STATE OF NEW YORK

7216

2021-2022 Regular Sessions

IN SENATE

June 7, 2021

Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY
proposing an amendment to subdivisions b, e, and f of section 2 of article VI of the constitution, in relation to prohibiting the governor from making appointments to the court of appeals when he or she is subject to an impeachment investigation or if the assembly has begun impeachment proceedings against such governor

Section 1. Resolved (if the Assembly concur), That subdivisions b, e and f of section 2 of article 6 of the constitution be amended to read as follows:

b. Whenever and as often as the court of appeals shall certify to the governor that the court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate such number of justices of the supreme court as may be so certified to be necessary, but not more than four, to serve as associate judges of the court of appeals. The justices so designated shall be relieved, while so serving, from their duties as justices of the supreme court, and shall serve as associate judges of the court of appeals until the court shall certify that the need for the services of any such justices no longer exists, whereupon they shall return to the supreme court. The governor may fill vacancies among such designated judges*; however, the governor shall not fill vacancies while such governor is the subject of an impeachment investigation being conducted by a standing committee of the assembly or while the assembly has begun impeachment proceedings against such governor until the conclusion of the trial of the impeachment by the senate*. No such justices shall serve as associate judge of the court of appeals except while holding the office of justice of the supreme court. The designation of a justice of the supreme court as an associate judge of the court of appeals shall not be deemed to affect his or her existing

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

LBD89144-01-1

office any longer than until the expiration of his or her designation as such associate judge, nor to create a vacancy.

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. The governor shall transmit to the senate the written report of the commission on judicial nomination relating to the nominee. **The governor shall not appoint a person to fill the office of chief judge or associate judge while such governor is the subject of an impeachment investigation being conducted by a standing committee of the assembly or while the assembly has begun impeachment proceedings against such governor until the conclusion of the trial of the impeachment by the senate.**

f. When a vacancy occurs in the office of chief judge or associate judge of the court of appeals 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 upon the recommendation of a commission on judicial nomination as provided in this section. An interim appointment shall continue until the senate shall pass upon the governor's selection. **However, the governor shall not fill a vacancy in the office of chief judge or associate judge of the court of appeals if such governor is the subject of an impeachment investigation being conducted by a standing committee of the assembly or if the assembly has begun impeachment proceedings against such governor until the conclusion of the trial of the impeachment by the senate.** If the senate confirms an appointment, the judge shall serve a term as provided in subdivision a of this section commencing from the date of his or her interim appointment. If the senate rejects an appointment, a vacancy in the office shall occur sixty days after such rejection. If an interim appointment to the court of appeals be made from among the justices of the supreme court or the appellate divisions thereof, that appointment shall not affect the justice's existing office, nor create a vacancy in the supreme court, or the appellate division thereof, unless such appointment is confirmed by the senate and the appointee shall assume such office. If an interim appointment of chief judge of the court of appeals be made from among the associate judges, an interim appointment of associate judge shall be made in like manner; in such case, the appointment as chief judge shall not affect the existing office of associate judge, unless such appointment as chief judge is confirmed by the senate and the appointee shall assume such office.

§ 2. Resolved (if the Assembly concur), That the foregoing amendment 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.