

A JUDICIAL RETIREMENT SYSTEM FOR VIRGINIA

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



HD 22, 1970

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Department of Purchases and Supply
Richmond
1970

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A JUDICIAL RETIREMENT SYSTEM FOR VIRGINIA

REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia

January 3, 1970

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

I. THE PREVIOUS STUDY

During the 1966-1967 interim between regular sessions of the General Assembly, the Council conducted an initial investigation of the three State retirement systems which remain outside the jurisdiction of the Board of Trustees of the Virginia Supplemental Retirement System. Those three systems afford retirement benefit coverage for (1) Justices of the Supreme Court of Appeals, judges of the circuit courts, corporation courts and other city courts of record, Commissioners of the State Corporation and Industrial Commissions and Assistant Attorneys General, (2) Clerks of the Senate and House of Delegates and (3) county court judges. We will refer to these systems as the Judges and Commissioners System, the Clerks System and the County Judges System, respectively, hereafter. The Council examined the systems to determine whether they are planned and funded on an actuarially sound basis and whether they should be revised and strengthened.

For expert assistance, the actuarial firm of Bowles, Andrews & Towne was employed to act as consultants. Their Actuarial Evaluation of the three systems was carried as Appendix I in the Council's Report which was printed as 1968 House Document No. 16. The consultants' Evaluation demonstrated that the systems are not actuarially funded but financed on a pay-as-you-go basis.

The consultants described present funding practices succinctly as follows:

"In the case of the three Funds considered in this study, only one (Fund III [County Judges System]) had any assets as of June 30, 1966, and even in that case, the assets were very small. By law, the State is supposed to match the amount of the participants' stipulated contributions each year to Fund I [Judges and Commissioners System], but in any event contribute enough, along with participants' contributions to meet the benefit outlay. Apparently the same procedure is followed for Funds II [Clerks System] and III.

"For Funds I and II, the matching contributions are not even enough to meet the benefit payments currently falling due so that the State is contributing at a considerably higher aggregate rate than are the active participants. For Fund III the matching contributions are getting very close to the point of being inadequate to meet the benefit payroll.

"So long as the State is merely contributing enough to pay the present benefits, and is using the active participants' contributions to help meet this outlay, nothing at all is being set aside to provide the benefits for those present active participants who will retire in the future. The 'pay-as-you-go' approach, which is really a form of robbing Peter to pay Paul, will be perpetuated. As more and more participants join the retirement roll, the State's annual outlay will continually increase until, at some point in the distant future, it may tend to level off." 1968 House Document No. 16, p. 13.

The Council agreed with consultants that the systems were not funded on an actuarially sound basis and examined several possible revisions to achieve sounder financing. It concluded:

“The possible revisions in these systems which the Council has examined and which would be calculated to place these systems on a sounder basis actuarially, to simplify their administration, to eliminate some of the discrepancies among these systems and to bring them more closely in accord with the retirement treatment afforded by the State to the bulk of State employees, are all of necessity related matters and raise important questions especially as they affect the participants in these systems.

“In view of the serious questions which arise in any determination of the funding and actuarial soundness of these systems and which concern the benefits to be paid, the rates of member and State contributions, mandatory participation and retirement and eligibility for retirement, it is the conclusion of the Council that further study should be conducted which will involve the members of the systems.” 1968 House Document No. 16, p. 6.

An additional consideration affecting Council’s decision not to proceed hastily was its recognition that

“. . . there were special considerations involved in the establishment of these systems apart from those which applied in creating the broader Virginia Supplemental Retirement System. The question of adequate salary and benefits to attract well-qualified men, the frequently shorter periods of service and the relatively advanced age of numerous appointees are factors affecting retirement programs established for these men. . . .

“We believe that further consideration of both the purposes and provisions of these systems is necessary if they are to be established on a more soundly planned basis and still to meet the problem of providing fair and proper retirement benefits to these State officials, and we so recommend.” 1968 House Document No. 16, p. 9.

To implement its recommendations for further study and consultation with system participants, the Council suggested that the 1968 General Assembly adopt the following joint resolution, to which the General Assembly did agree in due course:

House Joint Resolution No. 167.

Directing the Virginia Advisory Legislative Council to continue its study of Retirement Systems for Judges, Commissioners and Clerks.

Whereas, the Virginia Advisory Legislative Council, pursuant to House Joint Resolution No. 124 of the 1966 Acts of Assembly, has investigated the operation and actuarial soundness of those retirement programs not currently administered by the Board of Trustees of the Virginia Supplemental Retirement System; and

Whereas, the Council has concluded that such systems as currently constituted are not operated on an actuarially sound basis and changes may be in order to assure their more equitable and sounder operation both for the benefit of the Commonwealth and the participants of such systems, now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to continue its study of the operation of all State retirement programs not within the jurisdiction of the Board of Trustees of the Virginia Supplemental Retirement System and to consult with representatives of the systems being reviewed and of the Virginia Supplemental Retirement System in the formulation of recommendations concerning the revision and future operation of such systems.

The Council shall complete its study and submit its report and recom-

mendations to the Governor and the General Assembly by September one, nineteen hundred sixty-nine.

II. THE ORGANIZATION AND OPERATION OF THE PRESENT STUDY

Pursuant to House Joint Resolution No. 167, the Council appointed Council member William F. Stone, Senator from Martinsville, to be Chairman of a Committee to investigate the three systems and submit a preliminary report and recommendations to the Council.

Members appointed to serve with Senator Stone on this Committee were Martin P. Burks, General Counsel of the Norfolk and Western Railway Company, Roanoke; Harry Lee Carrico, Justice of the Supreme Court of Appeals, Fairfax; Frederick T. Gray, member of the House of Delegates, Chesterfield; J. C. Hutcheson, member of Council and of the Senate, Lawrenceville; Langhorne Jones, Judge of the Thirtieth Judicial Circuit, Chatham; William H. King, Sr., Attorney, Richmond; J. Harry Michael, Jr., member of the Senate, Charlottesville; J. Maurice Miller, Jr., General Counsel of the Life Insurance Company of Virginia, Richmond; H. Merrill Pasco, Attorney, Richmond; H. Marston Smith, Attorney, Warsaw; George R. C. Stuart, Attorney, Abingdon; James M. Thomson, member of Council and of the House of Delegates, Alexandria; and William L. Winston, Judge of the Thirty-fifth Judicial Circuit, Arlington.

Mr. Gray served as Vice-Chairman of the Committee. Mr. Miller served as Chairman and Mr. Gray and Senator Michael served as members of a Drafting Subcommittee for the Committee. The actuarial firm of Bowles, Andrews & Towne was employed as special consultant and the Division of Statutory Research and Drafting, represented by Mary Spain, served as counsel to the Committee and its Drafting Subcommittee during the course of their work.

The Committee conducted a thorough investigation of the systems presently not administered by the Board of Trustees of the Virginia Supplemental Retirement System. It consulted frequently with the Director of the Virginia Supplemental Retirement System, Charles H. Smith. The Committee had the benefit of views from the judiciary represented on the Committee itself and through consultation with a special committee of judges which included Justice Carrico, W. Francis Binford, Carlton E. Holladay, W. Moscoe Huntley and W. H. Overbey.

The Committee submitted a complete report and legislative recommendations to the Council at the conclusion of its work. The Council has reviewed that report and the accompanying legislative proposals and herewith submits the following recommendations and report.

The Council has also studied the State's basic retirement systems and has submitted a report recommending changes therein. Changes which we have proposed with respect to those systems have been incorporated in the system which we are proposing for the State's judiciary as they are appropriate to it.

III. RECOMMENDATIONS

A. A comprehensive and soundly planned and funded, new retirement System for the judiciary should be established which will replace the existing systems and have the following basic features:

- (1) *Participation* should be mandatory for Justices of the Supreme Court of Appeals, Commissioners of the State Corporation and Industrial Commissions, judges of circuit and other courts of record, and judges of regional juvenile and domestic relations, county and county juvenile and domestic relations courts, who are members of the present systems or who enter service after July 1, 1970. Judges of city courts not of record should be permitted to join if they elect to do so and their city agrees to pay the employer costs of their participation.

- (2) *Certain guarantees* should be included in the new System to protect participants in the present systems:
 - (a) Present participants should be guaranteed that their present required rate of contributions shall not be raised.
 - (b) Present participants should be guaranteed retirement and disability retirement benefits no less than those for which they might qualify under the present systems.
- (3) The normal *retirement age* for all participants should be sixty-five; early retirement should be permitted at age sixty; and the mandatory retirement age should be seventy.
- (4) *The members' contribution rate* should be five and one-half percent, the same as under the Virginia Supplemental Retirement System (referred to hereafter as VSRS).
- (5) *Annual retirement benefits* should be calculated by multiplying (a) the member's average annual salary in excess of \$1200 for his five highest-paid consecutive years, by (b) one and one-half percent, by (c) the number of years of service, by (d) a factor of three and one-half, the weighted years of service factor, subject to a maximum of seventy-five percent of item (a). Items (a), (b) and (c) are the factors which determine retirement benefits under the VSRS, and item (c) gives explicit recognition to the basic retirement planning concept that length of service is of particular value and should be rewarded. Item (d) is a multiplier designed: first, to compensate for the fact that judges, being typically employed at a later age, achieve shorter careers than other State employees; and second, to maintain benefits at a level closely comparable to those provided under present systems.
- (6) *Disability retirement benefits* should be provided for members with ten or more years of creditable service. Ten years of creditable service can be earned in less than three years by a judge on the bench since his service as a judge is multiplied by three and one-half, the weighted years of service factor described as item (d) in paragraph (5) above.
- (7) *Optional benefits* to provide practical alternative retirement plans should be made available including the straight life, joint and survivor and social security options available under the VSRS.
- (8) Members *terminating service* with less than five years of creditable service should be entitled to withdraw their contributions with interest, and with five or more years should be given the alternative option of a deferred retirement income benefit.
- (9) In case of the *death* of a member *before retirement* his beneficiary should receive his past contributions with interest. If, however, at death he was age fifty-five with thirty years of creditable service (eight to nine years of actual service) or between ages sixty and sixty-five, his spouse or parent, if designated, should receive a monthly income equal to the benefit under a joint and one-half to survivor option with actuarial reduction in case of death before sixty or with less than thirty years of creditable service. If at death he had attained age sixty-five, the monthly income should be based on a full joint and survivor option.
- (10) *Group insurance* benefits comparable to those afforded VSRS members should be provided.
- (11) The *State's* annual *contribution* to the new System should be an amount sufficient, when added to member contributions and earnings on the assets of the System, to fund liabilities as they are incurred after July 1, 1970 and to pay annual interest charges on liabilities incurred under the existing

systems prior to that date. This annual cost is estimated by the actuarial consultants at approximately \$700,000.

From the start of the new System, it should be financed so that the cost of retirement for judges in office will be paid at the time the liability is being incurred rather than postponed to the future. The funds set aside today for future retirement benefits should earn interest until they are used to pay benefits. The System should thus be placed on a partially funded but actuarially sound basis.

- B. Assistant Attorneys General and Clerks of the Senate and House covered by the existing Judges and Commissioners and Clerks Systems should retain all their rights and obligations thereunder. The method of administering these Systems should be revised and their administration should be placed under the Board of the VSRS as part of its duties in connection with the administration of the new judicial System until all rights preserved under these systems expire. Assistant Attorneys General and Clerks entering service in the future should be covered under the VSRS as are other State employees.
- C. Judges covered by the new System who retire thereunder and are not yet age seventy should be obligated to accept recall by the Supreme Court of Appeals for special judicial service with pay. Retired judges age seventy and older should be subject to such recall for service with pay if they consent.
- D. Judges who have retired and are beneficiaries of the new System should be proscribed from practicing law which requires appearance in any court of the Commonwealth; Commissioners retiring under the new System should be prohibited from practicing before the Commission of which they were members.

IV. REASONS FOR RECOMMENDATIONS

Two basic reasons justify the establishment of the new System we propose:

First, the existing systems are the result of a haphazard approach to providing retirement benefits for the judiciary, which has created inequities and ignored sound planning considerations.

For example, the seventy-five percent salary benefit of the County Judges System is reduced by the social security benefits to which the judge is entitled. The seventy-five percent benefit of the Judges and Commissioners System is not so reduced. The retirement eligibility provisions of the present systems are inconsistent; Supreme Court of Appeals—age sixty-five and twelve years of service or any age and twenty-five years of service; circuit courts—age sixty-five and ten years of service or age sixty and twenty-five years of service; county courts—age seventy and fifteen years of service or age sixty-five and twenty years of service. Eligibility for disability retirement benefits under the Judges and Commissioners System entails no service requirement, but under the County Judges System a ten year service requirement must precede eligibility. Prior service as a county court judge cannot count towards fulfilling service requirements for a court of record judge who is retiring.

These types of inconsistencies have little justification in terms of proper retirement program planning and only result in more unfair cases which in turn generate more special legislative amendments and new inconsistencies.

The absence of funding provisions and actuarial soundness was fully described in 1968 House Document No. 16. The considerable advantages of funding are also set out in that report. This present lack of financial planning can, in part, be attributed to the relatively much smaller amounts involved in the judicial retirement programs than in the VSRS, but the liabilities under the judicial programs are growing and should not be treated casually.

We find there is a definite need to create a new System for the judiciary, to

eliminate inequities and inconsistencies and to provide for funding and sound financing.

Second, the System for the judiciary should be maintained separately from the VSRS. The need to develop a single system for the judiciary does not imply the need for one State system for all employees and officials.

While Virginia's present systems for the judiciary are generous in comparison with those in other states (see, 1968 House Document No. 16, pp. 25-31), the provisions of the VSRS would afford benefits much lower than those provided by almost all states for the judiciary.

We believe that judges are a unique employee group. They are not career employees who enter service after school and remain in service many years. More often, they have practiced law for long periods and enter service on the bench at mature ages. They constitute a special category of professional employees of special importance to the State. The judiciary system must be able to attract qualified and experienced men away from established careers and should be attractive to younger men by being competitive with the prospects of private practice. We are convinced that service in the judiciary system must compare favorably with private practice not only from the viewpoint of the successful older lawyer but also in the opinion of the younger lawyer. The younger lawyer can be a valuable addition to the bench, particularly in our county court system, and should view the bench as a potentially rewarding and secure career.

In order to recognize the special nature of the judicial career and maintain benefits at a level comparable to present high standards, we are recommending a system very like the VSRS with the key distinction that potential VSRS benefits be multiplied by the three and one-half weighted years of service factor. In effect, we are recommending a new System tailored to the frequently shorter judicial career.

A. THE PROPOSED NEW SYSTEM

The Report of the Actuaries, which appears in Appendix I, carries a description of the provisions of the proposed new System and cost calculations.

Several specific elements of the new System warrant particular comment here.

(1) Participation

We are proposing a single, comprehensive retirement System for the State's judiciary. Judges in office and presently covered under the Judges and Commissioners System, the County Judges System and, in the case of regional juvenile and domestic relations court judges, the VSRS, will all be brought into the new System subject to the special guarantees on their behalf described below. The present Commissioners of the State Corporation and Industrial Commissions who are covered under the Judges and Commissioners System would be included within the scope of the new System, subject to the same guarantees. Judges in office who are not members of any existing system (other than judges of city courts not of record who are discussed below) will be given the option to elect to join the new System.

Participation in the new System should be mandatory for any person appointed after July 1, 1970, to the bench (other than to a city court not of record) or to one of the Commissions so that the System may be inclusive and soundly planned.

Judges of city courts not of record are not presently covered under any State retirement program. We propose that they be afforded the option to participate provided that their city agrees to pay the employer or State share of the cost of their participation. In this manner a method will be provided whereby a retire-

ment program is available to all judges, including municipal judges in those localities which have no retirement program.

(2) *Certain guarantees*

In order that no member of the present systems will be injured through adoption of the new System, guarantees are written into the proposed statute which assure that existing members will contribute at rates no greater than those they are contributing at now and that they will receive, upon retirement, benefits equivalent to those for which they would be eligible under present systems.

The long-range cost of these guarantees is estimated by the actuaries to equal approximately \$800,000. It is the feeling of the Council that the guarantees are essential and that it would be improper for the State to effect a reduction in the amount of benefits for any present member of the judiciary.

(3) *Retirement age*

The proposed System provides for normal retirement at age sixty-five as is the case with the VSRS. Early retirement would be permitted at age sixty which is also a provision parallel to the VSRS. A uniform mandatory retirement age of seventy is provided applicable to all future appointees.

Age seventy is now the mandatory retirement age for circuit judges who were appointed after March 1, 1962. The retirement age presently required for members of the Supreme Court of Appeals and the State Corporation and Industrial Commissions is age seventy-five if appointed after June 30, 1954. There is no retirement age presently for the county court judges. It is our recommendation that the mandatory age for retirement be fixed at age seventy for all participants in the new System. Existing mandatory retirement age limits would be left in effect for those appointed prior to July 1, 1970.

It appears to us that age seventy is a fair and sensible retirement age. Beyond that point, we would certainly not preclude judicial service, but we believe it is best to provide for judicial service past age seventy on a temporary recall basis which will permit the wisest use possible of this reserve of talent to meet particular court problems as they arise.

(4) *Members' contribution rate*

It is our recommendation that the members of the proposed System be required to contribute at the same rate as other State employees under the VSRS. This means a contribution rate of five and one-half percent. Although this contribution rate will not mean equal contributions by the judges and the State to pay for the costs of the proposed System, it will mean that they will be contributing at a more realistic rate.

Provisions in other jurisdictions on judges' contributions vary a great deal from no contribution to many cases of contributions at seven or eight percent of salary. We believe the VSRS figure is reasonable and should apply.

(5) *Retirement benefits*

The present systems provide a straight seventy-five percent benefit in the case of the judges of the courts of record and a seventy-five percent benefit for county court judges reduced by the amount of their social security benefits. We believe there is no justification for a difference in treatment between the two types of judges and have proposed a uniform benefit system.

The recommended benefit formula parallels that recommended for the VSRS in that a member's average salary in excess of \$1200 for his five highest-paid consecutive years is multiplied by one and one-half percent and by the number of his years of service. There is the additional factor which recognizes the shorter career of the judges—the weighted years of service factor which equals three and one-

half. When the number of years of service are multiplied by the weighted years of service factor, a judge can obtain seventy-five percent of his salary in retirement benefits if he has served approximately fourteen years on the bench. The maximum benefit which can be earned is seventy-five percent of the total of the final average salary minus \$1200.

Under the present law there are several varying age requirements to be eligible for the seventy-five percent retirement benefit. Those benefits are available to circuit judges retiring after ten years of service at age sixty-five or twenty-five years of service at age sixty, to Supreme Court of Appeals Justices retiring after twenty-five years of service or twelve years of service at age sixty-five and to county judges retiring with fifteen years of service at age seventy or twenty years of service at age sixty-five. The discrepancies in the requirements for retirement, many of which were developed to cover particular cases, should be eliminated and recognition should be given to length of service on a consistent basis. What we are saying is that fourteen years of service will be worth a certain percentage of salary regardless of age at appointment. We are eliminating the present provisions which discriminate in favor of the older judge and making length of service determinative.

Consideration was given to providing extra weighting to service as a Supreme Court of Appeals justice to take into account that his career may be shorter than that of another judge. It was felt, however, that the higher pay of the justice would generate sufficiently higher retirement allowance for him and that the introduction of any special classifications into the benefit formula should be avoided.

(6) Disability retirement benefits

Under the present systems, there is no requirement that a court of record judge have served any period of time to be eligible for disability retirement benefits equivalent to regular benefits. There is a requirement of ten or more years of service for a county court judge to be eligible for disability retirement benefits.

It is our recommendation that the ten-year requirement be made uniform for all participants of the new System. Ten years of creditable or approximately three years of actual service would meet the requirement. The amount of benefits would be computed as for normal retirement using the lesser of either the weighted years of service the member would have had at age sixty or twice the member's weighted years of service at disability retirement. For example, a judge retiring on disability at age fifty with four years of actual service would receive salary minus \$1200 times one and one-half percent times eight times three and one-half or a benefit of approximately forty-two percent.

(7) Optional benefits

The new System would offer the same range of optional benefits as are included under the VSRS. This would provide in addition to the one hundred percent joint and survivor option under the present Judges and Commissioners System, a reduced allowance on a fifty percent joint and survivor basis or a social security adjustment basis. County court judges previously had no optional modes of settlement.

(8) Termination of service

Under present systems the judiciary are not able to withdraw contributions upon terminating service. Those contributions are lost. Under the proposed System any judge may upon termination withdraw his accumulated contributions with interest at four percent and if he has served more than 1.3 years (five years of creditable service) he will have the alternative option of a deferred retirement income benefit. These are provisions based on recommendations for the VSRS.

(9) and (10) Death before retirement

In the case of death before retirement, there are no benefits under the present systems except that an allowance is available for members under the Judges and

Commissioners System if the member were eligible for retirement at the date of death. That allowance is paid under the joint and survivor option to the surviving widow. Under our proposal the survivor protection afforded would parallel that under VSRS—group life insurance coverage plus a refund of contributions or allowance to spouse or designee depending on the member's age at death. Potential widow's benefits are fully outlined in Appendix I. The added benefits under this proposal are of real value and should constitute a distinct improvement for the judiciary over the present systems.

(11) State's contribution

We are recommending a partial funding approach by which all future liability will be handled on a funded basis with the State contributing an amount which when added to the members' contributions for a period and interest on assets will provide a fund sufficient to meet those liabilities when they mature. Past liabilities incurred under the present unfunded systems will be carried in perpetuity with contributions by the State sufficient to pay interest thereon.

The costs of the new System are spelled out in detail in the consultants' report in Appendix I. They estimate that the State's cost under the new System will be approximately twenty-seven percent of payroll or approximately \$700,000 annually. This estimate represents an increase over present costs under our Judges and Commissioners and County Judges Systems which were estimated to be \$391,300 for fiscal year 1969-1970 in the last Budget Act, but the costs under the present systems are increasing rapidly and will eventually surpass those of the proposed system while the costs of the proposed System should remain relatively constant. It should also be borne in mind that many additional benefits (elimination of social security offset for county judges, new widow's or survivor's benefits, refund of contributions, etc.) are being provided at the same time that financially sound contributions are initiated. We believe that in the long run there will be savings introduced under the funded approach we are recommending and that a more beneficial System will be provided at the least cost to the State.

B. ASSISTANT ATTORNEYS GENERAL AND CLERKS

The Council recommends that assistant attorneys general and Clerks of the Senate and the House of Delegates presently covered by the special systems should retain all rights and obligations as if the systems were to remain in effect. The character of their positions, however, does not warrant the special treatment afforded under the proposed judicial System. It is our recommendation that in the future a person taking the position of assistant attorney general or Clerk be covered under the VSRS with other State employees since they are not logically part of a system for the judiciary.

C. OBLIGATORY RECALL

The services of members of the judiciary who retire prior to age seventy under the new System should be held available, and it is our recommendation that the Chief Justice of the Supreme Court of Appeals have authority to recall such judges for special judicial service. This service should be compensated. Judges recalled to duty should receive a per diem payment which when added to their retirement income will be equal to the pay being received by judges performing comparable duties. A retired judge reaching age seventy should have discretion to reject such recall, but if he accepts assignment he should receive the same per diem pay.

D. LIMITATIONS ON THE PRACTICE OF LAW

Judges who receive retirement benefits under the new System and are, therefore, former full-time judges should be proscribed from practicing law which requires appearances in the courts of the Commonwealth. So long as a substantial

and fair retirement benefit is provided for the judiciary, a condition of the retirement should be an agreement not to practice law before any court of the Commonwealth while beneficiaries of the retirement System. The prestige of judicial office remains with a retired judge who may be still acting as a judge under the proposed obligatory recall provision. Appearances in court should therefore be prohibited. This recommendation does not proscribe such appearances by former part-time judges nor does it proscribe other types of law practice, law teaching and activities. Parallel prohibitions should apply to retired Commissioners.

V. CONCLUSION

It is our intent to provide a comprehensive and fair retirement program for the judiciary of Virginia. We offer our recommendations to the end that Virginia may be assured of a qualified and conscientious judiciary to carry on the work of her courts.

Respectfully submitted,

C. W. CLEATON, *Chairman*

J. C. HUTCHESON, *Vice-Chairman*

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APPENDIX I
VIRGINIA JUDGES RETIREMENT SYSTEMS
REPORT ON ACTUARIAL STUDY OF PROPOSED REVISIONS
JANUARY 1, 1969

Richmond, Virginia 23230
September 10, 1969

Virginia Advisory Legislative Council
State Capitol
Richmond, Virginia 23219

Gentlemen:

RE: Study of Proposed Revisions in
Judges' Retirement Systems

Attached is a report presenting the results of our study of the proposed changes in the Judges' Retirement Systems. The revised retirement program would provide benefits modeled after those under the Virginia Supplemental Retirement System, but with a modification in the credit allowed for service.

In addition to presenting a summary of the provisions of the proposed plan together with estimated costs therefor, there is also included a comparison with other state retirement systems for judges.

We will be pleased to be of such further assistance as may be needed.

Respectfully submitted,

BOWLES, ANDREWS & TOWNE, INC.
By: Kenneth R. Campbell, F.S.A.

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A. INTRODUCTION

Presented in this report are the results of a study made at the request of the Virginia Advisory Legislative Council's Committee Studying Judges' Retirement. The scope of the study as to encompass the following main areas:

1. Preparation of a description of an actuarial cost computations for a unified retirement program for Virginia Judges. Such a program would be similar to the Virginia Supplemental Retirement System, but with a modification in the service credit used for determining retirement benefits; and
2. A comparison of the present and proposed programs with those in effect for judges in other states, with particular emphasis on provisions providing for widows' benefits.

In Section B of this report a description of the proposed program is presented; the estimated cost therefor is given in Chart 5 headed "Summary of Cost Computations," presented in Section F of this report. The computations were based on census data supplied by the Division of Statutory Research and Drafting and salary levels as of January 1, 1969. Comparison of the proposed plan with those in other states is made in Section C.

B. SUMMARY OF PROPOSED PLAN PROVISIONS

The provisions of the plan considered in this study are summarized below. As indicated in several places, it is intended that persons who are participating in any present plan would be protected by grandfather clauses from any increase in contribution rate or any decrease in retirement allowance.

Membership All Virginia judges of courts of record, regional or county juvenile and domestic relations courts and county courts, and members of the State Corporation Commission and the Industrial Commission.

Senate and House Clerks and Assistant Attorneys General currently participating in one of the present systems, but no future appointees, are included, but only for the same benefits to which they are entitled under the present system.

Member Contributions

	<i>Age When Appointed</i>	<i>Contribution Rate</i>
(a) Present participants:	40 or less	2% of earnings
	41 through 55	2½ % of earnings
	56 or over	3% of earnings
(b) New entrants:	any age	5½ % of annual earnings in excess of \$1200.

Normal Retirement Age 65

Delayed Retirement Up to age 70

Early Retirement Age 60 or later

Disability Retirement

- (a) Disability not compensable under Workmen's Compensation Act: After 10 years of weighted service, if member is certified to be permanently and totally disabled.

- (b) Disability compensable under Workmen's Compensation Act:

Same as above but with no service requirement.

Normal or Delayed Retirement Benefit

A yearly benefit, payable monthly, equal to 1⅜% of highest five year average annual earnings in excess of \$1,200 multiplied by weighted years of service, subject to a maximum of 75% of such average earnings in excess of \$1,200.

Note: Weighted years of service equal actual years of service, plus an additional 2½ years for each creditable year of service rendered as a member of this or a previous system.

Minimum Guarantee: An income no less than that provided under the present judges' systems, provided the member would have qualified for retirement under such systems. A proportionately reduced benefit would be guaranteed for members not satisfying the retirement age and service requirements of the present systems.

Early Retirement Benefit

A benefit computed using the normal retirement benefit formula, but with an actuarial reduction based on the difference between early retirement age and age 65 if the member's weighted years of service are under 30.

Minimum Guarantee: A guaranteed benefit similar to that provided in case of normal retirement, but with the full or the proportionately reduced benefit further reduced actuarially from age 65 if the member has less than 30 years of weighted service credit. In no event, however, will the benefit be less than that for which the member may have qualified under the present judges' system.

Disability Retirement Benefit

- (a) Workmen's Compensation Not Applicable:

A benefit computed in a way similar to that for normal retirement, but for members under age 60 at time of disability, the smaller of the following is used instead of the member's weighted years of service at disability retirement:

- a) two times the member's weighted years of service at disability retirement, or
- b) the weighted years of service the member would have had at age 60.

- (b) Workmen's Compensation Applicable:

Same benefit as above, but guaranteed to be not less than excess of two-thirds of highest average earnings over Social Security benefit. Workmen's Compensation payments are deducted.

Minimum Guarantee: An income no less than that provided under the present judges' systems, provided the member would have qualified for disability retirement thereunder.

Optional Benefits

- (a) Straight Life Option: Member receives an increased allowance providing no death benefits.
- (b) Joint and Survivor Option: Member receives a reduced allowance with the same* amount, or half of it—depending on the election made—continued to his surviving designated contingent annuitant.
*Not available in case of disability retirement.
- (c) Social Security Option: In case of early retirement, member may elect to receive an increased allowance before age 65 and a lower one thereafter. This provides a more nearly level retirement allowance when combined with the primary Federal Social Security benefit.

Termination Benefit

- (a) Under Ten Years of Weighted Service: Past member contributions accumulated at 2% interest become payable in a lump sum.
- (b) Ten Years or More of Weighted Service: A deferred income beginning at age 60 or later, based on benefit accrued at time of termination. Actuarial reduction applied if weighted years of service are less than 30 at time of termination and benefit begins before age 65.

Death Benefit before Retirement

Before member qualifies for benefits described below:

Past member contributions accumulated at 2% interest become payable in a lump sum.

If member is under age 65 and

- (a) has attained age 55 and has 30 or more weighted years of service, or
- (b) has attained age 60,

a monthly income is payable to his surviving spouse or parent in the amount that would have been payable had the member retired under the Joint and One Half to Survivor option; benefit is actuarially reduced if member dies before age 60, or if he dies after age 60 with less than 30 years of weighted service credit.

If member is over age 65, the benefit is similar to that described above except the Joint and Full to Survivor option is used.

Note: If the member's death is due to a cause compensable under the Workmen's Compensation Act, the survivor's benefit, when combined with Social Security and Workmen's Compensation payments, is guaranteed to be not less than one-half of the member's final average compensation.

Death Benefit after Retirement

The excess, if any, of the member's accumulated contributions at date of retirement over the total retirement income benefit payments made to him is payable in a lump sum (unless the member elected to receive payment under an optional form).

C. COMPARISON OF PROPOSED VIRGINIA PLAN
WITH OTHER STATE RETIREMENT SYSTEMS FOR JUDGES

1. BASIC RETIREMENT ALLOWANCE

i) *Other States*

A first review of the retirement allowance formulas in other state retirement systems for judges and the requirements imposed by these systems before benefit payments may begin leaves the impression that there is a complete lack of uniformity. Therefore, any comparison with these other systems is difficult, if not impossible, insofar as complete precision is concerned. A further complication is introduced because a number of states have different plans for persons in different branches of judiciary service. However, further analysis tends to bring out a few more or less similar features that may be thought of as characteristic. These are enumerated below.

- (a) The age requirement for benefit payments varies for the most part between ages 60 and 70, with age 65 being the most frequently used single age.
- (b) The service requirement varies mainly between five years and twenty years, with the ten to fifteen year span being most popular.
- (c) The retirement allowance formula itself is expressed in a multitude of ways, but the net effect is not quite so variable as one may think at first. The benefits provided after specified periods of service, expressed as a percentage of salary, exhibit a certain pattern as indicated in the following chart.

NUMBER OF FORMULAS PROVIDING (APPROXIMATELY)
THE INDICATED PERCENTAGE OF SALARY

Years of Service	15%	25%	35%	50%	65%	75%	100%	Other	Total
10	3	6	8	20	7	9	3	3	59
15	1	2	7	24	8	12	3	2	59
20	—	1	7	19	12	13	5	2	59
25	—	—	6	20	12	14	5	2	59
30	—	—	6	18	14	14	5	2	59
35	—	—	5	19	11	17	5	2	59
40	—	—	5	19	11	17	5	2	59
45	—	—	5	19	11	15	7	2	59

As an inspection of the above chart reveals, most of the plans in other states provide a benefit of between 50% and 75% of salary after twenty years of service; the percentage is somewhat lower, on the average, for service of less than 20 years.

The characteristics listed above have to be used cautiously when attempting to draw conclusions from them. For example, even though a plan might provide a benefit equal to 75% of salary, this may not be available unless and until some age or service requirement has been met.

ii) *Proposed Plan for Virginia*

The following Chart 1 indicates the amount of benefit (and the approximate percentage of salary it represents) which the plan considered in this report would provide after specified periods of service and for various salary levels, without taking the effect of the guarantee into account.

Chart 2 shows the plan benefit together with the estimated Social Security benefit and the percentage of salary that this combined income would be.

CHART 1: PLAN BENEFIT RELATED TO SALARY LEVEL

Actual Years of Service	Salary Level									
	\$5,000		\$10,000		\$15,000		\$20,000		\$30,000	
	Plan	%	Plan	%	Plan	%	Plan	%	Plan	%
5	\$ 914	18	\$2,118	21	\$3,321	22	\$4,524	23	\$6,930	23
10	1,829	37	4,235	42	6,641	44	9,048	45	13,860	46
15	2,743	55	6,353	64	9,962	66	13,571	68	20,790	69
16 or more	2,850	57	6,600	66	10,350	69	14,100	71	21,600	72

CHART 2: PLAN BENEFIT PLUS ESTIMATED SOCIAL SECURITY
RELATED TO SALARY

Actual Years of Service	Salary Level									
	\$5,000		\$10,000		\$15,000		\$20,000		\$30,000	
	Plan & S.S.	%	Plan & S.S.	%	Plan & S.S.	%	Plan & S.S.	%	Plan & S.S.	%
5	\$3,044	61	\$4,248	42	\$5,451	36	\$6,654	33	\$9,060	30
10	3,959	79	6,365	64	8,771	58	11,178	56	15,990	53
15	4,873	97	8,483	85	12,092	81	15,701	79	22,920	76
16 or more	4,980	100	8,730	87	12,480	83	16,230	81	23,730	79

2. MEMBER CONTRIBUTIONS

i) *Other States*

The majority of the plans operating in other states require that members contribute to the costs of the benefits provided; about a dozen plans are non-contributory. The following table gives an indication of the magnitude of the contributions as a percentage of salary.

Percentage of Salary	Number of Plans Requiring Indicated Contribution Rate
3%	2
4	7
5	7
6	10
7	5
8	3

Here, also, some caution must be exercised in interpreting this information; a few states place a maximum dollar limitation on the actual contribution or on the salary subject to contributions.

ii) *Proposed Plan for Virginia*

For persons entering the judges' system in the future, the plan would involve contributions equal to 5½% of annual salary in excess of \$1200. Present plan members would continue to contribute at the same rate as they have in the past.

3. DISABILITY RETIREMENT ALLOWANCE

i) *Other States*

Most of the systems in other states provide retirement allowances in the event of disability. Here, also, the qualification requirements for benefits show much variation, but 17 states require 10 or more years of service; 6 additional states

require 5 to 10 years of service. A few impose an age requirement either by itself or in conjunction with the service requirement.

The benefits provided also vary considerably, but the most prevalent approach is to allow from 50% to 100% of the service retirement allowance, with a slight preference toward the 100% amount.

ii) *Proposed Plan for Virginia*

The disability allowance proposed for Virginia was designed to complement the service retirement allowance; the eligibility requirements for benefits compare favorably with those imposed in other state systems. The chart below illustrates the benefit provided for disability not compensable under the Virginia Workmen's Compensation Act.

CHART 3: ILLUSTRATIVE DISABILITY BENEFITS
RELATED TO SALARY LEVEL

Age at Disability	Salary Level									
	\$5,000 Plan		\$10,000 Plan		\$15,000 Plan		\$20,000 Plan		\$30,000 Plan	
	Age at Appointment: 30									
40	\$2,850	57	\$6,600	66	\$10,350	69	\$14,100	71	\$21,600	72
50	2,850	57	6,600	66	10,350	69	14,100	71	21,600	72
60	2,850	57	6,600	66	10,350	69	14,100	71	21,600	72
	Age at Appointment: 40									
50	\$2,850	57	\$6,600	66	\$10,350	69	\$14,100	71	\$21,600	72
60	2,850	57	6,600	66	10,350	69	14,100	71	21,600	72
	Age at Appointment: 50									
60	\$1,829	37	\$4,235	42	\$ 6,641	44	\$ 9,048	45	\$13,860	46

4. SURVIVORS OR WIDOWS BENEFITS

i) *Other States*

The benefits provided under other state retirement systems for judges to widows or other survivors of deceased members of the judiciary system are so varied as to defy any meaningful categorization. However, a summary of the various types of benefits provided may be helpful; it follows:

- a) Return of member contributions
- b) Continuation of a percentage of the member's salary
- c) Payment of a percentage of the service retirement allowance that was being paid to the member or that he would have received had he elected to retire
- d) Payment under a survivorship annuity elected by the member and "purchased" by a reduction in the member's income during his lifetime
- e) Payment of a flat dollar amount of income per year
- f) No benefit provided

Many of the plans provide that benefits cease if the widow remarries; many require that the judge, at time of death, must have been retired or eligible for retirement. A number of plans also have specifications as to the period of time

the widow was married to the judge, and a number have certain age or service requirements or both, with respect to either the judge or his widow—or both. A few plans terminate the benefit when the judge's term of office would have expired had he survived.

ii) *Proposed Plan for Virginia*

The survivors benefit proposed for Virginia has been designed, as in the case of the disability retirement allowance provision, to complement the basic service retirement allowance. Also, the proposed eligibility requirements for benefits compare favorably with those of other state systems. The following chart illustrates the benefits that would be provided, assuming the widow is four years younger than the member.

CHART 4: ILLUSTRATIVE SURVIVOR'S BENEFITS RELATED TO SALARY LEVEL

	Salary Level									
	\$5,000		\$10,000		\$15,000		\$20,000		\$30,000	
Age at Death	Plan	%	Plan	%	Plan	%	Plan	%	Plan	%
Age at Appointment: 30										
55	\$1,721	34	\$3,985	40	\$6,249	42	\$8,513	43	\$13,040	43
60	2,413	48	5,588	56	8,762	58	11,937	60	18,287	61
Age at Appointment: 40										
55	\$1,656	33	\$3,835	38	\$6,014	40	\$8,193	41	\$12,551	42
60	2,413	48	5,588	56	8,762	58	11,937	60	18,287	61
Age at Appointment: 50										
60	\$1,548	31	\$3,585	36	\$5,622	37	\$7,660	38	\$11,734	39

D. NATURE OF RETIREMENT PLAN COSTS

The actual dollar costs of any retirement plan must depend, in the long run, on actual experience as it unfolds. The total cost may be thought of as:

- (a) Benefits actually paid out
- minus
- (b) Investment earnings on accumulated funds, less the expense of administration.

It is the actuary's job to estimate these items in advance and to determine the contributions that should be made each year which, together with net investment earnings, will build up a fund sufficient to meet all benefit payments as they fall due. To do this the actuary must make assumptions regarding many aspects of future experience; some of these are noted in the following section. It should be kept in mind, however, that the actuarial cost estimates are just that—estimates of the technically "correct" contributions that should be made to the fund each year. Only actual unfolding experience can determine, retrospectively, whether previous contributions were "too high" or "too low." If they were too high, subsequent contributions may be reduced; if they were too low, subsequent contributions will have to be increased to maintain the desired incidence of building the fund.

E. SUMMARY OF VALUATION BASES

With the exception of the assumed age at retirement, the actuarial assumptions used for the current study were the same as those used in the previous studies, and were as follows:

Interest	3½ % per annum
Mortality	1951 Group Annuity Table with ages set back one year
Turnover	No provision
Salary Increases	No provision
Disability	Rates considered appropriate for this group
Retirement Age	Age 70 or the attained age, if greater. (In general, this assumed age is slightly lower than that used for the September 1967 study.)
Funding Method	Entry age normal cost with separate accrued liability.

F. SUMMARY OF COST COMPUTATIONS

1. *Funding Method*

Under the funding method used for the Virginia Supplemental Retirement System, no separate liability is determined for the benefits accrued in the past. Instead, a single aggregate cost is determined which consists of the normal cost and an indeterminate amount needed to fund a portion of the past service liability that would have resulted had the past and future service costs been separated. The aggregate cost obtained is then expressed as a percentage of participating payroll. For the proposed judges' system, however, it is suggested that the entry age normal cost funding method be adopted under which a separate past service liability for accrued benefits would be established. The minimum yearly cost would be the normal cost under this funding method plus a year's interest on the initial past service liability. Additional past service liability payments could be made at any time to reduce the initial liability. This funding method permits a greater degree of flexibility in the size of the annual plan costs than does the aggregate cost method.

2. *Results of Cost Computations*

The first year State entry age normal cost under the proposed system is presented in Chart 5 at the end of this section.

No breakdown of costs to show the portions allocable to members of the present three funds has been given since it is proposed that all members would be covered under a single system.

3. *Level of Future Costs*

Under the entry age normal cost method suggested, the normal cost as a percentage of payroll should tend to remain level except as actuarial gains or losses affect it. In the absence of gains or losses, the initial, accrued liability would not increase if the interest is paid each year, but it would not decrease unless payments in excess of the interest are made to amortize it.

CHART 5: SUMMARY OF COST COMPUTATIONS

(Current Assets Assumed to be Nil)

A. INITIAL ACCRUED LIABILITY

1. Value of Future Allowances to		
a) Retired Members	\$2,693,459	
b) Non-retired Members	8,290,597	\$10,984,056
2. Value of Members' Future Contributions		
Net of Refunds		453,930

3. Value of State's Future Normal Costs	\$2,802,442
4. Initial Accrued Liability, (1)-(2)-(3)	7,727,684
B. ANNUAL STATE COST	
1. Basic Entry Age Normal Cost	\$ 322,375
2. Term Costs for Disability Allowances and Survivors Benefits	117,000
3. Total Normal Cost, (1) + (2)	439,375
4. Total Normal Cost as a Percentage of Total Payroll of \$2,582,700	17.0%
5. Annual Interest on Initial Accrued Liability, $3\frac{1}{2}\% \times A(4)$	\$ 270,469
6. Total Annual State Cost	709,844
7. Total Annual State Cost as a Percentage of Total Payroll of \$2,582,700	27.5%
C. ANNUAL MEMBER CONTRIBUTIONS	\$ 53,900

APPENDIX II

A BILL

To amend and reenact § 51-111.10, as amended, of the Code of Virginia, relating to definitions under the Virginia Supplemental Retirement Act; to amend the Code of Virginia by adding a chapter numbered 7 in Title 51, consisting of sections numbered 51-160 through 51-176, establishing a new Judicial Retirement System; and to repeal, with certain provisos, Chapters 2, 2.1 and 2.2 of Title 51 of the Code of Virginia, consisting of §§ 51-3 through 51-29.19, as severally amended, relating to the Judges' and Commissioners', Clerks of the State Senate and House of Delegates and Trial Justices' Retirement Funds.

Be it enacted by the General Assembly of Virginia:

1. That § 51-111.10, as amended, of the Code of Virginia, be amended and reenacted; and that the Code of Virginia be amended by adding a chapter numbered 7 in Title 51 consisting of sections numbered 51-160 through 51-176; as follows:

§ **51-111.10. Definitions.**—As used in this chapter unless a different meaning is plainly required by the context:

(1) “*Retirement system*” means the Virginia Supplemental Retirement System provided for in § 51-111.11;

(2) “*Board*” means the board of trustees as provided by § 51-111.17;

(3) “*Medical board*” means the board of physicians as provided by § 51-111.26;

(4) “*Teacher*” means any person who is regularly employed on a salary basis as a professional or clerical employee of a county, city or other local public school board or of a corporation participating in the retirement system as provided by article 4.1 (§ 51-111.38:1 et seq.);

(5) “*State employee*” means any person who is regularly employed full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, not oftener than semi-monthly, in whole or in part, by the Commonwealth or any department, institution or agency thereof, including, without limitation, * clerks and employees of regional juvenile and domestic relations courts, except (a) an officer elected by popular vote or, with the exception of the Auditor of Public Accounts, *the Clerks of the State Senate and House of Delegates elected initially after July one, nineteen hundred seventy*, and the Director of the Division of Statutory Research and Drafting, by the General Assembly or either House thereof, (b) a judge of a county court, county or city treasurer, commissioner of the revenue, Commonwealth's attorney, clerk, sheriff, sergeant or constable and, with the exception of employees of county courts, a deputy or employee of any such officer, (c) any employee of a political subdivision of the Commonwealth, and (d) a State police officer of the Department of State Police;

(6) “*Employee*” means any teacher, State employee, officer or employee of a locality participating in the retirement system as provided in article 4 (§ 51-111.31 et seq.), or any employee of a corporation participating in the retirement system as provided in article 4.1 (§ 51-111.38:1 et seq.) or any civilian employee of the army or air national guard participating in the retirement system as provided in article 4.2 (§ 51-111.38:10 et seq.);

(7) “*Employer*” means Commonwealth, in the case of a State employee, the local public school board in the case of a public school teacher, or the locality, or corporation or army or air national guard participating in the retirement system as provided in articles 4 (§ 51-111.31 et seq.), 4.1 (§ 51-111.38:1 et seq.) and 4.2 (§ 51-111.38:10 et seq.);

(8) “*Member*” means any person included in the membership of the retirement system as provided in this chapter;

(9) “*Service*” means service as an employee;

(10) “*Prior service*” means service as an employee rendered prior to the date of establishment of the retirement system for which credit is allowable under §§ 51-111.39 to 51-111.41:1, 51-111.63 and 51-111.64 or service as an employee for such periods as provided in §§ 51-111.32 and 51-111.38:11;

(11) “*Membership service*” means service as an employee rendered while a contributing member of the retirement system except as provided in §§ 51-111.41:1, 51-111.45, 51-111.57, 51-111.63 and 51-111.64;

(12) “*Creditable service*” means prior service plus membership service for which credit is allowable under this chapter;

(13) “*Beneficiary*” means any person entitled to receive benefits under this chapter;

(14) “*Accumulated contributions*” means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members’ contribution account, together with interest credited on such amounts and also any other amounts he shall have contributed or transferred thereto including interest credited thereon as provided in §§ 51-111.41:1 and 51-111.49;

(15) “*Creditable compensation*” means the full compensation payable to an employee working the full working time for his covered position which is in excess of twelve hundred dollars per annum; in cases where compensation includes maintenance or other prerequisites, the Board shall fix the value of that part of the compensation not paid in money;

(16) “*Average final compensation*” means the average annual creditable compensation of a member during his five highest consecutive years of creditable service or during the entire period of his creditable service if less than five years;

(17) “*Retirement allowance*” means the retirement payments to which a member is entitled as provided in this chapter;

(18) “*Actuarial equivalent*” means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board;

(19) “*Normal retirement date*” means a member’s sixty-fifth birthday; and

(20) “*Abolished system*” means the Virginia Retirement Act, §§ 51-30 to 51-111, repealed by chapter 1 of the Acts of Assembly of 1952 as of February one, nineteen hundred fifty-two.

CHAPTER 7

JUDICIAL RETIREMENT SYSTEM

§ 51-160. *Judicial retirement system created; administration; application of Virginia Supplemental Retirement Act.—(a) This Chapter creates a retirement system (hereinafter referred to as “System”) for the judiciary of the Commonwealth.*

(b) *The provisions of this Chapter shall be administered by the Board of Trustees of the Virginia Supplemental Retirement System. Except as otherwise provided in this Chapter, the provisions of the Virginia Supplemental Retirement Act are applicable and shall apply to and govern the administration of the System established hereby.*

§ 51-161. *Definitions.—As used in this Chapter unless a different meaning is plainly required by the context:*

(1) *“Board” means the Board of Trustees as provided by § 51-111.17;*

(2) *“Medical Board” means the board of physicians as provided by § 51-111.26;*

(3) *“Judge” means any justice or judge of a court of record of the Commonwealth, any member of the State Corporation Commission or Industrial Commission, and any judge of a regional juvenile and domestic relations, county, or county juvenile and domestic relations court of the Commonwealth;*

(4) *“Member” means any person included in the membership of the System as provided in this Chapter;*

(5) *“Service” means service as a judge;*

(6) *“Prior service” means service rendered prior to July one, nineteen hundred seventy, for which credit is available under § 51-163;*

(7) *“Membership service” means service rendered while a contributing member of the System.*

(8) *“Creditable service” means prior service plus membership service, as further defined in and modified by § 51-163, for which credit is allowable under this Chapter;*

(9) *“Beneficiary” means any person entitled to receive benefits under this Chapter;*

(10) *“Accumulated contributions” means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members’ contribution account, together with interest credited on such amounts as provided in § 51-111.49;*

(11) *“Creditable compensation” means the full compensation payable by the State to a judge for his covered position which is in excess of twelve hundred dollars per annum;*

(12) *“Average final compensation” means the average annual creditable compensation of a member during his five highest consecutive years of actual service which may be considered under subsections (a), (b) or (e) of § 51-163 for purposes of determining creditable service or during the entire period of such actual service if less than five years;*

(13) *“Retirement allowance” means the retirement payments to which a member is entitled as provided in this Chapter;*

(14) *“Actuarial equivalent” means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board;*

(15) *“Normal retirement date” means a member’s sixty-fifth birthday;*

(16) *“Previous systems” means the systems established under the provisions of Chapters 2 and 2.2 of Title 51 of the Code of Virginia, and, in the case of judges of regional juvenile and domestic relations courts, the Virginia Supplemental Retirement System; and*

(17) "Appointing authority" means the Governor in the case of a justice or judge of a court of record and a Commissioner of the State Corporation Commission or Industrial Commission, or the judges authorized to make such appointment in the case of a judge of a regional juvenile and domestic relations, county or county juvenile and domestic relations court.

§ 51-162. *Membership in System.*—(a) Membership in the System shall consist of (i) all persons who become judges or reenter service as judges on or after July one, nineteen hundred seventy, (ii) all judges who, immediately prior to July one, nineteen hundred seventy, are in service and members of the previous systems, and (iii) all judges who, immediately prior to July one, nineteen hundred seventy, are in service but not members of the previous systems and who elect to become members by filing written notice of such election with the Board prior to October one, nineteen hundred seventy.

(b) The membership of any person in the System shall cease (i) upon the withdrawal of his accumulated contributions or (ii) upon retirement, or (iii) upon death.

§ 51-163. *Creditable service.*—(a) Prior service for judges who were previous system members. Any member in service prior to July one, nineteen hundred seventy, shall be credited with all prior service rendered as a judge or trial justice, if he was a member of any one of the previous systems immediately prior to July one, nineteen hundred seventy.

(b) *Membership service.* Membership service shall be creditable service.

(c) *Weighted years of service.* The service defined in subsections (a) and (b) of this section shall be multiplied by a factor of three and one-half, the weighted years of service factor, to calculate years of creditable service.

(d) *Service of members of armed forces.* Any member who, after July one, nineteen hundred seventy, enters the armed forces of the United States on leave of absence from service, and who does not withdraw his accumulated contributions, shall be entitled to have included as creditable service his period of service in such armed forces provided his discharge therefrom is not dishonorable and he reenters service within one year after discharge. Any member of one of the previous systems immediately prior to July one, nineteen hundred seventy, who on leave of absence from service, entered the armed forces of the United States, shall be entitled to have included as creditable service his period of service in such armed forces provided his discharge therefrom was not dishonorable and he reentered service within one year after discharge.

(e) *Transfer from Virginia Supplemental Retirement System.* Service qualifying for credit under the provisions of the Virginia Supplemental Retirement Act shall be included as creditable service for the purposes of this Chapter, provided the requirements as set forth in that Act for crediting such service thereunder have been complied with by the member and any contributions or payment required thereunder transferred to the members' contribution account under this System.

(f) *Transfer to Virginia Supplemental Retirement System.* If after ceasing to be employed as a judge, provided he has not been paid his accumulated contributions, the member accepts employment in a position not covered by this Chapter but covered under the Virginia Supplemental Retirement Act, he shall be entitled to credit for his previous creditable service under this Chapter and his accumulated contributions shall be transferred to the members' contribution account in the Virginia Supplemental Retirement System. In such cases, future retirement rights shall be as set forth in the Virginia Supplemental Retirement Act.

§ 51-164. *Contributions of members.*—(a) Each member shall contribute for each pay period for which he receives compensation five and one-half per

centum of his creditable compensation, except as provided in subsection (b) of this section.

(b) Each member who immediately prior to July one, nineteen hundred seventy, was a member of any of the previous systems shall contribute for each pay period for which he receives compensation an amount equal to the percentage rate at which he was contributing under the previous system times the sum of his creditable compensation for the pay period and the proportion of twelve hundred dollars per year represented by the pay period, if such amount is less than that required under subsection (a) of this section.

(c) The members' contributions provided for herein shall be deducted and paid as provided in subsections (b), (c), (d), (e) and (g) of § 51-111.46.

§ 51-165. Contributions by State.—(a) The State shall contribute annually an amount equal to the sum of the "normal contribution" and an "accrued liability contribution".

(b) The normal contribution for any period shall be determined as a percentage, equal to the normal contribution rate, of the total compensation of the members in such period, reduced by an amount calculated to be equal to the estimated excess, if any, of the net investment income during such period on the assets of the System over the amount of net investment income thereon assumed in the computation of the normal contribution rate.

(c) The normal contribution rate shall be determined as the percentage represented by the ratio of (i) the annual normal cost to provide the benefits of the System, computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board, in excess of the part thereof provided by the members' contributions, to (ii) the annual total compensation of the members of the System.

(d) The accrued liability contribution for any period shall be determined on an annual basis as a percentage, not less than the rate of net investment income assumed in the computation of the normal contribution rate, of the unfunded accrued liability under the System as of the commencement of such period.

(e) The unfunded accrued liability under the System as of any date shall be determined, in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board, as the excess of (i) the then present value of the benefits to be provided under the System in the future over (ii) the sum of the assets of the System then currently on hand in the members' contribution account and the retirement allowance account, plus the then present value of the stipulated contributions to be made in the future by the members, plus the then present value of the normal contributions expected to be made in the future by the State.

(f) The State's contribution shall be determined and paid as provided in subsections (c), (d), (e), (f) and (g) of § 51-111.47 and in such other provisions of the Virginia Supplemental Retirement Act as may be applicable to employer contributions.

§ 51-166. Assets of System.—(a) The provisions of §§ 51-111.48, 51-111.49, 51-111.50, 51-111.51 and 51-111.52 shall be applicable to the assets of the System.

(b) The Board shall be the trustee of the funds of the System, and the appropriate provisions of §§ 51-111.22 and 51-111.24 shall apply. The Board shall maintain the assets of the System, for all intents and purposes, in separate funds from the assets of other systems administered by it.

§ 51-167. *Service retirement.*—(a) *Mandatory retirement.* Any member who attains seventy years of age shall be retired forthwith; provided, however, that any member who was a judge immediately prior to July one, nineteen hundred seventy, may serve as long as he would have been permitted under the law in effect immediately prior to July one, nineteen hundred seventy.

(b) *Normal retirement.* Any member in service at his normal retirement date may retire at any time then or thereafter and prior to his mandatory retirement age on written notification to the Board, made by the member setting forth at what time the retirement is to become effective, provided that such effective date shall be after his last day of service but not more than ninety days prior to or subsequent to the filing of such notice.

(c) *Early retirement.* Any member in service (i) on or after his sixtieth birthday or (ii) at the time he has complied with the requirements for retirement set forth under the provisions in effect immediately prior to July one, nineteen hundred seventy, governing any of the previous systems of which he was a member immediately prior to such date and (iii) in either case prior to his normal retirement date, may retire upon written notification to the Board, made by the member setting forth at what time the retirement is to become effective, provided that such effective date shall be after his last day of service and after the filing of such notice but shall not be more than ninety days subsequent to the filing of such notice.

(d) *Deferred retirement for members terminating service.* Any member terminating service on or after July one, nineteen hundred seventy, after five or more years of creditable service, may retire under the provisions of subsections (b) or (c) above, provided that he shall not have withdrawn his accumulated contributions prior to the effective date of his retirement, and except that any requirements as to the member being in service shall not apply; provided further, however, that no member shall be entitled to the benefits of this subsection if his appointing authority certifies that his service was terminated because of dishonesty, malfeasance or misfeasance in office; such certification may be appealed to the Board, and its decision shall be final.

§ 51-168. *Service retirement allowance.*—(a) *Retirement allowance.* Upon retirement as provided in § 51-167, on or after July one, nineteen hundred seventy, a member shall receive an annual retirement allowance, payable monthly to him for life determined in accordance with paragraph (i) or (ii), whichever is applicable:

(i) *Normal retirement under § 51-167 (b).* An amount, not to exceed seventy-five per centum of his average final compensation, equal to one and one-half per centum of his average final compensation multiplied by his number of years of creditable service, subject, however, to the provisions of subsection (b) of this section.

(ii) *Early retirement under § 51-167 (c).* An amount, not to exceed seventy-five per centum of his average final compensation, which shall be determined in the same manner as for retirement at his normal retirement date, with years of creditable service and average final compensation being determined as of the date of his actual retirement, and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date; provided further that the retirement allowance of a member retiring on or after his sixtieth birthday and with at least thirty years of creditable service shall not be so reduced.

(b) *Normal and early retirement guarantees.* Any member who was a member of one of the previous systems immediately prior to July one, nineteen hundred seventy, and who would have been eligible for retirement benefits thereunder as of the date of his actual retirement under subsections (b) or (c) of § 51-167

if he had continued to participate therein, shall be guaranteed a minimum retirement allowance no less than that for which he would have qualified thereunder as of such date.

Any member who was a member of one of the previous systems immediately prior to July one, nineteen hundred seventy, and who would not have been eligible for retirement benefits thereunder as of the date of his actual retirement under subsections (b) or (c) of § 51-167 if he had continued to participate therein, shall be guaranteed a minimum retirement allowance proportionately reduced from that to which he would have been entitled thereunder if he had qualified as of such date by the proportion of actual years of service as of retirement under subsections (b) or (c) of § 51-167 to the required years of service thereunder.

The guarantees provided in this subsection for members retiring under subsection (c) of § 51-167 shall, however be reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date; provided that the retirement allowance of a member retiring on or after his sixtieth birthday and with at least thirty years of creditable service shall not be so reduced.

(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 as provided in § 51-171 is elected.

§ 51-169. Disability retirement generally.—(a) Any member in service or within ninety days after termination of service who has ten or more years creditable service may, at any time before his normal retirement date, retire on account of disability not compensable under the Virginia Workmen's Compensation Act upon written notification to the Board, given by the member or his appointing authority, setting forth at what date the retirement is to become effective; provided that such effective date shall be after his last day of service but shall not be more than ninety days prior to the filing of such notification; provided further that the Medical Board, after a medical examination of the member requesting disability retirement, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such notification, mentally or physically incapacitated for the further performance of duty and that such incapacity is likely to be permanent and that such member should be retired.

(b) Any member in service or within ninety days after termination of service may, at any time before his normal retirement date, retire on account of disability from a cause compensable under the Virginia Workmen's Compensation Act, upon written notification to the Board, made by the member or his appointing authority, setting forth at what date the retirement is to become effective; provided, that such effective date shall be after his last day of service, but shall not be more than ninety days prior to the filing of such notification; provided further that the Medical Board, after a medical examination of the member requesting disability retirement, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such notification, mentally or physically incapacitated for the further performance of duty and that such incapacity is likely to be permanent and that such member should be retired.

(c) In the event no compensation is finally awarded under the Virginia Workmen's Compensation Act with respect to the disability of a member, due to legal proceedings or otherwise resulting in settlement from the person, or persons causing such disability, the Virginia Industrial Commission, upon request of the Board, shall for the purpose of this section determine whether such member's disability was from a cause compensable under the Virginia Workmen's Compensation Act.

§ 51-170. Disability retirement allowance.—(a) Allowance payable on retirement. Upon retirement as provided in § 51-169 on or after July one, nineteen

hundred seventy, a member shall receive an annual retirement allowance, not to exceed seventy-five per centum of his average final compensation, payable monthly during his lifetime and continued disability equal to one and one-half per centum of his average final compensation multiplied by the smaller of:

(i) Twice the number of his years of creditable service; or

(ii) The number of years of creditable service he would have completed at age sixty, if he had remained in service to that age; subject, however, to the provisions of subsections (b) and (c) of this section.

(b) *Minimum disability retirement allowance.* Notwithstanding the provisions of subsection (a) of this section, the amount of annual retirement allowance as determined under this section shall, effective six months after retirement date and subject to the provisions of subsection (d) of this section, be at least an amount which when added to the primary social security benefits to which the member may become entitled under the federal Social Security Act in effect at his retirement date would equal twenty-five per centum of average final compensation.

(c) *Special disability retirement guarantee.* Notwithstanding the provisions of subsection (a) of this section, if a member retires for disability under the provisions of subsection (b) of § 51-169, the amount of annual retirement allowance as determined under this section shall, subject to the provisions of subsections (e) and (f) of this section be at least an amount which when added to the primary social security benefits to which the member may become entitled under the federal Social Security Act in effect at his retirement date would equal two-thirds of the sum of the member's average final compensation plus twelve hundred dollars.

(d) *General disability retirement guarantee.* The disability retirement allowance payable to a member who immediately prior to July one, nineteen hundred seventy, 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.

(e) *Determination of retirement allowance.* For the purposes 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.

(f) *Reduction of allowance.* Any allowance payable to a member under this section shall be reduced by the amount of any payments under the Virginia Workmen's Compensation Act and the excess of the allowance, if any, shall be paid to such member. When the time for payments of the compensation under such Act has elapsed, the member shall thereafter receive the full amount of such allowance payable monthly during his lifetime and continued disability.

(g) *Payment.* The payment of any disability allowance hereunder shall be subject to the provisions of §§ 51-111.61, 51-111.62 and 51-111.63 to the extent applicable.

§ 51-171. *Optional benefits.*—Each member shall have the right to elect to have his retirement allowance payable under an actuarially equivalent option as provided in § 51-111.60.

§ 51-172. *Withdrawal before retirement.*—(a) If a member has ceased to be a judge otherwise than by death or by retirement under the provisions of this Chapter, he shall be paid, on demand or as soon thereafter as practicable, but not later than ninety days after demand, the amount of his accumulated contributions reduced by the amount of any retirement allowances previously received by him under any of the provisions of this Chapter.

(b) Notwithstanding any provision in subsection (a) above to the contrary, a member who retires under the provisions of subsection (b) of § 51-169 shall be refunded the amount of his accumulated contributions.

§ 51-173. *Death before retirement.*—(a) *Should a member die at any time before retirement, and if no benefits are payable under subsection (b) of this section, the amount of his accumulated contributions, reduced by the amount of any retirement allowance previously received by him under this Chapter, shall be paid to such person, if any, as he has nominated by written designation signed and acknowledged by such member before some person authorized to take acknowledgements and filed with the Board, otherwise to his executors or administrators. Any such designation may be changed by the member by written designation of some other person, signed, acknowledged, and filed as aforesaid.*

(b) *Should a member die in service at any time before retirement and after either attaining his fifty-fifth birthday and completing at least thirty years of creditable service or attaining his sixtieth birthday and if no benefits are payable under subsection (c) of this section, there shall be paid a retirement allowance to the person nominated as provided in subsection (a) of this section, if such person is the wife, husband, mother or father of the member; such retirement allowance shall be continued during the lifetime of such person and shall be, (1) in the case of a member who dies prior to attaining his sixty-fifth birthday, an allowance equal to one half of the decreased retirement allowance that would have been payable to the member had the member retired under the provisions of subsection (c) of § 51-167 on the date of his death after having elected to have his allowance payable under the joint and last survivor option described in subsection (a) (2) of § 51-111.60 so that one half thereof would be continued after his death to such person, assuming, in the case of a member who had not attained his sixtieth birthday at his date of death, that the requirement of having attained his sixtieth birthday was not included in the provisions of subsection (c) of § 51-167 and that the retirement allowance payable in such event would be reduced on an actuarial equivalent basis for the period by which the date of death preceded the date the member would have attained his sixtieth birthday; or, (2) in the case of a member who dies after attaining his sixty-fifth birthday, an allowance equal to the decreased retirement allowance that would have been payable to the member had the member retired under the provisions of subsection (b) of § 51-167 on the date of his death after having elected to have his allowance payable under the joint and last survivor option described in subsection (a) (2) of § 51-111.60 so that the same amount would be continued after his death to such person. Provided that in the determination of the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subsection (b) of § 51-168 shall not apply, and provided further, that if such person so elects in writing, duly acknowledged, the amount of the member's accumulated contributions, reduced by the amount of any retirement allowance previously received by him under this Chapter, shall be paid to such person, in lieu of any other benefits under this subsection.*

(c) *Should a member die in service at any time before retirement from a cause compensable under the Virginia Workmen's Compensation Act, an annual retirement allowance shall be paid to the widow or widower, if any, of such member. In the event no compensation is finally awarded under the Virginia Workmen's Compensation Act with respect to the death of a member due to legal proceedings or otherwise resulting in settlement from the person or persons causing such death, the Virginia Industrial Commission, upon request of the Board, shall for the purpose of this section determine whether such member's death was from a cause compensable under the Virginia Workmen's Compensation Act. If such member leaves no widow or widower or the widow or widower dies or remarries, then the child or children under the age of eighteen years, if any, of the deceased member, shall be paid an allowance until such child or children die or attain the age of eighteen years, whichever shall first occur. If more than one child survives the deceased member, the allowance shall be divided among them in such manner as the Board may determine. If the deceased member leaves neither widow, widower nor child or children under the age of eighteen years, then such allowance*

shall be paid to the member's parent or parents wholly dependent upon him for support, divided in such manner as the Board may determine, during the life or lives of such parent or parents.

The retirement allowance payable hereunder to a qualifying survivor or survivors, shall be the annual amount, payable monthly, which when added to the social security benefit payable to such qualifying survivor or survivors as result of coverage of the member under the federal Social Security Act and the compensation payable under the Virginia Workmen's Compensation Act for the death of the member, shall be equal to one-half of the sum of the member's average final compensation plus twelve hundred dollars.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to such allowance by written notification to the Board within ninety days after the death of such member in order to make available a retirement allowance under the provisions of subsection (b) of this section.

§ 51-174. *Death after retirement.*—If a member dies after the effective date of his retirement under this Chapter, the excess, if any, of his accumulated contributions as of the effective date of his retirement, over the total retirement allowances received by him shall be paid in the same manner as provided in subsection (a) of § 51-173 in the case of death before retirement unless the retirement allowance is then being paid in accordance with any of the options of § 51-111.60.

§ 51-175. *Group insurance benefits.*—The members of the System, through coverage under the group insurance contract or contracts provided for in § 51-111.67:1 are eligible for the insurance benefits described in § 51-111.67:4, subject to the employee contributions provided for in §§ 51-111.67:5 and 51-111.67:6 and the other applicable provisions of Article 9 (§ 51-111.67:1 et seq.) of Chapter 3.2.

§ 51-176. *Participation by city court not of record judges.*—Any judge of a city court not of record of the Commonwealth shall be eligible to participate in the System and he may become a member if (i) he files written notice with the Board that he elects to become a member and (ii) the city council of the city of his court files with the Board a certified copy of a legally adopted resolution providing that the city agrees to pay the employer or State costs attributable to such judge as provided in this section.

Membership of such a judge shall commence as soon as both his notice of election and the copy of the ordinance are filed with the Board and shall continue until terminated as provided elsewhere in this Chapter.

Any judge becoming a member as provided in this section shall be entitled to the benefits of the System as set forth in this Chapter, provided that in applying the Chapter to him (i) "judge" shall include a judge of a city court not of record, (ii) "creditable compensation" shall mean the full compensation payable by the city to the judge which is in excess of twelve hundred dollars per annum, and (iii) "appointing authority" shall mean the city council of the city of his court.

The provisions of §§ 51-111.35, 51-111.36, 51-111.37 and 51-111.38 shall be applicable for the purposes of this section with respect to the duties of the fiscal officer of the city, the computation of the city's rate and method of contribution, the liability of the System for benefits, the irrevocability of the city's agreement to pay employer costs and procedures in case of default by the city.

2. Chapters 2, 2.1 and 2.2 of Title 51 of the Code of Virginia, consisting of §§51-3 through 51-29.19, as severally amended, are repealed.

The repeal of Chapters 2, 2.1 and 2.2 of Title 51 of the Code of Virginia, as stated above, is subject to the following provisos:

(a) Any assistant Attorney General or Clerk of the State Senate or House of Delegates who is a participant in the Judges' and Commissioners' or Clerks of the State Senate and House of Delegates Retirement Funds immediately prior to July one, nineteen hundred seventy, shall retain all rights and obligations thereunder and be entitled to complete service and retire with full benefits for himself and his beneficiaries thereunder as if Chapters 2 and 2.1 of Title 51 of the Code of Virginia were to remain fully in force and effect.

(b) Any person retired for service under Chapters 2, 2.1 or 2.2 and receiving or entitled to receive benefits thereunder prior to their repeal, shall continue to receive the same or shall continue to be entitled to receive the same to the same extent and in the same manner as if such Chapters had not been repealed. If any such person shall have elected to take his retirement benefit under one of the options of such Chapters his beneficiary shall, upon the death of the retirant, receive such amount as was provided under such Chapters.

(c) Any beneficiary receiving an allowance as a result of an election made by a person retiring under such Chapters shall continue to receive such allowance as such Chapters provided.

(d) Any person retired for disability under such Chapters and receiving benefits or entitled to receive benefits thereunder prior to their repeal, shall, so long as he continues to meet the tests therefor prescribed in such Chapters, continue to receive the same or shall continue to be entitled to receive the same to the extent and in the same manner as if such Chapters had not been repealed. At such time as he shall cease to meet such requirements his benefits shall cease and as to him the Chapters shall have no further application. If any person retired for disability under such Chapters and receiving benefits thereunder prior to their repeal shall have elected to take his retirement benefit under one of the options of such Chapters, his beneficiary shall, upon the death of the retirant, receive such amount as was provided under such Chapters.

(e) The contributions of persons covered by proviso (a) above shall be credited to the retirement allowance account established for purposes of Chapter 7 of Title 51 of the Code of Virginia.

(f) The Board of Trustees of the Virginia Supplemental Retirement System and the Director thereof are directed to provide for the payment of vested rights and those rights preserved by these provisos under such Chapters so long as may be necessary out of the retirement allowance account created for the purposes of Chapter 7 of Title 51 of the Code of Virginia. Liabilities preserved or incurred by reason of these provisos shall be taken into consideration for the purpose of calculating State contributions under § 51-165 of Chapter 7 of Title 51 of the Code of Virginia.

3. This act shall be in force and effect on and after July one, nineteen hundred seventy.

A BILL

To provide for the temporary recall and assignment to duties of certain retired justices, judges and commissioners.

Be it enacted by the General Assembly of Virginia:

1. § 1. (a) *Recall for court of record duties.* The Chief Justice of the Supreme Court of Appeals may call upon and authorize any justice or judge of a court of record who is retired under the provisions of Chapter 7 of Title 51 of the Code of Virginia to perform for a period 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) *Recall for court not of record duties.* The Chief Justice of the Supreme Court of Appeals may call upon and authorize any judge of a court not of record who is retired under the provisions of Chapter 7 of Title 51 of the Code of Virginia to perform, for a period not to exceed ninety days at any one time, such judicial duties in any court not of record as the Chief Justice shall deem in the public interest for the expeditious disposition of the business of such courts.

(c) *Recall for Commission duties.* The State Corporation Commission and Industrial Commission may call upon and authorize any Commissioner who is retired under the provisions of Chapter 7 of Title 51 of the Code of Virginia to perform, for a period not to exceed ninety days at any one time, such duties for his former commission as that commission deems in the public interest for the expeditious disposition of its business.

(d) *Obligation to serve.* It shall be the obligation of any retired justice, judge or commissioner who is recalled to temporary service under subsections (a), (b) or (c) hereof and who has not attained age seventy to accept such recall and perform the duties assigned, and it shall be within the discretion of any such justice, judge or commissioner who has attained age seventy to accept such recall.

(e) *Position while recalled to service.* Any justice, judge or commissioner recalled to duty hereunder shall have all the powers, duties and privileges attendant on the position he is recalled to serve.

(f) *Reimbursement.* Any justice, judge or commissioner serving on temporary recall shall be reimbursed from the State treasury actual expenses incurred during service and be paid per diem which, together with his retirement benefit, equals daily compensation of one in active service in the position in which he is serving.

2. This act shall be in force and effect on and after July one, nineteen hundred seventy.

A BILL

To prohibit in certain cases the practice of law by certain retired judges and commissioners.

Be it enacted by the General Assembly of Virginia:

1. § 1. 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 Chapter 7 of Title 51 of the Code of Virginia, shall appear as counsel in any case in any court of the Commonwealth.

No former commissioner of the State Corporation Commission or Industrial Commission, who is retired and receiving retirement benefits under the provisions of Chapter 7 of Title 51 of the Code of Virginia, shall appear as counsel in any case before the Commission of which he was formerly a member.

2. This act shall be in force and effect on and after July one, nineteen hundred seventy.

