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The 2017 Session of the Nevada Legislature and the Failure of Higher Education Reform

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Executive Summary

This report analyzes 11 bills introduced during the 79th Session of the Nevada Legislature that proposed to reorganize, reform, and realign various aspects of the state’s higher education system.

The analysis reveals the following:

▪ Despite bipartisan support for higher education reform, nearly all of the reform bills failed, including two bills vetoed by Governor Brian Sandoval.

▪ The failure to enact meaningful reform stands in contrast to the implementation of bills appropriating more resources for higher education.

▪ Opposition to reform legislation was strongest among those most invested in legitimizing and perpetuating current arrangements.

The report also considers the institutional and cultural factors that reinforce these outcomes.

These factors include:

▪ The mismatch between legislative capacity and the demand for policy reform.

▪ The selective manner in which higher education officials engaged in the Legislature.

▪ Misconceptions about the components of the state’s land-grant institution and the Board of Regents’ constitutional carve out prohibiting legislative action.

The report concludes with policy recommendations for the Nevada Legislature.

Foremost among these are:

▪ The second passage of AJR 5, an override of the AB 407 veto, and reintroduction and passage of the failed reform bills.

▪ Separation of the governance of the two- and four-year colleges from the branches of the state university, reduction in the size of the Board of Regents, and reorganization of the administration of higher education.

▪ Developing separate funding formulas for the universities and the two- and four-year colleges, and adding funding weights for courses completed by first generation, minority, and Pell Grant eligible students.

▪ Creation of the Assembly and Senate Higher Education and Economic Development Committees to improve legislative oversight and coordination.

▪ Elevation of Great Basin College to a four-year institution and realignment of the two and four-year colleges’ service areas to facilitate regional economic integration.
Introduction

The Nevada Legislature implemented a number of reforms to K-12 education in recent sessions. Most notably, legislators increased educational funding and more effectively aligned this support with the state’s demography. They created organizations for the management and recruitment of charter schools and individual schools within the state’s largest school district, the Clark County School District, and districts acquired greater autonomy over budgetary and personnel decisions.

In light of Nevada’s emergence from the Great Recession and the state’s recent investments in a number of economic development initiatives—many requiring a better trained and educated workforce—the 2017 session of the Nevada Legislature provided an important opportunity to rethink higher education. During the session Democratic and Republican Legislators introduced a number of bills proposing to reorganize, reform, and realign various aspects of the state’s higher education system.

Yet, despite these efforts, at the end of the session higher education in Nevada remains unreformed. As a consequence, Nevada continues to use the same unitary higher education structure that delivers one of the lowest shares of college educated populations in the country and is one of the least efficient in producing college graduates.\(^1\)

Unlike funding for K-12, where Nevada ranks at or near the bottom of the 50 states, Nevada’s funding for higher education is above the national median.\(^2\) In recent sessions of the Nevada Legislature, including the 2017 session, funding for higher education increased. However, no meaningful reforms or increased accountability accompanied these increases.

The purpose of this brief is to examine why efforts to reform higher education in the 2017 legislative session proved unsuccessful. To place this discussion in context, we first consider two recent reform efforts—the revisions made to the higher education funding formula during the 2011-2012 interim session and the 2013-2014 interim study that examined the governance, funding, and missions of the state’s “community colleges.” In both instances, Nevada higher education officials undermined reform efforts through a series of machinations that included the presentation of plagiarized and fabricated material to legislative committees and the withholding of information that reflected poorly on the higher education system. Exposure of this embarrassing behavior by *Las Vegas Review-Journal* reporter Bethany Barnes eventually led to the resignation of Nevada System of Higher Education Chancellor (NSHE) Dan Klaich.

Next, we consider 11 higher education bills introduced during the 2017 session. Our presentation of the legislative deliberations of these bills suggests that there is significant interest in reforming higher education, but reform efforts are thwarted by those most invested in legitimizing and perpetuating the status quo. To this end, the brief details statements offered by NSHE bureaucrats, members of the Board of Regents of the University of Nevada, administrators at the University of Nevada, Reno (UNR), and others opposing changes to the governance, administration, and funding of higher education. In the brief’s conclusion, we consider the institutional and cultural factors that reinforce these outcomes. We also offer a series of policy recommendations for the 2019 legislative session to reform the governance and administration of higher education in Nevada.
Recent Higher Education Reform Efforts

Since the late 1960s, when the Board of Regents of the University of Nevada voted to give UNLV co-equal status to UNR and the state’s first community college began operating in Elko, the issues of equitable funding and governance have perennially plagued Nevada’s unitary higher education structure.

By unitary structure, we mean a system of higher education with a single governing board, a single administrative agency, and in the case of Nevada, a single funding source used to appropriate state general fund revenue for higher education. While no two states’ higher education systems are identical, the characteristics of Nevada’s system are most similar to the systems used in Alaska, Hawaii, and North Dakota, states with the combined population of Nevada. However, Nevada is the only state in the country where a single elected board governs all public higher education institutions.

The most recent effort to address long-standing funding inequities between the better resourced northern institutions, particularly UNR, and the newer, fast growing southern institutions began in the 2011 legislative session when Senator John Lee (District 1, Clark County) introduced SB 374 proposing to redirect Clark County property taxes to support the College of Southern Nevada (CSN). The bill was amended to create an interim study committee to revise the funding formula used to appropriate the operating budgets for the two branches of the state university, UNLV and UNR, and the state’s two- and four-year colleges, Nevada State College (NSC), CSN, Great Basin College (GBC), Western Nevada College (WNC), and Truckee Meadows Community College (TMCC).

An analysis examining the development and implementation of the new funding formula released by The Lincy Institute and written by one of the authors of this report put forth the following conclusions.

First, the new formula achieved a number of political goals. By using the same metric (the weighted student credit hour (WSCH)) as the basis to generate the teaching institutions’ operational budgets the new formula is more transparent than its predecessor. The formula reduced, but did not eliminate, the subsidies to some of the smaller northern institutions. As a consequence, the northern two and four-year colleges continue to receive more funding on a per full time equivalent (FTE) student basis compared to their southern counterparts even though the formula increased the operational budgets for CSN and NSC. Funding for UNLV also increased. By moving programs that were previously supported through the formula to UNR’s statewide programs budget, UNR’s operating budget was held harmless.

Second, once higher education funding that is appropriated outside of the formula and changes to the accounting of student fees are considered, UNR was the largest benefactor of the implementation of the new formula, not the institutions in Southern Nevada. In fact, UNR gained more in funding outside of the formula for the 2014-2015 biennium than the combined net changes in the funding appropriated to the six other teaching institutions. Even now, in the third biennium in which the funding formula is being used, UNR continues to receive more funding per FTE than UNLV. For instance, the US Department of Education’s Integrated Postsecondary Education Data System (IPEDS) reports that for 2015-2016 (the last year for which data are available) Nevada appropriated $8,722 per FTE in state funding to UNR, compared to $7,172 appropriated to UNLV.
Third, it is unlikely that the pricing taxonomy underlying the formula captures the costs for delivering higher education in Nevada. Even though two consultants were hired to assist with the development of the funding formula, one by the Legislature and one by NSHE, a cost study was never conducted. Instead, NSHE developed the formula using cost estimates derived from states that have little in common with Nevada. Moreover, by weighting upper division and graduate courses significantly more than lower division and vocational courses, the formula places the two and four-year colleges at a significant disadvantage relative to the universities. The two and four-year colleges are further handicapped by the manner in which the formula accounts of F grades for non-attendance. As is discussed below, in an effort to address some of these inequities, during the 2017 session, legislators appropriated $20 million to support career and vocational training at CSN, GBC, WNC, and TMCC.

Fourth, to try to accommodate within the same formula the teaching institutions’ vastly different missions, services areas, and constituencies, the formula treats all institutions the same, while simultaneously treating them differently. That is, included in the formula are “small institution” carve outs for GBC and WNC and research carve outs for UNLV and UNR. As with the case with the costs underlying the formula’s cost structure, no analysis exists to determine if the carve outs are necessary or how much funding they actually require.

Fifth, the formula does not provide funding to facilitate the retention and degree completion of students most at risk of failing to complete their degrees such as first-generation college students or those from impoverished backgrounds. Rather, part of each institution’s operational budget is withheld, and institutions can earn these funds back if they meet institutional specific performance goals including graduating minority students and Pell Grant recipients. The hold back was initially five percent, but has now increased to 20 percent of the teaching institutions’ formula appropriations.

Given the historical regional inequities in higher education funding, the meetings of the study committee were contentious in large part because of information asymmetry. Despite requests from the study committee that campus presidents participate in the process, NSHE, through the enforcement of its “gag order” (see below and note 56), prohibited representatives from the institutions from providing input into the formula’s development. This maneuver allowed NSHE officials to aggressively push the system’s priorities, while depriving the committee of information about how NSHE’s preferred policies might affect the individual institutions.

Concerns about the behavior of NSHE officials during the formula study were well warranted. As part of a series of investigations into NSHE by Bethany Barnes, a reporter at the Las Vegas Review-Journal, it was later revealed that throughout the 2011-2012 interim study NSHE officials plotted at great length to deceive legislators, and to ensure that NSHE’s policy priorities formed the basis of the formula.

For instance, based upon emails obtained via a freedom of information request, Barnes reported that unbeknownst to the committee chair, Senator Steven Horsford (District 4, Clark County), NSHE staff members were working with a consultant, the National Center for Higher Education Management Systems (NCHEMS), months before the committee selected SRI International to assist the committee with its work. In early January NSHE staff members briefed Regents serving on the study committee about NSHE’s efforts to shape the formula. Contained in the emails obtained by Barnes is a January 5, 2012 exchange between, Crystal Abba, NSHE Vice Chancellor for Academic & Student Affairs, and Dennis Jones from NCHEMS with the subject line “Proposed Funding Model for Higher Ed in Nevada
– please review.” Copied on the exchange are Chancellor Klaich, former Chancellor Jane Nichols, and other senior NSHE staff members.

Dennis – You’re the best – thanks for the quick response. All good suggestions that we will incorporate. We met with some of the regents who are on the formula committee this morning and it could not have gone better – they ate it up! Miracles never cease.

Thanks again,

Crystal

To this, Jones replied:

Obviously you all did a great job of making the Chancellor sound like he knows what he’s selling—a form of miracle in its own way.

Nichols then replied:

...Dan [Klaich] you own this now and sold it amazingly. Dennis, none of this would have happened except for your coming and helping us buy into this concept.

Barnes also uncovered evidence that at the end of the study committee’s deliberation Chancellor Klaich submitted to the committee a memo purported to be written by NCHEMS. The memo defended NSHE’s favored policies in light of concerns raised by the committee about NSHE’s recommendations. However, far from being the independent analysis that Chancellor Klaich claimed it to be, the memo was written by NSHE staff members on NCHEMS’ letterhead.

This revelation came after the exposure of details of other NSHE subversions that took place during the 2013-2014 interim study examining the governance of the two and four-year colleges (discussed below). However, instead of firing Klaich for cause, the Regents accepted Klaich’s resignation. During a May 2016 Board meeting Regents praised Klaich for his leadership and voted to pay out the remainder of his $300,000 plus per year contract.10

In implementing the new formula during the 2013 session, Governor Brian Sandoval’s 2014-2015 proposed budgets included some, but not all, of the study committee’s recommendations. In response, the Legislature made a number of changes to the higher education budget including reversing a NSHE recommendation included in Governor Sandoval’s budget to redistribute $6.2 million in funding from the southern institutions to GBC and WNC. The Legislature also reduced some of the increases to UNR’s statewide programs budget, increased funding for the UNLV School of Law and the UNLV School of Dental Medicine, and redistributed funding from CSN and NSC to increase support for UNLV’s research mission.

During the 2013 session the Nevada Legislature also considered legislation seeking to reform the governance and administration of higher education. SB 391 introduced by Senator Barbara Cegavske (District 8, Clark County) proposed to transfer the administration of the “community colleges” (CSN, GBC, TMCC, and WNC) to the Department of Education. The bill was amended in the Senate to establish an interim study examining the governance structure of and funding for the “community colleges” and “requiring the committee to determine the advisability of transferring the administration of community colleges to the Department of Education.”

After the Senate adopted the amendment, the bill was re-referred to the Senate Finance Committee even though the fiscal notes placed against the bill, including one by NSHE (see note 24), applied to
the original version of the bill. The Senate Finance Committee, chaired by Senator Debbie Smith (District 13 Washoe County), considered an amendment to SB 391 that was adopted into the final version of the bill. The amendment eliminated language “requiring the committee to determine the advisability of transferring the administration of community colleges to the Department of Education” and added language establishing the “Subcommittee on Governance and Funding” and the “Subcommittee on Academics and Workforce Alignment.” The amendment also required that NSHE “provide administrative and technical assistance” and significantly expanded the study committee’s membership, including the appointment of two Regents.

Table 1: Summary of Higher Education Governance Studies and Legislation, 1968-2017*

<table>
<thead>
<tr>
<th>Year</th>
<th>Bill and/or Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>Recommendations for Community College Education in the State of Nevada: A Report to the Superintendent of Public Instruction by Arthur D. Little Company</td>
</tr>
<tr>
<td>1971</td>
<td>State Plan for Community Colleges in the State of Nevada by the Community College Division of the University of Nevada System, adopted by the Board of Regents</td>
</tr>
<tr>
<td>1977</td>
<td>ACR 44: Directing the Legislative Commission to study the Community College Division of the University of Nevada System</td>
</tr>
<tr>
<td>1979</td>
<td>SJR 12: Authorized the Legislature to create a five-member board of trustees for a system of community colleges, passed the Senate, died in the Assembly</td>
</tr>
<tr>
<td>1983</td>
<td>AJR 3: Separate governance for the community colleges, died in the Assembly</td>
</tr>
<tr>
<td>2002</td>
<td>The Road Less Traveled: Redesigning the Higher Education System of Nevada by RAND, Council for Aid to Education</td>
</tr>
<tr>
<td>2011</td>
<td>Fresh Look at Nevada Community Colleges by NSHE Chancellor Task Force</td>
</tr>
<tr>
<td>2011</td>
<td>AB 449: Economic Development</td>
</tr>
<tr>
<td>2011</td>
<td>Unify, Regionalize, Diversify: An Economic Development Agenda for Nevada by The Brookings Institution, Brookings Mountain West, and SRI International</td>
</tr>
<tr>
<td>2011</td>
<td>SB 374: Funding of Higher Education Interim Study Committee</td>
</tr>
<tr>
<td>2011</td>
<td>Report to the Nevada Legislature’s Committee to Study the Funding of Higher Education by SRI International</td>
</tr>
<tr>
<td>2013</td>
<td>SB 391: Committee to Conduct an Interim Study Concerning Community Colleges</td>
</tr>
<tr>
<td>2013</td>
<td>Understanding Nevada’s Higher Education Governance for Two-Year Colleges: Challenges and Solutions, The Lincy Institute, University of Nevada, Las Vegas</td>
</tr>
<tr>
<td>2013</td>
<td>The Case for a New College Governance Structure in Nevada: Integrating Higher Education with Economic Development, The Lincy Institute, University of Nevada, Las Vegas</td>
</tr>
<tr>
<td>2017</td>
<td>AB 331: Separate governance and administration for two and four-year colleges, died in Assembly</td>
</tr>
<tr>
<td>2017</td>
<td>AJR 5: Remove the Board of Regents from the Nevada Constitution, passed Assembly and Senate and to be reconsidered during the 2019 session of the Nevada Legislature</td>
</tr>
</tbody>
</table>


The 2013-2014 interim study committee was yet another in a long list of efforts to reform the governance and administration of the state's two and four-year colleges. As Table 1 details, since the
late 1960s, when the Elko County School District established the first two-year college in Nevada, legislative study committees examined these issues and there have been a multitude of studies and reports from governmental and non-governmental entities recommending how to reform and align the governance and administration of these institutions to better fulfill their missions. On a number of occasions, the Nevada Legislature, including during the 2017 session, considered legislation to this effect.

Not only did all of these efforts fail, but, on many occasions, the state took steps that directly contradicted the recommended policies. For example, the 1968 report from Arthur D. Little Company recommended a separate community college structure and board; a recommendation that is shared by most if not all of the reports conducted by non-governmental entities summarized in Table 1. The 1971 report by the short-lived “Community College Division of the University of Nevada System” recommended against two-year colleges becoming four-year institutions and recommended that these institutions emphasize vocational training. Today, CSN, GBC, and WNC all provide a mix of certificates and two- and four-year degrees. In fact, TMCC is the only institution that aligns with the typical mission of a community college, that is: an institution that provides certificates to assist with workforce development efforts, two-year degrees, remediation, and general education credits that are transferable to a four-year institution.

Failing to act on the recommendations, Nevada has instead used variations of the “system within a system” model. This was tried in early in the 1970s, but was quickly scuttled by the Regents over concerns about the direction of the “Community College Division.” Despite the failure of the model, the 1978 legislative study report recommended a similar reorganization and the creation of advisory boards. The 2013-2014 interim study report also recommended support for “the concept of community college operating in a system within a system,” “for the creation of a vice chancellor position with NSHE to act as a coordinator of community colleges and an advocate for the colleges within the system, as well as the establishment of a standing committee of the Board specifically focused on community colleges.”

That the 2013-2104 interim study committee recommended recycling the same “reform” that has been tried previously is not a surprise. The amendment to SB 391 requiring NSHE’s participation in the committee ensured that NSHE would have the opportunity to control the information the committee received and by extension, shape the committee’s recommendations. However, what was not known at the time was the malfeasance underlying the “administrative and technical assistance” that NSHE provided to the committee.

As part of her investigation, Bethany Barnes uncovered evidence that one of the documents NSHE submitted to the study committee had been taken word for word from a draft of a report being prepared by the Brookings Institution on behalf of Brookings Mountain West as part of an analysis of science, technology, engineering, and math related jobs in Nevada. Barnes’ reporting also uncovered that NSHE solicited a report from NCHEMS assessing NSHE’s administration of the two- and four-year colleges that was to be presented to the study committee. However, the original draft of the report was highly critical of NSHE’s efforts. In one email uncovered by Barnes, Chancellor Klaich noted, “I could see this report costing me my job. It would certainly undermine my standing and credibility with the presidents and the Regents.” NSHE then ordered the report to be re-written prior to the study committee’s last meeting in June. The revised report was never presented to the committee.
After this information became public, the Regents awarded an outside law firm a $50,000 contract to determine if Chancellor Klaich’s actions violated any policy. After interviews with Klaich, NCHEMS researchers, NSHE staff members, and CSN President Michael Richards (all of who reported directly to Klaich), the report concluded that there had been no wrongdoing. At a September 2015, Board meeting, the Regents cleared Klaich. As we discuss in the following section, some of the reform bills introduced during the 2017 session were a direct response to NSHE’s actions revealed by Barnes’ reporting.14

Higher Education Reform and the 2017 Legislative Session

During the 2017 legislative session numerous bills were introduced seeking to reform various aspects of higher education in Nevada. In this section, we review the content of 11 of these proposals, assess the testimony offered in favor and in opposition to the bills, and summarize the outcome of each piece of legislation.15

Except as noted in endnotes, the material presented in this report is found in the Nevada Electronic Legislative Information System (NELIS) and the Nevada Legislature website maintained by the Legislative Counsel Bureau (LCB).16 NELIS tracks each bill as it moves through the legislative process and provides downloadable files of bill texts and reprints, amendments, work session documents, and fiscal notes, summaries of committee action including agendas, exhibits, and minutes, and if relevant, information about floor votes and gubernatorial action. Starting with the 2015 session, NELIS archives videos of legislative hearings.

A limitation of using material contained in the public record is that we are unable to account for private meetings among stakeholders conducted outside of the public view. To be sure, negotiations between lobbyists and Legislators or between lobbyists, Legislators, and representatives of the executive branch or discussions among Legislators are critical aspects of the legislative process and can determine a bill’s fate. Moreover, it is not uncommon for Legislators to mention such meetings during legislative deliberations. However, as valuable as these data may be, they cannot be examined in a systematic manner and thus, we do not consider them here.

<table>
<thead>
<tr>
<th>AJR 5</th>
<th>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.</th>
</tr>
</thead>
</table>
| **Primary Sponsors** | • Assemblyman Elliot Anderson (District 15, Clark County)  
• Senator Joyce Woodhouse (District 5, Clark County) |
| **Outcome** | • Passed both chambers  
• To be reconsidered in the 80th Session of the Legislative |

AJR 5 is one of two bills introduced (AB 390 is the other) by Assemblyman Anderson and Senator Woodhouse as part of the “Nevada Higher Education Reform Act.”

AJR 5 received significant media attention as it proposes to remove the Board of Regents of the University of Nevada from the Nevada Constitution. The resolution received hearings in the Assembly and Senate Legislative Operations and Elections Committees (March 2, 2017 and May 8, 2017) and work sessions in those committees on April 13, 2017 and May 17, 2017. The bill passed out of both committees with a recommendation of “Amend, and do pass as amended.”
In the work sessions,\textsuperscript{17} committee members supported amendments clarifying that the measure does not prohibit the direct election of Regents (that procedure is in statute), encouraging the Legislature to place in statute protections for academic freedom, and adding a preamble to the resolution that reads, in part:

\textit{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; […]}

\textit{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 […]}

In a presentation accompanying a hearing of the bill before the Assembly Committee on Legislative Operations and Elections on March 2, 2017, Assemblymen Anderson highlighted examples of NSHE's efforts to deceive the Legislature: “In April 2016, the [Las Vegas] \textit{Review-Journal} published an article showing that the Board of Regents purposely stymied efforts by the 2012 Interim Committee to redo the state’s funding formula...NSHE presented ‘findings’ from NCHEMS’s report to the Interim Committee as though they were independent data. However, emails revealed NCHEMS allowed NSHE to write a memo on its own letterhead regarding its research.”

Anderson then reported on the objectives of the legislation, including its intention to both “clarify the Legislature’s constitutional oversight role” and to “insert critical checks and balances.” Anderson also noted that the resolution would ensure that the Legislature would “allow for a full investigation of the malfeasance brought to light by the \textit{Review-Journal’s} April 16, 2016 revelations.”\textsuperscript{18}

Some members of the Board of Regents saw the issue differently. In speaking about the disclosures reported in the \textit{Review-Journal} at a January 2016 special meeting of the Board of Regents called in response to the story, Regent Robert Davidson (District 9, Carson City) suggested that, “The system will thrive so long as the board is not distracted by ‘public criticism or newspapers’. And one of the things we need to really make sure is that higher education is not subject to political change.”

At the bill hearing before the Assembly Legislation, Operations, and Elections Committee, Regent Jason Geddes (District 11, Pershing and Washoe County) also questioned the accuracy of the news accounts and Board of Regents Vice-Chair Allison Stephens (District 4, Clark County) expressed her concerns that if AJR 5 is implemented, “higher education might become a political football like it did when Wisconsin Governor Scott Walker imposed changes in that state... And one of the things we need to really make sure is that higher education is not subject to political change.”

After Regents Geddes and Stephens testified, Chairwoman Olivia Diaz responded by stating, “I take offense that you come before this Committee and tell us that politics gets in the way of good policy. ... I believe that I have worked with colleagues across the aisle to ensure that we move Nevada forward for all of our folks. ... I take offense to your saying that this is a very political atmosphere and
we cannot do our jobs responsibly and shape good policy because we are of different parties. That is not very respectful.”

On April 24, 2017 the Assembly amended AJR 5 and the following day, voted the legislation out of the Assembly with 38 votes in favor and four in opposition. Reno-based legislators cast the four no votes. On May 24, 2017 the Senate amended the bill to add the academic freedom language. On April 25, 2017 the Senate voted to approve the legislation with a vote of 18 to two with one abstention. Senator Gansert (District 15, Washoe County), an administrator at UNR voted no, as did Senator Gustavson (District 14, Esmeralda, Humboldt, Mineral, Nye (Part), Pershing, and Washoe (Part) Counties). Senator Kieckheifer (District 16, Carson City and Washoe County) abstained.

On May 29, 2017 the Assembly concurred with the Senate version of the bill. Because the legislation seeks to amend the Nevada Constitution, it will be reconsidered in the 2019 session, and if the resolution passes a second time, it will be placed on the ballot for a statewide vote in 2020.20

<table>
<thead>
<tr>
<th>AB 16</th>
<th>An act relating to agricultural extension programs; requiring the Treasurer of the Nevada System of Higher Education, in consultation with the President of the University of Nevada, Reno, to submit to the Legislature an annual report regarding cooperative extension work; revising provisions related to the State’s cooperative share of the cost of agricultural extension work; and providing other matters properly relating thereto.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Sponsor</td>
<td>Assembly Natural Resources, Agriculture, and Mining on behalf of the Nevada Association of Counties</td>
</tr>
<tr>
<td>Outcome</td>
<td>Died in the Assembly Ways and Means Committee</td>
</tr>
</tbody>
</table>

AB 16 originated with the Nevada Association of Counties (NACO) due to dissatisfaction with UNR’s administration of Cooperative Extension Service (CES). In hopes of remedying these deficiencies, the bill proposed reporting of CES work to the Legislature and that the state appropriate funding to CES equal to the aggregate county CES contributions. The Assembly Natural Resources, Agriculture, and Mining Committee held a hearing on the bill on March 9, 2017.

At the bill hearing many individuals involved in CES at the county level detailed concerns about CES’s current performance. Humboldt County Commissioner, Jim French (Seat E) noted that because of the transfer of CES funds to the UNR main campus, “The loss of core personnel and programs has reduced the services to my community to that of a shell. Many of the personnel and programs are simply nonexistent at this time.”

Nye County Commissioner Lorinda Wichman (District 1) testified that UNR President Marc Johnson assured her that the consolidation of CES into the UNR College of Agriculture, Biotechnology, and Natural Resources (CABNR) would not reduce services. Eight months after the consolidation “18 of the 24 programs in Tonopah were shut down and the volunteers were told to go home, that their programs did not fit the plans for the new model of Cooperative Extension.” The following year, “the remaining six programs along with their volunteers were eliminated.” She also testified that Nye County provided UNR with $169,293 in county tax revenue for CES and that UNR attributed $76,181 in spending in Tonopah even though there was “no coordinator and no programs operating.”

Sarah Adler, the former Nevada State Director of the U.S. Department of Agriculture (USDA) Rural Development, testified that partnerships between UNR-based CES faculty and the counties were limited at best. She noted that one person with a joint UNR/CES appointment told her “the work he did benefited his research and his lab on campus and had nothing to do with what went on at the
county level,” and after the consolidation of CES into CABNR, a UNR Faculty Senate representative suggested that because “our grant requirements require outreach, and Extension can be our outreach. She meant for her on-campus research goals.”

UNR President Marc Johnson testified in opposition to the bill and sought to use his testimony to “clarify some misconceptions that have been put forward today.” President Johnson, for instance, disputed the notion that the budget for CES had been consolidated into UNR and instead testified that “we consolidated leadership” and that “there is no consolidation of budgeting.”

Budget documents are inconsistent with Johnson’s claim. In 2013 the Board of Regents approved budget maneuvers redirecting funding among various UNR budgets. As a consequence, in 2013 state support for CES decreased from a legislatively funded $6.3 million to $2.9 million, while funding for UNR’s statewide programs budget increased from $4.3 million to $7.8 million. Similar funding levels have carried forward in subsequent budgets. For instance, in fiscal year 2017, state appropriations for CES totaled $3.8 million and UNR’s statewide programs budget increased to $8.1 million.

Johnson also testified that UNR is the only institution in Nevada with land-grant status. Johnson’s claim is at odds with the defining principle of the state’s unified system of higher education governance establishing the UNLV, UNR, and the Desert Research Institute (DRI), collectively, as “the only land-grant institution within the State of Nevada.” When Assemblywomen Maggie Carlton (District 14, Clark County) asked if land-grant status applies to both UNR and UNLV and noted that “UNLV has obtained grants based on being a land-grant institution,” President Johnson responded, “I do not think it does.”

On April 4, 2017, AB 16 received a work session in the Assembly Natural Resources, Agriculture, and Mining Committee to consider an amendment to the bill. The amendment clarified that the work of CES is not limited to agriculture, that CES is overseen by the Treasurer of NSHE, not UNR, and to remove all references to the “Director of the Agricultural Extension Department of the Public Service Division of the University of Nevada, Reno” as no such position exists.

The bill passed out of committee with a recommendation of “Amend, and do pass as amended” and the legislation was exempted from bill passage deadlines due to its fiscal implications. The bill received two fiscal notes, one from NSHE for $10.1 million and one from the LCB on behalf of some county governments (totaling $217,000). After amending the bill on AB 24, 2017, the Assembly re-referred AB16 to the Assembly Ways and Means Committee. The bill was never heard by the committee and died.

<table>
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<tr>
<th>AB 188</th>
<th>An act relating to education; reducing the minimum number of credit hours required per semester for eligibility for a grant awarded under the Silver State Opportunity Grant Program; creating certain exceptions to the credit hour requirement; providing that grant money received by colleges pursuant to the Program does not revert; and providing other matters properly relating thereto.</th>
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<tr>
<td><strong>Primary Sponsor</strong></td>
<td>Assemblywoman Olivia Diaz (District 11, Clark County)</td>
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<td><strong>Outcome</strong></td>
<td>Vetoed by Governor Brian Sandoval</td>
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Legislators enacted the Silver State Opportunity Grant Program (SSOGP) during the 2015 session to provide financial support for students attending NSC, CSN, GBC, WNC, and TMCC. Legislators appropriated $2.5 million per year for fiscal years 2016 and 2017. The Board of Regents determines the size of the awards (currently grants are set at $2,750 per student per semester). To qualify for
the grants, students must be a Nevada resident, complete the Free Application for Federal Student Aid (FAFSA), and enroll in 15 credits at one of the five eligible institutions. As introduced, AB 188 proposed to reduce the credit threshold from 15 credits per semester to nine credits.

AB 188’s sponsor, Assemblywomen Diaz, presented the bill to the Assembly Education Committee on March 13, 2017. In her remarks Assemblywomen Diaz explained that she introduced the bill to expand eligibility to students who are unable to maintain a 15-credit course load because of other obligations such as caregiving and work. In her testimony, the Assemblywoman noted that because of the 15-credit threshold, “94 percent of CSN students cannot qualify for this grant.” Citing a survey of CSN grant recipients, she noted, “more than two-thirds were working while taking 15 hours. Four in five had children at home; two in three were first-generation college students and did not have a clear understanding of the amount of time that it would take to handle a five-course workload. More than half reported that they had to drop a course because of conflicts between work and their family obligations.”

Assemblywoman Diaz also proposed to amend her bill to appease those who felt that a nine-credit threshold was too low. The proposed amendment established eligibility for the grant at 12 credits per semester.25

Among the many individuals testifying in favor of the legislation was Kyle Dalpe, representing TMCC. In his testimony he noted that only 19 percent of TMCC students are eligible for the grant and that “what we are looking for here is a happy medium—whether it is nine credits or 12 credits that would provide access.” Michael Flores, representing CSN, also spoke in favor of the legislation.

There was no testimony in opposition. However, Kent Irvin, a UNR Chemistry Professor and a representative of the Nevada Faculty Alliance, testifying in support stated, “this program is stretched thin as far as having enough money. We cannot wholeheartedly support funding the expansion of programs when enhancements for NSHE institutions are not fully funded in the Executive Budget and when NSHE’s faculty compensation requests have not been fully funded.”26

A report produced by NSHE analyzing the first year of the program found that 36 percent of initial recipients lost eligibility between the fall and spring, including 45 percent of recipients at CSN. Despite the high attrition rate, the report accentuates the benefits of the 15-credit threshold by presenting data indicating that the completion rates for students who took 15 credits in their first semesters was higher (32 percent) compared to students taking 12 to 14 credits (16 percent) or fewer than 12 credits (four percent) in their initial semester. The report concludes by noting that the “Board of Regents and NSHE are not opposed to expanding the program to 12 credits or fewer if the funds are available.” Governor Sandoval’s budget proposed to double the grant to $5 million annually for fiscal years 2018 and 2019. To justify the larger appropriation, the NSHE budget request notes that the funding “should enable the program to expand to serve some students enrolled in at least 12 credits.”27

While much of the report’s methodology and data presentations are ambiguous, its claims about the completion rates of students taking 15-credits became a key talking point of proponents of the status quo, none of whom actually testified in opposition to the bill.28 For instance, during the Assembly Education hearing, Regent Geddes tweeted the exact statistics provided in the report.29 Media reports, however, focused on the fact that supporters of a 12-credit requirement believed the 15-credit requirement restricted access for many Nevadans who worked fulltime and were pursuing non-traditional education paths.30
On April 14, 2017 after considering the amendment establishing the 12-credit requirement, AB 188 passed out of the Assembly Education Committee with a recommendation of “Amend, and do pass as amended.” On April 24-2017 the Assembly amended the bill to establish eligibility at 12 credits. The following day the bill passed the Assembly on a party line vote, 27 Democrats in favor and 15 Republicans opposed.

After Assembly passage the bill was heard in the Senate Education Committee on May 4, 2017. Media reports on the AB 188 hearing before the Senate Education Committee noted that the bill received a “warm reception” and “met little controversy.” As was the case in the Assembly, there was no testimony offered in opposition to the bill.

On May 16, 2017, during a work session the Senate Education Committee passed the bill out with a recommendation of “Do pass.” On the Senate floor two Republicans, Senators Harris (District 9, Clark County) and Hammond (District 16, Clark County), voted with 11 Democratic and one independent senator in favor, 14 to seven.

On May 27, 2017 Governor Sandoval received the bill. On June 1, 2017, Governor Sandoval vetoed the bill and returned it to the Assembly where no further action was taken.

The Governor’s veto message reads, in part, that data “published by the Nevada System of Higher Education clearly shows that students who enroll in 15 credits during the first term of college are significantly more likely to finish” a program and that “AB 188 would undermine one of the primary goals behind the SSOGP [encouraging eligible students to enroll in 15 credits …]” As a consequence of the veto, the vast majority of students attending Nevada’s two and four-year colleges remain ineligible for the program.

### AB 202
An act relating to education; directing the Legislative Commission to appoint a committee to conduct an interim study concerning the cost and affordability of higher education in this State; and providing other matters properly relating thereto.

| Primary Sponsors | ▪ Assemblywomen Amber Joiner (District 24, Washoe County)  
▪ Assemblywoman Lesley Cohen (District 29, Clark County) |
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<tr>
<td>Outcome</td>
<td>▪ Approved by Governor Brian Sandoval</td>
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As originally introduced, AB 202 proposed to extend eligibility for the SSOGP to students enrolled at UNLV and UNR. The Assembly Education Committee held a hearing on the bill on March 15, 2017. The bill’s main sponsor, Assemblywoman Joiner (District 24, Washoe County), used her testimony to propose an amendment directing the Legislative Commission to appoint a committee to conduct an interim study of college affordability in the state.

In her testimony, Assemblywoman Joiner explained that she was proposing to amend the bill because the costs of extending the SSOGP to students attending all NSHE institutions were prohibitive. However, most if not all of the testimony offered by students and administrators was in support of the original version of the bill. In particular, testimony focused on the increasing costs of higher education and how these costs made it difficult for students to complete their degrees.

In a work session on April 10-2017, the Assembly Education Committee supported the amendment establishing the interim study committee and reported AB 202 out of committee with a recommendation of “Amend, and do pass as amended.” The amendment was adopted in the Assembly on April 19, 2017 and passed out of the Assembly on a 41 to one vote on April 25, 2017.
The Senate Education Committee heard the bill on May 9, 2017 and on May 16, 2017 the committee moved the bill to the Senate floor with a recommendation of “Do pass.” The Senate voted in favor of the bill 20-1 and on May 26, 2017 Governor Sandoval approved the bill establishing the interim committee. In the Senate the lone vote in opposition to the bill was from Senator Gustavson. The Senator was also the only vote against the bill in the Senate Education Committee where he stated that he was not supporting AB 202 “because we do not need any more interim studies at this time.”

AB 331

An act relating to education; creating the Nevada System of Community Colleges; creating the State Board for Community Colleges to administer the community colleges within the System and supervise and control the System separate from the Nevada System of Higher Education; providing for the appointment by the Governor of the membership of the Board; establishing the powers, duties and responsibilities of the Board; authorizing the Board to employ an Executive Director and delegate to the Executive Director any of the powers and duties of the Board; providing for the creation of and the appointment by the Governor of the membership of a board of trustees for each community college within the Nevada System of Community Colleges; establishing the powers, duties and responsibilities of the boards of trustees of the community colleges; providing for the selection of a president for each community college; establishing the Articulation and Transfer Board; transferring to the Board and to the boards of trustees of the community colleges, as applicable, the powers and duties of the Board of Regents of the University of Nevada relating to the supervision and control of community colleges; providing penalties; and providing other matters properly relating thereto.

<table>
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<tr>
<th>Primary Sponsor</th>
<th>• Assemblyman Ira Hansen (District 32, Esmeralda, Humboldt, Lander, Mineral, Nye (Part), Pershing, and Washoe (Part) Counties)</th>
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<tr>
<td>Outcome</td>
<td>• Died in the Assembly Education Committee</td>
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AB 331 stands as the most ambitious of the higher education reform bills introduced during the 2017 session. However, the bill’s proposal to separate Nevada’s two- and four-year colleges from the branches of the state university (UNLV, UNR, and DRI) is consistent with a long series of reports and analyses suggesting that a bifurcated higher education system would be more effective than the current unitary structure (see Table 1).³³

In addition to establishing a separate appointed governing board and administrative structure, the bill proposed to create a board of trustees for each two- and four-year institution, and to create a statewide board to manage transfers and articulation.

The Assembly Education Committee heard the bill on April 3, 2017. In presenting the bill, Assemblyman Hansen testified that higher education “in Nevada is not working efficiently or equitably when it comes to community colleges as compared to universities. When our community colleges were first established in the late 1960s...[T]he decision was made at that time to house all of our community colleges and universities under one governing system. Nevada has grown, and its higher education system has grown as well. What worked in 1968 is no longer working today.”

Three former college presidents, Carol Lucey (WNC, 1999-2013), John Gwaltney (TMCC, 1986-1995), and Ron Remington (GBC, 1989-2001, CSN 2001-2004), testified in support of the legislation. In their testimony the former college leaders highlighted the inability of campus presidents under the current system to advocate for their schools, explained the benefits of local governance boards, and noted that the efforts recently promoted by NSHE and the Board of Regents to improve governance and administration of the state’s “community colleges” had all been attempted previously and failed.
Four current college presidents, Mark Curtis (GBC), Michael Richards (CSN), Chester Burton (WNC), and Karin Hilgersom (TMCC), testified in opposition to the bill. The presidents offered a variety of reasons for their opposition including the fact that the bill did not provide additional resources for the effected institutions. Additionally, they argued that the bill would make the colleges’ financial situations worse, that NSHE was making progress in elevating the “community colleges,” and that the bill would lead to micromanagement of individual institutions.

No representatives of the Board of Regents or NSHE testified. In an exchange with the bill’s sponsor, Assemblyman Edgar Flores (District 28, Clark County) asked why higher education officials were not testifying given the significance of AB 331. When Assemblyman Hansen indicated that he did not know, Assemblyman Flores asked Assemblyman Hansen about any communications he had with NSHE representatives. Assemblyman Hansen responded “they [NSHE] have not reached out to me and said a word to me about this bill.”

AB 331 received ten fiscal notes, including one from NSHE, making AB 331 eligible for exemption. However, the Assembly Education Committee took no further action prior to the First House Committee Passage deadline and the bill died.

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<th>AB 390</th>
<th>An act relating to state governmental administration; prohibiting a state agency from taking certain actions against a state officer or employee who makes certain disclosures of improper governmental action to the Legislature; creating the Spending and Government Efficiency Commission for the Nevada System of Higher Education; prescribing the membership and duties of the Commission; and providing other matters properly relating thereto.</th>
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</table>
| Primary Sponsors | Assemblyman Elliot Anderson (District 15, Clark County)  
Senator Joyce Woodhouse (District 5, Clark County) |
| Outcome | Died in the Senate Legislative Operations and Elections Committee |

AB 390 was the companion bill to AJR 5 constituting the “Nevada Higher Education Reform Act.” The bill proposed whistleblower protections for state employees, to provide an annual salary of $20,000 for members of the Board of Regents of the University of Nevada (they are currently compensated $80 per meeting), and to create the SAGE (Spending and Government Efficiency) Commission for higher education.

At the bill hearing before the Assembly Government Affairs Committee on April 6, 2017, Assemblyman Anderson proposed an amendment to the legislation to narrow some of the language by clarifying that the whistleblower protections only applied to instances when false information was disseminated by a state agency to the Legislature. In his testimony, Assemblyman Anderson explained that he would like to extend the provision to college and university presidents, but that this was not allowed under the Nevada Constitution. In his testimony, the Assemblyman explained the rationale for providing a salary for the regents; he explained that because the Regents, like Legislators, are part-time, they are dependent upon staff for information. “We need to ensure the people who supervise NSHE and the bureaucracy have the ability to manage it so they are not being managed by it.” By providing a salary, the hope was that regents would “have some ability to keep their focus.”

NSHE Interim Chancellor John White, WNC President Chester Burton, Karin Hillgerom, the President of TMCC, Michael Flores, representing CSN, and Luis Valera, representing UNLV, offered opposition testimony. UNR Chemistry Professor Kent Ervin testified on behalf of the Nevada Faculty Alliance in
the neutral position. Representatives from NSHE and the Board of Regents also provided information to the committee. Opponents to the legislation contended that higher education is different from other government agencies and that subjecting NSHE to a SAGE Commission would undermine shared governance between faculty members and administrators. Others suggested that NSHE institutions are already subject to multiple levels of oversight and that administrators were constantly looking for ways to improve efficiency.

In a work session on April 12, 2017, the Assembly Government Affairs Committee considered an amendment to the bill clarifying some of the bill’s language. To remove the fiscal note that NSHE placed against the bill, the amendment also eliminated the language providing the Regents with a salary. The bill passed out of committee with a recommendation of “Amend, and do pass as amended.” On April 24, 2017 the bill was amended on the Assembly floor and the Assembly unanimously passed the bill the following day.

AB 390 was then heard, along with AJR 5, in the Senate Legislative Operations and Elections Committee on May 8, 2017. The hearing was extensive, lasting well over an hour. NSHE Interim Chancellor John White, Board Chair Rick Trachok (District 10, Washoe County), Regent Sam Lieberman (District 5, Clark County), Regent Cedric Crear (District 1, Clark County), WNC President Chet Burton, and Kyle Dalpe, representing TMCC, testified in opposition. Nevada Faculty Alliance representative Kent Irvin also testified in opposition (after testifying neutral when the legislation was in the Assembly).

In his closing remarks, Assemblyman Anderson noted that while the whistleblower language in AB 390 applied to all state employees, “there were no other state agencies here complaining about this measure today.” He also stated that every other state agency appeared before a SAGE Commission in 2009 or 2015 and that the bill “is not asking for anything that any other state agency hasn’t done or is willing to do at this point.

Although the Senate Legislative Operations and Elections Committee passed AJR 5 out of committee, the committee took no action on AB 390 prior to May 19, 2017 the deadline for Second House Committee Passage and the bill died.

<table>
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<tr>
<th>AB 407</th>
<th>An act relating to the Nevada System of Higher Education; designating certain institutions within the Nevada System of Higher Education as the state land grant institutions; requiring the Legislative Auditor to conduct a performance and compliance audit of the cooperative extension program of the System; and providing other matters properly relating thereto.</th>
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<tr>
<td>Primary Sponsor</td>
<td>Assemblywoman Olivia Diaz (District 11, Clark County)</td>
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<tr>
<td>Outcome</td>
<td>Vetoed by Governor Brian Sandoval</td>
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AB 407 was the second bill introduced during the session proposing to reform the operation of the UNR administered CES. The bill in its original form proposed to regionalize the administration of CES. UNLV would administer CES work performed in Clark, Lincoln, and Nye Counties and UNR would continue to direct CES work performed in the other 14 counties. The legislation builds on recent efforts to regionalize the delivery of governmental services such as economic development, workforce training, and medical education in Nevada.

Adding further motivation for the bill was a series of reports detailing CES’s performance in Southern Nevada. Research conducted by The Lincy Institute, including by the authors of this report, found that CES was one of the least connected non-profit organizations in the region despite its substantial
budget and staff and that the lack of collaboration between CES and other branches of the state university and the use of the CES facility in Clark County to house UNR’s undergraduate recruitment operations is atypical of how CES operates in similarly situated states. The research also detailed that CES in Clark County maintains a rolling surplus of $12 to $13 million in local property taxes. To help Legislators understand how a UNLV-administered CES in Southern Nevada would operate, the research outlined the type of programming that UNLV would pursue including partnerships with faculty members at CSN and NSC.

The Assembly Education Committee heard the bill on March 27, 2017. In presenting the bill, AB 407 sponsor Assemblywoman Diaz testified that while the current system might have served the state’s needs in the past “the new Nevada needs a cooperative extension system that reflects our diverse communities and our different and distinct regional economies.” Assemblywoman Diaz invited UNLV Professor Robert E. Lang, the Director of Brookings Mountain West and The Lincy Institute, a Senior Fellow at the Brookings Institution, and one of the authors of this report, and James Bilbray, a former Regent and member of Congress, to explain to the committee the history of Nevada’s land-grant institution and to detail UNLV’s capacity to administer the program.

Clark County Commissioners Marilyn Kirkpatrick (District B) and Chris Giunchigliani (District E) testified in support of the bill. In their testimony, they explained that as a consequence of the consolidation of CES on the UNR campus, input by local governments was limited and the programming needs of Southern Nevada’s rural and urban counties are not recognized by the UNR Department of Agriculture (now the UNR College of Agriculture, Biotechnology, and Natural Resources).

They also testified that the lack of responsiveness to local needs is why Nye County pulled out of the program and why Clark County considered doing the same. To increase local input, the commissioners proposed the creation of local advisory boards reporting to the presidents of UNLV and UNR and the establishment and enforcement of memorandums of understanding between CES and the county governments detailing the specific programs that CES would provide in each county. Representatives of the Latino Leadership Council, the City of North Las Vegas, the City of Las Vegas, and the Las Vegas Metro Chamber of Commerce also testified in support of the bill.

UNR President Marc Johnson and Mark Walker the Director of Cooperative Extension and a faculty member at UNR testified in opposition, as did Constance Brooks, NSHE Vice-Chancellor of Government & Community Affairs, and representatives of NACO and the Nevada Faculty Alliance. In his testimony, President Johnson again claimed that CES “received significant budget reductions.” As was noted in the discussion of AB 16, funding for CES was actually redirected to other UNR budgets.

He also claimed that UNR rents its recruiting space and there is “no program recruitment within the Clark County extension [building],” before clarifying that “the recruitment activity happens with individuals who happen to be housed in the Cooperative Extension building.” When asked by Assemblyman William McCurdy II (District 6, Clark County) about where the funding to pay for the recruitment operation came from, President Johnson responded, “the rent for the recruiting office is paid for by our teaching funds.” Budget documents indicate that the recruitment operation, including employee salaries, is funded by UNR’s Statewide Programs budget.

In asking President Johnson about what qualifies as a land-grant institution, a necessary condition for a campus to administer CES, Assemblyman Anderson stated:
Present Johnson responded, “I have a letter from Dr. Sonny Ramaswamy, the Director of NIFA [National Institute of Food and Agriculture], the agency that connects with all the states and territories for their land-grant activities...It says they recognize UNR as their land-grant connection.”

At the end of the hearing, Assemblywoman Diaz explained that during the hearing of AB 16 before the Assembly Committee on Natural Resources, Agriculture, and Mining on March 9, 2017, “Marc Johnson was asked by one of the Committee members if land-grant status applies to UNLV... Mr. Johnson replied, ‘I do not think it does.’”

Assemblywoman Diaz then asked a representative of the LCB Legal Division “to weigh in on who determines who has land-grant status. Is it the USDA or the Nevada Legislature?” In response, Barbara Erdos, the head of the LCB Legal Division responded, “It is the opinion of my office that land-grant status is simply established. There is an Attorney General opinion, AG0556 (1-23-1969) that agrees with it. It says the University of Nevada system has land-grant status, and that it includes UNR, UNLV, and DRI.”

Luis Valera, representing UNLV, testified in the neutral position. He used his remarks to address earlier question from Assemblyman Flores regarding UNLV’s capacity to administer CES. Valera responded by stating that “we do have the assets and resources to take over whatever role we asked to take on.” When asked by Assembly Pickard (District 22, Clark County) if UNLV would not need additional money, Valera answered, “That is my understanding, yes.”

On April 14, 2017, AB 407 received an exemption from bill deadlines. NSHE placed a fiscal note totaling $690,000 against the bill to account for costs that UNR and UNLV might incur if the bill became law. On April 14, 2017 the Assembly Education Committee considered an amendment to AB 407 in a work session.

The amendment added language to the bill consistent with the 1969 Attorney General’s Opinion by defining in statute that the “state land grant institutions of the University of Nevada are the University of Nevada, Las Vegas, the University of Nevada, Reno, and the Desert Research Institute.” The amendment also established advisory boards in participating counties and required that the advisory boards establish memorandums of understanding detailing the scope of CES work within each county. The committee then passed out AB 407 with a recommendation of “Amend, and do pass as amended.”

On April 24, 2017 the Assembly adopted the proposed amendment and the bill was re-referred to the Assembly Ways and Means Committee to address the bill’s fiscal implications. The Assembly Ways and Means Committee held a hearing on the bill on May 24, 2017. At the hearing Assemblywoman Diaz was joined by Senator Hammond (District 18, Clark County) in presenting the bill to the committee. At the hearing, Assemblywomen Diaz proposed an amendment to the bill to remove the
county advisory boards. The amendment addressed concerns raised by NSHE that the boards would usurp the Regents’ constitutional authority. The amendment also changed the effective date of the legislation from July 1, 2017 to July 1, 2018 at UNR’s request.

Most of the questions from committee members focused on how the transition would be completed to ensure that service would not be interrupted. In response, Senator Hammond explained that all current CES employees would continue to be NSHE employees. Assemblywoman Diaz testified that she had been in conversations with the leadership at UNLV and UNR about the transition.

Diaz also testified that she had not received a clear response from NSHE why the $12 million in Clark County reserves had not been put to use and that NSHE had never tried to contact UNLV about addressing the specifics of the fiscal note. Absent any response from NSHE, UNLV submitted a document to the committee proposing a 50/50 split of the state and federal contributions to CES. The document also states that UNLV was not asking for additional funding to support its administration of CES in Clark, Lincoln, and Nye Counties.

Luis Valera, representing UNLV, testifying in support, explained that UNLV was interested in enhancing the program and building the partnerships and that UNLV would absorb the costs associated with administering the program. Representatives of the Council for a Better Nevada, the Las Vegas Metro Chamber of Commerce, the City of Henderson, the City of Las Vegas, and the City of North Las Vegas also testified in support of the bill.

Opponents of the bill used the well-worn legislative strategy of packing the room in hopes of overwhelming the committee’s deliberations with opposition testimony. A number of UNR administrators including Provost Kevin Carmen, Dean of CABNR William Payne, CES Director Mark Walker, and Chris Pritsos and David Shintani, Associate Deans of CABNR, provided opposition testimony.

When Assemblywoman Irene Bustamante Adams (District 42, Clark County) asked if UNR had ever attempted to improve CES services in Clark County, Carmen responded that such a discussion had not taken place but claimed that there had been dialogues with UNLV to increase collaborations.

When asked about the $12 million in unspent county money by Chair Maggie Carlton (District 14, Clark County), Payne asserted that the bill would cause the program to lose federal and state funds and endanger the Agricultural Experiment Station and that the bill had demoralized CES faculty and staff.

Assemblywoman Swank (District 16, Clark County) then asked Payne why he was claiming that the state would lose federal funds since those dollars were based upon the number of people residing in rural areas and Nevada would not lose rural residents if the bill were implemented. Payne responded that there was no specification in the bill of how the federal funds would be split.

Chair Carlton asked again about the reserves in Clark County. Payne responded that some of the reserves had been used to pay down the bonds on the Clark County building and the intent was to keep $5.5 million in reserves (current reserves are two and a half times that amount). Frustrated by the lack of information about the on-going accumulation of such large reserves in Clark County, the committee requested documentation detailing the history of the reserves, programming decisions, and other financial information.
UNR and CES instructors and faculty members, 4-H Club leaders, representatives of Green Our Planet, the Nevada Faculty Alliance, the Nevada Farm Bureau Federation, the Nevada Cattleman’s Association, Douglas and Eureka Counties, NACO, and the Association of Public and Land-Grant Universities also gave opposition testimony.

With the end of session nearing and many of the committee’s questions about the bill remaining unresolved, Assemblywoman Diaz proposed to amend the bill again to remove all language regarding a reorganization of CES and to require a performance and compliance audit of CES. Since the bill would no longer impact the state budget, on June 1, 2017, the Assembly Ways and Means Committee passed the bill out of the committee with a recommendation of “Amend, and do pass as amended.” The bill was amended on the Assembly floor the following day and then passed by the Assembly on a 30-12 vote with five Republicans joining all but two Democrats in support. Of the 12 votes in opposition, nine were from Legislators representing districts north of Clark County.

The Senate Education Committee heard the bill on June 3, 2017. In presenting the bill, Assemblywoman Diaz highlighted the history of the state’s land-grant institution and the need for the Legislature to have an independent review of CES. She punctuated her testimony by noting that “I have asked why Clark County has $12 million in reserves for the program and to this day, I have not received a clear explanation.” She also explained that she had compromised on the bill throughout the session to accommodate the interests of the bill’s opponents.

To assist the committee during the hearing, Kevin Powers from the LCB Legal Division explained how land-grant institutions are designated by state legislatures and how land-grant funds are administered. Representatives of UNLV, the City of North Las Vegas, the City of Henderson, the City of Las Vegas, and the Las Vegas Metro Chamber of Commerce again testified in support. Many of the same UNR administrators and their allies who testified in opposition to the bill when it was in the Assembly reprised their testimony before the Senate Education Committee even though the bill no longer proposed to reorganize CES. When members of the committee pointed this fact out, opponents claimed that simply placing a half-century legal opinion defining the components of the state’s land-grant institution into statute would cause the loss of jobs and federal resources.

Dumbfounded by the response, Senator Hammond noted that “over the last 50 years UNLV has been submitting grants and receiving grant monies with the land-grant status. Nobody’s world has been upset.” Continuing, he stated “I am kind of worried, because what you are telling me is that UNLV has been receiving monies fraudulently over the last 50 years under the land-grant status. Is that correct? Have they been fraudulently receiving money?”

CABNR Dean William Payne replied, “I am not saying anything of the sort. I am saying that the federal government has not recognized UNLV as a land-grant institution,” ignoring decades of federal awards predicated upon the fact that the federal government does, indeed, recognize UNLV as a component of Nevada’s land-grant institution.

Throughout the rest of the hearing opponents of the bill steadfastly claimed that determination of land-grant status is a federal power. This claim, of course, is at odds with the fact that the Nevada Constitution directs the Legislature to establish the state’s land-grant institution and contradicts testimony provided by the LCB Legal Division at the beginning and at end of the hearing.

In a work session later in the day, the Senate Education Committee passed the bill out committee with a recommendation of “Do pass.” On June 4, 2017 the Senate voted 14 to 7 to pass the bill with
all votes in opposition coming from northern Legislators. After the bill passed the Senate and it was sent to Governor Sandoval, Assemblywoman Diaz and Senator Hammond wrote an editorial championing the bipartisan nature of the legislation:

*AB 407 also embraces Gov. Brian Sandoval’s “One Nevada” vision by codifying in statute a nearly 50-year-old precedent that our land-grant institution, the University of Nevada, is a unified institution that has co-equal branches in Reno and Las Vegas. Just as in states like California, where all branches of the University of California have land grant status, our state land grant institution also has branches.*

A week later Governor Sandoval vetoed the bill. The message accompanying the veto parroted UNR’s talking points by claiming that “Currently, (and for over 100 years), the University of Nevada, Reno ("UNR") has been the only 'land grant' university in the State,” and that AB407 would “lead to a three way split in federal appropriations.”

In response to Governor Sandoval’s veto, the *Las Vegas Sun* published an editorial titled “Extension Service Veto and Affront” that read in part,

*Sandoval contended that the bill threatened to divert 70-75 percent of the federal funding currently received by UNR for extension services, which it oversees statewide, by potentially allowing UNLV and the Desert Research Institute to take over the direction of the services in Southern Nevada.

*But that’s not what the bill would have done, which makes Sandoval’s veto a maddening affront to Southern Nevada.... It didn’t call for regionalization of the extension service, but rather to study whether the current system is being operated effectively [...]*

*In his veto message, Sandoval also contended that UNR was the state's only land-grant institution [...] But the Nevada Board of Regents established UNLV and UNR as co-equal branches of the University of Nevada in 1969. Also, a member of the Nevada Legislative Counsel Bureau told lawmakers this year that based on a 1969 Nevada Attorney General's Office opinion, land-grant status was held by the University of Nevada system as a whole — meaning UNR, UNLV and DRI.*

Governor Sandoval’s veto statement has no force of law. Rather, it simply presents an opinion that is inconsistent with a super-majority of current Legislators and a half century of policy supported by legal opinions from multiple Attorney Generals, from NSHE’s own legal staff, and most recently, from the LCB Legal Division.

The veto does, however, deprive the Legislature of information about the operations of CES and perpetuates a barrier for researchers at UNLV and DRI to access federal funds. Instead of citing NRS 549 to demonstrate land-grant status, researchers at UNLV or DRI may be required to provide documentation to apply for some federal grants or to qualify for a reduction in indirect grant costs. Given how poorly Nevada does in accessing federal grants, it is unclear how Governor Sandoval’s veto serves the state’s interests.

<table>
<thead>
<tr>
<th><strong>AB 511</strong></th>
<th>An act making an appropriation to the Millennium Scholarship Trust Fund; and providing other matters properly relating thereto.</th>
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</thead>
<tbody>
<tr>
<td><strong>Primary Sponsor</strong></td>
<td>Assembly Ways and Means Committee</td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
<td>Approved by Governor Brian Sandoval</td>
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The Assembly Ways and Means Committee introduced AB 511 four days after the Economic Forum’s general fund revenue projections were completed indicting that the state would have additional revenue in fiscal years 2018 and 2019. AB 511 proposed to make a $20 million appropriation from the general fund to the Millennium Scholarship Trust Fund. Created in 1999 using funding from Nevada’s share of the Tobacco Master Settlement Agreement, the Millennium Scholarship provides $10,000 in lifetime financial assistance for any Nevada resident who graduates from a Nevada high school with a grade point average of 3.25 or higher and who attends a NSHE institution. Over time the number of Millennium Scholarship recipients has increased, while Nevada’s share of the tobacco settlement payments has not kept pace. To maintain the solvency of the program requires Legislators to appropriate additional funding from time to time.

The Assembly Ways and Means Committee heard the bill on May 12, 2017. There was no testimony in support or opposition. On May 30, 2017 the Assembly Ways and Means Committee considered an amendment in work session that changed the effective date from July 1, 2017 to upon passage and approval and then passed the bill out with a recommendation of “Amend and do pass as amended.”

The following day, May 31, 2017, the bill was amended and passed out of the Assembly with no opposition. On June 3, 2017 the Senate Finance Committee held a brief hearing on the bill. In closing the hearing, Senate Finance Chair Woodhouse noted, “we will need to find a revenue source for this program.” After a brief work session, the bill passed out of committee with a recommendation of “Do pass.” On June 4, 2017 the Senate passed AB 511 with a 20 to one vote, with Senator Gustafson casting the vote in opposition. On June 8, 2017 Governor Sandoval approved AB 511.

SB 391 proposes to create the Nevada Promise Scholarship, based upon a similar program in Tennessee, for Nevada residents attending CSN, GBC, TMCC, and WNC. In his presentation of the bill before the Senate Education Committee on April 4, 2017, Senator Denis explained that the goal of the bill is twofold: to increase college enrollment and completion by easing financial burdens through the provision a “last dollar” scholarship to pay for registration and other fees not covered by other scholarships or grants and to ensure that students complete the FAFSA, a necessary step for accessing federal assistance. Students participating in the program are required to complete a community
service obligation and to begin meeting with a mentor during their senior of high school to assist with the transition to college.

Representatives from a number of local governments, higher educational institutions, and community organizations, as well as students testified in support of the legislation. There was no testimony in opposition. In a work session on April 11, 2017, the Senate Education Committee considered an amendment to the bill clarifying some of the bill’s provisions including a requirement that the State Treasurer determine an equitable method for disbursement of funds if inadequate funds are unavailable and delaying the bill’s implementation until fiscal year 2019. The Senate Education Committee recommended that SB 391 be amended and re-referred to the Senate Finance Committee to address the bill’s impact on the state general fund.

After the Senate adopted the amendment and re-referred the legislation, the Senate Finance Committee held a hearing on the bill on May 22, 2017. Most of the questions from the committee focused on clarifying what type of assistance would be used to determine the size of a student’s scholarship and how might students be prioritized if demand outstripped available resources. On June 1, 2017, the Senate Finance Committee considered an amendment to the bill. The amendment clarified that only state or federal funds would be used to assess a student’s “last dollar” needs. The amendment also increased the community service requirement from eight to 20 hours per semester, clarified that in the event of a funding short fall, continuing students would be prioritized over new applicants, and included an appropriation of $3.5 million. At the close of the work session, the committee moved the bill to the Senate with a recommendation of “Amend, and do pass as amended.” On June 3, 2017, the Senate amended the bill and unanimously passed SB 391.

The Assembly Ways and Means Committee heard the bill on June 5, 2017 (the bill was never heard in the Assembly Education Committee). All testimony before the committee was in support of the bill, and after the hearing, the committee went into work session to consider an amendment to the legislation adding language to the bill allowing campuses to opt into the program instead of being required to participate and allowing campuses to accept gifts to cover administrative costs.

At the close of the work session, the committee voted a recommendation of “Amend, and do pass as amended.” Later that day the Assembly voted to amend the bill and then unanimously passed SB 391. The Senate concurred with the Assembly’s amendment to the bill. On June 8, 2017, Governor Sandoval approved the bill.

**SB 546**

An act relating to projects of capital improvement; authorizing certain expenditures by the State Public Works Division of the Department of Administration; levying a property tax to support the Consolidated Bond Interest and Redemption Fund; making appropriations; and providing other matters properly relating thereto.

<table>
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<tr>
<th>Primary Sponsor</th>
<th>Senate Finance Committee</th>
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<tr>
<td>Outcome</td>
<td>Approved by Governor Brian Sandoval</td>
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</table>

SB 546 is the bill funding the Capital Improvement Programs (CIP). Although the bill is introduced at the end of the session, the bill’s introduction is the endpoint of a process that begins the prior year when agencies submit their budget requests to the Governor’s Finance Office. Included in these requests are funds for maintenance and construction projects that are then prioritized by the Governor. CIP is funded from a number of sources including general fund appropriations and other state sources such as the annual tax on slot machines, state bonding, and federal funds.
Among the projects requested by NSHE included in SB 546 were funds for deferred maintenance at NSHE institutions, planning money for an education building at NSC and a health science building at CSN, furniture and equipment for UNLV Hospitality Hall, and the seventh engineering building at UNR.

The appropriation of $41.5 million for the UNR engineering building was by far the largest item included in the bill. To complete the building, however, will require another $43.2 million in funding raised from other sources (e.g., philanthropy or student fees). The decision to make the project NSHE’s top priority was not universally supported.

Four Regents representing districts in Southern Nevada voted against the request during an April 2016 meeting. The Regents opposing the prioritization of the UNR engineering building suggested that the health science building at CSN and the education building at NSC should be the Board’s priorities given the obvious need for additional space on those campuses and the alignment of health science and education with the state’s economic development goals.

During an April 14, 2017 hearing before the Assembly Ways and Means and Senate Finance Subcommittee on K-12/Higher Education/CIP, Assemblywoman Diaz questioned UNR President Johnson about the need for another engineering building at UNR and requested information about the current square footage of UNR engineering buildings and about growth in the engineering department necessitating such a large state investment. Still, the bill was reported out of the Senate Finance Committee with a recommendation of “Do pass” on May 31, 2017, one day after it was introduced.

Because the bill required a reauthorization of a property tax, passage necessitated the support of two-thirds of Legislators in each chamber. The first vote of the bill in the Senate failed on a party line vote, 12 to nine. By withholding their support, Republicans hoped to use the bill as leverage against the Democrats’ opposition to funding the Education Savings Accounts (ESA) program. The Republicans’ effort to block SB 546 quickly ended when Senate Democrats amended SB 544, the bill funding public education, to move the $60 million funding for the ESA program included in Governor Sandoval’s proposed budget to the Distributive School Account. SB 544 then passed on a party line vote.

Additional factors undermined the Republicans’ effort to hold the CIP bill hostage. Governor Sandoval was unwilling to blow up the session over the ESA program, and the two big-ticket items in SB 546, the UNR engineering building and a veteran’s home, were northern Nevada priorities. After the bill failed, Senator Tick Segerblom (District 3, Clark County) tweeted “I would love to be [a] fly on the wall when Heidi Gansert reports to President Johnson on the status of his new engineering building.” Gansert, who is an administrator at UNR, voted against SB 544.

On June 4, 2017, the Senate reconsidered SB 544. The bill passed by a 15 to six margin, with Senators Gansert, Harris, and Kieckhefer switching their votes. The next day the Assembly introduced the bill and after a brief hearing in the Assembly Ways and Means Committee, the bill passed the Assembly on a 34 to eight vote. Seven Assembly Republicans voted with the Democrats to pass the bill. After being delivered to Governor Sandoval on June 8, 2017, the bill was approved on June 16, 2017.
SB 553 was one of a handful of bills introduced in the waning days of the session as additional general fund revenue became available. The bill originally provided planning funds for an engineering building at UNLV.

The bill proceeded very quickly. After being introduced on June 1, 2017, SB 553 received a hearing in the Senate Finance Committee the next day. At the hearing, Rema Venkat, Dean of the UNLV College of Engineering, testified that enrollment at the college had increased by 50 percent since 2010 and that UNLV was in dire need of space given that one-sixth of the college’s current space, including the robotics lab, is housed in the back of a “99 Cents Only Store.” When this fact was revealed to the committee, the minutes from the hearing detail the following exchange:

Senator Harris: Did I hear correctly? Is UNLV seriously leasing space in a “99 Cents Only Store”?

Mr. Valera (UNLV representative): That is correct. We lease the back part of a “99 Cents Only Store” for a nationally recognized roboticist.

Senator Harris: Is it an operating store, or is it empty?

Dr. Venkat: One part of it is a robotics lab called the “Drones and Autonomous Systems Lab,” and the other part of it is a “99 Cents Only Store.”

Mr. Valera: The two entities do not share an entrance.

Senator Harris: I am just trying to picture it because that sounded a bit outrageous to me.

Mr. Valera: It kind of is. The front end of the property that faces a major street is the “99 Cents Only Store.” The lab is in the back half of the property.

Senator Harris: Is it a strip mall property?

Mr. Valera: Correct.

The bill passed out of committee later that day with a recommendation of “Do pass” and the Senate unanimously voted in favor of the measure on June 3, 2017. The bill received a brief hearing in the Assembly Ways and Means Committee on June 4, 2017. The next day the committee considered an amendment to the bill adding a $25 million appropriation for the construction of a building for the UNLV School of Medicine. The committee then reported the bill out with a recommendation of “Amend and do pass.”

The $25 million in state funds for the medical school building matched an anonymous donation of an equal amount, providing a total of $50 million in building funds for the UNLV School of Medicine. The bill was then reported out of committee with a recommendation of “Amend and do pass.” Later that day the Assembly formally amended the bill and passed it on a 33 to nine vote. Republicans constituted all nine votes against the bill, including three representing districts in Southern Nevada. The Senate then concurred with the Assembly version of the bill. On June 8, 2017, during a ceremony at UNLV, Governor Sandoval approved the bill.
Analysis

The 2017 legislative session provided an opportunity for a full and thorough examination of higher education in Nevada. However, after the introduction of numerous bills, hours of testimony, and bipartisan support for higher education reforms, the manner in which higher education in Nevada operates and is organized remains essentially unchanged. As Table 2 details, with the exception of AJR 5, every bill seeking to increase accountability or align funding and governance and administration with Nevada's development from a small, homogenous, rural-oriented place to a larger, diverse, and urban-centered state met defeat. The failure to enact meaningful reform stands in contrast to the implementation of bills appropriating more resources for higher education.

Table 2: Summary of 2017 Higher Education Legislation

<table>
<thead>
<tr>
<th>Bill</th>
<th>Content</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>AJR 5</td>
<td>▪ Remove the Regents from the Nevada Constitution</td>
<td>To be reconsidered in 2019</td>
</tr>
<tr>
<td>AB 16</td>
<td>▪ Increase funding and reporting for CES work conducted in</td>
<td>Died in Assembly Ways and Means Committee</td>
</tr>
<tr>
<td></td>
<td>the counties</td>
<td></td>
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<tr>
<td>AB 188</td>
<td>▪ SSOGP 12-credit threshold</td>
<td>Vetoed</td>
</tr>
<tr>
<td>AB 202</td>
<td>▪ College affordability interim study</td>
<td>Approved</td>
</tr>
<tr>
<td>AB 331</td>
<td>▪ Separate the administration and governance of the two</td>
<td>Died in Assembly Education Committee</td>
</tr>
<tr>
<td></td>
<td>and four-year colleges from the branches of the state</td>
<td></td>
</tr>
<tr>
<td></td>
<td>university</td>
<td></td>
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<tr>
<td>AB 390</td>
<td>▪ SAGE Commission for higher education and whistleblower</td>
<td>Died in Senate Elections and Legislative</td>
</tr>
<tr>
<td></td>
<td>protections for state employees</td>
<td>Operations Committee</td>
</tr>
<tr>
<td>AB 407</td>
<td>▪ Definition of Nevada’s land-grant institution and CES</td>
<td>Vetoed</td>
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<tr>
<td></td>
<td>audit</td>
<td></td>
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<tr>
<td>AB 511</td>
<td>▪ Appropriation to the Millennium Scholarship Trust Fund</td>
<td>Approved</td>
</tr>
<tr>
<td>SB 391</td>
<td>▪ Creation of the Nevada Promise Scholarship</td>
<td>Approved</td>
</tr>
<tr>
<td>SB 546</td>
<td>▪ CIP funding</td>
<td>Approved</td>
</tr>
<tr>
<td>SB 553</td>
<td>▪ UNLV engineering and medical school buildings</td>
<td>Approved</td>
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</table>

In addition to funding for the capital projects authorized by SB 546 and SB 553, Legislators appropriated new funding to account for enrollment increases at the seven teaching institutions. CSN, GBC, TMCC, and WNC received $20 million to support career and technical education. In the second year of the biennium the seven teaching institutions and DRI will split $9.9 million to assist with developing and sustaining programs aligned with the state’s workforce and economic development needs. The Legislature also increased operational funding for the UNLV School of Medicine by $12.9 million above Governor Sandoval's recommended budget.

In total, the general funds appropriated for higher education approved during the 2017 session are $1.224 billion, an increase of 12 percent compared to the previous biennium. Yet, as evidenced by the debate surrounding AB 188, AB 202, AB 511, and SB 391, the cost of higher education, and by extension, access to higher education, is a challenge for many Nevadans. Moving forward, this situation is likely to get worse given that the Board of Regents is proposing to increase fees starting in 2019.51
To understand the disconnection between aggregate funding and the limited resources for state supported student scholarships, one only needs to look at the system level appropriations to understand higher education’s priorities in Nevada.\textsuperscript{52} NSHE has roughly 200 system level employees, by far the largest administrative staff in any comparably sized state.\textsuperscript{53} The state is spending $28.7 million in fiscal year 2018 to administer a woefully underperforming system.\textsuperscript{54} Nevada appropriates more money to system administration than to DRI ($7.7 million), GBC ($13.5 million), NSC ($15.9 million), the UNLV School of Medicine ($21.8 million), the UNLV Law School ($9.8 million), the UNLV Dental School ($9.2 million), or WNC ($13.5 million).

Much of this duality in legislative outcomes is endemic to the Nevada Legislature.\textsuperscript{55} The magnitude and volume of policies brought before the institution challenges and strains the capacity of a small group of part-time citizen Legislators. These Nevadans are afforded 120 days to process over 1,000 pieces of legislation and to vet and approve billions of dollars in federal, state, and local appropriations, all the while contending with the demands of more than 1,000 lobbyists.

Add to this the loss of institutional knowledge resulting from term limits and turnover — a third of all Legislators who served in 2017 were not in the Legislature the previous session. Then there are the bills that are traded away or stall out because of personality and partisan conflicts that flare among 63 Legislators working 12 plus hours a day for four months in a cramped physical space. In such an environment, passing bills with inherent credit-claiming opportunities that deliver material benefits are a much easier lift compared to proposals opposed by well-entrenched interests seeking to reform long standing institutional arrangements.

And then there are the procedural roadblocks that can derail bills with seemingly strong support. Governor Sandoval vetoed two bills (AB 188 and AB 407) that passed with either super- or near super-majority support AB 390 unanimously passed the Assembly, but the Senate Legislative Operations and Elections Committee never moved the bill. During the 2015 session, the Assembly passed a similar bill (AB 421) on a 35 to seven vote, only to see the Senate amend the provision placing NSHE under the SAGE Commission for public education from the bill.

Also affecting these outcomes was the selective manner in which NSHE administrators and Regents engaged in the legislative process. For some bills, system representatives provided extensive opposition testimony. In other instances, when Legislators sought input from system officials or when clarification would have helped Legislators sort out conflicting testimony, no one representing NSHE or the Board of Regents stepped forward.

In other instances, the “gag order” prohibiting campus administrators from publicly advocating for their institutions appeared to be selectively enforced.\textsuperscript{56} Instead of NSHE representatives or Regents opposing some reforms, selective campus presidents and administrators provided opposition testimony. In the case of AB 331, four college presidents, two who have since retired and one who now works at NSHE, testified that separate governing boards and administrative support for the two and four-year colleges would be detrimental; claims that were directly at odds with those offered by their predecessors.

Indeed, perhaps the most telling testimony offered during the session was from the former college presidents. One after another, they explained how they operated under policies constraining campus Presidents from advocating for their institutions. Carol Lucey resigned. The Regents unlawfully removed Ron Remington, who then sued the Regents and had his position restored by the courts. John Gawlenty went along because he “had two kids in college, a mortgage to pay, and so on down
the line.” Gawlenty also testified that the enforcement of Board priorities extended to philanthropy. After receiving a gift of a piece of land for TMCC from the Pennington Foundation, Gawlenty was told by the Chancellor to give it back so it could be given to UNR. “It was explained that I could either pack or I could give it back.”

A different dynamic played out during the AB 407 hearings. UNR President Johnson and other UNR administrators were given *carte blanche* to provide opposition testimony of questionable veracity. This same privilege was not extended to UNLV. Instead, during the AB 407 hearings, representatives for the school testified in either the neutral position or used testimony in support to briefly address questions and concerns raised by Legislators. As a consequence, UNR administrators were able to make whatever claims they wanted before the Legislature but UNLV administrators were unable to fully explain how the campus would administer CES in Southern Nevada.

When NSHE and the Regents’ lobbying gambits failed, and reform bills managed to advance through the Legislature, Governor Sandoval used his veto pen to ensure that the status quo prevailed. The messages accompanying Governor Sandoval’s vetoes recycled talking points either fashioned by NSHE (AB 188) or UNR (AB 407), his alma mater.

More generally, the 2017 session highlighted just how illogical, inefficient, and expensive it is to fund, govern, and administer a unified higher education system composed of institutions with different missions, constituencies, and service areas. While every institution may be part of a single legal entity, to paraphrase Orwell, within this structure some animals are more equal than others.

In terms of funding, three examples demonstrate this point. To try to accommodate the missions of the two and four-year colleges within a funding formula designed for research universities, the Legislature funded the requested career and technical education enhancements. For the 2017-2019 biennium these funds are appropriated directly to the campuses, but in future biennium the weightings for these courses will be incorporated into the funding formula. Given the formula’s mechanics, it will be the campuses with the largest increases in WSCH that will benefit the most from these enhancements.

During the session, Legislators devoted substantial attention to the issue of college affordability. However, the conditions imposed on the SSGOP and the Nevada Promise Scholarship limits eligibility to a fraction of students attending NSHE institutions. To qualify for these scholarships necessitates that students are undergraduate residents who are eligible to file a FAFSA and do not attend either UNLV or UNR (or NSC in the case of the Nevada Promise Scholarship), are able to maintain a 15-unit course load (SSGOP), or are under 20 years of age and graduate from a Nevada high school or from a public high school in a county of a state that borders Nevada in 2018 and attend an institution that chooses to develop and successfully implement a mentorship program (the Nevada Promise Scholarship).

Then there is the funding for higher education infrastructure projects. Instead of funding the construction of buildings on the fast growing and over-crowded campuses in Southern Nevada, the CIP appropriations exacerbate the inter-regional infrastructure discrepancies. UNR received funding for another engineering building, while CSN and NSC received planning funds for buildings that might be built in the future.

In the case of UNLV, Governor Sandoval proposed budget included neither planning funds for the proposed engineering building nor construction funding for the medical school building. A stand-
alone bill introduced during the last days of the session authorized funding for these projects. Moreover, the funds for the medical school building are conditioned upon a donor match.

News of the donation and the state match for the UNLV School of Medicine building came as a “complete surprise” to Regent Trevor Hayes (District 2, Clark County).\(^5\)\(^8\) Regents Crear, Hayes, and Stephens, were critical of UNLV’s fundraising efforts for the School of Medicine during an April 2017 meeting of the Board of Regents. Despite the donor’s designation that the money be used for the medical school building and Governor Sandoval’s willingness to match the donation with an equal amount of state dollars, Hayes suggested that the donation “would be a better fit for the engineering building.”\(^5\)\(^9\)

Nearly a year later, some Regents continued to voice their displeasure with the funding for the medical school building. During a March 2018 meeting, Regent Hayes stated that the building was not a Board priority and that UNLV ignored Board policy when the Legislature approved the $25 million in matching funds. In response, UNLV President Len Jessup explained that the funding resulted from “a conversation between the private donor and the governor” and that “we weren’t about to look the gift horse in the mouth at the eleventh hour.”\(^6\)\(^0\)

Soon after the meeting, media reports surfaced that Chancellor Thom Reilly and a group of Regents were pressuring President Jessup to resign, in part, for his handling of fundraising for the medical school building.\(^6\)\(^1\) President Jessup subsequently announced that he was pursuing other opportunities in light of the tensions with some of the Regents and soon thereafter accepted the job of the President of the Claremont Graduate College. In response to the treatment of Jessup by the Chancellor and the Regents, the Engelstad Family Foundation and another donor rescinded $22 million in gifts to help build the UNLV medical school building. In announcing the decision to withdraw the gift, Kris Engelstad McGarry, a foundation trustee, explained that if Jessup were to leave UNLV, the Foundation could not “trust the stewardship of the Board of Regents to handle our money.”\(^6\)\(^2\)

Included in a draft of the gift memorandum of understanding between the UNLV Foundation and the Engelstad Family Foundation was a provision that President Jessup and Barbara Atkinson, the Dean of the UNLV School of Medicine, remain in their positions. Such requests from higher education donors are not unusual. In 2012, an attorney representing the Nell J. Redfield Foundation, a major UNR donor, sent a letter to the Board of Regents as it was finalizing a president’s search at UNR. Included in the letter was language indicating that if the Regents did not hire Marc Johnson, who was then serving as the UNR Interim President, “there can be no assurances that current funding discussions will continue or that the projects currently being considered for funding will receive support in the future.”\(^6\)\(^3\)

There is no evidence in the public record if an investigation was conducted, nor if Marc Johnson knew about or had solicited the letter before its delivery to the Board. NSHE administrators denied that the letter was intended as a threat, even though two Regents publicly stated that they perceived the letter as such.\(^6\)\(^4\) Instead, Chancellor Klaich defended the arrangement as a natural reaction from a major donor whose support was dependent upon leadership stability.

In contrast to how the Redfield incident at UNR was handled, NSHE officials solicited a legal analysis of the provision included in the Engelstad Family Foundation agreement. The analysis, which suggested that the provision might violate state ethics law, along with other information about an ongoing review of President Jessup’s performance, appeared in media reports.\(^6\)\(^5\) However, after the
information became public, no one from NSHE or the Board of Regents filed an ethics complaint against President Jessup nor was President Jessup charged with any crime, perhaps because the memorandum in question was part of a longer dialogue between the UNLV and Engelstad Foundations seeking to find language acceptable to both Foundations, a detail that was omitted from the leaked information. A subsequent analysis conducted at the request of the UNLV Foundation that considered the totality of the exchanges between the two foundations found no evidence of self-dealing by President Jessup.

But perhaps the clearest application of Animal Farm to higher education in Nevada occurred during the deliberations for the bills implicating the constitutional provision directing the Legislature to establish the state’s land-grant institution. The specific provision, Article 11, Section 4 of the Nevada Constitution, reads: “The Legislature shall provide for the establishment of a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining, and other departments deemed appropriate for the State University.” The provision was included so that Nevada could access the resources provided by the Land-Grant Agricultural and Mechanical College Act of 1862 at the time of statehood.

In one way or another, AJR 5, AB 331, and AB 407 (as well as AB 16 and AB 390) sought to disentangle and demarcate the boundary between the Legislature’s authority over higher education and the Board of Regents’ constitutional carve out. For context, the historical record is as follows.

After designating Elko as the site for the state university in 1874, in 1885 the Legislature moved the state university to Reno. In 1951, a “Southern Division” of the state university was established in Las Vegas. In 1968, the Board of Regents voted to give the southern campus “co-equal” status to the northern branch. To reflect this, the name of the southern branch changed from Nevada Southern to the University of Nevada, Las Vegas and the name of the northern branch changed from the University of Nevada to the University of Nevada, Reno.

The next year, the Attorney General issued opinion 69-556 concluding that the “University of Nevada System, consisting of the University of Nevada, Reno, the University of Nevada, Las Vegas, and the Desert Research Institute, is the only land grant institution within the State of Nevada. The components of the system may not hold individual land grant status separate and apart from the system.”

Subsequent legal opinions have either reaffirmed this conclusion or, in the case of the system’s legal counsel, expanded it to include all of NSHE. AB 407 further clarified the bounds of the land-grant institution by placing in statute the 1969 Attorney General’s Opinion designating the components of the state’s land-grant institution as UNLV, UNR, and DRI.

During the presentation of AJR 5 before the Assembly Legislative Operations and Elections Committee on March 2, 2017, Kevin Powers from the LCB Legal Division summarized the Board of Regents’ and the Legislature’s differing perspectives on the scope of the Regents’ constitutional carve out.

Nevertheless, the Board of Regents has taken the position that the term “university” in Article 11 of the Nevada Constitution means all forms of higher education must be subject to the exclusive control of the Board of Regents. The Board of Regents believes UNLV, Nevada State College in Henderson, the community colleges, and all of those higher education institutions fall within the term “university” as used in Article 11. Therefore, they believe they have exclusive
control over all those institutions, including anything dealing with the land grants involving those institutions. By contrast, the LCB Legal Division believes that the term “university” is limited to the actual university envisioned by the framers, which is an institution of higher education that provides four-year degrees and that type of specific college-level education.

During the hearing, Assemblyman Anderson testified how the Board of Regents’ expansive view of its constitutional power was exerted to impede reform efforts:

Yet, the notion that Nevada’s constitutionally defined unified system of higher education precludes a role for the Legislature persists and is often used to obstruct efforts to align higher education governance and administration with the state’s demographic and economic needs. Indeed, NSHE regularly interprets this provision very expansively to suggest that it is the fourth branch of government.69

He also stated that there have been “many occasions upon which NSHE’s legal counsel has contacted our legal counsel trying to get them to draft letters of unconstitutionality on different reform proposals.”

During the AB 331 hearing the constitutionality of the Legislature’s authority to separate the state’s two and four-year colleges from the state university was never discussed, perhaps because no one representing NSHE or the Board of Regents testified. This issue was, however, addressed in depth during the study conducted during the 2013-2014 interim session examining the governance and funding of the state’s two- and four-year colleges. The LCB Legal Division provided the committee with an analysis detailing why the Board of Regents’ governance of these institutions was statutorily, as opposed to constitutionally, derived. As a consequence, the entirety of NSHE is not part of the Board of Regents’ constitutional carve out. Rather, this authority is limited to the state’s land-grant institution. Substantively, this means that material benefits associated with the state’s land-grant institution are available to the campuses with land-grant status.

During the AJR 5 hearing before the Assembly Committee on Elections and Legislative Operations, Regent Stephens testified, “that UNLV has received federal money as a land-grant institution,” a fact that is consistent with the historical development of the state university from a single branch in Elko to a multi-branch institution. This fact, however, does not comport with the testimony offered by NSHE Vice-Chancellor Constance Brooks and UNR administrators. During the AB 407 hearing before the Assembly Education Committee on March 27, 2017, Brooks claimed that UNR is “designated as the land-grant institution” (see note 38). UNR administrators also aggressively pushed this claim, presumably to protect their continued monopolization of the material resources associated with the land grant. At the end of the AB 407 hearing before the Senate Education Committee on June 3, 2017, Assemblywoman Diaz explained the consequences of these claims for the scope of the Board of Regents’ constitutional carve out.

The claims here today by the representatives from UNR just undermine the Board of Regents’ constitutional governance claim. It is for the State to determine who holds the land grant, not the USDA. Either the land grant belongs to the entire system and the Regents are the governing board, or it only applies to UNR, and therefore all other campuses besides UNR can have their own governance.
Given the Governor’s veto of AB 407 and the Board of Regents’ dereliction in addressing the issue, Legislators are unable to use their authority to again clarify the boundaries of the state’s land-grant institution until the Legislature reconvenes in 2019.

After years of scandals surrounding former Chancellor Klaich, Board Chair Rick Trachok gave assurances that the Regents would repair relationships with Legislators. However, the actions of NSHE and the Board of Regents during the session appeared to have the opposite effect. During the June 2017 Board of Regents meeting, Interim Chancellor John White noted that members of the Assembly were particularly distrustful of the Board and NSHE, and that Legislators didn’t want to hear from NSHE employees or trust the data presented by NSHE employees.

These concerns were likely reinforced by the search for a new Chancellor that was conducted concurrently with the legislative session. After spending $100,000 on a national search, while also paying former Chancellor Dan Klaich and Interim Chancellor John White salaries in excess of $300,000, the five finalists withdrew. Unable to attract qualified candidates from outside the state, Board Chair Trachok announced that the search would focus on internal candidates. Regents solicited Interim Chancellor John White to serve as Chancellor despite the fact that White’s appointment as Interim Chancellor explicitly prevented him from being a candidate for the permanent position. The Board of Regents scheduled a meeting for May 9, 2017 to announce White’s hire at an annual salary of $495,000.

In response to the effort to promote White, Regent Stephens, in a letter to Board Chief of Staff and Special Counsel Dean Gould, accused Board Chair Trachok of “inappropriate and possibly illegal behavior” and claimed that Trachok “defied the will of the board and its committees, violated the open meeting law, deviated from standard board process and called into question the ethical standards the board represents.” Regent Stephens also requested that the May 9, 2017 meeting be canceled and asked that the Board’s legal counsel investigate and remedy Trachok’s actions. There is no evidence in the public record that such an investigation took place.

White then withdrew from the search and the May 9, 2017 meeting was cancelled. On May 31, 2017 the search committee reconvened and agreed to continue its search for candidates in hopes of having a new Chancellor in place before White’s contract expired. At the meeting, Peter Guzman, an advisory search committee member and the President of the Latin Chamber of Commerce, expressed his concerns about the search. “I think the process has been pretty bad,” before noting “It’s John White, then one day it’s not. He’s not even supposed to be considered, then he is [...] I think the process has been almost embarrassing.”

On June 13, 2017 the Regents announced that Dr. Thom Reilly would be considered as a candidate for Chancellor. Reilly, the Director of the Morrison Institute for Public Policy at Arizona State University, previously worked as the Clark County manager. On June 26, 2017 the Board of Regents voted unanimously to accept the search committee’s recommendation that Reilly be appointed as the next Chancellor of NSHE. Reilly took a leave of absence from Arizona State and accepted the position. Seven months later, Reilly and a group of four unnamed Regents attempted to push out UNLV President Len Jessup.
Policy Reform Recommendations for the Nevada Legislature

The introduction of the higher education reform bills during the 2017 session bills and the testimony offered during the bills’ hearings help to understand why Nevada remains tethered to an outdated higher education structure and the consequences this has for the administration and governance of higher education.

During the AJR 5 hearing before the Assembly Legislative Operations and Elections Committee, Assemblyman Anderson succinctly captured this point: “If the system is different and it is successful, then it is a model. If it is different and failing, then let us change it. It is time Nevada changes the way that higher education is organized.”

Building upon the bipartisan efforts of the 2017 session, the first order of business when the Legislature reconvenes in Carson City in February 2019 is the override of AB 407 veto and the second passage of AJR 5. Overriding AB 407 will place in statute a near 50-year-old principle defining the components of the state university, eliminate a needless bureaucratic barrier for researchers at UNLV and DRI to access some federal resources, and provide the Legislature with important information about the operation of CES. The second passage of AJR 5 will provide voters with the opportunity to fully empower the Legislature to reform the administration and governance of all aspects of higher education in Nevada.

Next, Legislators should reintroduce and pass AB 188, AB 390, and the original version of AB 407. Reducing the credit-threshold for accessing the SSGOP will increase access to state-supported scholarships and align this resource with the contours of Nevada’s college going population. Passage of AB 390 will put NSHE on the same footing as every other state agency and will provide the Legislature with valuable information about the effectiveness and efficiency of the manner in which higher education is delivered in Nevada. By regionalizing the administration of CES, the Legislature will empower the branch of the state university that is best positioned to build partnerships with for-profit and not-profit organizations to expand CES’s programming to better serve regional needs.

The AB 202 interim study committee examining the affordability of higher education provides Legislators with an important opportunity to examine why a state that appropriates so much funding for higher education spends so little on financial assistance. As part of this study, we encourage the committee to focus its attention on reducing the size of system administration to the minimum needed to support DRI and the seven teaching institutions, eliminating any administrative duplication between the system and the individual campuses, and using cost savings to fund additional scholarships.

A thorough analysis of these considerations by the AB 202 interim study committee will expedite the implementation of the most important step that the Legislature can take to improve the delivery of higher education in Nevada: separating the governance and administration of the two and four-year colleges from the branches of the state university. AB 331 provides one model for what this separation might look like. As part of the 2013-2014 interim study committee examining the governance, funding, and missions of the “community colleges,” researchers at The Lincy Institute, including two of the authors of this report, issued a report linking the administration and governance of these institutions to the state’s economic development efforts. There is no shortage of examples and analyses (see Table 1) detailing how the state would be better served by a bifurcated higher education system that should be considered as part of this effort.
The separation of the governance of the two and four-year colleges from the branches of the state university will no longer necessitate such a large Board of Regents to govern UNLV, UNR, and DRI. Currently, the Board has 13 members. Thus, we recommend the current Board be decreased from 13 to seven members and that separate governing boards appointed by the Governor and the Legislature based upon recommendations from local governments be established for the two and four-year colleges. Moreover, the governing boards should have the exclusive authority to hire, fire, and evaluate campus Presidents and the boards should work directly with campus Presidents to develop and oversee the implementation and assessment of institution specific policies and priorities.

As part of this reform, system level administration should be significantly reduced and NSHE should be replaced with a “Department of Higher Education” located in Carson City with a branch office in the Grant Sawyer Building in Clark County. The Department should be composed of three divisions, one for general administration and one each to administer to the specialized needs of the two and four-year colleges and the universities. Displaced NSHE staff, resources, and property should be reassigned in proportionate measures to Nevada’s colleges and universities and to the governing boards. An Executive Director, instead of a Chancellor, who reports directly to the Governor and the governing boards, should oversee the agency (see Appendix).

After the governance of the two and four-colleges are separated from the branches of the state university and higher education administration is reduced and reorganized to reflect this bifurcation, we recommend that the Legislature conduct a study to determine the costs specific to Nevada to provide higher education at the seven teaching institutions.\textsuperscript{77} Once this information is collected, the Legislature should develop separate funding formulas that accurately price the delivery of higher education at the different institutions and more precisely aligns appropriations with the differing missions of the universities and the two and four-year colleges. In the short term, we recommend that the Legislature make two changes to the existing funding formula.

First, the Legislature should eliminate the “Performance Pool” set-aside (currently, a fifth of the teaching institutions’ operational budgets are held back and can be earned if an institution’s performance goals are met). Certainly, encouraging institutions to align course offerings with the state’s economic development goals or to graduate minority students and students from disadvantaged backgrounds are laudable. However, it is unclear how the mechanics of the performance pool and the specific performance measures developed by NSHE and the Board of Regents realize these goals. For instance, the number of Psychology graduates counts towards UNR’s economic development performance goals and each of the two and four-year colleges earn performance points when a student completes an introductory math or English course with a grade of C- or better.

More problematic though is how the “Performance Pool” accounts for the success of minority and economically disadvantaged students. Even though these students, as well as students who are the first in their family to attend college, are most at risk of failing to complete their degrees, the funding formula provides no assistance to help ensure these students’ success. Instead, the “Performance Pool” penalizes institutions by first holding back funding that could be used to boost these students’ retention and completion rates and then reducing institutions’ funding if these students do not graduate.\textsuperscript{78}
Thus, our second recommended change to the funding formula is to reverse this policy by adding a small weight for WSCH that are completed by first generation, minority, and Pell Grant eligible students. Given Nevada’s changing demography, students with these characteristics are becoming larger shares of Nevada’s college going population. Their success is vital to the state’s long-term economic sustainability and the state should implement policies that are consistent with this fact.

We also recommend that the Legislature create committees in the Assembly and Senate with jurisdictions over all higher education and economic development legislation. Currently, related policy can be considered in a number of committees, leading to policy fragmentation and the duplication of Legislators’ efforts. We also recommend as much membership overlap as is possible between these committees and the Assembly Ways and Means and Senate Finance K-12/Higher Education/CIP Subcommittees to better align funding and policy decisions.

Lastly, we recommend that the Legislature enlarge GBC’s charge. GBC should be elevated to a full four-year college akin to NSC. GBC, like CSN and WNC, already offers some four-year degrees. Unlike CSN and WNC, there is no proximate branch of the state university near GBC or its satellites. GBC is the primary institution in Nevada that trains employees for the mining industry. Under current arrangements GBC students must transfer to either UNLV or UNR to complete their studies before returning to the region to begin their careers. Elevating GBC will allow for further economic integration between the campus and the mining industry via internships, research opportunities, and representation on the institution’s governing board.

We also recommend that the service areas for the two and four-year colleges should be determined by relevant economic and demographic data. For instance, Southern Nye County should be transferred from GBC’s service area to CSN’s service area since Pahrump is part of the Las Vegas Combined Statistical Area due to the significant level of economic exchanges between Nye and Clark Counties.

Conclusion

For the past 50 years, the costs of the state’s governance and administration of higher education have been either abstract (i.e., failing to develop a top-rated Carnegie institution or a sustainable medical school) or limited to paying off compliant consultants and former Chancellors. Now, the costs of the current governance and administration of higher education to Nevada’s economy are directly observable. In the aftermath of the Regents’ effort to push out UNLV President Jessup, donors may rescind as much as $47 million in philanthropic donations to the UNLV Medical School building.79

The loss of these resources imperils access to higher education and the capacity of the state’s higher education institutions to develop and diversify Nevada’s economy. Unlike in the past when state money provided the vast majority of funding for higher education infrastructure, this is no longer the case. Instead it is a mix of state resources and seven- and eight-digit private donations that build the physical spaces in which Nevada’s students are educated, faculty members conduct research, and healthcare and other community services are provided.

Unfortunately, the actions of the current Chancellor and the Board of Regents continue to alienate the business and philanthropic communities in Southern Nevada. In a series of news stories featured in the Las Vegas Sun that corresponded with the public leak of information from UNLV President Jessup’s job performance evaluation, major donors to higher education and business leaders in
Southern Nevada defended Jessup’s record and strongly condemned the actions of Chancellor Reilly and the Board of Regents for their conduct over President Jessup’s departure.

Yet despite this stigmatization, Chancellor Reilly has indicated that he will defend the status quo and perpetuate the only higher education system in the United States with elected regents that govern all institutions within the system—from state universities to community colleges—via a single governing board. Before Reilly began his term as Chancellor, he told the Reno Gazette-Journal, “I am walking in to a system that is one system,’ he said of being attracted to that aspect of the job.”

As part of a campus listing tour seeking input into the next president of UNLV, the UNLV community challenged Reilly regarding the difficulties of finding a qualified President given the existing governance and administration. Reilly responded that there must be “clear expectations” that both the new President and NSHE can work together under the current governance structure. To support his claim that stable leadership at UNLV is possible with the existing system, Reilly cited the tenures of former UNLV Presidents Carol Harter and Robert Maxson.

Maxson, of course, never served as President of UNLV under the current arrangements that afford the Chancellor broad authority over policy, including the hiring and firing of presidents. After the Regents extended these powers to Chancellor Jim Rogers in 2005, one of Rogers’ first orders of business was to force out Carol Harter after eleven years on the job and with two years left on her contract. Since the Chancellor was placed above the college and university Presidents in the NSHE hierarchy, four permanent Presidents and one Interim President have churned through UNLV.

By a simple majority vote, the Board of Regents could reclaim their authority and reset the system to the very structure that corresponded with the leadership stability at UNLV that Reilly desires. The appendix highlights the change in Nevada higher education organizational structure, before and after the February 2005 Board vote to expand the Chancellor’s authority. Voting to return the governance to pre-February 2005 would send an important signal that the Regents are able to self-correct. We are not optimistic that this will occur. As this report demonstrates, for decades the keepers of the status quo have successfully warded off nearly every effort to reform Nevada’s higher education administration and governance or to increase accountability and oversight.

Yet, there are reasons that 2019 may be different. Not only will there be a new Governor residing in Carson City, there is momentum from the 2017 session in AJR 5—the bill that removes the Board of Regents of the University of Nevada from the Nevada Constitution to provide the Legislature with full authority over all aspects of higher education. If it is passed again by the Legislature in 2019, it will be placed before the electorate in 2020, where its prospects for adoption are excellent.

In addition, the shock of UNLV President Jessup’s treatment combined with the anger of many higher education stakeholders in the business and philanthropic communities towards Chancellor Reilly and the Board of Regents may translate into a legislative imperative for real change in 2019 and beyond. If Legislators—especially those from Southern Nevada—listen to their constituents who are hungry for a major reform to the higher education system, next year may prove the beginning of the end for Nevada’s “unique” way of governing and administering its colleges and universities.
Appendix: Structural Change to Nevada Higher Education Governance, 2005

Structure of Nevada Higher Education Governance, *Pre-February 2005*

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BOARD OF REGENTS of the University of Nevada

UNLV President     UNR President     DRI President     NSC President     CSN President     GBC President     WNC President     TMCC President
                      |                            |                            |                           |                            |
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                      |                            |                            |                           |                            |
                      CHANCELLOR Nevada System of Higher Education
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Structure of Nevada Higher Education Governance, *Post-February 2005*

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BOARD OF REGENTS of the University of Nevada

CHANCELLOR Nevada System of Higher Education

UNLV President     UNR President     DRI President     NSC President     CSN President     GBC President     WNC President     TMCC President
                      |                            |                            |                           |                            |
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Endnotes

1 The U.S. Census Bureau’s “2011-2015 American Community Survey” reports that 23 percent of Nevadans over the age of 25 have a Bachelors Degree. Nevada ranks 45th among the 50 states, and Nevada is nearly seven percentage points below the national average in the share of population with at least a four-year degree, https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2015/ (last accessed November 21, 2017). Using data from the National Center for Education Statistics’ Integrated Postsecondary Education Data System (IPEDS), the Chronicle of Higher Education ranks Nevada 43rd among the states in terms of four (14.9 percent) and six (45.8 percent) year graduation rates. In terms of efficiency, Nevada ranks 49th (16.5) in four-year completions per 100 full time students (the national average is 21.5). The average cost per completion of a four-year degree in Nevada is $72,219, which is nearly $6,000 more than the national average. Within the state there are substantial institutional differences. For instance, spending per completion at UNR is $98,888 compared to $67,182 at UNLV, “The Chronicle of Higher Education College Completion” http://collegecompletionchronicle.com/ (last accessed November 21, 2017).


3 Rhode Island, South Dakota, and Utah have similar governance structures. However, in South Dakota the South Dakota Board of Education governs the state’s technical institutions (e.g., community colleges). In Utah, the Utah System of Technical Colleges Board of Trustees governs the state’s technical institutions, each of which also has its own Board of Directors. In Rhode Island a single Board of Education governs all public education, including pre-K and the universities and colleges.

4 Michigan and Colorado have elected university boards but unlike in Nevada, these boards govern either a single (Michigan) or multi-campus (Colorado) institution, not an entire system. The University of Alabama Board and the Pennsylvania Board of Governors are composed of elected and appointed members. Arkansas, Arizona, California, Idaho, Illinois, Iowa, Kansas, Kentucky, Missouri, Montana, Nebraska, New Mexico, Oregon, Texas, and Wyoming elect all or some of the members to those states’ community college governing boards.

5 The Desert Research Institute (DRI) is funded using a separate formula and the professional schools are funded outside of the formula.


7 Under the old funding formula, when student fees collected on the campuses exceeded budget expectations, in the following biennium, the institutions’ operational budgets were revised downward. Given the growth in Southern Nevada since the 1990s, this budget rule resulted in students at the southern institutions receiving significantly less in state support than at the slower growing northern institutions. Under the current formula, student fees do not impact the funding formula. However, when the formula was implemented during the 2013 legislative session, the prior budget rules regarding the treatment of student derived fees were reversed. As a consequence, institutions that would have received an increase in funding under the old formula because their student fees came in under budget, had that level of funding subtracted from their 2014 and 2015 formula appropriations and institutions that would have taken a decrease under the old formula because their student fees came in over budget, kept that revenue. This change yielded UNR $7.9 million in fiscal year 2014 and $9.3 million in fiscal year 2015. The only other schools that benefitted from this change were NSC (+$320,195 in fiscal year 2014 and +$336,776 in fiscal year 2015) and WNC (+$452,888 in fiscal year 2015), see Damore (2014) Table 6 and Appendix.

8 There was robust discussion of how F grades should be treated during the meetings of the 2011-2012 interim funding formula study committee. The main points of discussion were differentiating F grades for non-attendance when a student did not withdraw from F grades when a student completes a course (an earned F) and determining if either type of F grade should be funded. The committee ultimately recommended that the Board of Regents standardize “the issuance and associated data collection of F grades for non-attendance” and then to exclude F grades for non-attendance. Governor Sandoval’s proposed 2013 budget eliminated funding both for F grades for non-attendance and for earned F grades. However, the Legislature opted to only eliminate funding for F grades for non-attendance and that policy carried forward in subsequent biennium. Inspection of the budget documents prepared by the LCB such as the “Fiscal Report” and the “Appropriations Report” report the aggregate effects of this policy by noting the increase in the per WSCH funding multiplier that results once the WSCH for F grades for non-attendance are eliminated from each institutions’ WSCH that is used to generate the formula based budgets. To understand more precisely how this policy affects the appropriations to
the different institutions necessitates inspecting the M-204 budget module for each institution in the "Legislatively Approved Budgets by Budget Account Detail" report issued by the LCB. The table below reports these data for the current biennium and demonstrates two important points. First, the policy does not effect all institutions equally. That is, some institutions, due to the nature of the programs they offer and the characteristics of their student bodies, accrue significantly more F grades for non-attendance than do other institutions. Second, because of these differential effects, funding is reallocated from some institutions, particularly CSN, to other institutions, most notably UNLV and UNR.

### M-204 Budget Module Funding Reallocations for F Grades for Non-Attendance for Fiscal Years 2018 and 2019*

<table>
<thead>
<tr>
<th>Year</th>
<th>UNLV</th>
<th>UNR</th>
<th>NSC</th>
<th>CSN</th>
<th>GBC</th>
<th>WNC</th>
<th>TMCC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-18</td>
<td>$3,489,494</td>
<td>$476,084</td>
<td>$189,897</td>
<td>-$4,002,503</td>
<td>$251,393</td>
<td>-$148,430</td>
<td>-$255,935</td>
</tr>
<tr>
<td>2018-19</td>
<td>$3,783,322</td>
<td>$1,363,190</td>
<td>$243,085</td>
<td>-$4,571,717</td>
<td>$234,861</td>
<td>-$422,660</td>
<td>-$630,081</td>
</tr>
<tr>
<td>Total</td>
<td>$7,272,816</td>
<td>$1,839,274</td>
<td>$432,982</td>
<td>-$8,574,220</td>
<td>$486,254</td>
<td>-$571,090</td>
<td>-$886,016</td>
</tr>
</tbody>
</table>

*Data from "Legislatively Approved Budgets by Budget Account Detail, 2017-2019" prepared by the LCB.


11 The study report also recommended creating a needs based grant to provide financial aid to low-income students attending CSB, GBC, NSC, TMCC, and WNC, funds for workforce development, and a workforce challenge grant program, as well as drafting a letter to the members of the 2015 Nevada Legislature forwarding the presentations and policy briefs prepared by researchers from The Lincy Institute that were submitted as part of the study committee’s deliberations, Magdalena Martinez (2014) “Understanding Nevada’s Higher Education Governance for Two-Year Colleges: Challenges and Solutions.” University of Nevada, Las Vegas, The Lincy Institute, *The Lincy Institute: Special Report*, No. 4 and Magdalena M. Martinez, David F. Damore, and Robert E. Lang (2014), “The Case for a New College Governance Structure in Nevada: Integrating Higher Education with Economic Development,” University of Nevada, Las Vegas, The Lincy Institute. *The Lincy Institute Policy Brief: Education Series*, No. 5.


14 Bethany Barnes was awarded the “2016 Outstanding Journalist Award” by the Nevada Press Association in part for her higher education reporting. Her nomination notes that Barnes, “Used public records to show, in their own words, how officials of the state’s higher education establishment conspired to tailor a consultant’s reports to their advantage and mislead legislators who were trying to overhaul a crucial college funding formula – going so far as to create false documents to give to lawmakers. The revelations forced the early retirement of the state’s Chancellor of Higher Education and sustained calls for statewide reforms,” [https://nevadapress.com/members/contest/2016-outstanding-journalists/](https://nevadapress.com/members/contest/2016-outstanding-journalists/) (last accessed May 3, 2018).

15 The “Appropriations Report” for the 2017 session produced by the LCB identifies eight other bills affecting higher education, AB1 (fee and tuition support for dependents of public employee who died on or after October 1, 2013), AB 24 (out-of-state tuition waiver for certain veterans), AB 94 ($350,000 appropriation to NSHE for the NV Grow Program), AB 522 ($300,000 appropriation for Nevada Teach program at UNR), SB 19 (dual credit requirements), SB 306 ($300,000 appropriation to CSN for a prison education pilot program), SB 457 (military education credit), and SB 496 (CIP bonding capacity).

16 The Legislative Counsel Bureau is the service agency that assists Legislators with analysis, research, and bill drafting. NELIS is accessible through the Nevada Legislature website, www.leg.state.nv.us.
Proposed amendments to bills are discussed and processed during committee work sessions. Work sessions occur after a bill has been heard, typically during a different committee meeting. However, when deadlines are looming, it is not uncommon for a bill to be heard and then later in the meeting for the committee to go into work session to process the bill. Unlike during bill hearings, there is no testimony or public comment during a work session. At the end of a bill’s work session, committee members vote indicating what action the committee recommends that the chamber take. For a bill that is supported by a majority of committee members that does not require an amendment, the typical recommendation is “Do pass.” For a bill that is supported by a majority of committee members provided that the chamber adopts a proposed amendment, the typical recommendation is “Amend, and do pass as amended.” Bills that are supported by a majority of committee members and that have a fiscal impact on the state budget, may be recommended to be re-referred to the “money committees” (e.g., the Assembly Ways and Means Committee and the Senate Finance Committee) after any amendments have been adopted. Bills that are not heard or that are heard and do not receive a work session prior to the relevant passage deadline (see note 24) are dead.


Legislative referendums seeking to amend the Nevada Constitution, such as AJR 5, are required to pass each chamber of the Nevada Legislature with a majority vote in successive legislative sessions before they are placed on the ballot. If supported by a majority of voters in the subsequent election, the amendment is adopted.

See footnote nine, Damore (2014).

For an analysis of the history of Nevada’s land-grant institution detailing how, since the late 1960s, all three branches of the University of Nevada (UNLV, UNR, and the Desert Research Institute) have been considered components of the state’s land-grant institution and how subsequent legal interpretations have extended land-grant status to all components of NSHE, see David F. Damore, Robert E. Lang, Fatma Nasoz, William E. Brown, Jr., and Catlin J. Saladino (2017) “Rethinking Cooperative Extension in Southern Nevada,” University of Nevada, Las Vegas, The Lincy Institute, The Lincy Institute Special Report, No. 5.

The Nevada Revised Statutes (NRS 549.010) define the mission of Cooperative Extension Service to include “continued educational, research, outreach and service programs pertaining to agriculture, community development, health and nutrition, horticulture, personal and family development, and natural resources in the rural and urban communities in the State of Nevada...”

At the start of each session, both chambers of the Legislature adopt resolutions detailing the operations of their chamber (Assembly Resolution 1 and Senate Resolution 1) and a resolution adopting the joint standing rules (Assembly Concurrent Resolution 1) that determine, among other considerations, the deadlines by which bills must be introduced and processed. During the 2017 session, March 20, 2017 (the 43rd day of the session) was the last day for a legislator to introduce a bill and March 27, 2017 (the 50th day of the session) was the last day for introducing all other bills, such as those sponsored by committees. Bills were required to be passed out of the committee in the chamber in which they were introduced (First House Committee Passage) by April 14, 2017 (the 68th day of the session) and to be passed by the chamber (First House Passage) by April 25, 2017 (the 79th day of the session). After First House Passage, each chamber spends most of its remaining committee and floor time processing bills that were passed by the other chamber. In 2017, the deadline for Second House Committee Passage was May 19 (the 103rd day of the session), and the deadline for Second House Passage was May 26 (the 110th day of the session). There are at least two important exceptions to these deadlines. First, bills that create a deviation from the Governor’s proposed budget receive a fiscal note detailing these effects. Fiscal notes are typically brought by affected governmental entities (e.g., a local government or a state agency) and bill’s that have fiscal notes are eligible for exemption from passage deadlines. Second, included in the resolution establishing the joint standing rules is a section detailing “emergency requests” that afford the majority and minority party leaders additional bill draft requests (in 2017, the majority party leaders each received ten and the minority party leaders received five) that can be submitted at any time in the session. In addition, late in the legislative session, party leaders of both chambers request that the rules be waived, which the Legislature can do with a majority vote.

The amendment extended eligibility to students in their final semester enrolled in less than 12 credits and allowed students to regain eligibility and to request a waiver from the credit requirement for hardship. The amendment also
proposed to keep undistributed money on campuses to be used in subsequent semesters instead of being redistributed by NSHE.

26 The Legislature appropriated funding for merit pay for classified NSHE employees and for a three percent cost of living increase for all NSHE employees in both years of the biennium.


28 The report presents results of completion rates for NSHE “two-year institutions” (see page three), a category that only pertains to TMCC. TMCC is the only institution in Nevada that exclusively delivers certificates and two-year degrees. The other institutions eligible for the SSOGP award certificates, two-year degrees, and four-year degrees, and NSC primarily awards four-year degrees. The analysis of completion rates, however, only considers students seeking a certificate or associate’s degree even though grant awards can be used for a certificate, an associate’s degree, or a bachelor’s degree and uses a 200 percent time to degree as opposed to the more commonly used 100 or 150 percent time to degree. The analysis also considers all students who enrolled in fall 2012, not just those who would meet the SSOGP’s requirements. NSHE’s report also makes no direct comparisons of the completion rates for those taking nine or 12 credits, the credit thresholds proposed in the original and amended versions of AB 188 (at the request of the Assembly Education Committee, NSHE did provide this information after the March 13, 2017 hearing and it was submitted as an exhibit prior to the AB 188 hearing before the Senate Education Committee on May 4, 2017). Also omitted from most of the report are the numbers of students included in the comparison categories. Elsewhere the report presents an analysis of enrollment levels and completion rates among year one SSOG recipients indicating that 74 percent of initial recipients, including half who were enrolled in 12 to 14.5 credits, increased their enrollment loads to 15 credits compared to the prior fall semester. These data are used to bolster the claim that “the program was successful in providing students the incentive to enroll in 15 credits.” However, 36 percent of initial recipients lost eligibility between the fall and spring, including 45 percent of CSN students. The report also suggests that the program had a positive effect on outcomes based upon a comparison of completion rates among “similarly situated students.” Specifically, the report states that “it is evident the SSOG award positively impacted time to degree as a greater percentage of students [33 percent] who received an SSOG award graduated” compared to those who were eligible but did not participate [30 percent] and those enrolled in less than 15 credits [23 percent]. Again, the report makes no direct comparison to the proposed AB 188 thresholds and omits the number of students included in each category. Beyond NSHE’s interpretation of the descriptive data there is no analysis demonstrating that the reported differences are statistically meaningful.


30 Rindels (2017).


32 The Legislative Commission is an interim committee that is composed of a dozen Legislators from both parties and both chambers. The Commission is tasked with overseeing the LCB and taking legislative action when the full Legislature is not in session including reviewing regulations and audits and making appointments. During each interim session, half a dozen or more interim studies are conducted. These study committees typically generate reports that include recommendations for subsequent action. Legislators serving on these committees are not compensated for their time beyond a per diem and because the study committees meet throughout the 20 months when the Legislature is not in session, Legislators must balance their interim assignments with other commitments such as work, family, and political activities. Legislative autonomy of interim studies can also be compromised by the appointment of non-legislators with vested interests. The efficacy of study committees may also be limited by turnover in the Legislature. For instance, neither Senator John Lee (District 1, Clark County), the sponsor of the legislation (SB 374, 2011) creating the interim committee that revised the higher education funding formula, nor Senator Steven Horsford, who chaired the study committee, returned to the Legislature the following session. Similarly, Senator Barbara Cegavske, a sponsor of the legislation creating the interim study committee examining the funding and governance of the state’s community colleges (SB 391, 2013), was termed limited from returning to the Senate. In the case of AB 202, Assemblywoman Joiner, the bill’s primary sponsor, is not seeking reelection in 2018.

33 In his testimony in support of AB 331, former President of CSN and GBC, Ronald Remington highlighted the persistence of the problems associated with the governance and administration of the two and four-year colleges: “Since I date back
to 1973 with service to Nevada, I can tell you that this hearing could have occurred in 1977, 1987, 1997, 2007, or currently. The issues are the same. To paraphrase Einstein, if you keep doing the same thing over and over expecting different results, there is something about that that is a bit insane. I am very much in support of separating the colleges. If you could allow me to paraphrase my colleagues here, if you do not enjoy riding in the back of the bus and complain about it, you are likely to be thrown off the bus.”


35 CES is funded with federal, state, and local resources with the majority of the funding coming from the local level via a one-cent tax per $100 of taxable property. Locally generated resources are used to support CES work within the county in which the taxes are collected. In the case of Clark County, property taxes generated $5.7 million in CES funding in 2016.


37 A college or university must have land-grant status in order to administer CES. Land-grant status also provides colleges and universities with exclusive access to some federal grants and a reduction in the indirect costs for some federal grants. At the request of the bill sponsor, UNLV Political Science Professor David F. Damore, one of the authors of this report, submitted written testimony and also testified at the end of the hearing to clarify some of the testimony offered by bill opponents.

38 Constance Brooks, NSHE Vice-Chancellor, testified at the hearing that “NSHE had no position on the original iteration of the bill,” but that the creation of boards would be unconstitutional per NSHE legal counsel since the language included in the conceptual amendment offered by Commissioners Guinchigliani and Kirkpatrick did not specify that the boards were advisory. The amendment to AB 407 that was adopted by the Assembly on April 24, 2017 designated the creation of advisory boards. Subsequently, the Assembly Ways and Means Committee amended the language defining the advisory boards from the bill. Later in the hearing, when Assemblyman Flores asked if she thought that UNLV had the capacity to administer CES, Brooks responded, “The University of Nevada is present in the room, and I think it is best that they speak for themselves in this regard.” When asked by Assemblyman McCurdy II if NSHE supported the housing of the UNR recruitment operation in the Clark County CES building, Brooks noted, “I do not know that the Board of Regents has taken a position on how programs are housed at any of our institutions [...] but as a blanket policy, the Board of Regents does not interfere with where programs are physically housed.” Later in the hearing in response to a question about the benefits of regionalization of services, Brooks asserted that NSHE “would not have a role in regionalization of Cooperative Extension or any staff therein. That solely falls under the purview of UNR, which is designated as the land-grant institution currently.” Brooks' claim that UNR is the designated land-grant institution and therefore, that UNLV or any other NSHE institution does not have claim to the material benefits associated with the land-grant contradicts legal opinions provided by the system’s legal counsel that were provided to the committee as an exhibit. Specifically, in response to a request from UNLV Dean of Science Ron Yasbin about UNLV’s status as a land-grant institution, Keasi Nyamekye, Assistant General Counsel, wrote in a May 25, 2004 memo that “It is the opinion of the Office of General Counsel that the land-grant status of the ‘University of Nevada’ applies to all the units within the System.” The following year in response to a similar inquiry from UNLV General Counsel Richard Lindstrom, Nyamekye replied in March 25, 2005 email, “Yes, it is still my opinion that the land-grant status of the ‘University of Nevada’ applies to all the units within the System...Therefore, UNLV is a land-grant institution.” At the AB 407 hearing before the Assembly Ways and Means Committee on May 24, 2017, Brooks testified that similarities between the medical school transition and the proposed reorganization of CES that had been discussed during the hearing were inaccurate because the Board of Regents was involved from the start with the medical school transition, but the sponsor of AB 407 had not consulted with the Board of Regents about the reorganization of CES. She also testified that the Board had neither considered the bill nor had plans to do so. Neither Brooks nor any other representatives from NSHE or the Board of Regents testified at the AB 407 hearings before the Senate Education Committee on June 3, 2017.

39 In fiscal year 2016, the state appropriated $561,861 in general fund revenue and in fiscal year 2017 the state appropriated $577,175 in general fund revenue for the “UNR Office of Prospective Students-South.” In fiscal year 2016 the state appropriated $216,929 in general fund revenue and in fiscal year 2017 the state appropriated $245,345 in general fund revenue for the “Las Vegas Cooperative Extension Building,” see Nevada System of Higher Education “2016-2017
In September 2016 the Nevada Supreme Court ruled that the ESA program was constitutional, but that the funding for the program was not commensurate with the state’s contribution to their child’s public education and to use that money to enroll the child in a non-public school, including home schooling. Before the program could be implemented it was challenged in state court. In September 2016 the Nevada Supreme Court ruled that the ESA program was constitutional, but that the funding for the program was not commensurate with the state’s contribution to their child’s public education and to use that money to enroll the child in a non-public school, including home schooling. Before the program could be implemented it was challenged in state court. 

The letter, which was submitted by UNR as part of the AB 16 deliberations, was written on November 12, 2015. The letter reads, in part, NIFA “can confirm that the University of Nevada, Reno has been the recipient of Nevada’s Hatch and Smith-Lever funding over the decades and, as such, University of Nevada, Reno is Nevada’s 1862 land-grant institution of record at NIFA.” A letter from NIFA summarizing the USDA Office of the General Counsel’s response to a UNLV requesting clarification of UNLV’s eligibility for the NIFA program that was written the previous month and that was submitted as part of the AB 407 deliberations states that “the University of Nevada System, as well as each component of the system, including several administrative offices, would be considered land-grant institution under the First Morrill Act and could be eligible for funding from NIFA, leaving the matter open as to whether the University of Nevada System itself should be the recipient of formula funds or the individual’s [sic] components of the system.” The letter then asks for clarification of this point and recommends “that UNL obtain an opinion from the Board of Regents of the University of Nevada System,” and notes that NIFA “will make a similar request to the Board.” In the more than two years since the letter was written there is no evidence in the public record indicating any response from NSHE or the Board of Regents to this request.

Although he did not formally sign on to the bill as a sponsor, Senator Scott Hammond actively promoted the bill as it moved through the Legislature.

The Economic Forum is five-member board appointed by the Governor that provides projections of the state’s general fund revenues based upon analysis of economic and employment data provided by the LCB and various executive branch agencies. The Economic Forum makes two sets of projections. The first projections are reported in early December of even years and are used by the Governor in preparing general fund budget recommendations to the Legislature. The Forum’s May 1 forecast in odd years is the official revenue estimates that the Legislature is required to use to ensure that general fund appropriations and revenues are balanced.

In his testimony, Senator Denis noted that Nevada has one of the lowest FAFSA completion rates in the county and as a consequence, Nevada students are unable to access millions of dollars in federal resources, such as Pell Grants, for which they may be eligible.

The $3.5 million appropriation was based upon an estimate provided by the Guinn Center for Policy Priorities. In the May 22, 2017 hearing, representative of NSHE testified that implementing the bill would cost $6.8 million. In addition, NSHE placed a fiscal note against the bill totaling $1.6 million for the biennium to implement the program.

Four subcommittees (General Government, Human Services, K-12/Higher Education/CIP, and Public Safety, Natural Resources, and Transportation) of the Assembly Ways and Means and the Senate Finance Committees are the legislative entities tasked with vetting the state budget (each of these committees also has Audit subcommittees, but these subcommittees did not meeting during the 2017 legislative session). At budget hearings members of the Assembly and Senate subcommittees participate in the same hearings. Each chamber’s subcommittees vote separately.

During the 2015 session, the Legislature established the ESA program. The program allows parents to receive funds commensurate with the state’s contribution to their child’s public education and to use that money to enroll the child in a non-public school, including home schooling. Before the program could be implemented it was challenged in state court. In September 2016 the Nevada Supreme Court ruled that the ESA program was constitutional, but that the funding for the
program was unconstitutional because it diverted money specifically authorized to fund public schools. Governor Sandoval’s proposed budget included a separate appropriation for the ESA program.


52 In total, the Legislature appropriated $33.5 million for the biennium for scholarships, $20 million to maintain the solvency of the Millennium Scholarship Trust Fund, $10 million for the SSOGP, and $3.5 for the Nevada Promise Scholarship. Note that the Millennium Scholarship Trust Fund and the Nevada Promise Scholarship are overseen by the Treasurer’s Office and are not included in NSHE budget totals.


54 This figure includes general fund appropriations for NSHE Special Projects, System Administration, System Computing Services, Business Center North, and Business Center South, also see Damore (2014).

55 The National Conference of State Legislatures reports that Nevada is one of four states where the legislature meets on a biennial basis, and with 63 members, the Nevada Legislature is the fourth smallest (Alaska = 60, Delaware = 62, and Nebraska = 49) in the country. Among the states with biennial legislatures, the Montana Legislature (150 members) meets for 80 legislative days (defined as a day on which a floor session is held), the North Dakota Legislature (141 members) meets for 80 legislative days, and the Texas Legislature (181 members) meets for 140 calendar days.


57 See Damore (2014).


The NSHE policy specifying the conditions under which gifts are received and other financial transactions are executed by institution Presidents, the Chancellor, or the Board of Regents is unclear (see Title 4, Chapter 10, Section of the Bylaws of the Board of Regents). As part of their periodic performance evaluations, Presidents report gifts received by their institutions (see Chapter 2, Page 7 of the Nevada System of Higher Education Procedures & Policies Manual).

In the hearing, Kevin Powers also addressed this point: First and foremost, there is no such thing as a fourth branch of government. I cannot say that emphatically enough. Nor is there any entity that is independent of the three branches of government. Every state officer and entity has to be connected to and derive its powers from one of the three branches of government, and only one of those branches of government. Obviously, the Board of Regents is not a judicial or a legislative entity. Therefore, it is an Executive Branch entity because like all Executive Branch entities, it is charged with carrying out and enforcing the law. In this case, it is carrying out and enforcing the law governing higher education. The framers in the Nevada Constitution took a slice of the sovereign power given to the Executive Branch and dedicated that to the Board of Regents. That slice of sovereign power from the Executive Branch is narrow in scope for the Board of Regents. It only applies to the internal management of the internal affairs of the university. By contrast, the Legislature retains all inherent sovereign power of the people except where expressly limited by the Nevada Constitution or the U.S. Constitution.


The report issued by the 2011-2012 interim study committee that developed the funding formula recommended that the Board of Regents “determine the scope and cost of a cost study to determine Nevada-specific credit hour weightings.” This recommendation was never implemented.

For a given fiscal year, institutions can earn back their share of the “Performance Pool” set-aside based upon actual performance from two years prior. Over time, the “Performance Pool” set-aside increased from five to 20 percent and the aggregate funding formula pool increased from $368 million in fiscal year 2014 (the first year the new funding formula was used) to $456 million in fiscal year 2019. Thus, even as the “Performance Pool” set-aside stabilizes at 20 percent, the increase in the aggregate funding formula budget means that even if institutions earn all of their performance points, the commensurate “Performance Pool” funding that is earned back is less than the total funding appropriated for that fiscal year by the Legislature.


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About UNLV

UNLV, founded in 1957, is an institution of more than 28,000 students and 3,000 faculty and staff located on the southern tip of Nevada, minutes from the Las Vegas Strip. Classified by the Carnegie Foundation for the Advancement of Teaching as a research university with high research activity, UNLV offers more than 350 undergraduate, graduate and doctoral degree programs including innovative academic degrees in such fields as gaming management, entrepreneurship, entertainment engineering and much more. The entertainment capital of the world, Las Vegas offers students a “living laboratory” for research, internships, and a wide variety of job opportunities. UNLV is dedicated to developing and supporting the human capital, regional infrastructure, and economic diversification that Nevada needs for a sustainable future. For more information, visit: http://www.unlv.edu/
About The Lincy Institute

Established in 2009, The Lincy Institute conducts and supports research that focuses on improving Nevada’s health, education, and social services. This research will be used to build capacity for service providers and enhance efforts to draw state and federal money to the greater Las Vegas. The Lincy Institute also highlights key issues that affect public policy and quality-of-life decisions on behalf of children, seniors, and families in Southern Nevada. Robert E. Lang, Ph.D. serves as the Executive Director of The Lincy Institute. To learn more visit: http://www.unlv.edu/lincyinstitute

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