

ASSEMBLY JOINT RESOLUTION NO. 1—ASSEMBLYMEN KOIVISTO, BUCKLEY, MCCLAIN, PARKS, CLABORN, ANDERSON, ARBERRY, ATKINSON, BOBZIEN, CONKLIN, DENIS, GERHARDT, HOGAN, HORNE, KIHUEN, KIRKPATRICK, LESLIE, MANENDO, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARNELL, PIERCE, SEGERBLUM, SMITH AND WOMACK

FEBRUARY 9, 2007

Referred to Committee on Elections, Procedures, Ethics,
and Constitutional Amendments

SUMMARY—Proposes to amend the Nevada Constitution to provide for forfeiture of public office for three or more violations of ethical duties. (BDR C-171)

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.

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for forfeiture of public office for three or more violations of ethical duties.

Legislative Counsel's Digest:

Existing law provides that the Governor and other state and judicial officers, except justices of the peace, may be impeached for misdemeanor or malfeasance in office. (Nev. Const. Art. 7, § 2) Justices of the peace are removable from office by the Commission on Judicial Discipline. (Nev. Const. Art. 6, § 21; NRS 1.425-1.4695) Other civil officers are removable from office for malfeasance or nonfeasance pursuant to statutory methods that are separate and distinct from impeachment. (Nev. Const. Art. 7, § 4; NRS 283.300, 283.440) Existing law also provides that each House of the Nevada Legislature shall judge the qualifications of its own members and may expel a member by a two-thirds majority vote. (Nev. Const. Art. 4, § 6)

This resolution proposes to amend the Nevada Constitution to provide that if a public officer commits three or more violations of his ethical duties while holding the same office, that officer shall forfeit his office. Subject to appeal to the courts of this State, such a forfeiture would be automatic and would not require the process



of an impeachment. Also, in the case of members of the Nevada Legislature, such a forfeiture would not be limited by the power of each House of the Legislature to judge the qualifications of, punish and expel its own members.

This resolution also provides that the determination of whether a public officer has committed a violation of one or more of his ethical duties is to be made by the Commission on Judicial Discipline for public officers who are members of the Judicial Department, and by the Commission on Ethics or its successor for all other public officers. For the purposes of this proposed new constitutional section providing for forfeiture of office, a violation of the ethical duties of a public officer is defined to mean an act or omission of a serious nature, including, but not limited to, felonies, that indicates the officer knowingly or willfully chose to behave in a manner inconsistent with the fact that a public office is a public trust to be held for the sole benefit of the people.

This resolution provides further that the proposed new constitutional section providing for forfeiture of office does not apply with respect to any acts or omissions committed by public officers before the date on which the new constitutional section would take effect.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 6 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec. ~~[- 6. —Each]~~ 6.

1. Except as otherwise provided in subsection 2, each House shall judge of the qualifications, elections and returns of its own members, choose its own officers (except the President of the Senate), determine the rules of its proceedings and may punish its members for disorderly conduct, and with the concurrence of two thirds of all the members elected, expel a member.

2. The provisions of this Section do not prohibit the forfeiture of office of a member pursuant to Section 5 of Article 7 of this Constitution.

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 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;



1 (b) Two members of the State Bar of Nevada, a public
2 corporation created by statute, appointed by its Board of
3 Governors; and

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

6 ➤ The Commission shall elect a Chairman from among its
7 three lay members.

8 3. If at any time the State Bar of Nevada ceases to exist
9 as a public corporation or ceases to include all attorneys
10 admitted to practice before the courts of this State, the
11 Legislature shall provide by law, or if it fails to do so the
12 Court shall provide by rule, for the appointment of attorneys
13 at law to the positions designated in this Section to be
14 occupied by members of the State Bar of Nevada.

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

24 5. The Legislature shall establish:

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

28 (b) The grounds for censure and other disciplinary action
29 that the Commission may impose, including, but not limited
30 to, violations of the provisions of the Code of Judicial
31 Conduct;

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

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

38 6. The Supreme Court shall adopt a Code of Judicial
39 Conduct.

40 7. The Commission shall adopt rules of procedure for
41 the conduct of its hearings and any other procedural rules it
42 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 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 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. The 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.

12. The provisions of this Section do not prohibit the forfeiture of office of a justice or judge pursuant to Section 5 of Article 7 of this Constitution.

And be it further

RESOLVED, That a new section, designated Section 5, be added to Article 7 of the Nevada Constitution to read as follows:

Sec. 5. 1. If a public officer commits three or more violations of his ethical duties while holding the same office, whether or not the violations are committed at the same time or during the same term, that public officer forfeits his office.

2. For the purposes of this Section:

(a) The determination of whether a public officer has committed one or more violations of his ethical duties must be made by:

(1) For a public officer who is a member of the Judicial Department, the Commission on Judicial Discipline; or

(2) For all other public officers, the Commission on Ethics or any successor public agency created by statute and empowered to render opinions interpreting the statutory ethical standards applicable to public officers. The Legislature shall provide by law for such a public agency if the Commission on Ethics ceases to exist.

(b) A public officer who is determined to have committed one or more violations of his ethical duties must be given a reasonable opportunity to appeal that determination to a court of competent jurisdiction.

(c) A determination that a public officer has committed one or more violations of his ethical duties must not be deemed to be final until the public officer has exhausted his judicial remedies at the state level.

(d) If a public officer admits or stipulates in writing that he has committed one or more violations of his ethical duties, such admission or stipulation, as applicable, shall be deemed to be a determination by the relevant body that the



public officer has committed one or more violations of his ethical duties.

(e) Each act or omission of a public officer that is part of a continuing course of conduct or arises out of the same occurrence, transaction, event or scheme constitutes a separate violation in determining whether the public officer has committed one or more violations of his ethical duties.

3. The process of forfeiture described in this Section is in addition to and not mutually exclusive as to any other method by which a public officer may be removed from office, including, without limitation:

(a) Impeachment of the Governor and other state and judicial officers pursuant to Sections 1 and 2 of this Article;

(b) Removal of civil officers as provided by law pursuant to Section 4 of this Article;

(c) In the case of members of the Legislature, removal from office pursuant to Section 6 of Article 4 of this Constitution; and

(d) In the case of officers of the Judicial Department, removal from office by:

(1) The Commission on Judicial Discipline, as described in Section 21 of Article 6 of this Constitution; or

(2) The Legislature, as described in Section 3 of this Article.

4. A public officer who forfeits his office pursuant to this Section is liable to indictment, trial, judgment and punishment according to law.

5. The Legislature shall enact such laws and procedures as it determines to be necessary to facilitate the operation of this Section.

6. The provisions of this Section do not apply with respect to acts or omissions that are committed by a public officer before this Section becomes law and takes effect.

7. As used in this Section:

(a) "Public officer" means a person elected or appointed to a position in the Legislative, Executive or Judicial Department of State Government or to a position with any political subdivision of this State if the position:

(1) Is established by this Constitution or a statute of this State or by a charter or ordinance of a political subdivision of this State; and

(2) Involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty.



(b) *"Violation of an ethical duty" means an act or omission committed by a public officer, which act or omission:*

(1) Is of a serious nature, including, without limitation, acts or omissions that constitute felonies in this State; and

(2) Indicates the public officer behaved knowingly or willfully in a manner inimical to the nature of a public office as a public trust to be held for the sole benefit of the people.

And be it further

RESOLVED, That Section 2 of Article 7 of the Nevada Constitution be amended to read as follows:

Sec. ~~[- 2. - The]~~ 2.

1. Except as otherwise provided in subsection 2, the Governor and other state and judicial officers, except justices of the peace, shall be liable to impeachment for misdemeanor or malfeasance in office, ~~[-]~~ but judgment in such case shall not extend further than removal from office and disqualification to hold any office of honor, profit ~~[-]~~ or trust under this State. The party, whether convicted or acquitted, shall ~~[-nevertheless,]~~ nevertheless be liable to indictment, trial, judgment and punishment according to law.

2. The provisions of this Section do not prohibit the forfeiture of office of the Governor or other state or judicial officers pursuant to Section 5 of this Article.

And be it further

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

Sec. ~~[- 3. - For]~~ 3.

1. Except as otherwise provided in subsection 2, 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 and judges of the district courts shall be removed from office on the vote of two thirds of the members elected to each branch of the Legislature, and the justice or judge complained of, shall be served with a copy of the complaint against him, and shall have an opportunity of being heard in person or by counsel in his defense, provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

2. The provisions of this Section do not prohibit the forfeiture of office of a justice of the Supreme Court or a



1 *judge of the district court pursuant to Section 5 of this*
2 *Article.*

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