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**HOUSE BILL NO. 770**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact §§ 16.1-69.22:1, 17.1-105 and 17.1-106 of the Code of Virginia, relating to retired judges and judges sitting by designation.*

Patrons—Hurt, Dudley and Marshall, D.W.

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-69.22:1, 17.1-105 and 17.1-106 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-69.22:1. Temporary recall of retired district court judges.

A. The Chief Justice of the Supreme Court may call upon and authorize any judge of a district court who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) to perform, for a period not to exceed ninety days at any one time, such judicial duties in any district court as the Chief Justice of the Supreme Court shall deem in the public interest for the expeditious disposition of the business of such courts.

B. It shall be the obligation of any retired judge who is recalled to temporary service under this section and who has not attained age seventy to accept the recall and perform the duties assigned. It shall be within the discretion of any judge who has attained age seventy to accept such recall.

C. Any judge recalled to duty under this section shall have all the powers, duties, and privileges attendant on the position he is recalled to serve.

D. No later than February 1 of each year, the Chief Justice shall report to the General Assembly a list of all judges eligible for recall. The General Assembly shall approve, by the majority vote of each house, such list or part thereof for use under this section. No judge shall be recalled under this section if such judge fails to receive the required majority vote in each house of the General Assembly.

§ 17.1-105. Designation of judges to hold courts and assist other judges.

A. If a judge of any court of record is absent, sick or disabled or for any other reason unable to hold any regular or special term of the court, or any part thereof, or to perform or discharge any official duty or function authorized or required by law, a judge or retired judge of any court of record may be obtained by personal request of the disabled judge, or another judge of the circuit to hold the court for the whole or any part of such regular or special term and to discharge during vacation such duty or function, or, if the circumstances require, to perform all the duties and exercise all the powers and jurisdiction as judges of such circuit until the judge is again able to attend his duties. The designation of such judge shall be entered in the common-law order book of the court, and a copy thereof sent to the Chief Justice of the Supreme Court. The Chief Justice shall be notified forthwith at the time any disabled judge is able to return to his duties.

B. If all the judges of any court of record are so situated in respect to any case, civil or criminal, pending in their court as to render it improper, in their opinion, for them to preside at the trial, unless the cause or proceeding is removed, as provided by law, they shall enter the fact of record and the clerk of the court shall at once certify the same to the Chief Justice of the Supreme Court, who shall designate a judge of some other court of record or a retired judge of any such court to preside at the trial of such case.

C. If a vacancy occurs in the office of a judge of a court of record that fact shall be immediately certified by the clerk of such court to the Governor, who may, instead of appointing a successor at once, request the Chief Justice to designate a judge of some other court of record or a retired judge of any such court to carry out the duties of the office, if there are insufficient judges in the circuit to carry out the work of the court, until the office has been filled in the mode prescribed by law. If any judge so designated shall be prevented by the duties of his court, or by sickness, from performing the duties required, he shall so inform the Chief Justice, who may designate another judge in his place.

D. Due to congestion in the work of any court of record, the Chief Justice may, upon his own initiative or upon application of the judge desiring assistance, designate a judge or retired judge of any court of record to assist the judge in the performance of his duties and every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as the judge whom he is designated to assist.

E. Any judge or retired judge sitting under any provision of this section or sitting by designation on any three-judge court shall receive from the state treasury actual expenses for the time he is actually

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59 engaged in holding court, except in those cases where the payment of such expenses is otherwise  
60 specifically provided by law.

61 F. The powers and duties herein conferred and imposed upon the Chief Justice may be exercised and  
62 performed by any justice, or any committee of justices, of the Court, designated by the Chief Justice for  
63 such purpose.

64 G. If the chief judge of any circuit is unable to perform the duties required by law, he shall notify  
65 the Chief Justice, who shall designate another judge of the same circuit to perform such duties.

66 H. If any judge refuses unreasonably to serve as requested under the provisions of this section, the  
67 chief judge may report his refusal to the Judicial Inquiry and Review Commission.

68 *I. No later than February 1 of each year, the Chief Justice shall report to the General Assembly a*  
69 *list of all judges eligible to sit in designation. The General Assembly shall approve, by the majority vote*  
70 *of each house, such list or part thereof for use under this section. No judge shall be designated under*  
71 *this section if such judge fails to receive the required majority vote in each house of the General*  
72 *Assembly.*

73 § 17.1-106. Temporary recall of retired judges.

74 A. The Chief Justice of the Supreme Court may call upon and authorize any justice or judge of a  
75 court of record who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) or who is  
76 retired under the Virginia Retirement System following transfer from the Judicial Retirement System  
77 under the provisions of subsection C of § 51.1-303 either to (i) hear a specific case or cases pursuant to  
78 the provisions of § 17.1-105 such designation to continue in effect for the duration of the case or cases  
79 or (ii) perform for a period of time not to exceed ninety days at any one time, such judicial duties in  
80 any court of record as the Chief Justice shall deem in the public interest for the expeditious disposition  
81 of the business of the courts of record.

82 B. It shall be the obligation of any retired judge or justice who is recalled to temporary service under  
83 this section and who has not attained age seventy to accept the recall and perform the duties assigned. It  
84 shall be within the discretion of any justice or judge who has attained age seventy to accept such recall.

85 C. Any justice or judge recalled to duty under this section shall have all the powers, duties, and  
86 privileges attendant on the position he is recalled to serve.

87 D. A retired justice of the Supreme Court or judge of the Court of Appeals recalled to active service  
88 shall be furnished an office, office supplies, and stenographer while performing such active service.

89 *E. No later than February 1 of each year, the Chief Justice shall report to the General Assembly a*  
90 *list of all judges and justices eligible for recall. The General Assembly shall approve, by the majority*  
91 *vote of each house, such list or part thereof for use under this section. No judge shall be recalled under*  
92 *this section if such judge or justice fails to receive the required majority vote in each house of the*  
93 *General Assembly.*