S T A T E O F N E W Y O R K

7648

I N S E N A T E

April 28, 2010

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 2 of article 6 of the constitution in relation to vacancies of the court of appeals; and to repeal subdivisions c, d, e and f of section 2 of article 6 of the constitution relating thereto

Section 1. Resolved (if the Assembly concur), That subdivisions c, d, e and f of section 2 of article 6 of the constitution are REPEALED.

S 2. Resolved (if the Assembly concur), That section 2 of article 6 of the constitution be amended to read as follows:

S 2. a. The court of appeals is continued. It shall consist of the chief judge and the six elected associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, WHO SHALL BE CHOSEN BY THE ELECTORS OF THE STATE and such justices of the supreme court as may be designated for service in said court as hereinafter provided. The official terms of the chief judge and the six ELECTED associate judges shall be fourteen years FROM AND INCLUDING THE FIRST DAY OF JANUARY NEXT AFTER THEIR ELECTION.

Five members of the court shall constitute a quorum, and the concurrence of four shall be necessary to a decision; but no more than seven judges shall sit in any case. In case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court during such absence or inability to act. The court shall have power to appoint and to remove its clerk. The powers and jurisdiction of the court shall not be suspended for want of appointment when the number of judges is sufficient to constitute a quorum.

b. Whenever and as often as the court of appeals shall certify to the governor that the court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate such number of justices of the supreme court as may be so certified to be necessary, but not more than four, to serve as associate judges of the court of appeals. The justices so designated shall be relieved, while so serving, from their duties as

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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justices of the supreme court, and shall serve as associate judges of the court of appeals until the court shall certify that the need for the services of any such justices no longer exists, whereupon they shall return to the supreme court. The governor may fill vacancies among such designated judges. No such justices shall serve as associate judge of the court of appeals except while holding the office of justice of the supreme court. The designation of a justice of the supreme court as an associate judge of the court of appeals shall not be deemed to affect his or her existing office any longer than until the expiration of his or her designation as such associate judge, nor to create a vacancy.

C. WHEN A VACANCY SHALL OCCUR BY EXPIRATION OF TERM OR OTHERWISE, IN THE OFFICE OF CHIEF OR ASSOCIATE JUDGE OF THE COURT OF APPEALS, THE SAME SHALL BE FILLED, FOR A FULL TERM, AT THE NEXT GENERAL ELECTION HELD NOT LESS THAN THREE MONTHS AFTER SUCH VACANCY OCCURS; AND UNTIL THE VACANCY SHALL BE SO FILLED, THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE IF THE SENATE SHALL BE IN SESSION, OR IF NOT IN SESSION, THE GOVERNOR MAY FILL SUCH VACANCY BY APPOINTMENT. IF ANY SUCH APPOINTMENT BE MADE FROM AMONG THE JUSTICES OF THE SUPREME COURT, SUCH APPOINTMENT SHALL NOT BE DEEMED TO AFFECT HIS OR HER EXISTING OFFICE ANY LONGER THAN UNTIL THE EXPIRATION OF HIS OR HER APPOINTMENT AS SUCH ASSOCIATE JUDGE, NOR TO CREATE A VACANCY. IF ANY SUCH APPOINTMENT OF CHIEF JUDGE SHALL BE MADE FROM AMONG THE ASSOCIATE JUDGES, A TEMPORARY APPOINTMENT OF ASSOCIATE SHALL BE MADE IN LIKE MANNER; BUT, IN SUCH CASE, THE APPOINTMENT SHALL NOT BE DEEMED TO AFFECT HIS OR HER OFFICE OF ASSOCIATE JUDGE ANY LONGER THAN UNTIL THE EXPIRATION OF HIS OR HER APPOINTMENT AS CHIEF JUDGE, NOR TO CREATE A VACANCY. THE POWERS AND JURISDICTION OF THE COURT SHALL NOT BE SUSPENDED FOR WANT OF APPOINTMENT OR ELECTION WHEN THE NUMBER OF JUDGES IS SUFFICIENT TO CONSTITUTE A QUORUM. ALL APPOINTMENTS UNDER THIS SECTION SHALL CONTINUE UNTIL AND INCLUDING THE LAST DAY OF DECEMBER NEXT AFTER THE ELECTION AT WHICH THE VACANCY SHALL BE FILLED.

g. The provisions of subdivisions c, d, e and f of this section shall not apply to temporary designations or assignments of judges or justices.

S 3. RESOLVED (if the Assembly concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.