

# VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

## CHAPTER 691

*An Act to amend and reenact §§ 51.1-126, 51.1-126.5, 51.1-126.6, and 51.1-161 of the Code of Virginia, relating to the optional retirement plans for certain employees of institutions of higher education; for certain employees of public school divisions; and for certain appointees of the Governor, the Attorney General, and the Lieutenant Governor.*

[H 1741]

Approved March 26, 2001

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

**1. That §§ 51.1-126, 51.1-126.5, 51.1-126.6, and 51.1-161 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-126. Employees of institutions of higher education.

A. Any institution of higher education which has established, or establishes, a retirement plan covering in whole or in part its employees who are engaged in the performance of teaching, administrative, or research duties is hereby authorized to make contributions for the benefit of its employees who elect to participate in such plan rather than in the retirement system established by this chapter. Any present or future employee of such institution may elect to participate in either the retirement system established by this chapter or the plan provided by the institution employing him, in accordance with guidelines established by the Virginia Retirement System. The election herein provided shall, as to any future employee, be exercised not later than ~~ninety~~ sixty days from the time of entry upon the performance of his duties. The University of Virginia is authorized on and after July 1, 1996, to transfer any University of Virginia Medical Center employee who is a participant in a retirement plan established pursuant to this section to any retirement plan established pursuant to § 51.1-126.3 as an alternative to the retirement system established by this chapter, provided that the employee has elected to transfer to the plan established pursuant to § 51.1-126.3. All University of Virginia Medical Center employees who are (i) first employed by the Medical Center on or after July 1, 2000, and (ii) engaged in the performance of teaching, administrative or research duties, shall be afforded the retirement plan coverage provided by § 51.1-126.3 rather than the election options provided by this section.

B. No employee of an institution of higher education who is an active member in a plan established under this section shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

C. 1. The contribution by the Commonwealth to such employee's retirement plan shall be 10.4 percent of creditable compensation. An institution of higher education may adopt a supplementation program for participants who, before January 1, 1991, exercise or have exercised the election to participate in the plan provided by the institution employing him as referred to in subsection A. Under such supplementation program, the institution may supplement such contribution using funds other than general funds, tuition or fees, up to an additional 2.17 percent of creditable compensation.

2. These contribution rates shall be examined by the Secretary of Administration prior to July 1, 1996, and at least once every six years thereafter. The Secretary shall consider the salary peer group mean contribution as determined by the State Council of Higher Education and the Virginia Retirement System actuary, and, if necessary, recommend a revision to the rate of contribution by the Commonwealth.

D. The Virginia Retirement System shall develop policies and procedures for the administration of all retirement plans established pursuant to this section. To assist the Virginia Retirement System in developing such policies and procedures, the Board may appoint an advisory committee of higher education employees to supply guidance in the process. Such policies and procedures shall not, under any circumstances, result in the elimination of any benefit program at any institution as such benefit program existed on June 30, 1991.

§ 51.1-126.5. Defined contribution plan for eligible members.

A. As used in this section, unless the context requires otherwise:

"Eligible member" means a member who holds an eligible position.

"Eligible position" means a position designated in subdivision 3, 4, or 21 of § 2.1-116 or an officer or employee appointed by the Attorney General or Lieutenant Governor to a position designated as a deputy, counsel or director position.

"Participating member" means an eligible member who elects to participate in the plan.

"Plan" means the defined contribution plan established pursuant to this section.

B. The Board shall establish a plan covering any eligible member who elects to participate in the plan. The plan shall be in lieu of the service retirement allowance provided by the retirement system under § 51.1-155. Participating members shall be deemed to be members of the retirement system to the

extent consistent with the provisions of this section.

C. ~~Any person who is an eligible member on July 1, 1998, shall elect, by August 1, 1998, to participate in either (i) the retirement system or (ii) the plan.~~ Any person who becomes an eligible member after July 1, 1998, shall elect upon accepting an eligible position to participate in either (i) the retirement system or (ii) the plan. Such election shall be made in accordance with guidelines established by the Virginia Retirement System.

D. ~~After ten years of service in an eligible position, or within ninety days after ceasing to be employed in an eligible position, a participating member may make a one-time, irrevocable election to transfer to the retirement system. Upon making such election, any accrued contributions and earnings in his defined contribution account shall be used to purchase service credit in the retirement system as provided in subsection G. A participating member who elects to transfer from the plan to the retirement system while serving in an eligible position shall thereafter be ineligible to participate in the plan.~~

E. ~~D. Upon ceasing to be employed in an eligible position but continuing to be an employee of the Commonwealth, a participating member who has not previously elected to transfer to the retirement system pursuant to subsection D shall may elect to:~~

1. Maintain the accrued contributions and earnings in his defined contribution account; or
2. Use the accrued contributions and earnings in his defined contribution account to purchase service credit in the retirement system as provided in subsection G F.

F. ~~E. Within ninety days after termination of employment, a participating member may withdraw the accrued contributions and earnings from his defined contribution account, subject to applicable state and federal law and regulation.~~

G. ~~F. Upon an election under subsection D by a participating employee (i) transferring to the retirement system or (ii) ceasing member who has ceased to be employed in an eligible position, the accrued contributions and earnings in such electing person's defined contribution account shall be used to purchase service credit in the retirement system at a rate to be established by the Board. Such rate shall cover the actuarial cost of providing the creditable service. In no event shall the amount of service credit purchased in the retirement system exceed the time that was served in an eligible position while participating in the plan. Any amount of accrued contributions and earnings in such electing person's defined contribution account in excess of the amount required to purchase service credit in the retirement system for the time served in an eligible position while participating in the plan shall be forfeited to the Virginia Retirement System.~~

H. ~~G. The contribution by the Commonwealth to a participating member's defined contribution account shall be 10.4 percent of creditable compensation determined by the Board of Trustees of the Virginia Retirement System in consultation with its actuary. Contributions to the defined contribution account and all earnings thereon shall be credited to an account to be maintained for each participating member. Contributions by the Commonwealth to a participating member's defined contribution account shall be in lieu of contributions to the retirement system required pursuant to § 51.1-145.~~

I. ~~H. The Virginia Retirement System shall (i) develop policies and procedures for the administration of the plan and (ii) provide a program of education and support for participating members.~~

§ 51.1-126.6. Certain employees of public school divisions.

A. ~~The Board shall establish a defined contribution plan covering any eligible employee serving in a position designated in § 22.1-60 who elects to participate in the plan.~~

A. ~~B. Any school board established pursuant to Article VIII, Section 7 of the Constitution of Virginia and Chapter 5 (§ 22.1-28 et seq.) of Title 22.1 may offer a retirement plan for the benefit of eligible members serving in a position designated in § 22.1-60 and is hereby authorized to make contributions to the optional retirement plan established by the Virginia Retirement System pursuant to this section for the benefit of its eligible employees who elect to participate in such a plan rather than in the retirement plan established by this chapter. Any present or future eligible employee of such school board hired on or after the effective date of the plan shall make an irrevocable election to participate in either (i) the retirement system established by this chapter or (ii) the optional retirement plan provided by the school board employing him, established by the Virginia Retirement System pursuant to this section. Such election shall be made in accordance with the guidelines for making such election as established by the Virginia Retirement System. The election provided for herein shall be exercised not later than ninety thirty days from the date performance of duties begins for employees.~~

B. ~~C. No employee of any school board who is an active member of the retirement plan established under this section shall also be an active member in the Virginia Retirement System or beneficiary thereof other than as a contingent annuitant. Such eligible employee may, however, be covered under any insurance plan established by the Board under this title for which he would have been otherwise eligible.~~

C. ~~D. The contribution by the school board to such employee's retirement plan defined contribution account shall be determined by the Board of Trustees of the Virginia Retirement System in consultation with its actuary. Contributions to the defined contribution account and all earnings thereon shall be credited to an account to be maintained for each eligible employee who elects to participate. Contributions by the school board to an electing employee's defined contribution account shall be in~~

*lieu of contributions to the retirement system required pursuant to § 51.1-145.*

Đ. E. The Virginia Retirement System shall develop policies and procedures for the administration of such plan in accordance with existing and future federal and state policies, regulations, and statutes governing the administration of such plans.

§ 51.1-161. Withdrawal of contributions before retirement.

A. If a member has ceased to be an employee, other than by death or retirement, he may receive a refund of his accumulated contributions reduced by the amount of any retirement allowance previously received by him under any of the provisions of this chapter or the abolished system.

B. Accumulated contributions shall be refunded to a member upon retirement for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.) or to his designated beneficiary upon the death of the member from a cause which is compensable under the Virginia Workers' Compensation Act.

C. *If a member becomes covered by an optional retirement plan established under § 51.1-126, the member may elect to have his accumulated contributions, as reduced by the amount of any retirement allowance previously received by him under any of the provisions of this chapter or the abolished system, transferred directly to such optional retirement plan as a credit to his account in such plan. No portion of the transferred amount shall be available to the member until benefits under the optional retirement plan are otherwise available for distribution. An election to transfer the accumulated contributions to an optional retirement plan shall be treated as a withdrawal of the member's accumulated contributions for purposes of § 51.1-128.*

**2. Any participating member in the defined contribution plan (plan) as defined in subsection A of § 51.1-126.5, who is an employee in service in an eligible position immediately before and after the effective date of this act, shall have ninety days beginning July 1, 2001, in which to make a one-time, irrevocable election to transfer from the plan to the retirement system. A participating member who makes such an election (i) shall have all accrued contributions and earnings in his plan used for the purchase of service credit in the retirement system pursuant to subsection F of § 51.1-126.5, and (ii) shall thereafter be ineligible to participate in the plan.**