
ASSEMBLY JOINT RESOLUTION NO. 5—ASSEMBLYMAN
ELLIOT ANDERSON

PREFILED FEBRUARY 13, 2017

JOINT SPONSOR: SENATOR WOODHOUSE

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, control and management of the State University. (BDR C-60)

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

~

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

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.

Legislative Counsel’s Digest:

1 Article 11 of the Nevada Constitution, which is known as the Education
2 Article, requires the Nevada Legislature to provide for the establishment of a State
3 University that is controlled by a Board of Regents whose duties are prescribed by
4 law. (Nev. Const. Art. 11, § 4) The Education Article also: (1) requires the
5 Legislature to provide for the election of the members of the Board of Regents of
6 the State University and to define their duties by law; and (2) authorizes the Board
7 of Regents to control and manage the affairs of the State University and its funds
8 under such regulations as may be provided by law. (Nev. Const. Art. 11, §§ 7, 8)
9 As required by the Education Article, the Legislature has provided by law for:
10 (1) the establishment of the State University, which is known as the University of
11 Nevada; and (2) the election of the members of the Board of Regents. (NRS
12 396.020, 396.040) Additionally, the Legislature has: (1) provided by law for the
13 establishment of the Nevada System of Higher Education, which consists of the



14 State University and other educational institutions, programs and operations; and
15 (2) authorized the Board of Regents to administer the System and to prescribe rules
16 for its governance and management. (NRS 396.020, 396.110, 396.230, 396.280,
17 396.300, 396.420, 396.440, 396.550)

18 This resolution proposes to amend the Nevada Constitution to remove the
19 constitutional provisions governing the Board of Regents and to authorize the
20 Legislature to provide by statute for the governance, control and management of the
21 State University. (Nev. Const. Art. 11, §§ 4, 7) However, although this resolution
22 removes the status of the Board of Regents as a constitutional body under the
23 Nevada Constitution, this resolution does not change the status of the Board of
24 Regents as a statutory body under existing statutory provisions, which authorize the
25 Board of Regents to administer the Nevada System of Higher Education and
26 prescribe rules for its governance and management. In addition, this resolution does
27 not repeal, either expressly or by implication, any of those existing statutory
28 provisions relating to the Board of Regents, including the existing statutory
29 provisions that provide for the election of the members of the Board of Regents.

30 Under the federal Morrill Land Grant Act of 1862, each state was provided
31 with certain federal land grants to be sold to support and maintain at least one
32 college in the state that teaches both agriculture and mechanic arts, including
33 military tactics, so long as the state agrees to certain terms and conditions regarding
34 the preservation and use of the proceeds derived from the sale of the federal land
35 grants. (Act of July 2, 1862, ch. 130, §§ 1-8, 12 Stat. 503-05, as amended and
36 codified at 7 U.S.C. §§ 301 et seq.) To secure the benefits offered by the federal
37 law, the Framers of the Nevada Constitution approved **Section 8** of the Education
38 Article to provide for the preservation and use of the proceeds derived from the sale
39 of the federal land grants. (*Debates & Proceedings of the Nevada State
40 Constitutional Convention of 1864*, at 586 and 589-91 (Andrew J. Marsh off. rep.
41 1866))

42 This resolution proposes to amend **Section 8** of the Education Article to: (1)
43 remove references to the Board of Regents; (2) delete obsolete provisions; (3)
44 clarify citations to the pertinent federal law, including all amendments thereto; and
45 (4) specify that the proceeds derived under the federal law must be invested by the
46 State of Nevada in the manner required by law. (Nev. Const. Art. 11, § 8)

47 If this resolution is passed by the 2017 Legislature, it must also be passed by
48 the next Legislature and then approved and ratified by the voters in an election
49 before the proposed amendments to the Nevada Constitution become effective.

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

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

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

13 WHEREAS, When drafting the Education Article, the Framers of
14 the Nevada Constitution purposefully added constitutional language



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

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

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

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

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

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

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

44 WHEREAS, Under our Nation’s fundamental, well-established
45 and long-standing principles of representative government, the



1 traditional role of the people's elected representatives in the
2 Legislature is to serve as the people's legislative check of
3 accountability to ensure that public bodies, agencies and officers in
4 the other branches of government are carrying out their
5 governmental functions for the benefit of the people and in a manner
6 consistent with the laws and policies enacted by the Legislature; and

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

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

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

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

38 WHEREAS, Amending the Nevada Constitution to remove the
39 Board of Regents' constitutional status will not repeal, either
40 expressly or by implication, the existing statutory provisions which
41 apply to the Board of Regents, the State University and all other
42 institutions, programs and operations of the Nevada System of
43 Higher Education, including, without limitation, the existing
44 statutory provisions that provide for the voters to elect the members
45 of the Board of Regents; now, therefore, be it



1 RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF
2 NEVADA, JOINTLY, That Section 4 of Article 11 of the Nevada
3 Constitution be amended to read as follows:

4 ~~{Sec:}~~ *Sec.* 4. The Legislature shall provide for the
5 establishment of a State University which shall embrace
6 departments for Agriculture, Mechanic Arts, and Mining ~~{to~~
7 ~~be controlled by a Board of Regents whose duties shall be~~
8 ~~prescribed by Law.}~~ , and the Legislature shall provide by
9 law for the governance, control and management of the
10 State University.

11 And be it further

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

14 ~~{Sec:}~~ *Sec.* 8. The ~~{Board of Regents shall, from the~~
15 ~~interest accruing from the first funds which come under their~~
16 ~~control, immediately organize and maintain the said Mining~~
17 ~~department in such manner as to make it most effective and~~
18 ~~useful, Provided, that all the}~~ proceeds of the public lands
19 donated by Act of Congress approved July ~~{second AD.~~
20 ~~Eighteen hundred and sixty Two,}~~ 2, 1862, *ch. 130, 12 Stat.*
21 *503, and thereafter amended by Act of Congress,* for a
22 college for the benefit of Agriculture ~~{,} the Mechanics}~~ and
23 *Mechanic* Arts, ~~{and}~~ including Military tactics , shall be
24 invested by the ~~{said Board of Regents}~~ *State of Nevada in*
25 *the manner required by law* in a separate fund to be
26 appropriated exclusively for the benefit of the first named
27 departments to the *State* University as set forth in Section
28 ~~{Four above;}~~ *4 of this Article.* And the Legislature shall
29 provide that if through neglect or any other contingency, any
30 portion of the fund so set apart ~~{, shall be}~~ *is* lost or
31 misappropriated, the State of Nevada shall replace said
32 amount so lost or misappropriated in said fund so that the
33 principal of said fund shall remain forever undiminished .
34 ~~{,}~~

35 And be it further

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

TEXT OF REPEALED SECTION

Sec: 7. **Board of Regents: Election and duties.** 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.

⑩

