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HOUSE JOINT RESOLUTION NO. 546

Offered January 20, 1997

Requesting the Judiciary Committee of the Virginia Bar Association to update its study of the capacity of the Court of Appeals of Virginia.

Patrons—Davies, Almand, Baker, Barlow, Brickley, Cantor, Clement, Croshaw, Cunningham, Deeds, Forbes, Johnson, McEachin, Moran, Murphy, Plum, Puller, Scott, Tate, Watkins and Woodrum; Senator: Howell

Referred to Committee on Rules

WHEREAS, in 1989, the Commission on the Future of Virginia's Judicial System submitted recommendations for a study and review of the Commonwealth's system of appellate review in civil cases, and a joint subcommittee was formed to study those recommendations (HJR 329); and

WHEREAS, the joint subcommittee, in 1990, recommended that the appellate system not be changed at that time, but recommended a reevaluation in the future of both the civil and criminal appellate systems; and

WHEREAS, in 1994, the Judiciary Committee of the Virginia Bar Association (the "Committee") completed a two-year study of the appellate process in Virginia, which was endorsed by the Virginia Bar Association and, in January 1995, released all members of the judiciary of the Commonwealth, the members of the General Assembly, leaders of the organized bar, and other interested persons in the Commonwealth; and

WHEREAS, the study received much favorable comment for its breadth and depth; and

WHEREAS, the Boyd Graves Conference reviewed the study and its recommendations at its meeting in October 1995, and endorsed the call of the Virginia Bar Association for further legislative study of this issue; and

WHEREAS, in the 1996 Session, the legislature acted on the recommendations of the study to allow the Judicial Council of Virginia to prepare periodic reviews of staffing of the Court of Appeals; and

WHEREAS, the study recommend that current staff needs of the Court of Appeals be funded on an ongoing basis; and

WHEREAS, the study also recommended that all civil cases be made appealable to the Court of Appeals in the first instance by petition, as is now true with criminal cases; and

WHEREAS, the study further recommended that § 17-116.07 be amended to make all cases eligible for appeal by petition to the Supreme Court following action by the Court of Appeals, permitting the Supreme Court the maximum ability to deal with the evolving legal issues facing the Commonwealth, resolve ambiguities in the law, interpret legislation, and set policy; and

WHEREAS, the study also recommended that, over time, the Commonwealth adopt a system whereby appeal to the Court of Appeals shifts from petition to "notice of appeal," which does not require a separate petition for "leave to appeal," thus assuring one level of appellate review; and

WHEREAS, the study additionally recommended that the time frame set for this change be one which allows for analysis and development of systems which do not lower the quality of review afforded litigants from that currently enjoyed, and which allows for the practical necessity of funding both normal growth needs and necessary changes in the appellate system; and

WHEREAS, since it has been several years since the Committee prepared a thorough study of the capacity of the Court of Appeals of Virginia, it is believed that the Committee needs to revisit and update the issues it addressed in the previous study so that the General Assembly will have before it current information as it considers establishing a joint subcommittee for the study and review of the Commonwealth's system of appellate review; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Judiciary Committee of the Virginia Bar Association be requested to study the appellate process in Virginia and update its 1994 report. The Committee shall complete its work by December 1, 1997, and shall submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly.

INTRODUCED

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