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Increasing the State Business License Fee: Nevada's "Simple" Answer to Its Failing Education System?

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The incomparable Dr. Seuss once said, "Sometimes the questions are complicated and the answers are simple." For the State of Nevada, the answer has not been simple as Nevada lawmakers struggle to find a solution to the state's education crisis. According to the "Quality Counts 2015" report issued by *Education Week*, a national newspaper that covers K-12 education issues in the United States, Nevada's system of K-12 public education falls short in nearly every aspect. Notably, Nevada's high school graduation rate is the worst in the nation, with only approximately 70 percent of high school students graduating with a diploma. Perhaps even more distressing is the fact that Nevada was ranked last in the nation in the Chance-for-Success Index (CFSI), which attempts to measure the contributions of a state's education system to a person's achievement beyond high school. Based on Nevada's CFSI ranking, the state has failed miserably at helping young people succeed.

In an attempt to find the much-needed funding for the K-12 public system, the Nevada Margin Tax for Public Schools Initiative, Question 3 (the Education Initiative) was placed on the November 4, 2014, ballot. The Education Initiative would have instituted a two-percent margin tax on businesses operating in Nevada with gross revenues in excess of $1 million. The margin tax would have been assessed on all gross revenue of a business, subject to a few permitted deductions, regardless of whether the business was actually making any profit.

The Education Initiative was overwhelmingly defeated by a 78.8 percent vote, in large part because of the voters' belief that the measure would have had a devastating impact on small or struggling businesses. The Education Initiative likely would have forced small businesses to close or to significantly reduce staff. Additionally, there was some concern that the Education Initiative would not truly result in an increase in education funding. The governor and Legislature have the ability to reduce overall general fund contributions to the school account, which happened as recently as 2009 when an approved tax increase intended for education was diverted to other uses.

On March 11, 2015, the details of Senate Bill 252, or Governor Brian Sandoval's state business license fee plan, were released. Essentially, Senate Bill 252 would change Nevada's existing state business license fee, currently set at a flat fee of $200 per year per business license. The current state business license fee

does not take into consideration any factors such as industry type or gross revenue. Conversely, Senate Bill 252 would require businesses to pay a state business license fee ranging from $400 to $4 million based upon industry sector and Nevada gross revenue, and would be paid on a quarterly basis. Unlike the Education Initiative, the new fee would apply to all businesses and not just those with gross revenues in excess of $1 million. If passed, the new state business license fee is estimated to generate approximately $438 million in revenue for education funding over the next two years.

Under Section 51 of the bill, any business that fails to pay its quarterly license fee would have its business license revoked by the Nevada Department of Taxation (the Department). Furthermore, an entity's charter or authority to transact business in Nevada would be revoked by the Nevada Secretary of State (SOS). Last, Section 51 would prohibit the Department from issuing a new state business license, and the SOS from reinstating or reviving a charter or the right to transact business in Nevada, unless the former holder of the revoked state business license pays the business license fee, as well as any penalties and interest associated therewith.

On April 21, 2015, Senate Bill 252 was passed in the state Senate with a 17-4 vote. The bill now goes to the Assembly, where it is expected that passage will be much more difficult. First, opponents believe that Senate Bill 252 is much too similar to the Education Initiative. Indeed, like the unsuccessful Education Initiative, the calculation of the new business license fee would be determined based on all gross revenue of a business, subject only to the proposed deductions identified in Section 20 of the bill. Some deductions under Section 20 include the pass-through revenue of a business, bad debts for purposes of federal income taxation, and the value of goods or services provided to a customer on a complimentary basis.

Second, as with the Education Initiative, Senate Bill 252 may have a crippling effect on small businesses in Nevada, possibly forcing them to cease operations or reduce staff. Since the new business license fee system would be based on gross receipts, it may not accurately reflect a business's ability to pay. By way of example, under Section 47 of the bill, a food service business with Nevada gross revenue per quarter between $109,939 up to and including $126,430 would be required to pay a state business license fee of $250 per quarter. This would result in an increase of $800 per year for the state business license for this particular business.

While $800 appears to be nominal in comparison to the gross revenue received per quarter in this example, it could be a significant difference for some restaurant owners, who have been hit particularly hard by the recession. Many restaurants located on the Las Vegas Strip have experienced a 40-percent decrease in business since the recession began. Moreover, with startup costs for food services businesses often being astronomical and with the fierce competition new restaurant owners face in Clark County, most new restaurants do not realize a profit until after 12 to 18 months of operation. In fact, one in four new restaurants will fail within the first year of business. Thus, if a food business is required to pay a state business license fee based on its quarterly gross revenues, that business may be forced to pay money it does not have.

Additionally, Nevada has touted itself as being a "business friendly" state, in part because of the reasonable fees paid by businesses to operate and the relative ease with which new entities can be formed with the SOS. In June 2012, SilverFlume, an online business portal that consolidates the registrations needed to commence and operate a business, became operational. With SilverFlume, a new entity can be formed and a state business license obtained

within a matter of minutes. This has proved to be particularly helpful for new small business owners, as SilverFlume reduces approximately 80 percent of the paperwork and information required by collecting and sharing information with partner agencies.

Although Senate Bill 252 would not affect the use or operation of SilverFlume, it could deter new businesses from even forming entities in Nevada. New businesses have the option of forming in another jurisdiction; however, that new business would still be subject to the Nevada state business license fee if it is considered to be conducting business in Nevada as defined under Section 13 of the bill. Section 13 is fairly broad and would include, among other things, businesses that have an office or base of operation in Nevada, have a registered agent in Nevada, or "[have] a sufficient nexus with [Nevada] to satisfy the requirements of the United States Constitution." Therefore, Senate Bill 252 could be an impediment not only to the formation of new businesses, but also to existing businesses considering expansion into Nevada.

Last, the funds generated from the increased state business license fee could be used to reduce the underfunded liability of the Nevada Public Employees Retirement System (PERS), which covers nearly all public sector workers in Nevada, including teachers. It is estimated that PERS currently has an underfunded liability of approximately $12.5 billion. While lawmakers are attempting to address this issue through Assembly Bill 190, if that bill fails, Governor Sandoval and the Legislature could divert funds collected from the higher state business license fees to reduce the PERS liability. If this occurs, then arguably the revenue generated from Senate Bill 252 is not truly being used for education funding. On the other hand, an argument could be made that reducing the PERS liability could attract more people into entering the teaching profession, thereby increasing the quality of education.

Proponents of Senate Bill 252 believe that the increase in the state business license fee is necessary for the state's long-term economic success. If the K-12 public education system is not improved, the children in Nevada would not have access to the proper tools to become successful when they enter the workforce. With Nevada's unemployment rate being among one of the highest in the nation, the children in this state need quality education beginning in the K-12 system in order to be competitive in the workforce. In addition, the number of small businesses in Nevada could be affected as young people who might have been inclined to start a new business could decide not to do so as a result of receiving a poor education.

As the end of the 78th Legislative Session of the Nevada Legislature quickly approaches, constituents wait to see whether Senate Bill 252 will pass as currently drafted, whether the bill will be amended to address the concerns of small and struggling business owners or whether the bill will completely fail. In any event, however the Nevada Legislature chooses to address these competing education and business issues, the answer will surely be anything but simple.

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