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## SENATE BILL NO. 939

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Stuart)

Senate Amendments in [ ] — February 6, 2018

A BILL to amend and reenact §§ 17.1-106, 17.1-302, 17.1-401, and 51.1-309 of the Code of Virginia, relating to retired circuit court judges, Court of Appeals judges, and Supreme Court justices under recall; qualification by Committees for Courts of Justice.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-106, 17.1-302, 17.1-401, and 51.1-309 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 circuit court of record who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) and who has been found qualified within the preceding three years by the Senate and House Committees for Courts of Justice to sit in recall 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 90 days at any one time; such judicial duties in any circuit 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 70 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 70 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. Notwithstanding the provisions of subsection A, the Chief Justice may call upon and authorize any judge of a circuit court whose retirement becomes effective during the interim period between regularly scheduled sessions of the General Assembly to sit in recall either to (i) hear a specific case or cases pursuant to the provisions of § 17.1-105, and such designation shall continue in effect for the duration of the case or cases, or (ii) perform, for a period of time not to exceed 90 days at any one time, such judicial duties in any circuit court as the Chief Justice shall deem in the public interest for the expeditious disposition of the business of the courts.

§ 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 shall be subject to recall pursuant to § 17.1-106, with the consent of a majority of the members of the court, and 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. [ Such justice shall have all the powers, duties, and privileges attendant on the position for which he is recalled to serve. ]

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

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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 shall be~~ subject to recall pursuant to ~~§ 17.1-106~~, with the consent of a majority of the members of the court, ~~and~~ may be known and designated as a senior judge.

B. Any chief judge or judge who has retired from active service, as provided in subsection A, may be designated and assigned by the Chief Judge of the Court of Appeals to perform the duties of a judge of the court. [ *Such judge shall have all the powers, duties, and privileges attendant on the position for which he is recalled to serve.* ]

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

D. A judge may terminate his status as a senior judge, or such status may be terminated by a majority of the members of the court. Each judge designated a senior judge 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 judge may so serve.

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

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

**§ 51.1-309. Appearance as counsel in certain forums prohibited.**

A. No former justice or judge of a court of record of the Commonwealth and no former full-time judge of a court not of record of the Commonwealth, who is retired and receiving retirement benefits under the provisions of the Judicial Retirement System, shall appear as counsel in any case in any court of the Commonwealth.

B. No former member of the State Corporation Commission or Virginia Workers' Compensation Commission, who is retired and receiving retirement benefits under the provisions of the Judicial Retirement System, shall appear as counsel in any case before the Commission of which he was formerly a member.

C. The provisions of subsection A shall not be applicable if (i) the retired justice or judge has been retired for at least two years and is not authorized for *or assigned to* temporary recall by the Chief Justice of the Supreme Court, *the Chief Judge of the Court of Appeals, or the Committees for Courts of Justice of the Senate and House of Delegates*; (ii) the retired justice or judge is appearing as counsel, pro bono, for an indigent person in a civil matter; (iii) such civil matter is assigned or referred to the retired justice or judge by a nonprofit legal aid program organized under the auspices of the Virginia State Bar; and (iv) the retired justice or judge is not an employee, officer, or board member of such nonprofit legal aid program. Nothing herein shall relieve the retired justice or judge from having obtained any license or meeting any requirement in connection with the appearance as counsel as required by law, rule, or regulation.

**2. That the provisions of this act shall become effective on July 1, 2019.**