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HOUSE BILL NO. 451

Offered January 11, 2006

Prefiled January 9, 2006

A BILL to amend and reenact §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia, relating to the Virginia Retirement System; forfeiture of eligibility.

Patron—Tata

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-153. Service retirement.

A. Normal retirement. - Any member in service at his normal retirement date with five or more years of creditable service may retire at any time upon written notification to the Board setting forth the date the retirement is to become effective. Any member in service who was denied membership prior to July 1, 1987, as a result of being age sixty or over when first employed may retire at any time after his normal retirement date and the requirement of having five or more years of service shall not apply.

B. Early retirement. - 1. Any member in service who has attained his fifty-fifth birthday with five 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.

2. Any state employee, teacher, or employee of a political subdivision who is a member of the retirement system may retire prior to his normal retirement date after attaining age fifty and thirty years of creditable service, upon written notification to the Board setting forth the date the retirement is to become effective. The benefit for such member shall be calculated in accordance with the provisions of subdivision A 1 of § 51.1-155.

C. Deferred retirement for members terminating service. - Any member who terminates service after five or more years of creditable service, regardless of termination date, may retire under the provisions of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn.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.

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

G. A member of the retirement system whose service is terminated because of dishonesty, malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order issued by a court of competent jurisdiction establishing that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office.

1. For the purposes of this section, a judgment or order will be considered final if the time within which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action seeking post-judgment or post-order remedy is pending.

2. Upon receipt from the member's employer of either of the above-described documents, VRS shall immediately terminate the member's service and process a refund of the member's accumulated contributions pursuant to the provisions of § 51.1-161.

3. VRS may hold in abeyance the processing of a member's retirement application upon receipt from an employer of notice that the member has been terminated because of dishonesty, malfeasance, or

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59 *misfeasance in office together with: (i) documentation establishing that legal action has been*  
60 *commenced to establish the basis for the termination; or (ii) an agreement entered into by the member*  
61 *that the retirement application may be suspended.*

62 4. All service credit lost from ceasing to be a member pursuant to the provisions of this section shall  
63 be ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain  
64 employment in a position covered by the retirement system.

65 § 51.1-205. Service retirement generally.

66 A. Normal retirement. - Any member in service at his normal retirement date with five or more years  
67 of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a  
68 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (iii)  
69 while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board,  
70 setting forth the date the retirement is to become effective. Any member, except one appointed by the  
71 Governor or elected by the people, who attains 70 years of age shall be retired forthwith. Any employer,  
72 subsequent to the employee's normal retirement date, may provide for compulsory service retirement  
73 upon a determination that age is a bona fide occupational qualification reasonably necessary to the  
74 normal operation of the particular business or that the employee is incapable of performing his duties in  
75 a safe and efficient manner. Any such determination shall be made by the employer.

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

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

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

89 C. Deferred retirement for members terminating service. - Any member who terminates service after  
90 five or more years of creditable service (i) as a member in the retirement system established by this  
91 chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this  
92 title, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of  
93 subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the  
94 effective date of his retirement or if he has five or more years of creditable service (a) as a member in  
95 the retirement system established by this chapter, (b) as a member in the retirement system established  
96 by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (c) while earning the benefits permitted by  
97 § 51.1-138, regardless of termination date, for which his employer has paid the contributions and such  
98 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the  
99 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~  
100 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~  
101 ~~misfeasance in office. The certification may be appealed to the Board.~~

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

106 D. Effective date of retirement. - The effective date of retirement shall be after the last day of  
107 service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

108 E. Notification on behalf of member. - If the member is physically or mentally unable to submit  
109 written notification of his intention to retire, the member's appointing authority may submit notification  
110 on his behalf.

111 F. A member of the retirement system whose service is terminated because of dishonesty,  
112 malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or  
113 disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order  
114 issued by a court of competent jurisdiction establishing that the member's service was terminated  
115 because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the  
116 member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or  
117 misfeasance in office.

118 1. For the purposes of this section, a judgment or order will be considered final if the time within  
119 which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action  
120 seeking post-judgment or post-order remedy is pending.

121 2. Upon receipt from the member's employer of either of the above-described documents, VRS shall  
122 immediately terminate the member's service and process a refund of the member's accumulated  
123 contributions pursuant to the provisions of § 51.1-161.

124 3. VRS may hold in abeyance the processing of a member's retirement application upon receipt from  
125 an employer of notice that the member has been terminated because of dishonesty, malfeasance, or  
126 misfeasance in office together with: (i) documentation establishing that legal action has been  
127 commenced to establish the basis for the termination; or (ii) an agreement entered into by the member  
128 that the retirement application may be suspended.

129 4. All service credit lost from ceasing to be a member pursuant to the provisions of this section shall  
130 be ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain  
131 employment in a position covered by the retirement system.

132 § 51.1-216. Service retirement generally.

133 A. Normal retirement.

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

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

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

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

154 3. A member of the retirement system whose service is terminated because of dishonesty,  
155 malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or  
156 disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order  
157 issued by a court of competent jurisdiction establishing that the member's service was terminated  
158 because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the  
159 member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or  
160 misfeasance in office.

161 For the purpose of this section, a judgment or order will be considered final if the time within which  
162 notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action  
163 seeking post-judgment or post-order remedy is pending.

164 Upon receipt from the member's employer of either of the above-described documents, VRS shall  
165 immediately terminate the member's service and process a refund of the member's accumulated  
166 contributions pursuant to the provisions of § 51.1-161.

167 VRS may hold in abeyance the processing of a member's retirement application upon receipt from an  
168 employer of notice that the member has been terminated because of dishonesty, malfeasance, or  
169 misfeasance in office together with: (i) documentation establishing that legal action has been  
170 commenced to establish the basis for the termination; or (ii) an agreement entered into by the member  
171 that the retirement application may be suspended.

172 All service credit lost from ceasing to be a member pursuant to the provisions of this section shall be  
173 ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain  
174 employment in a position covered by the retirement system.

175 B. Early retirement.

176 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any  
177 employee who makes the election provided in § 51.1-221, who is a member in service in any retirement  
178 program administered by the Virginia Retirement System other than the program established by this  
179 chapter shall retire pursuant to the early retirement provisions of the retirement program of which he is a  
180 member at the time of retirement.

181 Effective December 31, 2003, any employee 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.) of  
183 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
184 requirements of this section, and §§ 51.1-138 and 51.1-205.

185 2. Any other employee who is a member in service and who has attained his fiftieth birthday with  
186 five or more years of creditable service (i) as a member in the retirement system established by this  
187 chapter, (ii) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this  
188 title, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to  
189 the Board setting forth the date the retirement is to become effective.

190 Effective December 31, 2003, any employee 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.) of  
192 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
193 requirements of this section, and §§ 51.1-138 and 51.1-205.

194 C. Deferred retirement for members terminating service.

195 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any  
196 employee who makes the election provided in § 51.1-221, who terminates service from any position with  
197 membership in any retirement program administered by the Virginia Retirement System, may retire  
198 under the provisions of subdivision A 1 or B 1 if (i) he is otherwise eligible for such benefits, (ii) he  
199 has not withdrawn his accumulated contributions prior to the effective date of his retirement, and (iii) he  
200 has five or more years of creditable service (a) as a member in the retirement system established by this  
201 chapter, (b) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this  
202 title, or (c) while earning the benefits permitted by § 51.1-138 for which his employer has paid the  
203 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any  
204 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 employee 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.) of  
209 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
210 requirements of this section, and §§ 51.1-138 and 51.1-205.

211 2. Any other member who terminates service after five or more years of creditable service (i) as a  
212 member in the retirement system established by this chapter, (ii) as a member in the retirement system  
213 established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) while earning the benefits permitted by  
214 § 51.1-138 may retire under the provisions of subdivision A 2 or B 2 if he has not withdrawn his  
215 accumulated contributions prior to the effective date of his retirement or if he has five or more years of  
216 creditable service (a) as a member in the retirement system established by this chapter, (b) as a member  
217 in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (c) while earning  
218 the benefits permitted by § 51.1-138 for which his employer has paid the contributions and such  
219 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the  
220 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection  
221 if his employer certifies that his service was terminated because of dishonesty, malfeasance, or  
222 misfeasance in office. The certification may be appealed to the Board.~~

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

227 D. Effective date of retirement. - The effective date of retirement shall be after the last day of  
228 service, but shall not be more than 90 days prior to the filing of the notice of retirement.

229 E. Notification on behalf of member. - If the member is physically or mentally unable to submit  
230 written notification of his intention to retire, the member's appointing authority may submit notification  
231 on his behalf.

232 § 51.1-305. Service retirement generally.

233 A. Normal retirement. - Any member in service at his normal retirement date with five or more years  
234 of creditable service may retire upon written notification to the Board setting forth the date the  
235 retirement is to become effective.

236 B. Early retirement. - Any member in service who has either (i) attained his fifty-fifth birthday with  
237 five or more years of creditable service or (ii) in the case of a member of any of the previous systems  
238 immediately prior to July 1, 1970, complied with the requirements for retirement set forth under the  
239 provisions of such previous system as in effect immediately prior to July 1, 1970, may retire upon  
240 written notification to the Board setting forth the date the retirement is to become effective.

241 B1. Mandatory retirement. - Any member who attains 70 years of age shall be retired 20 days after  
242 the convening of the next regular session of the General Assembly. However, if the mandatory  
243 retirement provisions of this subdivision would require a member of the State Corporation Commission

244 to be retired before the end of his elected term and such retirement would occur during a session of the  
 245 General Assembly in which the General Assembly is required, pursuant to § 12.1-6, to elect another  
 246 member or members of the State Corporation Commission to serve either a regular term or a portion of  
 247 a regular term, such member who otherwise would be subject to the mandatory retirement provisions of  
 248 this subdivision shall be retired upon the first to occur of (i) the expiration of the term to which he was  
 249 elected or (ii) 20 days after the commencing of the regular session of the General Assembly that  
 250 immediately follows the date such member attains 72 years of age. The provisions of this subsection  
 251 shall apply only to those members who are elected or appointed to an original or subsequent term  
 252 commencing after July 1, 1993.

253 C. Deferred retirement for members terminating service. - Any member who terminates service after  
 254 five or more years of creditable service may retire under the provisions of subsection A or B of this  
 255 section, if he has not withdrawn his accumulated contributions prior to the effective date of his  
 256 retirement or if he has five or more years of creditable service for which his employer has paid the  
 257 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any  
 258 requirements as to the member being in service shall not apply. ~~No member shall be entitled to the~~  
 259 ~~benefits of this subsection if his appointing authority certifies that his service was terminated because of~~  
 260 ~~dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.~~

261 D. Effective date of retirement. - The effective date of retirement shall be after the last day of  
 262 service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

263 E. Notification of retirement. - In addition to the notice to the Board required by this section, the  
 264 same notice shall be given by the member to his appointing authority. If a member is physically or  
 265 mentally unable to submit written notification of his intention to retire, the member's appointing  
 266 authority may submit notification to the Board on his behalf.

267 *F. A member of the retirement system whose service is terminated because of dishonesty,*  
 268 *malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or*  
 269 *disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order*  
 270 *issued by a court of competent jurisdiction establishing that the member's service was terminated*  
 271 *because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the*  
 272 *member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or*  
 273 *misfeasance in office.*

274 *For the purposes of this section, a judgment or order will be considered final if the time within*  
 275 *which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action*  
 276 *seeking post-judgment or post-order remedy is pending.*

277 *Upon receipt from the member's employer of either of the above-described documents, VRS shall*  
 278 *immediately terminate the member's service and process a refund of the member's accumulated*  
 279 *contributions pursuant to the provisions of § 51.1-161.*

280 *VRS may hold in abeyance the processing of a member's retirement application upon receipt from an*  
 281 *employer of notice that the member has been terminated because of dishonesty, malfeasance, or*  
 282 *misfeasance in office together with: (i) documentation establishing that legal action has been*  
 283 *commenced to establish the basis for the termination; or (ii) an agreement entered into by the member*  
 284 *that the retirement application may be suspended.*

285 *All service credit lost from ceasing to be a member pursuant to the provisions of this section shall be*  
 286 *ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain*  
 287 *employment in a position covered by the retirement system.*