



NEVADA LEGISLATURE
LEGISLATIVE COMMISSION'S SUBCOMMITTEE
TO STUDY THE BENEFITS, COSTS, AND FEASIBILITY OF
THE IMPLEMENTATION OF COURTS OF CHANCERY
(Assembly Concurrent Resolution No. 35, File No. 109, *Statutes of Nevada 2007*)

SUMMARY MINUTES AND ACTION REPORT

The fifth meeting and work session of the Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery was held on July 8, 2008, at 2 p.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, is available on the Nevada Legislature's website at www.leg.state.nv.us/74th/Interim. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Bob Beers, Chairman
Senator Terry Care
Senator Barbara K. Cegavske
Assemblyman William C. Horne
Assemblyman Tick Segerblom

SUBCOMMITTEE MEMBER PRESENT IN CARSON CITY:

Assemblyman John C. Carpenter

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Jennifer Chisel, Senior Research Analyst, Research Division
Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division
Lucinda Benjamin, Senior Research Secretary, Research Division

OPENING REMARKS

Chairman Beers welcomed members and the public to the fifth meeting and work session of the Legislative Commission's Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in Nevada and explained the work session procedures.

APPROVAL OF THE "SUMMARY MINUTES AND ACTION REPORT" OF THE MEETING HELD ON MAY 28, 2008, IN LAS VEGAS

- The Subcommittee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN HORNE MOVED TO APPROVE THE MINUTES OF THE MAY 28, 2008, MEETING IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY SENATOR CARE, WHICH PASSED UNANIMOUSLY.

- Jennifer Chisel, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), clarified the process for submitting the approved recommendations listed in the "Work Session Document" to the 75th Session of the Nevada Legislature.
- Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division, LCB, added that under the *Nevada Revised Statutes* (NRS) the Subcommittee is entitled to five bill draft requests (BDR) and stated if the Subcommittee approved a request, a BDR would be prepared and forwarded to the Chair of the appropriate 2009 Legislative standing committee. He also stated the report of the Subcommittee's activities would be submitted to the Legislative Commission.

PUBLIC COMMENT

- No comments were received.

WORK SESSION—DISCUSSION AND POSSIBLE ACTION ON RECOMMENDATIONS RELATING TO:

- Enhancing the Existing Business Courts in Nevada
- Creating a Dedicated Business Court in Nevada
- Indirectly Enhancing the Business Courts in Nevada

"WORK SESSION DOCUMENT"

The "work session document" was prepared by the Chairman and staff of the Subcommittee to Study the Benefits, Costs, and Feasibility of the Implementation of Courts of Chancery in

Nevada. It was designed to assist the Subcommittee members develop recommendations to be forwarded to the 2009 Session of the Nevada Legislature. Each item in the document may be the subject of further discussion, refinement, or action.

The document contains recommendations which were either submitted in writing or presented during the Subcommittee's hearings on January 29, 2008; March 18, 2008; April 29, 2008; and May 28, 2008. The source of each recommendation is noted in parentheses unless the proposal was raised and discussed by numerous individuals and entities during the course of the Subcommittee's meetings.

The recommendations listed in the document are in no particular order and do not necessarily have the support or opposition of the Subcommittee Chair or members. For purposes of the "Work Session Document", the recommendations have been compiled and grouped by topic so the members may review them to decide if they should be adopted, changed, rejected, or further considered. The members of the Subcommittee may vote to send as many letters as they choose; however, pursuant to NRS 218.2429, the Subcommittee is limited to five BDRs, including requests for the drafting of legislative resolutions. Additionally, although possible actions may be identified within each recommendation, the Subcommittee may choose to recommend any of the following actions: (1) draft legislation; (2) draft a legislative resolution; (3) draft a letter; or (4) include a statement in the final report.

If action is taken to adopt a recommendation, it will become part of the Subcommittee's final report and will be presented to the 75th Session of the Nevada Legislature for consideration. Finally, please note that specific details of approved requests for legislation or statements may need to be clarified by the Subcommittee staff prior to drafting. Please see [Exhibit B](#).

RECOMMENDATIONS

Jennifer Chisel, Senior Research Analyst, Research Division, LCB, provided an explanation of the five recommendations made during previous meetings of the Subcommittee, which are included in the "Work Session Document."

ENHANCING THE EXISTING BUSINESS COURTS IN NEVADA

RECOMMENDATION NO. 1 — Send a letter to Nevada's Supreme Court encouraging the adoption of court rules that: (a) direct the business courts to issue written opinions explaining their decisions; (b) provide for the publication in written, electronic, or other form, including, but not limited to, publication via the Internet of business court opinions; (c) provide for the citation of business court opinions in the courts of Nevada; and (d) specify the precedential value or authoritative weight that must be given to business court opinions.

- Senator Cegavske requested a fiscal note for each of the recommendations and expressed concern about taking action on recommendations without fiscal note information.

- Jennifer Chisel, previously identified, explained that fiscal notes were not included for the recommendations in the “Work Session Document” and stated fiscal information would be developed if the Subcommittee approved a recommendation.
- Assemblyman Horne explained that issues presented to the Subcommittee would be discussed during the 2009 Legislative Session and expressed support for encouraging written opinions from the business courts.
- Senator Care stated the recommendation was to send a letter to Nevada’s Supreme Court encouraging, at the court’s option, publication of written business court decisions. He noted estimated costs were submitted by the Honorable Elizabeth Goff Gonzalez, Department 11, Eighth Judicial District Court of Nevada, but questioned the need for fiscal notes in the “Work Session Document.”
- Senator Cegavske explained that any bill with a fiscal note or cost would be referred to the Legislature’s Senate Committee on Finance and the Assembly Committee on Ways and Means during the 2009 Legislative Session and stated she did not support a bill draft request.
- Senator Beers restated Recommendation No. 1 and added the attorneys testified that a stronger business court mechanism might increase the number of cases handled in business court versus federal court and, therefore, provide an offset to the increased cost of providing written opinions.
- Assemblyman Carpenter noted that when a BDR was requested the fiscal note would be attached at that time, and he added cost information would be discussed after the BDR was introduced in the next legislative session.
- Ms. Chisel clarified that the Subcommittee would send the recommended letter to Nevada’s Supreme Court and clarified Recommendation No. 1 would not result in a BDR. She stated the letter would encourage Nevada’s Supreme Court to establish court rules to provide additional functions to the existing business courts created in 2000 by Supreme Court rule.
- Assemblyman Segerblom requested that the Legislature consider adding a fee for corporate cases filed in the business courts, which would be designated to cover the costs of producing written opinions.
- Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division, LCB, noted that Recommendation No. 1 could not result in a BDR without a constitutional amendment authorizing the Legislature to require Nevada’s Supreme Court to provide the listed functions and stated the recommendation is for a letter encouraging Nevada’s Supreme Court to adopt court rules to carry out the functions.
- The Subcommittee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN SEGERBLOM MOVED FOR APPROVAL TO SEND A LETTER TO NEVADA'S SUPREME COURT ENCOURAGING THE ADOPTION OF COURT RULES THAT: (A) DIRECT THE BUSINESS COURTS TO ISSUE WRITTEN OPINIONS EXPLAINING THEIR DECISIONS; (B) PROVIDE FOR THE PUBLICATION IN WRITTEN, ELECTRONIC, OR OTHER FORM, INCLUDING, BUT NOT LIMITED TO, PUBLICATION VIA THE INTERNET OF THE BUSINESS COURT OPINIONS; (C) PROVIDE FOR THE CITATION OF THE BUSINESS COURT OPINIONS IN THE COURTS OF NEVADA; AND (D) SPECIFY THE PRECEDENTIAL VALUE OR AUTHORITATIVE WEIGHT THAT MUST BE GIVEN TO THE BUSINESS COURT OPINIONS. THE MOTION WAS SECONDED BY SENATOR CARE, WHICH PASSED WITH SENATOR CEGAVSKE VOTING NAY.

RECOMMENDATION NO. 2 — Send a letter of support to Governor Jim Gibbons and the Chairmen of the Senate Committee on Finance and the Assembly Committee on Ways and Means for Nevada's Supreme Court's budget request for additional funding to cover the costs of issuing and publishing business court opinions.

(Proposed by the Honorable Elizabeth Goff Gonzalez, Department 11, Eighth Judicial District Court of Nevada, and the Honorable Mark R. Denton, Department 13, Eighth Judicial District Court of Nevada.)

- Jennifer Chisel, previously identified, provided an explanation of Recommendation No. 2 to the Subcommittee members.
- Senator Care stated Recommendation No. 2 was consistent with Recommendation No. 1 and stated the business court was created by Supreme Court rule and expressed support for the recommendation.
- Assemblyman Segerblom suggested an amendment to add a fee for corporate registration and corporate filings to cover costs related to Recommendation No. 2.
- Chairman Beers questioned if Subcommittee members supported an amendment to add or substitute a fee on litigants utilizing the business court.
- Senator Cegavske stated no support for Recommendation No. 2 or the proposed amendments to the motion.
- Assemblyman Segerblom did not support an amendment of filing fees on litigants based on the current high costs for litigation and because a fee could adversely affect small business litigants.
- The Subcommittee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN SEGERBLOM MOVED FOR APPROVAL TO SEND A LETTER OF SUPPORT TO GOVERNOR JIM GIBBONS AND THE CHAIRMEN OF THE SENATE COMMITTEE ON FINANCE AND THE ASSEMBLY COMMITTEE ON WAYS AND MEANS FOR NEVADA'S SUPREME COURT'S BUDGET REQUEST FOR ADDITIONAL FUNDING TO COVER THE COSTS OF ISSUING AND PUBLISHING BUSINESS COURT OPINIONS AND RECOMMENDING CORPORATE AND LIMITED LIABILITY CORPORATION REGISTRATION FILING FEES BE ADDED. THE MOTION WAS SECONDED BY ASSEMBLYMAN HORNE, WHICH PASSED WITH SENATOR CEGAVSKE VOTING NAY.

RECOMMENDATION NO. 3 — *If Recommendation No. 1 (direct the business courts to issue and publish written opinions by court rule) is approved by the Subcommittee, draft legislation requiring the district court clerks to publish the written opinions of the business courts by making the opinions publicly available on the Internet.*

- Jennifer Chisel, previously identified, provided an explanation of Recommendation No. 3 and clarified the actual publication of written opinions is considered an administrative function rather than a judicial function; therefore, the Legislature by statute could require court clerks to provide written opinions to the public.

Responding to questions from Subcommittee members, Kevin C. Powers, previously identified, clarified how the BDR would be framed using language such as, "if a business court had been established in a judicial district, the clerk of the court shall publish any written opinions issued by the business court." Consequently, if the business court issued written opinions, then the court would have a duty to provide the opinions on the Internet.

- Mr. Powers further explained that the court rules being discussed would be temporary measures until a constitutional amendment establishing a business court was approved by Nevada voters, after which the Legislature would be permitted to establish the details of a business court. He further stated that the measures, if approved, would remain in place and govern the existing business court structure. He noted that the BDR would be drafted in a conditional way and would apply if the business courts were in operation and were issuing written opinions.

Mr. Powers also stated no opinions are written or published at the district court level at this time and written opinions are only issued by Nevada's Supreme Court. He clarified that opinions could be written if the Supreme Court adopted court rules that directed the business courts or district courts to issue written opinions explaining their decisions.

- Senator Care explained that district courts will, on occasion, issue findings of fact or conclusions of law, which are for the benefit of the parties in litigation. He was of the opinion that without attorneys to assist in writing opinions, the current business court

judges would find it difficult to publish written opinions based on current caseloads and time constraints.

- The Subcommittee **APPROVED THE FOLLOWING ACTION:**

SENATOR CARE MOVED FOR APPROVAL TO DRAFT LEGISLATION REQUIRING THE DISTRICT COURT CLERKS TO PUBLISH WRITTEN OPINIONS OF THE BUSINESS COURTS BY MAKING THE OPINIONS PUBLICLY AVAILABLE ON THE INTERNET. THE MOTION WAS SECONDED BY ASSEMBLYMAN HORNE. THE MOTION PASSED WITH SENATOR CEGAVSKE ABSTAINING.

- Senator Cegavske stated without clarification of the cost of clerks publishing written opinions she would abstain.

CREATING A DEDICATED BUSINESS COURT IN NEVADA

RECOMMENDATION NO. 4 — Draft a joint resolution amending the *Nevada Constitution* to authorize the Legislature to establish courts having jurisdiction over business matters.

- Kevin C. Powers, previously identified, stated the proposed joint resolution ([Exhibit C](#)) authorizes the Nevada Legislature to establish courts having jurisdiction over business matters. He explained the *Nevada Constitution* language uses broad general terms leaving the details to be implemented by subsequent legislation. Mr. Powers stated the draft resolution would give specific and broad authority to the Nevada Legislature in dealing with the creation of a business or chancery court, after a constitutional amendment was adopted. He explained the proposed resolution would amend Section 6 of Article 6 of the *Nevada Constitution*, which currently establishes the jurisdiction of the district court, and stated Section 2 of Article 6 allowed the Legislature to provide by law the establishment of a family court as a division of the district court and prescribed the court's jurisdiction.

Continuing, Mr. Powers referred to the new language in Section 3 of the proposed joint resolution and clarified that the Legislature may provide by law for the establishment of one or more district courts having jurisdiction over business matters. He noted the proposed language allows the Legislature to: (1) establish such business courts or district courts having jurisdiction over business matters as a division of the district court or as a specialized district court; and (2) provide by law for one or more judicial districts for such specialized district courts.

Further, Mr. Powers explained the proposed joint resolution ([Exhibit C](#)) would allow the Legislature to establish a business court of southern and northern Nevada and that the judicial districts could be different from the existing judicial districts to allow flexibility to shape the business courts rather than requiring it be done in one particular way. He added the new language in subsection 4 of the proposed resolution provides if

the Legislature did establish one or more district courts having jurisdiction over business matters, then the Legislature could exercise additional powers at that time. He referred to paragraph (a), which would give the Legislature the flexibility to determine what to call the courts and to define the exact and appropriate jurisdiction for the courts.

In addition, Mr. Powers explained paragraph (b) of subsection 4 of the proposed joint resolution dealt with the selection of judges for the district courts having jurisdiction over business matters, hereafter referred to as business courts, and stated the language assembled three contingencies. He explained that Senate Joint Resolution No. 2 (File No. 104, *Statutes of Nevada*) was passed by the 2007 Legislature, which proposed to amend the *Nevada Constitution* to provide for the initial appointment of judges and then retention elections where the judge would run unopposed, so that voters could determine whether to retain them. He explained that S.J.R. 2 would need to be passed by the 2009 Legislature and then approved by the voters in the 2010 General Election to become part of the *Nevada Constitution*. He noted paragraph (b) of the proposed resolution attempted to take into consideration the passage or failure of S.J.R. 2 and other contingencies.

Continuing his testimony, Mr. Powers referred to the new language in paragraph (c) of the proposed joint resolution and stated the resolution was based on testimony previously presented to the Subcommittee and would allow the Legislature to prescribe additional qualifications in education, experience, or training necessary for eligibility to be a judge of a business court and additional qualifications, which must be reasonably related to the jurisdiction and judicial functions of such a court.

Paragraph (d) of the proposed joint resolution ([Exhibit C](#)), as explained by Mr. Powers, authorizes the Legislature to provide by law for the publication of the business court decisions and requires Nevada's Supreme Court to provide for the citation of the decisions in the courts of Nevada and to specify the precedential value or authoritative weight given to business court decisions. Mr. Powers stated the provision is consistent with Section 8 of Article 15 of the *Nevada Constitution*, which states any person may provide for the publication of judicial decisions, so that independent publishers may obtain the decisions of Nevada's courts and publish them through electronic databases or in hard copy form.

In conclusion, Mr. Powers stated paragraph (e) of the proposed joint resolution would allow the Legislature to adopt laws to facilitate alternative dispute resolution, settlement, and expedited disposition, and noted paragraph (f) would ensure the Legislature has broad authority in the *Nevada Constitution* to develop the business court.

Responding to a question from Assemblyman Horne, Mr. Powers stated the Legislature has prescribed specific qualifications for district court judges and the proposed recommendation

would allow the Legislature to add qualifications above those current prescribed qualifications for business court judges.

- Assemblyman Carpenter was of the opinion that business court judges should be elected by the voters in the 2010 General Election.

Mr. Powers responded to Assemblyman Carpenter and referred to testimony provided to the Subcommittee noting that one of the advantages of a business court was that business court judges were appointed and, therefore, the qualifications of the judges were significantly vetted; therefore, only persons who had specific experience in business matters would be appointed. He added, if S.J.R. 2 did not pass, the proposed resolution was drafted so that the Legislature would be given the opportunity, specifically for business court judges, to provide for initial appointment and retention by election. He said Assemblyman Carpenter was correct in stating the resolution would allow the power of appointment even if S.J.R. 2 failed.

- Chairman Beers suggested modifying Section 2 of the proposed resolution by adding a paragraph (c), which would use the same language as paragraph (b) but would change “family court” to “business court.” Chairman Beers added the concept of appointment and retention elections for business court judges would be determined by Nevada voters if S.J.R. 2 passed.
- Mr. Powers stated the first sentence in paragraph (b), subsection 4, could be removed to address concerns expressed by Assemblyman Carpenter and the remaining two sentences could state “if S.J.R. 2 passed, business court judges would have initial appointment and a retention election;” if S.J.R. failed, then business court judges would be elected the same as other district court judges. Mr. Powers added if a modified version as suggested by Chairman Beers was approved, legislative intent could be questioned as to what the Legislature could do with business courts. He explained that the resolution of questions is handled by the courts if there is not enough expressed, broad authorization in the *Nevada Constitution*.
- Assemblyman Carpenter supported presenting the business court issue to public vote but expressed concern about removing the ability of Nevada voters to address qualifications of judges.
- Senator Care recalled the emphasis of testimony presented to the Subcommittee members addressed business courts not chancery courts and stated his support for enhancement of the current business courts. Though a constitutional amendment for a chancery court was previously discussed, he did not support it.

Responding to a question from Assemblyman Segerblom, Mr. Powers stated the proposed joint resolution was to ensure that if the constitutional amendment passed, the Legislature would have broad authority to deal with the details of establishing a business court. He reiterated when a constitutional provision is stated in very broad terms, doubt could

arise about the scope of the Legislature's powers, which would need to be resolved in a court of law. The proposed language in the joint resolution was written to capture the elements discussed by the Subcommittee to make sure the Legislature would have express authority to deal with elements such as qualifications for business court judges. He stated the family courts are very specific divisions of the district courts, whereas the business court might need to be created in a broader sense, so that the draft resolution could be adjusted prior to a vote by the Subcommittee.

Mr. Powers responded to a question from Chairman Beers and stated he did not recall any litigation challenging the establishment or operation of the family court in Nevada.

- The Subcommittee **PRESENTED THE FOLLOWING ACTION:**

ASSEMBLYMAN HORNE MOVED FOR APPROVAL TO ACCEPT RECOMMENDATION NO. 4 TO DRAFT THE JOINT RESOLUTION AND TO REMOVE THE FIRST SENTENCE OF PARAGRAPH B, SUBSECTION 4, WITH MODIFICATIONS TO THE REMAINING TWO SENTENCES IN SUBSECTION 4. THE MOTION WAS SECONDED BY ASSEMBLYMAN SEGERBLOM, WHICH FAILED WITH SENATOR CEGAVSKE AND SENATOR CARE VOTING NAY.

INDIRECTLY ENHANCING THE BUSINESS COURTS IN NEVADA

RECOMMENDATION NO. 5 — Include a statement in the final report supporting the intermediate appellate court amendment to the *Nevada Constitution* set forth in S.J.R. 9 (File No. 69, *Statutes of Nevada 2007*), which will return to the 2009 Legislative Session. Joint resolutions which seek to amend the *Nevada Constitution* must be passed by two sessions of the Legislature and then submitted to the voters for approval or disapproval at the next general election.

(Proposed by Justice James Hardesty, Associate Justice, Nevada Supreme Court.)

- The Subcommittee **APPROVED THE FOLLOWING ACTION:**
ASSEMBLYMAN SEGERBLOM MOVED FOR APPROVAL TO INCLUDE A STATEMENT IN THE FINAL REPORT SUPPORTING THE INTERMEDIATE APPELLATE COURT AMENDMENT TO THE NEVADA CONSTITUTION AS SET FORTH IN S.J.R. 9 (FILE NO. 69, STATUTES OF NEVADA 2007). THE MOTION WAS SECONDED BY SENATOR CARE, WHICH PASSED UNANIMOUSLY.

PUBLIC COMMENT

- No public testimony was presented.
- Chairman Beers thanked the members for their work on the Subcommittee.

ADJOURNMENT

There being no further business to come before the Subcommittee, the meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Lucinda Benjamin
Senior Research Secretary

Jennifer Chisel
Senior Research Analyst

APPROVED BY:

Senator Bob Beers, Chairman

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Jennifer Chisel, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is the “Work Session Document” provided by Jennifer Chisel, Senior Research Analyst, Research Division, LCB.

[Exhibit C](#) is a draft copy of a proposed joint resolution amending the *Nevada Constitution* to authorize the Legislature to establish courts having jurisdiction over business matters provided by Kevin C. Powers, Senate Legal Counsel and Bill Drafting Adviser, Legal Division, LCB.

This set of “Summary Minutes and Action Report” is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or telephone: 775/684-6827.