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## Legislation Creates Judicial Pay Commission

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Joel Stashenko

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ALBANY - The frustration of New York state judges who have gone without a raise since 1999 came a step closer to ending yesterday after lawmakers approved the creation of a commission to recommend new salary levels once every four years.

The judicial pay commission—if approved as expected by Governor David A. Paterson—would represent the best prospect for a salary increase for some 1,300 state-paid judges since their last pay hike nearly a dozen years ago.

The commission would be created once every four years, beginning April 1, 2011, and recommend within 150 days salary adjustments for the next four years.

The earliest the first raise could take effect would be April 1, 2012, under the legislation ([A42010/S68010](#)) approved Monday evening by the state Senate and a few minutes after midnight yesterday by the Assembly.

Under the measure, commissions will consider the "prevailing adequacy of pay levels and non-salary benefits" of judges and whether "any such pay levels warrant adjustment."

The legislation does not set new salary levels for the judiciary. Rather, it empowers the seven-member commission to consider inflation and the state's ability to increase compensation as well as the salaries of federal judges, judges in other states and officials in other branches of state government, among other factors.

Unless the Legislature specifically votes to oppose the commission's recommendations, increases would become effective each April 1 under a schedule laid out by the panel.

Proposals by the Unified Court System have generally sought to bring the \$136,700-a-year salaries of Supreme Court justices in line with federal district court judges, who earn \$170,000 a year, with other state judges receiving proportional increases.

The commission would disband after making its recommendations next year and a new panel would form on April 1, 2015, and every four years after that to reconsider the compensation question.

Mr. Paterson urged lawmakers to consider the pay commission bill during the session that started Monday.

"The Governor proposed this bill because he believes it is critical to keep New York's judicial system competitive with systems in other states by working to attract and retain top talent within our judiciary," Jessica Bassett, a Paterson spokeswoman, said yesterday.

The Senate [approved the measure 57-0](#). The Assembly, whose Democratic majority has balked in recent years at passing a judicial pay bill without also hiking state legislators' pay, [passed it 99-22](#).

Proponents say the commission will remove consideration of judicial salaries from politics. And judges have argued that they can only mount feeble lobbying efforts with the other two branches of government to get higher pay. In the meantime, bar and judges' groups say the level of pay has forced good judges to leave the bench in search of higher-paying jobs and deterred talented lawyers from seeking judgeships.

Chief Judge Jonathan Lippman, who has lobbied hard for a pay raise, as did his predecessor Judith S. Kaye, called the commission's passage a near "miracle" given the perilous condition of the state budget and the shaky economy.

"It is a magnificent day," Judge Lippman said in an interview. "I think that this is, for us, the Holy Grail."

A recurring mechanism to determine judicial salaries "takes us out of politics forever so that we never have to go through what we have gone through for the last decade. It is so important for the institution of the Judiciary. Now we have a future," Judge Lippman said.

Former Chief Judge Kaye first brought up the idea of a pay commission in her State of the Judiciary address in February 2006 as a way of preventing raise droughts and taking the issue out of politics.

Her inability to gain a raise for the Judiciary was a frustration in the final years of her record-long 15-year tenure as chief judge. She eventually sued the governor and Legislature to force them to grant an increase.

Victor Kovner, chairman of the pro-raise Fund for Modern Courts, called a commission a "rational solution" to a logjam in Albany that will "once and for all remove judicial compensation from the political process."

Stephen P. Younger, president of the New York State Bar Association, said that "an independent, well qualified judiciary must be compensated in a fair, consistent manner that is as free from political interference as possible."

The New York City Bar, the New York County Lawyers' Association and Manhattan District Attorney Cyrus R. Vance Jr., among others, publicly urged lawmakers to back a commission once Mr. Paterson put it on an agenda of items he would like to see the Legislature address during its session this week.

#### Seven-Member Commission

Under the bill, three members of the seven-member commission are to be appointed by the governor, one each by the Assembly speaker and Senate majority leader and two by the chief judge. The governor will designate the chair.

Members will not be paid, but will be reimbursed for expenses.

The formation of a pay commission may cause the plaintiffs in suits designed to compel the Legislature to take up a judicial pay raise bill to back off their litigation.

Judge Lippman, the plaintiff in *Chief Judge v. Governor*, said the removal of the pay question from the political realm was "our main objective" in bringing the suit, which was initiated by Ms. Kaye and taken over by Judge Lippman when she retired at the end of 2008.

Bernard W. Nussbaum of Wachtell Lipton Rosen & Katz, Judge Lippman's attorney in *Chief Judge v. Governor*, called the legislation "major" and "historic."

"This takes judicial pay out of the realm of politics where it does not belong," Mr. Nussbaum said yesterday. "This could have major impacts around the country and for the federal government."

Two weeks ago, Thomas E. Bezanson of Cohen & Gresser and George Bundy Smith of Chadbourne & Parke asked the Court of Appeals to, in effect, enforce its ruling from February 2010 in the pay cases and force the Legislature to consider the raise issue independently of other legislation ([NYLJ, Nov. 19](#)).

Mr. Bezanson called the pay commission legislation a "good first step," but said yesterday he and Mr. Smith will continue to pursue their case.

"If this achieves what they say it will achieve, it will extend an 11-year pay freeze to 13 years," Mr. Bezanson said in an interview. "There has been really punishing harm done to the judges. So the litigation will have to proceed."

The lawyers, representing the plaintiff judges in *Larabee v. Governor*, said they were also seeking to have the judges collect damages from the state for the Legislature's refusal to approve a pay bill.

The Court of Appeals made its ruling in *Chief Judge v. Governor*, *Larabee v. Governor* and a third case brought by judges, *Maron v. Silver*.

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