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HOUSE BILL NO. 10**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 26, 2014)

(Patron Prior to Substitute—Delegate Jones)

A *BILL to amend and reenact §§ 16.1-69.22:1, 16.1-69.35, 17.1-105, 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.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.22:1, 16.1-69.35, 17.1-105, 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:

§ 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 (i) *hear a specific case or cases pursuant to the provisions of § 16.1-69.35 with such designation to continue in effect for the duration of the case or cases or* (ii) 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.

§ 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 *eligible for recall pursuant to § 16.1-69.22:1* 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 *eligible for recall pursuant to § 17.1-106* 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.

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

60 judge from another district or any circuit court judge, if such circuit court judge consents, or a retired
61 judge *eligible for recall*, to provide judicial assistance to such district. Every judge so designated shall
62 have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the
63 district for which he is designated to assist and while so acting his order or judgment shall be, to all
64 intents and purposes, the judgment of the court to which he is assigned.

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

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

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

101 **§ 17.1-105. Designation of judges to hold courts and assist other judges.**

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

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

118 C. If a vacancy occurs in the office of a judge of a court of record that fact shall be immediately
119 certified by the clerk of such court to the Governor, who may, instead of appointing a successor at once,
120 request the Chief Justice to designate a judge of some other court of record or a retired judge of any
121 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 or when in his opinion the administration of justice so requires, 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 engaged in holding court, except in those cases where the payment of such expenses is otherwise specifically provided by law.

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

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

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

I. As used in this section, "retired judge" means a judge eligible for recall pursuant to § 17.1-106.

§ 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

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

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

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

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

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

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

203 **§ 51.1-303. Creditable service.**

204 A. For those members in service on December 31, 1994, service as a judge shall be multiplied by a
205 factor of 3.5, the weighted years of service factor, to calculate years of creditable service. To calculate
206 years of creditable service for those members appointed or elected to an original term commencing on
207 or after January 1, 1995, service as a judge shall be multiplied by the weighted years of service factor
208 of 2.5. To calculate years of creditable service for those members appointed or elected to an original
209 term commencing on or after July 1, 2010, the following formula shall be used: if (i) the member was
210 less than 45 years old at the time he was appointed or elected to such original term, then service as a
211 judge shall be multiplied by the weighted years of service factor of 1.5, (ii) the member was at least 45
212 years old but less than 55 years old at the time he was appointed or elected to such original term, then
213 service as a judge shall be multiplied by the weighted years of service factor of 2.0, and (iii) the
214 member was at least 55 years old at the time he was appointed or elected to such original term, then
215 service as a judge shall be multiplied by the weighted years of service factor of 2.5. For purposes of this
216 section, "original term" means the first term for which the member was appointed or elected to a
217 position covered by the Judicial Retirement System.

218 B. Service qualifying for credit under the provisions of the Virginia Retirement System, the State
219 Police Officers' Retirement System, and the Virginia Law Officers' Retirement System shall be included
220 as creditable service for the purposes of this chapter, provided the requirements of those systems for
221 crediting service have been complied with. Service purchased in accordance with the provisions of
222 § 51.1-142.2 shall not be considered in determining the actuarial equivalent for early retirement nor shall
223 it be considered twice in determining any disability allowance payable under this chapter.

224 C. If a member ceases to be a judge, has not received a refund of the accumulated contributions
225 credited to his member's contribution account, and accepts employment in a position covered by a
226 "retirement plan administered by the Virginia Retirement System" as defined under § 51.1-124.3, he
227 shall be entitled to credit for his previous creditable service under this chapter. The amount of service
228 transferred to the credit of the member in the ~~Virginia Retirement System~~ *such other retirement plan*
229 shall not exceed the amount of credit which would provide a benefit of 78 percent of average final
230 compensation determined on the assumption that the member was eligible for normal retirement as of
231 the date of transfer and that he had elected no optional allowance. Future retirement rights shall be as
232 provided in the ~~Virginia Retirement System~~ *under the applicable retirement plan. However, the annual*
233 *retirement allowance payable to such person accepting employment in a position covered by any other*
234 *retirement plan administered by the Virginia Retirement System shall not exceed 78 percent of the*
235 *person's average final compensation, unless the person has been credited with five or more years of*
236 *creditable service under such other retirement plan for service performed after ceasing to be a judge. In*
237 *no case shall the annual retirement allowance payable to such person exceed 100 percent of his average*
238 *final compensation.*

239 **§ 51.1-306. Service retirement allowance.**

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

242 1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation
243 multiplied by the amount of creditable service. ~~The allowance shall not exceed 78 percent of the average~~
244 ~~final compensation of the member.~~ Notwithstanding the foregoing, for a member appointed or elected to

an original term commencing on or after January 1, 2013, the allowance shall equal the sum of (a) 1.65 percent of his average final compensation multiplied by the amount of his creditable service performed or purchased on or after January 1, 2013, and (b) 1.70 percent of his average final compensation 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

306 shall be determined on the assumption that the retirement allowance is payable to the member alone and
307 that no optional retirement allowance is elected.

308 E. Reduction of allowance. - Any allowance payable to a member who retires for disability from a
309 cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of
310 any payments under the provisions of the Act in effect on the date of retirement of the member and the
311 excess of the allowance shall be paid to such member. When the time for compensation payments under
312 the Act has elapsed, the member shall receive the full amount of the allowance payable during his
313 lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation
314 Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his
315 allowance shall be computed as if he were receiving the compensation to which he would otherwise be
316 entitled.

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

325 **2. That an emergency exists and this act is in force from its passage.**