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**HOUSE BILL NO. 2095**

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-124.13, relating to the Virginia Retirement System; loss of benefits for certain felonious convictions.*

Patron—Jones

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 and that the Code of Virginia is amended by adding a section numbered 51.1-124.13 as follows:**

*§ 51.1-124.13. Loss of benefits; certain felony convictions.*

A. No person shall be entitled to any of the benefits of this title as provided in this section if (i) he is convicted of a felony and (ii) the person's employer determines that the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the person was a member covered for retirement purposes under any retirement system administered by the Board. Prior to making any such determination, the employer shall give the person reasonable prior written notice and provide an opportunity to be heard. The employer's determination may be appealed in a manner consistent with subsection E of § 2.2-3004, and no further proceedings shall follow the decision of the circuit court. The employer's determination shall become final 10 calendar days after the date of the initial determination if no appeal is filed, or the date of the decision of the circuit court if an appeal is filed. A reversal by the circuit court of the employer's determination shall render the determination null and void.

B. The Board shall implement the relinquishment of benefits under this title as soon as practicable after the employer notifies the Board of its final determination that the member's felony conviction arose from misconduct in any position in which the member was a member in service.

C. If the person is or becomes a member in service after relinquishment of benefits under subsection B, he shall be entitled to the benefits under this title based solely on his service occurring after the relinquishment.

D. Notwithstanding any provision of law to the contrary, any service credit lost from relinquishment of benefits under subsection B shall be ineligible for subsequent purchase.

E. The governing body of any locality served by a constitutional officer shall be considered that officer's employer for purposes of this section.

*§ 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.

However, a person who becomes a member on or after July 1, 2010, under this chapter shall be allowed to retire under this subdivision prior to his normal retirement date only if the person is in service and has attained his sixtieth birthday with five or more years of creditable service, and the benefit for such person shall be calculated in accordance with the provisions of subdivision A 3 of § 51.1-155.

2. Subject to the provisions of subdivision 3, 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. A person who becomes a member on or after July 1, 2010, as a state employee, teacher, or employee of a political subdivision 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

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59 accordance with the provisions of subdivision A 1 of § 51.1-155.

60 C. Deferred retirement for members terminating service. - Any member who terminates service after  
61 five or more years of creditable service, regardless of termination date, may retire under the provisions  
62 of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to  
63 the effective date of his retirement or if he has five or more years of creditable service for which his  
64 employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of  
65 this subsection, any requirements as to the member being in service shall not apply. ~~No member shall be~~  
66 ~~entitled to the benefits of this subsection if his employer certifies that his service was terminated~~  
67 ~~because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the~~  
68 ~~Board.~~

69 D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his  
70 fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement  
71 date upon written notification to the Board setting forth the date the retirement is to become effective. A  
72 person who becomes a member on or after July 1, 2010, shall not be allowed to retire pursuant to this  
73 subsection.

74 E. Effective date of retirement. - The effective date of retirement shall be after the last day of service  
75 of the member, but shall not be more than ninety days prior to the filing of the notice of retirement.

76 F. Notification on behalf of member. - If the member is physically or mentally unable to submit  
77 written notification of his intention to retire, the member's appointing authority may submit notification  
78 on his behalf.

79 § 51.1-205. Service retirement generally.

80 A. Normal retirement. - Any member in service at his normal retirement date with five or more years  
81 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. Any member, except one appointed by the  
85 Governor or elected by the people, who attains 70 years of age shall be retired within 60 days of  
86 attaining age 70. Any employer, subsequent to the employee's normal retirement date, may provide for  
87 compulsory service retirement upon a determination that age is a bona fide occupational qualification  
88 reasonably necessary to the normal operation of the particular business or that the employee is incapable  
89 of performing his duties in a safe and efficient manner. Any such determination shall be made by the  
90 employer.

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

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

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

104 C. Deferred retirement for members terminating service. - Any member who terminates service after  
105 five or more years of creditable service (i) as a member in the retirement system established by this  
106 chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this  
107 title, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of  
108 subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the  
109 effective date of his retirement or if he has five or more years of creditable service (a) as a member in  
110 the retirement system established by this chapter, (b) as a member in the retirement system established  
111 by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (c) while earning the benefits permitted by  
112 § 51.1-138, regardless of termination date, for which his employer has paid the contributions and such  
113 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the  
114 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~  
115 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~  
116 ~~misfeasance in office. The certification may be appealed to the Board.~~

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

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

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

126 § 51.1-216. Service retirement generally.

127 A. Normal retirement.

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

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

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

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

148 B. Early retirement.

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

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

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

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

167 C. Deferred retirement for members terminating service.

168 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any  
169 employee who makes the election provided in § 51.1-221, who terminates service from any position with  
170 membership in any retirement program administered by the Virginia Retirement System, may retire  
171 under the provisions of subdivision A 1 or B 1 if (i) he is otherwise eligible for such benefits, (ii) he  
172 has not withdrawn his accumulated contributions prior to the effective date of his retirement, and (iii) he  
173 has five or more years of creditable service (a) as a member in the retirement system established by this  
174 chapter, (b) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this  
175 title, or (c) while earning the benefits permitted by § 51.1-138 for which his employer has paid the  
176 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any  
177 requirements as to the member being in service shall not apply. No member shall be entitled to the  
178 benefits of this subsection if his employer certifies that his service was terminated because of  
179 dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

180 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is  
181 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of

182 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting  
183 requirements of this section, and §§ 51.1-138 and 51.1-205.

184 2. Any other member who terminates service after five or more years of creditable service (i) as a  
185 member in the retirement system established by this chapter, (ii) as a member in the retirement system  
186 established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) while earning the benefits permitted by  
187 § 51.1-138 may retire under the provisions of subdivision A 2 or B 2 if he has not withdrawn his  
188 accumulated contributions prior to the effective date of his retirement or if he has five or more years of  
189 creditable service (a) as a member in the retirement system established by this chapter, (b) as a member  
190 in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (c) while earning  
191 the benefits permitted by § 51.1-138 for which his employer has paid the contributions and such  
192 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the  
193 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~  
194 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~  
195 ~~misfeasance in office. The certification may be appealed to the Board.~~

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

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

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

205 § 51.1-305. Service retirement generally.

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

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

214 B1. Mandatory retirement. - Any member who attains 70 years of age shall be retired 20 days after  
215 the convening of the next regular session of the General Assembly. However, if the mandatory  
216 retirement provisions of this subdivision would require a member of the State Corporation Commission  
217 to be retired before the end of his elected term and such retirement would occur during a session of the  
218 General Assembly in which the General Assembly is required, pursuant to § 12.1-6, to elect another  
219 member or members of the State Corporation Commission to serve either a regular term or a portion of  
220 a regular term, such member who otherwise would be subject to the mandatory retirement provisions of  
221 this subdivision shall be retired upon the first to occur of (i) the expiration of the term to which he was  
222 elected or (ii) 20 days after the commencing of the regular session of the General Assembly that  
223 immediately follows the date such member attains 72 years of age. The provisions of this subsection  
224 shall apply only to those members who are elected or appointed to an original or subsequent term  
225 commencing after July 1, 1993.

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

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

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