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SENATE BILL NO. 793  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee for Courts of Justice  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Surovell)

*A BILL to amend and reenact §§ 17.1-400 and 17.1-402 of the Code of Virginia, relating to maximum number of judges on the Court of Appeals of Virginia; hearings en banc.*

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

**1. That §§ 17.1-400 and 17.1-402 of the Code of Virginia are amended and reenacted as follows:**

**§ 17.1-400. Creation and organization; election and terms of judges; oath; vacancies; qualifications; incompatible activities prohibited; chief judge.**

A. The Court of Appeals of Virginia is hereby established effective January 1, 1985. It shall consist of 21 judges who shall be elected for terms of eight years by the majority of the members elected to each house of the General Assembly. The General Assembly shall consider regional diversity in making its elections. Before entering upon the duties of the office, a judge of the Court of Appeals shall take the oath of office required by law. The oath shall be taken before a justice of the Supreme Court of Virginia or before any officer authorized by law to administer an oath. When any vacancy exists while the General Assembly is not in session, the Governor may appoint a successor to serve until 30 days after the commencement of the next regular session of the General Assembly. Whenever a vacancy occurs or exists in the office of a judge of the Court of Appeals while the General Assembly is in session, or when the term of office of a judge of the Court of Appeals will expire or the office will be vacant or vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor may be elected at any time during a session preceding the date of such vacancy by the vote of a majority of the members elected to each house of the General Assembly for a full term and, upon qualification, the successor shall enter at once upon the discharge of the duties of the office; however, such successor shall not qualify prior to the predecessor leaving office. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect and reports of such searches have been received by the ~~Chairmen~~ Chairs of the House and Senate Committees for Courts of Justice. If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the ~~Chairmen~~ Chairs of the House and Senate Committees for

33 Courts of Justice.

34 All judges of the Court of Appeals shall be residents of the Commonwealth and shall, at least five years  
35 prior to the appointment or election, have been licensed to practice law in the Commonwealth. No judge of  
36 the Court of Appeals, during his continuance in office, shall engage in the practice of law within or ~~without~~  
37 *outside of* the Commonwealth or seek or accept any nonjudicial elective office, or hold any other office of  
38 public trust, or engage in any other incompatible activity.

39 B. The chief judge shall be elected by majority vote of the judges of the Court of Appeals to serve a term  
40 of four years.

41 C. If a judge of the Court of Appeals is absent or unable through sickness, disability, or any other reason  
42 to perform or discharge any official duty or function authorized or required by law, a (i) retired chief justice  
43 or retired justice of the Supreme Court of Virginia, (ii) retired chief judge or retired judge of the Court of  
44 Appeals of Virginia, or (iii) retired judge of a circuit court of Virginia, with his ~~or her~~ prior consent, may be  
45 appointed by the chief judge of the Court of Appeals, acting upon his own initiative or upon a personal  
46 request from the absent or disabled judge, to perform or discharge the official duties or functions of the  
47 absent or disabled judge until that judge shall again be able to attend his duties. The chief judge of the Court  
48 of Appeals shall be notified forthwith at the time any absent or disabled judge is able to return to his duties.

49 D. The chief judge of the Court of Appeals may, upon his own initiative, designate a (i) retired chief  
50 justice or retired justice of the Supreme Court of Virginia, (ii) retired chief judge or retired judge of the Court  
51 of Appeals of Virginia, or (iii) retired or active judge of a circuit court of Virginia, with the prior consent of  
52 such justice or judge, to perform or discharge the official duties or functions of a judge of the Court of  
53 Appeals if there is a need to do so due to congestion in the work of the court. Nothing in this subsection shall  
54 be construed to increase the number of judges of the Court of Appeals provided for in subsection A ~~of this~~  
55 ~~section~~.

56 E. Any retired chief justice, retired justice, retired chief judge, or active or retired judge sitting on the  
57 Court of Appeals pursuant to subsection C or D shall receive from the state treasury actual expenses for the  
58 time he or she is actually engaged in holding court.

59 F. The powers and duties herein conferred or empowered upon the chief judge of the Court of Appeals  
60 may be exercised and performed by any judge or any committee of judges of the court designated by the chief  
61 judge for such purpose.

62 **§ 17.1-402. Sessions; panels; quorum; presiding judges; hearings en banc.**

63 A. The Court of Appeals shall sit at such locations within the Commonwealth as the chief judge, upon

64 consultation with the other judges of the court, shall designate so as to provide, insofar as feasible, convenient  
65 access to the various geographic areas of the Commonwealth. The chief judge shall schedule sessions of the  
66 court as required to discharge expeditiously the business of the court.

67 B. The Court of Appeals shall sit in panels of at least three judges each. The presence of all judges in the  
68 panel shall be necessary to constitute a quorum. The chief judge shall assign the members to panels and,  
69 insofar as practicable, rotate the membership of the panels. The chief judge shall preside over any panel of  
70 which he is a member and shall designate the presiding judges of the other panels.

71 C. Each panel shall hear and determine, independently of the others, the petitions for appeal pursuant to  
72 § 17.1-406 or 19.2-398 and appeals in criminal and civil cases assigned to that panel.

73 D. The Court of Appeals ~~shall sit en banc (i) when there is a dissent in the panel to which the case was~~  
74 ~~originally assigned and an aggrieved party requests an en banc hearing and at least six judges of the court~~  
75 ~~vote in favor of such a hearing or (ii) when any judge of any panel shall certify that in his opinion a decision~~  
76 ~~of such panel of the court is in conflict with a prior decision of the court or of any panel thereof and five other~~  
77 ~~judges of the court concur in that view. The court~~ may sit en banc upon its own motion at any time or upon  
78 the petition of any party, in any case in which a majority of the court determines it is appropriate to do so.  
79 The court sitting en banc shall consider and decide the case and may overrule any previous decision by any  
80 panel or of the full court.

81 E. The court ~~may~~ *shall* sit en banc with no fewer than 13 judges. *Three of such judges shall be the three*  
82 *judges to whom the case was originally assigned, and 10 of such judges shall be assigned pursuant to a*  
83 *randomized rotational schedule in accordance with the Rules of the Supreme Court of Virginia.* In all cases  
84 decided by the court en banc, the concurrence of at least a majority of the judges sitting shall be required to  
85 reverse a judgment, in whole or in part.

86 **2. That the Supreme Court of Virginia shall enact a rule implementing a randomized rotational en**  
87 **banc panel selection system in accordance with the provisions of subsection E of § 17.1-402 of the Code**  
88 **of Virginia, as amended by this act.**