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I N   S E N A T E

June 18, 2012

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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

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

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

15     S 2. RESOLVED (if the Assembly concur), That subdivision b of section  
16 25 of article 6 of the constitution be amended to read as follows:

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

26     2. Each [such] former [judge of the court of appeals and] justice of  
27 the supreme court may thereafter perform the duties of a justice of the  
28 supreme court, with power to hear and determine actions and proceedings,  
29 provided, however, that it shall be certificated in the manner provided  
30 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

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

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

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

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

52 S 4. RESOLVED (if the Assembly concur), That the foregoing be referred  
53 to the first regular legislative session convening after the next  
54 succeeding general election of members of the assembly, and, in conform-  
55 ity with section 1 of article 19 of the constitution, be published for 3  
56 months previous to the time of such election.