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HOUSE BILL NO. 334

Offered January 14, 2004

Prefiled January 12, 2004

A BILL to amend and reenact §§ 51.1-138 and 51.1-205, as they are currently effective and as they shall become effective, and § 51.1-216 of the Code of Virginia, relating to years of service requirements for retirement.

Patron—Pollard

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-138 and 51.1-205, as they are currently effective and as they shall become effective, and § 51.1-216 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-138. (Effective until July 1, 2005) Benefits.

A. Employees who become members under this article and on whose behalf contributions are paid as provided in this article shall be entitled to benefits under the retirement system.

B. By resolution legally adopted and approved by the Board, the employer may elect to provide benefits equivalent to those provided under the State Police Officers' Retirement System, as set out in Chapter 2 (§ 51.1-200 et seq.) of this title, except for benefits provided under § 51.1-209 and except for those provisions allowing a person retired under the State Police Officers' Retirement System to receive the related retirement allowance while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police, in lieu of the benefits that would otherwise be provided hereunder for any employees who are employed in (i) law-enforcement positions comparably hazardous to that of a state police officer, including any sworn law-enforcement officer who has the duty and obligation to enforce the penal and traffic laws of this Commonwealth as directed by his superior officer, if so certified by his appointing authority, (ii) positions as full-time salaried fire fighters, or (iii) positions as regional jail superintendents and jail officers of regional jail farms, regional jails or jail authorities, as approved by the respective jail board or authority and by the participating political subdivisions of such entities. Sheriffs of political subdivisions that participate in the retirement system shall receive benefits equivalent to those of state police officers, except for the benefits provided under § 51.1-209 and except for those provisions allowing a person retired under the State Police Officers' Retirement System to receive the related retirement allowance while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police, regardless of whether the employer has elected to provide equivalent benefits as set out in this subsection.

C. Each employer providing the benefits of subsection B for its employees prior to July 1, 1990, may elect to provide for the early retirement of employees as set forth in this subsection in lieu of the early retirement and death before retirement provisions of the State Police Officers' Retirement System. Such election must be made to the Board in writing prior to July 1, 1990. Any member in service on or after his fifty-fifth birthday with five 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 (§ 51.1-200 et seq.) of this title, or (iii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title may retire upon written notification to the Board setting forth at what time the retirement is to become effective. The effective date shall be after his last day of service but shall not be more than 90 days prior to the filing of such notice. The member shall receive an allowance ~~which~~*that* shall be determined in the same manner as for retirement at an employee's normal retirement with creditable service and average final compensation being determined as of the date of his actual retirement. If the member has less than 30 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 (a) the member's normal retirement date or (b) the first date on or after the member's fifty-fifth birthday on which the member would have completed a total of 30 years of creditable service. *Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under this chapter, Chapter 2 (§ 51.1-200 et seq.), or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements of this section, and §§ 51.1-205 and 51.1-216.*

Members retiring under the provisions of this subsection shall be entitled to receive post-retirement supplements as provided in § 51.1-166. In computing the amount of any supplement, any additional allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded. In the case of death before retirement, members whose employers elect to provide benefits in accordance with

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59 the provisions of this subsection and who have not attained the age of 50 on the date of death shall be
60 assumed to be 50 years of age for the purposes of reducing the benefits on an actuarial equivalent basis.

61 D. The retirement system shall not be liable for the payment of any retirement allowances or other
62 benefits on behalf of a member or beneficiary of a member for which reserves have not been previously
63 created from funds contributed by the employer or the members for such benefits.

64 § 51.1-138. (Effective July 1, 2005) Benefits.

65 A. Employees who become members under this article and on whose behalf contributions are paid as
66 provided in this article shall be entitled to benefits under the retirement system.

67 B. By resolution legally adopted and approved by the Board, the employer may elect to provide
68 benefits equivalent to those provided under the State Police Officers' Retirement System, as set out in
69 Chapter 2 (§ 51.1-200 et seq.) of this title except for § 51.1-209, in lieu of the benefits that would
70 otherwise be provided hereunder for any employees who are employed in (i) law-enforcement positions
71 comparably hazardous to that of a state police officer, including any sworn law-enforcement officer who
72 has the duty and obligation to enforce the penal and traffic laws of this Commonwealth as directed by
73 his superior officer, if so certified by his appointing authority, (ii) positions as full-time salaried fire
74 fighters, or (iii) positions as regional jail superintendents and jail officers of regional jail farms, regional
75 jails or jail authorities, as approved by the respective jail board or authority and by the participating
76 political subdivisions of such entities. Sheriffs of political subdivisions which participate in the
77 retirement system shall receive benefits equivalent to those of state police officers, except for the
78 benefits provided under § 51.1-209, regardless of whether the employer has elected to provide equivalent
79 benefits as set out in this subsection.

80 C. Each employer providing the benefits of subsection B for its employees prior to July 1, 1990,
81 may elect to provide for the early retirement of employees as set forth in this subsection in lieu of the
82 early retirement and death before retirement provisions of the State Police Officers' Retirement System.
83 Such election must be made to the Board in writing prior to July 1, 1990. Any member in service on or
84 after his fifty-fifth birthday with five or more years of creditable service (i) as a member in the
85 retirement system established by this chapter, (ii) as a member in the retirement system established by
86 Chapter 2 (§ 51.1-200 et seq.) of ~~Title 51.1~~ this title, or (iii) as a member in the retirement system
87 established by Chapter 2.1 (§ 51.1-211 et seq.) of ~~Title 51.1~~ this title may retire upon written notification
88 to the Board setting forth at what time the retirement is to become effective. The effective date shall be
89 after his last day of service but shall not be more than ~~ninety~~90 days prior to the filing of such notice.
90 The member shall receive an allowance ~~which~~that shall be determined in the same manner as for
91 retirement at an employee's normal retirement with creditable service and average final compensation
92 being determined as of the date of his actual retirement. If the member has less than ~~thirty~~30 years of
93 service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent
94 basis for the period by which the actual retirement date precedes the earlier of (a) the member's normal
95 retirement date or (b) the first date on or after the member's fifty-fifth birthday on which the member
96 would have completed a total of ~~thirty~~30 years of creditable service. *Effective December 31, 2003, any*
97 *employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of*
98 *creditable service rendered under this chapter, Chapter 2 (§ 51.1-200 et seq.), or Chapter 2.1*
99 *(§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements of this section, and*
100 *§§ 51.1-205 and 51.1-216.*

101 Members retiring under the provisions of this subsection shall be entitled to receive post-retirement
102 supplements as provided in § 51.1-166. In computing the amount of any supplement, any additional
103 allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded. In the
104 case of death before retirement, members whose employers elect to provide benefits in accordance with
105 the provisions of this subsection and who have not attained the age of ~~fifty~~50 on the date of death shall
106 be assumed to be ~~fifty~~50 years of age for the purposes of reducing the benefits on an actuarial
107 equivalent basis.

108 D. The retirement system shall not be liable for the payment of any retirement allowances or other
109 benefits on behalf of a member or beneficiary of a member for which reserves have not been previously
110 created from funds contributed by the employer or the members for such benefits.

111 § 51.1-205. (Effective until July 1, 2005) Service retirement generally.

112 A. Normal retirement. - Any member in service at his normal retirement date with five or more years
113 of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
114 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of ~~Title 51.1~~ this title, or
115 (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board,
116 setting forth the date the retirement is to become effective. Any member in service at age 60 or older
117 with five or more years of creditable service as a member in the retirement system established by this
118 chapter may elect to retire and receive a retirement allowance pursuant to this chapter and may continue
119 to receive such retirement allowance notwithstanding that such person is employed as a state police
120 officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police for a period of

up to one year. Such period may be extended for up to one additional year with the prior approval of the Secretary of Public Safety. Any member, except one appointed by the Governor or elected by the people, who attains 70 years of age shall be retired forthwith. Any employer, subsequent to the employee's normal retirement date, may provide for compulsory service retirement upon a determination that age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or that the employee is incapable of performing his duties in a safe and efficient manner. Any such determination shall be made by the employer.

Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-216.

B. Early retirement. - Any member in service who has attained his fiftieth birthday with five 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~~ *this title*, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board setting forth the date the retirement is to become effective.

Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-216.

C. Deferred retirement for members terminating service. - Any member who terminates service after five 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~~ *this title*, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five 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~~ *this title*, 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. A person receiving a retirement allowance pursuant to this chapter while employed as a state police officer or as an employee, as defined in § 51.1-124.3, of the Department of State Police pursuant to subsection A of this section or subsection E of § 51.1-206 shall not be eligible to retire as provided under this subsection. 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.

Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-216.

D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with 10 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.

E. 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 90 days prior to the filing of the notice of retirement.

F. 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.

§ 51.1-205. (Effective July 1, 2005) Service retirement generally.

A. Normal retirement. - Any member in service at his normal retirement date with five 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~~ *this title*, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board, setting forth the date the retirement is to become effective. Any member, except one appointed by the Governor or elected by the people, who attains ~~seventy~~ 70 years of age shall be retired forthwith. Any employer, subsequent to the employee's normal retirement date, may provide for compulsory service retirement upon a determination that age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or that the employee is incapable of performing his duties in a safe and efficient manner. Any such determination shall be made by the employer.

Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is

182 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.),
183 this chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting
184 requirements of this section, and §§ 51.1-138 and 51.1-216.

185 B. Early retirement. - Any member in service who has attained his fiftieth birthday with five or more
186 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
187 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of ~~Title 51.1~~ this title, or
188 (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board
189 setting forth the date the retirement is to become effective.

190 *Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is*
191 *credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.),*
192 *this chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting*
193 *requirements of this section, and §§ 51.1-138 and 51.1-216.*

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

207 *Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is*
208 *credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.),*
209 *this chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting*
210 *requirements of this section, and §§ 51.1-138 and 51.1-216.*

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

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

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

219 § 51.1-216. Service retirement generally.

220 A. Normal retirement.

221 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any
222 employee who makes the election provided in § 51.1-221, who is a member in service in any retirement
223 program administered by the Virginia Retirement System at his normal retirement date with five or more
224 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
225 member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of ~~Title 51.1~~ this title, or
226 (iii) while earning the benefits permitted by § 51.1-138, may retire upon written notification to the
227 Board, setting forth the date the retirement is to become effective.

228 *Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is*
229 *credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of*
230 *this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting*
231 *requirements of this section, and §§ 51.1-138 and 51.1-205.*

232 2. Any other employee who is a member in service at his normal retirement date with five or more
233 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
234 member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of ~~Title 51.1~~ this title, or
235 (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board,
236 setting forth the date the retirement is to become effective.

237 *Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is*
238 *credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of*
239 *this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting*
240 *requirements of this section, and §§ 51.1-138 and 51.1-205.*

241 B. Early retirement.

242 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any
243 employee who makes the election provided in § 51.1-221, who is a member in service in any retirement

program administered by the Virginia Retirement System other than the program established by this chapter shall retire pursuant to the early retirement provisions of the retirement program of which he is a member at the time of retirement.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-205.

2. Any other employee who is a member in service and who has attained his fiftieth birthday with five 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 (§ 51.1-200 et seq.) of Title 51.1-~~this title~~, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board setting forth the date the retirement is to become effective.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-205.

C. Deferred retirement for members terminating service.

1. Any employee commencing employment or reemployment on or after July 1, 2001, and any employee who makes the election provided in § 51.1-221, who terminates service from any position with membership in any retirement program administered by the Virginia Retirement System, may retire under the provisions of subdivision A 1 or B 1 if (i) he is otherwise eligible for such benefits, (ii) he has not withdrawn his accumulated contributions prior to the effective date of his retirement, and (iii) he has five 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 (§ 51.1-200 et seq.) of Title 51.1-~~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.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-205.

2. Any other member who terminates service after five 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 (§ 51.1-200 et seq.) of Title 51.1-~~this title~~, or (iii) while earning the benefits permitted by § 51.1-138 may retire under the provisions of subdivision A 2 or B 2 if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five 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 (§ 51.1-200 et seq.) of Title 51.1-~~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.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-205.

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

E. 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.

2. That an emergency exists and this act is in force from its passage.