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HOUSE BILL NO. 241

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact §§ 16.1-69.22:1, 16.1-69.35, 17.1-106, and 51.1-305 of the Code of Virginia, relating to mandatory retirement; retired judges under temporary recall.

Patron—Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.22:1, 16.1-69.35, 17.1-106, and 51.1-305 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 has been approved by the General Assembly and* who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) to perform, for a period not to exceed ~~ninety~~ 90 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~~ 70 to accept the recall and perform the duties assigned. It shall be within the discretion of any judge who has attained age ~~seventy~~ 70 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.

§ 16.1-69.35. Administrative duties of chief district judge.

The chief judge of each district shall have the following administrative duties and authority with respect to his district:

1. When any district court judge is under any disability or for any other cause is unable to hold court and the chief judge determines that assistance is needed:

a. The chief district judge shall designate a judge within the district or a judge of another district court within the Commonwealth, if one is reasonably available, to hear and dispose of any action or actions properly coming before such district court for disposition;

b. If unable to designate a judge as provided in subdivision 1 a, the chief district judge may designate a retired district judge for such hearing and disposition if such judge consents; or

c. If unable to assign a retired district court judge, the chief district judge may designate a retired circuit court judge if such judge consents ~~or the chief district judge may request that the Chief Justice of the Supreme Court designate a circuit judge if such judge consents.~~

If no judges are available under subdivision a, b or c, then a substitute judge shall be designated pursuant to § 16.1-69.21.

While acting, any judge so designated shall have all the authority and power of the judge of the court, and his order or judgment shall, to all intents and purposes, be the judgment of the court. A general district court judge designated pursuant to subdivision 1 a, may, with his consent, substitute for or replace a juvenile and domestic relations district court judge, and vice versa. The names of the judges designated under subdivisions b and c shall be selected from a list provided by the Executive Secretary and approved by the ~~Chief Justice of the Supreme Court~~ *General Assembly*.

2. The chief general district court judge of a district may designate any juvenile and domestic relations district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than one year, in any of the general district courts within the district. The chief juvenile and domestic relations district court judge of a district may designate any general district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than one year, in any of the juvenile and domestic relations district courts within the district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which he is designated to assist, and, while so acting, his order or judgment shall be, for all purposes, the judgment of the court to which he is assigned.

3. If on account of congestion in the work of any district court or when in his opinion the administration of justice so requires, the Chief Justice of the Supreme Court may, upon his own initiative or upon written application of the chief district court judge desiring assistance, designate a judge from another district or any circuit court judge, if such circuit court judge consents, or a retired

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59 judge to provide judicial assistance to such district. Every judge so designated shall have the same
60 powers and jurisdiction and be authorized to perform the same duties as any judge of the district for
61 which he is designated to assist and while so acting his order or judgment shall be, to all intents and
62 purposes, the judgment of the court to which he is assigned.

63 4. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may establish
64 special divisions of any general district court when the work of the court may be more efficiently
65 handled thereby such as through the establishment of special civil, criminal or traffic divisions, and he
66 may assign the judges of the general district court with respect to serving such special divisions. In the
67 City of Richmond the general district court shall, in addition to any specialized divisions, maintain a
68 separate division of such court in that part of Richmond south of the James River with concurrent
69 jurisdiction in civil matters whenever one or more of the defendants reside or the cause of action or any
70 part thereof arises in that part of the city, concurrent jurisdiction over all traffic matters arising in that
71 part of the city and exclusive jurisdiction over all other criminal matters arising in that part of the city.

72 5. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge shall
73 determine when the district courts or divisions of such courts shall be open for the transaction of
74 business. The chief judge or presiding judge of any district court may authorize the clerk's office to
75 close on any date when the chief judge or presiding judge determines that operation of the clerk's office,
76 under prevailing conditions, would constitute a threat to the health or safety of the clerk's office
77 personnel or the general public. Closing of the clerk's office pursuant to this subsection shall have the
78 same effect as provided in subsection B of § 1-210. In determining whether to close because of a threat
79 to the health or safety of the general public, the chief judge or the presiding judge of the district court
80 shall coordinate with the chief judge or presiding judge of the circuit court so that, where possible and
81 appropriate, both the circuit and district courts take the same action. He shall determine the times each
82 such court shall be held for the trial of civil, criminal or traffic matters and cases. He shall determine
83 whether, in the case of district courts in counties, court shall be held at any place or places in addition
84 to the county seat. He shall determine the office hours and arrange a vacation schedule of the judges
85 within his district, in order to ensure the availability of a judge or judges to the public at normal times
86 of business. A schedule of the times and places at which court is held shall be filed with the Executive
87 Secretary of the Supreme Court and kept posted at the courthouse, and in any county also at any such
88 other place or places where court may be held, and the clerk shall make such schedules available to the
89 public upon request. Any matter may, in the discretion of the judge, or by direction of the chief district
90 judge, be removed from any one of such designated places to another, or to or from the county seat, in
91 order to serve the convenience of the parties or to expedite the administration of justice; however, any
92 town having a population of over 15,000 as of July 1, 1972, having court facilities and a court with
93 both general criminal and civil jurisdiction prior to July 1, 1972, shall be designated by the chief judge
94 as a place to hold court.

95 6. Subject to the provisions of § 16.1-69.38, the chief judge of a general district court or the chief
96 judge of a juvenile and domestic relations district court may establish a voluntary civil mediation
97 program for the alternate resolution of disputes. The costs of the program shall be paid by the local
98 governing bodies within the district or by the parties who voluntarily participate in the program.

99 § 17.1-106. Temporary recall of retired judges.

100 A. The Chief Justice of the Supreme Court, *the chief judge of the Court of Appeals, and the chief*
101 *judges of the various circuit courts* may call upon ~~and authorize~~ any justice or judge of a court of
102 record *who has been approved by the General Assembly and* who is retired under the Judicial
103 Retirement System (§ 51.1-300 et seq.) or who is retired under the Virginia Retirement System
104 following transfer from the Judicial Retirement System under the provisions of subsection C of
105 § 51.1-303 either to (i) hear a specific case or cases pursuant to the provisions of § 17.1-105 such
106 designation to continue in effect for the duration of the case or cases or (ii) perform for a period of time
107 not to exceed ~~ninety~~ 90 days at any one time, such judicial duties in ~~any~~ *that* court of record as the
108 Chief Justice *or chief judge* shall deem in the public interest for the expeditious disposition of the
109 business of the courts of record.

110 B. It shall be the obligation of any retired judge or justice who is recalled to temporary service under
111 this section and who has not attained age ~~seventy~~ 70 to accept the recall and perform the duties
112 assigned. It shall be within the discretion of any justice or judge who has attained age ~~seventy~~ 70 to
113 accept such recall.

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

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

118 § 51.1-305. Service retirement generally.

119 A. Normal retirement. - Any member in service at his normal retirement date with five or more years
120 of creditable service may retire upon written notification to the Board setting forth the date the

121 retirement is to become effective.

122 B. Early retirement.- Any member in service who has either (i) attained his ~~fifty-fifth~~ 55th birthday
123 with five or more years of creditable service or (ii) in the case of a member of any of the previous
124 systems immediately prior to July 1, 1970, complied with the requirements for retirement set forth under
125 the provisions of such previous system as in effect immediately prior to July 1, 1970, may retire upon
126 written notification to the Board setting forth the date the retirement is to become effective.

127 B1. Mandatory retirement. - Any member who attains 70 years of age shall be retired 20 days after
128 the convening of the next regular session of the General Assembly. However, if the mandatory
129 retirement provisions of this subdivision would require a member of the State Corporation Commission
130 to be retired before the end of his elected term and such retirement would occur during a session of the
131 General Assembly in which the General Assembly is required, pursuant to § 12.1-6, to elect another
132 member or members of the State Corporation Commission to serve either a regular term or a portion of
133 a regular term, such member who otherwise would be subject to the mandatory retirement provisions of
134 this subdivision shall be retired upon the first to occur of (i) the expiration of the term to which he was
135 elected or (ii) 20 days after the commencing of the regular session of the General Assembly that
136 immediately follows the date such member attains 72 years of age. The provisions of this subsection
137 shall apply only to those members who are elected or appointed to an original or subsequent term
138 commencing after July 1, 1993 upon the expiration of the term to which he was elected.

139 C. Deferred retirement for members terminating service. - Any member who terminates service after
140 five or more years of creditable service may retire under the provisions of subsection A or B of this
141 section, if he has not withdrawn his accumulated contributions prior to the effective date of his
142 retirement or if he has five or more years of creditable service for which his employer has paid the
143 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any
144 requirements as to the member being in service shall not apply. No member shall be entitled to the
145 benefits of this subsection if his appointing authority certifies that his service was terminated because of
146 dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

147 D. Effective date of retirement. - The effective date of retirement shall be after the last day of
148 service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

149 E. Notification of retirement. - In addition to the notice to the Board required by this section, the
150 same notice shall be given by the member to his appointing authority. If a member is physically or
151 mentally unable to submit written notification of his intention to retire, the member's appointing
152 authority may submit notification to the Board on his behalf.