

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
May 24, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:37 a.m., on Thursday, May 24, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman John Ocegüera (Excused)



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

Chairman Anderson:

[Meeting called to order and roll called.]

We began a work session yesterday relative to Senate Joint Resolution 2 and I asked Ms. Chisel to do some research on it ([Exhibit C](#)).

Senate Joint Resolution 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

Jennifer Chisel, Committee Policy Analyst:

I looked at the election records for 2002, 2004, and 2006 to put this information together. Those are each reflected in the charts behind the memo page. At the top, in the green portion, you will see how many candidates there were total and how many of those were opposed or unopposed. For instance, in 2002, 3 out of the 13 candidates ran opposed, so most of them did not run with an opponent. Each race is pointed out. I have also provided information about the Supreme Court races. The information was taken from Secretary of State records and the contribution and expense reports that were on file. I included the Supreme Court and district court elections, since they are the only elections addressed in S.J.R. 2.

Chairman Anderson:

As you can see in this report, in 2002 only 3 of the 13 candidates who ran for district court judge were involved in the elections and the contributions that they were raising.

Assemblyman Segerblom:

This does not include the judge races that are the normal cycle, where most ran unopposed and still had to raise hundreds of thousands of dollars.

Chairman Anderson:

We did not ask for the listing of every single judicial race, only a sampling of one.

Assemblyman Ohrenschall:

Ms. Chisel, District 1 shows that Michael Griffin received 77 percent of the vote. What does the 23 percent of the vote that he did not receive represent?

Jennifer Chisel:

In the records I pulled up, it was unclear to me. The election summary for the Supreme Court races had the choice of the candidate and the choice "none of these candidates." That is reflected in the "none" category in the Supreme Court. When you get to the District Court, in 2006, the total is close to 100 percent. In 2002, they used the term "over-and-under votes." The term "over and under" is the remainder of the 100 percent. That 77 percent is what he received.

Chairman Anderson:

I would like to note that on the 2006 election district court page, that anomaly does not exist. That is a result of how the earlier cycles reported the actual number of people who participated in the election and who chose not to cast a ballot in that particular section of the election. The terminology changed because we view each election separately, but they are held on a common ballot. If you are looking for 100 percent, you will see that is true in the 2006 report, where it is not true in the earlier reports.

Assemblywoman Allen:

I have been rather outspoken about the 60 percent portion of S.J.R. 2. After considerable thought and discussion with members of the Committee, I would be willing to move the bill if the Committee agreed to a 55 percent ceiling.

Assemblyman Horne:

I would be amenable to that amendment.

Chairman Anderson:

A motion to reconsider has not been placed, but an Amend and Do Pass motion on S.J.R. 2 has. The amendment would change Section 22 to 55 percent instead of its current 60 percent.

Assemblywoman Allen:

We had discussion in Committee yesterday in regard to people who choose to skip that portion of the ballot. It might be worthy in this amendment to make it clear that it would be 55 percent of everyone who decided to vote in the election.

Risa Lang, Committee Counsel:

The current language says "if less than 60 percent of the votes cast on the question," so it is already specified.

Assemblyman Conklin:

I agree with Ms. Lang. It says, "are cast in that specific race," and that is the current number. I am unsure about the intended. If we put 55 percent of all of the ballots cast, then any ballot that is not cast automatically becomes a no. Is that correct?

Chairman Anderson:

In Assemblywoman Allen's proposed amendment, we are only changing the number from 60 percent to 55 percent. Ms. Lang indicated that because the continuation of the sentence says "on the question" we are talking about those in favor and those against being leveled against each other, rather than the aggregate total number of people who voted in the election. In skipping by the particular election, it is neither an affirmative or negative vote, but a neutral. Is that correct, Ms. Lang?

Risa Lang:

Yes, that is correct Chairman Anderson.

Assemblyman Manendo:

After the fact of judges running for retention, how is that going to be worded on the ballot? Will it have "retain candidate" or "not retain candidate"? I think that is relevant to placing this on the ballot.

Chairman Anderson:

Ms. Lang, do we need to be specific on the wording?

Risa Lang:

It would be worded so that you would be able to provide by statute for that if needed at a later time. This does not spell out the specifics of what would go on the ballot, and I am not sure if you would want to put that specifically in the constitution.

Chairman Anderson:

Assemblyman Manendo, this is a constitutional amendment so we may want to leave that particular practical application open so that in the future it may be changed.

Assemblyman Manendo:

My question leads to the percentage then. If you only put one name on the ballot, depending on how it is worded, it is easy to get a high percentage because they are unopposed.

Assemblywoman Allen:

In the research I did during the interim, I saw copies of ballots in other states where this takes place. It actually says the judges name and "to retain" with a "yes" or a "no." I do not think that there was confusion in this instance with voting.

Chairman Anderson:

Assemblyman Manendo would like to have a statement referring to the fact that the person must receive a percentage of votes, and the statement shall be a straight forward question with a yes or no answer to the question of retaining a certain judge.

Assemblyman Manendo:

The wording of the question is relevant to the percentage.

Chairman Anderson:

Ms. Chisel provides that on page 2, lines 11 through 13. It is a form provided by law which would indicate that if this were to become applicable that the form itself would be the proper discussion of the Elections and Procedures Committee. Assemblyman Manendo is concerned because he would like to see it become part of the constitution.

Assemblyman Horne:

The language for the ballot does not necessarily need to be in the constitution. The mandate from the constitution would be that the judge is to retain whatever percentage we come up with in a retention election. In order to be able to calculate that percentage, the voter needs a choice of yes or no. I cannot imagine putting the ballot forth with what was implied, which would be just the name of the judge by himself. That would be a 100 percent vote every time. There would not be a calculated vote over the entire sum of ballots cast over election. We are talking about the votes cast for that particular judge and the percentage they have to attain. That means that there has to be a "yes" or "no", or "retain" or "not retain" language.

Chairman Anderson:

Assemblyman Manendo, do you have a comfort level now?

Assemblyman Manendo:

I still feel that they might put the name on the ballot twice. It could say yes for this candidate or no for this candidate. I am concerned that it could be extremely easy to obtain 60 percent with one person's name on the ballot. I feel this is something we need to consider because this is a huge step.

Assemblyman Carpenter:

Are there going to be two commissions? Is there one Judicial Performance Commission and another one that would put forth the names to the governor?

Risa Lang:

There is the Commission on Judicial Performance and there would also be the Commission on Judicial Selection. They are different.

Chairman Anderson:

I remain concerned about the election question, wanting to make sure that there is an opportunity for public testimony at the election. There also needs to be an opportunity for the public to make comment on the potential candidates in front of the Selection Committee for Nomination.

Assemblyman Carpenter:

I have a concern about page 3. It says that "a vote of an individual member of a commission must not be disclosed to the public." If this is supposed to be some kind of an open process, the public should be involved.

Chairman Anderson:

The rules for the Commission on Judicial Selection are not outlined in the bill. We can see that time has been put into the Committee on Judicial Performance, but making sure that the public has input into the judicial selection part seems to be less open.

Assemblyman Horne:

Page 3 paragraph 4 appears to be talking about the Judicial Performance Commission. Who is on that Commission?

Chairman Anderson:

There are two members of the State Bar of Nevada, each justice of the Supreme Court, and judges of the Court of Appeals.

Assemblyman Horne:

The reason there is nondisclosure to the public may be to protect them from possible repercussions for unfavorable voting. For instance, if I am an attorney sitting on the Commission and I decide not to vote an affirmative for something

and it moves forward, then I would be known by a certain judge that I disapprove of them. If I am an attorney, I may have cases before this judge. There are members of the legal profession that are members of the Commission.

Chairman Anderson:

This bill also increases the members of the judicial selection from three to four. If we are concerned about making sure that public comment is taken, we can look at page 6, Section 20. That section talks about the Commission on Judicial Selection, and we could look at language for when a vacancy occurs, for any reason, in the Supreme Court or the courts of appeals or among the district judges. This does not apply to the justices of the peace; they are still going to be elected. While the Commission on Judicial Selection makes its own operating rules by regulation, if we were to put in here some restrictions about public testimony or an announcement so that we know that it has occurred, we would then at least give the public the opportunity to make comment. We could restrict the public comment on potential appointments and the hearings by the Commission on Judicial Selection. They shall select three nominees for the Commission and shall provide names of three nominees to the Governor and the public.

Assemblywoman Allen:

I like Assemblyman Carpenter's point in relation to the Judicial Selection Commission public disclosure of how they voted on each judge. I feel that is a reasonable request.

Chairman Anderson:

I am concerned about what Assemblyman Horne outlined concerning the fact that there will be two judges and potentially two attorneys who will appear in front of the appointed judges on a regular basis. When the attorneys meet to make their deliberation and make a selection, they should not have to worry if it is going to affect them in another part of their life. The only advantage of having judges who are appointed rather than elected, is that independence allows them to look at the weight of the case and not the popularity of the case.

Assemblyman Ohrenschall:

I have a hard time convincing myself that the citizens are not qualified to make these decisions. The influence of money in politics is a problem across the spectrum that should be addressed in another bill in terms of finance reform, maybe only allowing lawyers to make a symbolic contribution and not to heavily fund judges' campaigns. I have a problem with taking the voters out of the selection process. I know the selection panels and the performance panels

are supposed to be based purely on merit, but politics affects every committee. We are going to be taking political choices and making them more secretive.

Chairman Anderson:

The simple solution would be to see if the Amend and Do Pass motion without any other amendment moves.

ASSEMBLYWOMAN ALLEN MOVED TO AMEND AND DO PASS
SENATE JOINT RESOLUTION 2 WITH THE AMENDMENTS
CHANGING 60 PERCENT TO 55 PERCENT AT LINE 14 AND
LINE 22.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CARPENTER, MANENDO,
OHRENSCHALL AND CHAIRMAN ANDERSON VOTED NO.
ASSEMBLYMAN OCEGUERA WAS EXCUSED FOR THE VOTE.)

I will assign this bill to Assemblyman Conklin.

[Meeting adjourned at 10:53 a.m.]

RESPECTFULLY SUBMITTED:

Kaci Kerfeld
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 24, 2007

Time of Meeting: 9:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.J. R. 2	C	Jennifer Chisel, Committee Policy Analyst	Memorandum