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SENATE JOINT RESOLUTION NO. 7—SENATOR DONDERO LOOP

MARCH 16, 2021

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JOINT SPONSOR: ASSEMBLYMAN ROBERTS

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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.

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**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:**

1 Article 11 of the Nevada Constitution, commonly 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 of the State University and for  
21 the auditing of public institutions of higher education in this State. However,  
22 although this resolution removes the status of the Board of Regents as a  
23 constitutional body under the Nevada Constitution, this resolution does not change  
24 the status of the Board of Regents as a statutory body under existing statutory  
25 provisions, which authorize the Board of Regents to administer the Nevada System  
26 of Higher Education and prescribe rules for its governance and management. In  
27 addition, this resolution does not repeal, either expressly or by implication, any of  
28 those existing statutory provisions relating to the Board of Regents, including the  
29 existing statutory provisions that provide for the election of the members of the  
30 Board of Regents.

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

47 If this resolution is passed by the 2021 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.

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1 WHEREAS, Article 11 of the Nevada Constitution, commonly  
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



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



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

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

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

9 ~~{See:}~~ *Sec. 4. 1. The Legislature shall provide **by law** for*  
10 *the establishment **and governance** of a State University*  
11 *which shall embrace departments for Agriculture, Mechanic*  
12 *Arts, and Mining ~~{to be controlled by a Board of Regents~~*  
13 *~~whose duties shall be prescribed by Law.}~~ **and other***  
14 *departments deemed appropriate for the State University.*

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

19 And be it further,

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

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

42 And be it further,

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

45 And be it further,



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

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**TEXT OF REPEALED SECTION**

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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.

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