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Lippman Predicts Sizable Raise for Judiciary After Bill Signing

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Daniel Wise

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Governor David A. Paterson on Friday signed legislation its supporters say clears a path to give New York state's 1,300 state-paid judges their first raise since 1999.

The new law requires the establishment every fourth year of a seven-member commission to evaluate and make recommendations about the adequacy of the judges' pay and non-salary benefits. Each panel's recommendations would go into effect automatically unless the Legislature and the governor enacted a statute to modify or reject the findings. The first raises would be paid in the fiscal year beginning April 1, 2012.

Although nothing in the law mandates that judges receive a raise, Chief Judge Jonathan Lippman said in an interview after the signing that the odds are "great" that the commission will approve a catch-up raise followed by cost-of-living adjustments in each of the next three years "at the very least."

[Hear audio of the bill signing ceremony.](#)

The new law does not provide for retroactive raises, a sticking point with some judges, but Judge Lippman said, it permits the commission "to take account of the suffering the judges have gone through and how long it has been since they had a raise."

Mr. Paterson said during a signing ceremony at his Manhattan offices that at long last "the judges of this state will get [the pay] they deserve," which "is important to creating the highest standard of jurisprudence in this nation."

In his remarks, Judge Lippman called the legislation, A42010/S68010, "a long overdue salute" to the state's judges, who for many years without a pay increase "have labored day in and day out meeting their constitutional responsibilities."

Passage of the legislation follows the Court of Appeals ruling earlier this year in *Maron v. Silver*, 14 NY 3d 230, which held that legislators had violated the separation of powers by tying judges' pay to unrelated issues.

Backers of the new law say that it fulfills the mandate that the Legislature should give "expeditious and appropriate consideration" to judicial compensation.

The first pay commission will be convened on April 1, 2011 and will have 150 days to complete its work. A new panel will be appointed every fourth year after that.

Governor Andrew Cuomo will appoint three of its seven members. Judge Lippman will appoint two members and Assembly Speaker Sheldon Silver, D-Manhattan, and Senator Dean G. Skelos, R-Nassau, as the incoming temporary president of the Senate, will each have one designee. The governor will designate the chairman.

The law provides that, "to the extent practicable," members of the compensation commission should have experience in one or more of three areas: executive compensation, human resource administration and financial management.

In determining judicial compensation, the new law instructs the commission to consider "all appropriate factors," including six that are specifically enumerated. Those are the overall economic climate; rates of inflation; changes in public sector spending; compensation levels for judges and elected public officials in other states and in the federal government; compensation received by professionals in government, academia as well as those in the private and non-profit sectors; and the state's ability to fund salary increases.

According to the latest estimates, the state government faces a \$9.3 billion budget gap for the year that begins April 1.

When asked if it is realistic to expect increases in light of a stalled economy and dismal budget outlook for state finances, Mr. Paterson noted that there were other factors in the statute that would support increases such as the rate of inflation since judicial pay was last increased and the instruction to look at the pay of federal judges.

Federal district court judges are paid \$174,000; state Supreme Court justices make \$136,700 per year.

Mr. Paterson, however, said he would "not speculate on what the commission will do because it was created to be independent."

'A Long Journey'

In their remarks at the signing ceremony, both Mr. Paterson and Judge Lippman revealed how long a judicial pay raise has been a top priority for them both.

Shortly before convening the special session that produced the new law two weeks ago ([NYLJ, Dec. 1](#)), Mr. Patterson said he went to the chief judge and told him that he was going to try one more time.

Judge Lippman described "a long journey" that started when he was chief administrative judge and Mr. Paterson was minority leader of the Senate. He said that the two often discussed the need for a pay raise coupled with a commission to take the issue out of the political process.

"Neither of us could have imagined that there would ever have come a day when you would be standing here as governor and I as chief judge" at a bill signing ceremony accomplishing precisely those goals, Judge Lippman said. "But sometimes life is stranger than fiction."

Assembly Speaker Sheldon Silver said that passage of legislation is "a signal to the men and women of the judiciary how much we recognize the challenges they are facing and their outstanding work."

Some judges have expressed skepticism that the commission will give them a raise large enough to reflect the toll inflation has taken on their salaries since 1999 and dismay that no provision has been made to provide them with retroactive pay.

Albany Family Court Judge W. Dennis Duggan ([See Profile](#)) said many judges are "disappointed" that after "13 years of deprivation" during which the judges received no pay increase, 200,000 other state employees received raises that collectively came to 43.5 percent.

Thomas A. Bezanson of Cohen & Gresser who represented several judges in one of the pay raise cases heard by the Court of Appeals, argued before the Court that judges have suffered what is tantamount to a 33 percent pay cut in the 12 years they have gone without a raise ([NYLJ, Dec. 2](#)).

Mr. Bezanson recently asked the Court to take up the pay issue again, saying that legislators had not responded to its mandate.

Whatever increase is recommended by the commission can be vetoed by legislation. That is what happened in Maryland in 2009.

The Maryland Judicial Compensation Commission had approved a 28.3 percent pay raise for the state's judges that was to be phased in over four years starting on July 1, 2009.

The increase would have raised the pay of judges sitting on the court in Maryland that is akin to the Supreme Court in New York to \$182,010 from \$140,352. For two consecutive years the Maryland legislature has rejected the increase.

At the signing ceremony, New York State Bar President Stephen P. Younger emphasized the importance of the new law's creation of a "permanent mechanism which will depoliticize an issue that should not be politicized."

Victor A. Kovner, the chairman of the Fund for Modern Courts also stressed that point.

"To delink judicial compensation from unrelated issues," he said, provides "a rational approach" which will preserve the independence of the judiciary.

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