

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 639

*An Act to amend and reenact §§ 51.1-126.5 and 51.1-126.6 of the Code of Virginia, relating to the suspension of the payment of retirement benefits.*

[H 454]

Approved April 5, 2006

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

**1. That §§ 51.1-126.5 and 51.1-126.6 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-126.5. Defined contribution plan for eligible members.

A. As used in this section, unless the context requires otherwise:

"Eligible member" means a member who holds an eligible position.

"Eligible position" means a position designated in subdivision 3, 4, or 20 of § 2.2-2905 or an officer or employee appointed by the Attorney General or Lieutenant Governor to a position designated as a deputy, counsel or director position.

"Participating member" means an eligible member who elects to participate in the plan.

"Plan" means the defined contribution plan established pursuant to this section.

B. The Board shall establish a plan covering any eligible member who elects to participate in the plan. The plan shall be in lieu of the service retirement allowance provided by the retirement system under § 51.1-155. Participating members shall be deemed to be members of the retirement system to the extent consistent with the provisions of this section.

C. Any person who becomes an eligible member after July 1, 1998, shall elect upon accepting an eligible position to participate in either (i) the retirement system or (ii) the plan. Such election shall be made in accordance with guidelines established by the Virginia Retirement System.

D. Upon ceasing to be employed in an eligible position but continuing to be an employee of the Commonwealth, a participating member may elect to:

1. Maintain the accrued contributions and earnings in his defined contribution account; or

2. Use the accrued contributions and earnings in his defined contribution account to purchase service credit in the retirement system as provided in subsection F.

E. After termination of employment, a participating member may withdraw the accrued contributions and earnings from his defined contribution account, subject to applicable state and federal law and regulation.

F. Upon an election under subsection D by a participating member who has ceased to be employed in an eligible position, the accrued contributions and earnings in such electing person's defined contribution account shall be used to purchase service credit in the retirement system at a rate to be established by the Board. Such rate shall cover the actuarial cost of providing the creditable service. If the account is less than the actuarial cost of the total time worked in the eligible position, the employee may use his own funds to purchase the remaining time. In no event shall the amount of service credit purchased in the retirement system exceed the time that was served in an eligible position while participating in the plan. Any amount of accrued contributions and earnings in such electing person's defined contribution account in excess of the amount required to purchase service credit in the retirement system for the time served in an eligible position while participating in the plan shall be forfeited to the Virginia Retirement System.

G. The contribution by the Commonwealth to a participating member's defined contribution account shall be determined by the Board of Trustees of the Virginia Retirement System in consultation with its actuary. Contributions to the defined contribution account and all earnings thereon shall be credited to an account to be maintained for each participating member. Contributions by the Commonwealth to a participating member's defined contribution account shall be in lieu of contributions to the retirement system required pursuant to § 51.1-145.

H. *If a member of the optional retirement plan maintained under this section is at any time in service as an employee in a position covered for retirement purposes under the provisions of this chapter, Chapter 2 (§ 51.1-200 et seq.), Chapter 2.1 (§ 51.1-211 et seq.), or Chapter 3 (§ 51.1-300 et seq.) of this title, his benefit payments under the optional retirement plan maintained under this section shall be suspended while so employed; provided, however, reemployment in such position shall have no effect on the payment under the optional retirement plan maintained under this section if the benefits are being paid in an annuity form under a lifetime annuity contract purchased with the member's account balance.*

I. The Virginia Retirement System shall (i) develop policies and procedures for the administration of the plan and (ii) provide a program of education and support for participating members.

§ 51.1-126.6. Certain employees of public school divisions.

A. The Board shall establish a defined contribution plan covering any eligible employee serving in a position designated in § 22.1-60 who elects to participate in the plan.

B. Any school board established pursuant to Article VIII, Section 7 of the Constitution of Virginia and Chapter 5 (§ 22.1-28 et seq.) of Title 22.1 is hereby authorized to make contributions to the optional retirement plan established by the Virginia Retirement System pursuant to this section for the benefit of its eligible employees who elect to participate in such a plan. Any eligible employee of such school board hired on or after the effective date of the plan shall make an irrevocable election to participate in either (i) the retirement system established by this chapter or (ii) the optional retirement plan established by the Virginia Retirement System pursuant to this section. Such election shall be made in accordance with the guidelines established by the Virginia Retirement System.

C. No employee of any school board who is an active member of the retirement plan established under this section shall also be an active member in the Virginia Retirement System or beneficiary thereof other than as a contingent annuitant. Such eligible employee may, however, be covered under any insurance plan established by the Board under this title for which he would have been otherwise eligible.

D. The contribution by the school board to such employee's defined contribution account shall be determined by the Board of Trustees of the Virginia Retirement System in consultation with its actuary. Contributions to the defined contribution account and all earnings thereon shall be credited to an account to be maintained for each eligible employee who elects to participate. Contributions by the school board to an electing employee's defined contribution account shall be in lieu of contributions to the retirement system required pursuant to § 51.1-145.

*E. If a member of the optional retirement plan maintained under this section is at any time in service as an employee in a position covered for retirement purposes under the provisions of this chapter, Chapter 2 (§ 51.1-200 et seq.), Chapter 2.1 (§ 51.1-211 et seq.), or Chapter 3 (§ 51.1-300 et seq.) of this title, his benefit payments under the optional retirement plan maintained under this section shall be suspended while so employed; provided, however, reemployment in such position shall have no effect on the payment under the optional retirement plan maintained under this section if the benefits are being paid in an annuity form under a lifetime annuity contract purchased with the member's account balance.*

Æ F. The Virginia Retirement System shall develop policies and procedures for the administration of such plan in accordance with existing and future federal and state policies, regulations, and statutes governing the administration of such plans.