

SENATE BILL NO. 843

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Petersen)

A BILL to amend and reenact §§ 16.1-69.21, 16.1-69.22:1, 16.1-69.35, and 17.1-106 of the Code of Virginia, relating to retired circuit court and district court judges; recall; evaluation; qualification by Senate Committee on the Judiciary and House Committee for Courts of Justice.

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

**1. That §§ 16.1-69.21, 16.1-69.22:1, 16.1-69.35, and 17.1-106 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-69.21. When substitute to serve; his powers and duties.**

In the event of the inability of the judge to perform the duties of his office or any of them by reason of sickness, absence, vacation, interest in the proceeding or parties before the court, or otherwise, such judge or a person acting on his behalf shall promptly notify the appropriate chief district judge of such inability. If the chief district judge determines that the provisions of § 16.1-69.35 have been complied with or cannot reasonably be done within the time permitted and that no other full-time ~~or retired~~ judge is reasonably available to serve, the chief district judge may direct a substitute judge to serve as a judge of the court, which substitute may serve concurrently with one or more of the judges of the court or alone. When reasonably necessary, the chief district judge may designate a substitute judge from another district within the Commonwealth. The committee on district courts may adopt policies and procedures governing the utilization of substitute judges. In such event, those policies and procedures will, where applicable, control. While acting as judge, a substitute judge shall perform the same duties, exercise the same power and authority, and be subject to the same obligations as prescribed herein for the judge. A substitute judge shall retain the power to enter a final order in any case heard by such substitute judge for a period of 14 days after the date of a hearing of such case. While serving as judge of the court, the judge or the substitute

27 judge may perform all acts with respect to the proceedings, judgments and acts of any other judge in  
28 connection with any action or proceeding then pending or theretofore disposed of in the court except as  
29 otherwise provided in this chapter in the same manner and with the same force and effect as if they were  
30 his own.

31 **§ 16.1-69.22:1. Temporary recall of retired district court judges; evaluation.**

32 A. The Chief Justice of the Supreme Court may call upon any judge of a district court who is  
33 retired under the Judicial Retirement System (§ 51.1-300 et seq.) and who has been found qualified within  
34 the preceding ~~three years~~ year by the Senate Committee on the Judiciary and the House Committee for  
35 Courts of Justice to (i) hear a specific case or cases pursuant to the provisions of § 16.1-69.35 with such  
36 designation to continue in effect for the duration of the case or cases or (ii) perform, for a period not to  
37 exceed 90 days at any one time, such judicial duties in any district court as the Chief Justice of the Supreme  
38 Court shall deem in the public interest for the expeditious disposition of the business of such courts.

39 B. It shall be the obligation of any retired judge who is recalled to temporary service under this  
40 section and who has not attained age 70 to accept the recall and perform the duties assigned. It shall be  
41 within the discretion of any judge who has attained age 70 to accept such recall.

42 C. Any judge recalled to duty under this section shall have all the powers, duties, and privileges  
43 attendant on the position he is recalled to serve.

44 ~~D. Notwithstanding the provisions of subsection A, the Chief Justice may call upon and authorize~~  
45 ~~any judge of a district court whose retirement becomes effective during the interim period between~~  
46 ~~regularly scheduled sessions of the General Assembly to sit in recall either to (i) hear a specific case or~~  
47 ~~cases pursuant to the provisions of § 16.1-69.35, which designation shall continue in effect for the duration~~  
48 ~~of the case or cases, or (ii) perform, for a period of time not to exceed 90 days at any one time, such~~  
49 ~~judicial duties in any district court as the Chief Justice shall deem in the public interest for the expeditious~~  
50 ~~disposition of the business of the courts.~~

51 ~~E.-D.~~ D. All retired district court judges who have requested to sit in recall shall be evaluated ~~during~~  
52 ~~the final year of the three year period following~~ immediately following retirement, prior to qualification  
53 by the Senate Committee on the Judiciary and the House Committee for Courts of Justice, using an

54 evaluation form prepared and distributed by the Office of the Executive Secretary of the Supreme Court  
55 of Virginia. All retired judges who have requested to sit in recall shall be evaluated annually following  
56 such initial evaluations upon retirement. An annual report containing the results of all such initial and  
57 annual evaluations conducted that year shall be prepared and transmitted to the Senate Committee on the  
58 Judiciary and the House Committee for Courts of Justice by the first day of the next regular session of the  
59 General Assembly.

60 E. No retired judge shall be authorized or eligible for recall under subsection A if such judge, prior  
61 to submitting a notice of retirement, sought reelection to a subsequent term but was not reelected by a  
62 majority of the members elected to each house of the General Assembly.

63 **§ 16.1-69.35. Administrative duties of chief district judge.**

64 The chief judge of each district shall have the following administrative duties and authority with  
65 respect to his district:

66 1. When any district court judge is under any disability or for any other cause is unable to hold  
67 court and the chief judge determines that assistance is needed:

68 a. The chief district judge shall designate a judge within the district or a judge of another district  
69 court within the Commonwealth, if one is reasonably available, to hear and dispose of any action or actions  
70 properly coming before such district court for disposition;

71 b. If unable to designate a judge as provided in subdivision 1 a, the chief district judge may  
72 designate ~~a retired district~~ any judge eligible for recall pursuant to § 16.1-69.22:1 for such hearing and  
73 disposition if such judge consents; ~~or~~

74 ~~c. If unable to assign a retired district court judge, the~~ The chief district judge may designate ~~a~~  
75 ~~retired circuit court~~ any judge eligible for recall pursuant to § 17.1-106 if such judge consents or the chief  
76 district judge may request that the Chief Justice of the Supreme Court designate a circuit judge if such  
77 judge consents; or

78 ~~If no judges are available under subdivision a, b or c, then a~~ d. A substitute judge shall be  
79 designated pursuant to § 16.1-69.21.

80 While acting, any judge so designated shall have all the authority and power of the judge of the  
81 court, and his order or judgment shall, to all intents and purposes, be the judgment of the court. A general  
82 district court judge designated pursuant to subdivision 1 a, may, with his consent, substitute for or replace  
83 a juvenile and domestic relations district court judge, and vice versa. The names of the judges designated  
84 under subdivisions b and c shall be selected from a list provided by the Executive Secretary and approved  
85 by the Chief Justice of the Supreme Court.

86 2. The chief general district court judge of a district may designate any juvenile and domestic  
87 relations district court judge of the district, with the judge's consent, for an individual case or to sit and  
88 hear cases for a period of not more than one year, in any of the general district courts within the district.  
89 The chief juvenile and domestic relations district court judge of a district may designate any general  
90 district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases  
91 for a period of not more than one year, in any of the juvenile and domestic relations district courts within  
92 the district. Every judge so designated shall have the same powers and jurisdiction and be authorized to  
93 perform the same duties as any judge of the district for which he is designated to assist, and, while so  
94 acting, his order or judgment shall be, for all purposes, the judgment of the court to which he is assigned.

95 3. If on account of congestion in the work of any district court or when in his opinion the  
96 administration of justice so requires, the Chief Justice of the Supreme Court may, upon his own initiative  
97 or upon written application of the chief district court judge desiring assistance, designate a judge from  
98 another district or any circuit court judge, if such circuit court judge consents, or a retired judge eligible  
99 for recall, to provide judicial assistance to such district. Every judge so designated shall have the same  
100 powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which  
101 he is designated to assist and while so acting his order or judgment shall be, to all intents and purposes,  
102 the judgment of the court to which he is assigned.

103 4. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may  
104 establish special divisions of any general district court when the work of the court may be more efficiently  
105 handled thereby such as through the establishment of special civil, criminal or traffic divisions, and he  
106 may assign the judges of the general district court with respect to serving such special divisions. In the

107 City of Richmond the general district court shall, in addition to any specialized divisions, maintain a  
108 separate division of such court in that part of Richmond south of the James River with concurrent  
109 jurisdiction over all matters arising in the City of Richmond.

110 5. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge shall  
111 determine when the district courts or divisions of such courts shall be open for the transaction of business.  
112 The chief judge or presiding judge of any district court may authorize the clerk's office to close on any  
113 date when the chief judge or presiding judge determines that operation of the clerk's office, under  
114 prevailing conditions, would constitute a threat to the health or safety of the clerk's office personnel or the  
115 general public. Closing of the clerk's office pursuant to this subsection shall have the same effect as  
116 provided in subsection B of § 1-210. In determining whether to close because of a threat to the health or  
117 safety of the general public, the chief judge or the presiding judge of the district court shall coordinate  
118 with the chief judge or presiding judge of the circuit court so that, where possible and appropriate, both  
119 the circuit and district courts take the same action. He shall determine the times each such court shall be  
120 held for the trial of civil, criminal or traffic matters and cases. He shall determine whether, in the case of  
121 district courts in counties, court shall be held at any place or places in addition to the county seat or other  
122 place expressly authorized by statute. He shall determine the office hours and arrange a vacation schedule  
123 of the judges within his district, in order to ensure the availability of a judge or judges to the public at  
124 normal times of business. A schedule of the times and places at which court is held shall be filed with the  
125 Executive Secretary of the Supreme Court and kept posted at the courthouse, and in any county also at  
126 any such other place or places where court may be held, and the clerk shall make such schedules available  
127 to the public upon request. Any matter may, in the discretion of the judge, or by direction of the chief  
128 district judge, be removed from any one of such designated places to another, or to or from the county  
129 seat or other place expressly authorized by statute, in order to serve the convenience of the parties or to  
130 expedite the administration of justice; however, any town having a population of over 15,000 as of July  
131 1, 1972, having court facilities and a court with both general criminal and civil jurisdiction prior to July  
132 1, 1972, shall be designated by the chief judge as a place to hold court.

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

137           **§ 17.1-106. Temporary recall of retired judges; evaluation.**

138           A. The Chief Justice of the Supreme Court may call upon any judge of a circuit court who is retired  
139 under the Judicial Retirement System (§ 51.1-300 et seq.) and who has been found qualified within the  
140 preceding ~~three years~~ year by the House Committee for Courts of Justice and the Senate Committee on  
141 the Judiciary to sit in recall either to (i) hear a specific case or cases pursuant to the provisions of § 17.1-  
142 105, such designation to continue in effect for the duration of the case or cases, or (ii) perform for a period  
143 of time not to exceed 90 days at any one time such judicial duties in any circuit court as the Chief Justice  
144 shall deem in the public interest for the expeditious disposition of the business of the courts.

145           B. It shall be the obligation of any retired judge who is recalled to temporary service under this  
146 section and who has not attained age 70 to accept the recall and perform the duties assigned. It shall be  
147 within the discretion of any judge who has attained age 70 to accept such recall.

148           C. Any judge recalled to duty under this section shall have all the powers, duties, and privileges  
149 attendant on the position he is recalled to serve.

150           ~~D. Notwithstanding the provisions of subsection A, the Chief Justice may call upon and authorize~~  
151 ~~any judge of a circuit court whose retirement becomes effective during the interim period between~~  
152 ~~regularly scheduled sessions of the General Assembly to sit in recall either to (i) hear a specific case or~~  
153 ~~cases pursuant to the provisions of § 17.1-105, and such designation shall continue in effect for the~~  
154 ~~duration of the case or cases, or (ii) perform, for a period of time not to exceed 90 days at any one time,~~  
155 ~~such judicial duties in any circuit court as the Chief Justice shall deem in the public interest for the~~  
156 ~~expeditious disposition of the business of the courts.~~

157           ~~E.~~D. All retired circuit court judges who have requested to sit in recall shall be evaluated ~~during~~  
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159 by the Senate Committee on the Judiciary and the House Committee for Courts of Justice, using an

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161 of Virginia. All retired judges who have requested to sit in recall shall be evaluated annually following  
162 such initial evaluations upon retirement. An annual report containing the results of all such initial and  
163 annual evaluations conducted that year shall be prepared and transmitted to the Senate Committee on the  
164 Judiciary and the House Committee for Courts of Justice by the first day of the next regular session of the  
165 General Assembly.

166 E. No retired judge shall be authorized or eligible for recall under subsection A if such judge, prior  
167 to submitting a notice of retirement, sought reelection to a subsequent term but was not reelected by a  
168 majority of the members elected to each house of the General Assembly.

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