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SENATE BILL NO. 121

Offered January 9, 2002
Prefiled January 7, 2002

A BILL to amend and reenact § 51.1-168 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-126.8, relating to retirement plans administered by the Virginia Retirement System.

Patrons—Stosch, Houck and Miller, K.G.

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-168 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 51.1-126.8 as follows:

§ 51.1-126.8. Maximum contributions to optional plans; coordination of limits.

A. Notwithstanding any other provision of law, the annual additions to the optional retirement plans described in Article 4 (§ 51.1-125 et seq.) of Chapter 1 of this title shall be reduced, if necessary, to the extent required by § 415 (c) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415 (d) of the Internal Revenue Code. If an employee participating in an optional retirement plan is also a participant in another defined contribution plan qualified under §§ 401 (a) or 403 (b) of the Internal Revenue Code and sponsored or maintained by an employer participating in such optional retirement plan, the employer shall apply the combined limit test required by § 415 (c) of the Internal Revenue Code. Whenever a reduction in annual additions is required to comply with the limitations of § 415 (c) of the Internal Revenue Code, the annual additions under such employer's other plan or plans will be reduced before contributions under the optional retirement plan.

B. Any vendor for an optional retirement plan that is a defined contribution plan established by Article 4 of Chapter 1 of Title 51.1 shall (i) request and maintain the records needed, (ii) perform the testing services required to assure compliance with the limitation described in § 415 (c) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another defined contribution plan that must be tested together with the optional retirement plan, and (iii) advise the employer of any contribution that exceeds the applicable limitation. If there is no vendor for these services, the employer shall (a) request and maintain the records needed, (b) perform the testing services required to assure compliance with the limitation described in § 415 (c) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another defined contribution plan that must be tested together with the optional retirement plan, and (c) reduce any contribution that exceeds the applicable limitation.

§ 51.1-168. Limits on creditable compensation; maximum benefits; mandatory payment of allowance.

A. Notwithstanding any other provision of law, ~~earned~~ *creditable compensation used for computing any benefit or employee contribution under or to the Retirement System shall not exceed $200,000 (as adjusted in $5,000 increments from time to time by the adjustment factor described in I.R.C. § 415 (d) on the basis of a base period of the calendar quarter beginning July 1, 2001). In determining average final compensation for periods beginning on or after July 1, 2001, the limit on creditable compensation applied to compensation attributable to periods prior to July 1, 2001, shall be $200,000. Notwithstanding the foregoing,* compensation for any employee who ~~becomes~~ *became* a member of the Retirement System (i) prior to the ninetieth day after the opening date of the 1996 Session of the General Assembly, on whose behalf employee or employer contributions are made into the Retirement System, and for whom annual compensation is used for computing any benefit, shall not exceed ~~$265,000,~~ the *limit on compensation as adjusted by* ~~amount determined by~~ the Commissioner of the Internal Revenue Service pursuant to *the transition provisions applicable to eligible participants under state and local governmental plans under* I.R.C. § 401 (a) (17) as ~~the limitation on earned compensation; or (ii) on or after the ninetieth day of the opening date of the 1996 Session of the General Assembly, on whose behalf employee or employer contributions are made into the Retirement System, and for whom annual compensation is used for computing any benefit, shall not exceed $160,000, or any amount determined by the Commissioner of the Internal Revenue Service pursuant to I.R.C. § 401 (a) (17) as the limitation on earned compensation in effect in subsequent calendar years~~ *amended in 1993 and as contained in § 13212 (d)(3) of the Omnibus Budget Reconciliation Act of 1993 (P. L. 103-66).*

B. Notwithstanding any other provision of law, the annual benefit under the Retirement System of a member and any related death or other benefit shall, if necessary, be reduced to the extent required by

§ 415 (b) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415 (d) of the Internal Revenue Code. Any adjustment pursuant to § 415 (d) of the Internal Revenue Code shall apply to all members including those who have died, retired, or otherwise terminated service with a nonforfeitable right to a retirement allowance before the effective date of such adjustment. If an employee participating in the Retirement System is also a participant in another ~~retirement~~ *defined benefit* plan sponsored or maintained by an employer participating in the Retirement System and subject to the limitations under § 415 of the Internal Revenue Code, ~~such employer shall apply the combined limit test required by § 415 (e) of the Internal Revenue Code, until the repeal of such section is effective~~ *such employer shall apply the combined limit test required by § 415 (b) of the Internal Revenue Code to all such plans, to the extent required by § 415 of the Internal Revenue Code*. Whenever a reduction in annual ~~additions or~~ benefits is required to meet the annual benefit limit required by § 415 (b) of the Internal Revenue Code ~~or the combined limit test~~, the ~~annual additions or~~ annual benefits under such employer's other plan or plans will be reduced before benefits under the Retirement System.

C. ~~Notwithstanding any other provision of law, the annual additions to the optional retirement plans described in Article 4 (§ 51.1-125 et seq.) of Chapter 1 of this title shall be reduced, if necessary, to the extent required by § 415 (c) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415 (d) of the Internal Revenue Code. If an employee participating in an optional retirement plan is also a participant in another retirement plan sponsored or maintained by an employer participating in the Retirement System and subject to the limitations under § 415 of the Internal Revenue Code, such employer shall apply the combined limit test required by § 415 (c) of the Internal Revenue Code and the combined limit test required by § 415 (e) of the Internal Revenue Code, until the repeal of such section is effective to all such plans, to the extent required by § 415 of the Internal Revenue Code. Whenever a reduction in annual additions or annual benefits is required to comply with the limitations of § 415 of the Internal Revenue Code, the annual additions or annual benefits under such employer's other plan or plans will be reduced before benefits under the optional retirement plan.~~

~~D. Any vendor for an optional retirement plan established by Article 4 of Chapter 1 of Title 51.1 shall (i) request and maintain the records needed, (ii) perform the testing services required to assure compliance with the limitations described in § 415 (c) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the optional retirement plan, and (iii) advise the employer of any contribution or benefit that exceeds the applicable limitation.~~

Any vendor for a defined benefit plan sponsored or maintained by an employer that participates in the Retirement System shall (i) request and maintain the records needed, (ii) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (iii) advise the employer of any annual benefit that exceeds the applicable limitation. If there is no vendor for these services, the employer shall (a) request and maintain the records needed, (b) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (c) reduce any annual benefit that exceeds the applicable limitation.

~~E~~*D*. On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of (i) April 1 of the calendar year following the calendar year that the member attains seventy and one-half years of age or (ii) April 1 of the calendar year following the calendar year in which the member terminates employment.