STATE OF NEW YORK

4704

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

Introduced by M. of A. CARROLL, GOTTFRIED, PAULIN -- Multi-Sponsored by -- M. of A. LUPARDO -- read once and referred to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to article 6 of the constitution, in relation to the manner of selecting judges and justices of the unified court system, and to repeal section 21 of article 6 thereof relating thereto

Section 1. Resolved (if the Senate concur), That subdivision c of section 4 of article 6 of the constitution be amended to read as follows:

c. The governor shall designate the presiding justice of each appellate division, who shall act as such during his or her term of office and shall be a resident of the department. The other justices of the appellate divisions shall be designated by the governor, from all the justices [~~elected to~~] *of* the supreme court, *other than those serving by interim appointment pursuant to section twenty-one of this article* for terms of five years or the unexpired portions of their respective terms of office, if less than five years.

§ 2. Resolved (if the Senate concur), That subdivisions b and c of section 6 of article 6 of the constitution be amended to read as follows:

b. Once every ten years the legislature may increase or decrease the number of judicial districts or alter the composition of judicial districts and thereupon re-apportion the justices to be thereafter [~~elected~~] *selected* in the judicial districts so altered. Each judicial district shall be bounded by county lines.

c. [~~The justices of the supreme court shall be chosen by the electors of the judicial district in which they are to serve.~~] The terms of justices of the supreme court shall be fourteen years [~~from and including the first day of January next after their election~~].

§ 3. Resolved (if the Senate concur), That section 9 of article 6 of the constitution be amended to read as follows:

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

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§ 9. The court of claims is continued. It shall consist of the eight judges now authorized by law, but the legislature may increase such number and may reduce such number to six or seven. The **terms of the** judges shall be [~~appointed by the governor by and with the advice and consent of the senate and their terms of office shall be~~] nine years. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide.

§ 4. Resolved (if the Senate concur), That subdivisions a and b of section 10 of article 6 of the constitution be amended to read as follows:

a. The county court is continued in each county outside the city of New York. There shall be at least one judge of the county court in each county and such number of additional judges in each county as may be provided by law. The judges shall be residents of the county [~~and shall be chosen by the electors of the county~~].

b. The terms of the judges of the county court shall be ten years [~~from and including the first day of January next after their election~~].

§ 5. Resolved (if the Senate concur), That subdivisions b and c of section 12 of article 6 of the constitution be amended to read as follows:

b. The judges of the surrogate's court shall be residents of the county [~~and shall be chosen by the electors of the county~~].

c. The terms of the judges of the surrogate's court in the city of New York shall be fourteen years, and in other counties ten years[~~, from and including the first day of January next after their election~~].

§ 6. Resolved (if the Senate concur), That subdivision a of section 13 of article 6 of the constitution be amended to read as follows:

a. The family court of the state of New York is hereby established. It shall consist of at least one judge in each county outside the city of New York and such number of additional judges for such counties as may be provided by law. Within the city of New York it shall consist of such number of judges as may be provided by law. The judges of the family court within the city of New York shall be residents of such city and [~~shall be appointed by the mayor of the city of New York for terms of ten years. The~~] **the** judges of the family court outside the city of New York[~~,~~] shall be [~~chosen by the electors of the counties wherein they reside for~~] **residents of the county. The** terms of **judges of the family court shall be** ten years.

§ 7. Resolved (if the Senate concur), That subdivision a of section 15 of article 6 of the constitution be amended to read as follows:

a. The legislature shall by law establish a single court of city-wide civil jurisdiction and a single court of city-wide criminal jurisdiction in and for the city of New York and the legislature may, upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The said city-wide courts shall consist of such number of judges as may be provided by law. The judges of the court of city-wide civil jurisdiction **and of the court of city-wide criminal jurisdiction** shall be residents of such city [~~and shall be chosen for~~] **and their** terms [~~of~~] **shall be** ten years [~~by the electors of the counties included within the city of New York from districts within such counties established by law. The judges of the court of city-wide criminal jurisdiction shall be residents of such city and shall be appointed for terms of ten years by the mayor of the city of New York~~].

§ 8. Resolved (if the Senate concur), That subdivision h of section 16 of article 6 of the constitution be amended to read as follows:

h. The judges shall be residents of the district and [~~shall be chosen by the electors of the district. Their~~] their terms shall be six years [~~from and including the first day of January next after their election~~].

§ 9. Resolved (if the Senate concur), That the opening paragraph of subdivision b of section 20 of article 6 of the constitution be amended to read as follows:

A judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the city of New York established pursuant to section fifteen of this article [~~who is elected or appointed after the effective date of this article~~] may not:

§ 10. Resolved (if the Senate concur), That section 21 of article 6 of the constitution be REPEALED and a new section 21 be added to read as follows:

§ 21. a. There shall be a judicial nominating commission for each judicial district outside the city of New York to evaluate the qualifications of candidates for appointment in such district to the offices of judge or justice of the supreme court, the county court, the family court, the surrogate's court, and, in each district in which the district court has been established, the district court. There shall be one city-wide judicial nominating commission to evaluate the qualifications of candidates for appointment in the city of New York to the offices of judge or justice of the supreme court, the family court, the surrogate's court, and the city-wide court or courts for such city established pursuant to section fifteen of this article. There shall be one statewide judicial nominating commission to evaluate the qualifications of candidates for appointment to the office of judge of the court of claims, and for designation to the offices of presiding justice and justice of the appellate division.

b. (1) Each such commission shall consist of thirteen at-large members of whom four shall be appointed by the governor, three by the chief judge of the court of appeals, one each by the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly, and one by the president of the New York state bar association. The chief administrator of the courts shall be a member of the statewide judicial nominating commission. Each commission, other than a statewide judicial nominating commission, also shall include one at-large member appointed by the presiding justice of the appellate division of the department in which the district is located and two regional members from each county in the district appointed by the chief elected official of the county, except that there shall be four regional members appointed from each county in the city of New York, two of whom shall be appointed by the chief elected official of such county and two of whom shall be appointed by the mayor of such city. Regional members shall serve only when the vacant office is to be filled by a resident of their county. To the extent practicable, the members of each commission shall reflect diversity of race, gender, sexual orientation, ethnicity, geography and, among those who are also members of the bar, various practice areas and size of practice.

(2) Of the four members of each commission appointed by the governor, not more than two shall be enrolled in the same political party and at least two shall not be members of the bar of the state. Of the three

members appointed by the chief judge of the court of appeals, not more than two shall be members of the bar of the state. The member appointed by the presiding justice of the appellate division shall be a member of the bar of the state. The two regional members from each county outside the city of New York shall not be enrolled in the same political party and one shall not be a member of the bar of the state. The two regional members from each county in the city of New York appointed by the chief elected official of each such county shall not be enrolled in the same political party and one shall not be a member of the bar of the state, and the two regional members from each county in the city of New York appointed by the mayor of such city shall not be enrolled in the same political party and one shall not be a member of the bar of the state. Except for the chief administrator of the courts, no at-large or regional member of any commission shall hold or have held any judicial office or hold any elected public office for which he or she receives compensation during his or her period of service, except that the governor and chief judge may each appoint no more than one former judge or justice of the unified court system to each commission. No at-large or regional member of any commission shall hold office in any political party, and, except for the chief administrator of the courts, no member shall be eligible for appointment to judicial office in any court of the state during the member's period of service or within one year thereafter.

(3) The members of each commission first appointed by the governor shall have, respectively, one, two, three and four year terms as he or she shall designate. The members first appointed by the chief judge of the court of appeals shall have, respectively, two, three and four year terms as he or she shall designate. The member first appointed by the temporary president of the senate shall have a four year term. The member first appointed by the speaker of the assembly shall have a three year term. The member first appointed by the minority leader of the senate shall have a two year term. The member first appointed by the minority leader of the assembly shall have a one year term. The members first appointed by the presiding justice of the appellate division and the president of the New York state bar association shall have four year terms. The regional members first appointed from each county outside the city of New York shall have, respectively, two and four year terms as the person appointing them shall designate. The two regional members appointed from each county within the city of New York by the chief elected official of each county shall have, respectively, one and three year terms as the person appointing them shall designate and the two regional members appointed from each county within the city of New York by the mayor of such city shall have, respectively, two and four year terms as the mayor shall designate. Each subsequent appointment shall be for a term of four years.

(4) The governor shall designate a chairperson for each commission from among its at-large members.

(5) Each at-large member of each commission shall be a resident of, have an office in or work in the judicial district in which he or she is to serve, except that each at-large member of the city-wide commission for the city of New York shall be a resident of, have an office in or work in such city and each at-large member of the statewide commission shall be a resident of the state.

c. (1) The statewide judicial nominating commission shall consider the qualifications of all candidates for appointment to the office of judge of the court of claims, and for designation to the offices of presiding

justice and justice of the appellate division; and each such other district commission shall consider the qualifications of candidates for appointment outside the city of New York to the offices of judge or justice of the supreme court, the county court, the family court, the surrogate's court, and, in each district in which the district court has been established, the district court. The city-wide commission for the city of New York shall consider candidates for appointment within such city to the offices of judge or justice of the supreme court, the family court, the surrogate's court, and the city-wide court or courts for such city established pursuant to section fifteen of this article. Whenever one or more vacancies in such offices occur, the appropriate commission shall prepare a written report and recommend to the appropriate appointing authority persons who by their character, temperament, professional aptitude and experience are well-qualified for that judicial office. To the extent practicable, the nominees shall reflect diversity of race, gender, sexual orientation, ethnicity, and geography, taking into consideration the court to which they are being nominated and the members with whom they might be serving.

(2) The legislature shall prescribe by law the organization and procedure of each commission, provided, however, that where there is one vacancy to be filled, at least three persons and not more than five persons shall be recommended as provided herein; where there are two vacancies in the same judicial office, at least five persons and not more than eight persons shall be recommended; and, where there are three or more vacancies in the same judicial office, the number of persons recommended by the appropriate commission shall be at least two times the number of vacancies and not more than three times the number of vacancies. Notwithstanding the foregoing, where a commission is unable to recommend as well-qualified for a judicial office such number of persons as is prescribed herein, it shall recommend such lesser number of persons who are well-qualified therefor. To the extent practicable, the nominees shall reflect diversity of race, gender, sexual orientation, ethnicity, and geography, taking into consideration the court to which they are being nominated and the members with whom they might be serving.

d. (1) From among those recommended by the appropriate commission as provided in paragraph one of subdivision c of this section, the governor shall appoint a person to fill a vacancy in the office of justice of the supreme court and the office of judge of the court of claims, by and with the advice and consent of the senate, and designate a person as presiding justice or justice of the appellate division; the governor shall, upon the nomination of the mayor of the city of New York, appoint a person to fill a vacancy in the office within such city of judge of the family court, the surrogate's court, and the city-wide court or courts for such city established pursuant to section fifteen of this article, by and with the advice and consent of the senate; and the governor shall, upon the nomination of the chief elected official of a county outside the city of New York in which a vacancy occurs in the office of judge of the county court, the family court, the surrogate's court, or the district court, appoint a person to fill such office, by and with the advice and consent of the senate.

(2) In the case of each appointment that is subject to the advice and consent of the senate, the governor shall transmit to the senate the written report of the appropriate commission relating to the appointee.

e. When a vacancy occurs in a judicial office where appointment thereto is subject to the advice and consent of the senate and the senate is

not in session to give its advice and consent to an appointment to fill the vacancy, the governor shall fill the vacancy by interim appointment as provided in subdivision d of this section. An interim appointment shall continue until the senate shall pass upon the selection. If the senate confirms an appointment, the justice or judge shall serve the full term provided for his or her office under this article, commencing from the date of such interim appointment. If the senate rejects an appointment, a vacancy in the office shall occur sixty days after such rejection.

§ 11. Resolved (if the Senate concur), That subdivision a of section 25 of article 6 of the constitution be amended to read as follows:

a. The compensation of a judge of the court of appeals, a justice of the supreme court, a judge of the court of claims, a judge of the county court, a judge of the surrogate's court, a judge of the family court, a judge of a court for the city of New York established pursuant to section fifteen of this article, a judge of the district court or of a retired judge or justice shall be established by law and shall not be diminished during [~~the~~] his or her term of office [~~for which he or she was elected or appointed. Any judge or justice of a court abolished by section thirty-five of this article, who pursuant to that section becomes a judge or justice of a court established or continued by this article, shall receive without interruption or diminution for the remainder of the term for which he or she was elected or appointed to the abolished court the compensation he or she had been receiving upon the effective date of this article together with any additional compensation that may be prescribed by law~~].

§ 12. Resolved (if the Senate concur), That article 6 of the constitution be amended by adding a new section 36-d to read as follows:

§ 36-d. a. The amendments to sections four, six, nine, ten, twelve, thirteen, fifteen, sixteen, twenty and twenty-five of this article, the repeal of section twenty-one, and the insertion of a new section twenty-one and this section, as first proposed by a concurrent resolution passed by the legislature in the year two thousand seventeen, entitled "CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing amendments to article 6 of the constitution, in relation to the manner of selecting judges and justices of the unified court system, and to repeal section 21 of article 6 thereof relating thereto" shall become a part of the constitution on the first day of January next after the approval and ratification of the amendment proposed by such concurrent resolution by the people, but the provisions thereof shall not become operative and the repeal of section twenty-one of this article shall not become effective until September first next thereafter which date shall be deemed the effective date of these amendments.

b. Notwithstanding any other provision herein, the judges and justices of the appellate division, the supreme court, the court of claims, the county court, the family court, the surrogate's court, the city-wide court or courts for the city of New York established pursuant to section fifteen of this article, and the district court in office on the effective date of this section shall hold their offices as judges and justices of such courts until the expiration of their respective terms.

§ 13. Resolved (if the Senate concur), That the foregoing amendments 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.