

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:**

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

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

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



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

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

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

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

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

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

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

18 *(3) Three are appointed by the Majority Leader of the*  
19 *Senate or his or her designee.*

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

23 *(a) The permanent Commission on Judicial*  
24 *Performance;*

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

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

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

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



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

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

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

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

20 And, be it further

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

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

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

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

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



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

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

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

- 12 (a) *Knowledge of the law;*
- 13 (b) *Oral and written communication skills;*
- 14 (c) *Ability to perform the duties of the position;*
- 15 (d) *Legal experience;*
- 16 (e) *Judicial temperament;*
- 17 (f) *Professional reputation;*
- 18 (g) *Work ethic;*
- 19 (h) *Commitment to access to justice for all; and*
- 20 (i) *Other such areas as directed by the Legislature*  
21 *through law or the Court through rulemaking.*

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

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

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

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

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



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

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

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

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

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

29 And, be it further

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

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

37 2. ~~After the initial terms, each judge of the court of~~  
38 ~~appeals must be elected by the qualified electors of this State~~  
39 ~~at the general election for a term of 6 years beginning on the~~  
40 ~~first Monday of January next after the election. The initial~~  
41 ~~three judges of the court of appeals must be appointed by the~~  
42 ~~Governor from among three nominees selected for each~~  
43 ~~individual seat by the permanent Commission on Judicial~~  
44 ~~Selection described in subsection 3 of section 20 of this~~  
45 ~~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~~



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

25 And, be it further

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

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

39 And, be it further

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

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





1 ~~among three nominees selected for such individual vacancy~~  
2 ~~by] the Commission on Judicial Selection [;] shall select~~  
3 ~~three nominees for the vacancy within 60 days after the~~  
4 ~~vacancy occurs. The Commission shall provide the names of~~  
5 ~~the three nominees to the Governor and the public. The~~  
6 ~~Governor may:~~

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

10 (b) *Reject all three nominees.*

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

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

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

36 5. The *initial* term of office of any justice or judge ~~[so~~  
37 ~~expires on the first Monday of January following the next~~  
38 ~~general election.~~

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





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

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

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

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

11           ~~[4.]~~ **7.** Each nomination for the district court must be  
12 made by a temporary commission composed of:

13           (a) The permanent Commission;

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

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

19           ~~[5.]~~ **8.** If at any time the State Bar of Nevada ceases to  
20 exist as a public corporation or ceases to include all attorneys  
21 admitted to practice before the courts of this State, the  
22 Legislature shall provide by law, or if it fails to do so the  
23 Supreme Court shall provide by rule, for the appointment of  
24 attorneys at law to the positions designated in this Section to  
25 be occupied by members of the State Bar of Nevada.

26           ~~[6.]~~ **9.** The term of office of each appointive member of  
27 the permanent Commission, except the first members, is 4  
28 years. Each appointing authority shall appoint one of the  
29 members first appointed for a term of 2 years. If a vacancy  
30 occurs, the appointing authority shall fill the vacancy for the  
31 unexpired term. The additional members of a temporary  
32 commission must be appointed when a vacancy occurs, and  
33 their terms expire when the nominations for such vacancy  
34 have been transmitted to the Governor.

35           ~~[7.]~~ **10.** An appointing authority shall not appoint to the  
36 permanent Commission more than:

37           (a) One resident of any county.

38           (b) Two members of the same political party.

39           ↪ No member of the permanent Commission may be a  
40 member of *a commission on judicial performance or* the  
41 Commission on Judicial Discipline.

42           ~~[8.—After the expiration of 30 days from the date on~~  
43 ~~which the Commission on Judicial Selection has delivered to~~  
44 ~~him its list of nominees for any vacancy, if the Governor has~~  
45 ~~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.

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**TEXT OF REPEALED SECTION**

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**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.





