

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 196

*An Act to amend and reenact § 51.1-803 of the Code of Virginia, to provide liability protection for the governing body of any county, city or town that establishes a retirement system pursuant to Chapter 8 of Title 51.1 in situations where it has to select an individual retirement account investment if required by Internal Revenue Code Section 401 (a) (31) (B).*

[H 2746]

Approved March 20, 2005

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

**1. That § 51.1-803 of the Code of Virginia is amended and reenacted as follows:**

§ 51.1-803. Investments of retirement systems.

A. If the governing body of any county, city, or town establishes a retirement system pursuant to the provisions of this article, any funds that may be allocated, segregated, or otherwise designated for the retirement system, which are on hand at any time and are not necessary for immediate payment of pensions or benefits, shall be invested with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

B. The selection of services related to the management, purchase, or sale of investments authorized by this section, including but not limited to actuarial services, shall be governed by the standard of care set forth in this section and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of Title 2.2.

C. *In the case of an automatic rollover of a mandatory cash-out, as that term is defined under I.R.C. Section 401 (a) (31) (B) of the United States Internal Revenue Code of 1986 (including as such section is amended or renumbered or any successor provision thereto) and regulations thereunder applicable to governmental plans, the governing body shall not be liable for any loss resulting from the governing body's selection of an individual retirement plan provider and investment product where the selection is made in accordance with guidelines to be adopted by the governing body that are similar to the safe harbor guidelines adopted by the United States Department of Labor for this purpose.*