

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 369

*An Act to amend and reenact §§ 51.1-126 and 51.1-126.3 of the Code of Virginia, relating to optional retirement plans.*

[S 849]

Approved March 16, 2003

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

**1. That §§ 51.1-126 and 51.1-126.3 of the Code of Virginia are amended and reenacted as follows:**

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

*For purposes of this section, "optional retirement plan" means a retirement plan covering the employee for retirement purposes other than the Virginia Retirement System defined benefit retirement plan established under this chapter.*

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 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. 1. The Board shall maintain an optional retirement plan covering employees engaged in the performance of teaching, administrative, or research duties with an institution of higher education and any institution of higher education is authorized to make contributions to such plan for the benefit of its employees participating in such plan. Except (i) as provided in subsection B for institutions of higher education that have established their own optional retirement plan and (ii) for employees described in subdivision A 2, every employee hired by an institution of higher education on or after July 1, 2003, engaged in the performance of teaching, administrative, or research duties shall make an irrevocable election to participate in either (a) the Virginia Retirement System defined benefit retirement plan established by this chapter or (b) an optional retirement plan maintained by the Board. Such election shall be exercised no later than 60 days from the time of the employee's entry upon the performance of his duties. If an election is not made within such 60 days, such employee shall be deemed to have elected to participate in the Virginia Retirement System defined benefit retirement plan.

2. Any employee (i) hired on or after July 1, 2003, by an institution of higher education engaged in the performance of teaching, administrative, or research duties and (ii) who at the time of hiring is in continuous service in the performance of such teaching, administrative, or research duties shall participate in the optional retirement plan maintained by the Board if the most recent retirement plan covering the employee prior to such hiring was an optional retirement plan. If the most recent retirement plan covering the employee prior to such hiring was the Virginia Retirement System defined benefit retirement plan, such person shall participate in such defined benefit retirement plan from the time of his entry upon the performance of his duties.

B. 1. Any institution of higher education, upon receipt of approval by the Board in writing, may establish and maintain its own optional retirement plan covering its employees who are engaged in the performance of teaching, administrative, or research duties. Upon such approval, such institution is authorized to make contributions to its own optional retirement plan for the benefit of its employees who elect to participate or who are required to participate in such plan as provided in this subsection.

2. Every employee, with the exception of employees described in subdivision B 3, (i) hired on or after July 1, 2003, by an institution of higher education that has established and is maintaining its own optional retirement plan pursuant to this subsection and (ii) engaged in the performance of teaching, administrative, or research duties shall make an irrevocable election to participate in either: (a) the Virginia Retirement System defined benefit retirement plan established by this chapter or (b) such optional retirement plan of the institution of higher education. Such employee shall not be provided any

*election to participate in an optional retirement plan maintained by the Board.*

*The election shall be exercised no later than 60 days from the time of the employee's entry upon the performance of his duties. If an election is not made within such 60 days, such employee shall be deemed to have elected to participate in the Virginia Retirement System defined benefit retirement plan established by this chapter.*

*3. Any employee (i) hired on or after July 1, 2003, by an institution of higher education engaged in the performance of teaching, administrative, or research duties and (ii) who at the time of hiring is in continuous service in the performance of such teaching, administrative, or research duties shall participate in the optional retirement plan established by the institution of higher education pursuant to this subsection if the most recent retirement plan covering the employee prior to such hiring was an optional retirement plan. If the most recent retirement plan covering the employee prior to such hiring was the Virginia Retirement System defined benefit retirement plan, such person shall participate in such defined benefit retirement plan from the time of his entry upon the performance of his duties.*

*C. Any employee engaged in the performance of teaching, administrative, or research duties at an institution of higher education who was covered under an optional retirement plan for retirement purposes, other than the optional retirement plan established by such institution pursuant to subdivision B 1, shall, at the time such institution establishes its own optional retirement plan pursuant to subdivision B 1, automatically and immediately begin to participate in the optional retirement plan established pursuant to subdivision B 1, notwithstanding such employee's prior election to participate in a different optional retirement plan.*

*B D. No employee of an institution of higher education who is an active member in a any plan maintained by the Board or established by an institution of higher education, pursuant to ~~under~~ this section, shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.*

*€ E. 1. The contribution by the Commonwealth on behalf of an employee participating in an optional retirement plan maintained by the Board or on behalf of an employee participating in an optional retirement plan established by his institution of higher education under this section to such employee's retirement plan shall be 10.4 percent of creditable compensation. An institution of higher education may ~~adopt a supplementation program~~ make an additional contribution 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 them. Under such supplementation program, the institution may supplement such contribution~~ Such additional contributions shall be made 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 Board~~ at least once every six years ~~thereafter~~. The ~~Secretary~~ examination 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~~ deemed advisable, recommend a revision to the rate of contribution by the Commonwealth.*

*Ð F. With respect to any employee who elects pursuant to subsection A or B to participate in the Virginia Retirement System defined benefit retirement plan established by this chapter, the institution of higher education shall collect and pay all employee and employer contributions to the Virginia Retirement System for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of this title for such employees.*

*G. The Virginia Retirement System shall develop policies and procedures for the administration of ~~all retirement plans established pursuant to this section~~ the optional retirement plan it maintains. 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.~~*

*H. As a condition of the Board granting approval to an institution of higher education to establish its own optional retirement plan, the institution of higher education shall develop policies and procedures for the administration of such plan and shall submit such policies and procedures to the Board as part of the Board-approval process required under this section. In addition, an institution of higher education that is granted approval by the Board to establish its own optional retirement plan covering employees engaged in the performance of teaching, administrative, or research duties shall not adopt or implement policies and procedures that are substantially different from the policies and procedures approved by the Board in the initial approval process unless the Board, in writing, approves such substantially different policies and procedures.*

*I. The Board shall establish guidelines for the employee elections referred to in subdivision B 2 and shall review and, if deemed advisable, recommend revisions to the contribution rates as described in subsection E. Except for the duties described in subsection H, the Board shall have no duties and responsibilities with respect to such plans established pursuant to subsection B.*

*§ 51.1-126.3. Employees of the University of Virginia Medical Center.*

*A. The University of Virginia Medical Center, hereafter referred to as the Medical Center, may*

establish one or more retirement plans covering in whole or in part its employees, including employees who, prior to the effective date of any plan established pursuant to this section, had been participants in any plan established pursuant to ~~§ 51.1-126 or § 51.1-126.1~~. The Medical Center is authorized to make contributions for the benefit of its employees who are covered by any plan established pursuant to this section. Any such alternative retirement plans for Medical Center employees shall not become effective until such time as the Board of Visitors of the University of Virginia may determine. *Except as provided herein*, all employees of the Medical Center who are first employed by the Medical Center on or after July 1, 2000, shall be participants in a Medical Center retirement plan established pursuant to this section, with a contribution by the Medical Center at a rate to be determined by the University of Virginia Board of Visitors. However, ~~new Medical Center employees an employee hired by the Medical Center on or after July 1, 2003, who are current members, as of the first day of such employment, is a current member of the Virginia Retirement System defined benefit retirement system plan established by this chapter, including any person covered under a retirement plan established pursuant to § 51.1-126,~~ may shall elect to either: (i) remain in the retirement system established by this chapter or the retirement plan established pursuant to ~~§ 51.1-126~~, in accordance with prior election *continue to participate in such defined benefit retirement plan* or (ii) choose the plan provided by the Medical Center with a contribution by the Medical Center at a rate to be determined by the University of Virginia Board of Visitors. Such election shall be exercised not later than ~~one hundred and eighty days~~ 60 days from the time of the employee's entry into the performance of his duties for the Medical Center, and the election shall be irrevocable. Additionally, employees of the Medical Center who were employed by the Medical Center prior to July 1, 2000, and who are current members of the retirement system established by this chapter, including any person covered under a retirement plan established pursuant to ~~§ 51.1-126~~, may elect to either: (i) remain in the retirement system established by this chapter or the retirement plan established pursuant to ~~§ 51.1-126~~, in accordance with prior election or (ii) choose the plan established by the Medical Center pursuant to this section to which the contribution by the Medical Center shall be eight percent of creditable compensation. Such election shall be exercised not later than one hundred and eighty days from the time of the establishment of a retirement plan authorized by this section, and the election shall be irrevocable. During such one hundred and eighty day periods up until the time of an election of a retirement plan, all such employees of the Medical Center who have been provided with an election under this section, shall remain, in the retirement system established by this chapter or the retirement plan established pursuant to ~~§ 51.1-126~~, in accordance with prior election. If an election is not made within the time periods provided in this section by an employee entitled to make such election, such employee shall be deemed to have elected to remain in his current retirement system and such election shall be irrevocable. *During such 60-day period, to the time of such election, such employee shall participate in the Virginia Retirement System defined benefit retirement plan established by this chapter. If such election is not made within the time period provided in this subsection, such employee shall be deemed to have elected to participate in the retirement plan established by the Medical Center.*

B. With respect to any employee of the Medical Center who elects to remain a member of ~~continue to participate in the Virginia Retirement System or other such authorized retirement plan defined benefit retirement plan~~, the Medical Center shall collect and pay all employee and employer contributions due to the Virginia Retirement System or other such authorized retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of this title for such employees. For current and new Medical Center employees who are current members of the retirement system established by this chapter, including any persons covered under a retirement plan established pursuant to ~~§ 51.1-126~~, who elect or who are required pursuant to subsection A to become members of the retirement program established by the Medical Center, the Virginia Retirement System or other such authorized plan shall transfer to the retirement plan established by the Medical Center assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For purposes hereof, the basic benefit shall be the benefit accrued under the Virginia Retirement System or other such authorized retirement plan, based on creditable service and average final compensation, as defined in § 51.1-124.3 and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan, so that the transfer of assets to the retirement plan established by the Medical Center will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan.

~~B~~ C. No employee of the Medical Center who is an active member of any plan established under this section shall also be an active member of the retirement system established by this chapter or a beneficiary of such other plan other than as a contingent annuitant.

~~C~~ D. The University of Virginia Board of Visitors shall adopt guidelines for the implementation of the provisions of this section, *including guidelines for the administration of any retirement plan established pursuant to this section. The Board shall have no duties and responsibilities with respect to such plan.* The guidelines adopted by the Board of Visitors shall be filed with the Board of Trustees of the Virginia Retirement System.

**2. That, except as provided in this enactment, prior to December 31, 2003, no institution of higher**

education may establish and maintain an optional retirement plan covering its employees who are engaged in the performance of teaching, administrative, or research duties. On or before November 1, 2003, and prior to granting approval to any institution of higher education to establish and maintain such optional retirement plan, the Board of Trustees of the Virginia Retirement System shall prepare and release a plan to the chairmen of the Senate Finance Committee and House Appropriations Committee establishing criteria and guidelines that shall be applied by the Board in determining whether to grant approval to an institution of higher education to establish and maintain such optional retirement plan. No institution of higher education shall establish and maintain such optional retirement plan unless it has been granted approval by the Board, in writing, in accordance with such criteria and guidelines. The provisions of this enactment shall not be applicable to any institution of higher education that (i) prior to July 1, 2003, established an optional retirement plan for its employees who are engaged in the performance of teaching, administrative, or research duties, and (ii) is maintaining such plan as of June 30, 2003.

3. That the provisions of subsection C of § 51.1-126 requiring certain employees engaged in the performance of teaching, administrative, or research duties at an institution of higher education to participate in an optional retirement plan established by such institution shall apply to both (i) any such employee who elected prior to July 1, 2003, to participate in an optional retirement plan pursuant to § 51.1-126 and who is covered by an optional retirement plan at the time such institution establishes its own optional retirement plan and (ii) any such employee who on or after July 1, 2003, elected to participate in an optional retirement plan maintained by the Board.