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HOUSE BILL NO. 1189

Offered January 13, 2010

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A BILL to amend and reenact §§ 51.1-124.3, 51.1-126, 51.1-144, 51.1-153, 51.1-155, 51.1-157, and 51.1-166 of the Code of Virginia, relating to retirement plans under the Virginia Retirement System.

Patrons—Putney, Brink, Joannou and Jones

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-124.3, 51.1-126, 51.1-144, 51.1-153, 51.1-155, 51.1-157, and 51.1-166, of the Code of Virginia are amended and reenacted as follows:

§ 51.1-124.3. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.

"Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, all amounts the member may contribute to purchase creditable service, all member contributions contributed by the employer on behalf of the employee, on or after July 1, 1980, except those amounts contributed on behalf of members of the General Assembly who are otherwise retired under the provisions of this chapter, and all interest accruing to these funds. If a member is retired for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), dies in service prior to retirement, or requests a refund of contributions in accordance with § 51.1-161, "accumulated contributions" shall include all member contributions paid by the employer on behalf of the member on and after July 1, 1980, and all interest which would have accrued to these funds.

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial tables adopted by the Board.

"Average final compensation" means the average annual creditable compensation of a member during his 36 highest consecutive months of creditable service or during the entire period of his creditable service if less than 36 months. *If a member commenced employment on or after July 1, 2010, with no prior service credit, "average final compensation" means the average annual creditable compensation of a member during his 60 highest consecutive months of creditable service or during the entire period of his creditable service if less than 60 months.* If a member ceased employment prior to July 1, 1974, "average final compensation" means the average annual creditable compensation during the five highest consecutive years of creditable service.

"Beneficiary" means any person entitled to receive benefits under this chapter.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Creditable compensation" means the full compensation payable annually to an employee working full time in his covered position. For any state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who is (i) compensated on a salaried basis, and (ii) working full time in a covered position pursuant to a contract of employment for a period of at least nine months, creditable compensation means the full compensation payable over the term of any contract entered into between the employee and the employer, without regard to whether or not the term of the contract coincides with the normal scholastic year. However, if the contract is for more than one year, creditable compensation means that compensation paid for the current year of the contract.

Remuneration received by members of the General Assembly not otherwise retired under the provisions of this chapter pursuant to §§ 30-19.11 and 30-19.12 shall be deemed creditable compensation. In addition, for any member of the General Assembly, creditable compensation shall include the full amount of salaries payable to such member for working in covered positions, regardless of whether a contractual salary is reduced and not paid to such member because of service in the General Assembly.

"Creditable service" means prior service as set forth in § 51.1-142.2 plus membership service for which credit is allowable.

"Employee" means any teacher, state employee, officer, or employee of a locality participating in the Retirement System.

"Employer" means the Commonwealth in the case of a state employee, the local public school board

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59 in the case of a teacher, or the political subdivision participating in the Retirement System.

60 "Joint Rules Committee" means those members of the House of Delegates and the Senate designated
61 by the Speaker of the House and the Chairman of the Senate Committee on Rules, respectively, to meet
62 with each other and to act jointly on behalf of the Committee on Rules for each house.

63 "Local officer" means the treasurer, commissioner of the revenue, attorney for the Commonwealth,
64 clerk of a circuit court, or sheriff of any county or city, or deputy or employee of any such officer.

65 "Medical Board" means the board of physicians as provided by this chapter.

66 "Member" means any person included in the membership of the Retirement System.

67 "Membership service" means service as an employee rendered while a contributing member of the
68 Retirement System except as provided in this chapter.

69 "Normal retirement date" means a member's sixty-fifth birthday.

70 "Political subdivision" means any county, city, or town, any political entity, subdivision, branch, or
71 unit of the Commonwealth, or any commission, public authority, or body corporate created by or under
72 an act of the General Assembly specifying the powers, privileges, or authority capable of exercise by the
73 commission, public authority, or body corporate.

74 "Primary social security benefit" means, with respect to any member, the primary insurance amount
75 to which the member is entitled, for old age or disability, as the case may be, pursuant to the provisions
76 of the federal Social Security Act as in effect at his date of retirement, under the provisions of this
77 chapter except as otherwise specifically provided.

78 "Prior service" means service rendered prior to becoming a member of the Retirement System.

79 "Purchase of service contract" means a contract entered into by the member and the Retirement
80 System for the purchase of service credit by the member as provided in § 51.1-142.2.

81 "Retirement allowance" means the retirement payments to which a member is entitled.

82 "Retirement System" means the Virginia Retirement System.

83 "Service" means service as an employee.

84 "State employee" means any person who is regularly employed full time on a salaried basis, whose
85 tenure is not restricted as to temporary or provisional appointment, in the service of, and whose
86 compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or
87 any department, institution, or agency thereof. "State employee" shall include any faculty member, but
88 not including adjunct faculty, of a public institution of higher education (a) who is compensated on a
89 salary basis, (b) whose tenure is not restricted as to temporary or provisional appointment, and (c) who
90 regularly works at least 20 hours but less than 40 hours per week (or works the equivalent of one-half
91 of a full time equivalent position) engaged in the performance of teaching, administrative, or research
92 duties at such institution; such faculty member shall be deemed an eligible employee for purposes of the
93 retirement provisions under §§ 51.1-126, 51.1-126.1, and 51.1-126.3. "State employee" shall also include
94 the Governor, Lieutenant Governor, Attorney General, and members of the General Assembly but shall
95 not include (i) any local officer, (ii) any employee of a political subdivision of the Commonwealth, (iii)
96 individuals employed by the Department for the Blind and Vision Impaired pursuant to § 51.5-72, (iv)
97 any member of the State Police Officers' Retirement System, (v) any member of the Judicial Retirement
98 System, or (vi) any member of the Virginia Law Officers' Retirement System.

99 "Teacher" means any person who is regularly employed full time on a salaried basis as a professional
100 or clerical employee of a county, city, or other local public school board.

101 § 51.1-126. Employees of institutions of higher education.

102 For purposes of this section, "optional retirement plan" means a retirement plan covering the
103 employee for retirement purposes other than the Virginia Retirement System defined benefit retirement
104 plan established under this chapter.

105 A. 1. The Board shall maintain an optional retirement plan covering employees engaged in the
106 performance of teaching, administrative, or research duties with an institution of higher education and
107 any institution of higher education is authorized to make contributions to such plan for the benefit of its
108 employees participating in such plan. Except (i) as provided in subsection B for institutions of higher
109 education that have established their own optional retirement plan and (ii) for employees described in
110 subdivision A 2, every employee hired by an institution of higher education on or after July 1, 2003,
111 engaged in the performance of teaching, administrative, or research duties shall make an irrevocable
112 election to participate in either (a) the Virginia Retirement System defined benefit retirement plan
113 established by this chapter or (b) an optional retirement plan maintained by the Board. Such election
114 shall be exercised no later than 60 days from the time of the employee's entry upon the performance of
115 his duties. If an election is not made within such 60 days, such employee shall be deemed to have
116 elected to participate in the Virginia Retirement System defined benefit retirement plan.

117 2. Any employee (i) hired on or after July 1, 2003, by an institution of higher education engaged in
118 the performance of teaching, administrative, or research duties and (ii) who at the time of hiring is in
119 continuous service in the performance of such teaching, administrative, or research duties shall
120 participate in the optional retirement plan maintained by the Board if the most recent retirement plan

covering the employee prior to such hiring was an optional retirement plan. If the most recent retirement plan covering the employee prior to such hiring was the Virginia Retirement System defined benefit retirement plan, such person shall participate in such defined benefit retirement plan from the time of his entry upon the performance of his duties.

B. 1. Any institution of higher education, upon receipt of approval by the Board in writing, may establish and maintain its own optional retirement plan covering its employees who are engaged in the performance of teaching, administrative, or research duties. Upon such approval, such institution is authorized to make contributions to its own optional retirement plan for the benefit of its employees who elect to participate or who are required to participate in such plan as provided in this subsection.

2. Every employee, with the exception of employees described in subdivision B 3, (i) hired on or after July 1, 2003, by an institution of higher education that has established and is maintaining its own optional retirement plan pursuant to this subsection and (ii) engaged in the performance of teaching, administrative, or research duties shall make an irrevocable election to participate in either: (a) the Virginia Retirement System defined benefit retirement plan established by this chapter or (b) such optional retirement plan of the institution of higher education. Such employee shall not be provided any election to participate in an optional retirement plan maintained by the Board.

The election shall be exercised no later than 60 days from the time of the employee's entry upon the performance of his duties. If an election is not made within such 60 days, such employee shall be deemed to have elected to participate in the Virginia Retirement System defined benefit retirement plan established by this chapter.

3. Any employee (i) hired on or after July 1, 2003, by an institution of higher education engaged in the performance of teaching, administrative, or research duties and (ii) who at the time of hiring is in continuous service in the performance of such teaching, administrative, or research duties shall participate in the optional retirement plan established by the institution of higher education pursuant to this subsection if the most recent retirement plan covering the employee prior to such hiring was an optional retirement plan. If the most recent retirement plan covering the employee prior to such hiring was the Virginia Retirement System defined benefit retirement plan, such person shall participate in such defined benefit retirement plan from the time of his entry upon the performance of his duties.

C. Any employee engaged in the performance of teaching, administrative, or research duties at an institution of higher education who was covered under an optional retirement plan for retirement purposes, other than the optional retirement plan established by such institution pursuant to subdivision B 1, shall, at the time such institution establishes its own optional retirement plan pursuant to subdivision B 1, automatically and immediately begin to participate in the optional retirement plan established pursuant to subdivision B 1, notwithstanding such employee's prior election to participate in a different optional retirement plan.

D. 1. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 upon any institution of higher education for administering and overseeing the institution's retirement plan established pursuant to subsection A shall be charged for each employee participating in such plan and shall be for costs incurred by the Retirement System that are directly related to the administration and oversight of such plan.

2. Each institution of higher education may charge and collect a reimbursement fee from each employee participating in the institution's retirement plan established pursuant to subsection A. The total amount charged and collected for such fee from all such employees for any year shall not exceed the total of the costs described in subdivision D 1 and charged to the institution for such year.

E. 1. No employee of an institution of higher education who is an active member in any plan maintained by the Board or established by an institution of higher education, pursuant to this section, shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

2. 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 Chapters 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3 (§ 51.1-300 et seq.), his benefit payments under the optional retirement plan maintained under this section shall be suspended while so employed; provided, however, reemployment shall have no effect on the payment under the optional plan maintained under this section if the benefits are being paid in an annuity form under an annuity contract purchased with the member's account balance.

F. 1. The contribution by the Commonwealth on behalf of an employee participating in an optional retirement plan maintained by the Board or on behalf of an employee participating in an optional retirement plan established by his institution of higher education under this section to such employee's retirement plan shall be (i) 10.4 percent of creditable compensation for employees commencing employment or reemployment prior to July 1, 2010, and (ii) 9.4 percent for employees commencing employment on or after July 1, 2010, with no prior service credit. An institution of higher education may make an additional contribution for participants who, before January 1, 1991, exercised the election

182 to participate in the plan provided by the institution employing them. Such additional contributions shall
183 be made using funds other than general funds, tuition or fees, up to an additional 2.17 percent of
184 creditable compensation.

185 2. These contribution rates shall be examined by the Board at least once every six years. The
186 examination shall consider the salary peer group mean contribution as determined by the State Council
187 of Higher Education and the Virginia Retirement System actuary, and, if deemed advisable, recommend
188 a revision to the rate of contribution by the Commonwealth.

189 G. With respect to any employee who elects pursuant to subsection A or B to participate in the
190 Virginia Retirement System defined benefit retirement plan established by this chapter, the institution of
191 higher education shall collect and pay all employee and employer contributions to the Virginia
192 Retirement System for retirement and group life insurance in accordance with the provisions of Chapter
193 1 (§ 51.1-124.1 et seq.) for such employees.

194 H. The Virginia Retirement System shall develop policies and procedures for the administration of
195 the optional retirement plan it maintains. To assist the Virginia Retirement System in developing such
196 policies and procedures, the Board may appoint an advisory committee of higher education employees to
197 supply guidance in the process.

198 I. As a condition of the Board granting approval to an institution of higher education to establish its
199 own optional retirement plan, the institution of higher education shall develop policies and procedures
200 for the administration of such plan and shall submit such policies and procedures to the Board as part of
201 the Board-approval process required under this section. In addition, an institution of higher education
202 that is granted approval by the Board to establish its own optional retirement plan covering employees
203 engaged in the performance of teaching, administrative, or research duties shall not adopt or implement
204 policies and procedures that are substantially different from the policies and procedures approved by the
205 Board in the initial approval process unless the Board, in writing, approves such substantially different
206 policies and procedures.

207 J. The Board shall establish guidelines for the employee elections referred to in subdivision B 2 and
208 shall review and, if deemed advisable, recommend revisions to the contribution rates as described in
209 subsection F. Except for the duties described in subsection I, the Board shall have no duties and
210 responsibilities with respect to such plans established pursuant to subsection B.

211 § 51.1-144. Member contributions.

212 A. Each member shall contribute five percent of his creditable compensation for each pay period for
213 which he receives compensation.

214 The employer shall deduct the contribution payable by the member. Every employee accepting
215 employment shall be deemed to consent and agree to any deductions from his compensation required by
216 this chapter. No deduction shall be taken from the compensation of a member after his normal
217 retirement date if the member elects not to contribute.

218 B. In determining the creditable compensation of a member in a payroll period, the Board may
219 consider the rate of compensation payable to the member on the date of entry or removal of his name
220 from the payroll as having been received throughout the month if service for the month is creditable. If
221 service for the month is not creditable, the Board may consider any compensation payable during the
222 month as not being creditable compensation.

223 C. The minimum compensation provided by law for any member shall be reduced by the deduction
224 required by this section. Except for any benefits provided by this chapter, payment of compensation
225 minus the deductions shall be a full and complete discharge of all claims for services rendered by the
226 member during the period covered by the payment.

227 D. No deduction shall be made from any member's compensation if the employer's contribution is in
228 default.

229 E. The Board may modify the method of collecting the contributions of members so that the
230 employer may retain the amounts deducted from members' salaries and have a corresponding amount
231 deducted from state funds otherwise payable to the employer.

232 F. 1. Any employer may elect to
233 pay an equivalent amount in lieu of all member contributions required of its employees. Such payments
234 shall be credited to the members' contribution account. These contributions shall not be considered
235 wages for purposes of Chapter 7 (§ 51.1-700 et seq.) of this title, nor shall they be considered to be
236 salary for purposes of this chapter.

237 2. *Each member who commences employment on or after July 1, 2010, with no prior service credit,*
238 *who is a member of the retirement system, and who is covered by the defined benefit plan established*
239 *under this chapter; and each member of (i) the State Police Officers' Retirement System (Chapter 2 of*
240 *this title) who commenced employment on or after July 1, 2010, with no prior service credit, (ii) the*
241 *Virginia Law Officers' Retirement System (Chapter 2.1 of this title) who commenced employment on or*
242 *after July 1, 2010, with no prior service credit, and (iii) the Judicial Retirement System (Chapter 3 of*
243 *this title) who commenced employment on or after July 1, 2010, with no prior service credit, shall pay*
member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue

Code, in the amount of five percent of creditable compensation.

G. Any employer whose employees are paying member contributions to the retirement system on a salary reduction basis in accordance with § 414 (h) of the Internal Revenue Code may pay a portion of the member contributions on behalf of all of its employees upon notification to the Board of the employer's intent to make such partial payment. Any employer paying a portion of the member contributions for its employees (i) shall do so in such manner that the entire member contribution for all of its employees shall be paid by the employer starting not later than six years from the commencement of such partial payment, or a period of time approved by the Board upon submission of a plan by the employer, and (ii) shall not pay a portion of the member contribution in any incremental amount with a fractional part of less than one-half of one percent of creditable compensation.

H. Any employer that, by resolution of its governing body, elects to provide retirement coverage for its employees in accordance with § 51.1-130 on or after September 1, 1998, shall allow its employees to pay member contributions to the retirement system on a salary reduction basis in accordance with § 414 (h) of the Internal Revenue Code in lieu of paying the member contribution on behalf of its employees in accordance with the provisions of subsection F.

I. The Board may develop procedures to effect the transfer of member contributions paid by employers on or after July 1, 1980, and accrued interest on those contributions, to the member contribution account of the member, if such contributions have been previously deposited into the retirement allowance account of the employer.

§ 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. *Subject to the provisions of subdivision B3, Any 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.*

3. *Any state employee, teacher, or employee of a political subdivision who commences employment on or after July 1, 2010, who has no prior service credit, and who is a member of the retirement system, may retire prior to his normal retirement date after the sum of his age and years of creditable service equals 90, 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.

§ 51.1-155. Service retirement allowance.

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

1. Normal retirement. - *For members commencing employment on or after July 1, 2010, with no prior service credit, the allowance shall equal 1.65 percent of his average final compensation multiplied*

305 *by the amount of his creditable service.*~~The~~ For all other members, the allowance shall equal 1.70
306 percent of his average final compensation multiplied by the amount of his creditable service.

307 2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall
308 be determined in the same manner as for normal retirement with creditable service and average final
309 compensation being determined as of the date of actual retirement. If the member has less than 30 years
310 of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial
311 equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal
312 retirement date or (ii) the first date on which he would have completed a total of 30 years of creditable
313 service. The provisions of this subdivision shall apply to teachers and state employees. These provisions
314 shall also apply to employees of any political subdivision that participates in the retirement system if the
315 political subdivision makes the election provided in subdivision 3.

316 3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall
317 be determined in the same manner as for normal retirement with creditable service and average final
318 compensation being determined as of the date of actual retirement. If the creditable service of the
319 member equals 30 or more years but the sum of his age at retirement plus his creditable service at
320 retirement is less than 90, the amount of the retirement allowance shall be reduced on an actuarial
321 equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal
322 retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable
323 service would have been equal to 90 or more had he remained in service until such date. If the member
324 has less than 30 years of creditable service, the retirement allowance shall be reduced for the period by
325 which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date
326 on which he would have completed a total of at least 30 years of creditable service and his then
327 creditable service plus his then attained age would have been equal to 90 or more.

328 The provisions of this subdivision shall apply to the employees of any political subdivision that
329 participates in the retirement system. The participating political subdivision may, however, elect to
330 provide its employees with the early retirement allowance set forth in subdivision 2. Any election
331 pursuant to this subdivision shall be set forth in a legally adopted resolution.

332 4. Additional allowance. - In addition to the allowance payable under subdivisions 1, 2, and 3, a
333 member shall receive an additional allowance which shall be the actuarial equivalent, for his attained
334 age at the time of retirement, of the excess of his accumulated contributions transferred from the
335 abolished system to the retirement system, including interest credited at the rate of two percent
336 compounded annually since the transfer to the date of retirement, over the annual amounts equal to four
337 percent of his annual creditable compensation at the date of abolishment for a period equal to his period
338 of membership in the abolished system.

339 5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the
340 greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated
341 service and deferred retirement to age 55 or (ii) the actuarially calculated present value of the member's
342 accumulated contributions, including accrued interest.

343 B. Beneficiary serving in position covered by this title.

344 1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance
345 under this chapter or the provisions of Chapters 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3
346 (§ 51.1-300 et seq.) is at any time in service as an employee in a position covered for retirement
347 purposes under the provisions of this or any chapter other than Chapter 6 (§ 51.1-600 et seq.), 6.1
348 (§ 51.1-607 et seq.), or 7 (§ 51.1-700 et seq.), his retirement allowance shall cease while so employed.
349 Any member who retires and later returns to covered employment shall not be entitled to select a
350 different retirement option for a subsequent retirement.

351 2. Active members of the General Assembly who are eligible to receive a retirement allowance under
352 this title, excluding their service as a member of the General Assembly, shall be eligible to receive a
353 retirement allowance based on their creditable service and average final compensation for service other
354 than as a member of the General Assembly. Such members of the General Assembly shall continue to
355 be reported as any other members of the retirement system. Upon ceasing to serve in the General
356 Assembly, members of the General Assembly receiving a retirement allowance based on their creditable
357 service and average final compensation for service other than as a member of the General Assembly
358 shall have their retirement allowance recomputed prospectively to include their service as a member of
359 the General Assembly. Active members of the General Assembly shall be prohibited from receiving a
360 service retirement allowance under this title based solely on their service as a member of the General
361 Assembly.

362 3. (Expires July 1, 2015) Any person receiving a service retirement allowance under this chapter,
363 who is hired as a local school board instructional or administrative employee required to be licensed by
364 the Board of Education, may elect to continue to receive the retirement allowance during such
365 employment, under the following conditions:

366 (a) The person has been receiving such retirement allowance for a certain period of time preceding

his employment as provided by law;

(b) The person is not receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; and

(c) At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § 22.1-23, by the relevant division superintendent, pursuant to § 22.1-70.3, or by the relevant local school board, pursuant to subdivision 9 of § 22.1-79.

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

§ 51.1-157. Disability retirement allowance.

A. 1. Allowance payable on retirement. - Upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance during his lifetime and continued disability equal to 1.70 percent of his average final compensation multiplied by the smaller of (i) twice the amount of his creditable service or (ii) the amount of creditable service he would have completed at age sixty if he had remained in service to that age. If a member has already attained age sixty, the amount of creditable service at his date of retirement shall be used.

2. *For those members who commenced employment on or after July 1, 2010, with no prior service credit, upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance during his lifetime and continued disability equal to 1.65 percent of his average final compensation multiplied by the smaller of (i) twice the amount of his creditable service or (ii) the amount of creditable service he would have completed at age sixty if he had remained in service to that age. If a member has already attained age sixty, the amount of creditable service at his date of retirement shall be used.*

3. For retirements between October 1, 1994, and December 31, 1998, any employee or local officer who is a member or beneficiary of a retirement system administered by the Board shall receive an additional retirement allowance equal to three percent of the disability retirement allowance payable under this section; provided that, for purposes of this additional retirement allowance, the term employee shall include only those employees of political subdivisions that have adopted a resolution providing for such an allowance under subsection B of § 51.1-130. Average final compensation attributable to service as Governor, Lieutenant Governor, Attorney General, or member of the General Assembly shall not be included in computing this additional retirement allowance.

B. Workers' compensation guarantee. - If a member retires for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual retirement allowance shall equal sixty-six and two-thirds percent of the member's average final compensation if the member does not qualify for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal fifty percent of his average final compensation. A member shall be entitled to the larger of the retirement allowance as determined under the provisions of subsection A or under the provisions of this subsection.

C. Reduction of allowance. - Any allowance payable to a member who retires for disability from a cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of any payments under the provisions of the Act in effect on the date of retirement of the member and the excess of the allowance shall be paid to the member. When the time for compensation payments under the Act has elapsed, the member shall receive the full amount of the allowance payable during his lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his allowance shall be computed as if he were receiving the compensation to which he would otherwise be entitled.

D. Special retirement allowance guarantee. - Any member retired from a cause which is not compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement allowance during his lifetime and continued disability which equals fifty percent of the member's average final compensation if the member does not qualify for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social security benefits under the provisions of the Social Security Act in effect on the date of retirement, the allowance payable from the retirement system shall equal thirty-three and one-third percent of his average final compensation.

E. Determination of retirement allowance. - For the purposes of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and

428 that no optional retirement allowance is elected.

429 § 51.1-166. Post-retirement supplements generally.

430 A. In addition to the allowances payable under this chapter, post-retirement supplements shall be
431 payable to the recipients of such allowances. Supplements shall be subject to the same conditions of
432 payment as are allowances.

433 B. The amounts of the post-retirement supplements shall be determined as percentages of the
434 allowances supplemented hereby. The percentages shall be determined annually by reference to the
435 increase in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U),
436 as published by the Bureau of Labor Statistics of the United States Department of Labor. The
437 percentages shall be based on monthly averages and shall be the difference between the average for the
438 calendar year in which the allowance initially commenced and the average for the calendar year
439 immediately prior to the calendar year in which the post-retirement supplement is paid. The annual
440 increase in the Consumer Price Index shall be considered only to the extent of three percent plus
441 one-half of such additional increase up to seven percent, *except that for any person who commences*
442 *employment on or after July 1, 2010, with no prior service credit, the annual increase in the Consumer*
443 *Price Index shall be considered only to the extent of two percent plus one-half of such additional*
444 *increase up to six percent.*

445 Beginning July 1, 1997, contribution rates calculated pursuant to § 51.1-145 for all employers shall
446 include an amount not less than twenty percent of the total annual amount necessary to fund all
447 post-retirement supplements. Contribution rates for all employers shall increase thereafter until,
448 beginning July 1, 2002, such rates shall include an amount equal to 100 percent of the total annual
449 amount necessary to fund all post-retirement supplements. All contribution rates shall be computed in
450 accordance with recognized actuarial principles on the basis of methods and assumptions approved by
451 the Board.

452 Nothing in this section shall prohibit an employer from contributing, prior to July 1, 2002, 100
453 percent of the total annual amount necessary to fund its post-retirement supplements.

454 C. There shall be no change in the amount of any post-retirement supplement between determination
455 dates except as necessary to reflect changes in the amount of the allowance being supplemented. The
456 post-retirement supplement shall remain a constant percentage of the respective allowance being
457 supplemented. No new post-retirement supplement shall be commenced except as of a determination
458 date. The post-retirement supplement determined as of any determination dates shall become effective at
459 the beginning of the fiscal year and shall be in lieu of any post-retirement supplements previously
460 payable, which shall thereupon be terminated.

461 D. Any recipient of an allowance which initially commenced on or prior to January 1, 1990, shall be
462 entitled to post-retirement supplements effective July 1, 1991.