

14100721D

**HOUSE BILL NO. 10**

Offered January 8, 2014

Prefiled November 18, 2013

*A BILL to amend and reenact §§ 17.1-106, 17.1-302, 17.1-401, 51.1-303, 51.1-306, and 51.1-308 of the Code of Virginia, relating to person who has served as a judge; retirement allowance and service after retirement.*

Patrons—Jones, Greason and LaRock

Referred to Committee on Appropriations

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

**1. That §§ 17.1-106, 17.1-302, 17.1-401, 51.1-303, 51.1-306, and 51.1-308 of the Code of Virginia are amended and reenacted as follows:**

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

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

B. It shall be the obligation of any retired judge or justice 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 justice or judge who has attained age seventy to accept such recall.

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

**§ 17.1-302. Senior justice.**

A. Any Chief Justice or justice of the Supreme Court of Virginia who is eligible for retirement, other than for disability, with the prior consent of a majority of the members of the Court, may elect to retire *under the Judicial Retirement System* (§ 51.1-300 et seq.) and be designated a senior justice. In addition, any Chief Justice or justice of the Supreme Court of Virginia who is retired *under the Judicial Retirement System* (§ 51.1-300 et seq.) and subject to recall pursuant to § 17.1-106, with the consent of a majority of the members of the court, may be known and designated as a senior justice.

B. Any Chief Justice or justice who has retired from active service, as provided in subsection A, may be designated and assigned by the Chief Justice of the Supreme Court of Virginia to perform the duties of a justice of the Court.

C. While serving in such status, a senior justice shall be deemed to be serving in a temporary capacity and, in addition to the retirement benefits received by such justice, shall receive as compensation a sum equal to one-fourth of the total compensation of an active justice of the Supreme Court of Virginia for a similar period of service. A retired justice, while performing the duties of a senior justice, shall be furnished office space, support staff, a telephone, and supplies as are furnished a justice of the Court.

D. A justice may terminate his status as a senior justice, or such status may be terminated by a majority of the members of the Court. Each justice designated a senior justice shall serve a one-year term unless the Court, by order or otherwise, extends the term for an additional year. There shall be no limit on the number of terms a senior justice may so serve.

E. Only five retired justices shall serve as senior justices at any one time.

F. Nothing in this section shall be construed to increase the number of justices of the Supreme Court provided for in Section 2 of Article VI of the Constitution of Virginia and in § 17.1-300.

**§ 17.1-401. Senior judge.**

A. Any chief judge or judge of the Court of Appeals who is eligible for retirement, other than for disability, with the consent of a majority of the members of the court first obtained, may elect to retire *under the Judicial Retirement System* (§ 51.1-300 et seq.) and be known and designated as a senior judge. In addition, any chief judge or judge of the Court of Appeals who is retired *under the Judicial Retirement System* (§ 51.1-300 et seq.) and subject to recall pursuant to § 17.1-106, with the consent of a

INTRODUCED

HB10

59 majority of the members of the court, may be known and designated as a senior judge.

60 B. Any chief judge or judge who has retired from active service, as provided in subsection A, may  
61 be designated and assigned by the Chief Judge of the Court of Appeals to perform the duties of a judge  
62 of the court.

63 C. While serving in such status, a senior judge shall be deemed to be serving in a temporary capacity  
64 and, in addition to the retirement benefits received by such judge, shall receive as compensation a sum  
65 equal to one-fourth of the total compensation of an active judge of the Court of Appeals for a similar  
66 period of service. A retired judge, while performing the duties of a senior judge, shall be furnished  
67 office space, support staff, a telephone, and supplies as are furnished a judge of the court.

68 D. A judge may terminate his status as a senior judge, or such status may be terminated by a  
69 majority of the members of the court. Each judge designated a senior judge shall serve a one-year term  
70 unless the court, by order or otherwise, extends the term for an additional year. There shall be no limit  
71 on the number of terms a senior judge may so serve.

72 E. Only five retired judges shall serve as senior judges at any one time.

73 F. Nothing in this section shall be construed to increase the number of judges of the Court of  
74 Appeals provided for in § 17.1-400.

75 **§ 51.1-303. Creditable service.**

76 A. For those members in service on December 31, 1994, service as a judge shall be multiplied by a  
77 factor of 3.5, the weighted years of service factor, to calculate years of creditable service. To calculate  
78 years of creditable service for those members appointed or elected to an original term commencing on  
79 or after January 1, 1995, service as a judge shall be multiplied by the weighted years of service factor  
80 of 2.5. To calculate years of creditable service for those members appointed or elected to an original  
81 term commencing on or after July 1, 2010, the following formula shall be used: if (i) the member was  
82 less than 45 years old at the time he was appointed or elected to such original term, then service as a  
83 judge shall be multiplied by the weighted years of service factor of 1.5, (ii) the member was at least 45  
84 years old but less than 55 years old at the time he was appointed or elected to such original term, then  
85 service as a judge shall be multiplied by the weighted years of service factor of 2.0, and (iii) the  
86 member was at least 55 years old at the time he was appointed or elected to such original term, then  
87 service as a judge shall be multiplied by the weighted years of service factor of 2.5. For purposes of this  
88 section, "original term" means the first term for which the member was appointed or elected to a  
89 position covered by the Judicial Retirement System.

90 B. Service qualifying for credit under the provisions of the Virginia Retirement System, the State  
91 Police Officers' Retirement System, and the Virginia Law Officers' Retirement System shall be included  
92 as creditable service for the purposes of this chapter, provided the requirements of those systems for  
93 crediting service have been complied with. Service purchased in accordance with the provisions of  
94 § 51.1-142.2 shall not be considered in determining the actuarial equivalent for early retirement nor shall  
95 it be considered twice in determining any disability allowance payable under this chapter.

96 C. If a member ceases to be a judge, has not received a refund of the accumulated contributions  
97 credited to his member's contribution account, and accepts employment in a position covered by a  
98 "retirement plan administered by the Virginia Retirement System" as defined under § 51.1-124.3, he  
99 shall be entitled to credit for his previous creditable service under this chapter. The amount of service  
100 transferred to the credit of the member in the Virginia Retirement System such other retirement plan  
101 shall not exceed the amount of credit which would provide a benefit of 78 percent of average final  
102 compensation determined on the assumption that the member was eligible for normal retirement as of  
103 the date of transfer and that he had elected no optional allowance. Future retirement rights shall be as  
104 provided in the Virginia Retirement System under the applicable retirement plan. However, the annual  
105 retirement allowance payable to such person accepting employment in a position covered by any other  
106 retirement plan administered by the Virginia Retirement System shall not exceed 78 percent of the  
107 person's average final compensation, unless the person has been credited with five or more years of  
108 creditable service under such other retirement plan for service performed after ceasing to be a judge. In  
109 no case shall the annual retirement allowance payable to such person exceed 100 percent of his average  
110 final compensation.

111 **§ 51.1-306. Service retirement allowance.**

112 A. Retirement allowance. - A member shall receive an annual retirement allowance, payable for life  
113 as follows:

114 1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation  
115 multiplied by the amount of creditable service. The allowance shall not exceed 78 percent of the average  
116 final compensation of the member. Notwithstanding the foregoing, for a member appointed or elected to  
117 an original term commencing on or after January 1, 2013, the allowance shall equal the sum of (a) 1.65  
118 percent of his average final compensation multiplied by the amount of his creditable service performed  
119 or purchased on or after January 1, 2013, and (b) 1.70 percent of his average final compensation  
120 multiplied by the amount of all other creditable service.

*In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of the member.*

For retirements between October 1, 1994, and December 31, 1998, any judge who is a member or beneficiary of a retirement system administered by the Board shall receive an additional retirement allowance equal to three percent of the service retirement allowance payable under this section. Average final compensation attributable to service as Governor, Lieutenant Governor, Attorney General, or member of the General Assembly shall not be included in computing this additional retirement allowance.

2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has not attained his sixtieth birthday or has less than 30 years of service, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his sixtieth birthday on which he would have completed a total of 30 years of creditable service.

*In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of the member.*

B. Normal and early retirement guarantees. - Any member who was a member of one of the previous systems immediately prior to July 1, 1970, and who would have been eligible for retirement benefits thereunder shall be guaranteed a minimum retirement allowance no less than that for which he would have qualified had he continued to participate therein.

C. Determination of retirement allowance. - For the purposes of subsection B of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and that no optional retirement allowance is elected.

D. Beneficiary serving in position covered by this title. - If a beneficiary of a service retirement allowance under this chapter or under any of the previous systems is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

**§ 51.1-308. Disability retirement allowance.**

A. Allowance payable on retirement. - Upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance; ~~not to exceed 78 percent of his average final compensation~~, payable during his lifetime and continued disability equal to 1.70 percent of average final compensation when multiplied by the smaller of (i) twice the amount of creditable service or (ii) the amount of creditable service he would have completed at age 60 if he had remained in service to that age. Notwithstanding the foregoing, for a member appointed or elected to an original term commencing on or after January 1, 2013, the allowance shall equal 1.65 percent of his average final compensation multiplied by the smaller of (a) twice the amount of his creditable service or (b) the amount of creditable service he would have completed at age 60 if he had remained in service to that age. If a member has already attained age 60, the amount of creditable service at his date of retirement shall be used.

*In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of the member.*

B. Workers' compensation guarantee. - If a member retires for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual retirement allowance shall, subject to the provisions of subsection D, equal 66 and two-thirds percent of the member's average final compensation if the member does not qualify for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal 50 percent of his average final compensation. A member shall be entitled to the larger of the retirement allowance as determined under the provisions of subsection A of this section or under the provisions of this subsection.

C. General disability retirement guarantee. - The disability retirement allowance payable to a member who immediately prior to July 1, 1970, was a member of one of the previous systems shall be at least an amount equal to the disability retirement allowance to which he would have been entitled under the provisions of the previous system.

D. Determination of retirement allowance. - For the purposes of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and that no optional retirement allowance is elected.

E. Reduction of allowance. - Any allowance payable to a member who retires for disability from a cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of

182 any payments under the provisions of the Act in effect on the date of retirement of the member and the  
183 excess of the allowance shall be paid to such member. When the time for compensation payments under  
184 the Act has elapsed, the member shall receive the full amount of the allowance payable during his  
185 lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation  
186 Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603,  
187 his allowance shall be computed as if he were receiving the compensation to which he would otherwise  
188 be entitled.

189 F. Special retirement allowance guarantee. - Any member retired from a cause which is not  
190 compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement  
191 allowance during his lifetime and continued disability which equals 50 percent of the member's average  
192 final compensation if the member does not qualify for primary social security benefits under the  
193 provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for  
194 primary social security benefits under the provisions of the Social Security Act in effect on the date of  
195 retirement, the allowance payable from the retirement system shall equal 33 and one-third percent of his  
196 average final compensation.