

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 311

An Act to amend and reenact §§ 51.1-600, 51.1-601, 51.1-604, and 51.1-605 of the Code of Virginia; to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 6.1, consisting of sections numbered 51.1-607 through 51.1-613; and to repeal § 51.1-606 of the Code of Virginia, relating to the Deferred Compensation Plan and the Cash Match Plan for public employees.

[H 71]

Approved April 1, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-600, 51.1-601, 51.1-604, and 51.1-605 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 51.1 a chapter numbered 6.1, consisting of sections numbered 51.1-607 through 51.1-613, as follows:

§ 51.1-600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Government Employees Deferred Compensation Plan Act.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Deferred compensation plan" means a plan which allows an employee to elect to defer some portion of income until some stated time in the future; provides that the federal and state income tax on such income will be deferred until the actual receipt of such income; and is established pursuant to the provisions of § 457 of the Internal Revenue Code of 1986, as amended.

"Employee" means ~~any salaried person~~, in the case of the plan described in § 51.1-602, all persons employed by a participating employer, including appointed or elected officials, providing services for the Commonwealth, state agencies, counties, municipalities, or other political subdivisions. In the case of a plan adopted by a county, municipality, authority or other political subdivision pursuant to § 51.1-603, an employee shall be defined by such county, municipality, authority or other political subdivision.

"Participating employer" means the Commonwealth or any political subdivision that has elected pursuant to § 51.1-603.1 to participate in the deferred compensation plan established by the Board pursuant to this chapter or a sponsor of a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended.

"Qualified participant" means an employee of a participating employer with at least twelve consecutive months of service who is making continuous deferrals of at least ten dollars per pay period in the deferred compensation plan established by the Board pursuant to this chapter or in a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended.

§ 51.1-601. Contract for deferred compensation.

In accordance with a plan of deferred compensation, the Commonwealth, or any state agency, county, municipality, authority, or other political subdivision may, by contract, agree with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of the plan and in such proportions as may be designated or directed under the plan, place such deferred compensation in investment products selected by the Commonwealth and its agencies, county, municipality, authority, or other political subdivision. All investment products shall be offered in compliance with applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities.

§ 51.1-604. Standards for deferred compensation plans.

No deferred compensation plan shall become effective until the Board, county, municipality, authority or other political subdivision of the Commonwealth is satisfied, by opinion of its respective counsel, such federal agency or agencies as may be deemed necessary, or otherwise, that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan (i) will not be included in the employee's taxable income under federal or state law until it is actually received by the employee under the terms of the plan and (ii) that such compensation will nonetheless be deemed compensation at the time of deferral for the purposes of social security coverage, for the purposes of the Virginia Retirement System, and for any other retirement, pension, or benefit program established by law.

§ 51.1-605. Other retirement, pension, etc., systems not affected; annual report.

Any deferred compensation program established by this chapter, and any plan adopted hereunder, shall exist and serve in addition to any other retirement, pension, or benefit system established by the Commonwealth, its agencies, counties, municipalities, authorities, or other political subdivisions, and shall not supersede, make inoperative, or reduce any benefits provided by the Virginia Retirement System or by any other retirement, pension, or benefit program established by law.

The Virginia Retirement System shall submit an annual report to the Governor and the General

Assembly advising them of the condition of the Commonwealth's fund and all operational costs associated with ~~the~~ such fund.

The Board shall have the authority to establish a plan pursuant to § 401 (a) or § 403 (b) of the Internal Revenue Code of 1986, as amended, for the purpose of implementation of this section.

CHAPTER 6.1.

CASH MATCH PLAN.

§ 51.1-607. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Trustees of the Virginia Retirement System.

"Cash match plan" means a plan established pursuant to the provisions of § 401 (a) of the Internal Revenue Code of 1986, as amended, to which a participating employer contributes based on contributions made by an employee to a deferred compensation plan or to a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended. Alternatively, if the Board determines that it is appropriate, such plan may be established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended.

"Deferred compensation plan" means a plan described in Chapter 6 (§ 51.1-600 et seq.) of this title.

"Employee" means, in the case of the plan described in § 51.1-608, any salaried person, including appointed or elected officials, providing services for a participating employer. In the case of a plan adopted by a county, municipality, authority or other political subdivision pursuant to § 51.1-610, an employee shall be defined by such county, municipality, authority or other political subdivision.

"Participating employer" means the Commonwealth or any political subdivision that has elected pursuant to § 51.1-603.1 to participate in the deferred compensation plan established by the Board pursuant to Chapter 6 (§ 51.1-600 et seq.) of this title or a sponsor of a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended.

"Qualified participant" means, in the case of a plan established pursuant to § 51.1-608, an employee of a participating employer who is making continuous deferrals of at least ten dollars per pay period to the deferred compensation plan established by the Board pursuant to Chapter 6 (§ 51.1-600 et seq.) of this title or to a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended. The determination of whether an employee is making continuous deferrals shall be made by the Board. In the case of a plan established pursuant to subsection E of § 51.1-608 or § 51.1-610, qualified participant means an employee described by the governing body establishing such plan in the documents setting forth the details of such plan.

§ 51.1-608. Cash match plan for employees of the Commonwealth; administered by the Board.

A. The Board shall establish and administer a cash match plan for employees of the Commonwealth and its agencies. The Virginia Retirement System Director shall be the chief administrative officer of the plan. The Board may contract with private corporations or institutions subject to the standards set forth in § 51.1-124.30 to provide investment products as well as any other goods and services related to the administration of the deferred compensation plan. The Virginia Retirement System is hereby authorized to perform related services including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, and asset purchase, control, and safekeeping.

B. If it deems it advisable, the Board may create a trust or other special fund for the segregation of the funds or assets resulting from contributions made on behalf of qualified participants.

C. The Department of Accounts shall be responsible for the timely transfer of the matching contributions to the private corporation or institution designated by the Board pursuant to subsection A. However, any state agency that has decentralized its payroll function and any political subdivision of the Commonwealth participating in the plan pursuant to § 51.1-611 shall be responsible for the timely transfer of matching contributions to the private corporation or institution designated by the Board pursuant to subsection A.

D. The Commonwealth, the Board of Trustees of the Virginia Retirement System, the employees of the System, and the Investment Advisory Committee of the System shall not incur any liability for any losses suffered by a cash match plan established or administered under the authority of this chapter.

E. Alternatively, agencies of the Commonwealth that sponsor or maintain programs described in § 403 (b) of the Internal Revenue Code of 1986, as amended, may establish separate cash match plans with the consent of the Board in lieu of participation in the plan established pursuant to this section.

§ 51.1-609. Contributions on behalf of qualified participants.

A. A participating employer or, on behalf of the Commonwealth, the Department of Accounts or any agency of the Commonwealth not covered under the central payroll system, shall transfer funds from its appropriations to the private corporation or institution designated to hold investments under the plan or plans adopted or established by the participating employer pursuant to § 401 (a) or § 403 (b) of the Internal Revenue Code of 1986, as amended. The funds shall be held, administered and invested as provided for in the applicable document adopted for the administration of such contributions.

B. The amount credited on behalf of a qualified participant pursuant to this section shall not exceed, on a semimonthly basis, the lesser of fifty dollars or fifty percent of the amount that the qualified participant voluntarily contributes to the deferred compensation plan established under this chapter or

to a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended, unless otherwise determined by the General Assembly through the appropriations process. The amount credited pursuant to this section on behalf of a qualified participant who is an employee of a participating employer other than the Commonwealth shall be a discretionary amount determined by the participating employer's governing body from time to time.

§ 51.1-610. Local cash match plans.

A. Any county, municipality, authority, or other political subdivision of the Commonwealth may by ordinance or resolution adopt and establish for itself and its employees a cash match plan. Any such cash match plan may include constitutional officers and their employees. The ordinance or resolution adopting or establishing such plan shall create or designate an appropriate board or officer to administer the plan, and shall confer upon such board or officer the authority to do all things by way of supervision, administration, and implementation of the plan, including the power to contract with private corporations or institutions for services in connection therewith.

B. If it deems it advisable, any county, municipality, authority, or other political subdivision of the Commonwealth, which by ordinance or resolution adopts and establishes for itself and its employees a cash match plan, may create a trust or other special fund for the segregation of the funds or assets resulting from contributions.

§ 51.1-611. Participation by employees of political subdivisions in cash match plan of Virginia Retirement System.

The Virginia Retirement System may enter into an agreement with any political subdivision of the Commonwealth to permit participation by the political subdivision's employees in the cash match plan established and administered by the Board pursuant to § 51.1-607.

§ 51.1-612. Standards for cash match plans.

No cash match plan shall become effective until the Board, county, municipality, authority or other political subdivision of the Commonwealth is satisfied, by opinion of its respective counsel, such federal agency or agencies as may be deemed necessary, or otherwise, that the contribution thereunder or the investment products purchased pursuant to the plan (i) will not be included in the employee's taxable income under federal or state law until it is actually received by the employee under the terms of the plan and (ii) that such contribution will not be deemed compensation at the time of the contribution for the purposes of social security coverage, for the purposes of the Virginia Retirement System, and for any other retirement, pension, or benefit program established by law.

§ 51.1-613. Other retirement, pension, etc., systems not affected; annual report.

Any cash match program established by this chapter, and any plan adopted hereunder, shall exist and serve in addition to any other retirement, pension, or benefit system established by the Commonwealth, its agencies, counties, municipalities, authority, or other political subdivisions, and shall not supersede, make inoperative, or reduce any benefits provided by the Virginia Retirement System or by any other retirement, pension, or benefit program established by law.

The Virginia Retirement System shall submit an annual report to the Governor and the General Assembly advising them of the condition of the fund administered by the Virginia Retirement System and all operational costs associated with such fund.

2. That § 51.1-606 of the Code of Virginia is repealed.