

**MINUTES OF THE  
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Eightieth Session  
March 18, 2019**

The Senate Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 2:42 p.m. on Monday, March 18, 2019, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator James Ohrenschall, Chair  
Senator Nicole J. Cannizzaro, Vice Chair  
Senator Yvanna D. Cancela  
Senator Heidi Seevers Gansert  
Senator Keith F. Pickard

**GUEST LEGISLATORS PRESENT:**

Senator Joyce Woodhouse, Senatorial District No. 5  
Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34

**STAFF MEMBERS PRESENT:**

Michael Stewart, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Janae Johnson, Committee Secretary

**OTHERS PRESENT:**

Elliot Anderson  
Warren Hardy, Council for a Better Nevada  
Todd Mason, Las Vegas Metro Chamber of Commerce  
Maureen Schafer, Council for a Better Nevada  
Joseph Reynolds, Nevada System of Higher Education  
Kent Ervin, Nevada Faculty Alliance

CHAIR OHRENSCHALL:

I will open the meeting with Assembly Joint Resolution (A.J.R.) 5.

**ASSEMBLY JOINT RESOLUTION 5**: Proposes to amend the Nevada Constitution to remove the constitutional provisions governing the election and duties of the Board of Regents of the State University and to authorize the Legislature to provide by statute for the governance, control and management of the State University and for the reasonable protection of individual academic freedom. (BDR C-60)

SENATOR JOYCE WOODHOUSE (Senatorial District No. 5):

Former Assemblyman Elliot Anderson and I have proposed the Nevada Higher Education Reform, Accountability and Oversight Amendment known as A.J.R.5. I have submitted my testimony ([Exhibit C](#)).

ELLIOT ANDERSON:

The Nevada Constitution created the Board of Regents that gives the authority to govern "a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining" which is the curriculum stipulated under the Morrill Act. The Legislative Counsel Bureau (LCB) and the legal scholars have argued for authority over higher education that is under review from the Legislature. The official report from the 1864 Nevada Constitutional Convention is a misinterpretation of the original intent of the drafters. Originally, the Nevada Constitution was written thus "the Legislature shall provide for the establishment of a State University which shall be under the control of a Board of Regents."

Page 586 from the Nevada Constitution concerns debating and proceeding. George Nourse was a lawyer from Washoe County who remarked "I like the general idea of that [the Board of Regents] very much, only I would suggest to add to it, 'whose powers and duties shall be prescribed by the Legislature', and not leave it to be inferred, perhaps, that they [the Board] have absolute control." Mr. Nourse said he would vote for it with that addition.

The final language of the article was modified pursuant to Mr. Nourse's concern under Article 11, section 4, "The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents whose duties shall be prescribed by law." Yet the notion persists that Nevada's

constitutionally defined unified system of higher education precludes the role for the Legislature that is often used to obstruct efforts to align higher education governance and administration with the State's demographic and economic needs.

The system of higher education in the past has regularly interpreted this provision to suggest that it is a fourth branch of government, extending the constitutional authority of the Board of Regents to govern the three branches of University of Nevada, Reno (UNR), University of Nevada, Las Vegas (UNLV), and the Desert Research Institution (DRI) to a bureaucratic agency funded by the Legislature. We believe the constitutional status has created an isolated culture, one that sometimes acts as though it cannot be touched. The Board of Regents has argued that it has virtual immunity from legislative acts and has made similar pronouncements in regard to the Judicial Branch.

In the past, the Nevada System of Higher Education (NSHE) has litigated or lobbied the use of this constitutional status to avoid the legislative requirements. The Nevada Supreme Court observed a case in 1948, *King v. Board of Regents of the University of Nevada*, where despite the plain language in the Constitution that allowed for the Legislature to exercise control over the Board, that the Board of Regents maintained some autonomy over higher education without recourse from the Legislature, unlike every other state governing board. This constitutional provision has been misinterpreted, but the provision has become an impediment to the reform.

Addressing the arguments against taking the Board of Regents out of the Constitution, the Board of Regents has argued that the Legislature is too political, and, therefore, the Board of Regents should remain in the Nevada Constitution. Someone can get elected to the Legislature or the Board of Regents and is not insulated from politics. If a politically minded regent is elected, he or she is 1 of 13 of the governing body as opposed to 1 of 42 or 1 of 21 and 1 of 63. A politically driven regent could do more damage than a politically driven Legislator because that regent has more voting power. In the Legislature, the governing structure ensures someone who seeks to harm higher education can be kept off the Education Committee that has jurisdiction. There are lot of tools the Legislature can bring to isolate someone who wants to bring harm to higher education.

There are concerns from the Nevada Faculty Alliance, such as what might happen if the Board is no longer in the Nevada Constitution? One concern is academic freedom. Assembly Joint Resolution 5 was amended to enshrine academic freedom into the Constitution to ensure there would not be political interference with this clause. Nevada's media and citizens focus more on what happens in the pressure cooker of the Legislature than they do with the Board of Regents. Leaders mitigate these political forces that could be causing problems for higher education. The resolution brings a lot of transparency and view into what happens in the Legislature.

An elected part-time Board composed of people with little or no background in higher education policy is unable to manage the sprawling higher education apparatus that has flourished under these arrangements. This structure has resulted in a too strong education bureaucracy. Nevada is a bottom dweller in higher education performance. It is time Nevada changes the way higher education is organized, and A.J.R. 5 is an important step in doing so. This resolution will allow Nevada to design a higher educational system from the ground up without regard to what the settlers from 1864 thought. The resolution will enable all of entities to design the higher education system that Nevada deserves and needs.

CHAIR OHRENSCHALL:

Mr. Powers, will you give some of the constitutional wording on this passage? Will A.J.R. 5 make the Board of Regents no longer elected positions if it passes?

KEVIN POWERS (Counsel):

The Legal Division is a nonpartisan agency, and we do not support or oppose any particular policy, legislation or viewpoint. The primary purpose of A.J.R. 5 is to remove the Board of Regents from the Nevada Constitution but not to remove the Board of Regents from the law. The consequence is the Board of Regents will become a statutory body under the existing statutory authority in *Nevada Revised Statutes* (NRS) 396. These existing statutes will not be repealed expressly by the implication of the people's adoption of the constitutional amendment proposed by A.J.R. 5. As a statutory body, the Board of Regents will be subject to the policymaking control of the Legislature. The Legislature will establish the policies through statutes, and the Board of Regents—like any other State statutory agency—will be required to follow those policies.

This does not change the essence of the Board of Regents. It does not make it an appointed body and does not change the power of governance over the University. It gives the power to the Legislature to make any statutory changes in the future. Assembly Joint Resolution 5 does not require that the Board of Regents become an appointed body; instead, it leaves that decision up to the Legislature. Right now, the Legislature has not passed any legislation that would change the Board of Regents elected status. If A.J.R. 5 gets adopted by the people, elected status would not change. However, in the future, the Legislature could by statute change the status of the Board of Regents, making it an appointed body or a hybrid body. This is where some members are elected and others are appointed. Assembly Joint Resolution 5 does not do that; it just gives the Legislature the power to change the policy in the future.

WARREN HARDY (Council for a Better Nevada):

I am excited to participate in this resolution. My first introduction to A.J.R. 5 was in 2003 during an Interim Committee to Evaluate Higher Education Programs. I received emails from constituents about higher education and shared their frustration. It was not about who had jurisdiction over higher education; instead, it was about things they wanted to see happen in Nevada. Education is central to about everything the Legislature does in terms of economic development. After 30 years in this process, it is clear the Legislature has an oversight and an equal responsibility to participate in this issue. There is not another successful state in terms of how higher education is handled. It is simply outdated and goes back to the Morrill Act. It is time for Nevada to move into the real world. This resolution eliminates the confusion that exists. It gets us back to a point where we can do what our constituents expect. This is Legislators dealing with issues involving higher education. The Council for a Better Nevada supports A.J.R. 5.

TODD MASON (Las Vegas Metro Chamber of Commerce):

The Chamber supports A.J.R. 5 as part of a long-standing priority for the higher education reform. This act provides clarity between the Board of Regents and the State Legislators. Referring back to 2017, the LCB explained the appropriate oversight role of the Legislature. The Chamber will continue to support NSHE and the Board of Regents any way we can. I urge you to send this resolution to the voters in 2020.

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MAUREEN SCHAFER (Council for a Better Nevada):

The Council supports A.J.R. 5. The existing higher education Board of Regents framework and governance structure that has supported Nevada for many decades has been outgrown ([Exhibit D](#)).

ASSEMBLYWOMAN SHANNON BILBRAY-AXELROD (Assembly District No. 34):

I am 100 percent in support of A.J.R. 5. The bill is long overdue.

JOSEPH REYNOLDS (Nevada System of Higher Education):

The Board of Regents and NSHE are stakeholders in higher education, and we are neutral to A.J.R. 5. Regardless if A.J.R. 5 passes, you will still find engaged, informed, open and collaborate partnerships with these entities. The changes proposed by A.J.R. 5 are significant but not imminent on anything that it may do. But it does open the door, and this creates a concern. The founders of the State did put the Board of Regents in the Nevada Constitution in 1864; the intent is relevant. The Board of Regents is one of the few State's elected bodies that is recognized in the Nevada Constitution. Its mission is fundamentally different than other State agencies. It is to educate citizens to obtain and disseminate knowledge throughout the State, the Nation and the world. This is a unique charge, and this is what the Board of Regents oversees. Thirteen nonpartisan members are elected and accountable directly to the citizens of Nevada.

Over 150 years, Nevada higher education has been overseen by the Board of Regents. It has grown from a single university to two Carnegie Research 1 (R1) universities, four community colleges, two medical schools, one top-tier law school, one dental school, one research institute and a teacher-focused college. I reject the notion of Nevada's higher education as bottom dwellers. The Board of Regents oversees all aspects of higher education, including 107,000 students and 14,200 employees in five major cities. We operate a shared governance model where decisionmaking processes are shared between the Board of Regents, Chancellor, college presidents, administration, academic faculty, student government, community leaders and partners. The concern is the impact it might have on a shared governance model. It is opening the door to future changes once the Board of Regents is removed from Article 11 of the Nevada Constitution. There is nothing to stop a future Legislature from making the Board appointed and a statutory act.

I would premise any constitutional change is significant. What will this do to NSHE's \$3.1 billion retirement system? Will it break up the one-system approach? Will it disfranchise voters by having a Board of Regents appointed? Will it allow for legislation that dictates academic curriculum? Will it allow legislation that directs registration and tuition fees? Will it impact the way presidents of institutions are selected?

KENT ERVIN (Nevada Faculty Alliance):

The Nevada Faculty Alliance comments ([Exhibit E](#)) are neutral to A.J.R. 5.

SENATOR WOODHOUSE:

I hope you take A.J.R. 5 under consideration.

MR. ANDERSON:

The framers of the Nevada Constitution wanted to insulate NSHE. There is a direct citation from the Constitutional Convention record that casts doubt on the assertion from the system that was their intent. Think of this as a policy choice, think about all the bodies that would need insulation from the political process. Constitutional protection is not appropriate because it insulates people from policymakers along with checks and balances. There have been decades of litigation where the system of higher education has claimed immunity and made broad legal assertions. There is no compelling reason the Board of Regents can point to besides being worried about what might happen. Every other governing board and interest in Nevada is subject to the legislative power, and so should the Board of Regents. Academic freedom has never been enshrined into the Constitution, and A.J.R. 5 would do this.

SENATOR GANSERT:

Is the protection of academic freedom reasonable? Is there a definition of academic freedom, or how is it going to be enshrined?

MR. POWERS:

The proposed constitutional amendment established language for the Legislature under law to provide reasonable protection of individual academic freedom. It is the Legislature's duty, if this becomes part of the Nevada Constitution, to define reasonable academic protection and to put it into a law. Although this creates the right for reasonable protection, the confines and contours of that right will be defined by the Legislature. It is open to the Legislature as the policymaking body to give that right substance and protection in the future.

CHAIR OHRENSCHALL:

If the Legislature passes A.J.R. 5, will it go to the voters for the 2020 election for approval or rejection?

MR. POWERS:

That is correct. If it is approved at the 2020 election, it will become effective on the canvass of votes roughly three weeks after the election and will be part of the Nevada Constitution in November 2020.

CHAIR OHRENSCHALL:

Do we know what the ballot question will look like if A.J.R. 5 passes the Legislature, or would that be drafted in the future?

MR. POWERS:

Under NRS 218D, the ballot language is prepared by the LCB Legal, Research and Fiscal Divisions. It is presented to the Legislative Commission that reviews the language and determines whether to approve it. If approved, this language will go on the ballot.

CHAIR OHRENSCHALL:

On ballot questions, there are arguments "for" and "against." Will this language be prepared by the LCB? Will the Legislative Commission review and approve this language?

MR. POWERS:

That is correct. As a nonpartisan agency, we will present both arguments by putting on different hats. The strongest arguments "for" and "against" will be presented to the Legislative Commission. The Commission will have the final approval on the language that goes on the ballot.

CHAIR OHRENSCHALL:

Given the "for" and "against" arguments, will the public be able to comment on how they are written or need to be written?

MR. POWERS:

That is correct. For example, the 2018 ballot had two provisions that the Legislature put on the ballot, a constitutional amendment and an exemption from the sales tax. The LCB put together one of the constitutional amendments for Marsy's Law creating a Victims' Bill of Rights. The LCB put together



arguments for and against passage as part of the ballot explanation language presented to the Legislative Commission which was opened up for comments. The Legislative Commission received a significant number of comments with regard to the proposed language to Marsy's Law. The Commission took those comments into consideration while finalizing the language for Marsy's Law.

CHAIR OHRENSCHALL:

I feel the voters can educate themselves on this legislation. What is the pleasure of the Committee?

SENATOR PICKARD:

This has been well-vetted over the last couple of Sessions. I recognize that there are those who disagree. But that is what the vote of the people is all about.

SENATOR PICKARD MOVED TO DO PASS A.J.R. 5.

SENATOR CANNIZZARO SECONDED THE MOTION.

SENATOR GANSERT:

I work for the system of higher education. It does not affect me, and I will be supporting the measure. It is worthwhile to send it to the voters. For the record, we have institutions that we should be proud of. Both UNLV and UNR were rated R1 Carnegie research institutions, which is the highest rank for education. There are only 130 research institutions across the entire U.S. that are ranked R1. The system has benefited Nevada and the citizens.

SENATOR CANCELA:

For the record, I am a student at UNLV within the system of higher education. It does not affect my vote.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR OHRENSCHALL:  
I will adjourn this meeting at 3:22 p.m.

RESPECTFULLY SUBMITTED:

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Janae Johnson,  
Committee Secretary

APPROVED BY:

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Senator James Ohrenschall, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
A.J.R. 5	C	3	Senator Joyce Woodhouse	Testimony
A.J.R. 5	D	2	Maureen Schafer / Council for a Better Nevada	Testimony
A.J.R. 5	E	1	Kent Ervin / Nevada Faculty Alliance	Testimony