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HOUSE BILL NO. 2556

Offered January 8, 2003

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

Patrons—Landes, Abbitt, Bell, Cline, Saxman and Van Yahres; Senators: Deeds and Hanger

Referred to Committee on Appropriations

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.

"Funding employer" means a current employer as defined in § 51.1-124.3 who (i) in the 12 months immediately preceding the termination date of a withdrawing employer directly or indirectly had an ownership interest in, or controlled the activities of, a withdrawing employer and (ii) contributed funds or property to the withdrawing employer. When used for purposes of the distribution of excess funds pursuant to subdivision F 4 c, it shall also include any current employer, as defined in § 51.1-124.3, who is designated as a funding employer in a written agreement providing for the distribution of such excess funds.

"Former member" means a person who was an employee of a withdrawing employer (i) who is not a retired member and (ii) whose accumulated contributions attributable to service with, and creditable compensation from, a withdrawing employer, as an employee as defined in § 51.1-124.3, have not been withdrawn by such person or paid as a result of the death of such person.

"Present value of the Retirement System's liability for retirement benefits" means the present value of the Retirement System's liability for retirement benefits to (i) retired members of withdrawing employers pursuant to subdivision F 3, (ii) former members who will have the liability for their retirement benefits assumed by the replacement employer pursuant to subdivision F 2 a, and (iii) former members who become employees of the replacement employer as described in subdivision F 2 b.

"Replacement employer" means an employer as defined in § 51.1-124.3 who enters into a written contract with the Retirement System to assume all liabilities for retirement benefits, as provided herein, due to former members and retired members, or if deceased their beneficiaries, that are attributable to service with, and creditable compensation from, a withdrawing employer.

"Retired member" means a person who has retired from a covered position with a withdrawing employer and who at the time of such retirement was an employee as defined in § 51.1-124.3. Such term shall also include beneficiaries of a retired member receiving a retirement allowance based on such retired member's service as an employee, as defined in § 51.1-124.3, of a 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 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 days, the Retirement System shall request its actuary to determine the present value of the Retirement System's liability to each *former* member, retired member,

59 or beneficiary attributable to service with, and creditable compensation from, the withdrawing employer.
60 For *former* members, such calculation shall be determined based on the liability resulting from the
61 present value of a service retirement allowance beginning at his normal retirement date. Such
62 determination shall be based on actuarial principles and assumptions consistent with those used in the
63 most recent actuarial valuation and financial report for the Retirement System. The expenses incurred by
64 the Board for such actuarial determination report shall be the liability of the withdrawing employer.

65 D. If (i) no qualified retirement plan, as that term is defined in § 401(a) of the Internal Revenue
66 Code, is established by the withdrawing employer, to which the assets and liabilities relating to *former*
67 members and *retired members* employed by such employer are transferred, as described in subsection E,
68 and (ii) there is a successor to the withdrawing employer directly responsible for the liabilities of the
69 withdrawing employer, benefits shall be determined as follows:

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

74 2. Each *former* member, retired member or beneficiary shall be entitled to a distribution of the
75 greater of (i) the balance in his member contribution account established pursuant to § 51.1-147 or (ii)
76 the present value of his service retirement allowance attributable to creditable service and compensation
77 with the withdrawing employer to which such *former* member, retired member or beneficiary would
78 have been entitled immediately prior to the termination event (plus additional amounts, if any, which the
79 withdrawing employer may direct pursuant to subdivision 4 of this subsection). Such *former* members,
80 retired members, and beneficiaries may elect to receive such benefit either in the form of (i) a lump sum
81 payment, subject to the eligible rollover distribution rules and withholding requirements of the Internal
82 Revenue Code or (ii) an annuity equal to the service retirement benefit at normal retirement. The
83 annuity shall be purchased from a private insurance company or companies as selected by the Board.
84 The Board shall establish reasonable notice and election periods for the distribution made pursuant to
85 this subsection. The distribution provided for in this subdivision shall be in the form of a lump sum,
86 subject to applicable withholding requirements, upon the failure of a *former* member, retired member or
87 beneficiary to make an election.

88 *Notwithstanding any other provision of this subsection, a former member who is currently an*
89 *employee, as defined in § 51.1-124.3, shall have his member contribution account established pursuant*
90 *to § 51.1-147 credited with the balance in his member contribution account with the withdrawing*
91 *employer.*

92 3. If the assets held in the members' contribution account established pursuant to § 51.1-147 and in
93 the retirement allowance account established for withdrawing employer pursuant to § 51.1-148 are less
94 than the amount needed to pay the benefits to which all affected *former* members, retired members, and
95 beneficiaries are entitled, the withdrawing employer shall make a contribution to the retirement
96 allowance account in the amount necessary to make up any insufficiency in assets required to provide
97 all benefits payable under this section. If the withdrawing employer fails to make the required
98 contribution, assets held in the members' contribution account established pursuant to § 51.1-147 and in
99 the retirement allowance account established for the withdrawing employer pursuant to § 51.1-148 shall
100 be distributed to *former* members, retired members and beneficiaries in the manner described in
101 § 51.1-139.

102 4. Any assets remaining in the retirement account established for the withdrawing employer pursuant
103 to § 51.1-148 after full satisfaction of liabilities to *former* members, retired members and beneficiaries
104 under this section shall be distributed to the withdrawing employer or transferred to another qualified
105 retirement plan at the direction of the withdrawing employer; ~~provided, however, that if there is no~~
106 ~~successor to the withdrawing employer directly responsible for the liabilities of the withdrawing~~
107 ~~employer, any remaining assets shall be used to offset expenses incurred by the Retirement System in~~
108 ~~any manner permitted by the Internal Revenue Code.~~

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

113 E. If the withdrawing employer establishes or has established a qualified retirement plan, as that term
114 is defined in § 401(a) of the Internal Revenue Code, which provides (i) for participation by *former*
115 members, retired members and the beneficiaries of *former* members and retired members, (ii) for the
116 transfer to the qualified retirement plan of all contributions and prior service attributable to creditable
117 service with the withdrawing employer, and (iii) member benefits and vesting rights at least equal to
118 those which each member would have been entitled under the Retirement System immediately before the
119 termination of the employer's affiliation with the Retirement System, the Board shall transfer to such
120 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. 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. 1. If there is no successor to the withdrawing employer directly responsible for the retirement liabilities, pursuant to this chapter, of the withdrawing employer, the Retirement System may enter into a written agreement with a replacement employer. Any replacement employer who enters into such agreement shall be subject to the provisions of § 51.1-139 as if such former members and retired members of such withdrawing employer were the replacement employer's former members and retired members. A replacement employer shall have transferred into its retirement allowance account established pursuant to § 51.1-148 the amount determined in subdivision 4 b of this subsection. The Retirement System may enter into such written agreement no longer than 90 days after the termination date for the withdrawing employer.

2. a. Such agreement shall provide that each former member, or if deceased his beneficiary, except as provided in subdivision 2 b, shall elect to (i) receive the distribution under subdivision D 2 as calculated under that subdivision or (ii) have the liability for his retirement benefits assumed by the replacement employer. If such person elects to receive a distribution under subdivision D 2, the additional election and distribution thereunder shall apply to such person, except that the withdrawing employer shall not be allowed to direct additional benefits to a former member or beneficiary thereof. Any former member, or if deceased his beneficiary, failing to make such election shall be deemed to have elected to have the liability for his retirement benefits assumed by the replacement employer. For all former members who will have the liability for their retirement allowances assumed by the replacement employer under this subdivision, the amount in the member's contribution account with the withdrawing employer shall be transferred and credited to his member contribution account with the replacement employer.

b. If a former member is currently an employee, as defined in § 51.1-124.3, he shall have his member contribution account established pursuant to § 51.1-147 credited with the balance in his member contribution account with the withdrawing employer.

3. Retired members of withdrawing employers shall not be allowed to make any election under this subsection but shall have the liabilities for their retirement benefits assumed by the replacement employer.

4. a. Payments and credits by the Retirement System pursuant to subdivision 2 shall be made from the former members' or employees' contribution accounts established with the withdrawing employer pursuant to § 51.1-147 and from the withdrawing employer's retirement allowance account established pursuant to § 51.1-148.

b. From the balance remaining in such accounts after the payments and credits pursuant to subdivision 4 a, the Retirement System shall transfer to the retirement allowance account of the replacement employer an amount equal to 105 percent of the present value of the Retirement System's liability for retirement benefits minus (i) amounts contributed to the member contribution accounts of former members who are current employees of the replacement employer pursuant to subdivision 2 b, and (ii) amounts contributed to the member contribution accounts of former members who will have the liability for their retirement benefits assumed by the replacement employer pursuant to subdivision 2 a. Such amounts transferred into the replacement employer's retirement allowance account shall be used for the same purposes as all other assets held in such account.

c. Any remaining funds after the making of the payments, credits, and transfers in subdivisions 4 a and 4 b shall be paid to funding employers. The Retirement System shall make such payment to funding employers as soon as practical after the payments, credits, and transfers required under this subdivision. Such remaining funds shall be distributed in accordance with a written agreement of funding employers of the withdrawing employer, approved by the Board, providing the distribution to each funding employer. Such agreement shall provide that all funding employers who are a party to the agreement exercised due diligence in attempting to identify all funding employers of the withdrawing employer. If there is no such agreement, the remaining funds shall be proportionally distributed to funding employers based upon the value, as of the date of contribution, of all funds or property contributed by each funding employer to the withdrawing employer.

d. If funds in the former members' and employees' contribution accounts established with the withdrawing employer and in the withdrawing employer's retirement allowance account are insufficient for the Retirement System to make the required payments, credits, and transfers provided in subdivisions 4 a and 4 b, the Retirement System shall assess additional contributions, in addition to those already provided for in this code, upon all funding employers of the withdrawing employer in order that it has

182 sufficient funds to make such required payments, credits, and transfers. The total amount of the
183 additional contributions assessed shall provide an amount such that (a) the additional contributions
184 assessed plus (b) the balance in the former members' and employees' contribution accounts with the
185 withdrawing employer and in the withdrawing employer's retirement allowance account, prior to the
186 making of any payments, credits, or transfers pursuant to subdivisions 4 a and 4 b, shall equal the
187 amount needed by the Retirement System to make the payments, credits, and transfers under all such
188 subdivisions. The additional contribution assessed to each funding employer shall be assessed in
189 accordance with a written agreement of such funding employers, approved by the Board, providing the
190 additional amount or ratio to be assessed to each funding employer. If there is no such agreement, the
191 additional contribution assessed to each funding employer shall equal a pro rata share of the total
192 additional contributions assessed, as determined by the value of the funds and property contributed by a
193 funding employer to the withdrawing employer as compared to the total value of funds and property
194 contributed by all funding employers to the withdrawing employer. The Retirement System shall
195 determine the additional contribution to be assessed to each such funding employer. Such additional
196 contribution shall be paid by the funding employers to the Retirement System within the time period and
197 at the rate of interest prescribed by the Board.

198 e. All liabilities of the Retirement System to former members who have elected to receive the
199 distribution under subsection D pursuant to subdivision 2 a, or if deceased their beneficiaries, for
200 retirement benefits, pursuant to this chapter, that are attributable to service with, and creditable
201 compensation from, a withdrawing employer shall terminate upon the payments to be made by the
202 Retirement System as described in subdivision 4 a. Replacement employers shall have no liability to
203 former members (for service with a withdrawing employer) electing to receive a distribution under
204 subsection D. The only liability of the Retirement System for the excess funds described in subdivision 4
205 c, if any, shall be the payment to the funding employers as described in such subdivision.

206 5. A former member of a withdrawing employer shall not accrue additional creditable service
207 pursuant to this chapter unless he becomes an employee as defined in § 51.1-124.3.

208 G. If (i) there is no successor to the withdrawing employer directly responsible for the retirement
209 liabilities, pursuant to this chapter, of the withdrawing employer, and (ii) the Retirement System has
210 been unable to enter into an agreement with a replacement employer pursuant to subsection F,
211 retirement benefits, pursuant to this chapter, of former members and retired members, or if deceased
212 beneficiaries thereof, that are attributable to service with, and creditable compensation from, a
213 withdrawing employer shall be determined and paid in accordance with subsection D, except that the
214 withdrawing employer shall not be allowed to direct additional benefits to a former member or retired
215 member. All liabilities of the Retirement System for retirement benefits, pursuant to this chapter, to such
216 former members and retired members, or beneficiaries thereof, shall terminate upon such payment. Any
217 assets remaining in the retirement allowance account established for the withdrawing employer pursuant
218 to § 51.1-148 after full satisfaction of such liabilities, as calculated under subsection D, shall be used to
219 offset expenses incurred by the Retirement System in any manner permitted by the Internal Revenue
220 Code.

221 FH. Creditable service attributable to employment with a withdrawing employer shall be taken into
222 consideration for purposes of determining whether each employee of the withdrawing employer meets
223 the five or more year requirement to be entitled to a service allowance at normal retirement from the
224 employment of an employer other than the withdrawing employer. Neither creditable service nor
225 creditable compensation attributable to employment with a withdrawing employer shall be taken into
226 account for any other purpose under the Retirement System, unless a former member who becomes an
227 employee has had his member contribution account established pursuant to § 51.1-147 credited with the
228 balance in his member contribution account with the withdrawing employer as provided under
229 subdivision F 2 b, in which case creditable service and creditable compensation accrued and earned
230 while as an employee, as defined in § 51.1-124.3, of a withdrawing employer shall be taken into account
231 for all retirement benefits pursuant to this chapter.

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

237 2. That for termination dates prior to July 1, 2003, (i) if there is no successor to a withdrawing
238 employer directly responsible for the retirement liabilities of the withdrawing employer and (ii) the
239 Virginia Retirement System has not distributed any retirement benefits to former members and
240 retired members of the withdrawing employer pursuant to § 51.1-124.12, the Virginia Retirement
241 System shall have until July 1, 2004, to enter into a written agreement with a replacement
242 employer. #