

NEVADA LEGISLATURE

Eightieth Session, 2019

SENATE DAILY JOURNAL

THE THIRTY-SEVENTH DAY

CARSON CITY (Tuesday), March 12, 2019

Senate called to order at 12:04 p.m.

President pro Tempore Denis presiding.

Roll called.

All present and one vacant.

Prayer by the Chaplain, Pastor Louis Locke.

Let us pray. Lord, we thank You and ask for Your blessing on the people of Nevada. We ask for Your wisdom in the deliberations and decisions of this Legislature.

May we be reminded of these verses from the Book of Psalms, chapter 100:

Know that the Lord, He is God;

It is He who has made us, and not we ourselves;

We are His people and the sheep of His pasture.

For the Lord is good;

His mercy is everlasting,

And His truth endures to all generations.

In the Name of the Most High God,

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Assistant Secretary are authorized to make the necessary corrections and additions.

REPORTS OF COMMITTEE

Mr. President pro Tempore:

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 156, 208, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

PAT SPEARMAN, *Chair*

Mr. President pro Tempore:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 15, 34, 35, 68, 225, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DAVID R. PARKS, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, March 11, 2019

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Joint Resolution No. 5 of the 79th Session.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Joint Resolution No. 5 of the 79th Session.

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.

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.

Senator Ratti moved that the resolution be referred to the Committee on Legislative Operations and Elections.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By Senators Pickard, Hardy, Hammond, Goicoechea, Hansen, Settlemeyer and Assemblywoman Titus:

Senate Bill No. 259—AN ACT relating to physicians; requiring the issuance of a provisional license by endorsement to practice allopathic or osteopathic medicine under certain circumstances; requiring the issuance of a license by endorsement to the holder of such a provisional license by endorsement under certain circumstances; requiring the Executive Director of the Board of Medical Examiners and of the State Board of Osteopathic Medicine to be a licensed allopathic or osteopathic physician, as applicable; and providing other matters properly relating thereto.

Senator Pickard moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

By Senators Pickard, Hammond, Goicoechea, Settlemeyer; Assemblymen Cohen, Roberts, Hardy and Leavitt:

Senate Bill No. 260—AN ACT relating to domestic relations; prohibiting law enforcement representatives of investigative agencies and law enforcement officers from providing certain information on behalf of a party in a proceeding relating to the custody and visitation of children; establishing provisions relating to the civil liability of such representatives and officers under certain circumstances; authorizing such representatives and officers to provide information based upon personal knowledge; and providing other matters properly relating thereto.

Senator Pickard moved that the bill be referred to the Committee on Judiciary.

Motion carried.

By Senators Cancela, Scheible, Harris, Dondero Loop, Ratti, Brooks, Ohrenschall, Parks, Spearman and Woodhouse:

Senate Bill No. 261—AN ACT relating to public safety; prohibiting certain acts relating to the modification of a semiautomatic firearm; providing a penalty; and providing other matters properly relating thereto.

Senator Cancela moved that the bill be referred to the Committee on Judiciary.

Motion carried.

By Senators Cancela, Ratti, Cannizzaro, Parks, Brooks, Dondero Loop, Harris, Ohrenschall, Scheible, Spearman and Woodhouse:

Senate Bill No. 262—AN ACT relating to prescription drugs; making various changes to provide for tracking and reporting of information concerning the pricing of prescription drugs for treating asthma; requiring certain insurers to provide certain notice concerning those drugs to insureds; providing for an administrative penalty for failure to provide certain information concerning those drugs to the Department of Health and Human Services; and providing other matters properly relating thereto.

Senator Cancela moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By Senator Ratti:

Senate Bill No. 263—AN ACT relating to taxation; requiring that certain vapor products be taxed and regulated as other tobacco products; establishing a license fee for retailers of cigarettes and other tobacco products and wholesale dealers of other tobacco products; requiring certain taxes imposed on vapor products to be used for certain programs related to tobacco prevention and control and public health; requiring a retail dealer of other tobacco products to submit certain taxes on vapor products to the Department of Taxation; providing penalties; and providing other matters properly relating thereto.

Senator Ratti moved that the bill be referred to the Committee on Revenue and Economic Development.

Motion carried.

By the Committee on Health and Human Services:

Senate Bill No. 264—AN ACT relating to public welfare; requiring the Director of the Department of Health and Human Services to amend the State Plan for Medicaid to provide certain additional home and community-based services; requiring the Division of Health Care Financing and Policy of the Department to provide tenancy support services to the extent authorized by federal law; and providing other matters properly relating thereto.

Senator Ratti moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By Senators Seevers Gansert, Hardy, Cancela, Goicoechea, Hammond, Hansen, Kieckhefer, Ohrenschall, Pickard, Settlemeyer; Assemblymen Titus, Kramer, Assefa, Daly, Hafen, Hardy, Leavitt, Nguyen, Peters, Sprinkle, Tolles and Watts:

Senate Bill No. 265—AN ACT relating to records of mental health; providing for coordination between the Central Repository for Nevada Records of Criminal History and the courts relating to the transmission of certain records of mental health; requiring the Central Repository to prepare an annual report relating to such records; and providing other matters properly relating thereto.

Senator Seevers Gansert moved that the bill be referred to the Committee on Judiciary.

Motion carried.

By Senator Spearman; Assemblymen Spiegel and Flores:

Senate Bill No. 266—AN ACT relating to mental health; providing for the establishment of the Mental Health First Aid Program; and providing other matters properly relating thereto.

Senator Spearman moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

By Senator Spearman and Assemblywoman Spiegel:

Senate Bill No. 267—AN ACT relating to education; requiring the identification of social and environmental factors that affect the educational experience of pupils at each public school; requiring the consideration of those factors in certain circumstances; requiring the development of a plan for each school to mitigate the effect of those factors; and providing other matters properly relating thereto.

Senator Spearman moved that the bill be referred to the Committee on Education.

Motion carried.

By Senators Spearman, Parks and Brooks:

Senate Bill No. 268—AN ACT relating to regulatory bodies; requiring any person authorized to make appointments to a board or commission that regulates certain occupations or professions to give consideration as to whether the members of the board or commission reflect the diversity of the State; requiring the expiration of the term of any member of the Nevada Funeral and Cemetery Services Board serving on July 1, 2019; and providing other matters properly relating thereto.

Senator Spearman moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 159.

Bill read third time.

Remarks by Senators Woodhouse and Hansen.

SENATOR WOODHOUSE:

Senate Bill No. 159 requires the Board of Trustees of each school district and the governing bodies of each charter and private school to adopt a policy concerning safe exposure to the sun. The measure requires the policy to provide that sunscreen not be considered a medication sold over the counter and allow a student who participates in certain outdoor activities to wear protective clothing and possess and self-administer sunscreen.

The bill authorizes the policy to include teaching students practices for safe exposure to the sun to reduce the risk of skin cancer. The bill further provides that, whenever possible, a policy requiring students to wear school uniforms be consistent with policies relating to safe exposure to the sun. I urge your support.

SENATOR HANSEN:

I supported Senate Bill No. 159 in Committee and have not had a chance to discuss it with you as the Chair of this Committee. I am going to oppose this bill for three reasons. First, is the inclusion in this bill, in Section 3, of private schools. I am very uncomfortable with this. Second, I reviewed the Food and Drug Administration (FDA) reasons for listing sunscreen across the board as a medication, and I feel this listing is quite reasonable. Last, we heard from the Nevada System of Higher Education in Committee that 50 percent of all children who graduate from our schools require remediation, and 65 percent of the students in Clark County require remediation. Each Session we add more things to educator's plates that take away time from the fundamentals. This is not specific to this bill, but when we add more requirements to what teachers and schools do, even though the intentions are good, we should focus more on the fundamentals and not use the schools to try and correct every possible thing in society. Skin cancer is the issue we now want to address. Do not get me wrong, this is a good thing to address, and I am supportive of the overall idea behind the bill. But I do not think we should include private schools, and I am not comfortable that bypassing the FDA's recommendations is wise. I will be voting no on this bill.

Roll call on Senate Bill No. 159:

YEAS—19.

NAYS—Hansen.

VACANT—1.

Senate Bill No. 159 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Brooks, the privilege of the floor of the Senate Chamber for this day was extended to Angelica Ayala, Geisell Ayala, Michael Collins, Gary Glover and Jorge Gonzalez.

On request of Senator Cancela, the privilege of the floor of the Senate Chamber for this day was extended to Susan Anable, Alee Brooks, Peter Frigeri, Leonard Jackson and John Wolfe.

On request of Senator Cannizzaro, the privilege of the floor of the Senate Chamber for this day was extended to Josset Alvarez, Dora Crane, John Hoaglundwill and Keith Rowley.

On request of Senator Denis, the privilege of the floor of the Senate Chamber for this day was extended to Laura Forsythe, Rudy Zamora and Sandra Moore King.

On request of Senator Dondero Loop, the privilege of the floor of the Senate Chamber for this day was extended to Riley Casperson.

On request of Senator Goicoechea, the privilege of the floor of the Senate Chamber for this day was extended to Pam Harrington.

On request of Senator Hammond, the privilege of the floor of the Senate Chamber for this day was extended to Aura Ortiz, Liz Sandoval and Howard Wilson.

On request of Senator Hansen, the privilege of the floor of the Senate Chamber for this day was extended to Donna Kapala and William Roth.

On request of Senator Hardy, the privilege of the floor of the Senate Chamber for this day was extended to Roberta Ohlinger-Johnson, Jacqueline Sosa and Veronica Tubbins.

On request of Senator Harris, the privilege of the floor of the Senate Chamber for this day was extended to Pesach Kremin, Victoria Ortiz, Chelsea Phillips and Michael Willoughby.

On request of Senator Kieckhefer, the privilege of the floor of the Senate Chamber for this day was extended to Naleia Abbie, Alicia Aguilar, Yuliana Renteria Aguilera, Daniel Alvarado, Malia Alvarado, Noah Bean, Kia Benton-Holt, Taylor Brockelsby, Zachary Carpenter, Michelle Gonzalez Castro, Drew Coburn, Dylan Cooley, Anthony Cox, Tyler Currier, Michael Ellis, Samantha Ericksen, Mollie Frazer, Alexandfer Lavelle Garcia, Kkayla Germain, Josue Gomez, Jeremy Hernandez, Angel Hottendorf, Malaina Hutson, Ari Iza, Jaelani Jenkins, Arlette Castaneda Jimenez, Ayden Johnson, Jay Keller, Carter Kelly, Lillian Kolb, Troy Lannom, Audreanna Locatelli, Zack Lopez, Gabriel Lucas, Edwin Manzano, Katherine Mariscal, Esau Torres Marquez, Enrique Curt Martinez, Mclahnd Jones McBroom, Brookelyn McGee, Kenia Medina-Rojas, Sara Mitchell, Benjamin Morrison, Vielka Lopez Munguia, Brendin Munoz, Hong Chau Nguyen, Kiara Nunez-Sanchez, Navi Ochoa, Emmanuel Pineda, Paris Robbins, Ashley Ortiz Rodriguez, Gya Sanchez, Kaitlyn Samaniego, Lorrell Service, Noah Silverberg, Nestor Solis-Lara, Isabella Stagliano, Arwen Vela and Hayden White.

On request of Senator Ohrenschall, the privilege of the floor of the Senate Chamber for this day was extended to Alexa Aispuro, Jose Luis Aispuro, Katherine Cortez, Kevin Eppenger, Alma Rubi Loaiza and Robert Teuton.

On request of Senator Parks, the privilege of the floor of the Senate Chamber for this day was extended to Mayor John Lee, Jacob Meneses and Juan Robledowill.

On request of Senator Ratti, the privilege of the floor of the Senate Chamber for this day was extended to Beatriz Uribe Acordagoitia, Jeff Bryant, Jesse Loeb and Cassandra Rivas.

On request of Senator Scheible, the privilege of the floor of the Senate Chamber for this day was extended to Barbara Ambrose, Guillermo Barahona, Heather Brown, Mindy Lockshin, Anne Pearson, Ellen Stokes and the Nevada Conservation League.

On request of Senator Seevers Gansert, the privilege of the floor of the Senate Chamber for this day was extended to Douglas Davidson, Ruth Flack and Shelby Riley.

On request of Senator Settelmeyer, the privilege of the floor of the Senate Chamber for this day was extended to Norris Easley, Lisa Foley and Sam Vanderhoof.

On request of Senator Spearman, the privilege of the floor of the Senate Chamber for this day was extended to Bishop Bonnie Radden, Pam Goins, Katie Lynn, Paula Novack, Jocelyn Torres and Kristina Whitney.

On request of Senator Woodhouse, the privilege of the floor of the Senate Chamber for this day was extended to Linda Gentry, Lynn Lakers, Ken Rabe and Heriberto Ramos.

Senator Cannizzaro moved that the Senate adjourn until Wednesday, March 13, 2019, at 11:00 a.m.

Motion carried.

Senate adjourned at 12:31 p.m.

Approved:

MOISES DENIS

President pro Tempore of the Senate

Attest: SHERRY L. RODRIGUEZ

Assistant Secretary of the Senate