

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.¹

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.

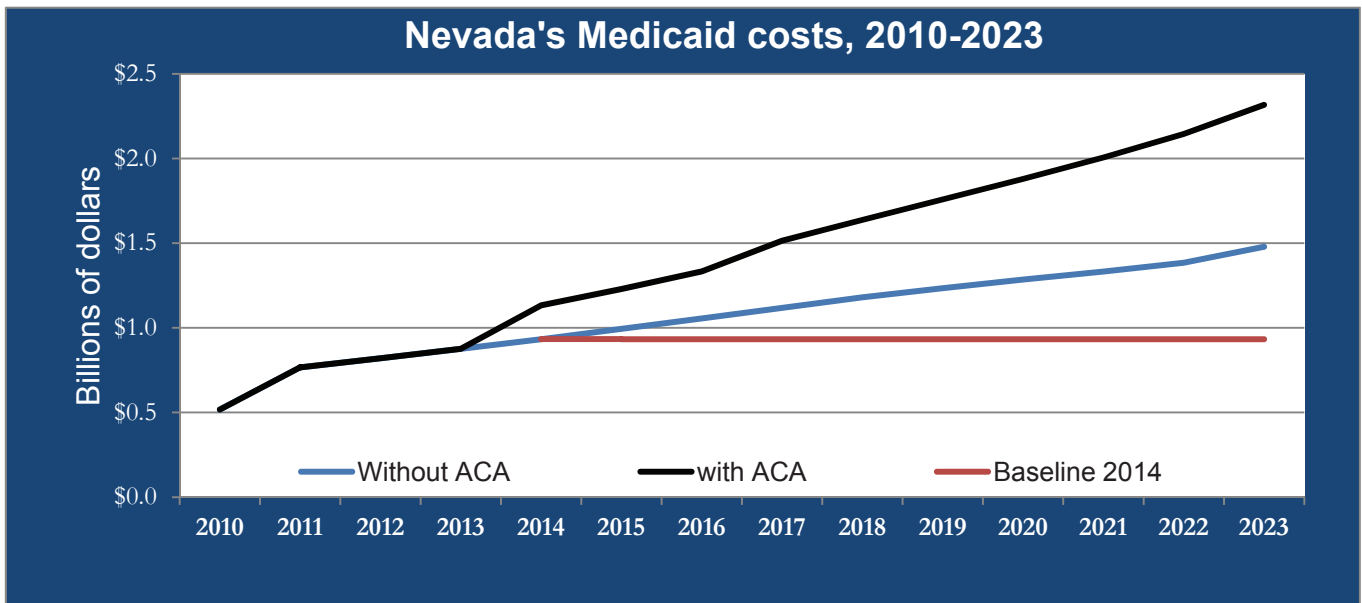
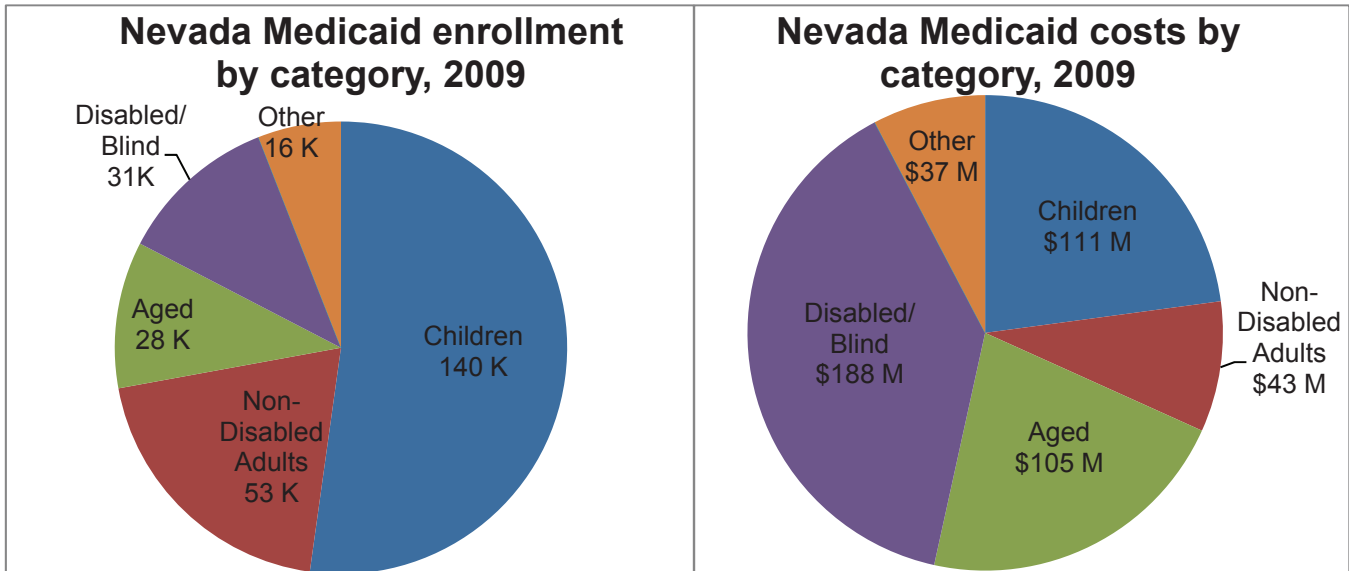
Lawmakers in at least 10 states have preemptively passed legislation to defend citizens' right not to enroll in Medicaid if they do not wish to do so. Given studies showing that health outcomes may be worse for Medicaid enrollees than for the uninsured, discerning individuals have an obvious incentive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

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

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

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

³ 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
Total	319,000	624,000	392,000	740,000	431,000	802,000
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.¹

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 2023.²

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.³

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."⁴

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

² *Ibid.*

³ 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.

⁴ 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.

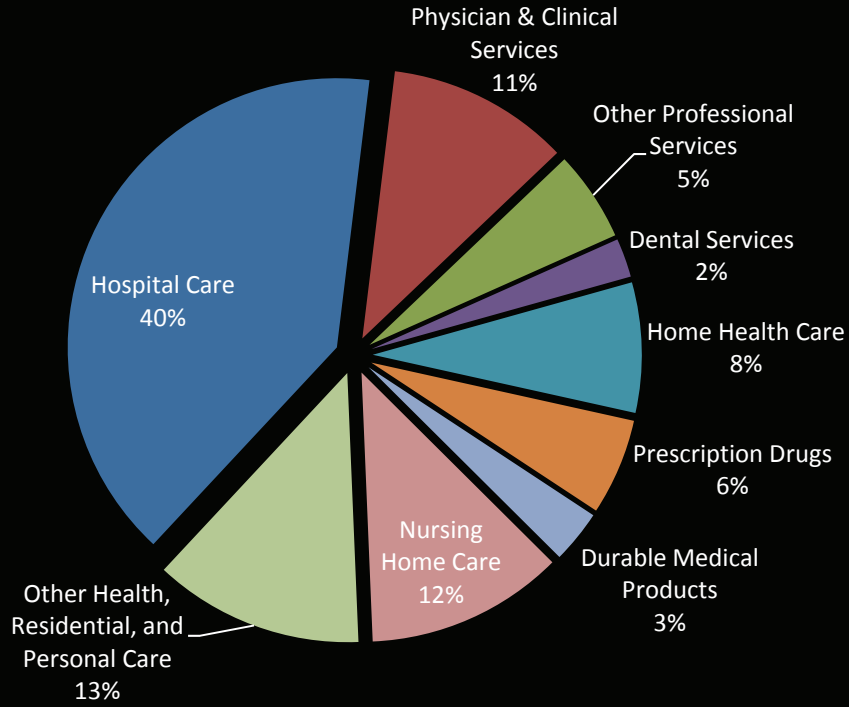
Recommendations

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.

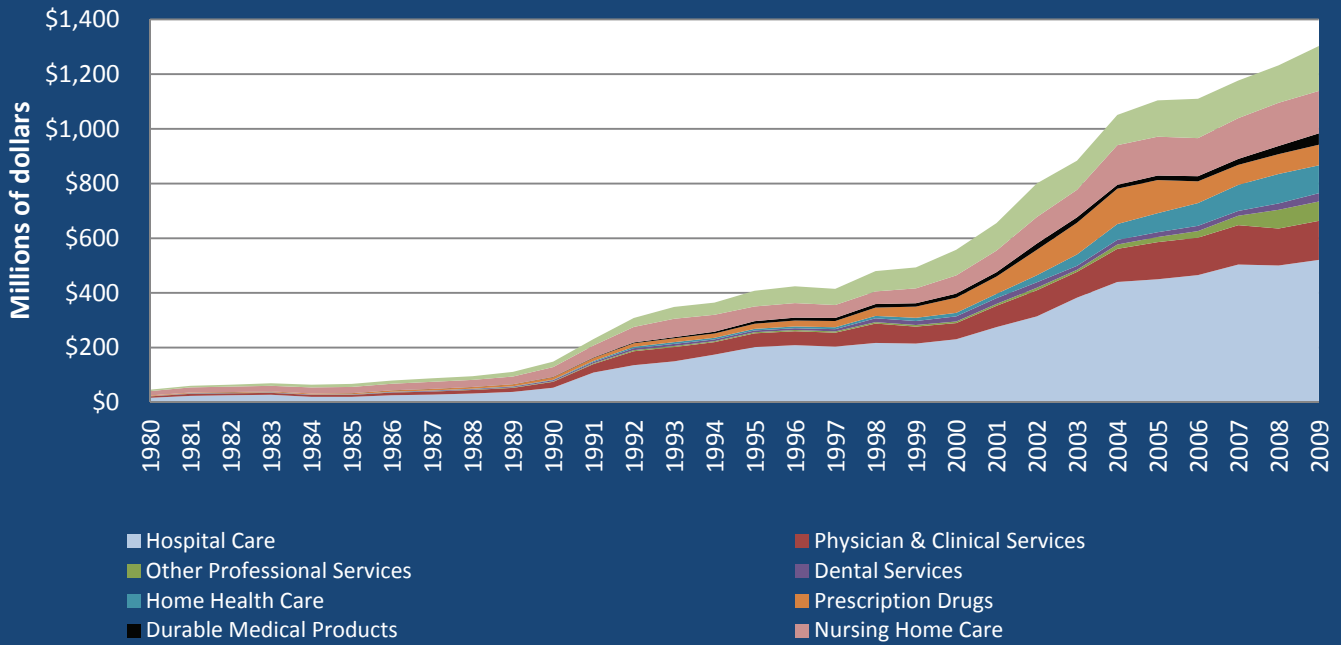
States that elect to establish HOAs deposit Medicaid dollars into a beneficiary's private account. The beneficiary can then use those dollars to purchase medical services directly. If the beneficiary uses Medicaid providers, the account is debited at standard Medicaid rates. For non-participating providers, 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.¹

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.

¹ 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.²

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.³ 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

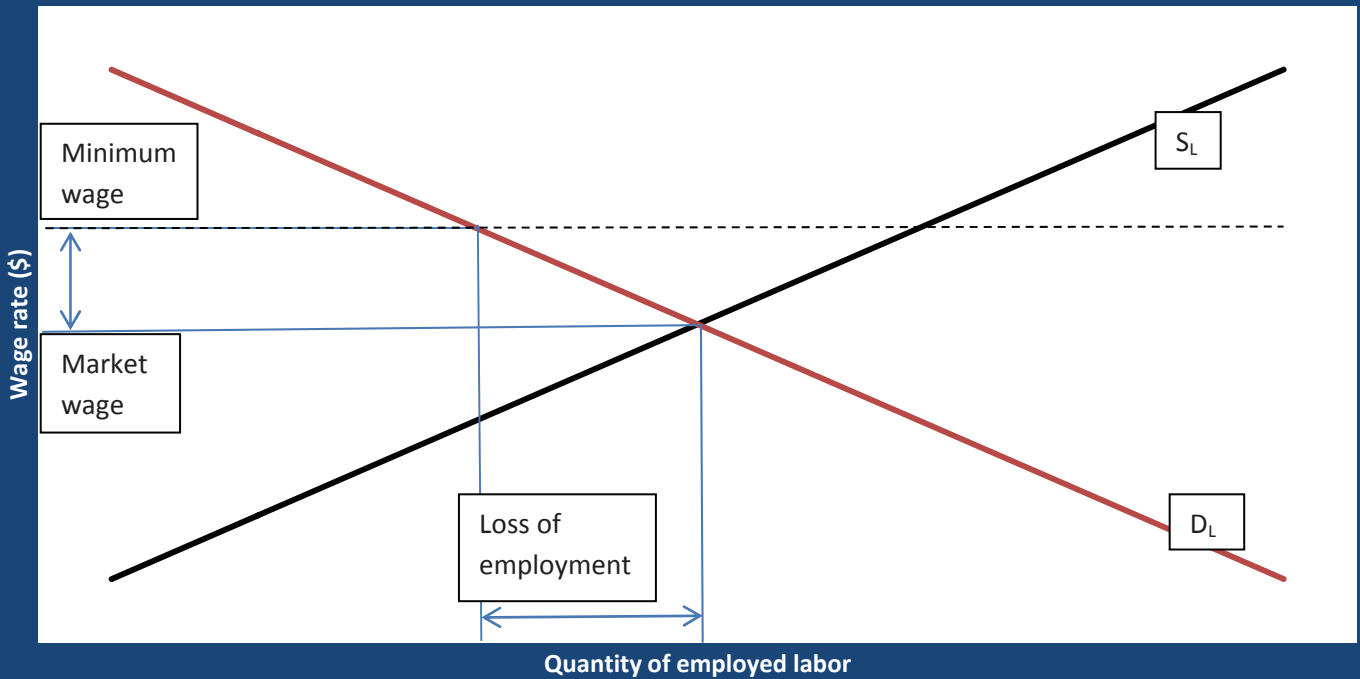
Amend the state constitution to repeal the Nevada minimum wage law. Nevadans are facing the nation’s highest unemployment rate.⁴ The state’s minimum wage law only exacerbates this problem — artificially imposing even more joblessness. Moreover, the individuals who suffer most as a result of minimum wage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

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

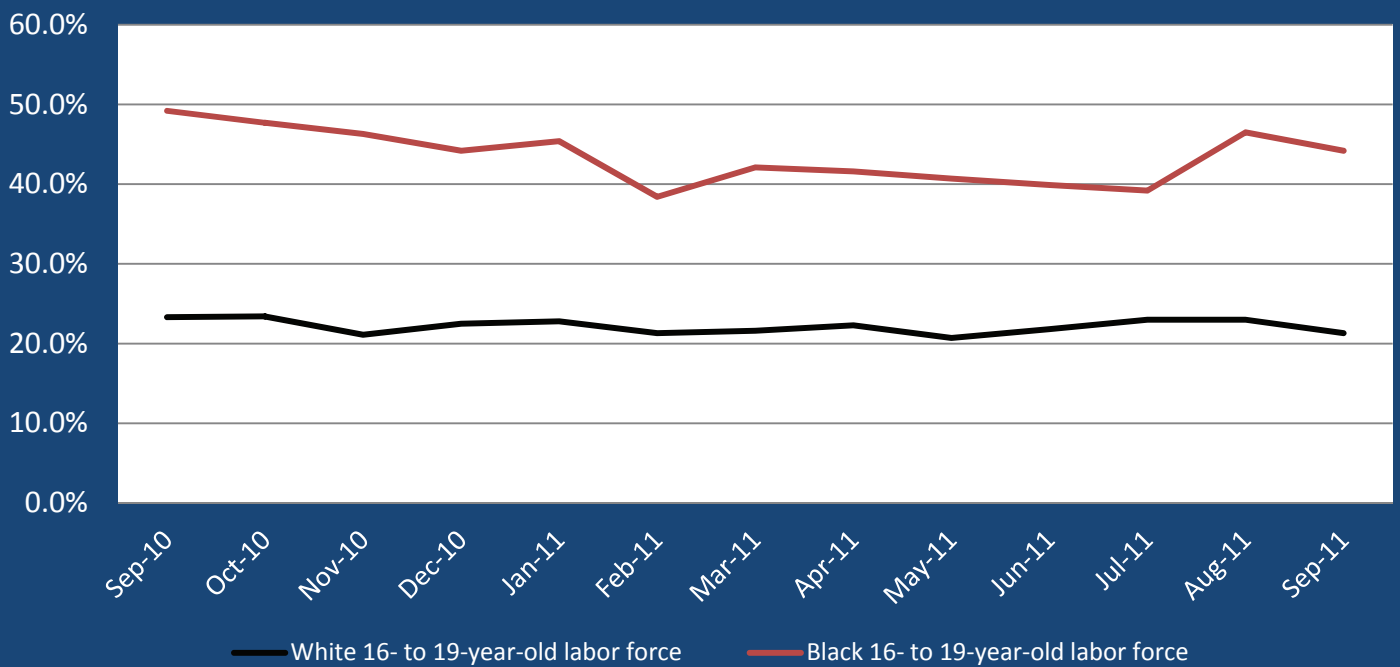
³ See, e.g., Sidney Webb and Beatrice Potter Webb, 1897, Industrial Democracy, pp. 766-789.

⁴ 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.¹

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.²

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.³

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.”⁴

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 1978.⁵ Nevada should become the 11th.

² *Ibid.*

³ *Ibid.*

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

⁵ Lawrence, note 1.

¹ 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**

Job Classification (Journeymen)	Prevailing Wage	DETR Average Wage	DETR Wage + 40 percent (accounting for benefits)
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**

Job Classification (Journeymen)	Prevailing Wage	DETR Average Wage	DETR Wage + 40 percent (accounting for benefits)
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 18th and 27th 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.¹

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.²

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.³ 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.

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

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

³ 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	NV	\$52,088	7	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
NV	\$50,125	18	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	NV	\$40,899	27
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 65th 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 2009.¹

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.)

¹ 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.²

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.

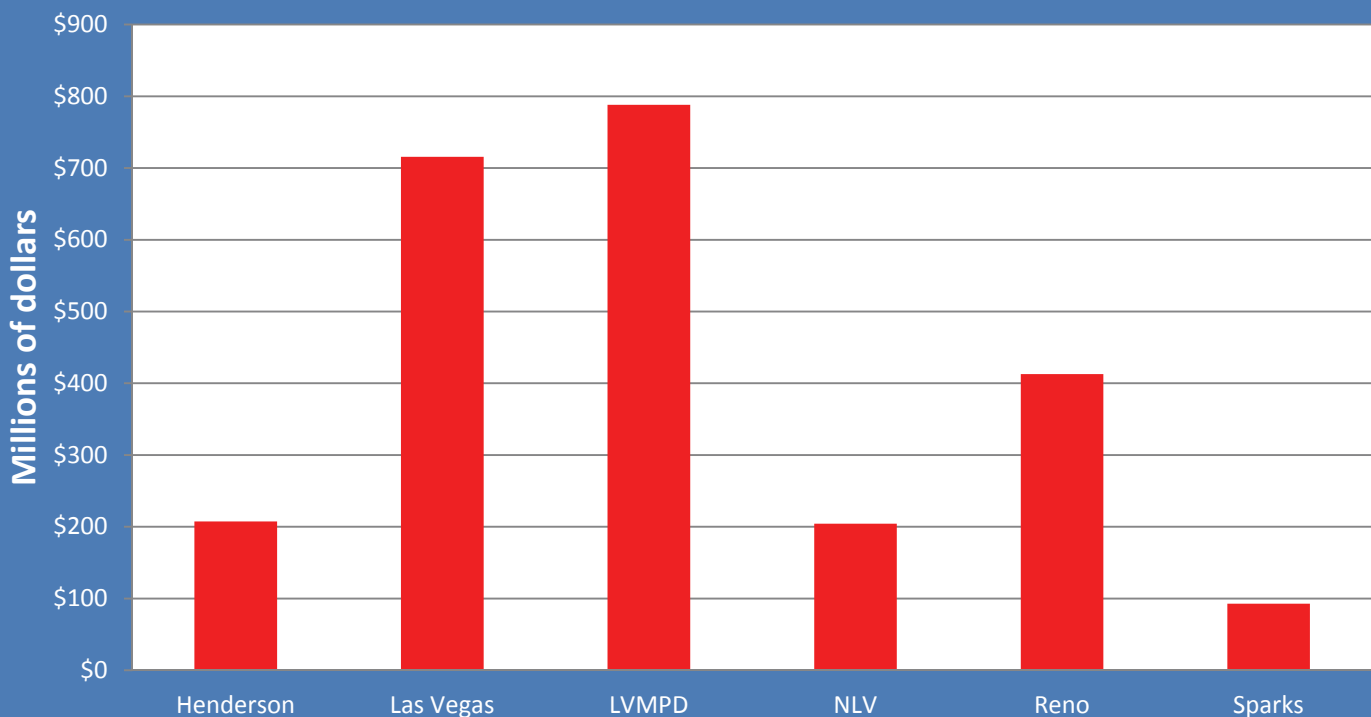
² Scott Lefkowitz, “Unpaid Benefit Costs for Heart Disease, Lung Disease, Hepatitis, and Cancer Claims, as of June 30, 2008,” Oliver Wyman Actuarial Consulting, Inc., Prepared for Cities of Henderson, Las Vegas, North Las Vegas, Reno and Sparks and the Las Vegas Metropolitan Police Department.

Leading causes of death in the United States, 2009

Cause of death	Number of mortalities
1. Heart disease	598,607
2. Cancer	568,668
3. Lung disease	137,082
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.¹

¹ 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."²

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.³

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.⁴ 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.⁵ 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.

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

³ *Ibid.*

⁴ *Ibid.*

⁵ 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.¹

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.²

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

¹ Nevada Legislature, 76th Session, Assembly Bill 449.

² 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.³

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.⁴

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.⁵ 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.

³ Murray Rothbard, [Man, Economy and State](#), 1962.

⁴ Hernando de Soto, [The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else](#), 2000.

⁵ 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 Fund¹ 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."²

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.³ Despite lawmakers' ability to solicit a favorable judicial

¹ Nevada's now-defunct estate tax yielded the seed funds.

² Nevada Constitution, Article 8, Section 9.

³ 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.⁴

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.

⁴ E.g., AB 149 of the 75th Session, and AB 284 and AB 273 of the 76th 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.¹

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.² 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.³

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.⁴

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.⁵

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.⁶

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.

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

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

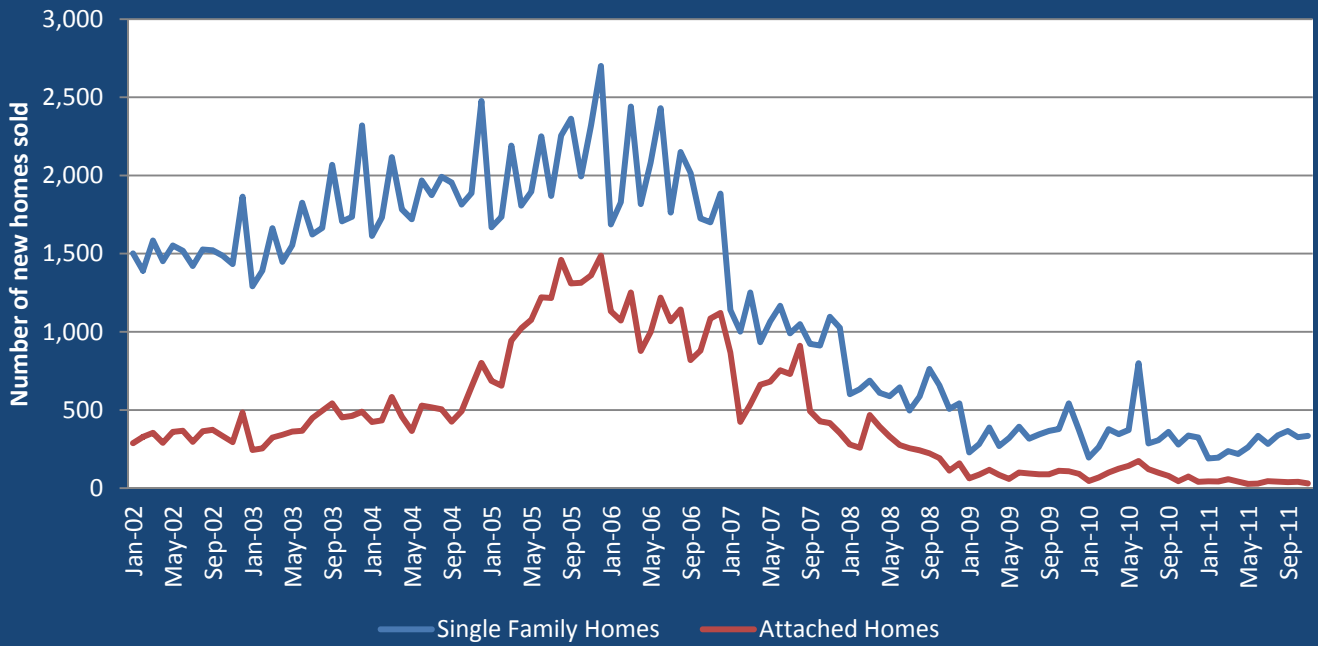
³ Nevada Legislature, 68th Session, Senate Bill 395; also, Nevada Legislature, 68th Session, Minutes of the Senate Committee on Judiciary, May 10, 1995.

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

⁵ *Ibid.*

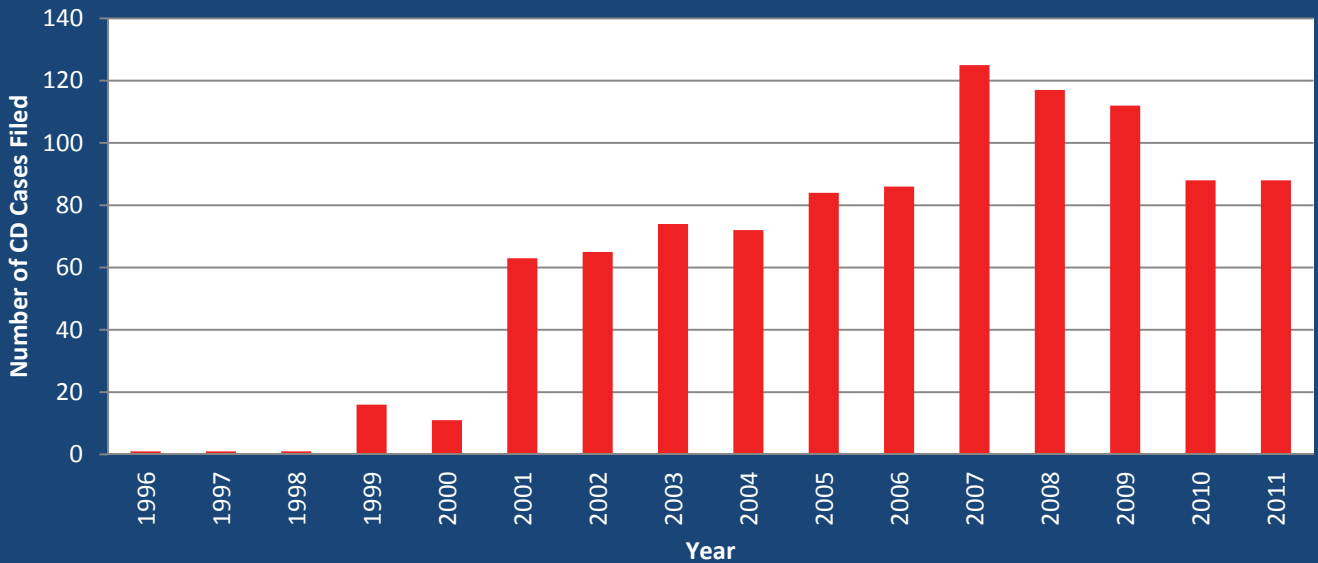
⁶ Jeff German, “GOP Consultant Helped Rig HOA Elections in Plot,” *Las Vegas Review-Journal*, September 1, 2011.

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.¹

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.

¹ Nevada Legislature, 76th 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