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

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I N S E N A T E

June 18, 2012

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to sections 2 and 25 of article 6 and adding section 36-d to such article of the constitution, in relation to retirement of judges and justices

Section 1. RESOLVED (if the Assembly concur), That subdivision e of section 2 of article 6 of the constitution be amended to read as follows:

e. The governor shall appoint, with the advice and consent of the senate, from among those recommended by the judicial nominating commission, a person to fill the office of chief judge or associate judge, as the case may be, whenever a vacancy occurs in the court of appeals; provided, however, that no person may be appointed a judge of the court of appeals unless such person is a resident of the state [and], has been admitted to the practice of law in this state for at least ten years AND WHO HAS NOT REACHED THE LAST DAY OF DECEMBER IN THE YEAR IN WHICH HE OR SHE REACHES THE AGE OF SEVENTY. The governor shall transmit to the senate the written report of the commission on judicial nomination relating to the nominee.

S 2. RESOLVED (if the Assembly concur), That subdivision b of section 25 of article 6 of the constitution be amended to read as follows:

b. 1. Each [judge of the court of appeals,] justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court, judge of the family court, judge of a court for the city of New York established pursuant to section fifteen of this article [and], judge of the district court AND JUDGE OF A CITY COURT OUTSIDE THE CITY OF NEW YORK shall retire on the last day of December in the year in which he or she reaches the age of seventy. EACH JUDGE OF THE COURT OF APPEALS SHALL RETIRE ON THE LAST DAY OF DECEMBER IN THE YEAR IN WHICH HE OR SHE REACHES THE AGE OF EIGHTY.

2. Each [such] former [judge of the court of appeals and] justice of the supreme court may thereafter perform the duties of a justice of the supreme court, with power to hear and determine actions and proceedings, provided, however, that it shall be certificated in the manner provided by law that the services of such [judge or] justice are necessary to

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

LBD89164-01-2

expedite the business of the court and that he or she is mentally and physically able and competent to perform the full duties of such office. Any such certification shall be valid for a term of two years and may be extended as provided by law for additional terms of two years. A [retired judge or] justice shall serve no longer than until the last day of December in the year in which he or she reaches the age of [seventy-six] EIGHTY. A retired judge or justice shall be subject to assignment by the appellate division of the supreme court of the judicial department of his or her residence. Any retired justice of the supreme court who had been designated to and served as a justice of any appellate division immediately preceding his or her reaching the age of seventy shall be eligible for designation by the governor as a temporary or additional justice of the appellate division. A retired judge or justice shall not be counted in determining the number of justices in a judicial district for purposes of subdivision d of section six of this article.

3. EACH FORMER JUDGE OF THE COURT OF CLAIMS, JUDGE OF THE COUNTY COURT, JUDGE OF THE SURROGATE'S COURT, JUDGE OF THE FAMILY COURT, JUDGE OF A COURT FOR THE CITY OF NEW YORK ESTABLISHED PURSUANT TO SECTION FIFTEEN OF THIS ARTICLE, JUDGE OF THE DISTRICT COURT AND JUDGE OF A CITY COURT OUTSIDE THE CITY OF NEW YORK MAY THEREAFTER PERFORM THE DUTIES OF A JUDGE OF THE COURT FROM WHICH SUCH JUDGE RETIRED, INCLUDING THE PERFORMANCE OF ANY TEMPORARY ASSIGNMENT AUTHORIZED FOR A JUDGE OF SUCH COURT BY THE PROVISIONS OF SECTION TWENTY-SIX OF THIS ARTICLE, WITH POWER TO HEAR AND DETERMINE ACTIONS; PROVIDED, HOWEVER, THAT IT SHALL BE CERTIFICATED IN THE MANNER PROVIDED BY LAW THAT THE SERVICES OF SUCH JUDGE ARE NECESSARY TO EXPEDITE THE OPERATION OF THE COURT FROM WHICH HE OR SHE RETIRED AND THAT HE OR SHE IS MENTALLY AND PHYSICALLY ABLE AND COMPETENT TO PERFORM THE FULL DUTIES OF SUCH OFFICE. ANY SUCH CERTIFICATION SHALL BE VALID FOR A TERM OF TWO YEARS AND MAY BE EXTENDED AS PROVIDED BY LAW FOR ADDITIONAL TERMS OF TWO YEARS. A JUDGE SHALL SERVE NO LONGER THAN UNTIL THE LAST DAY OF DECEMBER IN THE YEAR IN WHICH HE OR SHE REACHES THE AGE OF SEVENTY-SIX. A RETIRED JUDGE CERTIFICATED UNDER THIS PARAGRAPH SHALL BE SUBJECT TO ASSIGNMENT, INCLUDING TEMPORARY ASSIGNMENT PURSUANT TO SECTION TWENTY-SIX OF THIS ARTICLE, IN THE SAME MANNER AS A JUDGE OF THE COURT FROM WHICH SUCH JUDGE RETIRED. A RETIRED JUDGE SHALL NOT BE COUNTED IN DETERMINING THE NUMBER OF JUDGES AUTHORIZED BY LAW.

S 3. RESOLVED (if the Assembly concur), That article 6 of the constitution be amended by adding a new section 36-d to read as follows:

S 36-D. THE AMENDMENTS TO SUBDIVISION E OF SECTION TWO AND SUBDIVISION B OF SECTION TWENTY-FIVE OF ARTICLE SIX OF THE CONSTITUTION, AS FIRST PROPOSED BY A CONCURRENT RESOLUTION PASSED BY THE LEGISLATURE IN THE YEAR TWO THOUSAND TWELVE, ENTITLED "CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY PROPOSING AMENDMENTS TO SECTIONS 2 AND 25 OF ARTICLE 6 OF THE CONSTITUTION, IN RELATION TO RETIREMENT OF JUDGES" SHALL BECOME A PART OF THE CONSTITUTION ON THE FIRST DAY OF JANUARY NEXT AFTER THE APPROVAL AND RATIFICATION OF THE AMENDMENTS PROPOSED BY SUCH CONCURRENT RESOLUTION BY THE PEOPLE AND THE PROVISIONS THEREOF SHALL BECOME EFFECTIVE ON SUCH DATE EXCEPT THAT THE AMENDMENTS TO SUBDIVISION B OF SECTION TWENTY-FIVE OF THIS ARTICLE SHALL NOT BECOME EFFECTIVE UNTIL THE FIRST DAY OF JANUARY IN THE YEAR TWO THOUSAND FIFTEEN.

S 4. RESOLVED (if the Assembly concur), That the foregoing 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.