

## A.J.R. 22 of the 70th Session

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### ASSEMBLY JOINT RESOLUTION NO. 22—COMMITTEE ON CONSTITUTIONAL AMENDMENTS

(ON BEHALF OF NEVADA SUPREME COURT)

MARCH 22, 1999

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Referred to Committee on Constitutional Amendments

SUMMARY—Proposes to amend Nevada Constitution to create intermediate appellate court and revise term of person appointed to fill vacancy in supreme court or court of appeals. (BDR C-1368)

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

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~(omitted material)~~ is material to be omitted.

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ASSEMBLY JOINT RESOLUTION—Proposing to amend the Constitution of the State of Nevada to create an intermediate appellate court and revise the term of a person appointed to fill a vacancy in an office for supreme court justice, court of appeals judge or district judge.

1 RESOLVED BY THE ASSEMBLY AND SENATE 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 judges must be elected by the qualified electors of*  
13 *this state at the first general election following the enactment of this*  
14 *section. The initial terms of the judges must be staggered so that at least*  
15 *one judge serves for an initial term of 2 years, at least one for 4 years and*  
16 *at least one for 6 years. The initial judges shall meet as soon as*  
17 *practicable after their election to determine by lot the term of office that*  
18 *each judge will fill. If there is an increase in the number of judges, each*  
19 *additional judge must be elected by the qualified electors of this state at*  
20 *the first general election following the increase for a term beginning on*

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1 *the first Monday of January next after the election. The legislature shall*  
2 *provide for an initial term of 6 or fewer years for each additional judge*  
3 *so that one-third of the total number of judges, as nearly as may be, is*  
4 *elected every 2 years. If the number of judges is increased by more than*  
5 *one, the additional judges shall meet as soon as practicable after their*  
6 *election to determine by lot the term of office that each judge will fill.*

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

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

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

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

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

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

Sec. 7. The times of holding the Supreme Court, *the Court of Appeals* and District Courts ~~{shall}~~ *must* be as fixed by law. The terms of the Supreme Court ~~{shall}~~ *must* be held at the seat of Government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in ~~{the}~~ *this* state. *The terms of the Court of Appeals must be held at the place provided by law.* The terms of the District Courts ~~{shall}~~ *must* be held at the County seats of their respective counties unless the Legislature otherwise provides by law.

Sec. 8. 1. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State ~~{}~~ *of Nevada* and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, according to the amount in controversy, the nature of the case, the penalty provided ~~{}~~ or any combination of these.

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

3. The Legislature shall also prescribe by law the manner, and determine the cases in which appeals may be taken from Justices and other courts. The Supreme Court, *the Court of Appeals*, the District Courts ~~{}~~ and such other Courts ~~{}~~ as the Legislature shall designate ~~{shall be}~~ *are* Courts of Record.

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

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

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

~~{2.—The}~~ *Except as otherwise provided in subsection 2, the* term of office of any justice or judge so appointed expires on the first Monday of January following the ~~{next}~~ *first* general election ~~{}~~ *that is held at least 12 calendar months after the date on which the appointment was made. At that general election, a justice or judge must be elected to fill the remainder of the term.*

2. *If the date on which the appointment was made is within the 12 calendar months immediately preceding the expiration of the term of the vacated office, the term of office of the justice or judge appointed pursuant to subsection 1 is the remainder of the unexpired term of office.*

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

(a) The chief justice or an associate justice designated by him;

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

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

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

(a) The permanent commission;

(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the board of governors of the State Bar of Nevada; and

(c) A resident of such judicial district, not a member of the legal profession, appointed by the governor.

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

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

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

(a) One resident of any county.

(b) Two members of the same political party.

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

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

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

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

2. The commission is composed of:

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

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

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

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

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

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

5. The legislature shall establish:

(a) In addition to censure, retirement and removal, the other forms of disciplinary action that the commission may impose;

(b) The grounds for censure and other disciplinary action that the commission may impose, including, but not limited to, violations of the provisions of the code of judicial conduct;

(c) The standards for the investigation of matters relating to the fitness of a justice or judge; and

(d) The confidentiality or nonconfidentiality, as appropriate, of proceedings before the commission, except that, in any event, a decision to censure, retire or remove a justice or judge must be made public.

6. The supreme court shall adopt a code of judicial conduct.

7. The commission shall adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

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

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

(b) Retired except for advanced age which interferes with the proper performance of his judicial duties, or for mental or physical disability which

prevents the proper performance of his judicial duties and which is likely to be permanent in nature.

9. Any matter relating to the fitness of a justice or judge may be brought to the attention of the commission by any person or on the motion of the commission. The commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing is ordered, a statement of the matter ~~[shall]~~ *must* be served upon the justice or judge against whom the proceeding is brought. The commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this section is entitled thereafter to receive such compensation as the legislature may provide.

10. If a proceeding is brought against a justice of the supreme court, no justice of the supreme court may sit on the commission for that proceeding. *If a proceeding is brought against a judge of the court of appeals, no judge of the court of appeals may sit on the commission for that proceeding.* If a proceeding is brought against a district judge, no district judge from the same judicial district may sit on the commission for that proceeding. If a proceeding is brought against a justice of the peace, no justice of the peace from the same township may sit on the commission for that proceeding. If a proceeding is brought against a municipal judge, no municipal judge from the same city may sit on the commission for that proceeding. If an appeal is taken from an action of the commission to the supreme court, any justice who sat on the commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the commission is disqualified by this subsection, the supreme court shall appoint a substitute from among the eligible judges.

11. he commission may:

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

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

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

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

And be it further

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

~~[Sec:]~~ *Sec. 3.* For any reasonable cause to be entered on the journals of each House ~~[ ]~~ which may ~~[ ]~~ or may not be sufficient grounds for impeachment, the ~~[Chief Justice and Associate]~~ Justices of the Supreme Court, *the Judges of the Court of Appeals* and *the* Judges of the District Courts ~~[shall]~~ *must* be removed from Office on the vote of two thirds of the

1 Members elected to each branch of the Legislature, and the Justice or Judge  
2 complained of ~~[, shall]~~ *must* be served with a copy of the complaint against  
3 him ~~[, and shall]~~ *and* have an opportunity of being heard in person or by  
4 counsel in his defense ; ~~[,]~~ Provided, that no member of either branch of the  
5 Legislature ~~[shall be]~~ *is* eligible to fill the vacancy occasioned by such  
6 removal.

7 And be it further

8 RESOLVED, That section 8 of article 15 of the Constitution of the State of  
9 Nevada be amended to read as follows:

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

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