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I N   S E N A T E

April 28, 2010

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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

1     Section 1. Resolved (if the Assembly concur), That subdivisions c, d,  
2     e and f of section 2 of article 6 of the constitution are REPEALED.  
3     S 2. Resolved (if the Assembly concur), That section 2 of article 6 of  
4     the constitution be amended to read as follows:  
5     S 2. a. The court of appeals is continued. It shall consist of the  
6     chief judge and the six elected associate judges now in office, who  
7     shall hold their offices until the expiration of their respective terms,  
8     and their successors, WHO SHALL BE CHOSEN BY THE ELECTORS OF THE STATE  
9     and such justices of the supreme court as may be designated for service  
10    in said court as hereinafter provided. The official terms of the chief  
11    judge and the six ELECTED associate judges shall be fourteen years FROM  
12    AND INCLUDING THE FIRST DAY OF JANUARY NEXT AFTER THEIR ELECTION.  
13    Five members of the court shall constitute a quorum, and the concur-  
14    rence of four shall be necessary to a decision; but no more than seven  
15    judges shall sit in any case. In case of the temporary absence or  
16    inability to act of any judge of the court of appeals, the court may  
17    designate any justice of the supreme court to serve as associate judge  
18    of the court during such absence or inability to act. The court shall  
19    have power to appoint and to remove its clerk. The powers and jurisdic-  
20    tion of the court shall not be suspended for want of appointment when  
21    the number of judges is sufficient to constitute a quorum.  
22    b. Whenever and as often as the court of appeals shall certify to the  
23    governor that the court is unable, by reason of the accumulation of  
24    causes pending therein, to hear and dispose of the same with reasonable  
25    speed, the governor shall designate such number of justices of the  
26    supreme court as may be so certified to be necessary, but not more than  
27    four, to serve as associate judges of the court of appeals. The justices  
28    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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1 justices of the supreme court, and shall serve as associate judges of  
2 the court of appeals until the court shall certify that the need for the  
3 services of any such justices no longer exists, whereupon they shall  
4 return to the supreme court. The governor may fill vacancies among such  
5 designated judges. No such justices shall serve as associate judge of  
6 the court of appeals except while holding the office of justice of the  
7 supreme court. The designation of a justice of the supreme court as an  
8 associate judge of the court of appeals shall not be deemed to affect  
9 his or her existing office any longer than until the expiration of his  
10 or her designation as such associate judge, nor to create a vacancy.

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

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

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