

MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Eighty-first Session
April 6, 2021

The Senate Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:14 p.m. on Tuesday, April 6, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator James Ohrenschall, Chair
Senator Roberta Lange, Vice Chair
Senator Nicole J. Cannizzaro
Senator Heidi Seevers Gansert
Senator Carrie A. Buck

GUEST LEGISLATORS PRESENT:

Marilyn Dondero Loop, Senatorial District No. 8
Tom Roberts, Assembly District No. 13

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Bryan Fernley, Counsel
Barbara Young, Committee Secretary

OTHERS PRESENT:

Peter Long, Administrator, Division of Human Resource Management,
Department of Administration
Maggie McLetchie, Nevada Open Government Coalition
Maureen Schafer, Council for a Better Nevada
Warren Hardy, American Legislative Exchange Council
Gina Bongiovi, Vegas Chamber
Peter Grema
Olivia Cheche, President, Student Senate, University of Nevada, Las Vegas
Vanessa Booth

Rusty McAllister, Nevada State AFL-CIO
Naseem Benjelloun
Joshua Padilla
Kent Ervin, Nevada Faculty Alliance
Jake Tibbitts, Eureka County Natural Resources Manager
Brian Rippet, Nevada State Education Association
Mark Doubrava, Board of Regents, Nevada System of Higher Education

CHAIR OHRENSCHALL:

Before we open the hearing on a resolution, I am turning the meeting over to Policy Analyst Michael Stewart. We have a work session first.

MICHAEL STEWART (Policy Analyst):

Today we have three bills on work session. The first work session document ([Exhibit B](#)) is for Senate Bill (S.B.) 51. It came from the Division of Human Resource Management (DHRM), Department of Administration, which we heard on March 11.

SENATE BILL 51: Revises provisions relating to sex- or gender-based harassment in the Executive Department of the State Government. (BDR 23-243)

The policy of this State is for its employees not to engage in sex- or gender-based harassment. It specifies that such harassment violates State policy and is a form of unlawful discrimination. The measure requires that the Administrator of the DHRM adopt and maintain a policy concerning sex- and gender-based harassment and review the policy annually or as deemed necessary. Senate Bill 51 also creates the Sex- or Gender-Based Harassment and Discrimination Investigation Unit within the DHRM. That Unit shall assign or appoint an investigator to discreetly investigate a complaint alleging sex- or gender-based harassment, prepare a written report of the findings, submit that report to the Unit for transmission and then on to the appointing authority.

Finally, S.B. 51 makes any information obtained by the investigator, such as the written report and the written resolution of that complaint, confidential unless ordered by the Administrator or a court. After the hearing on S.B. 51, representatives from the Nevada Open Government Coalition as well as the DHRM discussed a compromise dealing with some of the concerns that the Coalition had

expressed regarding confidentiality provisions that are set forth in subsection 5 of section 6.

The proposed conceptual amendment is in your work session document ([Exhibit C](#)) as submitted by the Coalition and the Division. It would entirely replace subsection 5 of section 6. Essentially, it states that any information which reveals or alleges to reveal: the identity of a complainant; the identity of a person alleged to have engaged in harassment or discrimination; or the identity of a witness obtained by an investigator in an investigation; which is contained in the written report of a complaint retained or contained in the written resolution of a complaint that is retained, is considered confidential. It must not be disclosed unless so ordered after the conclusion of the investigation by the Administrator or designee or a court of competent jurisdiction. Mr. Peter Long, the Administrator of DHRM, was involved in the discussions concerning this amendment, and he may be able to assist the Committee with questions.

CHAIR OHRENSCHALL:

This amendment was a consensus amendment which addressed concerns from the Open Government Coalition and the DHRM.

SENATOR SEEVERS GANSERT:

The information is confidential unless the Administrator or a court or designee deems it not to be so. Can the Administrator designate it as not being confidential?

PETER LONG (Administrator, Division of Human Resource Management, Department of Administration):

That is correct. After a determination is made that the interest in disclosure outweighs the interest in confidentiality, it would be discussed with our Deputy Attorney General before moving forward.

SENATOR SEEVERS GANSERT:

The original language stated it was confidential, and now the Administrator has discretion. Any personnel complaints filed are confidential in general, unless a court orders it otherwise. I do not know if the Administrator should have that authority.

CHAIR OHRENSCHALL:

This was a consensus with the representatives of the agencies and the Open Government Coalition. I understand your concerns, Senator Seevers Gansert. Please restate your question.

SENATOR SEEVERS GANSERT:

Looking at the conceptual amendment, [Exhibit C](#), it provides discretion to the Administrator or a designee as to whether information is to be kept confidential. I think in most personnel cases, that information is confidential unless a court requires the information. In this amendment, the interest in disclosure outweighs the interest in confidentiality. If there was an individual who had a sexual harassment claim or gender-based claim, that person may never want to be revealed but would want the claim investigated. It seems as though that type of information should remain confidential. Under what circumstances does an Administrator or someone other than a court have the ability to make that type of information public?

MR. LONG:

In the original version, it had this verbiage so the Administrator would be able to reveal that information. In the conceptual amendment, it is specific unless the official is an elected official. It is narrowly focused.

SENATOR SEEVERS GANSERT:

My question still goes back to the legality of the issue. Should that type of information remain confidential unless a court orders it, or someone else with jurisdiction, versus the confidentiality of the information remaining at the discretion of the Administrator? I am concerned with businesses in general. That type of information needs to remain confidential.

BRYAN FERNLEY (Counsel):

My understanding of your question is whether the information would only be able to be released upon a court order. In this provision, these records and documents are in the custody of a State agency. They would be public record unless the Legislature declared them to be confidential. The Legislature is declaring these records to be confidential in certain circumstances, and the Legislature has the authority to enact laws to make records confidential. Under this amendment, the records would remain confidential if determined by the Administrator when applying the standard in the amendment, or unless a court released them. Either of those could occur.

SENATOR SEEVERS GANSERT:

What I was asking pertains to the private sector. I thought personnel records were confidential, period. Is that accurate?

MR. FERNLEY:

In the private sector, businesses would not be subject to any kind of public record's law. A private business could choose to keep the records confidential. I am not aware of any law requiring businesses to keep records confidential.

SENATOR LANGE:

In the hearing, we spoke about training. When would the training occur? We need specific language which addresses when the training is going to happen and whether it will be conducted annually or biannually.

Secondly, the amendment states that the appointing authorities shall be promptly notified. The word promptly needs to be clarified. What is the timeline for promptly?

MR. LONG:

Currently in regulation, there are requirements for training and classes concerning sexual harassment and discrimination. All new employees must have training within six months. Supervisors and managers are also required to have training within six months after appointment.

SENATOR LANGE:

Do they have refresher classes?

MR. LONG:

Absolutely. It is required.

SENATOR LANGE:

Please clarify what promptly means when notifying an appointing authority.

MR. LONG:

There is no definitive timeline stated. We would expect action to be taken promptly. Twenty-four hours would not be unreasonable, but I would say, action should be taken a couple of days from the time of the receipt of the complaint.

SENATOR CANNIZZARO:

I share some of the same reservations as Senator Seevers Gansert on the Administrator component of this amendment. It makes sense for a court to make a determination after something has been declared to be confidential, especially concerning sexual harassment and discrimination. One of the reasons it is underreported is because proceeding forward with the complaint can often result in retaliatory actions. I am cognizant of the implications of not having confidentiality, aside from certain circumstances, in which allowing that determination to be made in the interest of disclosure would outweigh the interest of confidentiality. I also share concerns about the Administrator having that ability to make determinations concerning confidentiality.

I want to ask a question pertaining to the last line in this section regarding *Nevada Revised Statutes* (NRS) 288.505 which deals with the subject of collective bargaining. I was curious about the purpose of that language?

MR. LONG:

The purpose of that language is in a collective bargaining agreement. This makes it clear they cannot contract out of a confidentiality requirement.

SENATOR CANNIZZARO:

That is meant for the confidentiality piece, so it cannot be abridged. If we need something confidential, they could not contract around that.

MR. LONG:

That is correct because NRS 288 and S.B. No. 135 of the 80th Session, the bill that created collective bargaining for State employees, allows the contracts not to have to adhere to NRS 284.281.

SENATOR CANNIZZARO:

I know that section of NRS deals with conflict of laws with amendments. It does make sense that you cannot contract out of the confidentiality piece, if it is limited.

CHAIR OHRENSCHALL:

We have been joined by attorney Maggie McLetchie, who is with the Open Government Coalition. She was involved with Mr. Long in negotiating this consensus amendment. We have had questions concerning confidentiality in the proposed amendment.

MAGGIE MCLETCHE (Nevada Open Government Coalition):

I was glad to be able to resolve the Coalition's concerns regarding confidentiality so we could balance the need to protect complainants with the need for the public to have access to information.

There is a high profile investigation into Governor Andrew Cuomo's conduct in New York, and as the language was originally drafted, it would have shielded that information from public view. Similarly, a few years ago in Nevada, there was a trustee, Kevin Child of Clark County School District (CCSD), not a State employee, which created a need for transparency. Mr. Child was engaged in alleged sexual harassment and other inappropriate conduct. Obtaining access to that information was vitally important for the public because CCSD took the position they could not control him, but the voters could. The public needed access to information, CCSD resisted access, but ultimately the Nevada Supreme Court, consistent with how this language is crafted in the amendment, balanced the need of the public with the privacy rights of victims and witnesses to come forward. I think that the language here strikes a good balance between allowing investigation to proceed and protecting complainants, while still allowing public access to information.

SENATOR SEEVERS GANSERT:

Majority Leader Cannizzaro said it very well. I am concerned about the victims. You spoke about the other side of the equation, those who are the offenders. I do see the need for public disclosure in terms of protecting potential victims. My concern is the individuals who will not come forward because of possible retaliation. They may be concerned with public embarrassment or harassment if an allegation is brought forward. I am not sure if this language is clear enough to ensure the confidentiality of the victims is protected.

MS. MCLETCHE:

It specifically protects complainants and victims, not just their names, but other identifying information concerning victims, complainants and witnesses. We made it broader than just identity. The proposed amendment language protects the identifying information of complainants who go forward, as well as witnesses and their potential targets. It does not allow release of any identifying information until the investigation is over, and only if a court determines that the public interest in disclosure outweighs the interest in confidentiality. This is the balance we have in common law through the Nevada Supreme Court's decision in the CCSD case in which they upheld disclosure but did direct the trial court judge to

ensure he was appropriately considering the privacy rights of potential victims and potential complainants. This was crafted with that in mind.

I wear a few hats as a lawyer. In addition to being a transparency advocate and a media lawyer, I also represent plaintiffs in sexual harassment cases and victims of sexual assault. In that capacity, I do understand and respect the need to protect victims and witnesses who come forward. This ensures that the identity is protected.

SENATOR SEEVERS GANSERT:

You just outlined the court system but not the Administrator. I am not concerned about the court and the court weighing in and balancing the situation. I interpreted this to be at the discretion of the Administrator, is that accurate?

MS. MCLETCHE:

It does allow for discretion by the Administrator, but the Administrator needs to apply this kind of balancing act as well and needs to carefully weigh the concerns at hand when protecting the identities of complainants and victims with the need for disclosure. Government agencies are protective of personal information, oftentimes more protective than necessary and sometimes even protecting the information without the public domain. There could be an instance in which the interests in disclosure of the information was already made available to the public. If someone wanted to access the underlying documents with the identity revealed, it would be appropriate because there would not be a great interest in privacy since the victim or a witness had already come forward or if it had been a court case with the information already available. The Administrator can release this information after the close of the investigation but only if the Administrator engages in the same type of balancing tests in which a court would need to engage.

CHAIR OHRENSCHALL:

I am not seeing any additional questions. Is there a motion to amend and do pass S.B. 51 with the amendment list in the work session document?

SENATOR LANGE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 51.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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MR. STEWART:

Our next work session document ([Exhibit D](#)) is for Senate Bill 268. This bill was brought to us by Senator Dallas Harris on March 25.

SENATE BILL 268: Revises provisions relating to state financial administration.
(BDR 17-545)

It required the Fiscal Analysis Division of the Legislative Counsel Bureau, to the extent that resources are available, to perform a budget stress test in each even-numbered year. That stress test would be designed to compare the estimated future revenue to, and the estimated future expenditures from, major funds in the State Treasury under various potential economic conditions. The report is required to show the results of the test, and the report must be posted on the Legislature's website and also submitted to the Governor and the Legislature. There are no amendments for consideration at this time.

CHAIR OHRENSCHALL:

Are there any questions regarding S.B. 268? I will open it up for a motion.

SENATOR SEEVERS GANSERT MOVED TO DO PASS S.B. 268.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR OHRENSCHALL:

We have one more item on work session.

MR. STEWART:

The last bill on a work session document ([Exhibit E](#)) today is Senate Bill 292. It was brought to us by our Vice Chair, Senator Roberta Lange.

SENATE BILL 292: Revises provisions relating to elections. (BDR 24-999)

This bill requires ballots for general elections to permit voters to vote a straight ticket for all candidates in one political party in partisan races. It does require a voter education program to be provided by the county to include information regarding straight-ticket voting.

The measure also addresses minor party ballot access and increases the number of signatures required for minor party ballot access from 1 percent to 2 percent of the total number of votes cast for representatives in Congress in the last general election. It also notes that those signatures must be apportioned equally among the petitioned districts. The bill adjusts the date as to when those petitions must be filed to June 1, as well as subsequent challenge dates regarding minor party ballot access petitions.

Senate Bill 292 also makes various changes regarding the filling of vacancies in elective offices. For the vacancy for U.S. Senator, S.B. 292 would require the Governor to appoint a person who is of the same political party as the former Senator. Regarding vacancies for Representatives in Congress, a candidate for a major political party must be nominated in a special primary election before the special general election. For vacancies regarding the office of Legislator, S.B. 292 requires that the Majority Leader or the Minority Leader of the House of which the former Legislator was a member and who is of the same party as the former Legislator submit to the Board of County Commissioners a list of qualified nominees to fill that vacancy.

Finally, S.B. 292 repeals provisions in Title 24 of NRS which set forth various requirements concerning the internal organization and procedures of major political parties.

SENATOR ROBERTA LANGE (Senatorial District No. 7):

I will quickly go through the amendment. Since the hearing, I have been listening to comments from people and changed the 2 percent for minor candidates to qualify back to 1 percent. Additionally, a change was made on how we fill Legislative seats, giving the County Commission the right to reject a list of names given to them and having a new list provided, which can occur one time.

The other change came from the county clerks. It would go through the Secretary of State and the State Board of Examiners for approval to get funding from the Statutory Contingency Account if there would be a primary election. The last time we had an election such as this was in 2011; before that, it was

approximately 40 years ago. This does not happen often, but I believe it is important to have that language specified because it is expensive for a county to hold an election.

CHAIR OHRENSCHALL:

Are there any questions on S.B. 292 and the proposed amendment?

SENATOR SEEVERS GANSERT:

Keeping the threshold at 1 percent for the minor parties makes sense because we want to ensure they are able to participate. I also appreciate the language which states a county commissioner can reject a nominee, but I thought there should be more than one person as a nominee; however, I am opposed to S.B. 292.

Nevada is a small State where our constituents know us. When we get together as members of this Legislative body, I look forward to working across the aisle from my fellow colleagues. Having a partisan, straight-ticket ballot is setting up a culture more like Washington, D.C., where our constituents are looking at partisanship versus policy and the individual. I value the culture we have in Nevada, where we do work across the aisle and our voters who are independent know us personally and can discern by looking at the ballot for whom they are going to vote. My concern is creating a culture where Nevadans will look toward partisanship first, not policy or the individual. I trust the voters to stay informed when selecting representation. I do not want us to move toward hyperpartisanship as seen on the federal level. The last election showed we have voters in Nevada who are educating themselves on the issues concerning policy and the candidates running for office.

CHAIR OHRENSCHALL:

If there is no additional discussion, I would open it up for a motion to amend and do pass with the proposed amendments.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 292.

SENATOR LANGE SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS BUCK AND SEEVERS GANSERT VOTED NO.)

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CHAIR OHRENSCHALL:

This brings us to the end of our work session. We will now open the hearing on Senate Joint Resolution (S.J.R.) 7. Senator Dondero Loop will be presenting.

SENATE JOINT RESOLUTION 7: 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 of the State University and for the auditing of public institutions of higher education in this State. (BDR C-944)

SENATOR MARILYN DONDERO LOOP (Senatorial District No. 8):

I am pleased to be joined today by Assemblyman Tom Roberts, representing Assembly District No. 13. We are presenting S.J.R. 7, the Nevada Higher Education Reform Accountability and Oversight Amendment which relates to the governance of the Nevada System of Higher Education (NSHE). I am sure many of you are aware of the general contents of the bill. I will begin with some introductory comments and Assemblyman Roberts will provide additional comments.

As you know, the Nevada Constitution requires the Legislature to provide for the establishment of a State University which is controlled by an elected Board of Regents whose duties are prescribed by law. Additionally, the Nevada Constitution provides for the Board of Regents to control and manage the affairs and funds of the State University under regulations established by law. Senate Joint Resolution 7 proposes to remove the constitutional provisions governing the elections and duties of the Board of Regents and its control and management of the affairs and funds of the State University. Instead, S.J.R. 7 would require the Legislature to provide by law for the governance of the State University. I want to stress that S.J.R. 7 does not repeal any existing statutory provisions governing the Board of Regents, including those which provide for the election of board members. However, it would make the Board a statutory body whose structure, membership, powers and duties are governed by those existing statutory provisions, subject to any such tort changes made through the legislative process.

This is no different from what so many other boards set forth in the NRS. Prior to previous sessions, there has been some misrepresentation as well as misinformation provided to policy makers, including the Nevada Legislature. Obviously, this is unacceptable. Assemblyman Roberts and I are encouraged by steps taken in recent years to correct many of these issues. Even so, as policy makers we must be focused on building long-standing and stable systems of governance, not on individual personalities. We owe the citizens of Nevada a culture of accountability on all levels of government. The higher education system belongs to all Nevadans. It is our collective investment in the future of our State. As you recall, A.J.R. No. 5 of the 79th Session, which proposed some of the same amendments that are in S.J.R. 7, passed overwhelmingly in two Legislative Sessions, for which we are grateful. Senate Joint Resolution 7 removes the Board of Regents from the Nevada Constitution but does not substantially change any higher education policy or procedure. It simply puts the Board of Regents and NSHE on par with every other governing board and State agency created pursuant to statute. Chapter 396 of NRS would continue to exist and would still comprehensively cover the Board of Regents. It still includes the requirement that the Board be elected.

The purpose of S.J.R. 7 is twofold. One, it allows the Legislature to exercise informed and measured governance of NSHE. Two, it allows more flexibility in considering reform proposals. Constitutional governance serves as an antiquated way to oversee higher education. The only reason the Board of Regents was placed in the Nevada Constitution originally was to access federal land grant funding under the Morrill Land Grant Act of 1862 without requiring action by the Legislature. Ever since, we have included all the State's higher education governance and administration under this provision. Despite a laundry list of studies and analyses recommending the reorganization of the State's higher education structure, it is our belief with the passage of S.J.R. 7, we will see a resurgence of strong support for the NSHE and the Board of Regents. Assemblyman Roberts and I pledge our support to work with the NSHE administration and the Board on behalf of the students, their families and our community to have the best system in the Nation.

ASSEMBLYMAN TOM ROBERTS (Assembly District No. 13):

As set forth on the 2020 general election ballot, S.J.R. No. 5 of the 79th Session became Question 1, and arguments for passage included that some states have elected boards with constitutional status which control and manage particular institutions and programs of public higher education. Nevada is the only State in

which a single elected board with constitutional status controls and manages the affairs and funds of the State's entire system of public higher education.

In the past cases before the Nevada Supreme Court, the Board of Regents has even asserted that its unique constitutional status gives it virtual autonomy and thus immunity from certain laws and policies enacted by the Legislature. Based on legislative testimony, these assertions have given some people the impression that the Board conducts itself as a fourth branch of government. The Board also often invokes its constitutional status as a shield against additional Legislative oversight and accountability. As noted by Senator Dondero Loop, things have improved in recent years. Nonetheless, this general government structure needs to be changed. A good example of this is how the University's budget is administered. While the Nevada Constitution requires the Legislature to provide financial support for the operation of our universities, it also directs the Board to control and manage the funds of the State University. This divide between the Legislature's constitutional power to fund higher education and the Board's constitutional power to direct how these funds are actually spent gives the Board virtually unparalleled power within State government to control and manage higher education spending without the same level of Legislative oversight typically applied to other Executive agencies.

Another component of S.J.R. 7 relates to the administration of federal land grant proceeds that are dedicated for the benefit of a State University. The Nevada Constitution provides that funding derived by the State of Nevada under the Morrill Act of 1862 must be invested in a separate fund and dedicated for the benefit of certain departments of the State University. If any amount of the separate fund is lost or misappropriated through neglect or any other reason, the State must replace the loss or misappropriated amount so that the principal of the fund remains undiminished. Senate Joint Resolution 7 clarifies and modernizes existing provisions of the Nevada Constitution relating to the administration of these federal land grant proceeds. However, because the State of Nevada must administer those proceeds in a manner required by federal law, S.J.R. 7 will not change the purpose for the use of these proceeds.

In closing, Senator Dondero Loop and I know that S.J.R. 7 represents a second attempt to present the bill to the public. This time, the language in S.J.R. 7 is softened from A.J.R. No. 5 of the 79th Session and calls for governance rather than control and management of the State University. Moreover, a biannual legislative audit of the State University and other public institutions of higher

education established by the Legislature is also included in S.J.R. 7. This new, gentler language and the audit provision will bring an enhanced level of transparency and trust that our system of higher education so desperately needs.

MAUREEN SCHAFER (Council for a Better Nevada):

This bill presents greater accountability, transparency and oversight of NSHE, a system that carries with it a \$1 billion biennial budget in taxpayer dollars and the operation of the seven institutions and the corporate NSHE office within it. Today, those seven community colleges, colleges and universities each has its own unique mission attempting to serve its own student population and working every day to grow in dynamic and creative ways to meet the times in which we all live, while preparing students to navigate and shape a stronger and sustainable Nevada. Our students' academic successes represent this future Nevada, yet the State's public investment of \$1 billion which has been a consistent and important priority of this Legislature, has remarkably ranked sixteenth nationally in per pupil spending and has also consistently translated to forty-sixth nationally in college attainment outcomes. When we look at what has been accomplished with that generous investment by this Legislature, Nevada can do better.

Fortunately, with S.J.R. 7, the Legislature understands its call to action, in particular, that strong governance drives improved transparency and accountability. Nevada has been one of the fastest, if not the fastest, state in population growth for the last several decades. Our learning institutions have added student numbers, increased diversity and responded to their local economies to understand the types of workforce communities needed to aid growth. However, the governance structure of our higher education system is struggling to be able to respond to those opportunities within our institutions in changing times. Oftentimes, divisive board regionalism wins the day over politics of a new, unified, sustainable Nevada, at the expense of the institutions they govern.

The Board of Regents continues to come under the microscope for various and ongoing fiscal management and general information issues the public and the Legislature continually question. The Board is forced to answer questions either in hearings such as this, from outside queries or through the media. More simply, the Board consistently is struggling to challenge and keep up with business, academics and the people of its own \$1 billion organization. Change is hard even when you know that you need it, and change management principles will say that most organizations have difficulty reforming chronic legacy issues from the inside.

By placing the Board of Regents in the governance of the Nevada Legislature, S.J.R. 7 will enable greater accountability and transparency of the existing Board of Regents and ensure stronger stewardship of the valuable taxpayer dollars currently invested in the NSHE system. The public trust deserves stronger governance. With this change, the public trust will increase in the system that so many families and students depend on for their higher education experience, as well as what Nevada desperately depends on for future economic sustainability and growth. By placing the existing Board of Regents governance structure in purview of the Nevada Legislature, it will create increased accountability and transparency that does not exist today. For Nevadans to understand how current funds are spent and how the Board is making decisions on behalf of its institutions and students, it is important to note this change implements checks and balances without changing the Regent governance structure itself, which has already proven itself expensive and unmanageable. Moreover, it will bring the important focus back to students and our economy. The increased transparency and accountability will be a positive step for NSHE as well. The public, the students, the Legislature and NSHE stand to benefit from this change.

WARREN HARDY (American Legislative Exchange Council):

What we are attempting to do in this bill is return to the original intent of the framers of the Constitution. If you read the history and the documents from the 1864 constitutional convention on this particular subject, it becomes clear that the founders intended to give some constitutional authority to the Board of Regents, which was directly related to the Morrill Act passed in 1862. It is also abundantly clear, based on the public record from those debates, the Legislature fully intended to have significant oversight. In fact, one of the proponents of the Legislature in that conversation spoke specifically about not wanting the Board of Regents to think they have more power than they do. They did not want to create a fourth branch of government. Constitutional powers granted were related to being able to access the Morrill Fund Act at that time.

Unfortunately, in 1948 there was a Supreme Court ruling which caused some confusion and ruled there was some limit on the Legislature's authority over the Board of Regents. That ruling was limited and specific, and since that time the Board of Regents has taken that argument and it has evolved into this notion that the Board has a unique constitutional status which provides virtual autonomy and thus immunity from certain legislative actions. The argument used in 1981 is exactly the opposite of what the founders intended. There must be checks and

balances, which clearly does not exist for this inadvertent fourth branch of government, the Board of Regents.

This measure will go back to the voters and ask them to reconsider the question and have an opportunity to fully understand it. In our postelection voting and analysis of the ballot, it is interesting to note significant statistical evidence indicates voters did not understand this question. A full 60,000 fewer voters voted on Question 1 than voted on Question 2. They did not understand the question because the intent of the language was not clear enough. This legislation and this resolution specifically intend to come up with a much clearer ballot initiative so the public can understand what we are trying to do. Nevada's founding fathers intended for the Legislature to have significant impact and to treat the Board of Regents like every other State agency.

SENATOR SEEVERS GANSERT:

I was looking at the provisions concerning auditing. Why are you putting that into the Constitution? I believe the Legislature has the authority to conduct audits and reviews, so I am not sure why that was added.

MR. HARDY:

Part of the reason is based on our public outreach and our polling. The public clearly wanted to see in statute that an audit of the system was included in the Constitution.

SENATOR SEEVERS GANSERT:

I am familiar with NSHE. There are narratives concerning NSHE which are inaccurate. It is important to recognize our four-year institutions, University of Nevada, Reno (UNR), and University of Nevada, Las Vegas (UNLV). They are rated in the top tiers by *U.S. News and World Report*, as well as R1 in research by the Carnegie Classification of Institutions of Higher Learning. It is amazing, for a small State such as ours, to have the level of education available for our students. We have graduation rates at 62 percent at UNR, which is above average for a public school. Our institutions of higher learning are working diligently to educate our students.

Community colleges frequently partner with the private sector to ensure they are providing the workforce needed. Because of Covid-19, some of the jobs which existed are no longer going to exist; therefore, higher education must form partnerships with the private sector. Higher education has become a target for

negative comments. We need to continually raise the education bar in the State, which is how we will have a stronger and more resilient economy. There is a narrative which states the schools are underperforming, but they are not. The schools in Nevada have done a great job, the community colleges, the universities and the Desert Research Institute, which is world-renowned.

SENATOR DONDERO LOOP:

I appreciate what Senator Seevers Gansert is saying. No one is questioning how hard our universities are working or the great job they are doing at both ends of the State, as well as every community college. The question is, the higher education system has been put into the Constitution, which is unlike any other board we have.

MR. HARDY:

Everyone in Nevada should be proud that we have two top tier research universities. Each of our medical school graduates in our first graduating class were matched at top tier schools for their residencies.

My interest in this legislation dates back to 2005, when Senator William J. Raggio assigned me to chair our committee and look into higher education. I discovered there was too much perceived constitutional power in higher education. This is an effort to correct that and to get the Legislature back to where the founders intended it to be.

CHAIR OHRENSCHALL:

The Majority Leader and I are both proud that William S. Boyd School of Law at UNLV has moved up to sixtieth in *U.S. News and World Report* rankings of law schools around the Country. We are very proud of all of the hard work our former professors are doing at UNLV.

SENATOR LANGE:

I got an email about an amendment. Did you talk about an amendment to this?

MR. HARDY:

Is that from the Nevada Faculty Alliance?

SENATOR LANGE:

Yes, could you speak to that?

MR. HARDY:

We have seen the Nevada Faculty Alliance amendment ([Exhibit F](#)). The problem with the amendment is that it goes in the opposite direction in terms of what we are attempting to accomplish by clarifying this language. It makes it far more complicated. When we took an amendment last time, it put in language about academic freedom concepts, which were confusing to the voters. The reason we do not consider it a friendly amendment is not because it does not have merit. We trust the Legislature and NSHE to work through those kinds of issues. We are trying to simplify the issue.

GINA BONGIOVI (Vegas Chamber):

On behalf of the State's largest and broadest-based business association, the Vegas Chamber is in support of S.J.R. 7. We appreciate the work that the bill sponsors have done to bring this proposal forward. The Vegas Chamber has a long track record of engaging in higher education matters because workforce development is a major concern of both employers and our members. The Chamber believes the passage of S.J.R. 7 is an important component to reforming the State's higher education governance structure and aligning it to the needs of today's students and employers.

We all recognize that the demands on our workforce are quickly changing, and we need to revisit how our higher education structure is responding to these changes. Nevada's employers need students who are ready to enter the workforce when they graduate from an institution of higher education. Additionally, our economy needs innovations through research that can drive diversification. This is why the Vegas Chamber has a long and consistent history of supporting higher education reform initiatives. It is for that reason the Vegas Chamber is supporting S.J.R. 7.

Governance reform has been an ongoing discussion for many years, and the need to fix our governance structure should be addressed. We recognize the language of A.J.R. No. 5 of the 79th Session was confusing to voters in November 2020. Senate Joint Resolution 7 would provide much needed clarity between the Board of Regents and the State Legislature while at the same time enacting governance reform many in our State are seeking. We recognize there have been recent efforts by NSHE to align education, but the long-term benefit for both students and employers is the need to reform the higher education governance structure which we can depend on for the long term. This is good public policy based on sound reasoning, data and facts. We urge this body to pass S.J.R. 7.

PETER GREMA:

I am in support of S.J.R. 7. This constitutional amendment is needed to ensure that NSHE and the Board of Regents are held accountable and there is transparency and oversight over higher education in our State. The Board of Regents should be removed from the Nevada Constitution. There should be no ambiguity that the Board is a fourth branch of government. The Board should answer to the Legislature. The NSHE is the third largest line item in the State budget, yet it lacks sufficient oversight. There have been numerous controversies regarding the Regents and the System as a whole. I also echo comments from the previous caller.

OLIVIA CHECHE (President, Student Senate, University of Nevada, Las Vegas):

I urge your support of S.J.R. 7 because it will give students like me a stronger voice in our future. I will read my testimony ([Exhibit G](#)).

VANESSA BOOTH:

I am here to testify on behalf of thousands of UNLV students who feel they have been unheard for far too long. The NSHE has the potential to grow as an institution, but only if modernization and reform occur which promote more inclusivity within our system. As a student attending UNLV who was avid about the passing of Question 1, I remember speaking to family members and friends about the ballot initiative. I learned there was confusion with the language of the measure. Many people had ultimately made the wrong choice and regretted their vote after learning it did not pass. Today many will argue in opposition, stating that Question 1 did not pass because it was not supported; however, Question 1 failed by a small margin.

I strongly urge this Committee not to strip away the rights of voters in Nevada. As public servants, we must actively fight to educate our constituents to better understand the difficult legal jargon on these ballot initiatives. By passing S.J.R. 7, we will ensure our federal dollars go back to the classroom. The fact that the governance of NSHE has not been reformed severely concerns me as a political science major given there is no updated system of checks and balances in NSHE. Accountability, transparency and oversight are key to a thriving system. It is time for modernization, adaptation and for NSHE to support the will of the voters in our State, which includes the students in the higher education system.

RUSTY McALLISTER (Nevada State AFL-CIO):

On behalf of our 150,000-plus members in the State of Nevada, we support S.J.R. 7. We believe that increased accountability and transparency are needed. By allowing governance to remain in place but with greater oversight, the system for higher education will still be able to function and be better for all of us. This is a commonsense measure for accountability and transparency. It is for those reasons, as well as all of the other points which have been brought forward, that we support this legislation.

NASEEM BENJELLOUN:

I am here to testify in favor of S.J.R. 7. As a nontraditional student, someone who came to UNLV at the age of 15, I spent the last two years unable to directly influence my system of higher education at the ballot box. Due to the ambiguous and inaccessible language of A.J.R. No. 5 of the 79th Session, many cast their ballots without being able to discern the true effect of their vote on Question 1. I urge this Committee to pass this bill and to grant Nevadans the right and opportunity to express their opinion on this matter again. It is time we look forward and modernize our higher education system to include equity, accountability and transparency.

JOSHUA PADILLA:

I am in my fourth year studying civil engineering at UNLV. I strongly urge your support for S.J.R. 7. As we saw in the last election, the language of A.J.R. No. 5 of the 79th Session, which has language extremely similar to S.J.R. 7, narrowly failed. It was due to the complicated and difficult to understand language. According to Ballotpedia.org, there were 626,146 votes for yes and 630,023 votes for no. It only failed by 3,877 votes, which is a margin of 0.3 percent.

As a concerned UNLV student, I say it is time for more transparency and accountability. A simple Google search of NSHE public trust shows many articles addressing these issues. Students are tired of the questionable behavior. Increased transparency and accountability will help everyone involved. As someone who speaks with many students, I can assure you that students are ready for positive change.

KENT ERVIN (Nevada Faculty Alliance):

We are testifying in opposition to S.J.R. 7. I will read my testimony ([Exhibit H](#)).

JAKE TIBBITS (Eureka County Natural Resources Manager):

Speaking on behalf of Eureka County, we are opposed to S.J.R. 7. We note that Question 1, based on A.J.R. No. 5 of the 79th Session, proposed to effectively do the same thing, was resoundingly rejected by Eureka County voters with over 76 percent voting against it. This large margin in Eureka County is not due to folks not understanding the question. Beyond arguing about the merits of moving the Board of Regents under direct control of the Legislature, we are primarily concerned with and opposed to the provision on lines 13 and 14 of page 5, proposing to amend section 4, Article II of the Nevada Constitution by adding the open-ended power of the Legislature to designate additional "other departments deemed appropriate for the State University." We believe this language is overreach and muddies the waters related to land grant status by including yet to be identified or defined "additional" departments. This is not consistent with the original land grant intent and the land grant mission. Please, at a minimum, strike this language from S.J.R. 7, if the Committee chooses to move this bill forward.

BRIAN RIPPET (Nevada State Education Association):

The Nevada State Education Association (NSEA), the voice of Nevada educators for a 120 years, opposes S.J.R. 7. I will read the NSEA testimony ([Exhibit I](#)).

MARK DOUBRAVA (Board of Regents, Nevada System of Higher Education):

I am the Chair of the Board of Regents and testify in opposition to S.J.R. 7. At the outset, I would like to reaffirm the respect the Board of Regents has toward this Committee and the entire Nevada Legislature. The Board is ready and willing to continue working and collaborating with the Legislature on the important challenges facing higher education. As this Committee is aware, the very issues now presented by S.J.R. 7 were debated and discussed by the Legislature for nearly four years, ultimately becoming Question 1 on the ballot last year. The constitutional amendments presented by Question 1 sought to change 156 years of Nevada history. When the people of Nevada rejected those changes only four months ago, our democracy mandates that the collective wisdom of the voters be respected. Over the past few years, our two major universities have achieved R1 Carnegie Research status. We have two thriving medical schools in southern and northern Nevada, a top tier law school and a nationally renowned research institute.

Senate Joint Resolution 7 does nothing to improve higher education in Nevada. It does nothing to advance research or workforce development for our communities. Most importantly, it does nothing to help students, the delivery of instruction, the

growth of campuses or the retention of top faculty. Rather, this measure creates a cloud of uncertainty, significantly lowers the morale of our faculty and staff and impedes our short- and long-term strategical planning. It is a significant distraction from our core mission. On behalf of the Board of Regents, I respectfully urge this Committee to reconsider repeating this effort and turn a new chapter. Our new leaders are willing to work with the Legislature to advance commonsense reform that will address the concerns of the past and make way for the future. This bill is unnecessarily divisive at a time when we need to work together.

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Senate Committee on Legislative Operations and Elections
April 6, 2021
Page 24

CHAIR OHRENSCHALL:

Since there are no callers in the neutral position and no further comments, we will close the hearing on S.J.R. 7. We are adjourned at 6:03 p.m.

RESPECTFULLY SUBMITTED:

Barbara Young,
Committee Secretary

APPROVED BY:

Senator James Ohrenschall, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 51	B	1	Michael Stewart	Work Session Document
S.B. 51	C	1	Open Government Coalition	Conceptual Amendment
S.B. 268	D	1	Michael Stewart	Work Session Document
S.B. 292	E	1	Michael Stewart	Work Session Document
S.J.R. 7	F	1	Nevada Faculty Alliance	Conceptual Amendment
S.J.R. 7	G	1	Olivia Cheche	Support Testimony
S.J.R. 7	H	1	Kent Ervin / Nevada Faculty Alliance	Opposition Testimony
S.J.R. 7	I	1	Brian Rippet / Nevada State Education Association	Opposition Testimony