

064169276

**HOUSE BILL NO. 471**

Offered January 11, 2006

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*A BILL to amend and reenact §§ 51.1-138, 51.1-206, 51.1-207, 51.1-208, 51.1-216, 51.1-217, 51.1-218, and 51.1-811, of the Code of Virginia and to repeal §§ 51.1-219 and 51.1-221 of the Code of Virginia, relating to retirement benefits for state and local law-enforcement officers.*

Patron—Cosgrove

Referred to Committee on Appropriations

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

**1. That §§ 51.1-138, 51.1-206, 51.1-207, 51.1-208, 51.1-216, 51.1-217, 51.1-218, and 51.1-811 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-138. 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 § 51.1-209, 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 which participate in the retirement system shall receive benefits equivalent to those of state police officers, except for the benefits provided under § 51.1-209, 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 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 the provisions of this subsection and who have not attained the age of 50 on the date of death shall be assumed to be 50 years of age for the purposes of reducing the benefits on an actuarial equivalent basis.

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

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HB471

59 § 51.1-206. Service retirement allowance.

60 A. A member shall receive an annual retirement allowance, payable for life, as follows:

61 1. Normal retirement. - The allowance shall equal ~~4.70~~ 2.50 percent of his average final  
62 compensation multiplied by the amount of creditable service.

63 For retirements between October 1, 1994, and December 31, 1998, any state police officer who is a  
64 member or beneficiary of a retirement system administered by the Board shall receive an additional  
65 retirement allowance equal to three percent of the service or disability retirement allowance payable  
66 under this section. Average final compensation attributable to service as Governor, Lieutenant Governor,  
67 Attorney General, or member of the General Assembly shall not be included in computing this  
68 additional retirement allowance.

69 2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement  
70 with creditable service and average final compensation being determined as of the date of actual  
71 retirement. If the member has less than 25 years of service at retirement, the amount of the retirement  
72 allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement  
73 date precedes the earlier of (i) his normal retirement date or (ii) the first date ~~on or after his fiftieth~~  
74 birthday on which he would have completed a total of 25 years of creditable service.

75 B. In addition to the allowance payable under subsection A, a member shall receive annually from  
76 the date of his retirement until his retirement age, as such term is defined under the Social Security Act  
77 (42 U.S.C. § 416 et seq., as now or hereafter amended), an allowance equal to \$9,264. Beginning July 1,  
78 2001, and biennially thereafter, such allowance shall be reviewed and adjusted by the Board to an  
79 amount recommended by the actuary of the Virginia Retirement System based upon increases in social  
80 security benefits in the interim.

81 This subsection shall not apply to the following: (i) any member who qualifies for retirement under  
82 subsection C of § ~~51.1-205~~ and is credited with less than 20 years' service rendered in a hazardous  
83 position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than  
84 20 years' service rendered in a hazardous position. However, any service rendered as an employee, as  
85 such term is defined in § 51.1-212, shall be deemed as service in a hazardous position for purposes of  
86 the additional retirement allowance herein.

87 CB. If a beneficiary of a service retirement allowance under this chapter is at any time in service as  
88 an employee in a position covered for retirement purposes under the provisions of this or any chapter  
89 other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so  
90 employed.

91 § 51.1-207. Death before retirement.

92 A. If a member dies before retirement, and if ~~no benefits are payable under subsection B,~~ the amount  
93 of his accumulated contributions shall be paid to the designated beneficiary or to a surviving relative  
94 according to the same order of precedence as set forth in subsection A of § 51.1-162. This amount shall  
95 be reduced by the amount of any retirement allowance previously received by the member under this  
96 chapter or the abolished system. Each member shall designate who is to receive a refund of accumulated  
97 contributions credited to his account in the event of the death of the member prior to retirement. The  
98 designation must be made on a form prepared by the Board, signed and acknowledged by the member  
99 before a person authorized to take acknowledgments, and filed in a manner prescribed by the Board.  
100 The designation may be changed by the member by the written designation of some other person,  
101 signed, acknowledged, and filed in a manner prescribed by the Board.

102 If no designation has been made, or the death of the designated person occurs prior to the death of  
103 the member and another designation has not been made, the proceeds shall be paid to the persons  
104 surviving at the death of the member in the same order of precedence as set forth in subsection A of  
105 § 51.1-162.

106 B. If a member dies in service and if no benefits are payable under subsection C, a retirement  
107 allowance shall be paid to the person designated as provided in subsection A of this section if the  
108 person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s). If no designation has  
109 been made, or if the death of the designated person occurs prior to the death of the member and another  
110 designation has not been made, a retirement allowance shall be paid in the same order of precedence as  
111 set forth in subsection B of § 51.1-162. The retirement allowance shall be continued during the lifetime  
112 of the person or in the case of a minor child until the child dies or attains the age of majority,  
113 whichever occurs first. The retirement allowance shall equal the decreased retirement allowance that  
114 would have been payable under the joint and survivor option so that the same amount would be  
115 continued to such person after the member's death. If the member dies prior to his fiftieth birthday, then,  
116 for purposes of this subsection, the member shall be presumed to be age fifty on his date of death.  
117 ~~When determining the allowance that would have been payable to the member had the member retired~~  
118 ~~on the date of his death, the provisions of subsection B of § 51.1-206 shall not apply.~~ If the person elects  
119 in writing under seal and duly acknowledged, the amount of the member's accumulated contributions  
120 shall be paid to the person exclusively, in lieu of any other benefits under this section. This amount

shall be reduced by the amount of any retirement allowance previously received by the member.

C. If a member dies in service from a cause compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), a retirement allowance shall be paid to the member's surviving spouse. If no compensation is finally awarded under the Virginia Workers' Compensation Act due to legal proceedings or otherwise resulting in settlement from the persons causing such death, the Virginia Workers' Compensation Commission shall determine whether the member's death was from a cause compensable under the Virginia Workers' Compensation Act. If the member leaves no surviving spouse or the surviving spouse dies, any minor children of the deceased member shall be paid an allowance until the children die or attain the age of majority, whichever occurs first. If more than one minor child survives the deceased member, the allowance shall be divided in a manner determined by the Board. If the deceased member leaves neither surviving spouse nor minor child, the allowance, divided in a manner determined by the Board, shall be paid to the member's parents during their lives.

The retirement allowance, payable hereunder to a qualifying survivor, shall be the annual amount which when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member, shall equal fifty percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the retirement system when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by written notification to the Board within ninety days after the death of the member in order to make available a retirement allowance under the provisions of subsection B of this section.

§ 51.1-208. Post-retirement supplements.

In computing the amount of any post-retirement supplements, any additional allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded. Any recipient of an allowance which initially commenced on or prior to January 1, 1990, shall be entitled to post-retirement supplements effective July 1, 1991.

§ 51.1-216. Service retirement generally.

A. Normal retirement.

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 is a member in service in any retirement program administered by the Virginia Retirement System 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 (§ 51.1-200 et seq.) of 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.

2. Any other employee who is a 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 (§ 51.1-200 et seq.) of 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.

B. Early retirement.

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 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 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 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 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 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 90 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.

§ 51.1-217. Service retirement allowance.

A. A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement

a. Notwithstanding the provisions of §§ 51.1-155, 51.1-155.1 and 51.1-155.2, for any employee commencing employment or reemployment on or after July 1, 2001, and for any employee who makes the election provided in § 51.1-221, the allowance shall equal (i) two percent of his average final compensation multiplied by the amount of creditable service earned (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, or (c) while earning the benefits permitted by § 51.1-138; and (ii) 1.70 percent of his average final compensation multiplied by all other creditable service, if any; and

b. For any other employee, the allowance shall equal 1.70 2.50 percent of his average final compensation multiplied by the amount of creditable service.

2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement.

a. For an individual retiring pursuant to subdivision B 1 of § 51.1-216, who is not retiring directly from service as an employee as defined in § 51.1-212, and who has less than thirty years of service shall retire under the provisions of the retirement system for which he is a member as of his retirement date; and

b. For all other individuals retiring pursuant to subdivision B 1 of § 51.1-216, and for an individual retiring pursuant to subdivision B 2 of § 51.1-216 who *If the member* has less than twenty-five 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 (i) his normal retirement date or (ii) the first date on or after his fiftieth birthday on which he would have completed a total of twenty-five years of creditable service.

B. Any person who is an employee on June 30, 2001, and on July 1, 2001, who does not make the election provided in § 51.1-221, shall receive, in addition to the allowance payable under subsection A, from the date of his retirement until his sixty-fifth birthday, an annual allowance equal to \$9,264. Beginning July 1, 2001, and biennially thereafter, such allowance shall be reviewed and adjusted by the Board to an amount recommended by the actuary of the Virginia Retirement System based upon increases in Social Security benefits in the interim. This subsection shall not apply to the following: (i) any member who qualifies for retirement under subsection C of § 51.1-216 and is credited with less than twenty years' service rendered in a hazardous position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than twenty years' service rendered in a hazardous position.

CB. If a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

DC. No person shall be eligible to receive any of the allowances provided in this section if he receives retirement benefits under Chapter 2 (§ 51.1-200 et seq.) of Title 51.1 or under § 51.1-138. No person shall receive any allowance pursuant to subdivision A 1 (i) if he has received an allowance pursuant to subsection B of § 51.1-206 or subsection B of § 51.1-217, unless, after receiving the allowance pursuant to subsection B of § 51.1-206 or subsection B of § 51.1-217, he becomes employed or reemployed as an employee defined in § 51.1-212, and thereafter earns 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, or (c) while earning the benefits permitted by § 51.1-138.

§ 51.1-218. Death before retirement.

A. If a member dies before retirement, and if no benefits are payable under subsection B, the amount of his accumulated contributions shall be paid to the designated beneficiary or to a surviving relative according to the same order of precedence as set forth in subsection A of § 51.1-162. This amount shall be reduced by the amount of any retirement allowance previously received by the member under this chapter or the abolished system. Each member shall designate who is to receive a refund of accumulated contributions credited to his account in the event of the death of the member prior to retirement. The designation must be made on a form prepared by the Board, signed and acknowledged by the member before a person authorized to take acknowledgments, and filed with the Board. The designation may be changed by the member by the written designation of some other person, signed, acknowledged, and filed with the Board.

If no designation has been made, or the death of the designated person occurs prior to the death of the member and another designation has not been made, the proceeds shall be paid to the persons surviving at the death of the member in the same order of precedence as set forth in subsection A of § 51.1-162.

B. If a member dies in service and if no benefits are payable under subsection C, a retirement allowance shall be paid to the person designated as provided in subsection A of this section if the person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s). If no designation has been made, or if the death of the designated person occurs prior to the death of the member and another designation has not been made, a retirement allowance shall be paid in the same order of precedence as set forth in subsection B of § 51.1-162. The retirement allowance shall be continued during the lifetime of the person or in the case of a minor child until the child dies or attains the age of majority, whichever occurs first. The retirement allowance shall equal the decreased retirement allowance that would have been payable under the joint and survivor option so that the same amount would be continued to such person after the member's death. If the member dies prior to his fiftieth birthday, then, for purposes of this subsection, the member shall be presumed to be age fifty on his date of death. When determining the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subsection B of § 51.1-217 shall not apply. If the person elects in writing under seal and duly acknowledged, the amount of the member's accumulated

305 contributions shall be paid to the person exclusively, in lieu of any other benefits under this section.  
306 This amount shall be reduced by the amount of any retirement allowance previously received by the  
307 member.

308 C. If a member dies in service from a cause compensable under the Virginia Workers' Compensation  
309 Act (§ 65.2-100 et seq.), a retirement allowance shall be paid to the member's surviving spouse. If no  
310 compensation is finally awarded under the Virginia Workers' Compensation Act due to legal proceedings  
311 or otherwise resulting in settlement from the persons causing such death, the Virginia Workers'  
312 Compensation Commission shall determine whether the member's death was from a cause compensable  
313 under the Virginia Workers' Compensation Act. If the member leaves no surviving spouse or the  
314 surviving spouse dies, any minor children of the deceased member shall be paid an allowance until the  
315 children die or attain the age of majority, whichever occurs first. If more than one minor child survives  
316 the deceased member, the allowance shall be divided in a manner determined by the Board. If the  
317 deceased member leaves neither surviving spouse nor minor child, the allowance shall be paid to the  
318 member's parents, divided in a manner determined by the Board, during the lives of the parents.

319 The retirement allowance, payable hereunder to a qualifying survivor, shall be the annual amount  
320 which, when added to the compensation payable under the Virginia Workers' Compensation Act for the  
321 death of the member, shall equal fifty percent of the member's average final compensation if the  
322 survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on  
323 the date of the death of the member. If the survivor qualifies for death benefits under the provisions of  
324 the Social Security Act in effect on the date of the death of the member, the allowance payable from the  
325 Retirement System when added to the compensation payable under the Virginia Workers' Compensation  
326 Act shall equal thirty-three and one-third percent of the member's average final compensation.

327 Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this  
328 subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by  
329 written notification to the Board within ninety days after the death of the member in order to make  
330 available a retirement allowance under the provisions of subsection B of this section.

331 § 51.1-811. Eligibility for retirement; retirement allowance.

332 Any member of a police department who has completed twenty years of service in the department  
333 and attained the age of fifty years *or who has completed 25 years of service in the department*  
334 *regardless of age* may retire and receive the pension and benefits provided in this section. Upon  
335 retirement, a member shall receive a retirement allowance, payable to the member for life, equal to fifty  
336 percent of the member's annual salary, computed on the basis of the last three years of service and an  
337 additional amount equal to two percent of the member's salary for each year of service (i) after the age  
338 of fifty and after twenty years of service in the department, *or (ii) after 25 years of service in the*  
339 *department regardless of age.*

340 2. That §§ 51.1-219 and 51.1-221 of the Code of Virginia are repealed.