

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
February 5, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:01 a.m. on Tuesday, February 5, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair  
Senator Ruben J. Kihuen, Vice Chair  
Senator Aaron D. Ford  
Senator Justin C. Jones  
Senator Greg Brower  
Senator Scott Hammond  
Senator Mark Hutchison

**STAFF MEMBERS PRESENT:**

Mindy Martini, Policy Analyst  
Nick Anthony, Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

The Honorable Kristina Pickering, Chief Justice, Nevada Supreme Court  
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts  
The Honorable James W. Hardesty, Justice, Nevada Supreme Court  
Seth Floyd, Appellate Litigation Section, State Bar of Nevada  
Lucas Foletta, General Counsel and Policy Director, Office of the Governor  
Gerald Gardner, Chief of Staff, Office of the Governor

**Chair Segerblom:**

I will hand out the Committee Rules ([Exhibit C](#)). As you can see, the only change is in item 8: If you want to make a motion to reconsider a measure, you do not need to be on the side that won the vote at the measure's first action.

SENATOR KIHUEN MOVED TO ADOPT THE COMMITTEE RULES.

SENATOR BROWER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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**Mindy Martini (Policy Analyst):**

I have prepared a Committee Brief ([Exhibit D](#)). This large document contains many items that may be helpful, including the Committee's jurisdiction, anticipated topics and relevant publications from the Research Division. With regard to the anticipated workload, this is the busiest policy committee in the Senate. During the 76th Legislative Session, 152 bills came before the Committee; the next busiest committee was the Senate Committee on Commerce, Labor and Energy with 142 bills. The workload tends to be steady throughout the session. Of the 152 bills considered last Session, 83 were referred by the Senate and 69 by the Assembly, which meant the workload was much the same before and after the deadline for committee passage by the first House.

**Chair Segerblom:**

For those who are new to the process, the workload is the same because we have less time to consider bills after that crossover deadline.

**Ms. Martini:**

Yes. The Committee has 9 weeks to consider bills before the crossover, but only 4 weeks after the crossover before the deadline for committee passage by the second House. This is mitigated by the fact that the second group of bills will have been heard and amended by the Assembly before they come to this Committee, so they may have some of the problems ironed out. It is still a lot of work to finish in 4 weeks.

In the 76th Session, the Committee passed 84 percent of bills heard; of the 127 bills passed, 100 were eventually signed into law or reported to the Secretary of State. Overall, the Committee had a pass rate of about 80 percent.

**Nick Anthony (Counsel):**

I am nonpartisan staff. I provide legal counsel to both parties, and I can neither represent, urge passage nor oppose any legislation.

I have compiled a list of cases decided in the interim relating to the jurisdiction of the Committee ([Exhibit E](#)) titled "Summary of Court Decisions of Importance to Senate Judiciary." It contains five cases. One is a decision from the Eighth Judicial District Court, three are Nevada Supreme Court cases and one is a federal court case from the Ninth Circuit Court. I will give a brief overview of each case; [Exhibit E](#) contains more information on these cases for your review, including the written decisions as available.

The first case in [Exhibit E](#) is *State v. Hamilton and Schwingdorf*. The two defendants, Hamilton and Schwingdorf, were charged with possession and other criminal offenses relating to the medical use of marijuana. They appealed their sentence on the grounds that chapter 453A of the *Nevada Revised Statutes* (NRS), the medical marijuana statutory scheme, is unconstitutionally vague and overbroad. They were successful at the Eighth Judicial District Court, and the case is now pending before the Nevada Supreme Court. The most recent action in this case is a grant of extra time to file a reply brief. District Judge Donald M. Mosley of the Eighth Judicial District Court declared the statutory scheme unconstitutional. Since this is a district court opinion, it is persuasive; however, the Legislature can choose to amend the law, wait for the Nevada Supreme Court ruling or let the statutory scheme stand as written.

The first Nevada Supreme Court case is *State v. Lucero*. In that case, the defendant was charged with a drug-trafficking offense. He was given a reduced sentence because he provided substantial assistance. He was then picked up on a probation violation and brought for a probation revocation hearing, at which time his counsel argued that based on the substantial assistance provided by the defendant, his sentence should be further reduced. The court agreed, and the State appealed that decision. The Nevada Supreme Court looked at NRS 176A.630 and NRS 453 and upheld the decision, finding that the District Court had the power to reduce the sentence at the probation revocation hearing. The Legislature can either let the ruling of the Nevada Supreme Court

stand as precedent and become law or revise NRS 176A to specify that when a sentence is reduced for substantial assistance at the initial sentencing hearing, it cannot be further reduced below the statutory minimum sentence at a subsequent hearing.

**Chair Segerblom:**

Has a bill draft request (BDR) been submitted on that topic?

**Mr. Anthony:**

I am not aware of one, no.

The next Nevada Supreme Court case is *State v. Hughes*. This case deals with NRS 200.700 and NRS 200.710, Nevada's child pornography statutes. The defendant was charged with a child pornography offense wherein the victim was 17 years of age. The defendant argued that the statute was unconstitutionally broad and vague because it did not define the term "minor." He argued that the term "minor" could mean a person aged 16 years or less. The Nevada Supreme Court held that although the statute does not specifically define "minor," it is clearly defined throughout the NRS as a person aged 18 years and younger, and the defendant's conviction was upheld. The Legislature could revise NRS 200 to define "minor," but the Nevada Supreme Court decision makes it clear that our child pornography laws apply to any victim less than 18 years of age.

**Chair Segerblom:**

I seem to recall a bill last Session to clarify the definition of "minor."

**Mr. Anthony:**

There have been a number of bills over the years relating to crimes against minors. You might be thinking of a bill that gave victims of child pornography the right to file a civil suit.

**Chair Segerblom:**

Have any BDRs been filed on this topic this Session?

**Mr. Anthony:**

To my knowledge, there have been no BDRs to further clarify the definition of "minor."

The last Nevada Supreme Court decision is *Sheriff v. Andrews*, which relates to NRS 212.093 and NRS 212.165. In this case, the defendant was found to have a cell phone in his possession while he was incarcerated in the Pershing County jail. He was charged with possessing an instrument that might be used to escape from jail. The case went to the Nevada Supreme Court, which found that the statute covering county jail inmates, NRS 212.093, lists specific prohibited items that might be used to escape, and this list does not include cell phones. The statute covering the State prisons, NRS 212.165, specifically states that inmates are not allowed to use or possess cell phones. There is a bill forthcoming this Session that may address this issue.

Finally, [Exhibit E](#) includes an update on the status of *ACLU of Nevada v. Masto*, about which our office receives many queries. This is a federal decision dealing with the Adam Walsh Child Protection and Safety Act of 2006 and sex offender legislation. In 2007, the Legislature passed A.B. No. 579 of the 74th Session and S.B. No. 471 of the 74th Session in relation to the federal Adam Walsh Child Protection and Safety Act of 2006. That Act was immediately enjoined by the federal district court. The case was then appealed to the Ninth Circuit Court of Appeals. During this last interim, the court issued a three-judge opinion in which they reversed in part and remanded and then dismissed as moot in part that particular case from the federal district court.

What does that mean? At one point, our opinion was that A.B. No. 579 of the 74th Session and S.B. No. 471 of the 74th Session were unenforceable because they were enjoined. They are now codified in Nevada law. The Attorney General's Office informs me that the case has been remanded for an agreement as to how to enforce A.B. No. 579 of the 74th Session. That is the latest on that case.

**Chair Segerblom:**

If that law goes into effect now, it will be an incredible burden on law enforcement. Perhaps we can tweak the law so it will not be so burdensome. It is my intention to have some kind of hearing on this issue, though I do not know if we will have proposed legislation.

We will now have a presentation on the Judicial Branch by the Honorable Kristina Pickering, Chief Justice of the Nevada Supreme Court.

**The Honorable Kristina Pickering (Chief Justice, Nevada Supreme Court):**

I have been asked to give you a brief overview of the judicial system in Nevada, and the best information is in the *Annual Report of the Nevada Judiciary* ([Exhibit F](#)). This report contains backup detail for the items on the presentation we will give you this morning ([Exhibit G](#)).

Page 2 of [Exhibit G](#) shows the constitutional origins of the court system in Nevada. When we come before the money committees, we are treated as an agency, when in fact we are a separate branch of government equal to the Legislative and Executive Branches. We like to bring the constitutional provisions forward because they are significant in terms of how you think about the Judicial Branch and how this Committee does its work.

Page 3 of [Exhibit G](#) shows the organization of the Judicial Branch. It also lists the sections of the Nevada Constitution and the NRS that cover the different types of courts. Some justice court judges also serve as municipal court judges; in other jurisdictions, these positions are separate.

Page 4 of [Exhibit G](#) shows the sources and distribution of the funding for the Judicial Branch. When I joined the Nevada Supreme Court, I was surprised by the extent to which the Court is not funded by the General Fund. It is primarily funded by administrative assessments, which in turn are taken largely from traffic ticket revenues. A significant portion of the revenue that supports the court system, and indeed all the specialty court funding, comes through administrative assessments. That is significant because administrative assessments have been on the decline. The share of the courts' funding from them was further jeopardized by a special session enactment that took \$5 off the top of the administrative assessments and dedicated it to the special fund. That has cut into our ability to live within our means and to remit substantial portions of our General Fund allocations as a result of our effort to run lean.

The Judicial Branch General Fund appropriation is just 1 percent of the total General Fund appropriation in the State. That is a staggering statistic. When you look at all funding sources in the State, our portion is 0.6 percent.

**Senator Brower:**

The chart on page 4 of [Exhibit G](#) shows that \$824,538 is received from federal funding over the biennium. Can you describe that?

**John R. McCormick (Rural Courts Coordinator, Administrative Office of the Courts):**

The primary federal funding we receive is for the Court Improvement Program, which is designed to help the State courts improve outcomes for children engaged in dependency proceedings. We use those funds to support judicial training. We are developing uniform court-ordered templates for child neglect cases and that type of activity.

**Senator Brower:**

Has that funding increased or decreased over the years, or was that a one-time funding?

**Mr. McCormick:**

That funding is recurrent. It is given to all state supreme courts to do that type of thing. Right now, we do not know if we will receive another year of funding, but it has been going on for a few years.

**Chief Justice Pickering:**

Page 5 of [Exhibit G](#) lists the duties of the Nevada Supreme Court. We decide all civil and criminal cases appealed from district courts. Unlike most state supreme courts, we hear these cases directly, and our jurisdiction is mandatory. We do not have the ability to refuse to consider an appeal. We do have extraordinary writ review, and there we can exercise a modicum of discretion. Those are writs of mandamus, certiorari, prohibition, *quo warranto* and habeas corpus. We exercise both original and appellate jurisdiction in that arena. Our exercise of original jurisdiction is discretionary, and it is established by clearly stated legal guidelines.

Page 6 of [Exhibit G](#) tracks the number of Nevada Supreme Court cases filed, resolved and pending starting in 2010 and projected through 2015. You will note that while the number of cases filed and pending rises steadily through that period, the number of cases resolved is projected to stay the same. This is because the seven human beings on the Nevada Supreme Court are only capable of putting out so much work in an effective, judicially appropriate way. If the caseload continues to increase, we will lose ground on dispositions, as we already are. We have implemented every available efficiency we can think of. We have an active Supreme Court Settlement Program, which routes civil cases to mandatory settlement with some exceptions. We have 15 criminal attorneys

and 13 civil attorneys on staff, and we rely on them. We work in panels of three rather than the full court panel of seven, achieving some economy there.

We are producing fewer published dispositions as a function of our total docket than has historically been the case. Why does that matter? Because people who bring their disputes to a judicial resolution are entitled to understand that their cases were decided in the same way and under the same law that applied to the case before them and the case after them. That is how judicial law grows; it is incremental. It is not passing statutes of broad, policy-based components; it is deciding one case at a time. Each case changes the situation a little from the case before it, and you have to address each case individually and in writing. A large number of our cases are so-called unpublished cases; that is, they are publicly available, but they are not precedential. That is a price of this system where we have so many cases before us.

**Senator Hutchison:**

Has serious consideration ever been given to allowing the Nevada Supreme Court to use discretion in accepting appeals? That would certainly cut down on the caseload.

**Chief Justice Pickering:**

People have a right to get a second opinion on their cases. We would be eliminating the chance to do any error correction of district court decisions and vesting all the decision-making authority in one person. That would be truly anomalous in our system of government. The Nevada Supreme Court is constitutionally given the obligation of direct appellate review in criminal and civil cases.

**Senator Hutchison:**

Would that still apply if we had a court of appeals?

**Chief Justice Pickering:**

No. With a court of appeals, we could achieve discretionary review, and many cases would end at the court of appeals.

**Senator Hutchison:**

In those states where there is discretionary review at the supreme court level, they always have a court of appeals to take those direct appeals the Nevada Supreme Court does not hear. Is that correct?



**Chief Justice Pickering:**

Yes.

**Senator Brower:**

As I understand it, that is exactly what Senate Joint Resolution (S.J.R.) 14 of the 76th Session would do. With the creation of an intermediate court, the Nevada Supreme Court would have discretion rather like a writ of certiorari process. Is that correct?

**SENATE JOINT RESOLUTION 14 of the 76th Session:** Proposes to amend the Nevada Constitution to create an intermediate appellate court. (BDR C-1013)

**Chief Justice Pickering:**

Yes. With an appellate court, every case would be reviewed. The chief benefit of that system is that many cases would end at the court of appeals. There would be discretionary review in the Nevada Supreme Court, and in some instances there would be direct review to the Nevada Supreme Court without going through the intermediate court.

**Senator Brower:**

Thank you. I have received some emails from constituents who think creating an intermediate court will just give every litigant yet another layer of automatic appeal. I do not see that S.J.R. 14 of the 76th Session provides for that, and you confirm that it does not.

**Chief Justice Pickering:**

It does not. That argument is fallacious.

Page 6 of [Exhibit G](#) also includes statistics regarding the rate of increase in cases in the recent past. It took 112 years, from 1864 to 1977, for the first 10,000 cases to be filed with the Nevada Supreme Court; the next 40,000 cases only took 30 years. The 60,000th case was filed in January 2012, and we now receive cases at the rate of 10,000 every 4.5 years.

Page 7 of [Exhibit G](#) demonstrates our backlog and the age of cases at the time they are disposed of by the Nevada Supreme Court. We work very hard to render timely dispositions of the cases that come before us, but it is not

possible to do so in every case. As the caseload marches on, we will see increases in the number of older cases, and justice delayed is justice denied.

Page 8 of [Exhibit G](#) compares the caseload of the supreme courts of several states. Nevada leads the group, with the highest number of cases per justice per year—357. That number is somewhat misleading, since we do not act on cases singly but only in groups of three or seven. The number was arrived at by taking the 2,500 cases filed per year and dividing it by the seven justices. If we decided all cases in three-justice panels, that would be three cases per justice per day every day in the year, and it is not humanly possible to give careful consideration to the cases in that situation. It is even worse when you consider the serious cases we have. Nevada has 79 inmates on death row. Substantial death penalty and capital litigation and substantial serious civil matters come before the Court. We also have easy cases with jurisdictional issues that are readily dismissed, so the number is weighted. But the total caseload is the largest in the Nation.

Page 9 of [Exhibit G](#) covers the caseload of the district courts. Assembly Bill No. 64 of the 75th Session added new judges in Clark County and Washoe County, which allowed for a total of 131,506 case dispositions in 2012. That has given us some breathing space. We look forward to more progress now that the third floor in the Regional Justice Center has been fully built out and the judges in Las Vegas are no longer sharing courtrooms. That should make a big difference in their efficiency.

Page 10 of [Exhibit G](#) concerns the Senior Judge Program. The 22 senior judges step in when there are permanent or temporary vacancies on the bench. They assist the specialty courts and conduct mass mediations in medical malpractice and family court matters, which are enormously beneficial. Last year in Clark County, 94 family law cases were put into the settlement program, and 71 of those settled thanks to the mediation efforts of the senior judges who presided over them. That is a success rate of 75 percent.

Page 11 of [Exhibit G](#) covers the justice courts. As you can see, there was a slight increase in the number of traffic cases filed with these courts over the biennium. I do not know how this translates into administrative assessments. However, administrative assessment revenues are declining overall, perhaps due to negotiated resolutions with people working off fines rather than paying them outright.

Page 12 of [Exhibit G](#) concerns municipal courts, and page 13 covers specialty courts. Nevada has been a leader in the area of specialty courts. This is attributed to the judicial officers who had the vision to make the program work. Specialty courts take people out of the system; they redeem people who are leading lives of addiction, who are in a cycle of domestic violence and incarceration. They do not have a 100 percent success rate, but for those who succeed, they are enormously successful. This saves the State a great deal of money because it breaks the cycle of addiction and incarceration. The specialty courts are completely funded by special assessments. They also get 12 percent of the Nevada Supreme Court administrative assessment funds.

Page 14 of [Exhibit G](#) lists the locations of the specialty courts. This demonstrates the depth and range of coverage provided by our specialty courts. They are not limited to the two main population centers in the State. Serving the rural areas takes a lot of effort for the judges who must travel to the various courts, and we are truly in their debt for the services they provide.

Page 15 of [Exhibit G](#) concerns the business courts.

**Chair Segerblom:**

When we initially created the business courts, we talked about having them publish opinions to develop a base, as is done in Delaware and other states. Are we anywhere close to accomplishing that?

**The Honorable James W. Hardesty (Justice, Nevada Supreme Court):**

We made a commitment to examine that by rule, and we did. We held off on formalizing the rules dealing with district court opinions for three reasons. First, we were looking at the court of appeals to provide a relief to the Nevada Supreme Court, where those opinions should properly come from. Second, the business court judges are too busy to write published opinions. Third, they lack the financial resources to hire law clerks who would provide adequate data and research necessary for those published opinions. We have examined the rule process. We are hoping that if S.J.R. 14 of the 76th Session passes, we will be in a position to facilitate those opinions at the Nevada Supreme Court, where they more properly belong.

**Chief Justice Pickering:**

Pages 16 through 18 of [Exhibit G](#) concern the Administrative Office of the Courts (AOC), which performs a variety of functions. When I was elected to the

Nevada Supreme Court, the AOC was something of a mystery to me; now I have a much greater understanding of the depth and extent of the services it provides. I want to highlight particularly the AOC's work in the area of information technology (IT). The Nevada court system has a strong IT department. Our Nevada Supreme Court Website has a public portal that allows free access to the briefs and cases that are filed. The appendices are not on the public portal, but you can see all the briefs and orders as they are filed. Lawyers and jurists in other states consider it a model of an appropriate public forum. We also provide simultaneous podcasts of oral arguments in the Nevada Supreme Court on the Website. We are proud of the superb work of our IT department.

Page 19 of [Exhibit G](#) talks about the Foreclosure Mediation Program (FMP). It is included in this overview because NRS 107.086, subsection 8, tasks the Nevada Supreme Court with creating the rules by which the FMP would be administered. We have done that. However, page 20 demonstrates something we called to the attention of the Interim Finance Committee in August 2012, and that is a precipitous drop in the number of Notices of Default (NODs). In fiscal year (FY) 2010-2011, there were 54,191; in FY 2011-2012, there were 16,818; and in FY 2012-2013, there were 8,528 through December 2012. The stunning thing about the number of NODs in FY 2011-2012 is that 13,121 of them happened in the first quarter. There were only 3,697 NODs in the following three quarters. This sharp drop-off seems to have been coincident with A.B. No. 284 of the 76th Session, which went into effect on October 1, 2011.

**Chair Segerblom:**

Do you see that as also being related to people going to judicial foreclosures?

**Chief Justice Pickering:**

No. That has been rumored, but I have not seen the statistics to support it.

**Chair Segerblom:**

Do you support extending the program to judicial foreclosures?

**Chief Justice Pickering:**

I do not have a position on that.

Pages 21 and 22 of [Exhibit G](#) raise a policy question regarding the expenses of the FMP. In response to the precipitous decline of NODs in FY 2011-2012, we advised the Interim Finance Committee that our income was less than our expenditures and we needed to change course. We went from 21 employees to 9 employees. We are the stewards of the FMP, and we are trying to make sure it continues to function as mandated. By the same token, I do not know if the program can operate effectively with fewer than nine employees. Program expenses for FY 2013-2014 will be \$1,141,356, and that is a trimmed-down version of the expenses, but the projected income for that same period is only \$404,100. The shortfall is even greater for FY 2014-2015. The approximate \$1 million overhead of the program is essentially irreducible.

I call this to your attention, as we did to the Interim Finance Committee and the money committees, because it presents the Legislature with a policy decision: to continue the FMP as is or change course. I express no opinion on this, but I do bring it to your attention.

**Senator Hutchison:**

If there is a relationship between A.B. No. 284 of the 76th Session and the number of foreclosures in Nevada, would changing the provisions enacted by that bill solve the problem?

**Chief Justice Pickering:**

There is a relationship between A.B. No. 284 of the 76th Session and the precipitous decline in NODs. Beyond that, I do not know what changes will be made this Session, so it is hard for me to project that in any realistic way. We are the stewards of the program, not its architects, and there is a case pending before the Nevada Supreme Court challenging our stewardship on the grounds of separation of powers.

Page 23 of [Exhibit G](#) addresses the Judicial Council of the State of Nevada. The Council does important work, and you can find further information on this body in [Exhibit F](#). Page 24 of [Exhibit G](#) lists the special commissions and committees of the Nevada Supreme Court. Each of them deserves your attention and applause. They do phenomenal work, and much of it is volunteer work.

I would like to close my presentation with a reference to the Judicial Summit held this past year in Las Vegas. We were fortunate to have Justice Anthony M. Kennedy of the Supreme Court of the United States as the keynote speaker.

During the course of the Summit, Justice Kennedy said: "A functioning legal system is part of the capital infrastructure. It's as important as roads, bridges, schools ... You have to have an efficient, fair, decent, transparent, open legal system." I agree with that.

**Chair Segerblom:**

I will open the hearing on S.J.R. 14 of the 76th Session.

**SENATE JOINT RESOLUTION 14 of the 76th Session:** Proposes to amend the Nevada Constitution to create an intermediate appellate court. (BDR C-1013)

**Justice Hardesty:**

Senate Joint Resolution No. 14 of the 76th Session would amend Nevada's Constitution to create a court of appeals. I have a presentation describing the need for this change, how the court of appeals would operate and how it would be funded ([Exhibit H](#)). Page 6 lists projections of the number of cases to be filed with and disposed by the Nevada Supreme Court for the next biennium. These numbers are based on a 5 percent increase in case filings, though I believe that figure to be low as demonstrated by our experience this year.

As Chief Justice Pickering noted, we have kept the number of cases resolved the same for the future. This is because the members of the court are genuinely concerned that increasing the number of dispositions may result in mistakes made at the appellate level. No one wants to make mistakes, but it is even more crucial when you are the only appellate court. If the workload is increased, we are at risk of making mistakes.

Finally, the need for published opinions from the Nevada Supreme Court is great, as all of you who are lawyers know. We have seen a static level of published opinions at about 65 to 72 per year. Given the number of issues of first impression we hear, that number is too low. The members of the Nevada Supreme Court are frequently faced with this question: Do we decide the case by order, which is a quicker resolution of the case for the benefit of the parties before it, or do we, as many cases require, publish the opinion, which is a lengthy process that involves extensive research, numerous edits and substantial writing? That is the process we hope will be improved by the establishment of a court of appeals.

Page 8 of [Exhibit H](#) shows the proposed plan contained in S.J.R. 14 of the 76th Session. Since this plan was proposed, we have made it clear that the court of appeals would not involve capital costs. It is intended that the court of appeals would operate in the Regional Justice Center in southern Nevada, utilizing the courtroom and offices currently housing Justice Michael L. Douglas and Chief Justice Pickering. It is our contention that there is adequate space for remodeling should those justices remain there, or the court can establish separate rented facilities in Clark County at a cost much reduced from that we are currently paying in rent at the Regional Justice Center. We are projecting the operating cost at \$1,746,583 in 2015. That covers judges, staff and law clerks.

The structure of the court of appeals we are proposing is different from that in many other states. We developed what is called a push-down model. We did not want to change the staffing of the Nevada Supreme Court or the method by which cases are processed. We have an effective and efficient processing and case management system. Lawyers and *propria persona* parties throughout the State would continue to file their appeals with the Nevada Supreme Court's clerk's office, which is located in Carson City and at the Regional Justice Center in Las Vegas. Under S.J.R. 14 of the 76th Session, the Nevada Supreme Court would establish by rule those cases that are to be transferred to the court of appeals. For example, the Nevada Supreme Court's docket might include a *propria persona* inmate case, a case in which an individual seeks a judicial review of the revocation of a driver's license, and a case that requires review of evidentiary errors made by the district court during the trial. Those are types of cases that might be deserving of an appeal but are more appropriately considered by a court of appeals. We estimate those types of cases account for about 700 to 800 of the 2,500 cases filed with the Nevada Supreme Court every year. As you can see, the Nevada Supreme Court's caseload will still be substantial and will amount to 1,600 to 1,800 cases per year. However, we believe the case management systems we have in place will allow better and more efficient processing of those cases.

Senator Brower made a perceptive comment earlier about S.J.R. 14 of the 76th Session adding to judicial bureaucracy. We recognize that neither litigants nor lawyers want to go through a duplicative appellate process. It is costly and wastes time. Our plan eliminates that. Cases assigned to the court of appeals would only be reviewed by the Nevada Supreme Court by certiorari. In the Supreme Court of the United States, less than 1 percent of those cases are considered for review. The Nevada Supreme Court currently hears either

petitions for rehearing en banc or petitions for reconsideration en banc, and we consider 1 percent or less of those petitions. The cases that would be heard by the Nevada Supreme Court and not by the court of appeals would undergo only one appeal and one review.

There is no judicial bureaucracy in this plan, which is why we adopted the push-down plan in the first place. There is no need for new court clerks or for additional or separate central legal staff, and the plan does not incur a judicial bureaucracy that duplicates appellate effort.

We have been asked how the court of appeals would be structured, and page 10 of [Exhibit H](#) lays it out specifically. The court of appeals will initially consist of three judges, with the first three being appointed by the Governor through the judicial selection process. After they serve for 2 years, the judges would be elected for 6-year terms.

The key to this plan is on page 11 of [Exhibit H](#), which quotes section 4 of S.J.R. 14 of the 76th Session. Chair Segerblom's comment about the business court brings up precisely one of the things we want to target. Business court cases, which are seriously in need of jurisprudence in Nevada, would go directly to the Nevada Supreme Court for published opinions. We could increase the number of published opinions if many of the other cases on our docket could be heard by a court of appeals. From a business standpoint, if Nevada intends to compete effectively with Delaware or other states, it needs to have published opinions with precedential value from the highest court rather than from district courts. A number of cases have come to us in the last 4 years that have substantial business court precedent, and I see many more of them emerging over the next 10 years.

**Senator Hutchison:**

It seems that it would be necessary for business court judges to produce a written opinion on any cases they send to the Nevada Supreme Court. Given the crushing caseload in the business courts, getting those opinions seems like a pipedream.

**Justice Hardesty:**

I am optimistic that we can make some real headway in reducing the caseload of the business courts. I advocated for A.B. No. 65 of the 75th Session when I was the Chief Justice of the Nevada Supreme Court. That plan added



nine judges in Clark County and one in Washoe County. A key component of that plan was how to pay for those judicial resources, both staff and courtrooms, without resorting to the General Fund. The Eighth Judicial District opened those courtrooms after 18 months of construction. Assembly Bill No. 65 of the 75th Session was an incredible success, and I am hopeful that it will either add an additional business court judge in that district or reduce the number of business court cases assigned to the three judges currently hearing them.

The business court judges write orders, not publishable opinions. They write orders that provide us with tremendous guidance in business court issues. We would like to see that expanded. The key component, though, is giving them additional law clerks so they can do the research necessary to make real contributions in those areas.

**Senator Hutchison:**

What is the status of getting those additional law clerks? Is that something we need to deal with, or is it a matter of court rules?

**Justice Hardesty:**

It is not a matter of court rules; it is a matter of resources. As Chief Justice Pickering's presentation showed, we have a judicial system weighted down with an enormous caseload from top to bottom that is operating on spare and reduced resources. Administrative assessments represent a large portion of our operations, and they are declining. That hurts our staff. We have made proposals this Session to try to stabilize that. We lost nine central staff lawyers in the last biennium to other agencies within the State because of the pay restrictions under which the Nevada Supreme Court must operate. At the local level, as long as counties are operating under the same kind of limited resources and are not redirecting those resources to the judicial system, we cannot get law clerks to do this kind of work. It is a matter of establishing priority, and that comes from the Legislature.

**Senator Ford:**

On page 3 of S.J.R. 14 of the 76th Session, lines 8 through 11 state, "The Supreme Court shall fix by rule the jurisdiction of the court of appeals and shall provide for the review, where appropriate, of appeals decided by the court of appeals." Do you take that to give the Nevada Supreme Court the discretionary

ability to take appeals from the district court as opposed to a direct required appeal?

**Justice Hardesty:**

Yes. We would establish by rule those cases that will be automatically transferred by the clerk's office to the court of appeals. All others will remain with the Nevada Supreme Court under a separate section of the Constitution that mandates us to hear all appeals.

Page 12 of [Exhibit H](#) adds one more point to the fiscal issue. Beginning in 2007, the Nevada Supreme Court was reverting substantial sums of its budget back to the General Fund. The amount reverted was nearly \$2,500,000 in FY 2008-2009, \$872,571 in FY 2009-2010 and \$1,287,378 in FY 2010-2011. We have recommended two tweaks to the revenue issues in our budget. With those adjustments, the operating costs of the court of appeals will be paid for and the Nevada Supreme Court will be funded at the same level as in 2007.

Page 13 of [Exhibit H](#) lists the benefits of establishing a court of appeals.

I would like to go back to page 6 of [Exhibit H](#), which gives the number of Nevada Supreme Court cases filed and resolved. When I joined the Nevada Supreme Court in January 2005, there were 1,515 cases pending. At the end of FY 2011-2012, there were 1,919 cases pending. We have lost ground. If these numbers are even close to accurate, by the end of 2015 we will have a pending caseload of 3,384 cases, and that will be a disaster for judicial processing of cases in Nevada.

**Senator Jones:**

If this measure goes on the ballot in 2014 and is approved by the voters, when would the court of appeals start operating?

**Justice Hardesty:**

The three new members of the court would be appointed in November and December 2014 and would take office in January 2015.

**Senator Hutchison:**

We have tried to get this measure passed before, and it has not worked. Tell us why it has not worked with the voters and what we can do to help voters understand the pressing need for a court of appeals.

**Justice Hardesty:**

The last time the public had an opportunity to vote on this, it was much better received than it had been in the past. However, there was an absence of a public education campaign. As you recall, it was on the ballot at the same time as merit selection, which was a much more controversial matter. Some opine that when two measures dealing with major changes in the judicial system are on the ballot at the same time, they will both lose. That is what occurred in this case. Every major newspaper in Nevada endorsed the measure establishing a court of appeals.

I would also add that many contributed money to the education campaign for the judicial merit selection proposal. The consequence was that there was no money for the court of appeals proposal campaign. If we do not have a competing judicial amendment on the ballot, we will have the opportunity to raise the funds and conduct the public education campaign this time around. There has been a growing interest in and support for the court of appeals in the past 2 years. Many lawyers who practice before the Nevada Supreme Court see the workload under which we operate, and many litigants express concern. The plan has the support of the State Bar of Nevada, all of the county bar associations and other individual bar associations. We are hopeful that we can be more effective at communicating the need and benefit of the program, the absence of judicial bureaucracy and the limited cost.

**Senator Hutchison:**

What have been the joint efforts between the Court and the Legislature to educate the public in the past? Can you suggest any practical ways the Legislature can work with the Nevada Supreme Court to see a successful passage of this measure?

**Justice Hardesty:**

One important thing in any education campaign is that the message should be uniform. We have developed a uniform PowerPoint presentation that describes the function and operation of the court of appeals, its cost and so forth. It would be of enormous assistance to the Nevada Supreme Court if the Legislature and the Executive Branch would join in the public education campaign. You are all very astute in the law, and you are also astute in representing your constituents, helping them understand the benefits of this measure and answering their questions about how it would operate. The more we can do in cooperation with you as Legislators, the more beneficial the

education campaign will be. My hope is that the Legislators who vote for this measure will support it beyond their votes. We have also approached Governor Brian Sandoval to ask for his support, which I do not think the Nevada Supreme Court did last time the measure came up.

**Seth Floyd (Appellate Litigation Section, State Bar of Nevada):**

We support S.J.R. 14 of the 76th Session. It goes without saying that attorneys recognize the need for this legislation. The State Bar of Nevada has taken an official position that it supports this measure. In addition, S.J.R. 14 of the 76th Session has been a primary topic of discussion at the State Bar's newly formed Appellate Litigation Section, and we recognize the need for a court of appeals. When the Court issues an unpublished order, that really does not help the Bar. What we need are published dispositions we can rely on. Clients ask us what the law is, and we need something we can look to.

**Lucas Foletta (General Counsel and Policy Director, Office of the Governor):**

Governor Sandoval supports S.J.R. 14 of the 76th Session. The Governor recognizes that Nevada has one of the busiest supreme courts in the U.S., and the workload of the Nevada Supreme Court complicates its work and makes it difficult to lead the development of the law in our State. This proposal is essentially budget neutral, when you take into account the reversion referred to by Justice Hardesty. The Governor is happy to support this measure, and he believes it advances the responsiveness of the judicial system and folds into his strategic priority for the State, which is to have a responsive, efficient State government.

**Gerald Gardner (Chief of Staff, Office of the Governor):**

We support S.J.R. 14 of the 76th Session. I have written testimony explaining Governor Sandoval's support for this measure ([Exhibit I](#)).

**Chair Segerblom:**

I will close the hearing on S.J.R. 14 of the 76th Session.

SENATOR BROWER MOVED TO DO PASS S.J.R. 14 OF THE 76TH SESSION.

SENATOR FORD SECONDED THE MOTION.

**Senator Brower:**

Let me express my support for S.J.R. 14 of the 76th Session. I voted for it last Session and am happy to do so again. As we heard, there is a compelling need for this measure; that goes without saying, and we have heard no opposition to it. I thank the Nevada Supreme Court for articulating the need, and I thank the Chair for sensing the urgency of this matter and bringing it up today.

During the course of the Legislative Session, we hear a lot of what we think of as Chicken Little testimony. Witnesses tell us that the sky will fall and civilization as we know it will end if we do this or do not do that. This is not that. This is a very important measure. I appreciate the Court's understated but clear point about the importance of S.J.R. 14 of the 76th Session. From my experience as a practitioner before the courts and as a citizen, I say we could not take up a more important measure this Session.

I am happy to support this measure.

**Chair Segerblom:**

I echo Senator Brower's comments. The key to the success of this measure is for us to get behind it once it is on the ballot and make sure there is a united voice explaining to the citizens of Nevada that this matter is critical. Nevada is at a turning point where voters are starting to realize we are no longer that little State we all grew up in. We have to move into the twenty-first century, and S.J.R. 14 of the 76th Session will be a major part of that.

**Senator Ford:**

I know S.J.R. 14 of the 76th Session was not developed for the purpose of economic development, but it will have an economic impact. The American Bar Association's Business Law Section met in Las Vegas in March 2012. At that event, I heard from many colleagues whom I respect that they were afraid to operate in Nevada because of the lack of written judicial opinions. If we want to be the "Delaware of the West," we need to give the Nevada Supreme Court the ability to write opinions that can be relied upon and justified. I look forward to supporting this measure.

**Senator Hutchison:**

I thank the Chair for recognizing the need to address the pressing need of the judicial caseload, and to do so in a bipartisan manner. Our constituents have asked us to look at issues and solve problems in a bipartisan manner. This

measure is a symbolic and appropriate way for us to begin this Committee and this Session.

**Senator Jones:**

Having been through the appellate process myself on many occasions, I cannot overemphasize the importance of passage of this bill. Like my colleagues, I enthusiastically support S.J.R. 14 of the 76th Session and look forward to working with my colleagues and the Executive Branch to ensure the passage of this legislation in 2014.

THE MOTION PASSED UNANIMOUSLY.

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**Chair Segerblom:**

If there is no further business to come before this Committee, we are adjourned at 10:52 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
	C	2		Committee Rules
	D	151	Mindy Martini	Committee Brief
	E	62	Nick Anthony	Summary of Court Decisions of Importance to Senate Judiciary
	F	60	Kristina Pickering	<i>Annual Report of the Nevada Judiciary</i> booklet
	G	24	Kristina Pickering	Judicial Branch Overview presentation
S.J.R. 14 of the 76th Session	H	13	James W. Hardesty	The Need for a Court of Appeals presentation
S.J.R. 14 of the 76th Session	I	1	Gerald Gardner	Written testimony