

SENATE JOINT RESOLUTION NO. 5—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SUPREME COURT)

FEBRUARY 25, 2003

Referred to Committee on Judiciary

SUMMARY—Proposes to amend Nevada Constitution to allow Legislature to establish intermediate appellate court. (BDR C-607)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court.

1 RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF
2 NEVADA, JOINTLY, That a new section, designated Section 3A, be
3 added to Article 6 of the Nevada Constitution to read as follows:

4 ***Sec. 3A. 1. The Legislature may provide by law for***
5 ***the creation of a Court of Appeals.***

6 ***2. If the Legislature creates a Court of Appeals***
7 ***pursuant to subsection 1, then:***

8 ***(a) The Court of Appeals must consist of three judges or***
9 ***such greater number as the Legislature may provide by law.***
10 ***If the number of judges is so increased, the Supreme Court***
11 ***shall provide by rule for the assignment of each appeal to a***
12 ***panel of three judges for decision.***

13 ***(b) After the initial terms, each judge of the Court of***
14 ***Appeals must be elected by the qualified electors of this***
15 ***State at the general election for a term of 6 years beginning***
16 ***on the first Monday of January next after the election. The***
17 ***initial judges must be elected by the qualified electors of this***
18 ***State at the first general election following the creation of***
19 ***the Court of Appeals. The initial terms of the judges must be***



1 *staggered so that one judge serves for an initial term of 2*
2 *years, one for 4 years and one for 6 years. The initial judges*
3 *shall meet as soon as practicable after their election to*
4 *determine by lot the term of office that each judge will fill.*
5 *If there is an increase in the number of judges, each*
6 *additional judge must be elected by the qualified electors of*
7 *this State at the first general election following the increase*
8 *for a term beginning on the first Monday of January next*
9 *after the election. The Legislature shall provide for an*
10 *initial term of 6 or fewer years for each additional judge so*
11 *that one-third of the total number of judges, as nearly as*
12 *may be, is elected every 2 years. If the number of judges is*
13 *increased by more than one, the additional judges shall*
14 *meet as soon as practicable after their election to determine*
15 *by lot the term of office that each judge will fill.*

16 *(c) The Supreme Court shall appoint one of the judges*
17 *of the Court of Appeals to be Chief Judge. The Chief Judge*
18 *serves a term of 4 years and may succeed himself. The Chief*
19 *Judge may resign his position as Chief Judge without*
20 *resigning from the Court of Appeals.*

21 And be it further

22 RESOLVED, That Section 1 of Article 6 of the Nevada
23 Constitution be amended to read as follows:

24 Section 1. The Judicial power of this State ~~{shall be}~~ *is*
25 *vested in a court system, comprising a Supreme Court, a*
26 *Court of Appeals, if established by the Legislature,* District
27 Courts ~~{ }~~ and Justices of the Peace. The Legislature may also
28 establish, as part of the system, Courts for municipal purposes
29 only in incorporated cities and towns.

30 And be it further

31 RESOLVED, That Section 4 of Article 6 of the Nevada
32 Constitution be amended to read as follows:

33 Sec. 4. 1. The Supreme Court ~~{shall}~~ *and the Court of*
34 *Appeals, if established by the Legislature,* have appellate
35 jurisdiction in all civil cases arising in district courts, and also
36 on questions of law alone in all criminal cases in which the
37 offense charged is within the original jurisdiction of the
38 district courts. *The Legislature shall fix the jurisdiction of*
39 *the Court of Appeals.* The Supreme Court ~~{shall}~~ *and the*
40 *Court of Appeals* also have power to issue writs of
41 mandamus, certiorari, prohibition, quo warranto ~~{ }~~ and
42 habeas corpus and also all writs necessary or proper to the
43 complete exercise of ~~{its appellate}~~ *their* jurisdiction. Each
44 ~~{of the justices shall have power to}~~ *justice of the Supreme*
45 *Court and judge of the Court of Appeals may* issue writs of



1 *habeas corpus* to any part of the State, upon petition by, or on
2 behalf of, any person held in actual custody ~~{ } in this State~~
3 and may make such writs returnable ~~{before himself}~~ *before*
4 *the issuing justice or judge* or the ~~{supreme court,}~~ *court of*
5 *which the justice or judge is a member,* or before any district
6 court in the State or ~~{before}~~ any judge of ~~{said courts.}~~ *a*
7 *district court.*

8 2. In case of the disability or disqualification, for any
9 cause, of ~~{the Chief Justice or one of the associate justices}~~ *a*
10 *justice* of the Supreme Court, ~~{for any two of them,}~~ the
11 Governor ~~{is authorized and empowered to designate any}~~
12 *may designate a judge of the Court of Appeals or a* district
13 judge ~~{for judges}~~ to sit in the place ~~{for places of such}~~ *of the*
14 disqualified or disabled justice . ~~{for justices, and said judge or~~
15 ~~judges so designated shall receive their}~~ *The judge*
16 *designated by the Governor is entitled to receive his* actual
17 expense of travel and otherwise while sitting in the Supreme
18 Court.

19 3. *In case of the disability or disqualification, for any*
20 *cause, of a judge of the Court of Appeals, the Governor may*
21 *designate a district judge to sit in the place of the disabled or*
22 *disqualified judge. The judge that the Governor designates*
23 *is entitled to receive his actual expense of travel and*
24 *otherwise while sitting in the Court of Appeals.*

25 And be it further

26 RESOLVED, That Section 7 of Article 6 of the Nevada
27 Constitution be amended to read as follows:

28 Sec. 7. The times of holding the Supreme Court , *the*
29 *Court of Appeals* and *the* District Courts ~~{shall}~~ *must* be as
30 fixed by law. The terms of the Supreme Court ~~{shall}~~ *must* be
31 held at the seat of Government unless the Legislature
32 otherwise provides by law, except that the Supreme Court
33 may hear oral argument at other places in the State. *The*
34 *terms of the Court of Appeals must be held at the place*
35 *provided by law.* The terms of the District Courts ~~{shall}~~ *must*
36 be held at the County seats of their respective counties unless
37 the Legislature otherwise provides by law.

38 And be it further

39 RESOLVED, That Section 8 of Article 6 of the Nevada
40 Constitution be amended to read as follows:

41 Sec. 8. 1. The Legislature shall determine the number
42 of Justices of the Peace to be elected in each city and
43 township of the State ~~{ }~~ and shall fix by law their
44 qualifications, their terms of office and the limits of their civil
45 and criminal jurisdiction, according to the amount in



1 controversy, the nature of the case, the penalty provided ~~{}~~ or
2 any combination of these.

3 ~~{The provisions of this section affecting the number,~~
4 ~~qualifications, terms of office and jurisdiction of Justices of~~
5 ~~the Peace become effective on the first Monday of January,~~
6 ~~1979.}~~

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

13 And be it further

14 RESOLVED, That Section 11 of Article 6 of the Nevada
15 Constitution be amended to read as follows:

16 Sec. 11. The justices of the Supreme Court , *the judges*
17 *of the Court of Appeals* and the district judges ~~{shall be}~~ *are*
18 ineligible to any office, other than a judicial office, during the
19 term for which they ~~{shall}~~ have been elected or appointed . ~~{~~
20 ~~and all}~~ *All* elections or appointments of any such judges by
21 the people, Legislature ~~{}~~ or otherwise ~~{}~~ during said period
22 ~~{}~~ to any office other than judicial ~~{, shall be}~~ *are* void.

23 And be it further

24 RESOLVED, That Section 15 of Article 6 of the Nevada
25 Constitution be amended to read as follows:

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

39 And be it further

40 RESOLVED, That Section 20 of Article 6 of the Nevada
41 Constitution be amended to read as follows:

42 Sec. 20. 1. When a vacancy occurs before the
43 expiration of any term of office in the Supreme Court , *the*
44 *Court of Appeals, if established by the Legislature*, or among
45 the district judges, the Governor shall appoint a justice or



1 judge from among three nominees selected for such
2 individual vacancy by the Commission on Judicial Selection.

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

6 3. Each nomination for the Supreme Court ~~{shall}~~ **or the**
7 **Court of Appeals must** be made by the permanent
8 commission, composed of:

9 (a) The Chief Justice or an associate justice designated by
10 him;

11 (b) Three members of the State Bar of Nevada, a public
12 corporation created by statute, appointed by its Board of
13 Governors; and

14 (c) Three persons, not members of the legal profession,
15 appointed by the Governor.

16 4. Each nomination for the district court ~~{shall}~~ **must** be
17 made by a temporary commission composed of:

18 (a) The permanent commission;

19 (b) A member of the State Bar of Nevada resident in the
20 judicial district in which the vacancy occurs, appointed by the
21 Board of Governors of the State Bar of Nevada; and

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

24 5. If at any time the State Bar of Nevada ceases to exist
25 as a public corporation or ceases to include all attorneys
26 admitted to practice before the courts of this State, the
27 Legislature shall provide by law, or if it fails to do so the
28 **Supreme** Court shall provide by rule, for the appointment of
29 attorneys at law to the positions designated in this section to
30 be occupied by members of the State Bar of Nevada.

31 6. The term of office of each appointive member of the
32 permanent commission, except the first members, is 4 years.
33 Each appointing authority shall appoint one of the members
34 first appointed for a term of 2 years. If a vacancy occurs, the
35 appointing authority shall fill the vacancy for the unexpired
36 term. The additional members of a temporary commission
37 ~~{shall}~~ **must** be appointed when a vacancy occurs, and their
38 terms ~~{shall}~~ expire when the nominations for such vacancy
39 have been transmitted to the Governor.

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

42 (a) One resident of any county.

43 (b) Two members of the same political party.

44 No member of the permanent commission may be a member
45 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.~~

And be it further

RESOLVED, That Section 21 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 21. 1. A justice of the Supreme Court, *a judge of the Court of Appeals, if established by the Legislature*, 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



1 appointing authority shall fill the vacancy for the unexpired
2 term. An appointing authority shall not appoint more than one
3 resident of any county. The Governor shall not appoint more
4 than two members of the same political party. No member
5 may be a member of a commission on judicial selection.

6 5. The Legislature shall establish:

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

10 (b) The grounds for censure and other disciplinary action
11 that the Commission may impose, including, but not limited
12 to, violations of the provisions of the Code of Judicial
13 Conduct;

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

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

20 6. The Supreme Court shall adopt a Code of Judicial
21 Conduct.

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

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

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

29 (b) Retired except for advanced age which interferes with
30 the proper performance of his judicial duties, or for mental or
31 physical disability which prevents the proper performance of
32 his judicial duties and which is likely to be permanent in
33 nature.

34 9. Any matter relating to the fitness of a justice or judge
35 may be brought to the attention of the Commission by any
36 person or on the motion of the Commission. The Commission
37 shall, after preliminary investigation, dismiss the matter or
38 order a hearing to be held before it. If a hearing is ordered, a
39 statement of the matter ~~shall~~ **must** be served upon the justice
40 or judge against whom the proceeding is brought. The
41 Commission in its discretion may suspend a justice or judge
42 from the exercise of his office pending the determination of
43 the proceedings before the Commission. Any justice or judge
44 whose removal is sought is liable to indictment and
45 punishment according to law. A justice or judge retired for



1 disability in accordance with this section is entitled thereafter
2 to receive such compensation as the Legislature may provide.

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

22 11. The Commission may:

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

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

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

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

34 And be it further

35 RESOLVED, That Section 3 of Article 7 of the Nevada
36 Constitution be amended to read as follows:

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



1 the complaint against him ~~{, and shall}~~ *and* have an
2 opportunity of being heard in person or by counsel in his
3 defense . ~~{, Provided, that no member}~~ *No Member* of either
4 branch of the Legislature ~~{shall be}~~ *is* eligible to fill the
5 vacancy occasioned by such removal.

6 And be it further

7 RESOLVED, That Section 8 of Article 15 of the Nevada
8 Constitution be amended to read as follows:

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



