

Nevada System of Higher Education

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May 5, 2015

Senator Becky Harris, Chair
Senate Committee on Education
Nevada Legislature
401 South Carson Street
Carson City, Nevada 89701

Re: Opposition to Assembly Bill 421 - An Act relating to education, creating the Spending and Government Efficiency Commission for public education and the Nevada System of Higher Education

Dear Chair Harris:

It is my understanding that this coming Thursday, May 7, your committee is hearing AB 421 regarding the creation of the Spending and Government Efficiency (SAGE) Commission for public education and the Nevada System of Higher Education (NSHE). Board of Regents Chair Kevin Page, Vice Chair Rick Trachok and I will testify in opposition to the bill insofar as it relates to the Nevada System of Higher Education. We submit this letter for inclusion in the record and distribution to the members of the Committee. As our opposition to the bill is limited to higher education, we will limit our discussion in this letter to higher education.

As you know, AB 421 proposes to establish a SAGE Commission for the NSHE. The Commission is proposed to consist of 12 members appointed as follows:

- (a) Six members appointed by the Governor;
- (b) Two members appointed by the Governor from a list of six recommendations provided by the Senate Majority leader;
- (c) Two members appointed by the Governor from a list of six recommendations provided by the Speaker of the Assembly;
- (d) One member appointed by the Governor from a list of three recommendations provided by the Senate Minority leader; and
- (e) One member appointed by the Governor from a list of three recommendations provided by the Assembly Minority Leader.

The bill provides that each of the appointees must be persons with “expertise and experience in the operation of a business.” There are no elected members of the Board of Regents on this commission.

The Commission is charged with recommending ways in which (1) costs may be reduced; (2) efficiencies may be found; and (3) education may be improved. Clearly these three areas of investigation and recommendation encompass the entire sphere of higher education governance.

We believe that the legislation as it applies to NSHE is wholly unnecessary. First, the State and the Board of Regents have clear and agreed upon expectations regarding performance that are being met. Second, in addition, to the agreed upon metrics, the Board has been aggressively and successfully pursuing efficiency policies and initiatives for a number of years. The matters

contemplated by the proposed legislation are already being effectively dealt with. Finally, the Board of Regents is the elected body constitutionally charged with the responsibility for the matters outlined in this bill. In accordance with Article 11, Section 4 of the Nevada Constitution, the Board of Regents has exclusive governing authority over higher education in Nevada (discussed in more detail below). We believe that the proposed inclusion of the Nevada System of Higher Education in AB 421 is clearly unconstitutional.

Performance Metrics for Higher Education

In connection with revision of the formula for funding higher education that was led by the legislature's interim committee, pursuant to SB 374 (Nevada Legislature, 76th regular session), performance funding was first incorporated into the higher education funding formula. This performance pool was created to be funded by means of a carve out of the instructional budget. The legislature, Board of Regents, representatives of the Governor's office, faculty and students agreed upon clear metrics for determining the expected performance and efficiency of the system. The agreed upon metrics are:

1. Completions - Bachelor's Degrees \ Master's & Doctoral Degrees \ Associate and Certificates
 - a. Minority Completers
 - b. Pell-Eligible Completers
2. Transfer Students w/a transferable associate's degree
3. Gateway Course Completers
4. Sponsored/External Research Expenditures
5. Efficiency - Awards per 100 FTE
6. Economic Development Graduate Alignment

We have attached to this written testimony a summary table (Table 1) showing the performance of the NSHE with respect to each of these areas. It is clear that the System is already exceeding the majority of the agreed upon metrics, including critical metrics in numbers of graduates at the baccalaureate level and below.

Additional Effectiveness and Efficiency Efforts by NSHE

The Board of Regents did not wait to be told that efficiency policies were needed. In 2010, the Board appointed an Effectiveness and Efficiency working group to drive and monitor its efforts in this area. As the great recession deepened and continued the efforts of this committee were merged into the Board's overview of the continuing budget reductions.

As indicated above, AB 421 requires recommendations in three general areas: (1) cost reduction, (2) increased efficiency, and (3) areas where there can be general improvement. Specific to those three areas, it is instructive to consider what work the Board has accomplished over the last three biennia. Attached to the end of this written testimony, we have detailed 31 specific areas that are responsive to the statutory mandates (Table 2). While we will refrain from repeating all of those areas at this point, let us highlight some of the Board's initiatives and policies.

Directly responsive to the proposed legislation, the Nevada System of Higher Education is currently implementing the most far-reaching administrative restructuring in its history. Following the 2011 implementation of a modern student information system, NSHE began a process to examine every major administrative process in its administrative, financial, and human resources operations. In response to the Regents' Efficiency and Effectiveness directives,

the current project by 2017 will transform how NSHE performs every facet of its administrative functions.

In 2013, Huron Associates (Chicago) conducted a detailed business process review as well as an analysis of the System's complex chart of financial accounts to promote highly efficient and effective business practices. The Huron findings informed NSHE's choice of the highly acclaimed modern software, Workday, as the single automated system to embed these business changes in every facet of NSHE's financial, payroll, and human resources functions.

To be completed in 2017, NSHE's business operations will be optimized to:

- Streamline business operations by reducing unnecessary, inefficient, and duplicative back office activities across NSHE institutions
- Reduce transactional costs
- Increase reliability, accuracy, and timeliness of transactions
- Improve flow of information and access to business operations across NSHE
- Improve reporting and decision making
- Deliver consistent administrative solutions that best meet the needs of NSHE in the most cost effective manner possible
- Adopt common business practices to ensure standardized and consistent high levels of service across NSHE
- Maximize productivity through shared resources across campuses
- Improve consistency in data and reporting capabilities at the institutional level, as well as reporting and data collection at the System level and to external entities such as the Governor, Legislature, and other stakeholders

NSHE has undertaken these fundamental changes not only to improve services, but also to ensure that Nevada's investment in higher education is maximally directed to its primary mission of instruction and research.

Tuition and fee policy has been completely revised. Market pricing has been incorporated; a more stable policy regarding fee increases has been adopted allowing families to better budget for college expenses; and numerous discounted tuition and fee policies were repealed. For high cost programs the Board has implemented a policy allowing differential fees.

Tighter controls over graduation requirements were implemented. Standards were established for maximum number of credits in degrees; low yield programs were subjected to review and possible elimination; and comprehensive policies supporting completion were put in place.

Collaboration to achieve cost reduction has been implemented throughout the system. A College Collaborative was established to share talent and services among northern community colleges, reducing institutional costs while maintaining service levels. Similar efforts have been implemented among UNLV, NSC and CSN in southern Nevada.

The Board has led reform in remedial education, partnerships with K-12 and affordability. Our focus is on serving all students. We have given particular attention to serving our veterans, creating and improving veterans' centers on all teaching campuses. The Board has embarked on a study of implementing eLearning options to better serve students throughout the state.

We have improved alignment of our programs with the State's economic development plan. This includes curriculum, research and workforce alignment and reporting to the State. In partnership with the Legislature, we have implemented a "system with a system" designed to

bring our community colleges closer to the communities that they serve and to improve our workforce.

We have streamlined our meeting process, moving to electronic agendas and online streaming meetings to make them more available to the public. We also converted our rent payments into an owned office building that recently won an award for urban redevelopment within the UNLV Midtown corridor. The office includes a state of the art Board meeting room with video conferencing capability to reduce travel.

All of these programs, efficiencies and development were accomplished during a time when we implemented a 30% general fund reductions throughout the System. For the period 2008-2014 the cuts to higher education in Nevada rank us the 8th highest among all states in overall cuts, reducing per student funding by \$3430 (Source: Center on Budget and Policy Priorities. Copyright, the Pew Charitable Trusts).

In short, the Board of Regents and the Nevada System of Higher Education are doing their job of running the system of higher education during very difficult economic times and doing it in an exemplary manner. There is no reason to think that a group of individuals with no background, history or expertise in running higher education institutions could add significant value in a single interim. To the contrary it is likely that the forward progress of the NSHE would slow significantly as its staff would have to dedicate an enormous amount of time to educating the Commission members before they could even hope to consider recommendations.

Constitutional Authority of Board of Regents

In accordance with Article 11, Section 4 of the Nevada Constitution, the Board of Regents has exclusive governing authority over higher education in Nevada. AB 421, which would create a commission appointed by the Governor, to study and make recommendations to the Governor every 90 days to reduce costs, increase efficiencies or other ways to improve the System, is a direct invasion of the constitutional authority and responsibility of the elected Board of Regents and should be rejected for that reason alone.

The Nevada Supreme Court in *King vs. Board of Regents*, 65 Nev. 533, 200 P. 2d 221 (1948), ruled that the Legislature's creation of an "advisory board" to the Board of Regents was unconstitutional, and stated "the right of the regents to control the university, in their constitutional executive and administrative capacity, *is exclusive of such right in any other department of the government . . .*" *King*, 65 Nev. at 564-5, 200 P.2d at 236 (emphasis added). Although the Court noted that the Legislature has authority to prescribe the duties of the regents, under the holding in *King*, it cannot assign such responsibility to any other department of government. *Id.* This fundamental constitutional principle is illustrated in numerous cases referred to by the Court in *King*. The Constitution is "the paramount law of a state, designed to separate the powers of government" and "[e]very positive delegation of power to one office or department implies a negation of its exercise by any other officer, department, or person. If it did not, the whole constitutional fabric might be undermined and destroyed." *King*, 65 Nev. at 556-8, 200 P. 2d at 232 (internal case citations omitted). A Minnesota case quoted in *King*, expresses this fundamental rule in the context of a constitutionally created Board of Regents:

So we find the people of the state, speaking through their Constitution, have invested the regents with a power of management of which no Legislature may deprive them. That is not saying that they are the rulers of an independent province or beyond the lawmaking power of the Legislature. *But it does mean that the whole executive power of the*

University having been put in the regents by the people, no part of it can be exercised or put elsewhere by the Legislature.

Id., at 558 (emphasis added, internal citation omitted). The Nevada Supreme Court’s holding in *King* very clearly prohibits AB 421’s proposed creation of this commission:

From what we have said it is clear that we are of the opinion that it was the intention of the framers of the constitution to vest exclusive executive and administrative control of the university in a board of regents to be elected by the people and an act creating the advisory board would change, alter or modify its constitutional powers and function and cannot find its justification in the power of the legislature to define the duties of the elected board.

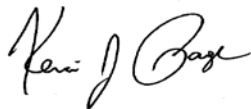
Id., 65 Nev. at 558, 200 P.2d at 238.

It is clear that, the reasoning of *King* is not so broad as to divest the legislature of all power to legislate in this area. In *Oakley v. Board of Regents*, the Nevada Supreme Court held that Legislature may pass laws, such as the non-discrimination law at issue, which do not interfere with the right of the Regents to control higher education. The Court held, “. . . that this statute reasonably and properly imposes upon the governing board of our state university *the same obligation that it imposes on other state, county and other municipal boards*, namely the obligations to make hiring and retention decisions on the basis of merit and fitness. . . .” *Oakley*, 97 Nev. at 607, 637 P.2d at 1200 (emphasis added). This reasoning in *Oakley* does not save AB 421, which is not a law of *general application* to other state, county or municipal boards—AB 421 is a law dealing squarely with higher education and unconstitutionally purports to assign responsibility for higher education to the Governor.

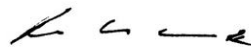
The very subject matter of AB 421, the study of costs, efficiencies and other possible operational improvements, are core and essential responsibilities of the elected Board of Regents. The creation of this commission, an alternate executive body charged with a duty to make recommendations to the Governor regarding higher education, would improperly “change, alter or modify” Nevada’s constitutionally-mandated structure for governance of higher education by the Board of Regents.

We respectfully urge the committee to amend AB 421 to delete provisions relating to the Nevada System of Higher Education.

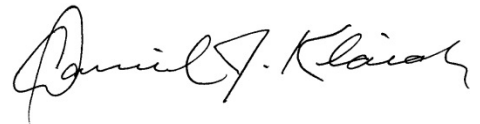
Sincerely,



Kevin J. Page,
Chair, NSHE Regents



Rick Trachok,
Vice Chair, NSHE Regents



Daniel J. Klaich,
NSHE Chancellor

**TABLE 1
NSHE PERFORMANCE METRICS**

NSHE PERFORMANCE METRICS			
	2011-12	2012-13	2013-14
Skills Certificate (<30 Credits)	N/A	2,638	3,040
1 to 2 Year Certificate	424	460	564
At-Risk 1 to 2 Year Certificate Recipients (Minority)	164	171	211
At-Risk 1 to 2 Year Certificate Recipients (Pell-Eligible)	105	119	194
Associate's and Bachelor's Degrees	10,476	11,147	11,576
At-Risk Associate's and Bachelor's Graduates (Minority)	3,698	3,965	4,359
At-Risk Associate's and Bachelor's Graduates (Pell-Eligible)	2,113	2,719	3,110
Master's and Doctoral Degrees	2,144	1,898	1,782
At-Risk Master's and Doctoral Graduates (Minority)	450	476	430
At-Risk Master's and Doctoral Graduates (Pell-Eligible)	364	355	347
Sponsored/External Research Expenditures in \$100,000's - Univ Only	1,314.7	1,454.6	1,386.8
Transfer Students w/a transferable associate's degree - 4-year	3,219	3,297	3,801
Transfer Students w/24 credits or associate's degree - 2 year	4,126	4,952	4,776
Efficiency Awards per 100 FTE - 4-year w/graduate awards	25.4	25.6	24.1
Efficiency Awards per 100 FTE - 4 year w/o graduate awards	21.8	22.8	21.5
Efficiency - Awards per 100 FTE - 2-year	14.3	16.0	18.9
Gateway Course Completers - 2-year & NSC	19,882	20,562	21,013
Economic Development (STEM and Allied Health) Graduates w/graduate awards	3,436	3,466	4,014
Economic Development (STEM and Allied Health) Graduates w/o graduate awards	2,893	2,924	3,478
Economic Development Graduates w/graduate awards	2,207	2,402	2,295
Economic Development Graduates w/o graduate awards	1,897	2,133	2,057
<i>2013-14 skills certificates are preliminary.</i>			
Outcome Definitions			
Skills Certificate: The total number of certificates that require less than 30 credit hours. Students earning multiple certificates in an academic year will have each earned certificate count as a separate outcome. (Source: IPEDS and data warehouse)			
1 to 2 year Certificate: The total number of certificates requiring 30 or more credit hours granted during an academic year. Students earning multiple certificates in an academic year will have each earned certificate count as a separate outcome. An additional weight of .4 per certificate awarded to a minority or Pell eligible student is applied. (Source: IPEDS and institutional data to identify low income graduates)			
Associate's and Bachelor's Degrees: The total number of associate's and bachelor's degrees conferred during an academic year. Students earning multiple degrees in an academic year will have each earned degree count as a separate outcome. An additional weight of .4 per degree awarded to a minority or Pell eligible student is applied. (Source: IPEDS and institutional data to identify low income graduates)			
Master's and Doctoral Degrees: The total number of master's and doctoral degrees conferred during an academic year. First-professional degrees (medical, dental, law) are not included. Students earning multiple degrees in an academic year will have each earned degree count as a separate outcome. An additional weight of .4 per degree awarded to a minority or Pell-eligible student is applied. (Source: IPEDS and institutional data to identify low income graduates)			
Transfer Students w/a Transferable Associate's Degree: Total number of students transferred to a 4-year institution with a transferable associate's degree from an NSHE community college. (Source: NSHE Data Warehouse)			
Transfer Students w/24 credits or Associate's Degree: The total number of students who enrolled at a four -year institution during the fall or spring semester of a given reporting year who had earned at least 24 credits or a transferable associate's degree at a community college prior to the reporting year. Students are excluded if they are co-enrolled at a 4-year institution and a 2-year institution during the term in which they otherwise would have been included as a transfer student. (Excludes courses from the 24 credit count if the grades are AU, AD, NR, ND, X, I, F, U, W.) (Source: NSHE Data Warehouse)			
Efficiency - Awards per 100 FTE: The number of bachelor's, master's and doctoral awards per 100 FTE at 4-year institutions and the number of certificates, associate's and bachelor's (where applicable) per 100 FTE at the 2-year institutions. (Source: IPEDS and Official FTE)			
Sponsored/External Research Expenditures: The total amount expended on sponsored programs/projects of research and other scholarly activities for the fiscal year. This amount includes federal, federal pass-through, State of Nevada, other state and local government, private for-profit, private non-profit. Other scholarly activity includes the instructional, public service, student services, and "other" functional grant categories, including workforce development. The figures exclude the scholarship/fellowship category. (Source: Sponsored Projects)			
Gateway Course Completers: The total number of students (unduplicated) who successfully completed a college-level English or mathematics course (grad C- and above) in the reporting year. (Source: NSHE Data Warehouse)			
Economic Development - STEM and Allied Health Graduates: Total number of certificates, associate's, bachelor's, master's, or doctoral degrees awarded (first professional awards are excluded) in an academic year based on CIP codes for STEM and health professionals as identified by NCHEMS for the NGA metrics. (CIPs: 4 - architecture and related services; 11 - computer and information sciences and support services; 14 - engineering; 15 - engineering technologies/technicians; 26 - biological and biomedical sciences; 27 - mathematics and statistics; 40 - physical sciences; 41 - science technologies/technicians; and 51 - health professions and related clinical sciences) (Source: IPEDS)			
Economic Development - Institution Selected Discipline: Total number of certificates, associate's, bachelor's, master's, or doctoral degrees awarded (first professional awards are excluded) in an academic year based on CIP code selected by the institution which aligns with the state's economic development plan. (UNLV- 52 Business, Management, and Related Support Services; UNR- 42 Psychology; NSC- 52 Business, Management, and Related Support Services; CSN- 52 Business, Management, and Related Support Services; GBC - 47 Mechanic and Repair Technologies/Technician; TMCC- 48 Precision Production; WNC- 46 Construction Trades.) (Source: IPEDS)			

TABLE 2
DETAILED LISTING OF BOARD INITIATIVES

1. Low Yield Policy - requiring institutions to review programs on a regular basis in the context of degree productivity (general improvement and increased efficiency).
2. 60/120 credit policy - limiting the number of credits for an associates or bachelor's degree to 60 and 120, respectively (general improvement and increased efficiency).
3. Excess Credit Policy - charging students a 50 percent surcharge if they accumulate more than 150 percent of credits required for degree (general improvement - aimed at degree completion).
3. 15 to Finish enrollment intensity and student achievement campaign -- data driven initiative to improve time to gradation (general improvement and increased efficiency).
4. English and Math Summits on Remediation and NSHE Task Force on Gateway Mathematics Success -- data driven work to improve remediation and focus on getting students through the gateway college level course - (general improvement).
5. ACT placement guarantee - adopted by the Board in December 2014 - exemplifies a partnership with K-12 to utilize college readiness assessments and place students into college level courses (general improvement).
6. SARA - State Authorization Reciprocity Agreement -- reduces costs to the institutions in terms of administration and fees paid to other states where they are serving students - Nevada was one of the first states in the country to join SARA (cost reduction).
7. Supporting Common Core Implementation - strong partnership with NDE in the implementation of the Nevada Academic Content Standards that will drive improvements in remedial placement rates and ensure students graduate college ready (general improvement).
8. Remedial Data Revised - using placement rates in addition to enrollment rates to provide a more accurate picture of the students that need remediation - this was a huge shift that doesn't get much attention -- but will have long term impacts on conversations related to remediation (general improvement).
9. Access and Affordability – prepared detailed analysis on this critical aspect of the college experience, sponsored with NSCL a summit on this issue and have worked with the Chair of Senate Finance to introduce a bill on this subject.
10. Implementation of modern student information system.
11. Board of Regents Efficiency and Effectiveness Initiative (2010-2011).
12. Completed Business Process Review with Huron Consulting to identify best practices in these areas and areas to coordinate and streamline business processes and eliminate duplication of services.
13. Sponsored legislation allowing direct pay of employees.

14. Established Nevada College Collaborative to share services, share talent and eliminate back office duplication among Northern Community Colleges.
15. Have begun implementation of new ERP for business/ HR operations based on Huron Consulting report.
16. Implemented a new equitable performance based funding formula.
17. Implemented a “system within a system” to emphasize critical role and mission of community colleges.
18. Implemented a unique partnership with DETR utilizing Burning Glass technology to coordinate curricula with needs of communities and to assist putting Nevadans back to work.
19. Sit on Governor’s Economic Development Board and strengthened alignment of NSHE programs with State plan for economic development.
20. Commissioned an eLearning taskforce to update and extend educational offerings throughout the System.
21. Convened a Systemwide effort to coordinate police services throughout system. Initial areas for collaboration have been adopted. Efforts continuing to provide additional security on a more efficient basis.
22. Convened Systemwide task force regarding efforts to qualify institutions for Hispanic serving institution status. First campus – College of Southern Nevada – has met guidelines. Conducted Systemwide workshop on grant writing to take advantage of federal dollars available under this program.
23. Have submitted grants and received funding under every phase of the federal Trade Adjustment Assistance Community College and Career Training (TAACCCT) Grant Program. Last grant was awarded virtually maximum amount available of approximately \$10 million.
24. Numbers of graduates are at an all-time high in the System, including a 58% increase in certificates aimed at improving Nevada’s workforce.
25. Member of the Complete College America alliance of states committed to significantly increasing the number of student’s successfully completing college and achieving degrees and credentials of value – and closing the attainment gap for traditionally underrepresented populations by 2020. We have achieved a 21% increase in awards conferred in the first three years of Complete College America participation.
26. In the last decade, NSHE made notable progress in closing the enrollment gap – across the System more minority students are enrolled than ever before. Progress has also been made in closing the achievement gap as more minority students are also graduating. More work needs to be done, but steady progress is being made.
27. NSHE has adopted a policy to create “veteran friendly” campuses to honor and support servicemen and women as they transition to civilian life. This includes veterans centers on all of our campuses and a system of credit for prior learning across the Nevada System of Higher Education, fortified with training across institutions and including Nevada workforce partners, in order to not only honor and leverage the experience of active duty military and veterans and

older students re-entering higher education, but to help make dramatic improvement in their ability to earn higher wages and in their retention outcomes.

28. Have created extensive partnerships with public education, including expanding dual enrollment opportunities and career and technical education.

29. Partnering with NDE and DETR on developing a matching hub for a statewide longitudinal data system that will have capabilities to track students from kindergarten through college and into the work force.

30. Eliminated paper agendas, moving to an online process utilizing current technology.

31. Acquired a new administration building in Southern Nevada, using current rent to purchase an award winning building that assisted with renewal of the neighborhood surrounding UNLV. We turned our rent into equity with room for future expansion both in the building and on additional property we acquired. The building is equipped with state of the art technology that allows for more meetings via video conference cutting down on the need to and cost of travel.