

032544820

HOUSE BILL NO. 2556

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 27, 2003)

(Patron Prior to Substitute—Delegate Landes)

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

60 an annuity equal to the service retirement benefit at normal retirement. The annuity shall be purchased
61 from a private insurance company or companies as selected by the Board. The Board shall establish
62 reasonable notice and election periods for the distribution made pursuant to this subsection. The
63 distribution provided for in this subdivision shall be in the form of a lump sum, subject to applicable
64 withholding requirements, upon the failure of a member, retired member or beneficiary to make an
65 election.

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

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

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

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

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

122 *G. If there is no replacement employer, creditable* service attributable to employment with a
123 withdrawing employer shall be taken into consideration for purposes of determining whether each
124 employee of the withdrawing employer meets the ~~five~~ 5 or more year requirement to be entitled to a
125 service allowance at normal retirement from the employment of an employer other than the withdrawing
126 employer. ~~Neither~~ *If there is no replacement employer, neither* creditable service nor creditable
127 compensation attributable to employment with a withdrawing employer shall be taken into account for
128 any other purpose under the Retirement System.

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

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