

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

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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

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

4 b. Whenever and as often as the court of appeals shall certify to the
5 governor that the court is unable, by reason of the accumulation of
6 causes pending therein, to hear and dispose of the same with reasonable
7 speed, the governor shall designate such number of justices of the
8 supreme court as may be so certified to be necessary, but not more than
9 four, to serve as associate judges of the court of appeals. The justices
10 so designated shall be relieved, while so serving, from their duties as
11 justices of the supreme court, and shall serve as associate judges of
12 the court of appeals until the court shall certify that the need for the
13 services of any such justices no longer exists, whereupon they shall
14 return to the supreme court. The governor may fill vacancies among such
15 designated judges; however, the governor shall not fill vacancies while
16 such governor is the subject of an impeachment investigation being
17 conducted by a standing committee of the assembly or while the assembly
18 has begun impeachment proceedings against such governor until the
19 conclusion of the trial of the impeachment by the senate. No such
20 justices shall serve as associate judge of the court of appeals except
21 while holding the office of justice of the supreme court. The desig-
22 nation of a justice of the supreme court as an associate judge of the
23 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.

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

3 e. The governor shall appoint, with the advice and consent of the
4 senate, from among those recommended by the judicial nominating commis-
5 sion, a person to fill the office of chief judge or associate judge, as
6 the case may be, whenever a vacancy occurs in the court of appeals;
7 provided, however, that no person may be appointed a judge of the court
8 of appeals unless such person is a resident of the state and has been
9 admitted to the practice of law in this state for at least ten years.

10 The governor shall transmit to the senate the written report of the
11 commission on judicial nomination relating to the nominee. The governor
12 shall not appoint a person to fill the office of chief judge or associ-
13 ate judge while such governor is the subject of an impeachment investi-
14 gation being conducted by a standing committee of the assembly or while
15 the assembly has begun impeachment proceedings against such governor
16 until the conclusion of the trial of the impeachment by the senate.

17 f. When a vacancy occurs in the office of chief judge or associate
18 judge of the court of appeals and the senate is not in session to give
19 its advice and consent to an appointment to fill the vacancy, the gover-
20 nor shall fill the vacancy by interim appointment upon the recommenda-
21 tion of a commission on judicial nomination as provided in this section.
22 An interim appointment shall continue until the senate shall pass upon
23 the governor's selection. However, the governor shall not fill a vacan-
24 cy in the office of chief judge or associate judge of the court of
25 appeals if such governor is the subject of an impeachment investigation
26 being conducted by a standing committee of the assembly or if the assem-
27 bly has begun impeachment proceedings against such governor until the
28 conclusion of the trial of the impeachment by the senate. If the senate
29 confirms an appointment, the judge shall serve a term as provided in
30 subdivision a of this section commencing from the date of his or her
31 interim appointment. If the senate rejects an appointment, a vacancy in
32 the office shall occur sixty days after such rejection. If an interim
33 appointment to the court of appeals be made from among the justices of
34 the supreme court or the appellate divisions thereof, that appointment
35 shall not affect the justice's existing office, nor create a vacancy in
36 the supreme court, or the appellate division thereof, unless such
37 appointment is confirmed by the senate and the appointee shall assume
38 such office. If an interim appointment of chief judge of the court of
39 appeals be made from among the associate judges, an interim appointment
40 of associate judge shall be made in like manner; in such case, the
41 appointment as chief judge shall not affect the existing office of asso-
42 ciate judge, unless such appointment as chief judge is confirmed by the
43 senate and the appointee shall assume such office.

44 § 2. Resolved (if the Assembly concur), That the foregoing amendment
45 be referred to the first regular legislative session convening after the
46 next succeeding general election of members of the assembly, and, in
47 conformity with section 1 of article 19 of the constitution, be
48 published for 3 months previous to the time of such election.