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HOUSE BILL NO. 1129

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 10, 2012)

(Patron Prior to Substitute—Delegate Howell, W.J.)

A BILL to amend and reenact §§ 51.1-124.3, 51.1-155, 51.1-157, and 51.1-166 of the Code of Virginia, relating to Virginia Retirement System; defined benefit plan.

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-124.3, 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"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.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~~ 60 highest consecutive months of creditable service or during the entire period of his creditable service if less than ~~36~~ 60 months. However, for any member who is not a person who becomes a member on or after July 1, 2010, *this calculated amount of "average final compensation" shall be compared with the average annual creditable compensation of a member during his 60 36 highest consecutive months of creditable service or during the entire period of his creditable service if less than 60 36 months that occur prior to January 1, 2013, and the higher amount shall be used.*

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

"Joint Rules Committee" means those members of the House of Delegates and the Senate designated

60 by the Speaker of the House and the Chairman of the Senate Committee on Rules, respectively, to meet
61 with each other and to act jointly on behalf of the Committee on Rules for each house.

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

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

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

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

68 "Normal retirement date" means a member's sixty-fifth birthday. However, for any person who
69 becomes a member on or after July 1, 2010, under this chapter his normal retirement date shall be the
70 date that the member attains his "retirement age" as defined under the Social Security Act (42 U.S.C.
71 § 416 et seq., as now or hereafter amended).

72 "Person who becomes a member on or after July 1, 2010," means a person who is not a member of
73 a retirement plan administered by the Virginia Retirement System the first time he is hired on or after
74 July 1, 2010, in a covered position. Subsequent separation from such position and subsequent
75 employment in a covered position shall not alter the status of a person who becomes a member on or
76 after July 1, 2010.

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

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

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

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

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

89 "Retirement plan administered by the Virginia Retirement System" means a retirement plan
90 established under this title administered by the Virginia Retirement System, or by an agency that has
91 been delegated administrative responsibility by the Virginia Retirement System, but such term shall
92 exclude any plan established under Chapter 6 (§ 51.1-600 et seq.) or Chapter 6.1 (§ 58.1-607 et seq.) of
93 this title.

94 "Retirement System" means the Virginia Retirement System.

95 "Service" means service as an employee.

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

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

113 § 51.1-155. Service retirement allowance.

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

116 1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation
117 multiplied by the amount of his creditable service. *Notwithstanding the foregoing, for a person who is*
118 *not a member of a retirement system administered by the Virginia Retirement System the first time he is*
119 *hired in a covered position on or after January 1, 2013, the allowance shall equal 1.60 percent of his*
120 *average final compensation multiplied by the amount of his creditable service.*

121 2. Early retirement; applicable to teachers, state employees, and certain others. - 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. 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 (i) his normal retirement date or (ii) the first date on which he would have completed a total of 30 years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3.

3. Early retirement; applicable to employees of certain political subdivisions and any person who becomes a member on or after July 1, 2010. - 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. If the creditable service of the member equals 30 or more years but the sum of his age at retirement plus his creditable service at retirement is less than 90, 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 which the sum of his then attained age plus his then creditable service would have been equal to 90 or more had he remained in service until such date. If the member has less than 30 years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least 30 years of creditable service and his then creditable service plus his then attained age would have been equal to 90 or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system and any other employees as provided by law. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2. No such election shall be made for a person who becomes a member on or after July 1, 2010. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

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

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

B. Beneficiary serving in position covered by this title.

1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance under this chapter or the provisions of Chapters 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3 (§ 51.1-300 et seq.) 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 6 (§ 51.1-600 et seq.), 6.1 (§ 51.1-607 et seq.), or 7 (§ 51.1-700 et seq.), his retirement allowance shall cease while so employed. Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.

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

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

183 (a) The person has been receiving such retirement allowance for a certain period of time preceding
184 his employment as provided by law;

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

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

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

194 § 51.1-157. Disability retirement allowance.

195 A. Allowance payable on retirement. - Upon retirement for disability, a member who has five or
196 more years of creditable service shall receive an annual retirement allowance during his lifetime and
197 continued disability equal to 1.70 percent of his average final compensation multiplied by the smaller of
198 (i) twice the amount of his creditable service or (ii) the amount of creditable service he would have
199 completed at age sixty if he had remained in service to that age. *Notwithstanding the foregoing, for a*
200 *person who is not a member of a retirement system administered by the Virginia Retirement System the*
201 *first time he is hired in a covered position on or after January 1, 2013, the allowance shall equal 1.60*
202 *percent of his average final compensation multiplied by the smaller of (i) twice the amount of his*
203 *creditable service or (ii) the amount of creditable service he would have completed at age sixty if he*
204 *had remained in service to that age.* If a member has already attained age sixty, the amount of
205 creditable service at his date of retirement shall be used.

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

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

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

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

240 E. Determination of retirement allowance. - For the purposes of this section, the retirement allowance
241 shall be determined on the assumption that the retirement allowance is payable to the member alone and
242 that no optional retirement allowance is elected.

243 § 51.1-166. Post-retirement supplements generally.

244 A. In addition to the allowances payable under this chapter title, post-retirement supplements shall be

payable to the recipients of such allowances. Supplements shall be subject to the same conditions of payment as are allowances.

B. The amounts of the post-retirement supplements shall be determined as percentages of the allowances supplemented hereby. The percentages shall be determined annually by reference to the increase in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor. The percentages shall be based on monthly averages and shall be the difference between (i) the average for the calendar year just ended and (ii) the average for the most recent calendar year used in the determination of the post-retirement supplements currently being paid. The annual increase, if any, in the CPI-U shall be considered only to the extent of the first ~~three~~ *two* percent plus one-half of the next ~~four~~ *two* percent of any additional increase, or a maximum increase in the post-retirement supplement of ~~five~~ *three* percent in any given year. However, for a person who ~~becomes a member on or after July 1, 2010,~~ the annual increase in the Consumer Price Index shall be considered only to the extent of the first ~~two~~ *three* percent plus one-half of the next ~~eight~~ *four* percent of any additional increase, or a maximum increase in the post-retirement supplement of ~~six~~ *three* percent in any given year, as of January 1, 2013, (i) is the recipient of an allowance under this title or (ii) would otherwise be eligible for an unreduced allowance within five years, the applicable annual increase, if any, in the CPI-U shall be considered only to the extent of the first ~~three~~ *two* percent plus one-half of the next ~~four~~ *three* percent of any additional increase, or a maximum increase in the post-retirement supplement of ~~five~~ *three* percent in any given year. If the difference in the percentages determined above is zero or less, the post-retirement supplements shall either not commence or shall continue unchanged until such time as an annual determination results in a difference in the percentages that are greater than zero.

Contribution rates for all employers shall include an amount equal to 100 percent of the total annual amount necessary to fund all post-retirement supplements. All contribution rates shall be computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board.

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

D. 1. 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.

2. A person who is the recipient of an allowance pursuant to § 2.2-3204, subsection Q of Item 469 of Chapter 890 of the Acts of Assembly of 2011, or § 51.1-155.1, 51.1-155.2, 51.1-157, 51.1-162, 51.1-207, 51.1-218, 51.1-308, 51.1-1117, or 51.1-1128 must receive that allowance for one full calendar year before being entitled to post-retirement supplements.

3. A person who, as of January 1, 2013, (i) is the recipient of an allowance under this title or (ii) would otherwise be eligible for an unreduced allowance under the applicable chapter within five years, including a person described in clause (ii) who commences an unreduced allowance on or after January 1, 2013, must receive that allowance for one full calendar year before being entitled to post-retirement supplements.

4. Any other person must receive that allowance for one full calendar year after the date he would otherwise have been eligible for an unreduced allowance under the applicable chapter before being entitled to post-retirement supplements.