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SENATE BILL NO. 861

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact § 51.1-800 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-801.01, relating to defined contribution retirement plans for local employees.

Patron—Wagner

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-800 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51.1-801.01 as follows:

§ 51.1-800. Counties, cities, and certain towns to establish local systems or participate in Virginia Retirement System.

A. ~~Every~~ Except as provided in § 51.1-801.01, every county and city, and every town having a population of 5,000 or more, shall provide a retirement system for those officers and employees listed in subsection B either (i) by establishing and maintaining a local retirement system which provides a service retirement allowance to each employee who retires at age sixty-five or older which equals or exceeds two-thirds of the service retirement allowance to which the employee would have been entitled had the allowance been computed under the provisions of the Virginia Retirement System or (ii) by participating directly in the Virginia Retirement System.

B. The following persons shall be covered by a retirement system as provided in subsection A:

1. Officers and employees who are regularly employed full time on a salaried basis, whose tenure is not restricted to temporary or provisional employment.

2. Officers and employees who are regularly employed full time on a salaried basis, whose tenure is not restricted to temporary or provisional employment by an organization other than a public school board that functions solely within the boundaries of a county, city, or town, unless the cost of the organization's operation is borne by (i) users of services, (ii) more than one county, city, or town, or (iii) an entity other than a county, city, or town.

3. Clerks of the circuit court and deputies or employees of such officers.

C. Nothing in this chapter shall be construed to prohibit a county, city, or town from participating in the Virginia Retirement System and establishing a local retirement system. If a locality participates in the Virginia Retirement System and establishes a local retirement system, pursuant to § 51.1-801, providing supplemental benefits to the state system, the local system shall not be required to satisfy the criterion established in clause A (i) of this section.

D. A county, city, or town shall not be required to provide retirement benefits to an employee who enters into an agreement with the local government for inclusion in a deferred compensation plan when the agreement specifically prohibits inclusion in any other retirement system established by the county, city, or town.

§ 51.1-801.01. Local defined contribution retirement plan.

A. As used in this section, unless the context requires a different meaning:

"Eligible employee" means (i) for a locality, any person set forth in subsection B of § 51.1-800 who commences employment or reemployment on or after the effective date of a locality's defined contribution retirement plan pursuant to this section and (ii) for a local school board, any teacher or other regular full-time employee of a local school board who commences employment or reemployment on or after the effective date of a local school board's defined contribution retirement plan pursuant to this section.

B. In lieu of the retirement plan required pursuant to subsection A of § 51.1-800, any county or city, or any town having a population of 5,000 or more, may establish a defined contribution retirement plan pursuant to this section for the benefit of all its eligible employees. In addition, any local school board may establish a defined contribution retirement plan pursuant to this section for the benefit of all its eligible employees.

Any locality or local school board establishing such a plan shall continue to pay the required contributions to the Virginia Retirement System for employees who commence employment with the locality or local school board prior to the defined contribution retirement plan's effective date and who are covered under a retirement plan under the Virginia Retirement System.

C. No employee who is an active member of a retirement plan established under this section shall

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59 also be an active member in the Virginia Retirement System or beneficiary thereof other than as a
60 contingent annuitant.

61 D. Any contribution by the locality or local school board to an employee's defined contribution
62 account shall be determined by the locality's governing body or the local school board, as applicable.
63 Contributions to the defined contribution account and all earnings thereon shall be credited to an
64 account to be maintained for each eligible employee.

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

73 F. 1. The governing body of any locality that establishes a defined contribution retirement plan
74 under this section may at any time replace such plan with a retirement plan pursuant to clause (i) of
75 subsection A of § 51.1-800. In addition, any local school board that establishes a defined contribution
76 retirement plan under this section may at any time replace such plan with a retirement plan established
77 pursuant to clause (i) of subsection A of § 51.1-800 in which the school board is eligible to participate.

78 2. The governing body of any locality or local school board that establishes a defined contribution
79 retirement plan under this section may at any time adopt a resolution requesting that it be allowed to
80 cease operating such plan and have the members of the plan and future eligible employees of the plan
81 become members of the applicable retirement plan under the Virginia Retirement System. The governing
82 body or the local school board shall submit the resolution to the Board for approval, and acceptance of
83 the employees in the Virginia Retirement System shall be at the option of the Board. If the Board
84 approves the resolution, eligible employees may become members of the Virginia Retirement System. The
85 Board shall not approve the resolution unless the local governing body or local school board has first
86 entered into a plan of agreement, as defined in § 51.1-700, to extend benefits under the Social Security
87 Act to its employees approved under the provisions of § 51.1-705.

88 G. Upon ceasing to be employed in a position covered by the defined contribution retirement plan
89 and becoming an employee covered under the Virginia Retirement System, an employee may elect to:

- 90 1. Maintain the accrued contributions and earnings in his defined contribution account; or
91 2. Use the accrued contributions and earnings in his defined contribution account to purchase
92 service credit in the Virginia Retirement System as provided in subsection I.

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

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