

ASSEMBLY JOINT RESOLUTION NO. 9—COMMITTEE
ON LEGISLATIVE OPERATIONS AND ELECTIONS

MARCH 25, 2019

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada Constitution to revise provisions governing the selection of justices and judges. (BDR C-949)

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 revise provisions governing the selection of justices and judges.

Legislative Counsel's Digest:

Under the Nevada Constitution, the justices of the Supreme Court and the judges of the court of appeals and district courts are popularly elected. (Nev. Const. Art. 6, §§ 3, 3A, 5) When a vacancy occurs before the expiration of any term of such a judicial office, the Governor appoints a justice or judge from among nominees selected by the Commission on Judicial Selection. (Nev. Const. Art. 6, § 20) This resolution proposes to amend the Nevada Constitution to provide for the initial appointment by the Governor of the Chief Justice, associate justices and judges, from nominees recommended by the Commission on Judicial Selection and for a justice or judge to automatically succeed himself or herself to a new term only if such succession is recommended by a commission on judicial performance after it has reviewed the justice's or judge's performance.

In addition, this resolution proposes to amend the Nevada Constitution to create the permanent Commission on Judicial Performance, provide for the creation of temporary commissions on judicial performance and require the commissions to perform those reviews. The review of each justice or judge must consist of a review of the record of the justice or judge and at least one interview of the justice or judge. At the conclusion of this review, the commission must prepare and release to the public a report containing information about the review and a recommendation on the question of whether the justice or judge should succeed himself or herself.

If this resolution is passed by the 2019 Legislature, it must also be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.



RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 22, be added to Article 6 of the Nevada Constitution to read as follows:

Sec. 22. 1. There is created a permanent Commission on Judicial Performance of seventeen members composed of:

(a) The Chief Justice or an associate justice designated by the Chief Justice;

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

(c) Eight persons, not members of the legal profession, of whom:

(1) Two are appointed by the Governor or his or her designee;

(2) Three are appointed by the Speaker of the Assembly or his or her designee; and

(3) Three by the President pro-tempore of the Senate or his or her designee.

2. Each judge of the district court must be reviewed by a temporary commission on judicial performance, composed of:

(a) The permanent Commission on Judicial Performance;

(b) Two additional members of the State Bar of Nevada resident in the judicial district of the judge being reviewed, appointed by the Board of Governors of the State Bar of Nevada; and

(c) Two residents of the judicial district of the judge being reviewed, not members of the legal profession, appointed by the Governor.

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

4. The term of office of each appointive member of the permanent Commission, except the first members, is 8 years. Each appointing authority shall, as nearly as may be, appoint half of the members first appointed for a term of 4 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term.



5. *The additional members of a temporary commission must be appointed when a review is required, and their terms expire when the review has been completed.*

6. *An appointing authority shall not appoint to the permanent Commission more than half of the body from residents of the same county.*

7. *No member of the permanent Commission may be a member of a commission on judicial selection or the Commission on Judicial Discipline. A member of the permanent Commission may not hold any other elective office.*

8. *When the permanent Commission reviews a justice of the Supreme Court, the Chief Justice or associate justice designated to be a member of the Commission is disqualified and the other members of the permanent Commission shall select a judge of the district court or court of appeals to take the place of the disqualified member of the Commission for the sole purpose of reviewing the justice of the Supreme Court.*

And, be it further

RESOLVED, That a new section, designated Section 23, be added to Article 6 of the Nevada Constitution to read as follows:

Sec. 23. 1. The Chief Justice and associate justices of the Supreme Court, the judges of the court of appeals, and the judges of the district courts shall be appointed by the Governor, pursuant to Section 20 of this Article, for a term of 6 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution.

2. Commencing with a term of office that expires on or after December 31, 2025, each justice of the Supreme Court, judge of the court of appeals, or judge of the district court who desires to continue service must, on or before July 1 next preceding the expiration of that justice's or judge's term of office, declare their intent to continue service by succeeding themselves with a new term.

3. Commencing with all terms of office for each such justice and judge beginning on January 1, 2026, the term of office upon succession pursuant to this Section shall be 6 years.

4. Commencing with all terms of office for each such justice and judge beginning on January 1, 2026, no judge or justice may serve for more than four terms of 6 years in the same judicial office, provided that service in the same



judicial office before the effective date of this Section shall not count towards the four-term limitation on service.

5. All justices and judges must be periodically reviewed by a Commission on Judicial Performance. The review must consist of an examination of the record of the justice or judge and at least one interview of the justice or judge at which the Commission discusses with the justice or judge any areas of performance in which the performance review suggests improvement might be warranted.

6. The Commission on Judicial Performance shall consider, without limitation, a justice's or judge's:

- (a) Knowledge of the law;
- (b) Oral and written communication skills;
- (c) Ability to perform the duties of the position;
- (d) Legal experience;
- (e) Judicial temperament;
- (f) Professional reputation;
- (g) Work ethic;
- (h) Commitment to access to justice for all; and
- (i) Other such areas as directed by the Legislature

through law or the Court through rulemaking.

↪ The Commission shall not consider the justice's or judge's political affiliation or any consideration prohibited by law.

7. At the conclusion of the review closest to the expiration of the justice's or judge's term of office, the members of the Commission must vote on the question of whether the Commission recommends that the justice or judge succeed himself or herself.

8. Not later than 6 weeks after the completion of the review by the Commission on Judicial Performance, the Commission shall prepare and release to the public a report that provides a summary of the findings of the Commission, the recommendation of the Commission on the question of whether the justice or judge should succeed himself or herself, the rationale for the recommendation and the result of the vote by which the Commission made the recommendation. The vote of an individual member of the Commission must not be disclosed to the public.

9. If the justice or judge receives the recommendations of 13 or more members of the Commission, that judge or justice shall automatically succeed himself or herself to a new term of office.

10. If the justice or judge receives the recommendation of at least 9, but fewer than 13 members of the Commission,



shall not automatically succeed to a new term of office, that office shall be open for appointment through the Commission on Judicial Selection pursuant to Section 20 of this Article, but the justice or judge is eligible to seek reappointment to the next term through the Commission.

11. If fewer than 9 members of the Commission on Judicial Performance recommend that a justice or judge succeed himself or herself to a new term of office, that justice or judge shall be ineligible to seek reappointment to the next term through the Commission on Judicial Selection under Section 20 of this Article, but is not barred from seeking appointment in the future.

12. If a justice or judge does not declare an intent to succeed to a new term, a vacancy is created at the expiration of the term which must be filled by appointment pursuant to section 20 of this Article.

13. Notwithstanding a vacancy, an incumbent whose term has expired may hold over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but in no event shall an incumbent whose term has expired hold over in office for more than 90 days after the expiration of the term.

14. In all instances, the term of a new or reappointed justice or judge shall begin after the occurrence of the vacancy and on the date the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeited if such oath is not taken within 30 days of confirmation.

And, be it further

RESOLVED, That Section 3A of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 3A. 1. The court of appeals consists of three judges or such greater number as the Legislature may provide by law. If the number of judges is so increased, the Supreme Court must provide by rule for the assignment of each appeal to a panel of three judges for decision.

~~2. [After the initial terms, each judge of the court of appeals must be elected by the qualified electors of this State at the general election for a term of 6 years beginning on the first Monday of January next after the election. The initial three judges of the court of appeals must be appointed by the Governor from among three nominees selected for each individual seat by the permanent Commission on Judicial Selection described in subsection 3 of section 20 of this Article. After the expiration of 30 days from the date on~~



which the permanent Commission on Judicial Selection has delivered to the Governor its list of nominees for the initial judges, if the Governor has not made the appointments required by this Section, the Governor shall make no other appointment to any public office until the Governor has appointed a judge from the list submitted. The term of the initial judges is 2 years beginning on the first Monday of January next after the effective date of this Section, and an initial judge may succeed himself. If there is an increase in the number of judges, each additional judge must be elected by the qualified electors of this State at the first general election following the increase for a term of 6 years beginning on the first Monday of January next after the election.

~~—3.]~~ The Chief Justice of the Supreme Court shall appoint one of the judges of the court of appeals to be chief judge. The chief judge serves a term of 4 years . ~~[, except that the term of the initial chief judge is 2 years.]~~ The chief judge may succeed himself. The chief judge may resign the position of chief judge without resigning from the court of appeals.

~~[4.]~~ 3. The Supreme Court shall provide by rule for the assignment of one or more judges of the court of appeals to devote a part of their time to serve as supplemental district judges, where needed.

And, be it further

RESOLVED, That Section 5 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 5. The State is hereby divided into nine judicial districts of which the County of Storey shall constitute the First; The County of Ormsby the Second; the County of Lyon the Third; The County of Washoe the Fourth; The Counties of Nye and Churchill the Fifth; The County of Humboldt the Sixth; The County of Lander the Seventh; The County of Douglas the Eighth; and the County of Esmeralda the Ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes until otherwise provided by law. The Legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of the judicial districts and judges therein. But no such change shall take effect, except in case of a vacancy, or the expiration of the term of an incumbent of the ~~office. At the first general election under this Constitution there shall be elected in each of the respective districts (except as in this Section hereafter otherwise provided) one district judge, who~~



shall hold office from and including the first Monday of December A.D., eighteen hundred and sixty four and until the first Monday of January in the year eighteen hundred and sixty seven. After the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one district judge in each of the respective judicial districts (except in the First District as in this Section hereinafter provided.) The district judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of 6 years (excepting those elected at said first election) from and including the first Monday of January, next succeeding their election and qualification; provided, that the First Judicial District shall be entitled to, and shall have three district judges, who shall possess} *office of district judge. In a judicial district with more than one district judge, each judge possesses* co-extensive and concurrent jurisdiction, and ~~[who shall be elected at the same times, in the same manner, and shall hold office for the like terms as herein prescribed, in relation to the judges in other judicial districts, any one of said]~~ *any of those* judges may preside on the ~~[empanneling empaneling]~~ *empaneling* of grand juries and the presentment and trial on indictments ~~[, under such rules and regulations as may be]~~ *in the manner* prescribed by law.

And, be it further

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

Sec. 15. The justices of the Supreme Court, the judges of the court of appeals and the district judges are each entitled to receive for their services a compensation to be fixed by law and paid in the manner provided by law, which must not be increased or diminished during the term for which they have been elected ~~[H]~~ *or appointed* unless a vacancy occurs, in which case the successor of the former incumbent is entitled to receive only such salary as may be provided by law at the time of his election or appointment. A provision must be made by law for setting apart from each year's revenue a sufficient amount of money to pay such compensation.

And, be it further

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

Sec. 20. 1. When a vacancy occurs ~~[before the expiration of any term of office]~~ *for any reason* in the Supreme Court or the court of appeals or among the district judges, ~~[the Governor shall appoint a justice or judge from~~



~~among three nominees selected for such individual vacancy~~
by the Commission on Judicial Selection ~~it~~ shall select
three nominees for the vacancy within 60 days after the
vacancy occurs. The Commission shall provide the names of
the three nominees to the Governor and the public. The
Governor may:

(a) Appoint a justice or judge from among the three
nominees selected for the vacancy by the Commission on
Judicial Selection; or

(b) Reject all three nominees.

2. After the expiration of 30 days from the date on
which the Commission on Judicial Selection has delivered
to the Governor its list of nominees for any vacancy, if the
Governor has not appointed a justice or judge or rejected all
the nominees, the Governor shall make no other
appointment to any public office until the Governor has
appointed a justice or judge from the list submitted.

3. If the Governor rejects all three nominees selected
for the vacancy by the Commission on Judicial Selection,
the Commission shall select three additional nominees for
the vacancy within 60 days after the date of the rejection.
The Commission shall provide the names of the three
additional nominees to the Governor and the public. The
Governor must appoint a justice or judge from among the
three additional nominees selected for the vacancy by the
Commission on Judicial Selection.

4. After the expiration of 30 days from the date on
which the Commission on Judicial Selection has delivered
to the Governor its list of additional nominees for any
vacancy, if the Governor has not made the appointment
required by subsection 3, the Governor shall make no other
appointment to any public office until the Governor has
appointed a justice or judge from the list of additional
nominees submitted by the Commission on Judicial
Selection.

5. The *initial* term of office of any justice or judge ~~also~~
~~expires on the first Monday of January following the next~~
~~general election.~~

~~—3.~~ appointed due to the vacancy of a judicial office
before the expiration of a full 6-year judicial term shall be
the balance of that judicial term. If the initial term is for a
period of three calendar years or less, it shall not count
towards the four-term limitation on service. If the initial
term is for a period greater than three calendar years, it
shall so count.



6. Each nomination for the Supreme Court or the court of appeals must be made by the permanent Commission, composed of:

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

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

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

~~{4-}~~ 7. Each nomination for the district court must be made by a temporary commission composed of:

(a) The permanent Commission;

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

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

~~{5-}~~ 8. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the Supreme Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

~~{6-}~~ 9. The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission must be appointed when a vacancy occurs, and their terms expire when the nominations for such vacancy have been transmitted to the Governor.

~~{7-}~~ 10. An appointing authority shall not appoint to the permanent Commission more than:

(a) One resident of any county.

(b) Two members of the same political party.

➔ No member of the permanent Commission may be a member of *a commission on judicial performance or* the Commission on Judicial Discipline.

~~{8-} After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall~~



1 ~~make no other appointment to any public office until he has~~
2 ~~appointed a justice or judge from the list submitted.]~~
3 And, be it further
4 RESOLVED, That Section 3 of Article 6 of the Nevada
5 Constitution be repealed.

TEXT OF REPEALED SECTION

Sec: 3. Justices of Supreme Court: Election; terms; Chief Justice. The justices of the Supreme Court, shall be elected by the qualified electors of the State at the general election, and shall hold office for the term of six years from and including the first Monday of January next succeeding their election; provided, that there shall be elected, at the first election under this Constitution, three justices of the Supreme Court who shall hold office from and including the first Monday of December A.D., eighteen hundred and sixty four, and continue in office thereafter, two, four and six years respectively, from and including the first Monday of January next succeeding [succeeding] their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine by lot, the term of office each shall fill, and the justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior justice in commission shall be Chief Justice; and in case the commission of any two or more of said justices shall bear the same date, they shall determine by lot, who shall be Chief Justice.

