

S.J.R. 7 of the 81st Session

SENATE JOINT RESOLUTION NO. 7 OF THE 81ST SESSION— SENATOR DONDERO LOOP

MARCH 16, 2021

JOINT SPONSOR: ASSEMBLYMAN ROBERTS

Referred to Committee on Legislative Operations and Elections

SUMMARY—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)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

SENATE JOINT RESOLUTION—Proposing 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.

Legislative Counsel's Digest:

Article 11 of the Nevada Constitution, commonly known as the Education Article, requires the Nevada Legislature to provide for the establishment of a State University that is controlled by a Board of Regents whose duties are prescribed by law. (Nev. Const. Art. 11, § 4) The Education Article also: (1) requires the Legislature to provide for the election of the members of the Board of Regents of the State University and to define their duties by law; and (2) authorizes the Board of Regents to control and manage the affairs of the State University and its funds under such regulations as may be provided by law. (Nev. Const. Art. 11, §§ 7, 8)

As required by the Education Article, the Legislature has provided by law for: (1) the establishment of the State University, which is known as the University of Nevada; and (2) the election of the members of the Board of Regents. (NRS 396.020, 396.040) Additionally, the Legislature has: (1) provided by law for the



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establishment of the Nevada System of Higher Education, which consists of the State University and other educational institutions, programs and operations; and (2) authorized the Board of Regents to administer the System and to prescribe rules for its governance and management. (NRS 396.020, 396.110, 396.230, 396.280, 396.300, 396.420, 396.440, 396.550)

This resolution proposes to amend the Nevada Constitution to remove the constitutional provisions governing the Board of Regents 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. However, although this resolution removes the status of the Board of Regents as a constitutional body under the Nevada Constitution, this resolution does not change the status of the Board of Regents as a statutory body under existing statutory provisions, which authorize the Board of Regents to administer the Nevada System of Higher Education and prescribe rules for its governance and management. In addition, this resolution does not repeal, either expressly or by implication, any of those existing statutory provisions relating to the Board of Regents, including the existing statutory provisions that provide for the election of the members of the Board of Regents.

Under the federal Morrill Land Grant Act of 1862, each state was provided with certain federal land grants to be sold to support and maintain at least one college in the state that teaches both agriculture and mechanic arts, including military tactics, so long as the state agrees to certain terms and conditions regarding the preservation and use of the proceeds derived from the sale of the federal land grants. (Act of July 2, 1862, ch. 130, §§ 1-8, 12 Stat. 503-05, as amended and codified at 7 U.S.C. §§ 301 et seq.) To secure the benefits offered by the federal law, the Framers of the Nevada Constitution approved Section 8 of the Education Article to provide for the preservation and use of the proceeds derived from the sale of the federal land grants. (Nev. Const. Art. 11, § 8; *Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 586 and 589-91 (Andrew J. Marsh off. rep. 1866)) This resolution proposes to amend Section 8 of the Education Article to: (1) remove references to the Board of Regents; (2) delete obsolete provisions; (3) clarify citations to the pertinent federal law, including all amendments thereto; and (4) specify that the proceeds derived under the federal law must be invested by the State of Nevada in the manner required by law.

If this resolution is passed by the 2021 Legislature, it must also be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.

WHEREAS, Article 11 of the Nevada Constitution, commonly known as the Education Article, requires the Legislature to provide for the establishment of a State University that is controlled by a Board of Regents whose duties are prescribed by law (Nev. Const. Art. 11, § 4); and

WHEREAS, The Education Article also requires the Legislature to provide for the election of the members of the Board of Regents and to define their duties by law (Nev. Const. Art. 11, § 7); and

WHEREAS, The Education Article authorizes the Board of Regents to control and manage the affairs of the State University and its funds under such regulations as may be provided by law (Nev. Const. Art. 11, §§ 7, 8); and



1 WHEREAS, When drafting the Education Article, the Framers of
2 the Nevada Constitution purposefully added constitutional language
3 to ensure that the powers and duties of the Board of Regents and its
4 members “shall be prescribed by the Legislature,” in order to “not
5 leave it to be inferred, perhaps, that they have absolute control” over
6 the State University (*Debates & Proceedings of the Nevada State*
7 *Constitutional Convention of 1864*, at 586 (Andrew J. Marsh off.
8 rep. 1866)) (statement of Delegate George A. Nourse)); and

9 WHEREAS, The Framers believed that the Board of Regents’
10 control and management of the affairs of the State University should
11 be governed by laws enacted by the Legislature (*Debates &*
12 *Proceedings of the Nevada State Constitutional Convention of 1864*,
13 at 585-87 (Andrew J. Marsh off. rep. 1866)); and

14 WHEREAS, The Framers did not create the Board of Regents as a
15 constitutional body in the Education Article to give the Board of
16 Regents unchecked autonomy from legislative oversight (*Debates &*
17 *Proceedings of the Nevada State Constitutional Convention of 1864*,
18 at 585-91 (Andrew J. Marsh off. rep. 1866)); and

19 WHEREAS, As required by the Education Article, the Legislature
20 has provided by law for the establishment of the State University,
21 known as the University of Nevada, and has provided by law for the
22 election of the members of the Board of Regents (NRS 396.020,
23 396.040); and

24 WHEREAS, The Legislature has provided by law for the
25 establishment of the Nevada System of Higher Education, which
26 consists of the State University and other educational institutions,
27 programs and operations, and for the Board of Regents to administer
28 the System and to prescribe rules for its governance and
29 management (NRS 396.020, 396.110, 396.230, 396.280, 396.300,
30 396.420, 396.440, 396.550); and

31 WHEREAS, In cases before the Nevada Supreme Court, the
32 Board of Regents has asserted that its “unique constitutional status”
33 gives it “virtual autonomy and thus immunity” from particular laws
34 and policies enacted by the Legislature (*Board of Regents v. Oakley*,
35 97 Nev. 605, 607 (1981)); and

36 WHEREAS, Although the Nevada Supreme Court has rejected
37 the Board of Regents’ broad assertion of autonomy and immunity
38 from laws and policies enacted by the Legislature, the Nevada
39 Supreme Court has recognized that the Board of Regents’
40 constitutional status prevents the Legislature from enacting certain
41 legislation that directly “interferes with the Board’s essential
42 management and control of the University” (*Board of Regents v.*
43 *Oakley*, 97 Nev. 605, 608 (1981); *King v. Board of Regents*, 65 Nev.
44 533, 564-69 (1948)); and



1 WHEREAS, Under our Nation's fundamental, well-established
2 and long-standing principles of representative government, the
3 traditional role of the people's elected representatives in the
4 Legislature is to serve as the people's legislative check of
5 accountability to ensure that public bodies, agencies and officers in
6 the other branches of government are carrying out their
7 governmental functions for the benefit of the people and in a manner
8 consistent with the laws and policies enacted by the Legislature; and

9 WHEREAS, The Board of Regents has, at various times, relied on
10 its constitutional status and its authority to control and manage the
11 affairs of the State University as a defensive shield and cloak against
12 the people's legislative check of accountability, and the Board of
13 Regents has, at various times, taken actions that have hindered,
14 thwarted or undermined the Legislature's investigation, review and
15 scrutiny of the institutions, programs and operations of the Nevada
16 System of Higher Education; and

17 WHEREAS, Like other public bodies, agencies and officers of the
18 State Government, the Board of Regents should be subject to the
19 people's legislative check of accountability through legislative
20 oversight, and the Board of Regents' control and management of the
21 affairs of the State University should be governed by all laws
22 enacted by the Legislature; and

23 WHEREAS, To secure accountability to the people's elected
24 representatives in the Legislature, the Nevada Constitution should
25 be amended to remove the Board of Regents' constitutional status so
26 that the Board of Regents operates only as a statutory public body to
27 ensure that it is subject to the people's legislative check of
28 accountability through legislative oversight and to ensure that the
29 Board of Regents' control and management of the affairs of the
30 State University are governed by all laws enacted by
31 the Legislature; and

32 WHEREAS, Amending the Nevada Constitution to remove the
33 Board of Regents' constitutional status will allow the Legislature to
34 exercise the full extent of its legislative power to review, reform and
35 improve the programs and operations of the State University and, in
36 doing so, the Legislature will also have more options and greater
37 flexibility to review, reform and improve all other institutions,
38 programs and operations of the Nevada System of Higher
39 Education; and

40 WHEREAS, Amending the Nevada Constitution to remove the
41 Board of Regents' constitutional status will not repeal, either
42 expressly or by implication, the existing statutory provisions which
43 apply to the Board of Regents, the State University and all other
44 institutions, programs and operations of the Nevada System of
45 Higher Education, including, without limitation, the existing



statutory provisions that provide for the voters to elect the members of the Board of Regents; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That this resolution may be cited as the Nevada Higher Education Reform, Accountability and Oversight Amendment; and be it further

RESOLVED, That Section 4 of Article 11 of the Nevada Constitution be amended to read as follows:

~~{See:}~~ **Sec. 4. 1.** The Legislature shall provide *by law* for the establishment *and governance* 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.}~~ *and other departments deemed appropriate for the State University.*

2. *The Legislature shall provide by law for biennial auditing of the State University and any other public institutions of higher education established by the Legislature in this State.*

And be it further,

RESOLVED, That Section 8 of Article 11 of the Nevada Constitution be amended to read as follows:

~~{See:}~~ **Sec. 8.** The ~~{Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said Mining department in such manner as to make it most effective and useful, Provided, that all the}~~ proceeds of the public lands donated by Act of Congress approved July ~~{second AD. Eighteen hundred and sixty Two,}~~ **2, 1862, ch. 130, 12 Stat. 503, and thereafter amended by Act of Congress,** for a college for the benefit of Agriculture ~~{, the Mechanics}~~ *and Mechanic Arts,* ~~{and}~~ including Military tactics , shall be invested by the ~~{said Board of Regents}~~ *State of Nevada in the manner required by law* in a separate fund to be appropriated exclusively for the benefit of the first named departments to the *State* University as set forth in Section ~~{Four above;}~~ **4 of this Article.** And the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart ~~{, shall be}~~ *is* lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished.

And be it further,

RESOLVED, That Section 7 of Article 11 of the Nevada Constitution be repealed.

And be it further,



1 RESOLVED, That this resolution becomes effective upon
2 passage.

TEXT OF REPEALED SECTION

Sec: 7. The Governor, Secretary of State, and Superintendent of Public Instruction, shall for the first four years and until their successors are elected and qualified constitute a Board of Regents to control and manage the affairs of the University and the funds of the same under such regulations as may be provided by law. But the Legislature shall at its regular session next preceding the expiration of the term of office of said Board of Regents provide for the election of a new Board of Regents and define their duties.

