

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 267

An Act to amend and reenact § 51.1-124.12 of the Code of Virginia, relating to employers withdrawing from the Virginia Retirement System.

[H 2556]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-124.12 of the Code of Virginia is amended and reenacted as follows:

§ 51.1-124.12. Procedure when employer required to withdraw funds.

A. As used in this section, unless the context clearly shows otherwise, the following definitions shall apply.

"Replacement employer" means an employer as defined in § 51.1-124.3 who enters into a written agreement with the Retirement System to assume all liabilities for retirement benefits, as provided herein due to a member or beneficiary whose coverage under the Retirement System is affected by the withdrawal of the withdrawing employer, that are attributable to service with and creditable compensation from the withdrawing employer.

"Termination date" means the effective date of a change in an employer's status from an agency or political subdivision of the Commonwealth or the termination of the employer's existence that shall cause an employer participating in the Retirement System to become a withdrawing employer. If such date is in question or if the advance notification required by subsection C is not given, the termination date shall be the date determined by the Board.

"Termination event" means an event that results in an employer which participates in the Retirement System ceasing to be an agency or political subdivision of the Commonwealth.

"Withdrawing employer" means an employer that is required to withdraw from the Retirement System under subsection B.

B. Any employer participating in the Retirement System which ceases to be an agency or political subdivision of the Commonwealth or which permanently ceases operations shall withdraw from the Retirement System as of the termination date. All benefit accrual for members employed by a withdrawing employer shall automatically cease as of the termination date.

C. A withdrawing employer shall provide written notification to the Board of its termination date. Notification shall be in the form of a certified copy of an ordinance or resolution adopted by the governing body of the employer and shall be provided to the Board at least ~~ninety~~ 90 days prior to the termination date. Upon receipt of notification or upon the Board's determination that a termination event has occurred or will occur within ~~ninety~~ 90 days, the Retirement System shall request its actuary to determine the present value of the Retirement System's liability to each member, retired member, or beneficiary attributable to service with, and creditable compensation from, the withdrawing employer. For members, such calculation shall be determined based on the liability resulting from the present value of a service retirement allowance beginning at his normal retirement date. Such determination shall be based on actuarial principles and assumptions consistent with those used in the most recent actuarial valuation and financial report for the Retirement System. The expenses incurred by the Board for such actuarial determination report shall be the liability of the withdrawing employer.

D. If (i) no qualified retirement plan, as that term is defined in § 401(a) of the Internal Revenue Code, is established by the withdrawing employer, to which the assets and liabilities relating to members employed by such employer are transferred, as described in subsection E, or (ii) *if no replacement employer has come forth within 90 days of the termination date, or within such other reasonable time as may be agreed to by the Board*, benefits shall be determined as follows:

1. Each member or beneficiary whose coverage under the Retirement System is affected by the withdrawal of the employer shall become fully vested, as of the termination date, in his service retirement allowance attributable to creditable service with the withdrawing employer regardless of employment status or length of service with the withdrawing employer.

2. Each member, retired member or beneficiary shall be entitled to a distribution of the greater of (i) the balance in his member contribution account established pursuant to § 51.1-147 or (ii) the present value of his service retirement allowance attributable to creditable service and compensation with the withdrawing employer to which such member, retired member or beneficiary would have been entitled immediately prior to the termination event (plus additional amounts, if any, which the withdrawing employer may direct pursuant to subdivision 4 of this subsection). Such members, retired members, and beneficiaries may elect to receive such benefit either in the form of (i) a lump sum payment, subject to the eligible rollover distribution rules and withholding requirements of the Internal Revenue Code or (ii) an annuity equal to the service retirement benefit at normal retirement. The annuity shall be purchased

from a private insurance company or companies as selected by the Board. The Board shall establish reasonable notice and election periods for the distribution made pursuant to this subsection. The distribution provided for in this subdivision shall be in the form of a lump sum, subject to applicable withholding requirements, upon the failure of a member, retired member or beneficiary to make an election.

3. If the assets held in the members' contribution account established pursuant to § 51.1-147 and in the retirement allowance account established for withdrawing employer pursuant to § 51.1-148 are less than the amount needed to pay the benefits to which all affected members, retired members, and beneficiaries are entitled, the withdrawing employer shall make a contribution to the retirement allowance account in the amount necessary to make up any insufficiency in assets required to provide all benefits payable under this section. If the withdrawing employer fails to make the required contribution, assets held in the members' contribution account established pursuant to § 51.1-147 and in the retirement allowance account established for the withdrawing employer pursuant to § 51.1-148 shall be distributed to members, retired members and beneficiaries in the manner described in § 51.1-139.

4. Any assets remaining in the retirement account established for the withdrawing employer pursuant to § 51.1-148 after full satisfaction of liabilities to members, retired members and beneficiaries under this section shall be distributed ~~to the withdrawing employer or transferred to another qualified retirement plan at the direction of~~ *on a pro rata basis (based on contributed funds within the immediately preceding 12 months) to any employers within the meaning of § 51.1-124.3 who, within the 12 months immediately preceding the termination date of the withdrawing employer, directly or indirectly, by appointment of the governing body of the withdrawing employer, controlled the activities of the withdrawing employer and contributed funds or property to the withdrawing employer; provided, however, that if there is no successor to the withdrawing such employer directly responsible for the liabilities of the withdrawing employer,* any remaining assets shall be used to offset expenses incurred by the Retirement System in any manner permitted by the Internal Revenue Code.

5. Upon completion of the distribution of assets held in the members' contribution account established pursuant to § 51.1-147 and in the retirement allowance account established for the withdrawing employer pursuant to § 51.1-148 as provided in the section, the Retirement System shall have no further liability for such accounts.

E. If the withdrawing employer establishes or has established a qualified retirement plan, as that term is defined in § 401(a) of the Internal Revenue Code, which provides (i) for participation by members, retired members and the beneficiaries of members and retired members, (ii) for the transfer to the qualified retirement plan of all contributions and prior service attributable to creditable service with the withdrawing employer, and (iii) member benefits and vesting rights at least equal to those which each member would have been entitled under the Retirement System immediately before the termination of the employer's affiliation with the Retirement System, the Board shall transfer to such qualified retirement plan all balances in the individual accounts of the members' contribution account established pursuant to § 51.1-147 and all balances in the retirement allowance account established for such employer pursuant to § 51.1-148 and attributable to creditable service and compensation with such employer, including all earnings through and including the date of the transfer, *less the reasonable expenses incurred by the Retirement System in connection with such transfer.* Upon such transfer, all liabilities of the Retirement System for benefits, to the extent accrued as of the date of the transfer with respect to service with such employer shall be assumed by such qualified retirement plan and all liabilities of the Retirement System with respect thereto shall terminate.

F. *If the withdrawing employer does not establish a qualified retirement plan, as that term is defined in § 401 (a) of the Internal Revenue Code and as provided for in subsection E, but a replacement employer has come forth within 90 days of the termination date, or within such other reasonable time as may be agreed to by the Board, the Board shall transfer to the retirement allowance account of such replacement employer, all balances in the retirement allowance account of the withdrawing employer, including all earnings through and including the date of the transfer. The members' contribution account established pursuant to § 51.1-147 attributable to employees of the withdrawing employer shall be credited to member contribution accounts with the replacement employer. Notwithstanding however, if the balance of the retirement allowance account and the member contribution accounts exceed the actuarial present value of all liabilities with respect to employees of the withdrawing employer (after allowance for reimbursement to the Retirement System for reasonable expenses incurred in connection with such transfer), any amount in excess of 105 percent of such present value (including expenses) shall be paid on a pro rata basis (based on contributed funds within the immediately preceding 12 months) to any employers within the meaning of § 51.1-124.3 who within the 12 months immediately preceding the termination date of the withdrawing employer (i) directly or indirectly by appointment of the governing body of the withdrawing employer controlled the activities of the withdrawing employer and (ii) contributed funds or property to the withdrawing employer.*

G. *If there is no replacement employer, creditable service attributable to employment with a withdrawing employer shall be taken into consideration for purposes of determining whether each employee of the withdrawing employer meets the five or more year requirement to be entitled to a*

service allowance at normal retirement from the employment of an employer other than the withdrawing employer. *If there is no replacement employer*, neither creditable service nor creditable compensation attributable to employment with a withdrawing employer shall be taken into account for any other purpose under the Retirement System.

G. H. Notwithstanding any other provisions of this section or of any other law, if the withdrawing employer is a city which reverts to town status or otherwise loses its status as a city or is a town which loses its status as a town, then the members, retired members, and beneficiaries of the former city or town shall maintain all rights and privileges which they possess at the time of such change in status to current or future benefits from the Retirement System.

2. That for termination dates prior to July 1, 2003, if the Virginia Retirement System has not made distributions for retirement benefits due to members, retired members, and beneficiaries of the withdrawing employer pursuant to § 51.1-124.12, the Virginia Retirement System shall have until July 1, 2004, to enter into a written agreement with a replacement employer.