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NY Bill Aims To Set Aside \$48M For Judicial Salaries

By **Dan Rivoli**

Law360, New York (March 2, 2011) -- A New York state lawmaker introduced legislation Monday that would provide \$48.2 million for judicial salary increases and create two commissions on salary increases for state judges, who have been fighting for an increase in wages that have been stagnant since 1998.

Assemblyman Lou Tobacco, R-Staten Island, introduced bill A5784 that would bump up judicial salary to \$165,200 a year from \$136,700 and establish a commission to decide annual raises for judges in the state's unified court system and New York City's housing court.

The legislation appropriates \$48.2 million for the judicial pay raises. If passed, the raises would kick in January 2012 and, beginning April 2013, set the salary to match the pay of U.S. District Court judges.

Further increases each year would be determined by the commission. The proposed 13-member commission would be responsible for examining and determining an appropriate salary, and necessary adjustments to pay and benefits.

To ensure that salaries consistently remain updated, the legislation would create a second commission that would meet every four years, starting April 2011, to evaluate salary and benefits for New York's judges.

Both commissions would be required to report their findings.

"This legislation ensures that judicial raises are not tied to legislative raises," Tobacco said. "It is my desire to see that New York State continues to have the highest caliber of legal minds seated on the bench."

The bill would be a legislative remedy to the fight over judicial salary, which has been waged in the courts.

A Supreme Court of the State of New York judge on Feb. 10 ordered the state to increase judges' salaries using a \$51 million legislative appropriation that was approved in 2009 but never enforced. Four state supreme court judges, a court of claims judge, and a county court judge from Nassau County filed the complaint in July.

In her opinion, Justice Karen V. Murphy wrote that previous legislation aimed at increasing judicial salaries had been enacted every year since 2005, but those laws required an amendment to the state's judicial law before going into effect.

"In the past, enabling legislation was expressly required to effectuate judicial salary increases, and such enabling legislation was never passed," Justice Murphy said.

In granting summary judgment to the judges, Justice Murphy rejected the state's argument that the 2009 law required similar enabling legislation, saying that the New York State Legislature had purposefully amended the statute's language to make it self-executing.

State Attorney General Eric Schneiderman was not immediately available for comment Wednesday.

A foursome of other Nassau County judges in January filed a \$780 million claim in a separate suit in the New York State Court of Claims.

The claim was submitted nearly a year after the state's highest court ruled that the more than 10-year absence of salary increases for judges violated the separation-of-powers doctrine in the state constitution.

In February 2010, the New York State Court of Appeals said in a 5-1 decision that the state had undermined the judicial branch's independence in tying pay raises for legislators to increases for the state's judges.

The legislation that would form a judicial pay raise commission currently has three co-sponsors, all members of the Republican minority. The bill has been referred to the Assembly Judiciary Committee.

--Additional reporting by Martin Bricketto and Dietrich Knauth. Editing by Jocelyn Allison and Andrew Park.

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