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SENATE BILL NO. 498

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 29, 2012)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact §§ 51.1-124.3, 51.1-145, 51.1-155, 51.1-157, 51.1-166, 51.1-201, 51.1-202, 51.1-212, 51.1-213, 51.1-301, 51.1-601.1, 51.1-1100, 51.1-1400, and 51.1-1405 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.1-126.5:1 and by adding in Title 51.1 a chapter numbered 11.1, containing articles numbered 1 through 4, consisting of sections numbered 51.1-1150 through 51.1-1183, relating to the Virginia Retirement System.

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-124.3, 51.1-145, 51.1-155, 51.1-157, 51.1-166, 51.1-201, 51.1-202, 51.1-212, 51.1-213, 51.1-301, 51.1-601.1, 51.1-1100, 51.1-1400, and 51.1-1405 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51.1-126.5:1 and by adding in Title 51.1 a chapter numbered 11.1, containing articles numbered 1 through 4, consisting of sections numbered 51.1-1150 through 51.1-1183, 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"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.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.

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

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

64 "Employer" means the Commonwealth in the case of a state employee, the local public school board
65 in the case of a teacher, or the political subdivision participating in the Retirement System.

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

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

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

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

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

75 "Normal retirement date" means a member's sixty-fifth birthday. However, for any person who
76 becomes a member on or after July 1, 2010, under this chapter his normal retirement date shall be the
77 date that the member attains his "retirement age" as defined under the Social Security Act (42 U.S.C.
78 § 416 et seq., as now or hereafter amended).

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

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

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

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

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

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

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

101 "Retirement System" means the Virginia Retirement System.

102 "Service" means service as an employee.

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

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

120 § 51.1-126.5:1. *Optional defined contribution retirement program.*

121 A. *For purposes of this section, "optional defined contribution retirement program" or program*

means a retirement program covering any (i) "state employee," as defined in § 51.1-124.3 who is a member or eligible to be a member covered by the defined benefit plan under Chapter 1 (§ 51.1-100 et seq.), (ii) member or a person eligible to be a member of the State Police Officers' Retirement System under Chapter 2 (§ 51.1-200 et seq.), (iii) member or person eligible to be a member of the Virginia Law Officers' Retirement System under Chapter 2.1 (§ 51.1-211 et seq.), or (iv) "judge" as defined in § 51.1-300, who elects to participate in the program as provided in this section. Persons who are participants in, or eligible to be participants in, the optional retirement plans established under §§ 51.1-126, 51.1-126.1, 51.1-126.3, 51.1-126.4, 51.1-126.5, and 51.1-126.7 shall not be eligible to participate in the optional defined contribution retirement program.

The Board shall maintain this optional defined contribution retirement program, and any employer is authorized to make contributions under such program to the plans for the benefit of its employees participating in such program. Every person who is eligible for participation in the program and who is not a member of a retirement plan administered by the Virginia Retirement System the first time he is hired on or after January 1, 2014, shall make an irrevocable election to participate in either (a) the otherwise applicable defined benefit retirement plan established by this title and administered by the Virginia Retirement System or (b) this optional defined contribution retirement program.

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 otherwise applicable defined benefit retirement plan established by this title and administered by the Virginia Retirement System.

B. 1. The employer shall make a mandatory contribution on behalf of an employee participating in the optional defined contribution retirement program in the amount of five percent of creditable compensation. In addition, the employer shall make a matching contribution on behalf of the employee, based on the employee's voluntary contributions under subdivision C 2, up to a maximum of 3.5 percent of creditable compensation for the payroll period as follows: 100 percent of up to 3.5 percent of creditable compensation contributed by the employee to such plan for the payroll period, over and above the mandatory employee contribution. The matching contribution by the employer shall be made to the appropriate cash match plan established for the employee under § 51.1-608.

2. The total amount contributed by the employer under subdivision 1 shall vest to the employee's benefit according to the following schedule:

a. Upon completion of one year of continuous participation in the defined contribution retirement program, 20 percent.

b. Upon completion of two years of continuous participation in the defined contribution retirement program, 40 percent.

c. Upon completion of three years of continuous participation in the defined contribution retirement program, 60 percent.

d. Upon completion of four years of continuous participation in the defined contribution retirement program, 80 percent.

e. Upon completion of five years of continuous participation in the defined contribution retirement program, 100 percent.

If an employee terminates employment with an employer prior to the end of this vesting period, contributions made by an employer on behalf of the employee under subdivision 1 that are not vested shall be forfeited. The Board may establish a forfeiture account and may specify the uses of the forfeiture account.

3. An employee may direct the investment of contributions made by an employer under subdivision B 1.

4. No loans or hardship distributions shall be available from contributions made by an employer under subdivision B 1.

C. 1. An employee participating in the optional defined contribution retirement program shall, pursuant to procedures established by the Board, make mandatory 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.

2. An employee participating in the optional defined contribution retirement program may make voluntary contributions to the program, in increments of half percentages of creditable compensation, in an amount not to exceed 3.5 percent of creditable compensation or the limit on elective deferrals pursuant to § 457(b) of the Internal Revenue Code, whichever is less. The contribution by the employee shall be made to the appropriate deferred compensation plan established by the employee under § 51.1-602.

3. No loans or hardship distributions shall be available from contributions made by an employee under this subsection.

D. With respect to any employee who elects, pursuant to subsection A, to participate in the otherwise

183 applicable defined benefit retirement plan established by this title and administered by the Virginia
184 Retirement System, the employer shall collect and pay all employee and employer contributions to the
185 Virginia Retirement System for retirement and group life insurance in accordance with the provisions of
186 Chapter 1 (§ 51.1-124.1 et seq.) for such employee.

187 E. 1. The Board shall develop policies and procedures for administering the optional defined
188 contribution retirement program it maintains, including the establishment of guidelines for employee
189 elections and deferrals under the program.

190 2. No employee who is an active member in the optional defined contribution retirement program
191 maintained by the Board shall also be (i) an active member of the retirement system or beneficiary
192 other than a contingent annuitant or (ii) an active member of any other optional retirement plan
193 maintained under the provisions of Chapter 1 (§ 51.1-124.1 et seq.).

194 3. If a member of the optional defined contribution retirement program maintained under this section
195 is at any time in service as an employee in a position covered for retirement purposes under the
196 provisions of Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3
197 (§ 51.1-300 et seq.), his benefit payments under the optional defined contribution retirement program
198 maintained under this section shall be suspended while so employed, provided, however, reemployment
199 shall have no effect on the payment under the optional defined contribution retirement program
200 maintained under this section if the benefits are being paid in an annuity form under an annuity
201 contract purchased with the member's account balance.

202 4. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 on any employer for
203 administering and overseeing the optional defined contribution retirement program established pursuant
204 to this section shall be charged for each employee participating in such program and shall be for costs
205 incurred by the Virginia Retirement System that are directly related to the administration and oversight
206 of such program.

207 5. The creditable compensation for any employee on whose behalf employee or employer
208 contributions are made into the optional defined contribution retirement program shall not exceed the
209 limit on compensation as adjusted by the Commissioner of the Internal Revenue Service pursuant to the
210 transition provisions applicable to eligible participants under state and local governmental plans under
211 § 401(a)(17) of the Internal Revenue Code as amended in 1993 and as contained in § 13212(d)(3) of the
212 Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

213 6. The Board may contract with private corporations or institutions, subject to the standards set forth
214 in § 51.1-124.30, to provide investment products as well as any other goods and services related to the
215 administration of the optional defined contribution retirement program. The Virginia Retirement System
216 is hereby authorized to perform related services, including but not limited to providing consolidated
217 billing, individual and collective recordkeeping and accountings, and asset purchase, control, and
218 safekeeping.

219 § 51.1-145. Employer contributions.

220 A. The total annual employer contribution for each employer, expressed as a percentage of the
221 annual membership payroll, shall be determined in a manner so as to remain relatively level from year
222 to year. Each employer shall contribute an amount equal to the sum of the normal contribution, any
223 accrued liability contribution, and any supplementary contribution. The contribution rates for each
224 employer shall be determined after each valuation and shall remain in effect until a new valuation is
225 made. All contribution rates shall be computed in accordance with recognized actuarial principles on the
226 basis of methods and assumptions approved by the Board.

227 B. The normal employer contribution for any period shall be determined as a percentage, equal to the
228 normal contribution rate, of the total covered compensation of the members employed during the period.

229 C. The normal contribution rate for any employer shall be determined as the percentage represented
230 by the ratio of (i) the annual normal cost to provide the benefits of the retirement system with respect to
231 members employed by the employer in excess of the members' contributions to (ii) the total annual
232 compensation of the members.

233 D. The accrued liability contribution for any employer for any period shall be determined as a
234 percentage, equal to the accrued liability contribution rate, of the total compensation of the members
235 during the period.

236 E. The accrued liability contribution rate for any employer shall be a percentage of the total annual
237 compensation of the members, determined so that a continuation of annual contributions by the
238 employer at the same percentage of total annual compensation over a period of 40 years will be
239 sufficient to amortize the unfunded accrued liability with respect to the employer.

240 F. The unfunded accrued liability with respect to any employer as of any valuation date shall be
241 determined as the excess of (i) the then present value of the benefits to be provided under the retirement
242 system in the future to members and former members over (ii) the sum of the assets of the retirement
243 system then currently in the members' contribution account and in the employer's retirement allowance
244 account, plus the then present value of the stipulated contributions to be made in the future by the

members, plus the then present value of the normal contributions expected to be made in the future by the employer.

G. The supplementary contribution for any employer for any period shall be determined as a percentage, equal to the supplementary contribution rate, of the total compensation of the members employed during the period.

H. Until July 1, 1997, the supplementary contribution rate for any employer shall be determined as the percentage represented by the ratio of (i) the average annual amount of post-retirement supplements, as provided for in this chapter, which is anticipated to become payable during the period to which the rate will be applicable with respect to former members to (ii) the total annual compensation of the members.

I. The Board shall certify to each employer the applicable contribution rate and any changes in the rate.

J. The employer contribution for the year shall be increased to the extent necessary to overcome any insufficiency if the contributions for any employer, when combined with the amount of the retirement allowance account of the employer, are insufficient to provide the benefits payable during the year.

K. The appropriation bill which is submitted to the General Assembly by the Governor prior to each regular session that begins in an even-numbered year shall include the contributions which will become due and payable to the retirement allowance account from the state treasury during the following biennium. The amount of the contributions shall be based on the contribution rates certified by the Board pursuant to subsection I of this section that are applicable to the Commonwealth as an employer and the anticipated compensation during the biennium of the members of the retirement system on behalf of whom the Commonwealth is the employer.

L. In the case of all teachers whose compensation is paid exclusively out of funds derived from local revenues and appropriations from the general fund of the state treasury, the Commonwealth shall contribute to the extent specified in the appropriations act. In the case of any teacher whose compensation is paid out of funds derived in whole or in part from any special fund or from a contributor other than the Commonwealth or a political subdivision thereof, contributions shall be paid out of the special fund or by the other contributor in proportion to that part of the compensation derived therefrom. In the case of all state employees whose compensation is paid exclusively by the Commonwealth out of the general fund of the state treasury, the Commonwealth shall be the sole contributor, and all contributions shall be paid out of the general fund. In the case of a state employee whose compensation is paid in whole or in part out of any special fund or by any contributor other than the Commonwealth, contributions on behalf of the employee shall be paid out of the special fund or by the other contributor in proportion to that part of the employee's compensation derived therefrom. The governing body of each political subdivision is hereby authorized to make appropriations from the funds of the political subdivision necessary to pay its proportionate share of contributions on behalf of every state employee whose compensation is paid in part by the political subdivision. In the case of each person who has elected to remain a member of a local retirement system, the Commonwealth shall reimburse the local employer an amount equal to the product of the compensation of the person and the employer contribution rate as used to determine the employer contribution for state employees under this section. Each employer shall keep such records and periodically furnish such information as the Board may require and shall inform new employees of their duties and obligations in connection with the retirement system.

M. The employer contribution rate established for each employer may include the cost to administer any defined contribution plan administered by the Virginia Retirement System and available to the employer. The portion of such contribution designated to cover administrative costs of the defined contribution plans shall not be deposited into the trust fund established for the defined benefit plans but shall be separately accounted for and used solely to defray the administrative costs associated with the various defined contributions plans. This provision shall supplement the authority of the Board under §§ 51.1-124.22 and 51.1-602 to charge and collect administrative fees to employers whose employees have available the various defined contribution plans administered by the Virginia Retirement System.

N. The employer contribution rate established for each employer may include the annual rate of contribution payable by such employer with respect to employees enrolled in the optional defined contribution retirement program established under § 51.1-126.5:1, to be assessed as surcharges for the amortization of unfunded liabilities of the defined benefit plans administered by the Virginia Retirement System.

§ 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. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service. *Notwithstanding the foregoing, for a person who is*

306 *not a member of a retirement system administered by the Virginia Retirement System the first time he is*
307 *hired in a covered position on or after January 1, 2013, the allowance shall equal 1.60 percent of his*
308 *average final compensation multiplied by the amount of his creditable service.*

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

318 3. Early retirement; applicable to employees of certain political subdivisions and any person who
319 becomes a member on or after July 1, 2010. - The allowance shall be determined in the same manner as
320 for normal retirement with creditable service and average final compensation being determined as of the
321 date of actual retirement. If the creditable service of the member equals 30 or more years but the sum of
322 his age at retirement plus his creditable service at retirement is less than 90, the amount of the
323 retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual
324 retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the
325 sum of his then attained age plus his then creditable service would have been equal to 90 or more had
326 he remained in service until such date. If the member has less than 30 years of creditable service, the
327 retirement allowance shall be reduced for the period by which the actual retirement date precedes the
328 earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total
329 of at least 30 years of creditable service and his then creditable service plus his then attained age would
330 have been equal to 90 or more.

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

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

344 5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the
345 greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated
346 service and deferred retirement to age 55 or (ii) the actuarially calculated present value of the member's
347 accumulated contributions, including accrued interest.

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

349 1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance
350 under this chapter or the provisions of Chapters 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3
351 (§ 51.1-300 et seq.) is at any time in service as an employee in a position covered for retirement
352 purposes under the provisions of this or any chapter other than Chapter 6 (§ 51.1-600 et seq.), 6.1
353 (§ 51.1-607 et seq.), or 7 (§ 51.1-700 et seq.), his retirement allowance shall cease while so employed.
354 Any member who retires and later returns to covered employment shall not be entitled to select a
355 different retirement option for a subsequent retirement.

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

367 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:

(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. 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. *Notwithstanding the foregoing, for a person who is not a member of a retirement system administered by the Virginia Retirement System the first time he is hired in a covered position on or after January 1, 2013, the allowance shall equal 1.60 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 60 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.

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 that no optional retirement allowance is elected.

§ 51.1-166. Post-retirement supplements generally.

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~~ *two* percent plus one-half of the next ~~eight~~ *eight* 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~~ *three* percent plus one-half of the next ~~four~~ *four* percent of any additional increase, or a maximum increase in the post-retirement supplement of ~~five~~ *five* 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.

§ 51.1-201. Definitions.

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

"Employee" means a state police officer.

"Member" means any person included in the membership of the retirement system as provided in this chapter, except that any person participating in the optional defined contribution retirement program established pursuant to § 51.1-126.5:1 shall not be considered a member.

"Normal retirement date" means a member's sixtieth birthday.

"Retirement system" means the State Police Officers' Retirement System.

§ 51.1-202. Membership in retirement system.

Membership in the retirement system shall be compulsory for all state police officers. However, such compulsory membership requirement shall be deemed to have been met by any employee participating in

the optional defined contribution retirement program established under § 51.1-126.5:1.

§ 51.1-212. Definitions.

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

"Employee" means any (i) member of the Capitol Police Force as described in § 30-34.2:1, (ii) campus police officer appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23, (iii) conservation police officer in the Department of Game and Inland Fisheries appointed under the provisions of Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, (iv) special agent of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.), (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § 9.1-101, (vi) correctional officer as the term is defined in § 53.1-1, and including correctional officers employed at a juvenile correction facility as the term is defined in § 66-25.3, (vii) any parole officer appointed pursuant to § 53.1-143, and (viii) any commercial vehicle enforcement officer employed by the Department of State Police.

"Member" means any person included in the membership of the Retirement System as provided in this chapter, *except that any person participating in the optional defined contribution retirement program established pursuant to § 51.1-126.5:1 shall not be considered a member.*

"Normal retirement date" means a member's sixtieth birthday.

"Retirement System" means the Virginia Law Officers' Retirement System.

§ 51.1-213. Membership in Retirement System.

Membership in the Retirement System shall be compulsory for all employees. *However, such compulsory membership requirement shall be deemed to have been met by any employee participating in the optional defined contribution retirement program established under § 51.1-126.5:1.*

§ 51.1-301. Definitions.

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

"Appointing authority" means the General Assembly or the Governor.

"Creditable service" means prior service plus membership service, as further defined in and modified by § 51.1-303, for which credit is allowable under this chapter.

"Judge" means any justice or judge of a court of record of the Commonwealth, any member of the State Corporation Commission or Virginia Workers' Compensation Commission, any judge of a district court of the Commonwealth other than a substitute judge of such district court, and any executive secretary of the Supreme Court assuming such position between December 1, 1975, and January 31, 1976, *except that any person participating in the optional defined contribution retirement program established pursuant to § 51.1-126.5:1 shall not be considered a judge as provided in this chapter.*

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

"Previous systems" means the systems established under the provisions of Chapters 2 (§ 51-3 et seq.) and 2.2 (§ 51-29.8 et seq.) of Title 51, and, in the case of judges of regional juvenile and domestic relations courts, the Virginia Retirement System.

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

"Retirement system" means the Judicial Retirement System.

"Service" means service as a judge.

§ 51.1-601.1. Participation in plan by certain employees.

All employees of the Commonwealth and its agencies commencing employment or who are reemployed on or after January 1, 2008, in a position covered by the Virginia Retirement System, and who have not elected to participate in a plan established pursuant to (i) § 403(b) of the Internal Revenue Code of 1986, as amended, *or (ii) § 51.1-126.5:1 shall participate in the plan described in § 51.1-602, unless such employee elects, in a manner prescribed by the Board, not to participate in such plan. The amount of the deferral for any such employee participating in the plan shall equal, on a semimonthly basis, \$20 of otherwise payable compensation, unless the employee elects to defer a different amount.*

§ 51.1-1100. Definitions.

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

"Act" means the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

"Company" means an insurance company issuing a long-term disability insurance policy purchased by the Board pursuant to this chapter.

"Disability" means a partial disability or total disability.

"Disability benefit" means income replacement payments payable to a participating employee under a short-term or long-term disability benefit program pursuant to this chapter. Disability benefits do not include benefits payable under the Act.

"Eligible employee" means (i) a state employee as defined in § 51.1-124.3 who is a member of the

retirement system, (ii) an employee as defined in § 51.1-201, (iii) an employee as defined in § 51.1-212, or (iv) a qualifying part-time employee. Any person participating in a plan established pursuant to §§ 51.1-126, 51.1-126.1, 51.1-126.4, 51.1-126.5, 51.1-126.5:1, 51.1-502.1, or § 51.1-502.3 shall not be an eligible employee. Employees of the University of Virginia Medical Center covered under the basic insurance policies purchased by the Medical Center shall not be considered eligible employees under this chapter, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board of Visitors, purchases such insurance policies from the Virginia Retirement System.

"Existing employee" means an employee who elected to participate in the Virginia Sickness and Disability Program.

"Partial disability" exists during the first ~~twenty-four~~ 24 months following the occurrence or commencement of an illness or injury when an employee is earning less than ~~eighty~~ 80 percent of his predisability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.

"Participating employee" means any eligible employee required or electing to participate in the program.

"Program" means the program providing sick leave, family and personal leave, short-term disability, and long-term disability benefits for participating employees established pursuant to this chapter.

"Qualifying part-time employee" means any person who would qualify as a state employee as defined in § 51.1-124.3 but, rather than being regularly employed full time on a salaried basis, is regularly employed part time for at least ~~twenty~~ 20 hours but less than ~~forty~~ 40 hours per week on a salaried basis.

"State service" means the employee's total period of state service as an eligible employee, including all periods of classified full-time and classified part-time service and periods of leave without pay, but not including periods during which the employee did not meet the definition of an eligible employee.

"Total disability" exists (i) during the first ~~twenty-four~~ 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform all of his essential job functions or (ii) after ~~twenty-four~~ 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform any job for which he is reasonably qualified based on his training or experience and earning less than ~~eighty~~ 80 percent of his predisability earnings.

"Work-related injury" means an injury, as such term is defined in § 65.2-101, to a participating employee for which benefits are payable under the Act and the Commonwealth is the employer for purposes of the Act.

In addition to the definitions listed above, the definitions listed in § 51.1-124.3 shall apply to this chapter except as otherwise provided.

CHAPTER 11.1.

DISABILITY PROGRAM FOR DEFINED CONTRIBUTION RETIREMENT PROGRAM

PARTICIPANTS.

Article 1.

General Provisions.

§ 51.1-1150. Definitions.

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

"Act" means the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

"Company" means an insurance company issuing a long-term disability insurance policy purchased by the Board pursuant to this chapter.

"Continuous service" means an uninterrupted period of service as a participating employee with the same employer.

"Disability" means a partial disability or total disability.

"Disability benefit" means income replacement payments payable to a participating employee under a short-term or long-term disability benefit program pursuant to this chapter. Disability benefits do not include benefits payable under the Act.

"Eligible employee" means a person who is participating in the optional defined contribution retirement program established pursuant to § 51.1-126.5:1.

"Partial disability" exists during the first 24 months following the occurrence or commencement of an illness or injury when an employee is earning less than 80 percent of his predisability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.

"Participating employee" means any eligible employee required to participate in the program.

"Program" means the program providing short-term disability and long-term disability benefits for participating employees established pursuant to this chapter.

"Service" means a period of service as a participating employee.

"Total disability" exists (i) during the first 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform all of his essential job functions or (ii) after 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform any job for which he is reasonably qualified based on his training or experience and earning less than 80 percent of his predisability earnings.

"Work-related injury" means an injury, as such term is defined in § 65.2-101, to a participating employee for which benefits are payable under the Act and the employer for purposes of the Act is the Commonwealth or other political subdivision through which the participating employee became eligible for the program.

In addition to the definitions listed in this section, the definitions listed in § 51.1-124.3 shall, as the context requires, apply to this chapter except as otherwise provided.

§ 51.1-1151. Sickness and disability program; disability insurance policies.

A. The Board shall develop, implement, and administer a short-term disability and long-term disability benefits program in accordance with the provisions of this chapter. The Board is authorized to delegate or assign to any person any of the duties required to be performed by the Board pursuant to this chapter. The Board is authorized to purchase long-term disability insurance policies for participating employees. The policies shall be purchased from and carried with a disability insurance company that is authorized to do business in the Commonwealth.

Each policy shall contain a provision stipulating the maximum expense and risk charges that are determined by the Board to be on a basis consistent with the general level of charges made by disability insurance companies under policies of long-term disability insurance issued to large employers. The Board may require that the policies have reinsurance with a disability insurance company incorporated or organized under the laws of and authorized to do business in the Commonwealth.

B. Notwithstanding the provisions of subsection A, the Board may self-insure long-term disability benefits in accordance with the standards set forth in § 51.1-124.30.

§ 51.1-1152. Additional powers of the Board.

In addition to any other powers granted to the Board under this title, the Board shall have the power to:

1. Establish policies and procedures to implement and administer the program and the provisions of this chapter;

2. Contract for the provision of comprehensive case management;

3. Take all other actions necessary for the implementation and administration of the program; and

4. Adopt rules and policies that bring the program into compliance with any applicable law or regulation of the Commonwealth or the United States.

§ 51.1-1153. Participation in the program.

A. The effective date of participation in the program for participating employees shall be their first day of employment.

B. Notwithstanding any provision to the contrary, no participating employee shall receive benefits under Article 2 (§ 51.1-1154 et seq.) (Nonwork-Related Disability Benefits) until the participating employee completes one year of continuous service.

C. Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) termination of employment or (ii) death. Eligibility for participation in the program shall be suspended during periods that an employee is placed on nonpay status, including leave without pay, if such nonpay status is due to suspension pending investigation or outcome of employment-related court or disciplinary action.

Article 2.

Nonwork-Related Disability Benefits.

§ 51.1-1154. Applicability of article.

The provisions of this article shall apply only with respect to the disability programs providing disability benefits for disabilities not resulting from work-related injuries.

§ 51.1-1155. Short-term disability benefit.

A. Except as provided in subsection B of § 51.1-1153, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or of maternity leave. If an employee returns to work for one day or less during the seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability shall not require a waiting period.

B. Except as provided in § 51.1-1171, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60

months of continuous service and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous participation in the program attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

	Work Days of 100%	Work Days of 80%	Work Days of 60%
Months of	Replacement of	Replacement of	Replacement of
Continuous	Creditable	Creditable	Creditable
Participation	Compensation	Compensation	Compensation
60-119	25	25	75
120-179	25	50	50
180 or more	25	75	25

C. Creditable compensation during periods an employee receives short-term disability benefits shall include salary increases awarded during the period covered by short-term disability benefits.

D. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, or (iii) maternity leave.

§ 51.1-1156. Successive periods of short-term disability.

A. A participating employee's disability that is related or due to the same cause or causes as a prior disability for which short-term disability benefits were paid shall be deemed to be a continuation of the prior disability if the employee returns to his position on an active employment basis for less than 45 consecutive calendar days. If a participating employee, after receiving short-term disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to his position on an active employment basis for 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability.

C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty.

§ 51.1-1157. Long-term disability benefit.

A. Long-term disability benefits for participating employees shall commence upon the expiration of the maximum period for which the participating employee is eligible to receive short-term disability benefits under § 51.1-1155.

B. Except as provided in § 51.1-1171, long-term disability benefits shall provide income replacement in an amount equal to 60 percent of a participating employee's creditable compensation.

C. Creditable compensation during periods an employee receives long-term disability benefits shall not include salary increases awarded during the period covered by long-term disability benefits.

D. Long-term disability benefits shall be payable only during periods of (i) total disability or (ii) partial disability.

E. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

§ 51.1-1158. Successive periods of long-term disability.

A. A participating employee's disability that is related or due to the same cause or causes as a prior disability for which long-term disability benefits were paid shall be deemed to be a continuation of the prior disability if the employee returns to a position on an active employment basis for less than 125 consecutive work days. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to a position on an active employment basis for 125 consecutive work days or longer, any succeeding period of disability shall constitute a new period of disability.

§ 51.1-1159. Adjustments to disability benefits.

A. Disability benefit payments shall be offset by an amount equal to any sums payable to a participating employee from the following sources:

1. During the first 12 months the employee receives disability benefits, an amount equal to the employee's wages and salary from any employment multiplied by the creditable compensation replacement percentage;

2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent of the employee's wages and salary from any employment;

3. Disability payments from the Social Security Administration, local government disability benefits, federal civil service disability benefits, or other similar governmental disability program benefits received by the employee or his family as a result of the qualifying disability;

4. Benefits received from any other group insurance contract provided to the participating employee by his employer for the purpose of providing income replacement; and

5. Benefits paid under any compulsory benefits law.

B. If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, disability benefit payments may be offset by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is deemed eligible by the plan administrator as if the employee received such amounts. However, if the employee has applied for such benefits, and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and the claim is not approved, the employee's disability payments shall not be reduced thereby.

C. If a participating employee's disability benefit payments are reduced as the result of payments from sources listed in subdivisions A 3, A 4, and A 5 or pursuant to subsection B, the employee's disability benefits shall not thereafter be further reduced on account of cost-of-living increases in payments from such sources.

D. Participating employees shall be required to repay, with interest, to the Board or their employer any overpayments of disability benefits on account of the failure of the employee to provide the Board or its designee with information necessary to make any of the reductions required to be made under this article.

E. Any payment to a participating employee that is later determined by the Board or by the employer to have been procured on the basis of any false statement or falsification of any record knowingly made by or on behalf of the member, or the employee's failure to make any required report of change in disability status, may be recovered from the employee by the Board, with interest, either by way of a credit against future payments due the employee, his survivors, or beneficiaries or by an action at law against the employee.

F. Notwithstanding the foregoing, disability benefit payments shall not be offset by military disability benefits payable to a participating employee.

§ 51.1-1160. Rehabilitation incentive.

Disability benefits payable to a participating employee who fails to cooperate with a rehabilitation program prescribed for the employee shall be decreased by 50 percent of the amounts otherwise payable to such employee.

§ 51.1-1161. Cessation of disability benefits.

Disability benefits shall cease to be paid to a participating employee upon the first to occur of the following:

1. The end of the period of disability coverage as provided in subsection D of § 51.1-1155 or subsection D of § 51.1-1157;

2. The date of death of the participating employee;

3. The date that the participating employee attains age 65; or

4. The date that the participating employee takes an initial distribution from the defined contribution retirement plan established pursuant to § 51.1-126.5:1.

Notwithstanding the foregoing, an employee who is approved for disability benefits (i) at age 60 through 64 shall be eligible for five years of disability benefits, (ii) at age 65 through 68 shall be eligible for disability benefits to age 70, and (iii) at age 69 or older shall be eligible for disability benefits for one year. The eligibility periods include short-term disability and long-term disability.

Article 3.

Work-Related Disability Benefits.

§ 51.1-1162. Applicability of article.

The provisions of this article shall apply only with respect to disability programs providing payment of disability benefits attributed to work-related injuries.

§ 51.1-1163. Supplemental short-term disability benefit.

A. Payments of supplemental short-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any payments for medical, legal, or rehabilitation expenses.

B. Supplemental short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a

797 disability. If an employee returns to work for one day or less during the seven calendar days following
 798 the commencement of a disability but cannot continue to work, the periods worked shall not be
 799 considered to have interrupted the seven-calendar-day waiting period. Additionally, the
 800 seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20
 801 hours or less during the waiting period. Short-term disability benefits payable as the result of a
 802 catastrophic disability shall not require any waiting period.

803 C. Except as provided in subsection D and § 51.1-1171, supplemental short-term disability coverage
 804 shall provide income replacement for (i) 60 percent of a participating employee's creditable
 805 compensation for the first 60 months of continuous service and (ii) thereafter, a percentage of a
 806 participating employee's creditable compensation during the periods specified below, based on the
 807 number of months of continuous participation in the program attained by an employee who is disabled,
 808 on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the
 809 Board or its designee, as follows:

	Work Days of 100%	Work Days of 80%	Work Days of 60%
Months of	Replacement of	Replacement of	Replacement of
Continuous	Creditable	Creditable	Creditable
Participation	Compensation	Compensation	Compensation
60 to 119	85	25	15
120 or more	85	40	0

816 D. Notwithstanding the provisions of subsection C, a state police officer who is a participating
 817 employee and who incurs a work-related injury in the line of duty shall receive supplemental short-term
 818 disability coverage that provides income replacement for 100 percent of the officer's creditable
 819 compensation for the first six months and, pursuant to a certification by the Superintendent of State
 820 Police, based on a medical evaluation, that the officer is likely to return to service within another six
 821 months, up to one calendar year that the officer is disabled, without regard to the officer's number of
 822 months of state service. Upon the expiration of the one-calendar-year period, such state police officers
 823 shall be eligible for supplemental long-term disability benefits as provided in § 51.1-1165.

824 E. Creditable compensation during periods an employee receives supplemental short-term disability
 825 benefits shall include salary increases awarded during the period of short-term disability coverage.

826 F. Supplemental short-term disability benefits shall be payable only during periods of total disability
 827 or partial disability.

828 § 51.1-1164. Successive periods of short-term disability.

829 A. A participating employee's disability that is related or due to the same cause or causes as a prior
 830 disability for which supplemental short-term disability benefits were paid shall be deemed to be a
 831 continuation of the prior disability if the employee (i) is eligible for benefits payable under the Act,
 832 whether or not he is receiving such benefits, and (ii) returns to his position on an active employment
 833 basis for less than 45 consecutive calendar days. If a participating employee, after receiving short-term
 834 disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot
 835 continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits
 836 period, and such days worked shall not be counted for purposes of determining the maximum period for
 837 which the participating employee is eligible to receive short-term disability benefits. Days of work
 838 arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in
 839 determining the duration of the period of the employee's return to work.

840 B. If a participating employee returns to his position on an active employment basis for 45
 841 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of
 842 short-term disability.

843 C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that
 844 the participating employee is (i) actively at work and (ii) fully released to return to work full time, full
 845 duty.

846 § 51.1-1165. Supplemental long-term disability benefit.

847 A. Supplemental long-term disability benefits for participating employees shall commence upon the
 848 expiration of the maximum period for which the participating employee is eligible to receive short-term
 849 disability benefits under § 51.1-1163.

850 B. Except as provided in § 51.1-1171, supplemental long-term disability benefits shall provide income
 851 replacement in an amount equal to 60 percent of a participating employee's creditable compensation.

852 C. Creditable compensation during periods an employee receives supplemental long-term disability
 853 benefits shall not include salary increases awarded during the period covered by long-term disability
 854 benefits.

855 D. Payments of supplemental long-term disability benefits payable under this article shall be reduced
 856 by an amount equal to any benefits paid to the employee under the Act which the employee is entitled to
 857 receive under the Act, excluding any benefit for medical, legal, or rehabilitation expenses.

E. Supplemental long-term disability benefits shall be payable only during periods of total disability or partial disability.

F. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

§ 51.1-1166. Successive periods of long-term disability.

A. A participating employee's disability that is related or due to the same cause or causes as a prior disability for which supplemental long-term disability benefits were paid shall be deemed to be a continuation of the prior disability if the employee is eligible for benefits payable under the Act, whether or not he is receiving such benefits, and returns to a position on an active employment basis for less than 125 consecutive work days. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to a position on an active employment basis for 125 consecutive work days or longer, any succeeding period of disability shall constitute a new period of disability.

§ 51.1-1167. Adjustments in supplemental disability benefits.

A. In addition to offsets equal to the amount of any benefits paid to a participating employee under the Act, supplemental disability benefit payments shall be offset by an amount equal to any sums payable to a participating employee from the following sources:

1. During the first 12 months the employee receives disability benefits, an amount equal to the employee's wages and salary from any employment multiplied by the income replacement percentage payable;

2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent of the employee's wages and salary from any employment;

3. Disability payments from the Social Security Administration, local government disability benefits, federal civil service disability benefits, or other similar governmental disability program benefits received by the employee or his family as a result of the qualifying disability;

4. Benefits received from any other group insurance contract provided to the participating employee by his employer for the purpose of income replacement;

5. Benefits paid under any compulsory benefits law; and

6. If the participating employee receives a settlement in lieu of periodic payments for a disability compensable under the Act, an amount determined by dividing the workers' compensation benefit that such employee would have received had the lump-sum settlement not been consummated into the settlement actually accepted by the employee.

B. If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, supplemental disability benefit payments may be reduced by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is deemed eligible by the plan administrator as if the employee received such amounts. However, if the employee has applied for such benefits, and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and the claim is not approved, the employee's supplemental disability payments shall not be reduced thereby.

C. If a participating employee's disability benefit payments are reduced as the result of payments from sources listed in subdivisions A 3, A 4, and A 5 or pursuant to subsection B, the employee's disability benefits shall not thereafter be further reduced on account of cost-of-living increases in payments from such sources.

D. Participating employees shall be required to repay, with interest, to the Board or the employer any overpayments of supplemental disability benefits on account of the failure of the employee to provide the Board or its designee with information necessary to make any of the reductions required to be made under this article.

E. Any payment to a participating employee that is later determined by the Board or by the employer to have been procured on the basis of any false statement or falsification of any record knowingly made by or on behalf of the employee, or the employee's failure to make any required report of change in disability status, may be recovered from the employee by the Board, with interest, either by way of a credit against future payments due the employee or by an action at law against the employee.

F. If a participating employee's payments under the Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his disability benefits shall be computed as if he were receiving the compensation to which he would otherwise be entitled under the Act.

G. Notwithstanding the foregoing, disability benefit payments shall not be offset by military disability

919 *benefits payable to a participating employee.*

920 *§ 51.1-1168. Rehabilitation incentive.*

921 *Supplemental disability benefits payable to a participating employee who fails to cooperate with a*
922 *rehabilitation program prescribed for the employee shall be decreased by 50 percent of the amounts*
923 *otherwise payable to such employee. In determining the amount of any reduction in benefits under this*
924 *section, the participating employee shall be presumed to continue to receive benefits payable under the*
925 *Act. Failure to comply with a vocational rehabilitation assessment process at any time the employee is*
926 *receiving supplemental disability benefits may constitute a failure to cooperate for purposes of this*
927 *section.*

928 *§ 51.1-1169. Cessation of supplemental disability benefits.*

929 *Supplemental disability benefits shall cease to be paid to a participating employee upon the first to*
930 *occur of the following:*

931 *1. The end of the period of supplemental disability coverage as provided in subsection F of*
932 *§ 51.1-1163 or subsection E of § 51.1-1165;*

933 *2. The date of death of the participating employee;*

934 *3. The date the employee attains age 65; or*

935 *4. The date that the participating employee takes an initial distribution from the defined contribution*
936 *retirement plan established pursuant to § 51.1-126.5:1.*

937 *Notwithstanding the foregoing, an employee who is approved for supplemental disability benefits (i)*
938 *at age 60 through 64 shall be eligible for five years of supplemental disability benefits, (ii) at age 65*
939 *through 68 shall be eligible for supplemental disability benefits to age 70, and (iii) at age 69 or older*
940 *shall be eligible for supplemental disability benefits for one year. The eligibility periods include*
941 *supplemental short-term disability and supplemental long-term disability.*

942 *§ 51.1-1170. Coordination of benefits.*

943 *The Board shall develop guidelines and procedures for the coordination of benefits and case*
944 *management for participating employees entitled to benefits under the Act and supplemental disability*
945 *benefits under this article. Such guidelines shall also address disability benefits for participating*
946 *employees whose disability results from multiple injuries or illnesses, one or more of which is a*
947 *work-related injury.*

948 *Article 4.*

949 *Administrative Provisions.*

950 *§ 51.1-1171. Supplemental benefits for catastrophic disability.*

951 *Disability benefits shall be increased to 80 percent of creditable compensation for any disabled*
952 *participating employee who (i) is unable to perform at least two of the six activities of daily living due*
953 *to a loss of functional capacity or (ii) requires substantial supervision to protect the employee from*
954 *threats to health and safety as a result of severe cognitive impairment. Determination of whether a*
955 *participating employee satisfies either of these conditions shall be made in accordance with the policies*
956 *of the Board or its designee.*

957 *§ 51.1-1172. Employer contributions during disability absences.*

958 *A. Employer and employee contributions to the defined contribution retirement program pursuant to*
959 *subsections B and C of § 51.1-126.5:1 on behalf of participating employees shall continue during*
960 *periods of such employees' absence covered by short-term disability benefits.*

961 *However, the calculation of such contributions shall be based on the participating employee's*
962 *creditable compensation multiplied by the income replacement percentage for which the participating*
963 *employee is otherwise eligible under this program.*

964 *B. In lieu of the mandatory employer and employee contributions pursuant to subdivisions B 1 and C*
965 *1 of § 51.1-126.5:1, a 10 percent contribution to the defined contribution retirement program shall be*
966 *paid, on behalf of participating employees during periods of such employees' absence covered by*
967 *long-term disability benefits, by the Defined Contribution Retirement Program Disability Insurance Trust*
968 *Fund established under § 51.1-1183. However, the calculation of such contribution shall be based on*
969 *the participating employee's creditable compensation multiplied by the income replacement percentage*
970 *for which the participating employee is otherwise eligible under this program.*

971 *§ 51.1-1173. Health insurance coverage during disability absences.*

972 *A. Participating employees enrolled in a health insurance plan established pursuant to § 2.2-2818*
973 *shall continue to be covered during periods of short-term disability and shall have the option of*
974 *continuing to be covered by such plan during periods of absence covered by long-term disability*
975 *benefits.*

976 *B. The Commonwealth shall pay the employer's share of the cost of health insurance coverage under*
977 *such plan for participating employees and for the families or dependents of such employees during*
978 *periods the employee is receiving short-term disability benefits to the same extent as for other state*
979 *employees covered by such plan.*

980 *C. Participating employees enrolled in such plan established pursuant to § 2.2-2818 shall have the*

option of continuing to be covered under such plan and shall pay the full cost for coverage under such plan for themselves and for their families and dependents during periods the employee is receiving long-term disability benefits. However, for an employee as defined in § 51.1-201 who is receiving supplemental long-term disability benefits pursuant to Article 3 (§ 51.1-1162 et seq.), the Commonwealth shall continue to pay the employer's share of the cost of health insurance coverage under such plan for the participating employee and for his family and dependents until such time as the employee is approved for continued health insurance coverage as provided under Chapter 4 (§ 9.1-400 et seq.) of Title 9.1.

§ 51.1-1174. Life and accident insurance coverage during disability absences.

A. Participating employees participating in a group life and accident insurance program established pursuant to Chapter 5 (§ 51.1-500 et seq.) shall continue to participate in such program during periods of absence covered by short-term and long-term disability benefits.

B. During periods of absence covered by short-term disability benefits, the amount of the life insurance benefit shall be based on the annual salary of the participating employee at the commencement of the disability and shall be adjusted to include salary increases awarded during the period covered by short-term disability benefits.

C. During periods of absence covered by long-term disability benefits, the amount of the life insurance benefit shall be based on the annual salary of the participating employee at the commencement of the disability. Such amount shall not include salary increases awarded during the period covered by long-term disability benefits.

§ 51.1-1175. Optional insurance during disability absences.

Participating employees may continue coverage under the optional insurance for themselves and their spouses and minor dependents pursuant to §§ 51.1-512 and 51.1-513 at their own expense during periods of disability.

§ 51.1-1176. Exclusions and limitations.

A. Disability benefits shall not be payable to any participating employee (i) whose disability results from the employee's commission of a felony or (ii) during any period when the employee is incarcerated.

B. Long-term disability benefits shall not be payable to any participating employee whose disability results from the abuse of alcohol, the misuse of any prescribed medication, or the misuse of any controlled substance, unless the employee is actively receiving treatment and, in the judgment of the case manager, is fully complying with the treatment plan and is making substantial progress toward rehabilitation.

C. Disability benefits shall not be payable if the participating employee is determined by the Board or its designee to be noncompliant with the program.

§ 51.1-1177. Appeals.

The Board may elect to develop an alternative to the process set forth in the Administrative Process Act (§ 2.2-4000 et seq.) to allow appeals of case decisions related to the payment of disability benefits under this chapter. This alternative process shall be modeled after the claims provisions as provided for in the federal Employee Retirement Income Security Act of 1974, as amended, and shall (i) provide for adequate notice in writing to any participant whose claim for benefits has been denied setting forth the specific reasons for such denial and (ii) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a review of the decision denying the claim. Articles 3 (§ 2.2-4018 et seq.) and 4 (§ 2.2-4024 et seq.) of the Administrative Process Act shall not apply to any portion of this alternative appeals process.

However, any person aggrieved by, and claiming the unlawfulness of, a final case decision issued pursuant to this alternative appeals process, whether issued by the Board or by the Board's delegate, shall have a right to seek judicial review thereof. Such judicial review shall be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 51.1-1178. Board authorized to provide long-term care insurance and benefits.

A. For purposes of this section, "participating employee" means the same as that term is defined in § 51.1-1150.

B. The Board is authorized to develop, implement, and administer a long-term care insurance program for participating employees. The Board may contract for and purchase such long-term care insurance or may self-insure long-term care benefits or may use such other actuarially sound funding necessary to effectuate such long-term care insurance and benefits.

C. Employers of participating employees shall pay to the Board contribution amounts, to be determined by the Board, to provide the Board with such funds as shall be required from time to time to (i) obtain and maintain long-term care insurance and benefits for participating employees and (ii) administer the long-term care insurance program, including providing case management and cost containment programs. Contributions shall be deposited in the Defined Contribution Retirement Program Disability Insurance Trust Fund established under § 51.1-1183.

1042 § 51.1-1179. *Limitation on coverage.*

1043 No person shall have more than one coverage under a disability benefit program. Any person
1044 employed in more than one position that provides coverage under a disability benefit program shall
1045 elect one position on which his coverage shall be based by written notification to the Board. No person
1046 shall receive more than one disability benefit under this chapter at the same time.

1047 § 51.1-1180. *Keeping records and furnishing information required by Board.*

1048 Each employer whose employees are covered under the provisions of this chapter shall keep records
1049 and furnish information required by the Board.

1050 § 51.1-1181. *Benefits exempt from process.*

1051 The benefits provided for in this chapter and all proceeds therefrom shall be exempt from levy,
1052 garnishment, attachment, and other legal process.

1053 § 51.1-1182. *Policies to provide for accounting to Board; advance premium deposit reserve.*

1054 A. Each insurance product purchased by the Board or contract for administrative services related to
1055 a self-funded product shall provide for an accounting to the Board not later than 120 days after the end
1056 of each product year. For an insurance product, the accounting shall include (i) the amounts of
1057 premiums actually accrued under the policy during the policy year, (ii) the total amount of all claim
1058 charges incurred during the policy year, and (iii) the amount of fees accrued under the policy during
1059 the year plus the total amount of all claim charges incurred during the policy year. For a self-insured
1060 product, the accounting shall include the total amount of all claim charges incurred during the product
1061 year, the total amount of third party administrator expenses, and the total amount of other charges for
1062 administrative services.

1063 B. Any portion of the excess of the total of clause (i) of subsection A over clause (iii) of subsection A
1064 may, with the approval of the Board, be held by the insurance company in an advance premium deposit
1065 reserve to be used by the company for charges under the policy only. Any expenses incurred by the
1066 Board in connection with the administration of the disability benefits provisions of the program may be
1067 deducted from the advance premium deposit reserve. The advance premium deposit reserve shall bear
1068 interest at a rate to be determined in advance of each policy year by the insurance company. The rate
1069 shall be subject to Board approval as being consistent with the rates generally used by the company for
1070 similar funds held under other disability insurance policies. Any portion of the excess not held by the
1071 insurance company shall be held by the Board to be used for charges under the policy only. If the
1072 Board determines that the advance premium deposit reserve, together with any portion of the excess
1073 accumulated and held by the Board, has attained an amount estimated to make satisfactory provision for
1074 adverse fluctuations in future charges under the policy, any further excess shall inure to the benefit of
1075 the Commonwealth and its political subdivisions as determined by the Board.

1076 C. For purposes of this section, the insurance company may combine and consolidate the policies
1077 issued by it as directed by the Board.

1078 § 51.1-1183. *Funding of program; Defined Contribution Retirement Program Disability Insurance*
1079 *Trust Fund established.*

1080 A. The costs of providing short-term disability benefits shall be paid by the respective employers of
1081 participating employees. Employers that are state agencies shall pay such costs from funds as shall be
1082 appropriated by law to state agencies.

1083 B. Employers of participating employees shall pay to the Board contribution amounts, to be
1084 determined by the Board, to provide the Board with such funds as shall be required from time to time to
1085 (i) obtain and maintain long-term disability insurance policies under this chapter and (ii) administer the
1086 Program, including providing case management and cost containment programs. Employers that are
1087 state agencies shall make such contributions from funds as shall be appropriated by law to state
1088 agencies. Contributions shall be deposited in the Defined Contribution Retirement Program Disability
1089 Insurance Trust Fund.

1090 C. There is hereby established the Defined Contribution Retirement Program Disability Insurance
1091 Trust Fund. The costs incurred by the Board in providing policies of long-term disability insurance and
1092 administering the Program and in administering the long-term care insurance program established
1093 under § 51.1-1178, including the provision of case management and cost containment programs, shall be
1094 withdrawn from time to time by the Board from the Defined Contribution Retirement Program Disability
1095 Insurance Trust Fund. The funds of the Defined Contribution Retirement Program Disability Insurance
1096 Trust Fund shall be deemed separate and independent trust funds, shall be segregated from all other
1097 funds of the Commonwealth and its political subdivisions, and shall be invested and administered solely
1098 in the interests of the participating employees and beneficiaries thereof. Neither the General Assembly
1099 nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any
1100 purpose other than as provided in law for benefits, refunds, and administrative expenses, including but
1101 not limited to legislative oversight of the Defined Contribution Retirement Program Disability Insurance
1102 Trust Fund.

1103 § 51.1-1400. *Health insurance credits for retired state employees.*

A. The Commonwealth shall provide a credit toward the cost of health insurance coverage for any former state employee, as defined in § 2.2-2818, who retired under the Virginia Retirement System, State Police Officers' Retirement System, Judicial Retirement System, Virginia Law Officers' Retirement System, or any retirement system authorized pursuant to § 51.1-126, 51.1-126.1, 51.1-126.3, 51.1-126.4, 51.1-126.5, *51.1-126.5:1*, or 51.1-126.7 and who (i) rendered at least 15 years of total creditable service under the Retirement System or (ii) rendered service as a temporary employee of the General Assembly in 1972 and became a member of the retirement system from 1972 to 1985 immediately following such temporary service. The amount of each monthly health insurance credit payable under this section shall be \$4 per year of creditable service, which amount shall be credited monthly to any retired state employee participating in the state retiree health benefits program pursuant to § 51.1-1405 or an alternative personal health insurance plan as provided herein. However, such credit shall not exceed the health insurance premium for retiree-only coverage as provided under such alternative personal health insurance plan. Any (i) employee participant pursuant to § 51.1-126, 51.1-126.1, 51.1-126.3, 51.1-126.4, 51.1-126.5, *51.1-126.5:1*, or 51.1-126.7 receiving long-term disability, or (ii) retired state employee retired under the provisions of § 51.1-156 or 51.1-307, or (iii) any participating employee receiving long-term disability pursuant to § 51.1-1112 or 51.1-1123 shall receive a maximum monthly credit which is the greater of (i) \$120, (ii) \$4 per year for each year of creditable service at the time of disability retirement, or (iii) \$4 per year for each year of creditable service at the time of eligibility for long-term disability. Any person included in the membership of a retirement system provided by Chapter 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.) of ~~this title~~ who elects to defer his retirement pursuant to subsection C of § 51.1-153, subsection C of § 51.1-205 or subsection C of § 51.1-305 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement.

B. For those retired state employees:

1. Participating in the state retiree health benefits program, such credit shall be applied to the monthly premium deducted from benefits payable to retired state employees in accordance with Chapters 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), and 3 (§ 51.1-300 et seq.) of ~~this title~~. In the event that either no benefit is payable or the benefit payable is insufficient to deduct the entire health care premium, the payment of the credit shall be determined in the manner prescribed by the Virginia Retirement System. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

2. Not electing or eligible to participate in the state retiree health benefits program and who purchase an alternative personal health insurance policy from a carrier or organization of his own choosing, such retirees shall be eligible to receive a credit in the amount specified in subsection A. Eligibility for the credit and payment for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

C. Any person included in the membership of a retirement system provided by Chapter 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.) of ~~this title~~ who (i) rendered at least 15 years of total creditable service as a state employee as defined in § 2.2-2818 and (ii) after terminating state service, was employed by a local government that does not elect to provide a health insurance credit under § 51.1-1401 or 51.1-1402, shall be eligible for the credit provided by subsection A, provided that the retired employee is participating in a health insurance plan. The Commonwealth shall be charged with the credit as provided for in subsection D. In such case, the health insurance credit shall be determined based upon the amount of state service or service as a teacher, whichever is greater.

D. The Virginia Retirement System shall actuarially determine the amount necessary to fund all credits provided by this section to reflect the cost of such credits in the employer contribution rate pursuant to § 51.1-145, and prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance credit program provided for in this section shall be recovered from the health insurance credit trust fund.

E. Notwithstanding anything contained in this section to the contrary, the Virginia Commonwealth University Health System Authority shall pay the cost of coverage for employees of such Authority who (i) retired under the Virginia Retirement System or any retirement system authorized pursuant to § 23-50.16:24.1, 51.1-126, 51.1-126.1, or former § 51.1-126.2; (ii) were employed by such Authority prior to July 1, 1998, and were not subsequently rehired by such Authority on or after July 1, 1998; and (iii) served no less than 15 years of creditable service as regularly employed full-time employees of such Authority or the Commonwealth.

§ 51.1-1405. Participation in the state retiree health benefits program.

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

"Involuntarily separated" means separated from state service as the result of any dismissal, requested resignation, or failure to obtain reappointment, excluding a separation resulting from a conviction for a

1165 felony or crime involving moral turpitude or dishonesty or a separation related to the job performance or
1166 misconduct of the state employee.

1167 "Retiree health benefits program" or "program" means the plan for providing health insurance
1168 coverage for retired state employees provided pursuant to subsection E of § 2.2-2818.

1169 "State employee" means the same as that term is defined in § 2.2-2818.

1170 "State retiree" means a state employee retired under the Virginia Retirement System, State Police
1171 Officers' Retirement System, Judicial Retirement System, Virginia Law Officers' Retirement System, or
1172 any retirement system authorized pursuant to § 51.1-126 ~~or~~, 51.1-126.5, *or 51.1-126.5:1* who is eligible
1173 to receive a monthly retirement annuity from that retirement system.

1174 B. A state retiree shall be eligible to participate in the retiree health benefits program only if he
1175 makes an election to participate in the program within ~~thirty-one~~ 31 days following the date of
1176 termination of employment with the Commonwealth. A retired state employee who fails to elect to
1177 participate in the state health plan within ~~thirty-one~~ 31 days of the effective date of retirement, or who,
1178 once having elected to participate, discontinues participation, is barred from participating in the state
1179 health plan thereafter.

1180 C. Any state retiree who was involuntarily separated who on July 1, 1999, is participating in the
1181 retiree health benefits program and is receiving monthly retirement annuity payments may elect, by
1182 notifying the Virginia Retirement System and the Department of Human Resource Management before
1183 September 1, 1999, to cease receiving monthly retirement annuity payments until reapplying for such
1184 benefits at a later date and to continue participation in the retiree health benefits program.