

Assembly Joint Resolution No. 5 of the 79th Session—
Assemblyman Elliot Anderson

Joint Sponsor: Senator Woodhouse

FILE NUMBER.....

ASSEMBLY 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, control and management of the State University and for the reasonable protection of individual academic freedom.

Legislative Counsel’s Digest:

Article 11 of the Nevada Constitution, which is 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 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, control and management of the State University. (Nev. Const. Art. 11, §§ 4, 7) 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 Education Article, the Legislature is authorized to encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, ethical and other educational improvements. (Nev. Const. Art. 11, § 1) In public institutions of higher education, rules which provide for the reasonable protection of individual academic freedom are intended to encourage the pursuit of knowledge and the search for academic truth and



enlightenment. (*Urofsky v. Gilmore*, 216 F.3d 401, 410-11 (4th Cir. 2000); *Demers v. Austin*, 746 F.3d 402, 411-12 (9th Cir. 2014))

This resolution proposes to amend the Nevada Constitution to authorize the Legislature to provide by statute for the reasonable protection of individual academic freedom for students, faculty and other academic personnel of the public institutions of higher education in this State in order to facilitate the policies of encouraging by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, ethical and other educational improvements. (Nev. Const. Art. 11, § 4)

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. (*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. (Nev. Const. Art. 11, § 8)

If this resolution is passed by the 2017 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.

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

WHEREAS, Article 11 of the Nevada Constitution, which is 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

WHEREAS, When drafting the Education Article, the Framers of the Nevada Constitution purposefully added constitutional language to ensure that the powers and duties of the Board of Regents and its members “shall be prescribed by the Legislature,” in order to “not



leave it to be inferred, perhaps, that they have absolute control” over the State University (*Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 586 (Andrew J. Marsh off. rep. 1866) (statement of Delegate George A. Nourse)); and

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

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

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

WHEREAS, The Legislature has provided by law for the establishment of the Nevada System of Higher Education, which consists of the State University and other educational institutions, programs and operations, and for 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); and

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

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



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

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

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

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

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

WHEREAS, Amending the Nevada Constitution to remove the Board of Regents' constitutional status will not repeal, either expressly or by implication, the existing statutory provisions which apply to the Board of Regents, the State University and all other



institutions, programs and operations of the Nevada System of 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 ASSEMBLY AND SENATE 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:

~~[Sec:]~~ *Sec. 4. 1. 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.~~ , and other departments deemed appropriate for the State University.*

2. The Legislature shall provide by law for:

(a) The governance, control and management of the State University.

(b) The reasonable protection of individual academic freedom for persons who are enrolled in or who are employees or contractors of the State University and other public institutions of higher education in this State in order to facilitate the policies of Section 1 of this Article to encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, ethical and other educational improvements.

And be it further

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

~~[Sec:]~~ *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.



