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HOUSE BILL NO. 486

Offered January 11, 2012

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A BILL to amend and reenact § 51.1-126 of the Code of Virginia, relating to the Virginia Retirement System; employees of institutions of higher education.

Patrons—Ware, O. and Kory

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:**1. That § 51.1-126 of the Code of Virginia is amended and reenacted as follows:**

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

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

A. 1. The Board shall maintain an optional retirement plan covering employees engaged in the performance of teaching, administrative, or research duties with an institution of higher education and any institution of higher education is authorized to make contributions to such plan for the benefit of its employees participating in such plan. Except (i) as provided in subsection B for institutions of higher education that have established their own optional retirement plan and (ii) for employees described in subdivision A 2, every employee hired by an institution of higher education on or after July 1, 2003, 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) an optional retirement plan maintained by the Board. Such 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.

2. 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 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

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59 defined benefit retirement plan from the time of his entry upon the performance of his duties.

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

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

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

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

79 2. If a member of the optional retirement plan maintained under this section is at any time in service
80 as an employee in a position covered for retirement purposes under the provisions of Chapters 1
81 (§ 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
82 benefit payments under the optional retirement plan maintained under this section shall be suspended
83 while so employed; provided, however, reemployment shall have no effect on the payment under the
84 optional plan maintained under this section if the benefits are being paid in an annuity form under an
85 annuity contract purchased with the member's account balance.

86 F. 1. The contribution by the Commonwealth on behalf of an employee participating in an optional
87 retirement plan maintained by the Board or on behalf of an employee participating in an optional
88 retirement plan established by his institution of higher education under this section to such employee's
89 retirement plan shall be (i) at least 8.5 percent but not in excess of 8.9 percent of creditable
90 compensation for any person who becomes a member on or after July 1, 2010, and (ii) 10.4 percent of
91 creditable compensation for all other employees. Any institution of higher education that elects a
92 contribution in excess of 8.5 percent of creditable compensation for any employee described in clause (i)
93 shall provide for the same percentage of creditable compensation as contributions for each of its
94 employees described in clause (i) who participates in such optional retirement plan. The portion of the
95 contribution in excess of 8.5 percent of creditable compensation pursuant to clause (i) shall not be
96 funded from the general fund of the state treasury, but shall be paid by the institution of higher
97 education from other funds. In addition, any person who becomes a member on or after July 1, 2010,
98 shall, pursuant to procedures established by the Board, pay member contributions on a salary reduction
99 basis in accordance with § 414(h) of the Internal Revenue Code, in an amount equal to five percent of
100 his creditable compensation, to the optional retirement plan maintained by the Board on his behalf or the
101 optional retirement plan established by his institution of higher education on his behalf, as applicable.
102 Each employee making such member contribution shall be deemed to consent and agree to any salary
103 reduction for purposes of the member contribution. Such member contributions shall be in addition to all
104 contributions pursuant to clause (i). An institution of higher education may make an additional
105 contribution for participants who, before January 1, 1991, exercised the election to participate in the plan
106 provided by the institution employing them. Such additional contributions shall be made using funds
107 other than general funds, tuition or fees, up to an additional 2.17 percent of creditable compensation.

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

112 G. With respect to any employee who elects pursuant to subsection A or B to participate in the
113 Virginia Retirement System defined benefit retirement plan established by this chapter, the institution of
114 higher education shall collect and pay all employee and employer contributions to the Virginia
115 Retirement System for retirement and group life insurance in accordance with the provisions of Chapter
116 1 (§ 51.1-124.1 et seq.) for such employees.

117 H. Notwithstanding any other provision of this section, any person covered under an optional
118 retirement plan pursuant to this section who has at least 10 years of service with the Commonwealth
119 may make a one-time, irrevocable election to use the accrued contributions and earnings in his optional
120 retirement plan account to purchase service credit in the Virginia Retirement System (§ 51.1-124.1 et

121 *seq.) at a rate to be established by the Board. The provisions of subsection F of § 51.1-126.5 shall*
122 *apply mutatis mutandis for purposes of purchasing such service credit. The election shall be made no*
123 *later than six months following the month in which such person's total service with the Commonwealth*
124 *reaches 120 months. For any such person in service on July 1, 2012, with at least 120 months of*
125 *service to the Commonwealth as of such date, the election shall be made no later than January 1, 2013.*
126 *Any person making the election under this subsection shall thereafter participate in the Virginia*
127 *Retirement System defined benefit retirement plan.*

128 *HI.* The Virginia Retirement System shall develop policies and procedures for the administration of
129 the optional retirement plan it maintains. To assist the Virginia Retirement System in developing such
130 policies and procedures, the Board may appoint an advisory committee of higher education employees to
131 supply guidance in the process.

132 *IJ.* As a condition of the Board granting approval to an institution of higher education to establish its
133 own optional retirement plan, the institution of higher education shall develop policies and procedures
134 for the administration of such plan and shall submit such policies and procedures to the Board as part of
135 the Board-approval process required under this section. In addition, an institution of higher education
136 that is granted approval by the Board to establish its own optional retirement plan covering employees
137 engaged in the performance of teaching, administrative, or research duties shall not adopt or implement
138 policies and procedures that are substantially different from the policies and procedures approved by the
139 Board in the initial approval process unless the Board, in writing, approves such substantially different
140 policies and procedures.

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