

SENATE JOINT RESOLUTION NO. 14—COMMITTEE ON JUDICIARY

APRIL 23, 1997

Referred to Committee on Judiciary

SUMMARY—Proposes to amend Nevada constitution to create intermediate appellate court.
(BDR C-1620)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION – Matter in italics is new; matter in brackets [] is material to be omitted.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada constitution to create an intermediate appellate court.

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA,
2 JOINTLY, That a new section be added to article 6 and sections 1, 4, 7, 8,
3 11, 15, 20 and 21 of article 6 of the constitution of the State of Nevada be
4 amended to read respectively as follows:
5 *Sec. 3A. 1. The court of appeals consists of three judges or such*
6 *greater number as the legislature may provide by law. If the number of*
7 *judges is so increased, the supreme court shall provide by rule for the*
8 *assignment of each appeal to a panel of three judges for decision.*
9 *2. After the initial terms, each judge of the court of appeals must be*
10 *elected by the qualified electors of this state at the general election for a*
11 *term of 6 years beginning on the first Monday of January next after the*
12 *election. The initial three judges must be elected by the qualified electors of*
13 *this state at the first general election following the enactment of this section.*
14 *The initial terms of the judges must be staggered so that one judge serves*
15 *for an initial term of 2 years, one for 4 years and one for 6 years. The*
16 *initial judges shall meet as soon as practicable after their election to*
17 *determine by lot the term of office that each judge will fill. If there is an*
18 *increase in the number of judges, each additional judge must be elected by*
19 *the qualified electors of this state at the first general election following the*
20 *increase for a term beginning on the first Monday of January next after the*
21 *election. The legislature shall provide for an initial term of 6 or fewer years*
22 *for each additional judge so that one-third of the total number of judges, as*
23 *nearly as may be, is elected every 2 years. If the number of judges is*
24 *increased by more than one, the additional judges shall meet as soon as*

1 *practicable after their election to determine by lot the term of office that*
2 *each judge will fill.*

3 3. *The chief justice of the supreme court shall appoint one of the judges*
4 *of the court of appeals to be chief judge. The chief judge serves a term of 4*
5 *years and may succeed himself. The chief judge may resign his position as*
6 *chief judge without resigning from the court of appeals.*

7 4. *The supreme court shall provide by rule for the assignment of one or*
8 *more judges of the court of appeals to devote a part of their time to serve as*
9 *supplemental district judges, where needed.*

10 Section 1. The Judicial power of this State [shall be] *is* vested in a court
11 system, comprising a Supreme Court, *a Court of Appeals*, District Courts [,]
12 and Justices of the Peace. The Legislature may also establish, as part of the
13 system, Courts for municipal purposes only in incorporated cities and towns.

14 Sec. 4. 1. The supreme court [shall] *and the court of appeals* have
15 appellate jurisdiction in all civil cases arising in district courts, and also on
16 questions of law alone in all criminal cases in which the offense charged is
17 within the original jurisdiction of the district courts. *The legislature shall fix*
18 *the jurisdiction of the court of appeals and provide for the review, where*
19 *appropriate, of appeals decided by the court of appeals.* The supreme court
20 [shall] *and the court of appeals* also have power to issue writs of mandamus,
21 certiorari, prohibition, quo warranto [,] and habeas corpus and also all writs
22 necessary or proper to the complete exercise of [its appellate] *their*
23 jurisdiction. Each [of the justices shall have power to] *justice of the supreme*
24 *court and judge of the court of appeals may* issue writs of habeas corpus to
25 any part of the state, upon petition by, or on behalf of, any person held in
26 actual custody [,] *in this state* and may make such writs returnable [, before
27 himself] *before the issuing justice or judge* or the [supreme court,] *court of*
28 *which the justice or judge is a member,* or before any district court in the
29 state or [before] any judge of [said courts.] *a district court.*

30 2. In case of the disability or disqualification, for any cause, of [the
31 chief justice or one of the associate justices] *a justice* of the supreme court ,
32 [, or any two of them,] the governor [is authorized and empowered to
33 designate any] *may designate a judge of the court of appeals or a district*
34 *judge [or judges] to sit in the place [or places of such] of the* disqualified or
35 disabled justice . [or justices, and said judge or judges so designated shall
36 receive their] *The judge designated by the governor is entitled to receive his*
37 actual expense of travel and otherwise while sitting in the supreme court.

38 3. *In case of the disability or disqualification, for any cause, of a judge*
39 *of the court of appeals, the governor may designate a district judge to sit in*
40 *the place of the disabled or disqualified judge. The judge that the governor*
41 *designates is entitled to receive his actual expense of travel and otherwise*
42 *while sitting in the court of appeals.*

43 Sec. 7. The times of holding the Supreme Court , *the Court of Appeals*
44 and District Courts [shall] *must* be as fixed by law. The terms of the

1 Supreme Court [shall] *must* be held at the seat of Government unless the
2 Legislature otherwise provides by law, except that the Supreme Court may
3 hear oral argument at other places in the state. *The terms of the Court of*
4 *Appeals must be held at the place provided by law.* The terms of the District
5 Courts [shall] *must* be held at the County seats of their respective counties;
6 Provided, that in case any county [shall be] *is* hereafter divided into two or
7 more districts, the Legislature may by law [,] designate the places of holding
8 Courts in such Districts.

9 Sec. 8. 1. The Legislature shall determine the number of Justices of
10 the Peace to be elected in each city and township of the State [,] and shall
11 fix by law their qualifications, their terms of office and the limits of their
12 civil and criminal jurisdiction, according to the amount in controversy, the
13 nature of the case, the penalty provided [,] or any combination of these.

14 2. The provisions of this section affecting the number, qualifications,
15 terms of office and jurisdiction of Justices of the Peace become effective on
16 the first Monday of January, 1979.

17 3. The Legislature shall also prescribe by law the manner, and
18 determine the cases in which appeals may be taken from Justices and other
19 courts. The Supreme Court, *the Court of Appeals*, the District Courts [,] and
20 such other Courts [,] as the Legislature shall designate [, shall be] *are*
21 Courts of Record.

22 Sec. 11. The justices of the supreme court , *the judges of the court of*
23 *appeals* and the district judges [shall be] *are* ineligible to any office, other
24 than a judicial office, during the term for which they [shall] have been
25 elected or appointed; and all elections or appointments of any such judges by
26 the people, legislature [,] or otherwise [,] during said period [,] to any office
27 other than judicial [, shall be] *are* void.

28 [Sec:] Sec. 15. The Justices of the Supreme Court , *the Judges of the*
29 *Court of Appeals* and *the* District Judges [shall] *are* each *entitled* to receive
30 for their services a compensation to be fixed by law and paid in the manner
31 provided by law, which [shall] *must* not be [increased or] diminished during
32 the term for which they [shall] have been elected, unless a Vacancy occurs,
33 in which case the successor of the former incumbent [shall] *is entitled to*
34 receive only such salary as may be provided by law at the time of his
35 election or appointment; and provision [shall] *must* be made by law for
36 setting apart from each year's revenue a sufficient amount of Money, to pay
37 such compensation.

38 Sec. 20. 1. When a vacancy occurs before the expiration of any term
39 of office in the supreme court , *the court of appeals* or among the district
40 judges, the governor shall appoint a justice or judge from among three
41 nominees selected for such individual vacancy by the commission on judicial
42 selection.

43 2. The term of office of any justice or judge so appointed expires on the
44 first Monday of January following the next general election.

1 3. Each nomination for the supreme court [shall] *or the court of appeals*
2 *must* be made by the permanent commission, composed of:

- 3 (a) The chief justice or an associate justice designated by him;
4 (b) Three members of the State Bar of Nevada, a public corporation
5 created by statute, appointed by its board of governors; and
6 (c) Three persons, not members of the legal profession, appointed by the
7 governor.

8 4. Each nomination for the district court [shall] *must* be made by a
9 temporary commission composed of:

- 10 (a) The permanent commission;
11 (b) A member of the State Bar of Nevada resident in the judicial district
12 in which the vacancy occurs, appointed by the board of governors of the
13 State Bar of Nevada; and
14 (c) A resident of such judicial district, not a member of the legal
15 profession, appointed by the governor.

16 5. If at any time the State Bar of Nevada ceases to exist as a public
17 corporation or ceases to include all attorneys admitted to practice before the
18 courts of this state, the legislature shall provide by law, or if it fails to do so
19 the *supreme* court shall provide by rule, for the appointment of attorneys at
20 law to the positions designated in this section to be occupied by members of
21 the State Bar of Nevada.

22 6. The term of office of each appointive member of the permanent
23 commission, except the first members, is 4 years. Each appointing authority
24 shall appoint one of the members first appointed for a term of 2 years. If a
25 vacancy occurs, the appointing authority shall fill the vacancy for the
26 unexpired term. The additional members of a temporary commission [shall]
27 *must* be appointed when a vacancy occurs, and their terms [shall] expire
28 when the nominations for such vacancy have been transmitted to the
29 governor.

30 7. An appointing authority shall not appoint to the permanent
31 commission more than:

- 32 (a) One resident of any county.
33 (b) Two members of the same political party.

34 No member of the permanent commission may be a member of a
35 commission on judicial discipline.

36 8. After the expiration of 30 days from the date on which the
37 commission on judicial selection has delivered to him its list of nominees for
38 any vacancy, if the governor has not made the appointment required by this
39 section, he shall make no other appointment to any public office until he has
40 appointed a justice or judge from the list submitted.

41 [If a commission on judicial selection is established by another section of
42 this constitution to nominate persons to fill vacancies on the supreme court,
43 such commission shall serve as the permanent commission established by
44 subsection 3 of this section.]

1 Sec. 21. 1. A justice of the supreme court, *a judge of the court of*
2 *appeals*, a district judge, a justice of the peace or a municipal judge may, in
3 addition to the provision of article 7 for impeachment, be censured, retired,
4 removed or otherwise disciplined by the commission on judicial discipline.
5 A justice or judge may appeal from the action of the commission to the
6 supreme court, which may reverse such action or take any alternative action
7 provided in this subsection.

8 2. The commission is composed of:

9 (a) Two justices or judges appointed by the supreme court;

10 (b) Two members of the State Bar of Nevada, a public corporation
11 created by statute, appointed by its board of governors; and

12 (c) Three persons, not members of the legal profession, appointed by the
13 governor.

14 The commission shall elect a chairman from among its three lay members.

15 3. If at any time the State Bar of Nevada ceases to exist as a public
16 corporation or ceases to include all attorneys admitted to practice before the
17 courts of this state, the legislature shall provide by law, or , if it fails to do
18 so , the *supreme* court shall provide by rule, for the appointment of
19 attorneys at law to the positions designated in this section to be occupied by
20 members of the State Bar of Nevada.

21 4. The term of office of each appointive member of the commission,
22 except the first members, is 4 years. Each appointing authority shall appoint
23 one of the members first appointed for a term of 2 years. If a vacancy
24 occurs, the appointing authority shall fill the vacancy for the unexpired term.
25 An appointing authority shall not appoint more than one resident of any
26 county. The governor shall not appoint more than two members of the same
27 political party. No member may be a member of a commission on judicial
28 selection.

29 5. The supreme court shall make appropriate rules for:

30 (a) The confidentiality of all proceedings before the commission, except a
31 decision to censure, retire or remove a justice or judge.

32 (b) The grounds of censure and other forms of discipline which may be
33 imposed by the commission.

34 (c) The conduct of investigations and hearings.

35 6. No justice or judge may by virtue of this section be:

36 (a) Removed except for willful misconduct, willful or persistent failure to
37 perform the duties of his office or habitual intemperance; or

38 (b) Retired except for advanced age which interferes with the proper
39 performance of his judicial duties, or for mental or physical disability which
40 prevents the proper performance of his judicial duties and which is likely to
41 be permanent in nature.

42 7. Any person may bring to the attention of the commission any matter
43 relating to the fitness of a justice or judge. The commission shall, after
44 preliminary investigation, dismiss the matter or order a hearing to be held

1 before it. If a hearing is ordered, a statement of the matter [shall] *must* be
2 served upon the justice or judge against whom the proceeding is brought.
3 The commission in its discretion may suspend a justice or judge from the
4 exercise of his office pending the determination of the proceedings before
5 the commission. Any justice or judge whose removal is sought is liable to
6 indictment and punishment according to law. A justice or judge retired for
7 disability in accordance with this section is entitled thereafter to receive such
8 compensation as the legislature may provide.

9 8. If a proceeding is brought against a justice of the supreme court, no
10 justice of the supreme court may sit on the commission for that proceeding.
11 *If a proceeding is brought against a judge of the court of appeals, no judge*
12 *of the court of appeals may sit on the commission for that proceeding.* If a
13 proceeding is brought against a district judge, no district judge from the
14 same judicial district may sit on the commission for that proceeding. If a
15 proceeding is brought against a justice of the peace, no justice of the peace
16 from the same township may sit on the commission for that proceeding. If a
17 proceeding is brought against a municipal judge, no municipal judge from
18 the same city may sit on the commission for that proceeding. If an appeal is
19 taken from an action of the commission to the supreme court, any justice
20 who sat on the commission for that proceeding is disqualified from
21 participating in the consideration or decision of the appeal. When any
22 member of the commission is disqualified by this subsection, the supreme
23 court shall appoint a substitute from among the eligible judges.

24 9. The commission may:

25 (a) Designate for each hearing an attorney or attorneys at law to act as
26 counsel to conduct the proceeding;

27 (b) Summon witnesses to appear and testify under oath and compel the
28 production of books, papers, documents and records;

29 (c) Grant immunity from prosecution or punishment when the
30 commission deems it necessary and proper in order to compel the giving of
31 testimony under oath and the production of books, papers, documents and
32 records; and

33 (d) Exercise such further powers as the legislature may from time to time
34 confer upon it.

35 And be it further

36 RESOLVED, That section 3 of article 7 of the constitution of the State of
37 Nevada be amended to read as follows:

38 [Sec:] *Sec. 3.* For any reasonable cause to be entered on the journals of
39 each House [,] which may [,] or may not be sufficient grounds for
40 impeachment, the [Chief Justice and Associate] Justices of the Supreme
41 Court, *the Judges of the Court of Appeals* and *the Judges of the District*
42 *Courts* [shall] *must* be removed from Office on the vote of two thirds of the
43 Members elected to each branch of the Legislature, and the Justice or Judge
44 complained of [, shall] *must* be served with a copy of the complaint against

1 him [, and shall] *and* have an opportunity of being heard in person or by
2 counsel in his defense ; [,] Provided, that no member of either branch of the
3 Legislature [shall be] *is* eligible to fill the vacancy occasioned by such
4 removal.

5 And be it further

6 RESOLVED, That section 8 of article 15 of the constitution of the State of
7 Nevada be amended to read as follows:

8 [Sec:] *Sec.* 8. The Legislature shall provide for the speedy publication
9 of all Statute laws of a general nature, and such decisions of the Supreme
10 Court [,] *and the Court of Appeals*, as it may deem expedient; and all laws
11 and judicial decisions [shall] *must* be free for publication by any person;
12 Provided, that no judgment of the Supreme Court *or the Court of Appeals*
13 shall take effect and be operative until the Opinion of the Court in such case
14 [shall be] *is* filed with the Clerk of said Court.