Research Division, Nevada Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Business Entities and Economic Development

April 2016

In support of business and economic development, the State of Nevada and its units of local government endeavor to maintain fair competition, promote growth, provide infrastructure and services, and supply the legal and regulatory framework, while also caring for the protection and security of the State's residents and visitors.

From 1990 to 2000, Nevada's population grew by over 66 percent, compared to approximately 13 percent for the United States as a whole. From 2000 to 2010, Nevada's population grew by nearly 35 percent, compared to about 10 percent nationally.

Nevada takes pride in its business-friendly approach to commerce, reflected primarily in its tax climate and regulatory structure. The Tax Foundation ranks Nevada fifth overall in its *2016 State Business Tax Climate Index*. Nevada has no corporate or individual income tax, and it also scores well on the Foundation's property tax index.

The largest industries in Nevada's economy, in terms of employment, are accommodation and food services, government, and retail trade. Other important industries include health care and social assistance, administrative support and services, and construction.

This report covers the types of business entities operating in Nevada, the State's economic development efforts, current issues, and recent legislation affecting these topics.

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CORPORATIONS, LIMITED-LIABILITY COMPANIES, AND PARTNERSHIPS

Corporations

A corporation is a legal entity with a separate legal personality from its members. A corporation has the ability to sue and be sued, hold assets in its own name, hire agents, sign contracts, and make bylaws to govern its internal affairs. Modern business corporations generally have additional characteristics, including transferable shares, perpetual succession, and limited liability.

Chapter 78 ("Private Corporations") of *Nevada Revised Statutes* (NRS) governs private corporations in our State. It provides that one or more persons may establish a corporation for the transaction of any lawful business or to conduct any legitimate object or purpose.

Nevada recognizes different kinds of corporations, including:

- Domestic corporations (incorporated within Nevada);
- Foreign corporations (incorporated in another state or country);
- Close corporations (no more than 30 persons hold the stock of the corporation);
- Professional corporations;
- Benefit corporations;
- Nonprofit corporations; and
- Corporations sole (for religious purposes).

The website of Nevada's Secretary of State lists the following reasons to consider incorporation in Nevada:

- No corporate income tax;
- No taxes on corporate shares;
- No franchise tax;
- No personal income tax;
- Nominal annual fees;
- Nevada corporations may purchase, hold, sell, or transfer shares of their own stock;

- Nevada corporations may issue stock for capital, services, personal property, or real estate, including leases and options. The directors may determine the value of any of these transactions, and their decision is final;
- No franchise tax on income;
- No inheritance or gift tax;
- No unitary tax;
- No estate tax;
- Competitive sales and property tax rates;
- Minimal commerce tax on business gross receipts—ranging from 0.051 percent to 0.331 percent of gross receipts, depending on industry;
- Minimal modified business tax—1.475 percent of gross wages with certain deductions; and
- Nevada's Business Court, developed on the Delaware model, minimizes the time, cost, and risks of commercial litigation by providing:
    1. Early, comprehensive case management;
    2. Active judicial participation in settlement;
    3. Priority for hearing settings to avoid business disruption; and
    4. Predictability of legal decisions in commercial matters.

To establish a corporation in Nevada, a person must file articles of incorporation with the Secretary of State specifying the name of the corporation; the name, address, and signature of the registered agent; the number and value of shares the corporation may issue; the names and addresses of the board of directors; and the name, address, and signature of the incorporator. The articles must be accompanied by the appropriate fees. Every corporation must have a registered agent who resides in and has an actual street address in Nevada for service of process on behalf of the corporation.

If, based on its name or purpose, a proposed corporation would be regulated by the Division of Financial Institutions, the Division of Insurance, or the Real Estate Division within the Department of Business and Industry (B&I); the Nevada State Board of Accountancy; or the State Board of Professional Engineers and Land Surveyors, the application must be approved by the regulating agency before it is filed with the Secretary of State.

Each corporation organized under the laws of Nevada must file its list of officers and directors and information on its registered agent annually.

Limited-Liability Companies

A limited-liability company (LLC) is similar to a corporation, with a more flexible form of ownership, usually suitable for smaller companies. An LLC may be "member managed" or "manager managed." In Nevada, one or more persons may organize an LLC.

To establish an LLC in Nevada, a person must file articles of organization with the Secretary of State including the company name; the name, address, and signature of the registered agent; the form of management; the name and address of each manager or managing member; and the name, address, and signature of the organizer. The articles must be accompanied by appropriate fees. As with corporations, if the LLC would be regulated by the Division of Financial Institutions, the Division of Insurance, the Real Estate Division, the Nevada State Board of Accountancy, or the State Board of Professional Engineers and Land Surveyors, the application must be approved by the regulating agency before it is filed with the Secretary of State.

Partnerships

A partnership is an association of two or more persons acting as co-owners of a business for profit. Nearly all states, including Nevada, have adopted the Uniform Partnership Act. Chapter 87 ("Partnerships") and Chapter 88 ("Uniform Limited Partnership Act") of NRS govern partnerships in the State.

One major difference between partnerships and corporations relates to taxation. In general, partnerships are treated as conduits, through which income and losses flow to the individual partners, who report them on their individual tax returns. Another difference is that partners do not enjoy the benefits of limited liability, as stockholders in corporations do.

Nevada recognizes various types of partnerships, both domestic and foreign, including:

- General partnerships;
- Limited partnerships;
- Limited-liability partnerships; and
- Limited-liability limited partnerships.

A general partnership is typically one in which all of the partners share profits, losses, and management responsibilities equally, although their individual capital contributions may not be equal. A limited partnership usually consists of one or more general partners, who are jointly and severally liable and who conduct the primary business, and one or more limited partners, who contribute capital but are not liable for the debts of the partnership beyond the funds contributed.

ECONOMIC DEVELOPMENT

As mentioned earlier in this report, Nevada's business-friendly tax climate and regulatory structure figure prominently in the growth and development of the State in recent years. In addition, Nevada operates incentive programs, workforce development programs, and other initiatives to promote economic development.

Nevada's economic development efforts were reshaped by the enactment of Assembly Bill 449 (Chapter 507, *Statutes of Nevada*) in 2011. The bill created the Office of Economic Development (GOED), headed by an Executive Director, within the Office of the Governor; eliminated the Commission on Economic Development; required the formation of a State Plan for Economic Development; and provided for the establishment of new regional development authorities (RDAs). The programs administered by GOED, in concert with the RDAs, are described in more detail below.

Incentive Programs

Through GOED, Nevada offers a number of tax incentives for economic development to attract new businesses and to help the State's existing businesses expand and remain competitive. Applications must be consistent with the State's plan for industrial development and diversification, the objectives of which include diversification; attraction and expansion of basic industries; and attraction and expansion of corporate headquarters, research and development, producer services, and other businesses that create primary jobs.

Each incentive has specific requirements regarding the level of capital investment, the number of primary jobs created, and the minimum hourly wage level. All recipients must provide health insurance to their employees, obtain required business licenses and permits, and make a five-year business commitment. The available incentive programs include:

- Personal property tax abatement (NRS 360.750 and 361.0687)—an abatement not to exceed 50 percent over a maximum of 10 years;

- Sales and use tax abatement (NRS 360.750 and 374.357)—a partial sales and use tax abatement on capital equipment purchases;

- Personal property tax abatement (NRS 360.752)—an abatement not to exceed 50 percent over a maximum of 5 years; eligibility requires a minimum capital investment in an institution in the Nevada System of Higher Education (NSHE);

- Modified business tax abatement (NRS 363B.120)—an abatement of 50 percent for 4 years;

- Sales and use tax deferral (NRS 372.397)—a sales and use tax deferral on capital equipment;

- Aviation parts abatement (A.B. 161 [Chapter 406, *Statute of Nevada 2015*])—a partial abatement of personal property and sales and use taxes for up to 20 years;

- Data center abatement (Senate Bill 170 [Chapter 498, *Statutes of Nevada 2015*])—a partial abatement of personal property and sales and use taxes for up to 20 years; and

- Recycling property tax abatement (NRS 701A.210)—up to 50 percent abatement for up to 10 years on real and personal property for qualified recycling businesses.

Workforce Development

Nevada offers grants of up to $1,000 per trainee, with a minimum 25 percent company match, under the Train Employees Now (TEN) grant program (NRS 231.068 and 231.147). There is no required level of capital investment, but applicants must meet requirements for the number of primary jobs created and minimum hourly wage and make a five-year business commitment. The program provides intensive short-term job training to assist new and expanding firms to increase productivity quickly. Participating companies; GOED; the Department of Employment, Training and Rehabilitation; and NSHE design each training program individually.

Under the federal Workforce Investment Act of 1998 (Public Law 105-220), Nevada also operates Nevada JobConnect, a statewide network providing workforce development services to employers and job seekers. To employers, the program offers recruiting, retention, training, retraining, and outplacement services and labor market information. To job seekers, the program offers information on career development, job searches, training, and—as appropriate—unemployment benefits. In addition, Nevada JobConnect administers an incentive program, Silver State Works, that provides employers with incentives to hire and retain qualified employees. Employers can receive a wage retention supplement, on average of up to $2,000, when they satisfy certain requirements related to hiring, training, and retaining a full-time employee. Other incentives are available to supplement the cost of on-site workplace training and reimburse employers for wages paid to trainees.

Two local boards, the Southern Nevada Workforce Investment Board, known as "Workforce Connections," and the Northern Nevada Board, known as "Nevadaworks," set policy for their respective areas and provide one-stop service locations. The Governor's Workforce Investment Board oversees the program and advises the Governor and the Legislature on workforce development policy.

Industrial Development Revenue Bonds

Nevada's Industrial Development Revenue Bond program also supports economic development and diversification in the State. The bonds, issued by the B&I, represent a form of tax-exempt financing available to qualified projects at favorable interest rates below comparable commercial rates.

Silver State Opportunities Fund

In 2011, the Legislature required the State Treasurer to form an independent corporation for public benefit to act as a limited partner of limited partnerships or as a shareholder or member of LLCs that provide private equity funding to businesses that engage in certain industries (Chapter 355 ["Public Investments"] of NRS). The State Treasurer was authorized to transfer an amount not to exceed $50 million from the State Permanent School Fund to the independent corporation for investment, at least 70 percent of which must be provided to businesses located or seeking to locate in Nevada.

The State Treasurer created the Nevada Capital Investment Corporation (NCIC) to carry out the functions of the independent corporation envisioned in statute. The NCIC subsequently approved a contract with Hamilton Lane to manage the corporation's investments through the Silver State Opportunity Fund. According to Hamilton Lane's June 30, 2015, *Annual Investment Report*, investments made so far have generated a 6.6 percent return to the State Permanent School Fund.

Nevada New Markets Tax Credit Program

The Nevada New Markets Tax Credit Program, created in 2013, allows certain business entities to receive a credit against the insurance premium tax imposed on insurance companies in exchange for investing in a qualified community development entity (Chapter 231A ["Nevada New Markets Jobs Act"] of NRS). Certified development entities are required to make qualified low-income community investments in businesses located in severely distressed census tracts. In December 2015, the B&I reported over $190 million had been invested in Nevada businesses as a result of the program.

Catalyst Account

The Catalyst Account provides grants or loans to counties and cities, which must be used to invest in businesses seeking to expand in or relocate to this State. As of October 31, 2015, GOED provided $11.3 million in grants and loans from the fund; recipients pledged to create more than 4,000 jobs with projected capital investments of over $246 million.

Knowledge Account

The Knowledge Account provides funding for the development and commercialization of research and technology at the University of Nevada, Las Vegas (UNLV); the University of Nevada, Reno (UNR); and the Desert Research Institute (DRI). Among other uses, money in the Knowledge Account is to be allocated by the Executive Director of GOED to provide funding for:

- The recruitment, hiring, and retention of faculty and teams to conduct research in science and technology;
- Research laboratories and related equipment;
- The construction of research clinics, institutes and facilities, and related buildings in this State; and
- Matching funds for federal and private grants that further economic development.

Current Knowledge Account projects include: the Center for Gaming Innovation and the Nevada Institute of Personalized Medicine at UNLV; the Nevada Advanced Autonomous Systems Innovation Center at UNR; the Applied Innovation Center for Advanced Analytics and the Nevada Center of Excellence in Water at DRI; and the Industry Unmanned Autonomous Systems Collaboration Program among the NSHE research institutions.

RECENT LEGISLATION AFFECTING BUSINESS ENTITIES AND ECONOMIC DEVELOPMENT

In 2014 and 2015, the Legislature met in two special sessions to consider legislation to provide economic development incentives. In 2014, four bills were enacted as part of an effort to bring Tesla Motors' lithium ion battery plant, known as the "gigafactory," to northern Nevada—though the legislation allows any company making the required capital investment to take advantage of the tax credits and other incentives. The thrust of these efforts resulted in passage of S.B. 1 (Chapter 4, *Statutes of Nevada 2014, 28th Special Session*).

Senate Bill 1 set up a program of transferable tax credits and tax abatements to attract large capital investments. To qualify, the lead participant in a project must make an application to GOED and demonstrate, among other things, that: (1) the lead participant and other participants in the project will make a collective minimum investment of $3.5 billion within ten years after approval of the application; and (2) at least 50 percent of the construction workers on the project and 50 percent of the project employees will be Nevada residents.

Transferable tax credits, up to a maximum of $195 million, can be approved for a project. The value of the transferable tax credits is based on:

- The amount of $12,500 for each qualified project employee, up to a maximum of 6,000 employees (for a total of $75 million);
- An amount equal to 5 percent of the first $1 billion in new capital investment (for a total of $50 million); and
- An amount equal to 2.8 percent of the next $2.5 billion in new capital investment (for a total of $70 million).

These transferable tax credits can be sold to other businesses to use in offsetting their gaming percentage fee taxes, modified business taxes (MBTs), and insurance premium taxes, or any combination of those taxes.

Senate Bill 1 also allows GOED to approve a variety of tax abatements for a qualified project. Real and personal property taxes and MBTs can be abated for up to ten years. Certain local sales and use taxes can be abated for up to 20 years.

To ensure transparency and to verify that the qualified project is following the terms of the incentive agreement, S.B. 1 has stringent requirements for documentation and verification of eligibility, public notice and approval processes, and independent audits. Another key element, the so-called "clawback" provisions, provide that if any of the participants fail to meet eligibility standards, such as minimum investments, or otherwise fail to comply with the law, they must repay the State for the tax credits and abatements.

In 2015, the Legislature again met in special session to consider legislation to attract Faraday Future, an electric car manufacturer, to North Las Vegas. The main economic development incentive package was addressed in S.B. 1 (Chapter 2, *Statutes of Nevada 2015, 29th Special Session*). As with the prior package enacted to attract Tesla, the incentives in S.B. 1 are available to any project that meets the criteria for the credits and abatements in the bill. While the tax abatements and credits are similar to those found in the incentive bill from 2014, they are smaller in size and include some additional provisions to protect the State.

To qualify, a lead participant in a project must make an application to GOED and demonstrate, among other things, that: (1) the lead participant and other participants in the project will make a collective minimum investment of $1 billion within ten years after approval of the application; and (2) at least 50 percent of the construction workers on the project and 50 percent of the project employees will be Nevada residents.

For mid-tier qualified projects like Faraday, up to $38 million in transferable tax credits can be approved. The transferable tax credits are issued based on $9,500 for each qualified project employee, up to a maximum of 4,000 employees (for a total of $38 million). There is a limit of $7.6 million in transferable tax credits that may be issued in any fiscal year, although unused credits can be carried forward.

Senate Bill 1 also allows GOED to approve a variety of tax abatements for a qualified project. Up to 75 percent of real and personal property taxes and MBT can be abated for up to 10 years, and up to 100 percent of certain local sales and use taxes can be abated for as many as 15 years.

Protecting the State's investment in economic development projects is a matter of great concern, so S.B. 1 has a number of provisions to ensure that a qualified project meets the terms of any agreement made with GOED. Senate Bill 1 also contains enhanced clawback provisions, giving GOED the authority to require a participant to pay all or a portion of the abated taxes into a trust fund that would be held until GOED determines some or all of the requirements have been met. That way, if a project does not meet the terms of the agreement, the money in the trust fund will be distributed to the State or local government that would have received the money if the abatements had not been approved.

Another important piece of the negotiated economic development package was an increased commitment to specialized workforce development programs to train Nevadans for higher paying manufacturing jobs and the other employment needs of high-tech companies, like Faraday. Additionally, legislators took steps to ensure Nevada's high school and college graduates have the skills needed to work in this cutting-edge industry and for other related companies that will be attracted by the State's economic development efforts.

To that end, the Legislature enacted A.B. 1 (Chapter 1, *Statutes of Nevada 2015, 29th Special Session*), to require GOED to develop a customized workforce development program for persons creating, expanding, or relocating businesses in Nevada. These customized workforce programs and services must be developed in consultation with NSHE and Nevada's Departments of Education and Employment, Training and Rehabilitation, among others.

To provide structure and guidance, A.B. 1 lays out GOED's authority to approve programs of workforce recruitment, assessment, and training; specifies application requirements and approval processes; and requires posting of the criteria for evaluating applications on its website. To ensure equal opportunity for all, workforce development programs must include a workforce diversity action plan and, to the extent practicable, be provided on a statewide basis.

Interested businesses may apply to GOED to participate in workforce development programs. The program provides protection to participating businesses for training materials that constitute trade secrets or intellectual property.

The Governor's Office of Economic Development has been given authority to approve "authorized providers" of workforce development programs, which are defined to include any institution within NSHE, a State or local agency, a charter school, a school district, a nonprofit organization, a labor organization, or a private postsecondary educational institution.

To help fund these programs, an authorized provider may apply to GOED for a grant or loan to defray all or a portion of the costs of an approved program. Priority will be given to workforce development programs that:

- Provide high-skill and high-wage jobs to Nevada residents;
- Use materials produced or purchased in Nevada;
- Are consistent with the State Plan for Economic Development; and
- Are consistent with the unified State plan required by the federal Workforce Innovation and Opportunity Act of 2015.

The allowable uses of these grants or loans are broad and include the cost of technical services to a participating business, instructional services, facility rentals, administration and personnel, or any other cost necessary to effectively carry out the program.

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