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HOUSE BILL NO. 10

House Amendments in [] — January 30, 2014

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.*

Patron Prior to Engrossment—Delegate Jones

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

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

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

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

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

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

74 **§ 51.1-303. Creditable service.**

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

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

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

110 **§ 51.1-306. Service retirement allowance.**

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

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

120 *In no case shall the annual retirement allowance exceed 78 percent of the average final*

121 *compensation of the member.*

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

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

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

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

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

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

148 **§ 51.1-308. Disability retirement allowance.**

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

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

162 B. Workers' compensation guarantee. - If a member retires for disability from a cause which is
163 compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the
164 annual retirement allowance shall, subject to the provisions of subsection D, equal 66 and two-thirds
165 percent of the member's average final compensation if the member does not qualify for primary social
166 security benefits under the provisions of the Social Security Act in effect on the date of his retirement.
167 If the member qualifies for primary social security benefits under the provisions of the Social Security
168 Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal
169 50 percent of his average final compensation. A member shall be entitled to the larger of the retirement
170 allowance as determined under the provisions of subsection A of this section or under the provisions of
171 this subsection.

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

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

179 E. Reduction of allowance. - Any allowance payable to a member who retires for disability from a
180 cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of
181 any payments under the provisions of the Act in effect on the date of retirement of the member and the

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

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

196 [2. That an emergency exists and this act is in force from its passage.]