

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
April 5, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:11 a.m. on Thursday, April 5, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Gale Maynard, Committee Secretary

OTHERS PRESENT:

The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court
Juli Star-Alexander, Redress, Incorporated
James Richardson, Ph.D., Nevada Faculty Alliance
Alecia D. Biddison, The Busick Group
Rew R. Goodenow, State Bar of Nevada
John K. O'Connor
Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

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Rocky Finseth, Nevada Land Title Association
Shari O'Donnell, Vice President, Signature Homes

CHAIR AMODEI:

We call this meeting of the Senate Committee on Judiciary to order and start with Senate Joint Resolution (S.J.R.) 9.

SENATE JOINT RESOLUTION 9: Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

THE HONORABLE A. WILLIAM MAUPIN (Chief Justice, Nevada Supreme Court):

I support S.J.R. 9 which starts the process of passing the resolution in two consecutive Legislative Sessions to amend the *Constitution of the State of Nevada*. The resolution will then be on the ballot for the voters in 2010 to provide a separate intermediate court of appeals as part of the court system.

This resolution has been on the voting ballot before but was not well promoted. Amending the *Constitution of the State of Nevada* is a long process. Legislators will create the intermediate appeals court during the Legislative Session of 2011, the judges to sit on this court will be elected in 2012 and assume their offices in 2013.

Nevada Supreme Court cases increased from 1,616 in 1995 to 2,157 in 1996; in 1997, it increased again to 2,521. There has been a five-judge Supreme Court since the middle of the 1960s. This has been a huge undertaking by the judges to deal with caseloads. The Nevada State Legislature aided with important relief in the form of two additional Supreme Court justices and allowed us to create a panel system. With the addition of these judges, our caseload has been reduced; at the end of 2006, it stood at 1,377.

The increase of judges demonstrates we can get caseloads down to a manageable number. Using organized programs creates better time management. Despite these improvements, it still takes time from briefings to resolve substantial pieces of litigation before the court.

Between 1997 to present, in cooperation with the Eighth Judicial District, we created the chief judge system and incorporated this strategy in the Second Judicial District. We enacted a short trial system and used the arbitration system. With these methods in place, the filings leveled.

In the past two years, case filings have increased to over 2,000 cases per year. Even with these improvements in our court system, these increases are jeopardizing our functionality. We need to take the future of our court system to another level. Expansion of the Nevada Supreme Court has worked in the past, but with population pressures, we need to look at expanding again.

It is time to start the process of increasing our judges in the intermediate appeals court. A comprehensive report was commissioned by S.B. No. 234 of the 73rd Session of the Legislature ([Exhibit C](#), original is on file in the Research Library) and presented on March 8.

SENATOR WIENER:

This was initiated a few sessions ago, and then you pulled back on the process because the timing was not right. Did you make a decision to initiate these other intermediate procedures during this interim? In testimony, you say other routes to justice were maxed out, is that why you are bringing this forward?

CHIEF JUSTICE MAUPIN:

Essentially, you are correct. Arbitration went into effect in 1992, but the full impact was not felt until three to four years later. In 1996, there was an examination in the Eighth Judicial District Court between myself and my colleagues whether we should stop hearing criminal and civil cases in three-week cycles. We determined to enact a specialization program based on district court caseloads. We have benefited from these decisions.

Creating the family court improved the performance of the general district court. Once elected to the Nevada Supreme Court, I voted for the measure to approve the specialization which reduced court filings. Our criminal appeals in Clark County were less than in 1996. Management decisions were done to improve the court's performance, and it had a net effect of reducing the number of filings.

This resolution was initiated twice before. We did not know how successful the court expansion program would become. It would have been hard to make the case to the public at that time, but now we are ready.

SENATOR CARE:

I see the need, but how are you going to make the case to the public? How are you going to promote the idea?

CHIEF JUSTICE MAUPIN:

We will not have competition on an attempt to get a bond measure passed to build a 17-story courthouse in Clark County along with a renovated jail. The efforts of The Honorable James W. Hardesty and The Honorable Michael L. Douglas created a Bench-Bar Committee which started a regular interaction with members of the State Bar of Nevada to keep them abreast of the progress the Nevada Supreme Court makes with its dockets and our needs.

The Nevada Supreme Court cannot solicit or raise funds. The legal profession as an institution will have to step forward to raise funds. A political committee will have to be formed in order to promote this and be professional as well as accountable with spending. We have to make our case to the people and have a business plan. We are in the process of doing this. Justice Hardesty said he was in favor of an intermediate appeals court only if justification could be based on court caseloads, management needs and the development of an efficient court.

It was agreed to lease space in the Regional Justice Center for office and courtroom space pending the approval of an intermediate appeals court.

In intervening years, court expansion seemed to be working. Our infrastructure issues are to add new offices. The three chambers available now are suitable for an intermediate appeals judge, law clerk and judicial assistant.

CHAIR AMODEI:

Is there anyone else to speak on S.J.R. 9? We will close the hearing on S.J.R. 9 and reopen the hearing on S.J.R. 2.

SENATE JOINT RESOLUTION 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

JULI STAR-ALEXANDER (Redress, Incorporated):

In regard to this joint resolution, we were asked to provide evidence and support for our testimony which was missing from public record; therefore, we have prepared an overview ([Exhibit D](#), original is on file in the Research Library) which will be released to all public venues.

Senate Joint Resolution 2 goes in the opposite direction of judicial accountability. Fifteen other states use judicial selection committees. The Nevada plan, derived from the Missouri Plan, will fail. Evidence supports that the Missouri Plan does not work. Using the judicial selection committees does nothing to repair the judiciary.

The Nevada plan would require us to surrender the right to elect and recall judges, currently a right under the *Constitution of the State of Nevada*.

Articles being published speak to cronyism in Nevada. Any branch in the government can be corrupted. We are concerned that with a judicial selection committee, those seeking a judicial appointment could bribe members of the committee. This resolution is a Band-Aid to cover a diseased legal system.

I have been a critic of the judiciary and justice system in Nevada and page 12 of [Exhibit D](#) has a quote by U.S. Supreme Court Chief Justice Warren E. Burger. Our report cites multiple areas that should be reviewed prior to any discussion of S.J.R. 2.

Other options of judicial selection have not had attention, and that is the sortition of judges. This would eliminate the need for appointment and selection of judges. This method is successful in jury trial situations where the jury is sortitioned. The backlog of cases could be ratified through the use of a sortition system.

Unless the Nevada Supreme Court creates a user-friendly public Website which tracks judicial overturns, recusals and disqualifications along with an open judicial complaint system, we need financial disclosure reports online, so voters can make a sound and reasonable decision on elections. Things can be done that will create the kind of accountability S.J.R. 2 was designed to correct.

The entire system is defective, not by choice, but by parties involved not abiding by the *Constitution of the State of Nevada*. An incredible amount of

incompetence is in the legal system. A lot of work has to come from this Committee. We are not happy with testimony from Senator William J. Raggio because he did not give a fair representation of the jail for the judges' initiative. We are not an advocate of that organization, but it stands for judicial accountability initiative law. Grand juries are necessary to review acts of judicial misconduct.

Why can we sentence people to death but do not have the power to decide if a judge has engaged in misconduct? Senate Joint Resolution 2 is misleading.

JAMES RICHARDSON, PH.D. (Nevada Faculty Alliance):

During the day, I direct the Grant Sawyer Center for Justice Studies at the University of Nevada, Reno. Research is done relevant to this question and to develop new standards for the American Bar Association (ABA) for judicial performance. There are good methods that take into account the views of citizens and the legal profession. Many trial judges who have attended the degree program I direct at the Sawyer Center have questions on raising money for campaigns. Time after time, judges who have a process, as suggested in S.J.R. 2, are envied by other judges. Those who do not have the process suggested by S.J.R. 2 are faced with problems raising campaign funds.

The ABA and the judiciary have taken important steps rectifying some of these problems. This resolution is a compromise involving citizen input to assess the performance of judges and recommend appointments. Based on conversations with judges throughout the country, I urge support for S.J.R. 2.

ALECIA D. BIDDISON (The Busick Group):

I helped to draft this bill with Senator Raggio. I support S.J.R. 2.

REW R. GOODENOW (State Bar of Nevada):

I am also an active member of the ABA; both associations I am affiliated with have adopted positions of support and favor of the merit selection process. There are studies on this process, and I can provide the Committee with this information.

Senator Care, with respect to S.J.R. 9, convincing the electorate who makes the decision on what is in the best interest for Nevada, the ABA Website has enlightening materials.

A 2004 case decided by the United States Supreme Court, *Republican Party of Minn. v. White*, 536 U.S. 765 (2002), changed the field of judicial selection. It changed in a way important to the Committee and legislative decision where it upheld a judicial officer's right to free speech.

Because judges in Nevada can directly solicit campaign contributions, it creates a situation of what a judge might do in a particular case. This situation raises questions about our judicial system, and a change is necessary.

Ms. Star-Alexander spoke of an article in the *Las Vegas Review-Journal* that focused on counsel for those children in the foster care system. The Chief Justice and I took on the challenge to provide attorneys for that system along with volunteers. We are addressing these needs.

JOHN K. O'CONNOR:

This bill is a start in the right direction, but amendments need to be in place where an attorney can run against incumbents. It will bring a balance so more attorneys will run for office.

CHAIR AMODEI:

We will close the hearing on S.J.R. 2 and open the hearing on S.B. 483.

SENATE BILL 483: Makes various changes to provisions relating to business.
(BDR 7-868)

ROBERT C. KIM (Chair, Executive Committee, Business Law Section, State Bar of Nevada):

This bill embodies the Executive Committee's proposed revisions to our State's business law statutes. I provided the Committee with a memorandum ([Exhibit E](#)) that walks through each section of S.B. 483 and why we are proposing amendments to certain sections of the bill.

Section 1 allows a corporation to enter its own articles or bylaws. It provides for the waiver of the corporate opportunity doctrine. This doctrine holds the directors and officers to good faith and loyalty to their respective corporation by providing any business opportunity back to the corporation before pursuing it for themselves.

Sections 2 and 6 proposed amendments ease the administrative burden of taking action by written consent of a board of directors in the context of an interested transaction. The board may execute a written consent, have all board members execute per statute but interested members abstain and do not participate in the vote.

Sections 3-4, 10-14, 17, 21-22, 28-33, and 44 clarify language as it relates to the impact of a reinstatement or revival of an entity in Nevada if the entity is deemed in good standing by the effective date of the forfeiture. This impacts almost every chapter we have and clarifies that impact. It defines default. When a charter is reinstated, they are given a retroactive good standing back to the date of forfeiture.

Section 5 impacts the issue of bearer shares. This has come up on multiple fronts. Nevada has never allowed bearer shares, and the revision will make it clear. This alleviates the notion that doing business in Nevada is bad.

Section 7 allows a corporation to provide flexibility with voting standards in respect to different classes of stock and parallels the existing voting structure.

Section 8 clarifies that a corporation hold a high standard with regard to the election of directors. A common trend in corporations is to require directors to be elected by a straight majority and not just a mere plurality.

Section 9 addresses voting approval for the sale of assets or, substantially, all assets of a corporation.

Section 15 is a new section to *Nevada Revised Statute* (NRS) 86 dealing with limited liability companies (LLC). It allows organizers or managers to dissolve an LLC to the extent that member interests have not already been issued. This is similar to the power a corporate or a director has in a corporation saying they can dissolve such corporation prior to issuance of any stock.

Section 16 takes some of the revised Uniform LLC Act adopted in 2006 and states an LLC is distinct from its members and managers.

Section 18 is another revision based on the LLC Act that provides an operating agreement adopted by its members is adopted by the entity as well.

Section 19 also relates to the revised LLC Act and states that limited liability of managers and members in and of itself is not forfeited to the extent that they do not observe corporate formalities.

Section 20 attempts to correct when a member can bring a derivative action brought on behalf of the entity by its equity owners if believed the entity is not doing its job. The present legislation states a member has no right to bring a derivative action that is contrary to the intent when first adopted.

Sections 23, 25, 27 and 52 impact NRS 87 and were adopted to eliminate the limitation on use of limited liability partnerships (LLP) only for professional services. Any entity can use an LLP for any purpose.

Sections 24 and 26 deal with the transitional language as it relates to the Uniform Partnership Act. In the 73rd Session, Nevada adopted the Uniform Partnership Act approved by the National Commission on Uniform State Laws. We provided an opt-in/opt-out framework where we retained the unique aspects of our Partnership Act of 2005 but wanted to allow people to opt into the new partnership act which is distinct in intent and purpose. The old partnership act is based on the loose agreement between two parties to form a partnership for the conduct of business whereas the new partnership act is more entity-based and less state-of-mind based.

We asked to eliminate proposed changes in section 24 and further amend section 26 as we have requested.

Sections 34 through 43 impact NRS 89 and are designed to expand what entities can be used for professional services. As an example, doctors' groups or law firms may practice their trade in a form of a professional corporation or an LLP. We have seen a lot of firms using the LLC format to do business. This reflects the modern trend to allow and revise NRS 89 to permit the use of LLCs by professionals as well. It offers unique tax benefits, and it is about time that this expands.

Section 45 clarifies the impact of dissenters' rights regarding fractional shares. When one elects to dissent to a corporate action, it foregoes stockholder rights and exercises its rights to receive fair market value of shares.

The Nevada Trial Lawyers Association has a clarification they will submit at a later date with respect to revisions for NRS 92A.380.

Sections 46 through 48 deal with NRS 21 and clarify when a financial institution may offset amounts paid under the Social Security Act so payments to the individual are not offset.

Section 49 clarifies to file a financial statement for a transmitting utility in the Office of the Secretary of State and not in the county where the utility is located.

Section 50 clarifies when one can challenge a sale of real estate through foreclosure. It will preserve the rights of the bona fide purchaser who has no relationship to the prior owner and can purchase title without fear of being undermined.

Section 51 is an attempt to clarify the prohibition on gifts to associations and management committees. This amendment may pose issues; we are willing to withdraw this proposed amendment.

SENATOR WIENER:

In section 13, you want to expand the opportunity for LLPs beyond professional services to anyone who wants to form one. Section 15 to expands LLCs to include professionals, is this correct?

MR. KIM:

It is meant to allow professionals to use the LLC form if they elect to do so.

SENATOR WIENER:

Are they currently in LLPs?

MR. KIM:

By statute, they are limited to the use of LLPs and professional corporations.

SENATOR WIENER:

Your proposal allows them to expand to the LLC. It looks like sections 13 and 15 are cojoined.

MR. KIM:

They both relate to doing business as a professional entity. Section 13 and the changes in NRS 87 allow any entity to use this service.

SENATOR WIENER:

Based on these related components, what is wrong with the current system?

MR. KIM:

With respect to NRS 87, LLPs as one of many devised entities are a takeoff of a general partnership. It was adopted in many states to produce a professional service so that I, as a partner in a law firm, although liable for all the partnership debts, am not necessarily liable for my partners' malpractice.

However, other states have adopted LLPs without limitations where any legal purpose can be pursued in the LLP form. It eliminates an unnecessary limitation, provides more flexibility and acknowledges that other states broadly use LLPs beyond professionals.

As it relates to NRS 89, professionals, such as doctors and lawyers, are only allowed to do business as a professional corporation or as an LLP. We thought it best to have the statute mirror what is done by attorneys; the expansion to LLC is not a problem. The LLC is popular and provides a unique partnership and tax benefits that a professional corporation may not have. This gives professionals a choice.

SENATOR CARE:

Mr. Kim, you mentioned something about withdrawing an amendment?

MR. KIM:

The last change we had was relating to NRS 116, section 51, page 5. I go on record to say we are willing to withdraw this proposed change.

SENATOR CARE:

The additional language under NRS 92A by section 45, subsection 3 of the bill is proactive as opposed to retroactive.

MR. KIM:

This is merely clarification to NRS 92A.380.

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CHAIR AMODEI:

Is there anything else for S.B. 483?

SCOTT ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):

Our Office has no opposition to this bill, supports the provisions prohibiting bearer shares and takes care of a misunderstanding between the press and federal government regarding Nevada law. We also favor the reinstatement provisions of this bill.

With respect to Senator Wiener in regard to the LLPs and allowing other general partnerships to form, this could increase the volume in the Secretary of State's Office if other general partnerships are included and revenue generated.

ROCKY FINSETH (Nevada Land Title Association):

On March 21, the Committee heard S.B. 217 which addresses section 50 of S.B. 483. We have an amendment to section 50, subsection 5 ([Exhibit F](#)).

SENATE BILL 217: Revises the provisions governing deeds of trust and the sale of real property after default. (BDR 9-742)

We request the Committee consider joining these two issues if you decide to process either of these bills.

CHAIR AMODEI:

Will this make them consistent?

MR. FINSETH:

Yes.

CHAIR AMODEI:

Has Mr. Kim had a chance to digest this?

MR. FINSETH:

I just informed him about this idea.

CHAIR AMODEI:

If both of you can contact Mr. Wilkinson and let him know what you have decided, that would be good.

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MR. FINSETH:
We will do that.

CHAIR AMODEI:
Is there anything else on S.B. 483?

SHARI O'DONNELL (Vice President, Signature Homes):
I want to address section 51 which is under consideration of withdrawal by Mr. Kim. It does not clarify the existing law; it clouds it and takes away the issue the law clearly addressed where it is wrong to improperly attempt to influence a board member, officer or a community manager such as homeowner association. The law is very clear.

The amendment takes away this intent and is relevant only if an existing contract or an attempt were successful within one year after giving the gift. Whereas the attempt is not relevant, the attempt to improperly influence these important people operating in the association is relevant.

CHAIR AMODEI:
We will close the hearing on S.B. 483 and open the work session on S.B. 45.

SENATE BILL 45: Provides for the imposition of an administrative assessment on a person convicted of driving while under the influence of intoxicating liquor or a controlled substance. (BDR 14-672)

Mr. Wilkinson, can you update us on research being done on nexus issues and cases that have dealt with administrative assessments versus tax?

BRAD WILKINSON (Chief Deputy Legislative Counsel):
The work session document ([Exhibit G](#)) composed by Linda J. Eissmann, Committee Policy Analyst, identifies issues on page 2 regarding the constitutionality of administrative assessments. The two cases on this subject cited by the Nevada Supreme Court are *Board of Commissioners of Clark County v. White*, 102 Nev. 587, 729 P.2d 1347 (1966) and *McKay v. City of Las Vegas*, 106 Nev. 203, 789 P.2d 584 (1990).

White basically says administrative assessments are constitutional. If they go to the majority, then 51 percent of the vote is to the Judicial Branch and 49 percent to the Executive Branch.

McKay says it does not constitute a tax if the funds are used for broad judicial and law enforcement purposes. The constitutional issue is raised because the Legislature cannot require the Judicial Branch to act as a tax collector; this is an Executive Branch function.

The way the bill is currently drafted, when the administrative assessment of \$100 is imposed, 90 percent goes to the new fund to award grants to state and local governmental entities for programs relating to driving while under the influence of intoxicating liquor or controlled substances and to nonprofit agencies that provide similar programs to conduct public service announcements and to reimburse expenses of the Nevada Impaired Driving Advisory Council. The remaining 10 percent goes to the district, municipal or justice courts and is set forth in subsections 5-7.

The constitutional issue is addressed if the split made this administrative assessment more for funding the Judicial Branch and if 51 percent went primarily to the courts rather than 10 percent. This takes away the argument that this is an unconstitutional tax rather than a true administrative assessment.

CHAIR AMODEI:

This is an update on the issue; next week, we will take into account all the information we have on administrative assessments.

SENATOR HORSFORD:

Were you contacted by the group doing this study on the Council of State Governments? They had recommendations on administrative assessments.

CHAIR AMODEI:

No.

SENATOR HORSFORD:

I asked them to contact you. She gave an overview of recommendations for the Assembly, and there is a section on administrative assessments; we may want to include this as well.

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CHAIR AMODEI:

Sounds like a good idea. Mr. Tim Crowley wants to offer a major amendment on the subcontractor's bill we heard previously. I plan to hear that amendment next week. Senator Washington has a major amendment on the grandparents' bill. I plan to hear both amendments next week. If there is nothing else to come before the Committee, we are adjourned at 10:24 a.m.

RESPECTFULLY SUBMITTED:

Gale Maynard,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____