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

7316

2009-2010 Regular Sessions

I N A S S E M B L Y

March 27, 2009

Introduced by M. of A. TOBACCO, O'MARA, BOYLE, RABBITT, DUPREY -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to the compensation of state-paid judges and justices of the unified court system; to amend the New York city civil court act, in relation to the compensation paid to New York city housing judges; to establish special commissions on compensation, and providing for their powers and duties; making an appropriation for compensation increases to state-paid judges and justices of the unified court system and New York city housing judges; and to repeal certain provisions of the judiciary law relating to the compensation of state-paid judges and justices of the unified court system

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Sections 221, 221-a, 221-b, 221-bb, 221-c, 221-d, 221-e, 221-f, 221-g, 221-h, 221-i and 223 of the judiciary law are REPEALED and a new section 221 is added to read as follows:

S 221. ANNUAL SALARIES OF STATE-PAID JUDGES AND JUSTICES OF THE UNIFIED COURT SYSTEM. (A) EACH STATE-PAID JUDGE AND JUSTICE OF THE UNIFIED COURT SYSTEM SHALL RECEIVE THE ANNUAL SALARY PRESCRIBED FOR HIS OR HER OFFICE ON A SCHEDULE TO BE PROMULGATED BY THE CHIEF ADMINISTRATOR OF THE COURTS IN ACCORDANCE WITH LAW.

(B) STATE-PAID JUDGES AND JUSTICES SHALL RECEIVE ANNUAL SALARIES AS FOLLOWS:

1. (I) A JUSTICE OF THE SUPREME COURT SHALL RECEIVE AN ANNUAL SALARY OF ONE HUNDRED SIXTY-FIVE THOUSAND TWO HUNDRED DOLLARS, EFFECTIVE JANUARY FIRST, TWO THOUSAND NINE.

(II) EXCEPT AS OTHERWISE PROVIDED BY LAW, ON THE FIRST DAY OF APRIL IN EACH YEAR COMMENCING ON OR AFTER TWO THOUSAND TEN, IF THE ANNUAL SALARY OF A JUDGE OF THE UNITED STATES DISTRICT COURT WAS INCREASED WITHIN THE PRECEDING TWELVE MONTHS, THE ANNUAL SALARY OF A JUSTICE OF THE SUPREME

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

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COURT SHALL BE INCREASED BY ADDING THERETO A PERCENTAGE THEREOF EQUALING THE PERCENTAGE BY WHICH THE SALARY OF A JUDGE OF THE UNITED STATES DISTRICT COURT WAS INCREASED IN SUCH TWELVE-MONTH PERIOD.

2. THE FOLLOWING JUDGES AND JUSTICES SHALL RECEIVE AN ANNUAL SALARY EQUALING THAT OF A JUSTICE OF THE SUPREME COURT PLUS A PERCENTAGE THEREOF AS SET FORTH IN THIS PARAGRAPH:

(I) CHIEF JUDGE OF THE COURT OF APPEALS, FOURTEEN AND TWELVE ONE HUNDREDTHS PERCENT;

(II) ASSOCIATE JUDGES OF THE COURT OF APPEALS, TEN AND SIXTY-ONE ONE HUNDREDTHS PERCENT;

(III) PRESIDING JUSTICES OF THE APPELLATE DIVISION, SEVEN AND NINETY-SEVEN ONE HUNDREDTHS PERCENT;

(IV) ASSOCIATE JUSTICES OF THE APPELLATE DIVISION, THE PRESIDING JUDGE OF THE COURT OF CLAIMS AND JUDGES WHO ARE DESIGNATED DEPUTY CHIEF ADMINISTRATIVE JUDGES, FIVE AND THIRTY-FOUR ONE HUNDREDTHS PERCENT;

(V) PRESIDING JUSTICES OF THE APPELLATE TERM, JUDGES WHO ARE DESIGNATED DEPUTY OR ASSISTANT ADMINISTRATIVE JUDGES WITHIN THE CITY OF NEW YORK AND JUDGES AND JUSTICES WHO ARE DESIGNATED ADMINISTRATIVE JUDGES FOR A JUDICIAL DISTRICT OR COUNTY OUTSIDE THE CITY OF NEW YORK, THREE AND FIFTY-ONE ONE HUNDREDTHS PERCENT;

(VI) ASSOCIATE JUSTICES OF THE APPELLATE TERM, TWO AND NINETEEN ONE HUNDREDTHS PERCENT; AND

(VII) JUDGES OF THE COURT OF CLAIMS, NO ADDITIONAL PERCENTAGE.

3. THE FOLLOWING JUDGES SHALL RECEIVE AN ANNUAL SALARY EQUALING A PERCENTAGE OF THAT OF A JUSTICE OF THE SUPREME COURT, AS SET FORTH IN THIS PARAGRAPH:

(I) JUDGES OF THE COUNTY COURT, JUDGES OF THE FAMILY COURT AND JUDGES OF THE SURROGATE'S COURT, NINETY-FIVE PERCENT;

(II) JUDGES OF THE NEW YORK CITY CIVIL COURT, JUDGES OF THE NEW YORK CITY CRIMINAL COURT AND JUDGES OF THE DISTRICT COURT, NINETY-THREE PERCENT; AND

(III) JUDGES OF A CITY COURT OUTSIDE THE CITY OF NEW YORK WHO ARE NOT PERMITTED TO PRACTICE LAW, NINETY PERCENT.

NOTWITHSTANDING THE OTHER PROVISIONS OF THIS PARAGRAPH, ANY JUDGE SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, IN AN OFFICE THAT ON DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT WAS PAID AN ANNUAL SALARY THAT WAS MORE THAN NINETY-FIVE PERCENT OF THE ANNUAL SALARY PAID A JUSTICE OF THE SUPREME COURT ON SUCH DATE, SHALL RECEIVE AN ANNUAL SALARY EQUALING AN AMOUNT BEARING THE SAME PROPORTION TO THE SALARY OF A JUSTICE OF THE SUPREME COURT AS THE ANNUAL SALARY OF HIS OR HER OFFICE BORE TO THE SALARY OF A JUSTICE OF THE SUPREME COURT ON DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT. IN THE EVENT A NEW JUDGESHIP IS ESTABLISHED FOR A COUNTY COURT, FAMILY COURT OR SURROGATE'S COURT ON A DATE AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT, THE ANNUAL SALARY FOR SUCH OFFICE SHALL EQUAL THE ANNUAL SALARY FOR EACH OTHER JUDGESHIP ALREADY ESTABLISHED FOR SUCH COURT ON SUCH DATE.

4. (I) EACH JUDGE OF A CITY COURT OUTSIDE THE CITY OF NEW YORK, WHO IS PERMITTED TO PRACTICE LAW, SHALL RECEIVE AN ANNUAL SALARY EQUALING AN AMOUNT BEARING THE SAME PROPORTION TO THE SALARY OF THE LOWEST-PAID JUDGE OF A CITY COURT WHO IS NOT PERMITTED TO PRACTICE LAW AS THE SALARY OF HIS OR HER OFFICE ON DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT BORE TO THE SALARY OF SUCH LOWEST-PAID JUDGE ON SUCH DATE; EXCEPT THAT, EFFECTIVE APRIL FIRST, TWO THOUSAND NINE, EACH JUDGE OF A CITY COURT OUTSIDE THE CITY OF NEW YORK WHO IS PERMITTED TO PRACTICE LAW SHALL RECEIVE AN ANNUAL SALARY EQUALING AN AMOUNT BEARING THE SAME PROPORTION TO THE SALARY OF THE LOWEST-PAID JUDGE OF A CITY COURT WHO IS NOT

PERMITTED TO PRACTICE LAW AS THE SALARY OF HIS OR HER OFFICE ON APRIL FIRST, TWO THOUSAND NINE BEARS TO THE SALARY FOR SUCH LOWEST-PAID JUDGE ON SUCH DATE PURSUANT TO THE PROVISIONS OF CHAPTER FOUR HUNDRED NINETY-THREE OF THE LAWS OF TWO THOUSAND SIX.

(II) IN THE EVENT A NEW JUDGESHIP IS ESTABLISHED FOR A CITY COURT OUTSIDE THE CITY OF NEW YORK ON A DATE AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT, AND THE PERSON WHO HOLDS SUCH OFFICE IS PERMITTED TO PRACTICE LAW, THE ANNUAL SALARY FOR SUCH OFFICE ON THE DATE OF ITS ESTABLISHMENT SHALL BE AS PROVIDED BY LAW. THEREAFTER THE ANNUAL SALARY OF SUCH OFFICE SHALL BE AS PROVIDED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH EXCEPT THAT, FOR PURPOSES OF SUCH SUBPARAGRAPH (I), THE DATE ON WHICH SUCH OFFICE WAS ESTABLISHED SHALL BE SUBSTITUTED FOR THE DATE SPECIFIED THEREIN.

5. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE ANNUAL SALARIES OF EACH OF THE FOLLOWING JUDGES, AS SPECIFIED IN PARAGRAPH THREE OF THIS SUBDIVISION, SHALL BE INCREASED BY THE AMOUNTS SET FORTH IN THIS PARAGRAPH:

(I) EACH CHIEF JUDGE OF A CITY COURT OUTSIDE THE CITY OF NEW YORK, WHO IS NOT PERMITTED TO PRACTICE LAW, AN AMOUNT EQUAL TO ONE AND FIVE ONE HUNDREDTHS PERCENT OF HIS OR HER ANNUAL SALARY; AND

(II) EACH PRESIDENT OF THE BOARD OF JUDGES OF A DISTRICT COURT, AN AMOUNT EQUAL TO THREE AND FORTY-TWO ONE HUNDREDTHS PERCENT OF HIS OR HER ANNUAL SALARY.

S 2. Subdivision (f) of section 110 of the New York city civil court act, as amended by chapter 64 of the laws of 2007, is amended to read as follows:

(f) The housing judges shall be appointed by the administrative judge from a list of persons selected annually as qualified by training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs by the advisory council for the housing part. The list of persons who have been approved by such advisory council, whether or not appointed to such judicial position, shall be deemed public information and be published in the city record immediately after such list is submitted to the administrative judge. The annual salary of a housing judge shall [be one hundred fifteen thousand four hundred dollars] EQUAL AN AMOUNT REPRESENTING NINETY-FIVE PERCENT OF THE ANNUAL SALARY OF A JUDGE OF THE NEW YORK CITY CIVIL COURT.

S 3. (a) There shall be established a special commission on judges and justices of the unified court system to:

(i) determine whether, for any period of four years beginning with the year 2010, the formula for annual salary adjustment set forth in subparagraph (ii) of paragraph 1 of subdivision (b) of section 221 of the judiciary law, as added by section one of this act, warrants adjustment; and

(ii) examine, evaluate and make recommendations with respect to non-salary benefits of state-paid judges and justices of the unified court system.

(b) In discharging its responsibilities under subdivision (a) of this section, the commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; inflation and changes in public sector spending since January 1, 1999; the levels of compensation and non-salary benefits received by judges and justices of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government,

academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.

(c) The commission shall consist of 13 members to be appointed as follows: 4 shall be appointed by the governor; 2 shall be appointed by the temporary president of the senate; 1 shall be appointed by the minority leader of the senate; 2 shall be appointed by the speaker of the assembly; 1 shall be appointed by the minority leader of the assembly; and 3 shall be appointed by the chief judge of the state. Of the members appointed by an official pursuant to this subdivision, where such official has more than one such appointment, at least one-half (at least a majority, in the case of the governor) shall not be employees of the state or any political subdivision thereof, and at least one-half shall not be members of the bar of the state. The governor shall designate the chair of the commission from among the members so appointed. Vacancies in the commission shall be filled in the same manner as original appointments. To the extent practicable, members of the commission shall have experience in one or more of the following: determination of executive compensation, human resource administration and financial management.

(d) The commission may meet within and without the state, may hold public hearings and shall have all the powers of a legislative committee pursuant to the legislative law.

(e) The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this section.

(f) No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

(g) To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

(h) The commission may employ and at its pleasure remove such personnel as it may deem necessary for the performance of its functions and fix compensation within amounts made available therefor by appropriation.

(i) (i) The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations not later than September 1, 2009.

(ii) The levels of compensation recommended by the commission pursuant to paragraph (i) of subdivision (a) of this section shall take effect January 1, 2010.

(iii) Each recommendation of the commission made to implement a determination pursuant to paragraph (i) of subdivision (a) of this section shall have the force of law, and shall supersede inconsistent provisions of subparagraph (ii) of paragraph 1 of subdivision (b) of section 221 of the judiciary law, as added by section one of this act, unless modified or abrogated by statute prior to April first of the year as to which such determination applies.

(j) Upon the making of its report as provided in subdivision (i) of this section, the commission established pursuant to this section shall be deemed dissolved.

S 4. (a) On the first of April of every fourth year, commencing April 1, 2013, there shall be established for such year a commission on judicial compensation to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system. In accordance with the provisions of this section, the commission shall:

(i) examine the prevailing adequacy of pay levels and non-salary benefits received by judges and justices of the state-paid courts of the unified court system and determine whether any of such pay levels warrant adjustment; and

(ii) determine whether, for any of the four years following the year in which the commission is established, the formula for annual salary adjustment set forth in subparagraph (ii) of paragraph 1 of subdivision (b) of section 221 of the judiciary law, as added by section one of this act, warrants adjustment.

In discharging its responsibilities under paragraphs (i) and (ii) of this subdivision, the commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by judges and justices of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.

(b) The commission shall consist of 13 members to be appointed as follows: 4 shall be appointed by the governor; 2 shall be appointed by the temporary president of the senate; 1 shall be appointed by the minority leader of the senate; 2 shall be appointed by the speaker of the assembly; 1 shall be appointed by the minority leader of the assembly; and 3 shall be appointed by the chief judge of the state. Of the members appointed by an official pursuant to this subdivision, where such official has more than one such appointment, at least one-half (at least a majority, in the case of the governor) shall not be employees of the state or any political subdivision thereof, and at least one-half shall not be members of the bar of the state. The governor shall designate the chair of the commission from among the members so appointed. Vacancies in the commission shall be filled in the same manner as original appointments. To the extent practicable, members of the commission shall have experience in one or more of the following: determination of executive compensation, human resource administration and financial management.

(c) The commission may meet within and without the state, may hold public hearings and shall have all the powers of a legislative committee pursuant to the legislative law.

(d) The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

(e) No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

(f) To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division,

board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

(g) The commission may employ and at its pleasure remove such personnel as it may deem necessary for the performance of its functions and fix compensation within amounts made available therefor by appropriation.

(h) The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than one hundred fifty days after its establishment. Each recommendation made to implement a determination pursuant to paragraph (ii) of subdivision (a) of this section shall have the force of law, and shall supersede inconsistent provisions of subparagraph (ii) of paragraph 1 of subdivision (b) of section 221 of the judiciary law, as added by section one of this act, unless modified or abrogated by statute prior to April first of the year as to which such determination applies.

(i) Upon the making of its report as provided in subdivision (h) of this section, each commission established pursuant to this section shall be deemed dissolved.

S 5. Date of entitlement to salary increase. Notwithstanding the provisions of this act or of any other law, each increase in salary or compensation of any judge and justice of the unified court system provided by this act shall be added to the salary or compensation of such judge and justice of the unified court system at the beginning of that payroll period the first day of which is nearest to the effective date of such increase as provided in this act, or at the beginning of the earlier of two payroll periods the first days of which are nearest but equally near to the effective date of such increase as provided in this act; provided, however, the payment of such salary increase pursuant to this section on a date prior thereto instead of on such effective date, shall not operate to confer any additional salary rights or benefits.

S 6. The annual salaries as prescribed pursuant to this act for state-paid judges and justices of the unified court system, whenever adjusted pursuant to the provisions of this act, shall be rounded up to the nearest multiple of one hundred dollars.

S 7. The sum of forty-eight million two hundred thousand dollars ($48,200,000), or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury in the general fund to the credit of the state purposes account, not otherwise appropriated, and made immediately available to the administrative office of the courts for payment pursuant to the provisions of sections one and two of this act.

S 8. This act shall take effect immediately; provided, that the provisions of sections one and two of this act shall be deemed to have been in full force and effect on and after January 1, 2009.