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HOUSE BILL NO. 2296

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 51.1-165, 51.1-205, 51.1-206 and 51.1-1404 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 51.1 a section numbered 51.1-210.1, relating to retirement benefits for state police officers and certain local law-enforcement officers.

Patrons—Devolites and Hugo

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-165, 51.1-205, 51.1-206, and 51.1-1404 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 51.1-210.1 as follows:

§ 51.1-165. Optional benefits.

A. Any member not taking 50/10 retirement as provided in §§ 51.1-153, ~~51.1-205, or § 51.1-216~~, in accordance with the retirement plan covering such member, may elect to have his retirement allowance payable under one of the options set forth in this subsection and receive the actuarial equivalent of the retirement allowance otherwise payable to him. The election of an optional benefit shall be subject to the approval of the Board.

1. Straight life option. - A member may elect to receive an increased retirement allowance in lieu of any death benefits.

2. Joint and last-survivor option. - A member may elect to receive a decreased retirement allowance during his lifetime in order that a fraction of such retirement allowance be continued to a contingent annuitant at the death of the member. The amount to be received by the contingent annuitant, in accordance with such election by the member, shall not exceed 100 percent of the amount to be received by the member during his lifetime nor shall it be less than ten percent of such amount. In case of such an election, death benefits that might otherwise be provided shall not be payable upon the death of the member unless death of the member occurs prior to the effective date of retirement as set forth in subsection B of this section. This option may be elected if the contingent annuitant is the spouse of the member. If the contingent annuitant is not the spouse of the member, this option may be elected only if the actuarial present value of the payments expected to be made to the member is greater than one-half of the actuarial present value of the total payments expected to be made to the member and contingent annuitant.

B. Any member taking 50/10 retirement as provided in §§ 51.1-153, ~~51.1-205, or § 51.1-216~~, in accordance with the retirement plan covering such member, may elect to have his retirement allowance payable under the option set forth in this subsection and receive the actuarial equivalent of the retirement allowance otherwise payable to him. The election of this optional benefit shall be subject to the approval of the Board.

50/10 retirement joint and last-survivor option. - A member may elect to receive a decreased retirement allowance during his lifetime and have the retirement allowance continued after his death to a contingent annuitant during the lifetime of such person. The retirement allowance pursuant to this option shall be determined as provided in subdivision A 5 of § 51.1-155, ~~subdivision A 3 of § 51.1-206, or subdivision A 3 of § 51.1-217~~, in accordance with the retirement plan covering such member, except (i) the present value of future retirement benefits shall be calculated based on the life expectancies of both the member and the contingent annuitant and (ii) the actuarially computed present value of the payments expected to be made under this option shall be actuarially equivalent to the actuarially computed present value of the payments expected to be made to the member as determined pursuant to subdivision A 5 of § 51.1-155, ~~subdivision A 3 of § 51.1-206, or subdivision A 3 of § 51.1-217~~, in accordance with the retirement plan covering such member.

C. The election of any one of the options stated in this section shall be null and void if the member dies prior to the Board receiving written notification of the member's effective date of retirement. The election of a joint and last-survivor option shall be null and void if the contingent annuitant dies before the member's retirement. For purposes of this subsection, retirement shall be deemed to commence on the effective date of a member's service retirement or disability. If the death of the member occurs prior to the effective date of retirement but after the Board has received written notification of the member's effective date of retirement, benefits shall be paid in accordance with the provisions of § 51.1-163 and

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59 the requirement that the member be in service shall not apply.

60 D. A member who has elected any of the options stated in this section may revoke such an election
61 by written notification to the Board any time prior to the later of the effective date of retirement or the
62 date of written notification to the Board of retirement of the member.

63 E. A retired member who has elected a joint and last-survivor option may, in a manner prescribed by
64 the Board, revoke such election and elect to receive from time of notification either the retirement
65 allowance to which he would have been entitled had no option been elected initially or an allowance
66 actuarially equivalent thereto under a joint and last-survivor option with a different contingent annuitant,
67 if (i) the original contingent annuitant has died, (ii) a final decree of divorce of the retired member from
68 the original contingent annuitant has been entered, or (iii) the written consent of the original contingent
69 annuitant, together with evidence satisfactory to the Board of the good health of the original contingent
70 annuitant, is submitted with the notification. If the provisions of this subsection are invoked by a retired
71 member on the basis of the member's having been divorced from his contingent annuitant and the
72 marriage had been of a duration of twenty years or more, the provisions of this subsection shall not be
73 applicable until the death or remarriage of the former spouse unless such spouse consents in writing to
74 the revocation of the option prior to death or remarriage.

75 If such an election is made as a result of the death or divorce of the contingent annuitant, the benefit
76 payable to the retired member may be adjusted retroactively for a period of not more than sixty days
77 from the date the Board first receives notification of the desire of the retired member to make such a
78 change.

79 F. Subject to the provisions of subsection E of this section, any member who retires on or after July
80 1, 1986, and returns to covered employment shall not be entitled to select a different optional benefit
81 upon making application for retirement a second or subsequent time.

82 § 51.1-205. Service retirement generally.

83 A. Normal retirement.

84 ~~Any~~1. Any employee commencing employment or reemployment on or after July 1, 2003, and any
85 employee who makes the election provided in § 51.1-210.1, who is a member in service in any
86 retirement program administered by the Virginia Retirement System at his normal retirement date with 5
87 or more years of creditable service (i) as a member in the retirement system established by this chapter,
88 (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or
89 (iii) while earning the benefits permitted by § 51.1-138, may retire upon written notification to the
90 Board, setting forth the date the retirement is to become effective.

91 2. Any other employee who is a member in service at his normal retirement date with ~~five~~ 5 or more
92 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
93 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (iii)
94 while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board,
95 setting forth the date the retirement is to become effective.

96 3. Any member, except one appointed by the Governor or elected by the people, who attains ~~seventy~~
97 70 years of age shall be retired forthwith. Any employer, subsequent to the employee's normal
98 retirement date, may provide for compulsory service retirement upon a determination that age is a bona
99 fide occupational qualification reasonably necessary to the normal operation of the particular business or
100 that the employee is incapable of performing his duties in a safe and efficient manner. Any such
101 determination shall be made by the employer.

102 B. Early retirement.

103 1. Any employee commencing employment or reemployment on or after July 1, 2003, and any
104 employee who makes the election provided in § 51.1-210.1, who is a member in service in any
105 retirement program administered by the Virginia Retirement System other than the program established
106 by this chapter shall retire pursuant to the early retirement provisions of the retirement program of
107 which he is a member at the time of retirement.

108 2. Any other employee who is a member in service and who has attained his fiftieth birthday with
109 ~~five~~ 5 or more years of creditable service (i) as a member in the retirement system established by this
110 chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of
111 Title 51.1, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written
112 notification to the Board setting forth the date the retirement is to become effective.

113 C. Deferred retirement for members terminating service.

114 1. Any employee commencing employment or reemployment on or after July 1, 2003, and any
115 employee who makes the election provided in § 51.1-210.1, who terminates service from any position
116 with membership in any retirement program administered by the Virginia Retirement System, may retire
117 under the provisions of subdivision A 1 or B 1 if (i) he is otherwise eligible for such benefits, (ii) he has
118 not withdrawn his accumulated contributions prior to the effective date of his retirement, and (iii) he
119 has 5 or more years of creditable service (a) as a member in the retirement system established by this
120 chapter, (b) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this

title, or (c) while earning the benefits permitted by § 51.1-138 for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

2. Any other member who terminates service after ~~five~~ 5 or more years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of ~~subsection subdivision A, 2 or B ; or D of this section~~ 2 if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has ~~five~~ 5 or more years of creditable service (a) as a member in the retirement system established by this chapter, (b) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1, or (c) while earning the benefits permitted by § 51.1-138, regardless of termination date, for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

~~D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.~~

ED. Effective date of retirement. - The effective date of retirement shall be after the last day of service of the member, but shall not be more than ~~ninety~~ 90 days prior to the filing of the notice of retirement.

FE. Notification on behalf of member. - If the member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification on his behalf.

§ 51.1-206. Service retirement allowance.

A. A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement.

~~Thea. Notwithstanding the provisions of §§ 51.1-155, 51.1-155.1 and 51.1-155.2, for any employee commencing employment or reemployment on or after July 1, 2003, and for any employee who makes the election provided in § 51.1-210.1, the allowance shall equal (i) 2 percent of his average final compensation multiplied by the amount of creditable service earned (a) as a member in the retirement system established by this chapter, (b) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (c) while earning the benefits permitted by § 51.1-138; and (ii) 1.70 percent of his average final compensation multiplied by all other creditable service, if any; and~~

b. For any other employee, the allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of creditable service.

For retirements between October 1, 1994, and December 31, 1998, any state police officer who is a member or beneficiary of a retirement system administered by the Board shall receive an additional retirement allowance equal to ~~three~~ 3 percent of the service or disability retirement allowance payable under this section. Average final compensation attributable to service as Governor, Lieutenant Governor, Attorney General, or member of the General Assembly shall not be included in computing this additional retirement allowance.

2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement.

~~If the membera. For an individual retiring pursuant to subdivision B 1 of § 51.1-205, who is not retiring directly from service as an employee as defined in § 51.1-201, and who has less than 30 years of service shall retire under the provisions of the retirement system for which he is a member as of his retirement date; and~~

b. For all other individuals retiring pursuant to subdivision B 1 of § 51.1-205, and for an individual retiring pursuant to subdivision B 2 of § 51.1-205 who has less than ~~twenty-five~~ 25 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his fiftieth birthday on which he would have completed a total of ~~twenty-five~~ 25 years of creditable service.

3. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the amount the member would receive if he had taken early retirement or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued

182 interest.

183 B. ~~Any person who is an employee on June 30, 2003, and on July 1, 2003, who does not make the~~
184 ~~election provided in § 51.1-210.1, shall receive in addition to the allowance payable under subsection A;~~
185 ~~a member shall receive annually~~ from the date of his retirement until his retirement age, as such term is
186 defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended), an *annual*
187 allowance equal to \$9,264. Beginning July 1, 2001, and biennially thereafter, such allowance shall be
188 reviewed and adjusted by the Board to an amount recommended by the actuary of the Virginia
189 Retirement System based upon increases in social security benefits in the interim.

190 This subsection shall not apply to the following: (i) any member who qualifies for retirement under
191 subsection C of § 51.1-205 and is credited with less than twenty years' service rendered in a hazardous
192 position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than
193 twenty years' service rendered in a hazardous position.

194 C. If a beneficiary of a service retirement allowance under this chapter is at any time in service as an
195 employee in a position covered for retirement purposes under the provisions of this or any chapter other
196 than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

197 D. *No person shall be eligible to receive any of the allowances provided in this section if he receives*
198 *retirement benefits under Chapter 2.1 (§ 51.1-211 et seq.) of this title or under § 51.1-138. No person*
199 *shall receive any allowance pursuant to subdivision A 1 (i) if he has received an allowance pursuant to*
200 *subsection B of § 51.1-206 or subsection B of § 51.1-217, unless, after receiving the allowance pursuant*
201 *to subsection B of § 51.1-206 or subsection B of § 51.1-217, he becomes employed or reemployed as an*
202 *employee defined in § 51.1-201, and thereafter earns 5 or more years of creditable service (a) as a*
203 *member in the retirement system established by this chapter, (b) as a member in the retirement system*
204 *established by Chapter 2.1 of this title, or (c) while earning the benefits permitted by § 51.1-138.*

205 § 51.1-210.1. Election of benefits.

206 *All persons who are employees on June 30, 2003, and on July 1, 2003, shall have until October 31,*
207 *2003, to make an irrevocable election to be covered by the benefits provided in subdivision A 1 a of*
208 *§ 51.1-206.*

209 § 51.1-1404. Optional supplemental health insurance credit for retired state employees.

210 A. As used in this section, "lump sum payment amount" means the amount a state employee is
211 entitled to be paid upon the date of retirement from state service, in accordance with the applicable rules
212 and procedures of the employee's agency or institution, for any (i) accumulated annual leave balance, (ii)
213 accumulated sick leave balance, and (iii) wages and salary for any period for which the employee
214 worked and has not yet been paid.

215 B. Any state employee retiring from service pursuant to subsection A, B or D of § 51.1-153,
216 § 51.1-156, subsection A, or B ~~or D~~ of § 51.1-205, or subsection A, B or B1 of § 51.1-305 on or after
217 July 1, 1999, who participates in the state health insurance plan, shall have the option to require that his
218 lump sum payment amount be credited to a supplemental health insurance credit account which would
219 qualify under Internal Revenue Code § 125 to be used to supplement the amount of the monthly health
220 insurance credit provided pursuant to § 51.1-1400. Such option shall be irrevocably exercised on or
221 before the employee's last day of service.

222 C. Amounts credited to supplemental health insurance credit accounts shall be deposited in a special
223 fund in the state treasury. Interest accruing on amounts in the special fund shall be credited pro rata
224 among the accounts. Amounts shall be paid from the special fund at the request of the Department of
225 Human Resource Management, which shall determine, in cooperation with the Board of Trustees of the
226 Virginia Retirement System, the amount required to be withdrawn from an electing retired employee's
227 supplemental health insurance credit account in order to cover, in conjunction with the health care credit,
228 the premium for the retiree-only or family health insurance coverage.

229 D. Amounts in a retiree's supplemental health insurance credit account shall be exempt from taxation
230 and exempt from execution, attachment, garnishment or any other process to the same extent, and
231 subject to the same conditions, as are retirement allowances and benefits pursuant to § 51.1-124.4.

232 E. In the event that an electing retiree dies prior to exhausting the amount in the retiree's
233 supplemental health insurance credit account, the balance in the account shall be paid in the same
234 manner as provided in § 51.1-163.

235 **2. That the provisions of this act shall not affect retirement benefits for retirements that are**
236 **effective on or prior to July 1, 2003, except as provided in § 51.1-206.**