2017 Nevada Legislative Update

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LEGISLATIVE UPDATE

Nevada’s 79th legislative session brought a wide array of policy issues before the Nevada Legislature’s consideration. Holland & Hart’s Nevada legislative team of Ed Garcia, Scott Scherer and Shannon Hogan was deeply engaged in many of these issues. Specifically, Holland & Hart was instrumental in shepherding major legislation in the areas of transportation, public infrastructure and energy.

HOLLAND & HART LEGISLATIVE ISSUES

On behalf of its client, H&H shepherded three pieces of major transportation related legislation through both houses of the Nevada Legislature and approval by the Governor. SB 149 provided valuable updates to transportation and infrastructure statutes, increasing infrastructure, transportation and mobility options. SB 149 sets forth a more clear statutory framework for implementing mobility projects in Southern Nevada.

Similarly, SB 448 expands infrastructure funding, procurement and implementation options for infrastructure and transit projects in Clark County. SB 448 encourages private investment for transportation in Clark County by allowing local governments or state agencies to partner with private entities in building and financing transportation and infrastructure projects through more flexible and robust public private partnerships. By allowing private entities to take on early project design and planning activities, Clark County and its incorporated municipalities will be able to seek out modern and creative project implementation techniques for large infrastructure projects while minimizing project delay and increasing speed to market. This bill was signed by the Governor on June 8, 2017.

AB 399 establishes a structure for a State Infrastructure Bank (“SIB”) from which the entire state can benefit both in the infrastructure, transportation and utility sectors. The SIB allows the state to leverage public dollars by providing loans and other financial assistance to various government agencies in order to construct transportation and utility infrastructure. Should funding become available at the federal, state or local level, Nevada will now be positioned to capitalize on available sources of funds. The Governor signed this bill allowing Nevada to join the 37 other states that currently have SIBs.

H&H’s team was also engaged to pass legislation increasing the term for which a state entity may enter into an energy performance contract. On behalf of an energy performance contracting client, H&H succeeded in passing AB 160 to increase the term of energy performance contracts in this state; thereby, allowing the financing of larger projects. H&H was also
engaged by the same client to assist in passing PACE (“Property Assessed Clean Energy”) legislation which had been proposed and failed to pass the last several sessions. AB 5 allowed for an innovative financing structure for energy efficiency and renewable energy in Nevada. Our team was successful in assisting in the legislation’s passage this session.

H&H’s attorneys worked on passing AB 123 in order to resolve problems associated with corporate entities and their initial filings. This bill changes the filing due date of the business’s initial list for all of the types of entities that Nevada recognizes. Currently, the filing is due within 60 days, and as a result fifteen percent of businesses fail to file the initial list and end up in default the very first year. This bill would allow the information to be presented up front which will increase collections for the State without increasing any of the fees, and keep businesses informed and in compliance.

On behalf of a client engaged in urban agriculture, H & H pursued passage of SB 429. This bill encourages land access for urban agricultural production facilities by authorizing local governments within the state to establish and regulate urban agricultural zones. The term “urban agriculture” describes all types of urban farming activities, from small community gardens to larger commercial production of crops. This bill was also signed by the Governor.

OTHER 2017 NEVADA LEGISLATIVE SESSION TOPICS OF NOTE

A number of national issues made their way into Nevada’s 79th legislative session. Among them, codifying parts of the Affordable Care Act, creating or banning sanctuary cities within the state or tackling the rising prices of prescription drugs. However, much of the focus of the 2017 Session was on the fate of a purely local issue. Whether to fund ESAs (Education Savings Accounts), a school choice measure that passed in 2015 allowing parents to receive 90% or 100% of their child’s per-pupil funding allocation to use at a private educational institution. In late 2016, the Nevada Supreme Court struck down the program's funding through general education funds, forcing the legislature to allocate an alternate source of dedicated funds if the program was to be implemented.

During Republican Governor Sandoval's State of the State address on January 17, 2017, the Governor announced his proposal of $60 million for ESAs in the State’s budget. In the Democratic response, Senate Majority Leader Aaron Ford stated that the funding allocation for ESAs is the wrong priority for Nevada's kids and would result in less money being made available to public schools. If the ESAs were to be funded, the budget line item would have to pass the Democratic-controlled Nevada Senate and Assembly in order to make it to Governor Sandoval's desk.

The final days were chaotic as budget negotiations (largely because of disagreement on ESAs) broke down. Senate Republicans voted down a key budget bill which implemented a 10 percent excise tax on recreational marijuana expected to bring in $64 million for public education. However, in the final hours Majority leadership reached agreement to add $20 million in tax credits to the Silver State Opportunity scholarship fund in place of
the ESAs. The Silver State Opportunity Scholarship gives businesses a credit on their payroll taxes for donating to these scholarships which award up to $7,700 per child to indigent families. The excise tax on marijuana was restored and the Legislative Session adjourned sine die at midnight June 6, 2017. Below are other major topics of the 2017 Legislative Session.

BUSINESS

With the absence of any discussion of tax increases or other additional fees, the most prominent business issue during the session was about minimum wage. SB 106 would have increased the minimum wage to $11 or $12 an hour, depending upon whether the business provides certain benefits. Governor Sandoval vetoed this bill. He cited the alternate path by which a minimum wage increase can occur. A measure that would ultimately raise the minimum wage to $14/hour will be up for a vote by the Legislature again in 2019 and, if passed, will go to a vote of the people in 2020.

SB 196, offering paid sick leave, was vetoed by the Governor who cited its negative implications for small Nevada businesses.

AB 277, the Save Red Rock bill, would have put limitations on land development in areas near national monuments or conservation areas. This was largely seen as an attempt to further limit Jim Rhodes’ development of Blue Diamond Hill near the Red Rock Conservation Area. While Governor Sandoval said he supported the goals of the legislation, he vetoed saying he could not support it due to constitutional concerns.

The debate about the proper level of regulation of TNCs (Transportation Network Companies) continued in the 2017 Session. SB 554 was passed which requires TNC drivers to provide proof of having a state business license within 6 months of beginning operations; however, more onerous language requiring a business license for drivers prior to operating and relatively high levels of insurance was not part of the final bill.

AB 280 passed this session which gives Nevada based businesses a 5% bid preference for state contracts.

SB 487 was enacted which imposes a 10% tax on recreational marijuana retail sales.

SJR 14 would reset depreciation when property is sold to a new owner. SJR 14 proposes to amend the Nevada State Constitution in order to eliminate adjustments to property tax assessments based on the age of improvements to the property or legislatively created abatements and exemptions during the first year after it is sold or transferred. Since this is a constitutional amendment it will need to pass through the legislature again 2019, and would then go to the voters for approval in 2020.

ENERGY

AB 206 aimed to increase the state’s renewable energy standard to 40
percent by 2030. Brought forth by Freshman Assemblyman Brooks, notable amendments include setting an interim target of 32 percent by 2030; identifying energy storage as a qualified technology to meet 10 percent of the renewable portfolio standard by 2030; applying a multiplier of 1.5 to geothermal resources; applying a multiplier of 2.0 to energy storage resources, and revising the annual requirement for electricity sold in the state. Primary opponents included NV Energy and the Nevada Resort Association. AB 206 was vetoed by the Governor.

AB 405 was approved and is intended to resolve outstanding net-metering issues which have been the topic of intense debate over the last few years. The bill provides certain consumer protections to homeowners who invest in rooftop solar and gives them a credit of 95 percent of the retail rates, or what the customer would have been charged by the utility for each kilowatt hour of excess electricity generated by the rooftop system. The 95 percent credit rate for the first tier of new rooftop solar customers will drop in future phases as the amount of electricity produced by rooftop systems hits a benchmark of 80 megawatts. The amended bill includes an introduction saying the bill is necessary for the immediate re-establishment of the rooftop solar market in Nevada, both for job creation and the development of renewable energy.

SB 145 was approved. It is an omnibus bill that packaged several measures into one. It combined existing separate accounts for incentivizing solar, wind and hydropower development and combine them into a single account focusing on solar projects, electric vehicles and energy storage systems.

The existing program is paid through an existing line on utility bills called the Renewable Energy Program Rate, or REPR, and has a proposed upper limit of more than $295 million on incentive programs. While the specific requirements for the incentives would be set by the PUCN, the bill limits eligible energy storage systems to residential and commercial units, or units that have a capacity to store between 100 and 1,000 kilowatts.

In short, SB 145 combines the amount of existing incentives available for payment to each Solar and Wind and Waterpower program into a single pool of money; authorizes the Commission to provide for the installment for lower income customers; revises the composition of the Legislative Commission on Energy; provides for the incentives for the construction of hydrogen-refueling stations; repeals the provision on certain electric utilities requiring residential customers to pay certain electric service rates based on the time of use; and directing the Legislative Committee on Energy to conduct an interim study of energy efficiency programs and the viability of establishing green banks to help finance the use and harnessing of clean energy in the State. SB 145 was approved by the Governor.

Also approved was SB 146 which requires the public utility to submit a distributed resource plan as part of energy supply and demand planning. Integrated resource planning for electric utilities is a comprehensive long-term planning process for meeting customer demand for electricity. An IRP is comprised of many elements including an energy supply plan, load
forecast, supply planning and demand-side planning. In the current IRP process, NV Energy’s electric utilities file an IRP every three years and can amend the plan during the cycle. The PUC can accept, reject or modify the IRP based on testimony provided during an evidentiary hearing.

SB 146 amends the Nevada Revised Statutes (“NRS”) to require the utility to include a distributed resources plan within its IRP. It describes what the utility needs to evaluate, propose and identify for the distributed resources plan. It also amends the NRS to include the conditions under which the PUC may accept the plan.

Another change to the integrated resource planning process came in the form of Senate Bill 65, which was sponsored by the Governor’s Office of Energy. The bill requires utilities to meet with PUC staff, members of the state’s Bureau of Consumer Protection and other interested parties for at least four months before a new or amended integrated resource plan may be filed.

In addition, this bill requires the Commission to give preference to measures that provide the greatest economic and environmental benefits, the greatest opportunity for the creation of new jobs in the state, diversify energy portfolios and reduce fuel and carbon-price risk, and help to position Nevada to lead the nation as a producer and consumer of clean and renewable energy consistent with established energy policy.

Senate Bill 204, sponsored by Senator Kelvin Atkinson, came out of the Governor’s New Energy Industry Task Force and would require the PUC by October 2018 to analyze whether it serves the public interest for the utilities to purchase energy storage. The measure gives latitude to the PUC in determining the targets, a change from the initial form of the bill which would have mandated cost-beneficial energy storage use and required it to increase over time.

Senate Bill 392 would have allowed for community solar gardens. This bill was vetoed by the Governor who stated he was concerned with its potential impact on ratepayers.

HEALTHCARE

SB 539 requires some pricing transparency for diabetes drug manufacturers and others involved in the pricing process of diabetes drugs. Another version of this bill was originally vetoed by the Governor but SB 539 was signed after certain changes were made from the original bill. It is expected that there may be court challenges from the pharmaceutical industry.

The following healthcare related bills were passed but vetoed by Governor Sandoval:

AB 374, would have enacted the Nevada Care Plan offering health insurance to any Nevadan regardless of income. Known as the “Medicaid for All Bill” it would have broadly expanded the availability of Medicaid in
the State.

AB 382 sought to curb out-of-network emergency room costs. Governor Sandoval cited its potential to interfere with network contracts.

AB 408 codified several provisions of the Affordable Care Act into Nevada law including requiring insurers to cover pre-existing conditions, maternity care and preventative health services, allowing children under the age of 26 to remain on their parents health insurance, and the requirement that insurance companies cover contraceptives. It should be noted that SB 233 which was more limited and codifies certain women’s health and contraceptive benefits of the Affordable Care Act into state law was enacted.