dramatic overhaul to the state's economic development infrastructure, passing Assembly Bill 449.

AB 449 created a new cabinet-level position for economic development, restructured the state's economic development efforts into a more top-down manner and created a "Catalyst Fund" with \$10 million in initial "seed money," transferred from the Unclaimed Property Fund. The purpose of the Catalyst Fund is to provide financial incentives to firms that are considering moving to Nevada or expanding in Nevada.<sup>1</sup>

This strategy of state-directed economic development will rely on public revenues — taxes — to pay off private businessmen for locating their production in Nevada. Lawmakers should question whether this approach to economic development is superior to the approach articulated by John Locke, Adam Smith and their classical liberal contemporaries, which focuses on the assurance of property rights.<sup>2</sup>

## Key Points

**Property rights are essential for sustained economic development.** All individuals behave entrepreneurially. That is, they act in ways they perceive will increase their own personal happiness. Individuals who place value in material wealth act to increase this wealth through conscious effort. When individuals save a portion of their productive efforts, rather than immediately consuming it, these savings — capital — can be used to purchase or develop equipment or processes that increase their future productivity.

It is the accumulation of capital that allows society to grow richer over time, as individuals become able to produce more goods for every hour worked. Capital also provides the resources for research into new technologies and the development of new products to fill needs not even perceived previously.

Individuals only have the incentive to produce capital, however, if their claim to it is secure. Otherwise, producing anything that is not immediately consumed

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<sup>1</sup> Nevada Legislature, 76<sup>th</sup> Session, Assembly Bill 449.

<sup>2</sup> John Locke, The Second Treatise of Civil Government, 1690; see also, Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations, 1776.

becomes irrational. And then the capital that makes economic development possible is never created.<sup>3</sup>

**The state's primary responsibility is to ensure property rights.** As Locke recognized, society's need for individuals to have a protected claim to their own possessions necessitated the emergence of a legal framework that would define and protect property rights and adjudicate disputes. This is the original rationale for civil government and remains its central purpose. *Strict protection of property rights is the most fundamental of economic development strategies.*

As research by Hernando de Soto and others has shown, the least-developed nations in the world find themselves in that position precisely because of deficiencies in the legal framework for protecting property rights.<sup>4</sup>

**State-directed economic development is inefficient.** When production decisions are shaped by politicians instead of market forces, society's capital stock is likely to be invested in ways that serve politicians', not consumers' best interests. Publicly subsidized producers compete on an uneven playing field that can allow them to push out of the market the suppliers that consumers would otherwise prefer.

## Recommendations

**Clarify and restrict the mission of the Economic Development Board.** Nevada does not need a cabinet-level agency to dole out patronage to cronies. However, the Economic Development Board created by AB 449 could take meaningful steps to ensure future economic development if its mission is changed to identify and correct potential shortcomings in the state's protection of property rights.

Defining property rights is an evolutionary process. New forms of property — intellectual, environmental, etc. — are continuously identified and are only imperfectly encoded into law.<sup>5</sup> If Nevada would give entrepreneurs certainty over various forms of property rights and their future tax liabilities, it could become a world leader in developing new industry.

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<sup>3</sup> Murray Rothbard, Man, Economy and State, 1962.

<sup>4</sup> Hernando de Soto, The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else, 2000.

<sup>5</sup> Roy Cordato, Efficiency and Externalities in an Open-Ended Universe, 1992.



## Sampling of tax abatements granted by Nevada Commission on Economic Development, through FY 2008

Date	Company	County	Number of new jobs	Estimated sales & use tax abatement	Sales & use tax abatement per job	MBT abatement	Personal property tax abatement
11/12/2003	ORNI3, LLC - Ormat Nevada	CH	8	\$2,662,272	\$332,784	-	-
1/12/2005	RR Donnelly	WA	26	\$1,934,525	\$74,405	-	50%/10 years
7/13/2005	Polypipe, Inc	LY	6	\$233,726	\$38,954	-	50%/10 years
7/13/2005	Solargenix Energy, LLC	CL	28	\$5,800,850	\$207,173	-	50%/10 years
2/15/2006	Pro Line Printing	WA	24	\$448,006	\$18,667	-	-
4/19/2006	Vada Tech, Inc	CL	12	\$858,125	\$71,510	50%/4 years	50%/10 years
6/21/2006	Basalite Concrete Products, LLC	CC	14	\$373,100	\$26,650	50%/4 years	50%/10 years
7/19/2006	Sierra Stainless	LY	24	\$298,805	\$12,450	50%/4 years	50%/10 years
9/20/2006	SpecTIR LLC	WA	4	\$207,605	\$51,901	50%/4 years	-
10/18/2006	PowerLight Corporation/ Solar Star	CL	1	\$5,608,413	\$5,608,413	50%/4 years	-
11/15/2006	Varian Medical Systems, Inc	CL	45	\$1,123,038	\$24,956	50%/4 years	50%/10 years
1/17/2007	Western Dairy Specialties	LY	19	\$1,022,132	\$53,796	50%/4 years	50%/10 years
2/21/2007	Bottling Group LLC	CL	34	\$2,772,368	\$81,540	50%/4 years	50%/10 years
3/21/2007	Biodiesel of Las Vegas	CL	40	\$2,427,978	\$60,699	50%/4 years	50%/10 years
5/16/2007	Niotan, Inc.	LY	34	\$855,402	\$25,159	50%/4 years	50%/10 years
6/20/2007	Switch Communications Group, LLC	CL	7	\$621,742	\$88,820	50%/4 years	50%/10 years
7/18/2007	Arroweye Solutions, Inc	CL	6	\$319,878	\$53,313	50%/4 years	50%/10 years
8/15/2007	TG Power LLC	EL	15	\$2,011,725	\$134,115	-	-
8/15/2007	Erickson Manufacturing	CL	20	\$544,525	\$27,226	50%/4 years	-
9/19/2007	Enel North America, Inc	CH	12	\$6,155,100	\$512,925	50%/4 years	-
9/19/2007	U.S. Ordinance, Inc	ST	7	\$233,008	\$33,287	50%/4 years	50%/10 years
1/16/2008	GlobalWatt, Inc	LY	2	\$1,606,965	\$803,483	-	50%/10 years
2/20/2008	ICO Satellite Services GP	CL	2	\$4,836,973	\$2,418,487	50%/4 years	50%/10 years
6/24/2008	Switch Communications Group, LLC	CL	10	\$12,023,341	\$1,202,334	50%/4 years	50%/10 years
6/24/2008	El Dorado Energy, LLC	CL	1	\$1,857,250	\$1,857,250	50%/4 years	50%/10 years
6/24/2008	NGP Blue Mountain 1 LLC	HU	21	\$3,116,019	\$148,382	50%/4 years	-

**Source:** Nevada Legislature, Legislative Counsel Bureau, Fiscal Division, "Report on Tax Abatements, Tax Exemptions, Tax Incentives for Economic Development and Tax Increment Financing in Nevada," 2009.

# Investment Capital

Nevada lawmakers in 2011 created a new state corporation to invest money from the state’s Permanent School Fund. A primary goal of this effort was to give investment capital to firms locating into, or merely proposing to expand within, the Silver State. The enabling legislation, SB 75, allows for the creation of a “corporation for public benefit” to purchase, with \$50 million from the Permanent School Fund, a direct equity stake in private firms. Historically, money in the Permanent School Fund<sup>1</sup> had been invested by the state treasurer in high-quality financial securities, with the returns on the investments going directly into the state’s Distributive School Account.

## Key Points

**The purchase of private equity stakes with public funds is likely unconstitutional.** Before voting on SB 75, lawmakers solicited a judicial determination to justify its passage, given its apparent conflict with the Nevada Constitution: “The State,” says Article 8, Section 9, “shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.”<sup>2</sup>

The bill’s advocates argued that the corporation created by SB 75 met the “educational purpose” exemption because one component of its mission would be to seek a high investment yield, with this yield returning to the Distributive School Account. The corporation created by SB 75, however, would not be the final recipient of public funds — it would merely serve as a pass-through entity for the state to purchase equity stakes in firms that may not serve educational or charitable purposes.

Consequently, the judicial determination that lawmakers received to justify SB 75’s constitutionality made no appeal to the “educational purpose” exemption. Instead, the opinion appealed to the legally tenuous “Special Funds Doctrine,” which holds that lawmakers can get around constitutional restrictions on the use of public money if they first funnel those dollars through a fund created outside of the state’s general fund.<sup>3</sup> Despite lawmakers’ ability to solicit a favorable judicial

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<sup>1</sup> Nevada’s now-defunct estate tax yielded the seed funds.

<sup>2</sup> Nevada Constitution, Article 8, Section 9.

<sup>3</sup> Filed Declaratory Order, Judge James E. Wilson, Jr., First Judicial Court of the State of Nevada, Case No. 11 OC 00092 1B, April 20, 2011.

determination relative to SB 75, the issue’s constitutionality clearly remains in doubt.

**Capital for profitable ventures is not in short supply.** An ostensibly central purpose of the investment corporation created by SB 75 is to provide liquid capital to firms seeking to locate to, or expand within, Nevada. Bill advocates complained that Nevada suffers from a paucity of in-state investment capital and that this obstacle could be alleviated by using public resources for this purpose. Mobility, however, is one of the most defining features of capital. Every day, capital flows across the world seeking out ventures that cater best to human needs, because these offer the highest rates of return. Inasmuch as Nevadans have difficulty attracting capital, lawmakers should re-examine a wave of recent legislation that has rendered the state inhospitable to such investment.<sup>4</sup>

**Political influence over investments leads to economic inefficiency.** Political appointees will make up the board of directors of the corporation created by SB 75 and make investment decisions. Thus, the political interests of their masters will weigh heavily on the decisions of board members. Yet, politically influenced investment decisions regularly lead to a loss of wealth. That’s because politically controlled capital resources are not allocated on the strict basis of which ventures are most profitable — the clearest indication that a venture offers the highest and best value to consumers.

## Recommendations

**Repeal SB 75.** It’s highly doubtful that the corporatist scheme embodied in SB 75 would pass constitutional muster, if reviewed by the Nevada Supreme Court. Moreover, the rationales offered as to why such a corporatist scheme is supposedly necessary do not stand up to even mild scrutiny. Lawmakers should immediately repeal the authority for this scheme.

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<sup>4</sup> E.g., AB 149 of the 75<sup>th</sup> Session, and AB 284 and AB 273 of the 76<sup>th</sup> Session.

## Language from SB 75, establishing a “corporation for public benefit”

### Section 5.3.

1. The State Treasurer shall cause to be formed in this State an independent corporation for public benefit, the general purpose of which is to act as a limited partner of limited partnerships or a shareholder or member of limited-liability companies that provide private equity funding to businesses:
  - (a) Located in this State or seeking to locate in this State; and
  - (b) Engaged primarily in one or more of the following industries:
    - (1) Health care and life sciences.
    - (2) Cyber security.
    - (3) Homeland security and defense.
    - (4) Alternative energy.
    - (5) Advanced materials and manufacturing.
    - (6) Information technology.
    - (7) Any other industry that the board of directors of the corporation for public benefit determines will likely meet the targets for investment returns established by the corporation for public benefit for investments authorized by sections 2 to 7, inclusive, of this act and comply with sound fiduciary principles.
2. The corporation for public benefit created pursuant to subsection 1 must have a board of directors consisting of:
  - (a) Five members from the private sector who have at least 10 years of experience in the field of investment, finance or banking and who are appointed for a term of 4 years as follows:
    - (1) One member appointed by the Governor;
    - (2) One member appointed by the Senate Majority Leader;
    - (3) One member appointed by the Speaker of the Assembly;
    - (4) One member appointed by the Senate Minority Leader; and
    - (5) One member appointed by the Assembly Minority Leader;
  - (b) The Chancellor of the Nevada System of Higher Education or his or her designee;
  - (c) The State Treasurer; and
  - (d) With the approval a majority of the members of the board of directors described in subparagraphs (1), (2) and (3), up to 5 additional members who are direct investors in the corporation for public benefit.

### Section 6.

If the State Treasurer obtains the judicial determination required by subsection 3 of NRS 355.060, the State Treasurer may transfer an amount not to exceed \$50 million from the State Permanent School Fund to the corporation for public benefit. Such a transfer must be made pursuant to an agreement that requires the corporation for public benefit to:

1. Provide, through the limited partnerships or limited liability companies described in subsection 1 of section 5.3 of this act, private equity funding; and
2. Ensure that at least 70 percent of all private equity funding provided by the corporation for public benefit is provided to businesses:
  - (a) Located in this State or seeking to locate in this State; and
  - (b) Engaged primarily in one or more of the following industries:
    - (1) Health care and life sciences.
    - (2) Cyber security.
    - (3) Homeland security and defense.
    - (4) Alternative energy.
    - (5) Advanced materials and manufacturing.
    - (6) Information technology.
    - (7) Any other industry that the board of directors of the corporation for public benefit determines will likely meet the targets for investment returns established by the corporation for public benefit for investments authorized by sections 2 to 7, inclusive, of this act and comply with sound fiduciary principles.

# Construction Defect

Real property transactions in the United States have been governed by the principle of *caveat emptor* since at least 1817, when the Marshall Court incorporated this principle into its *Laidlaw v. Organ* decision.

*Caveat emptor* means that it is incumbent upon the purchaser to research and inspect any defects within the property for sale and to make his offer commensurate with his knowledge of defects. Under this principle, the seller retains no liability for any defects after the date of purchase unless the seller has deliberately misrepresented the property or has committed other fraudulent action.

Beginning in the 1960s, however, a series of court decisions began to confer onto sellers a liability for latent defects after the time of sale. This evolving body of “construction-defect law” was formalized most clearly in California, where, by the 1990s, litigating arguably defective construction became a highly prevalent and lucrative occupation. The increasing rate of litigation has significantly impacted California’s construction market, particularly for attached housing units — the most frequent target of litigators.<sup>1</sup>

As California trial lawyers exhausted California’s native targets for construction-defect litigation, they began looking eastward to Nevada as a potential new market for litigation.<sup>2</sup> In 1995, Nevada lawmakers acceded to their overtures, voting unanimously in favor of construction-defect legislation that had been rewritten by lobbyists from the Nevada Trial Lawyers Association.<sup>3</sup>

## Key Points

### **Construction-defect laws mean higher home prices.**

Nevada’s construction-defect law places an asymmetrical liability for unknown defects on the seller of the home vis-à-vis the purchaser. In a significant departure from all other sectors of Nevada civil law, it also guarantees unlimited “prelitigation” fees to attorneys, whether or not the case ever goes to court. Thus, while builders typically

purchase insurance to safeguard against liabilities, many insurers refuse to issue coverage in states with construction-defect laws or do so only at exorbitantly high rates.<sup>4</sup>

**Departure of willing insurers hits multi-family construction hardest.** Multi-family housing developments — e.g., townhouses and condominiums — are typically the subjects of class-action construction-defect litigation because a defect occurring in one unit can, arguably, be replicated in all units. Thus, in states where courts or legislatures have enabled rampant construction-defect litigation, builders have had difficulty obtaining affordable insurance and the construction of for-sale affordable housing has declined substantially.<sup>5</sup>

**A significant share of Nevada construction-defect litigation may be fraudulent.** Because Chapter 40 of the Nevada Revised Statutes incentivizes punitively long-running “prelitigation” maneuvering, it fosters the corruption of Nevada’s legal process. Builders and their insurers have fallen prey to endless, highly lucrative tag-teaming between the plaintiff bar and their defense-bar counterparts — before judges whose election campaigns were funded with contributions from both legal camps. Not coincidentally, the FBI is currently charging lawyers and other insiders with corrupt schemes to control homeowner associations for the purpose of generating more construction-defect lawsuits. The FBI investigation — which has produced multiple guilty pleas — is ongoing.<sup>6</sup>

## Recommendations

**Remove authority for attorney prelitigation fees.** Buyers certainly deserve recourse for construction defects, but current law destroys contractors’ incentive — and, sometimes, legal ability — to make such repairs.

It’s unlikely that construction of attached housing in Nevada will recover until the construction-defect bar is no longer privileged with the guarantee of automatic prelitigation fees.

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<sup>1</sup> Association of Bay Area Governments, “Service Matters: Issue No. 60,” July/August 2002.

<sup>2</sup> Andrea Adelson, “Building is Booming and California Lawyers Are Massing on State Line,” *New York Times*, December 4, 1996.

<sup>3</sup> Nevada Legislature, 68<sup>th</sup> Session, Senate Bill 395; also, Nevada Legislature, 68<sup>th</sup> Session, Minutes of the Senate Committee on Judiciary, May 10, 1995.

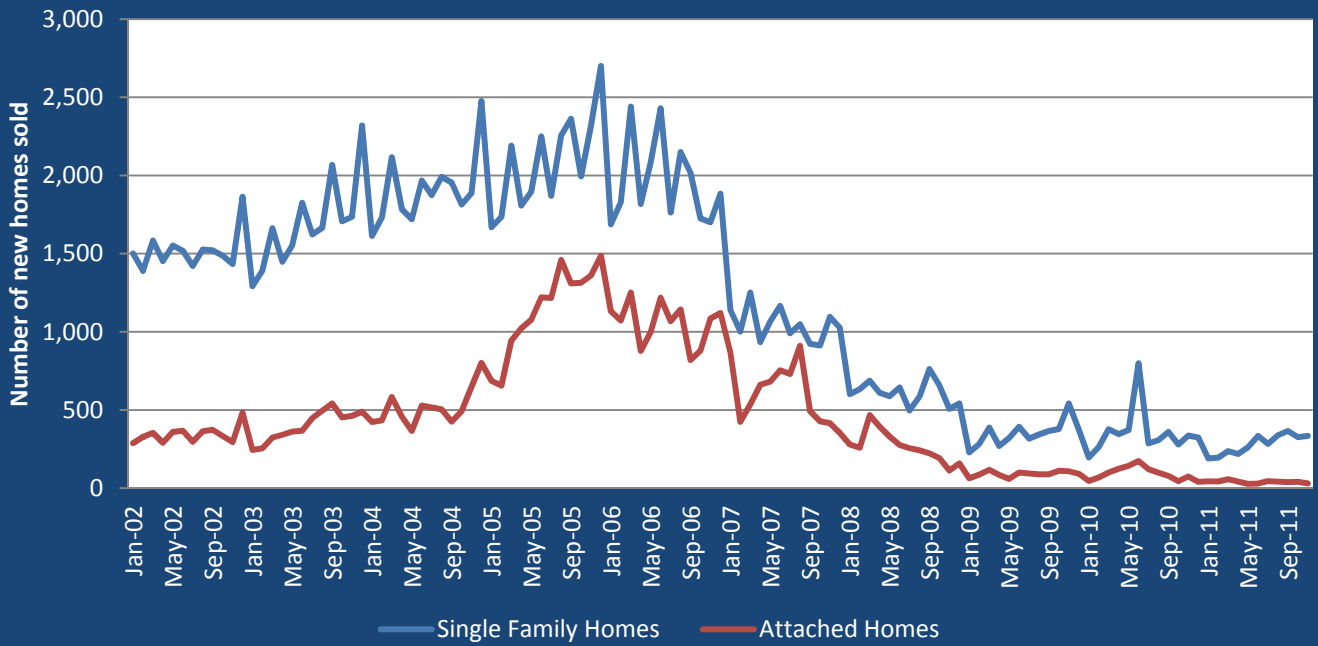
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<sup>4</sup> California Legislature, California Research Bureau, “Construction Defect Litigation and the Condominium Market,” CRB Note, Vol. 6, No. 7, 1999.

<sup>5</sup> *Ibid.*

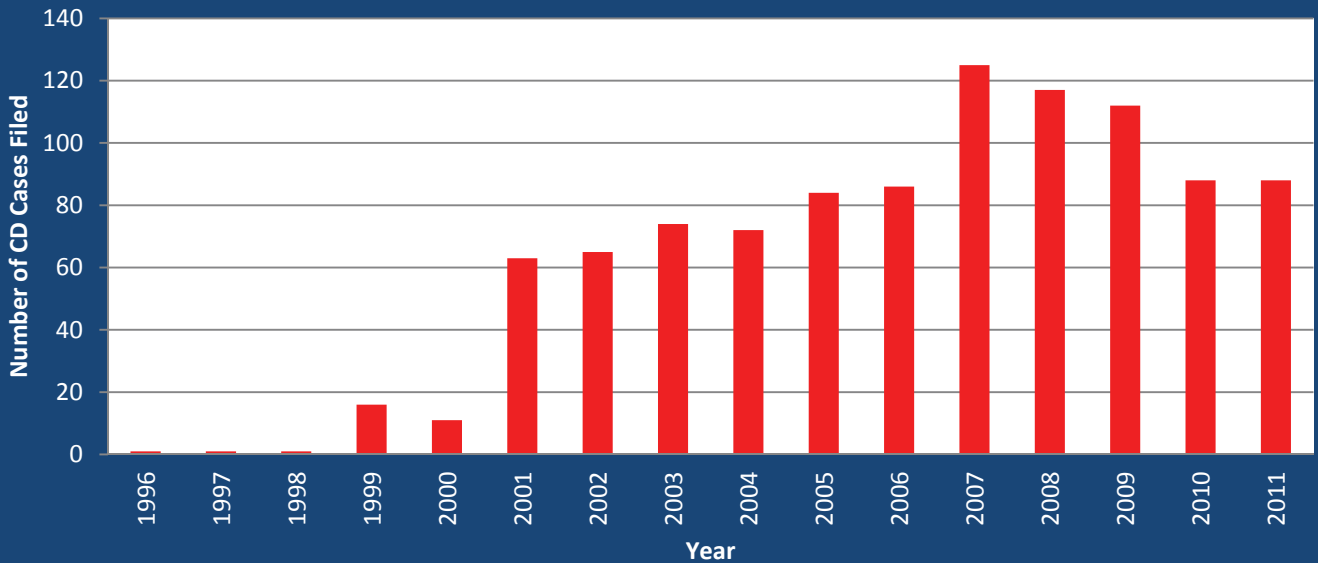
<sup>6</sup> Jeff German, “GOP Consultant Helped Rig HOA Elections in Plot,” *Las Vegas Review-Journal*, September 1, 2011.

## New-home sales in Clark County, Monthly, Jan. 2002 - Nov. 2011



Source: Homebuilders' Research.

## Construction defect cases filed in Eighth District Court (Clark County), 1996 - 2011



Source: Eighth District Court case filings.

# Occupational Licensing

In 2011, Nevada lawmakers passed legislation that will make it a criminal offense to practice music therapy without a license.<sup>1</sup>

According to the statutory language, “music therapy” is defined as the “clinical use of music interventions...to accomplish individualized goals within a therapeutic relationship.” These music interventions “may include, without limitation, music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, learning through music and movement to music.”

In other words, lawmakers dubiously made it a criminal offense to teach someone how to dance, write songs, or even listen to music unless the instructor has paid fees and obtained a state-sanctioned license.

Indeed, for over 50 different occupations in Nevada, lawmakers have required providers to pay regular fees to a state-sanctioned licensing board, or potentially face criminal charges. In many of these cases, it is doubtful such legislation is in the public interest.

## Key Points

**Occupational licensing is often designed by industry insiders to exclude competition.** In many cases, occupational-licensing bills are heavily influenced by industry insiders who want to forcibly exclude competition from the marketplace. Once lawmakers create an occupational licensing board, the members who populate that board are typically industry insiders as well. This is an obvious conflict of interest, empowering board members to decide who may legally compete with them.

**Statutory language is ambiguous.** The statutory language providing for many occupational licenses fails to clearly limit the law’s coverage to only “for profit” providers. For instance, NRS Chapter 640C appears to make it a criminal offense for an individual to give his or her spouse a massage without a state-sanctioned license.

**Many occupations subject to licensing present no meaningful danger of physical harm.** In Nevada, individuals cannot cut hair, apply makeup, give advice on interior design, or provide landscaping services without

first paying a fee and obtaining permission from their would-be competitors. The transparent intention of these obstacles is to dissuade talented new individuals from entering those markets.

**Occupational licensing is not “consumer protection.”** The demand for an individual’s services on the open marketplace is only as strong as that individual’s reputation for quality. Interior designers who dispense poor advice, for instance, are unlikely to remain in that industry for an extended time. Although advocates of occupational licensing claim to be intent on protecting consumers from poor quality, market forces make most licensing unnecessary.

**Even programs that don’t receive general-fund appropriations are costly to the public.** Lawmakers often claim that occupational-licensing boards are not costly to the public since they are funded through fees on providers, rather than with general-fund dollars. The fees levied for licenses, however, are a significant cost of doing business and, consequently, are built into the final prices facing consumers.

## Recommendations

**Restrict occupational licensing to professions that meet a narrow definition for “substantial risk of physical harm.”** Lawmakers should immediately repeal all occupational licensing requirements for professions that do not pose a substantial risk of *physical* harm to consumers when the occupation is not performed by a trained professional.

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<sup>1</sup> Nevada Legislature, 76<sup>th</sup> Session, Senate Bill 190.

# Occupations requiring a license in Nevada

Occupation	Licensing Board
Accountants	Nevada State Board of Accountancy
Acupuncturists	Nevada State Board of Oriental Medicine
Alternative Medicine Practitioners	Homeopathic Medical Examiners Board
Appraisers	Appraiser's Certification Board
Apprentice Opticians	Nevada State Board of Dispensing Opticians
Architects	Nevada State Board of Architecture, Interior Design, and Residential Design
Assisted Care Administrators	Board of Examiners for Long Term Care Administrators
Athletic Trainers	Nevada State Board of Athletic Trainers
Attorneys	Bar Examiners of Nevada
Audiologists	Nevada State Board of Examiners for Audiology and Speech Pathology
Barbers	Barbers Health and Sanitation Board
Builders	Nevada State Contractors Board
Cemetery Operators	Nevada State Funeral Board
Chiropractors	Chiropractic Physicians' Board of Nevada
Cosmetologists	Nevada State Board of Cosmetology
Court Reporters	Certified Court Reporters Board
Crematory Operators	Nevada State Funeral Board
Dental Hygienists	Nevada State Board of Dental Examiners
Dentists	Nevada State Board of Dental Examiners
Embalmers	Nevada State Funeral Board
Engineers	Nevada State Board of Professional Engineers and Land Surveyors
Environmental Health Specialists	Nevada Board of Registered Environmental Health Specialists
Family Therapists	Board of Examiners for Marriage and Family Therapists and Clinical Professional Councilors
Funeral Directors	Nevada State Funeral Board
Gaming Operators	State Gaming Control Board
Herbal Medicine Practitioners	Nevada State Board of Oriental Medicine
Interior Designers	Nevada State Board of Architecture, Interior Design, and Residential Design
Land Surveyors	Nevada State Board of Professional Engineers and Land Surveyors
Landscapers	Nevada State Board of Landscape Architecture
Marriage Counselors	Board of Examiners for Marriage and Family Therapists and Clinical Professional Councilors
Masseuses	Nevada State Board of Massage Therapists
Music Therapists	Nevada State Board of Health
Nurses	Nevada State Board of Nursing
Nursing Home Administrators	Board of Examiners for Long Term Care Administrators
Occupational Therapists	Nevada State Board of Occupational Therapy
Opticians	Nevada State Board of Dispensing Opticians
Optometrists	Nevada State Board of Optometry
Osteopathic Medicine Practitioners	Nevada State Board of Osteopathic Medicine
Pharmacists	Nevada State Board of Pharmacy
Physical Therapists	Physical Therapy Examiners' Board
Physical Therapists' Assistants	Physical Therapy Examiners' Board
Physicians	Nevada State Board of Medical Examiners
Physicians' Assistants	Nevada State Board of Medical Examiners
Podiatrists	Nevada State Board of Podiatry
Psychologists	Nevada State Psychological Examiners Board
Residential Designers	Nevada State Board of Architecture, Interior Design, and Residential Design
Social Workers	Nevada State Board of Examiners for Social Workers
Speech Pathologists	Nevada State Board of Examiners for Audiology and Speech Pathology
Teachers	Nevada State Board of Education
Vendors of Hearing Aids	Nevada State Board of Hearing Aid Specialists
Veterinarians	Nevada State Board of Veterinary Medical Examiners
Well Drillers	Well Drillers Advisory Board

# Corrections

Historically, lawmakers have elected to invest heavily in the state prison system as a primary means of providing for the public's safety. For the 2011-13 biennium, lawmakers appropriated \$496.3 million to the Department of Corrections for this purpose — 85.3 percent of state general-fund dollars spent on public safety.<sup>1</sup>

Prison spending has risen rapidly in the Silver State as both the inmate population and the cost per inmate have increased. Between FY 2002 and FY 2009, Nevada's inmate population increased 34.6 percent while the cost per inmate increased 25.9 percent, for a total spending increase of 69.4 percent in just seven years.<sup>2</sup>

Public-safety expenditures are no exception to the rule that lawmakers should constantly question whether they are spending public funds in the most cost-effective manner possible. Citizens expect to be protected from fraud and violence. Yet, it is not obvious that such high levels of prison spending are the most cost-effective means of providing that safety.

## Key Points

### **Nevada's incarceration rate is exceptionally high.**

According to figures from the Department of Corrections, Nevada's incarceration rate (defined as the number of inmates per 100,000 in population) has consistently remained above the United States average<sup>3</sup> — and the United States leads all nations, by far.

A survey by the UK-based International Centre for Prison Studies put the average incarceration rate in the United States in 2009 at 743 per 100,000 — above Rwanda and the Russian Federation, which ranked second and third, with 595 and 542, respectively. Canada's incarceration rate was 117. For France and Germany, it was 109 and 87, respectively.<sup>4</sup>

**High incarceration rates yield diminishing returns.** A 2008 study prepared for the Colorado Division of Criminal

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<sup>1</sup> Nevada Legislature, Legislative Counsel Bureau, Fiscal Division, "2011 Appropriations Report."

<sup>2</sup> State of Nevada, Department of Corrections, Statistical Abstract, Fiscal Year 2010.

<sup>3</sup> *Ibid.*

<sup>4</sup> International Centre for Prison Studies, University of Essex, World Prison Brief.

Justice noted that incarceration "has a far greater impact and return on investment when it is used for violent and high-rate offenders." While prisons are expensive, "violent and career criminals impose tremendous financial and social costs on society. The empirical evidence is increasingly clear, however, that *the increased use of incarceration for low-rate, non-violent offenders prevents and deters fewer crimes.*"<sup>5</sup> (Emphasis added)

### **Runaway prison spending is not fiscally conservative.**

Often, policymakers who present themselves as "fiscally conservative" also seek a "tough on crime" reputation by sending individuals to prison for increasingly minor infractions. These two positions, however, are antithetical. Since prisons are expensive, they should be reserved only for offenders of the most serious infractions. For lesser infractions, alternative sentencing has proven to be far more cost-effective.

## Recommendations

### **Reserve prison space for violent and high-rate offenders.**

Prison sentences for first-time offenders of non-violent crimes should be eradicated. Empirical evidence demonstrates that alternative sentencing techniques rehabilitate these offenders far more cost-effectively. Lawmakers can then re-allocate the financial savings that result from fewer incarcerations toward other public-safety expenditures.

**Pass a Recidivism Reduction Act.** Model legislation from the American Legislative Exchange Council (ALEC) would require that a minimum percentage of offenders be supervised using evidence-based practices that are designed to reduce recidivism rates.<sup>6</sup>

**Pass a Community Corrections Performance Incentive Act.** Model legislation from ALEC would allow probation departments to share in the savings when they develop successful strategies for reducing recidivism rates.<sup>7</sup>

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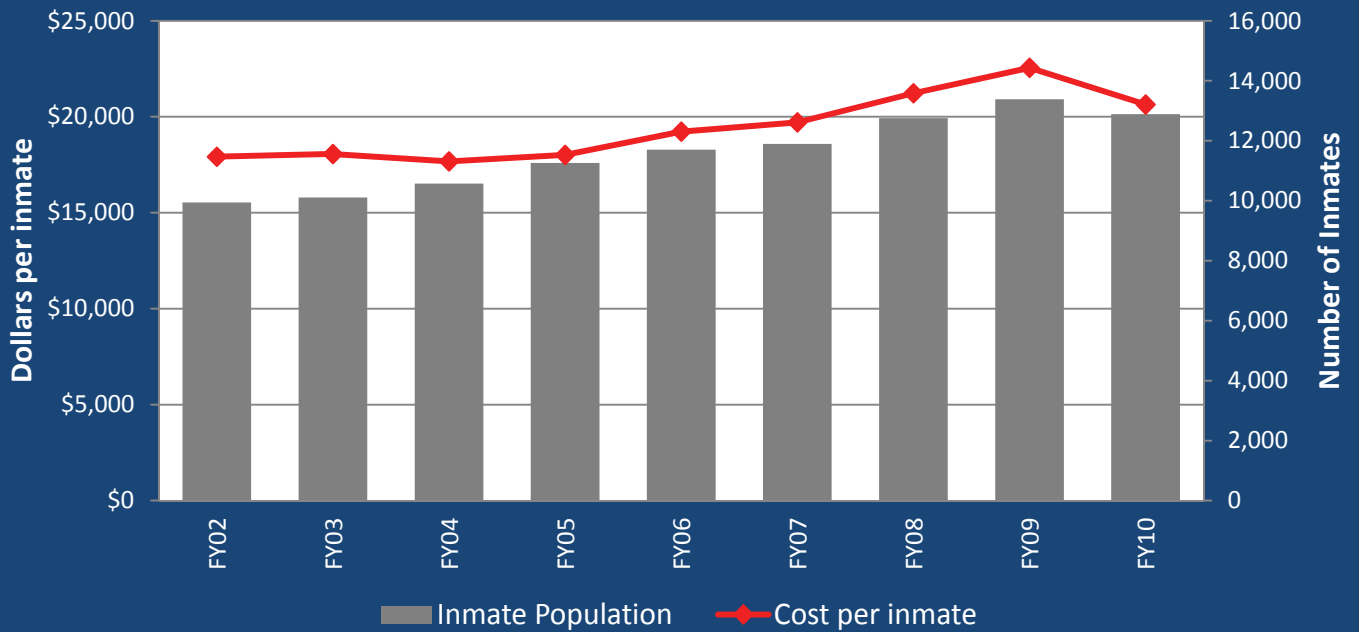
<sup>5</sup> Roger Przybylski, "What Works: Effective Recidivism Reduction and Risk-focused Prevention Programs," prepared for the Colorado Division of Criminal Justice, 2008.

<sup>6</sup> American Legislative Exchange Council, "Recidivism Reduction Act," 2010.

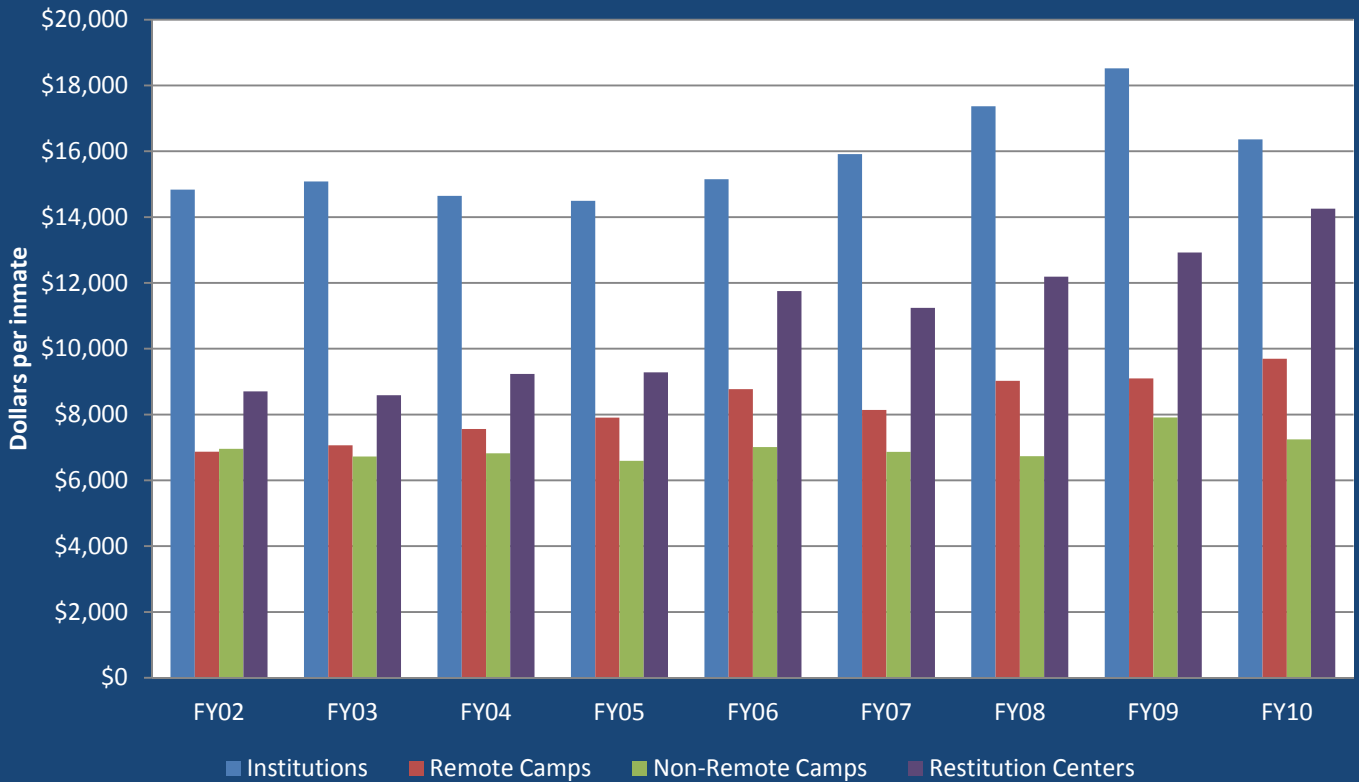
<sup>7</sup> American Legislative Exchange Council, "Community Corrections Performance Incentive Act," 2010.



## Nevada's annual average inmate population and cost per inmate, FY02 - FY10



## Cost per inmate by facility type, excluding medical and administrative, FY02 - FY10



Source: State of Nevada, Department of Corrections, Statistical Abstract, FY 2010.

# Impact of Prohibition

Nevada governments spent roughly \$258 million in 2008 to enforce drug prohibition within the state's borders. This includes \$51 million for policing, \$62 million in judicial expenses and \$150 million for corrections.<sup>134</sup>

As these figures indicate, enforcing the prohibition of a substance for which there is significant demand can be a costly proposal. This financial burden is further complicated by evidence that suggests that prohibition's positive impact on the public safety is ambiguous at best.

## Key Points

**Prohibition is expensive.** Nevada governments target not only the sale and manufacture of substances they have classified as illicit, but also individuals who possess even small amounts of these substances for personal consumption. Of the \$258 million that Nevada taxpayers spent to enforce drug prohibition in 2008, nearly \$50 million was spent to counter private citizens' ability to possess small amounts of marijuana: More than 7,000 citizens were arrested for simple possession of marijuana.<sup>135</sup>

**Prohibition creates black markets.** Regardless of any good intentions of lawmakers, experience has shown that legislation alone cannot alter the desires of individuals in society. As the so-called "Great Experiment" of American prohibition of alcohol in the 1920s made clear, black markets result when governments attempt to prevent the sale of goods that many people desire.

**Black markets breed violence.** Because buyers and sellers within black markets cannot turn to the legal system to solve disputes or protect property rights, only violent means remain.

Indeed, many scholars argue that prohibition *increases* the rate of violence in society. When the legal system fails to recognize property rights and contract law, black markets thrive, generating opportunities for individuals to now profit through the most unscrupulous of behaviors. Drug cartels, narco-terrorism and gang

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<sup>134</sup> Jeffrey Miron and Katherine Waldock, "The Budgetary Impact of Ending Drug Prohibition," Cato Institute, 2010.

<sup>135</sup> *Ibid.*

violence spread — as America now witnesses daily on its southwestern borders.

Because of such effects, researchers have found, higher public spending on prohibition enforcement leads to *higher* murder rates and other violent crimes.<sup>136</sup> Hence, prohibition enforcement appears to be a public-safety expenditure that actually *endangers* the public safety.

### **Prohibition is associated with higher usage rates.**

Proponents of drug and alcohol prohibition have argued that, regardless of the increase in violence, these policies carry a social benefit of less use and abuse. However, historical evidence — even that compiled by proponents of prohibition — reveals that alcohol prohibition in America led to higher rates of use and abuse.<sup>137</sup> Significantly, in Europe also, in the decade since Portugal decriminalized the possession of all drugs, usage rates in that nation have declined across the board.<sup>138</sup>

## Recommendations

**From a purely fiscal standpoint, enforcing prohibition is an unproductive use of tax dollars.** Given Nevada's limited resources and the many competing demands for public revenues, spending that may well produce effects explicitly opposite to its goal — enhancing public safety — is difficult to justify.

**Promote treatment options to discourage drug use.** If lawmakers want to discourage drug use among the public, demand-side policies that encourage individuals to seek treatment would be more cost-effective. In the language of economics, they would impose less dire externalities.

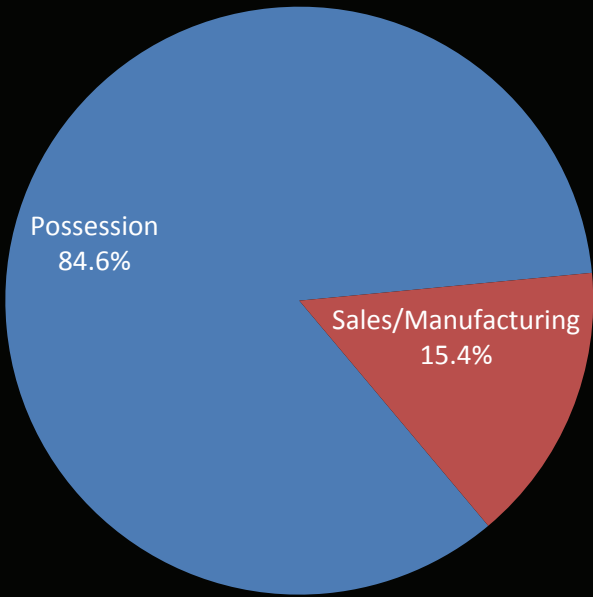
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<sup>136</sup> Jeffrey Miron, "Violence and the US Prohibitions of Drugs and Alcohol," *American Law & Economics Review*, Vol. 1, No. 1, pp. 78-114, 1999.

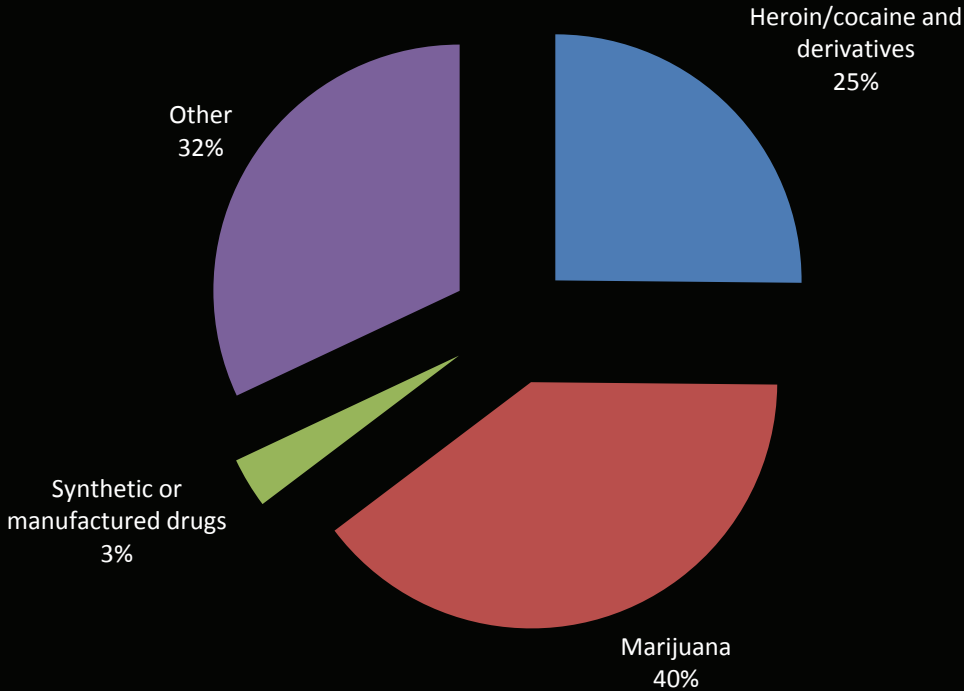
<sup>137</sup> Mark Thornton, "Alcohol Prohibition Was a Failure," Cato Institute Policy Analysis No. 157, 1991.

<sup>138</sup> Glenn Greenwald, "Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies," Cato Institute, 2009.

# Drug violations by type, Western U.S., 2010



# Possession arrests by substance, Western U.S., 2010



Source: Federal Bureau of Investigation, Uniform Crime Reports, Drug Arrest Data, 2010.

# Renewable Portfolio Standard

State renewable portfolio standards require electric utility companies to produce or purchase a minimum share of electricity from renewable-energy facilities.

Nevada's RPS mandates that renewable energy must account for a rising share of electricity sold within the state, regardless of the additional cost imposed. Under current law renewable energy must account for:

- 15 percent of production by 2011,
- 18 percent of production by 2013,
- 20 percent of production by 2015,
- 22 percent of production by 2020, and
- 25 percent of production by 2025.

In addition, electricity generated from solar panels must be used to meet 5 percent of the RPS requirements until 2015 and 6 percent thereafter.<sup>1</sup>

## Key Points

**Renewable energy is more expensive.** The costs of energy production extend far beyond fuel expenses. Important factors include capital costs, financing, transmission, shipping, maintenance, efficiency, productive capacity, facility lifetime and decommissioning.

For an apples-to-apples unit comparison, all of these expenses can be broken down to cost-per-kilowatt hour.

The U.S. Department of Energy has estimated the costs of new electricity production projected to come online in 2016: New solar photovoltaic energy would be nearly 3.5 times more expensive than conventional power sources such as natural gas.<sup>2</sup>

**High costs are passed on to ratepayers.** When state law requires a utility provider to produce electricity through more expensive means, the utility recoups those costs by increasing the rates charged to customers. Because utility companies operate as state-protected monopolies, customers are forced to pay the higher rates.

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<sup>1</sup> Nevada Revised Statutes, 704.7801-704.7828, inclusive.

<sup>2</sup> U.S. Department of Energy, Energy Information Administration, "Levelized Cost of New Generation Resources in the Annual Energy Outlook 2011."

Indeed, utility companies make *higher* profits when the state requires them to produce electricity through more expensive means. That's because they receive a guaranteed "rate of return" equal to a percentage of their costs.

**The RPS is a regressive tax.** Essentially a tax on energy, the state-imposed renewable-energy mandate hits low-income Nevada families hardest, as they must expend a greater proportion of their earnings to meet their energy needs.

**Nevada already has the highest electricity costs in the Intermountain West.** According to the U.S. Department of Energy, commercial electricity prices in Nevada are 25 percent higher than the Intermountain West average. Residential prices and industrial prices are 26 percent and 31 percent above the average, respectively.<sup>3</sup>

**High energy costs damage state competitiveness.** Energy is an input into every production process. When entrepreneurs are deciding whether to open a new manufacturing plant, restaurant, department store, or casino in Nevada, they must factor energy costs into their calculations.

Nevada's RPS has made and will continue to make electricity in Nevada more costly than in neighboring states. This damages state competitiveness and is a stumbling block to corporate investment and job growth.

## Recommendations

**Repeal the Nevada RPS in its entirety.** Because of the renewable mandates, Nevadans are required to expend ever greater resources to obtain the same amount of energy. This is the very definition of economic inefficiency.

Repeal of the RPS will lead to higher living standards and faster job growth.

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<sup>3</sup> U.S. Department of Energy, Energy Information Administration, "State Electricity Price Rankings," 2009.

## U.S. Average Levelized Cost (Cents/kWh) for Plants Entering Service in 2016

Plant Type	Levelized Capital Cost	Fixed O&M	Variable O&M (including fuel)	Transmission Investment	Total System Levelized Cost
Conventional Coal	6.53	0.39	2.43	0.12	<b>9.48</b>
Advanced Coal	7.46	0.79	2.57	0.12	<b>10.94</b>
Advanced Coal with CCS	9.27	0.92	3.31	0.12	<b>13.62</b>
Natural Gas-fired					
Conventional Combined Cycle	1.75	0.19	4.56	0.12	<b>6.61</b>
Advanced Combined Cycle	1.79	0.19	4.21	0.12	<b>6.31</b>
Advanced CC with CCS	3.46	0.39	4.96	0.12	<b>8.93</b>
Conventional Combustion Turbine	4.58	0.37	7.15	0.35	<b>12.45</b>
Advanced Combustion Turbine	3.16	0.55	6.29	0.35	<b>10.35</b>
Advanced Nuclear	9.01	1.11	1.17	0.1	<b>11.39</b>
Wind	8.39	0.96	0	0.35	<b>9.7</b>
Wind – Offshore	20.93	2.81	0	0.59	<b>24.32</b>
Solar PV	19.46	1.21	0	0.4	<b>21.07</b>
Solar Thermal	25.94	4.66	0	0.58	<b>31.18</b>
Geothermal	7.93	1.19	95	0.1	<b>10.17</b>
Biomass	5.53	1.37	4.23	0.13	<b>11.25</b>
Hydro	7.45	0.38	0.63	0.19	<b>8.64</b>

## Average Retail Price by U.S. Census Sector and State (Cents/kWh)

State	Residential	Commercial	Industrial	Transportation	All Sectors
<b>Mountain</b>	<b>10.18</b>	<b>8.53</b>	<b>6.09</b>	<b>8.38</b>	<b>8.41</b>
Arizona	10.73	9.35	6.65	-	9.56
Colorado	10.00	8.15	6.39	8.14	8.31
Idaho	7.80	6.49	5.17	-	6.51
Montana	8.93	8.32	5.45	-	7.57
<i>Nevada</i>	<i>12.86</i>	<i>10.64</i>	<i>7.97</i>	<i>9.95</i>	<i>10.36</i>
New Mexico	10.02	8.40	5.72	-	8.09
Utah	8.48	6.96	4.81	8.31	6.77
Wyoming	8.58	7.28	4.83	-	6.08

Source: U.S. Dept of Energy, Energy Information Administration, 2009.

# Electricity Deregulation

NRS Chapters 701-704 govern energy policy in the state of Nevada and protect regional monopoly providers from potential competitors. NRS Chapter 703 establishes a Public Utilities Commission (PUC) and charges this body with the task of fixing and regulating the prices charged by the state-protected monopoly provider.

## Key Points

**Central planning is inherently inefficient.** Yet, the PUC centrally plans for one of the most critical inputs into every productive process in Nevada: energy. The PUC decides how much electric capacity shall be constructed, through which means electricity shall be produced, and at what price electricity must be sold. The PUC operates at the direction of the Legislature, meaning that these critical economic decisions about price and supply are constantly subjected to political manipulation and not market forces.

For reasons articulated by Ludwig von Mises and other famed economists, it is, at all times, impossible for central planners to efficiently coordinate the use of society's resources due to the impossibility of gathering timely and reliable data about individuals' subjective and ever-changing valuations.<sup>1</sup>

**State regulation incentivizes monopoly providers to produce through the most expensive means possible.** Nevada's regulatory structure guarantees the protected monopoly provider of electricity a "rate of return" of between 8.5 and 11 percent of its costs. This means that the monopoly's shareholders can earn higher profits for operating less efficiently. This perverse incentive encourages the monopoly to support more onerous mandates and regulations that increase the cost of electricity production. While the electric monopoly makes more money, this inefficiency is pushed onto ratepayers in the form of higher electricity prices.

**Choice imposes accountability.** In any marketplace, consumers allowed to choose generally bypass the least efficient providers and purchase instead the product offering the qualities they most want for the best price.

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<sup>1</sup> Ludwig von Mises, [Economic Calculation in the Socialist Commonwealth](#), 1920; see also, Jesus Huerta de Soto, [Socialism, Economic Calculation and Entrepreneurship](#), 2010.

**Electricity is not a 'natural monopoly.'** The traditional argument for electricity regulation was that the industry was subject to conditions of "market failure" and that electricity production was a "natural monopoly" that should be protected and regulated by the state. However, academic economists — including some on the political Left — have recognized for at least 35 years that these theories were misguided and that electricity production is not subject to market failure.<sup>2</sup>

## Recommendations

**Deregulate Nevada's electricity market.** Lawmakers should facilitate open competition in the production, transmission and retail distribution of electricity. Generation facilities should be required to meet safety and environmental standards, but otherwise, choices about how electricity is produced should ultimately be made by consumers — as their preferences about price, quality and reliability flow through the market.

Deregulation does not mean an end to renewable energy. Rather, it can hasten the day of its genuine sustainability. Even now, retailers pursue customers by advertising that they procure electricity from renewable facilities on the wholesale market. Consumers are then left to make the choice among retail providers based on their own preferences and values.

Texas has been among the most aggressive states in pursuing electricity deregulation. Texas lawmakers in 1999 passed Senate Bill 7, which laid out the process for deregulation and required full retail competition by 2002.<sup>3</sup> In a 2011 report to lawmakers, the Texas PUC reported that consumers there face retail prices today that are 17.5 percent *lower* than retail prices in 2002.<sup>4</sup> Data from the U.S. Department of Energy indicates that, over the same time period, Nevada's regulated monopoly structure has increased prices to residential consumers by 31.1 percent.<sup>5</sup>

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<sup>2</sup> See, e.g., Leonard Weiss, "Antitrust in the Electric Power Industry," in [Promoting Competition in Regulated Markets](#), ed. Almarin Phillips, pp. 138-173, Brookings Institution, 1975.

<sup>3</sup> Texas Legislature, 76<sup>th</sup> Legislative Session, Senate Bill 7.

<sup>4</sup> State of Texas, Public Utilities Commission, "Report to the 82<sup>nd</sup> Texas Legislature: Scope of Competition in Electric Markets in Texas," 2011.

<sup>5</sup> U.S. Department of Energy, Energy Information Administration, Average Retail Price of Electricity to Ultimate Consumers database.

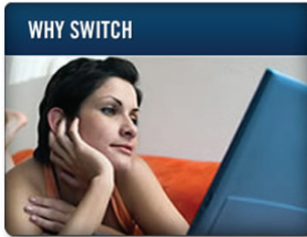
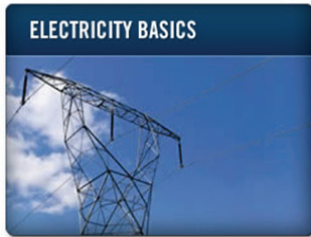
Electricity consumers in Texas can visit a website run by the state's PUC and shop for competitive retail providers

based on price, structure and renewable content:



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# Highway Quality

The Nevada Department of Transportation (NDOT) is responsible for building and maintaining public highways in the Silver State.

To accomplish this mission, NDOT receives funding from federal grants and state highway user funds that are generated primarily from taxes on motor fuels. For the 2011-13 biennium, lawmakers approved a total of \$1.139 billion in funding for NDOT, including \$470 million from federal sources and \$659 million out of the state highway fund.

## Key Points

**The condition of Nevada’s highways is among the best in the nation.** Nevada boasts the highest-ranked rural highway quality in the nation, with zero percent of rural interstate miles in poor condition. Only 0.28 percent of the state’s major rural highway network is considered to be in poor condition. Nevada also boasts the lowest percentage of deficient bridges nationwide, at 10.96 percent.

Nevada ranks somewhat lower in urban interstate quality – at 20<sup>th</sup> overall – with the state reporting 1.59 percent of urban interstate miles in poor condition.<sup>1</sup>

**Nevada’s urban interstates are heavily congested.** As Nevada’s cities have grown, its urban interstate system has struggled to keep pace. The peak-hour traffic volume is approaching or exceeding highway capacity on 54.4 percent of Nevada’s urban interstate miles. This means that urban residents in the Silver State face the 11<sup>th</sup> most congested urban highways in the nation, behind those of California (79.81 percent), Minnesota (77.66), Maryland (69.23), Michigan (68.14), Connecticut (66.67), New Jersey (63.84), Ohio (63.08), Kentucky (62.68), North Carolina (60.89) and Rhode Island (56.00).<sup>2</sup>

**Nevadans face relatively high costs per state-controlled highway mile.** Nevada taxpayers spent \$153,078 per state-controlled highway mile in 2008 – 20<sup>th</sup> highest in the nation. This relatively high cost was underscored by high administrative costs. At nearly \$24,000 per state-controlled mile, Nevadans faced the 10<sup>th</sup> highest

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<sup>1</sup> David Hartgen et al., “19<sup>th</sup> Annual Highway Report: The Performance of State Highway Systems,” Reason Foundation, 2010.

<sup>2</sup> *Ibid.*

administrative costs in the nation. In terms of both capital and maintenance expenditures per state-controlled mile, Nevada is near the national median.

## Recommendations

**Install High-Occupancy Toll (HOT) lanes to parallel congested urban interstates.** HOT lanes are limited-access lanes reserved for high-occupancy vehicles but open to motorists who elect to pay a toll in order to access these lanes. Toll rates are managed electronically and subject to variable pricing in order to control the volume of traffic on HOT lanes. During hours of peak traffic when the lane demand increases, so does the price of accessing HOT lanes.

The HOT lane concept was developed by the Reason Foundation in 1993 and subsequently endorsed by the Federal Highway Administration.<sup>3</sup> HOT lanes now in operation in California, Colorado, Minnesota, Texas and Utah have proven tremendously effective at using the power of markets to control traffic volume and alleviate urban congestion.

**Pass a Community Transportation Corporation Act.**

Lawmakers can address the state’s urgent need for urban highway development, even during periods of stagnant revenue growth, by allowing the private sector to develop additional highway capacity. Model legislation from the American Legislative Exchange Council would allow the establishment of non-profit corporations to issue revenue bonds and build highways and infrastructure for public use.<sup>4</sup>

**Streamline operations at the Department of Transportation.**

While NDOT has consistently kept Nevada atop the quality rankings for state highway systems, the department is also responsible for saddling taxpayers with high administrative costs. Lawmakers should direct NDOT to submit to an independent performance audit in order to determine how administrative costs can best be reduced.<sup>5</sup>

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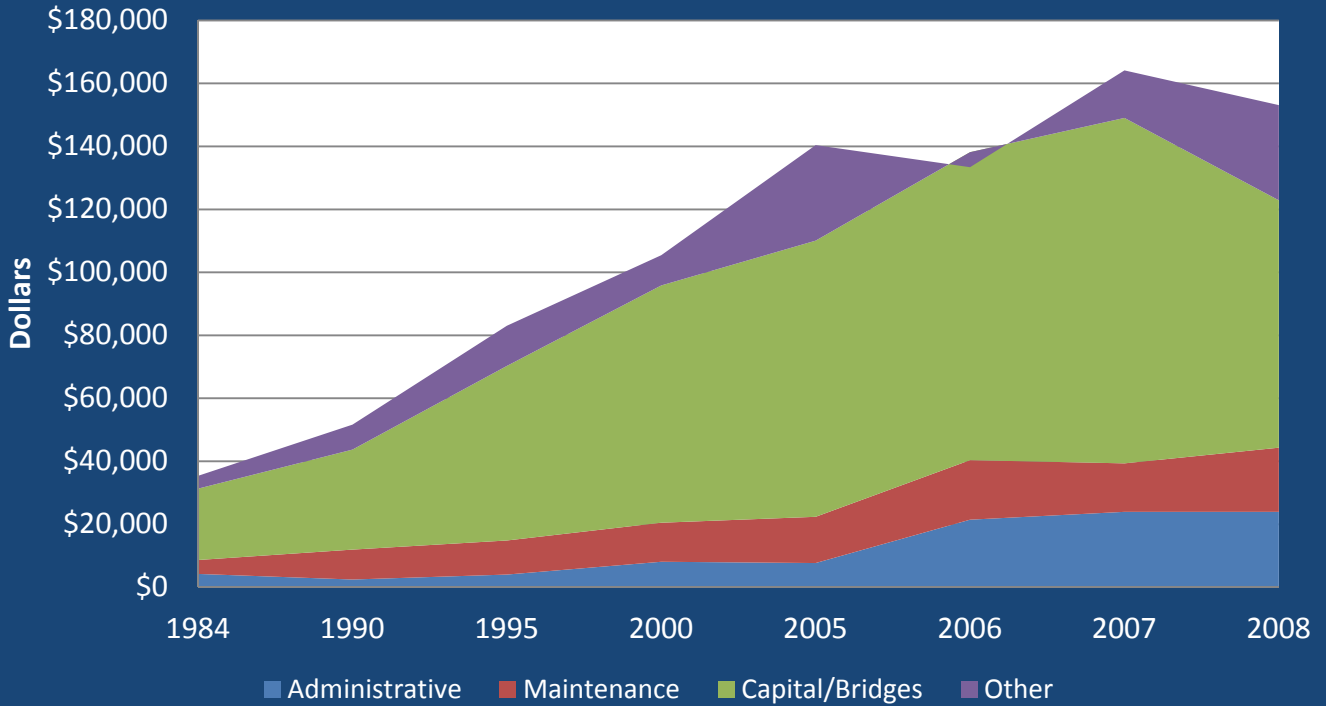
<sup>3</sup> Gordon Fielding & Daniel Klein, “High Occupancy/Toll Lanes: Phasing in Congestion Pricing a Lane at a Time,” Reason Foundation Policy Study No. 170, 1993.

<sup>4</sup> American Legislative Exchange Council, “Community Transportation Corporation Act,” 2003.

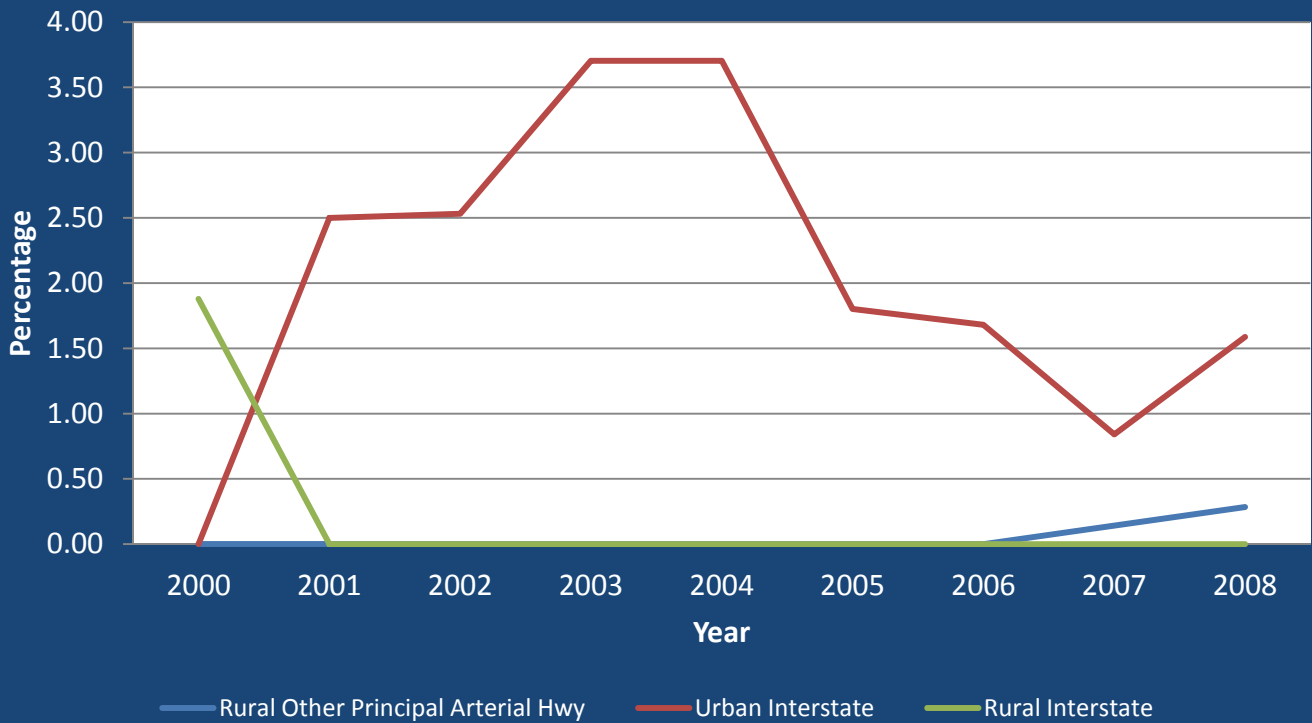
<sup>5</sup> See “Structural Reform: Auditing,” page 8.



## Nevada disbursements per state-controlled mile



## Percentage of Nevada highway miles in poor condition



Source: Reason Foundation, "19<sup>th</sup> Annual Highway Report: The Performance of State Highway Systems."

# Federal Law Review

The U.S. Constitution is a compact among the states that divides authority between the federal and state governments. As James Madison wrote in Federalist 45:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

But who should be the final arbiter of this division of powers, and when or whether federal entities overstep the “few and defined” powers they are delegated?

## Key Points

**The states must review the constitutionality of federal action.** Said Thomas Jefferson:

The several states composing the United States of America are not united on the principle of unlimited submission to their general government; but by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes [and] delegated to that government certain definite powers and whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force. To this compact each state acceded as a state, and is an integral party, its co-states forming, as to itself, the other party. *The government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution the measure of its powers.*” (Emphasis added.)

It thus is the states’ responsibility to constantly monitor federal acts to ensure the federal government does not act beyond its constitutional authority.

**Utah has created a standing legislative subcommittee to review the constitutionality of federal action.** In 2011, Utah lawmakers created a Federalism Subcommittee within the legislative Constitutional Defense Council. The subcommittee’s role is to review the constitutionality of any federal action that might “impact a power or a right reserved to the state or its citizens by the United States Constitution, Amendment IX or X; or expand or grant a power to the United States government beyond the limited, enumerated powers granted by the United States Constitution.”<sup>1</sup>

If the subcommittee determines a federal action exceeds the constitutional authority granted by the states, the subcommittee may pursue information regarding the action from a federal agency or a member of the state’s congressional delegation. Additionally, the Subcommittee may:

Give written notice of the evaluation to the federal governmental entity responsible for adopting or administering the federal law; and request a response by a specific date to the evaluation from the federal governmental entity; and request a meeting, conducted in person or by electronic means, with the federal governmental entity and a council member, a representative from another state, or a United States Senator or Representative elected from the state to discuss the evaluation of federal law and any possible remedy.

The Federalism Subcommittee may recommend to the governor that the governor call a special session of the Legislature to give the Legislature an opportunity to respond to the subcommittee’s evaluation of a federal law.

The Federalism Subcommittee chair may coordinate the evaluation of and response to federal law with another state.<sup>2</sup>

## Recommendations

**Pass legislation to systematically evaluate and respond to federal actions.** Nevada lawmakers should follow the lead of their Utah counterparts and act in concert with policymakers from other states to evaluate the constitutionality of all meaningful federal action.

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<sup>1</sup> Utah Legislature, 2011 General Session, House Bill 76, Second Substitute.

<sup>2</sup> *Ibid.*

## Powers of the United States Congress, Enumerated under Article I, Section 8 of the U.S. Constitution

- Lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States
- Borrow money on the credit of the United States
- Regulate commerce with foreign nations, among the several states, and with the Indian tribes
- Establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States
- Coin money, regulate the value of coin money and of foreign coin, and fix the standard of weights and measures
- Provide for the punishment of counterfeiting the securities and current coin of the United States
- Establish post offices and post roads
- Promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries
- Constitute tribunals inferior to the supreme court
- Define and punish piracies and felonies committed on the high seas and offences against the law of nations
- Declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water
- Raise and support armies, but no appropriation of money to that use shall be for a longer term than two years
- Provide and maintain a navy
- Rules for the government and regulation of the land and naval forces
- Provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions
- Provide for organizing, arming, and disciplining the militia, and for governing the part of the militia that may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress
- Exercise exclusive legislation in all cases whatsoever, over such district, which may not exceed 10 miles square, as may, by cession of particular states and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the place shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings
- Make all laws which shall be necessary and proper for carrying into execution the powers listed in this section, and all other powers vested by the United States Constitution in the government of the United States, or in any department or officer of the United States

## Federal Lands

On June 2, 1979, then-governor Bob List signed into law AB 413<sup>1</sup> — encoded today as NRS 321.596-321.599. AB 413 laid out clearly the unconstitutionality of federal control over 87 percent of the lands in Nevada. The charges first raised by List and Silver State lawmakers sparked a movement across Western states for freedom from the encumbrance of federal land control. It became known as the “Sagebrush Rebellion.”

This movement continues to gain strength. In 2011, Utah Gov. Gary Herbert signed HJR 39, a joint legislative resolution that garnered 56 cosponsors. It relied upon many of the legal arguments first raised by Nevada lawmakers three decades ago and called on Congress to relinquish control of “all right, title, and jurisdiction in those lands that were committed to the purposes of [that] state by terms of its enabling act compact.”

### Key Points

**Federal land control runs afoul of the “equal footing” clause and doctrine.** The 1864 enabling act by which Congress granted Nevada statehood declared that Nevada “shall be admitted into the Union upon an equal footing with the original states, in all respects whatsoever.”

However, the act then attached conditions to Nevada’s statehood to which the original states were never subject, including the loss of most land within the state’s boundaries to federal ownership. In 1845, the U.S. Supreme Court declared an almost identical provision contained in the enabling act for the State of Alabama unconstitutional, because it ran afoul of the equal footing doctrine. Said the Court, “the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new states were formed; except for temporary purposes.”<sup>2</sup> As soon as new states were formed, said the Court, “the power of the United States over these lands as property was to cease.”<sup>3</sup>

Later that year, when Congress admitted Texas into the Union, it allowed that state to retain ownership of all unappropriated land within its borders. Nevada declared in 1979 that this precedent “inured to the benefit of all

states admitted later ‘on an equal footing.’”<sup>4</sup>

List and Nevada lawmakers concluded that, “the attempted imposition upon the State of Nevada by the Congress of the United States of a requirement in the enabling act that Nevada ‘disclaim all right and title to the unappropriated public lands lying within said territory,’ as a condition precedent to acceptance of Nevada into the Union, was an act beyond the power of the Congress of the United States and is thus void.”<sup>5</sup>

**Nevada and its subdivisions are prohibited from collecting taxes on federal lands.** Nevada’s enabling act states that “no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States.” With nearly nine-tenths of the state under federal control, this condition severely limits the public, as well as private, resources available to Nevada residents. This recognition led List and Nevada lawmakers to protest that “none of the federal lands in Nevada are taxable and Federal Government activities are extensive and create a tax burden for the private property owners of Nevada who must meet the needs of children of Federal Government employees, as well as provide other public services.”<sup>6</sup>

**Sale of federal lands could alleviate short-term fiscal stress and lead to economic development.** Federal authorities control tens of billions of dollars worth of real property in the Silver State against the declared will of the sovereign State of Nevada. If Nevada were to gain “equal footing,” with right and title for lands now controlled by federal agencies, immediate private auction would generate massive public revenues for Silver State governments and prompt investment and job creation throughout the state.

### Recommendations

**Join Utah in demanding federal authorities immediately relinquish “all right, title and jurisdiction” over federally held lands.** Lawmakers should immediately petition Congress for a redress of grievances and direct the Nevada Attorney General to pursue legal action to compel the federal government to abandon its unconstitutional claim to state lands.

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<sup>1</sup> Nevada Legislature, 60<sup>th</sup> Session, Assembly Bill 413.

<sup>2</sup> *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845).

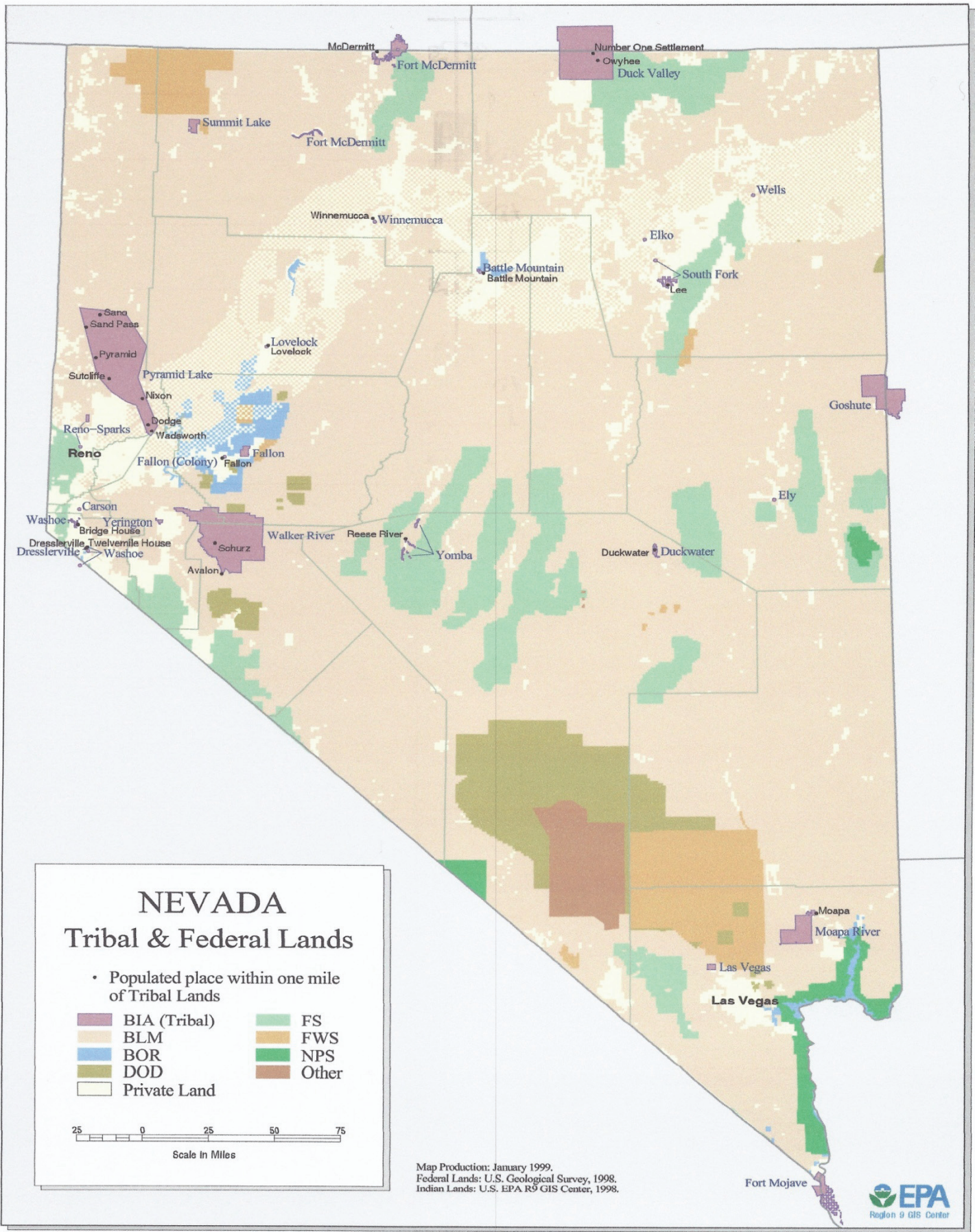
<sup>3</sup> *Ibid.*

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<sup>4</sup> NRS 321.596(2)(b).

<sup>5</sup> NRS 321.596(5).

<sup>6</sup> NRS 321.596(3)(c).



## About the author

**G**eoffrey Lawrence is deputy policy director at the Nevada Policy Research Institute. His commentaries run frequently in the *Las Vegas Review-Journal* and *Nevada Business Magazine* and have appeared in the *Washington Examiner*, *New Hampshire Union-Leader*, and *Kansas City Star*, among many others. Since joining NPRI in 2008, Geoffrey has authored several notable studies, including: an alternative state budget, a comprehensive review of Nevada’s tax structure and a roadmap for reforming Nevada’s budgeting practices, the Nevada Piglet Book 2010, and subsequent editions of NPRI’s Legislative Review and Report Card. Geoffrey’s work has drawn praise from The Tax Foundation, Americans for Tax Reform and the editorial pages of the *Las Vegas Review-Journal* and the *Las Vegas Sun*.

Prior to joining NPRI, Geoffrey spent two years at the John Locke Foundation in North Carolina, where he developed analyses of that state’s energy policies. Geoffrey attended graduate school at American University in Washington, D.C., where he earned an MA in International Economic Policy. As an undergraduate, he studied political science at the University of North Carolina at Pembroke where he was recognized as the department’s “Most Outstanding Senior” and was a four-time Peach Belt Scholar while starting for the school’s Top-20 wrestling team.

Geoffrey and his wife, Jenna, live in Henderson.



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