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SENATE BILL NO. 289

Offered January 8, 2014

Prefiled January 6, 2014

A BILL to amend and reenact §§ 9.1-401, 9.1-402, 9.1-403, 9.1-404, 9.1-405, and 58.1-662 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 9.1-400.1 and 9.1-400.2, relating to Line of Duty Act; funding and review.

Patrons—Carrico, Puckett, Ebbin and Garrett; Delegate: Ramadan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-401, 9.1-402, 9.1-403, 9.1-404, 9.1-405, and 58.1-662 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 9.1-400.1 and 9.1-400.2 as follows:

§ 9.1-400.1. Line of Duty Death and Health Benefits Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Line of Duty Death and Health Benefits Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. Funds as may be appropriated by the General Assembly, any gifts, bequests, or donations from public or private sources, and surcharges collected pursuant to § 58.1-662 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of paying the death and health insurance premium benefits pursuant to the Line of Duty Act (§ 9.1-400 et seq.) and the death benefits pursuant to subsection B of § 44-93.1 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department of Accounts.

B. The Department of Accounts shall use the assistance of the Virginia Retirement System in establishing, investing, and maintaining the Fund and in performing actuarial services. The Board of Trustees of the Virginia Retirement System shall administer and manage the investment of the Fund as custodian and provide staff support. The Virginia Retirement System shall invest the moneys in the Fund in accordance with Article 3.1 (§ 51.1-124.30 et seq.) of Chapter 1 of Title 51.1 and no officer, director, or member of the Board of Trustees or of any advisory committee of the Virginia Retirement System or any of its exempt subsidiary corporations whose actions are within the standard of care in Article 3.1 of Chapter 1 of Title 51.1 shall be held personally liable for losses suffered by the Fund on investments made under the authority of this section. The Fund shall annually reimburse the Department of Accounts and the Virginia Retirement System for all reasonable costs incurred and associated, directly and indirectly, with the administration of this chapter and the management and investment of the Fund.

B. For any surviving spouse of a deceased person or any disabled person who is receiving the benefits described in § 9.1-401 and who would otherwise qualify for health insurance credit described in Chapter 14 (§ 51.1-1400 et seq.) of Title 51.1, the amount of such credit shall be calculated and reimbursed to the Comptroller for deposit in the Fund from the health insurance credit trust fund, in a manner prescribed by the Board of Trustees of the Virginia Retirement System.

C. Payments required pursuant to subsection B of § 44-93.1 for the surviving spouses and dependents of certain members of the National Guard and United States military reserves killed in action in any armed conflict on or after October 7, 2001, are payable from the Fund. The Department of Accounts, with support from the Department of Military Affairs, shall determine eligibility for this benefit.

§ 9.1-400.2. Line of Duty Act Review Board.

A. The Line of Duty Act Review Board (the Board) is hereby established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall review and advise the Comptroller on claims for benefits made under this chapter that involve a claimant who has not received a disability determination from the Virginia Retirement System, Social Security Administration, Workers' Compensation Commission, or any recognized retirement system or who is, as of the time the claim for benefits had been filed, working in an alternative position.

B. The Board shall have a total of five members consisting of the Comptroller and four nonlegislative citizen members, to be appointed by the Governor as follows: (i) one nonlegislative citizen member selected from a list of at least three individuals nominated by the Virginia Municipal League, (ii) one nonlegislative citizen member selected from a list of at least three individuals nominated by the

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Virginia Association of Counties, (iii) one nonlegislative citizen member selected from a list of at least three individuals nominated by law-enforcement officer member associations, and (iv) one nonlegislative citizen member selected from a list of at least three individuals jointly nominated by organizations representing firefighter and emergency medical services member associations. The lists of nominees provided according to this subsection shall be submitted to the Governor at least 60 days before the expiration of the member's term for which the nominations are being made.

C. The Comptroller shall serve a term coincident with his term of office. Nonlegislative citizen members shall serve four-year terms. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies from the expiration of a term shall be filled in the manner of original appointments. Members of the Board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

§ 9.1-401. Continued health insurance coverage for disabled persons, their spouses and dependents, and for the surviving spouse and dependents of certain deceased law-enforcement officers, firefighters, etc.

A. The surviving spouse and any dependents of a deceased person shall be afforded continued health insurance coverage, the cost of which shall be paid in full out of *the Line of Duty Death and Health Benefits Fund pursuant to § 9.1-400.1 or* the general fund of the state treasury.

B. If the disabled person's disability (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or §~~,~~ 65.2-402, and arose out of and in the course of his employment, the disabled person, his surviving spouse and any dependents shall be afforded continued health insurance coverage. The cost of such health insurance coverage shall be paid in full out of *the Line of Duty Death and Health Benefits Fund pursuant to § 9.1-400.1 or* the general fund of the state treasury.

C. The continued health insurance coverage provided by this section shall be the same plan of benefits which the deceased or disabled person was entitled to on the last day of his active duty or comparable benefits established as a result of a replacement plan.

D. For any spouse, continued health insurance provided by this section shall terminate upon such spouse's death or coverage by alternate health insurance.

E. For dependents, continued health insurance provided by this section shall terminate upon such dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday. Continued health care insurance shall be provided beyond the dependent's twenty-first birthday if the dependent is a full-time college student and shall continue until such time as the dependent ceases to be a full-time student or reaches his twenty-fifth birthday, whichever occurs first. Continued health care insurance shall also be provided beyond the dependent's twenty-first birthday if the dependent is mentally or physically disabled, and such coverage shall continue until three months following the cessation of the disability.

F. For any disabled person, continued health insurance provided by this section shall automatically terminate upon the disabled person's death, recovery or return to full duty in any position listed in the definition of deceased person in § 9.1-400.

§ 9.1-402. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc., and retirees.

A. The beneficiary of a deceased person whose death occurred on or before December 31, 2005, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of $75,000, which shall be payable out of the *Line of Duty Death and Health Benefits Fund or the* general fund of the state treasury, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

B. The beneficiary of a deceased person whose death occurred on or after January 1, 2006, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of $100,000, which shall be payable out of the *Line of Duty Death and Health Benefits Fund or the* general fund of the state treasury, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

C. Subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813, or §~~,~~ 65.2-402, if the deceased person's death (i) arose out of and in the course of his employment or (ii) was within five years from his date of retirement, his beneficiary shall be entitled to receive the sum of $25,000, which shall be payable out of the *Line of Duty Death and Health Benefits Fund or the* general fund of the state treasury.

§ 9.1-403. Claim for payment; costs.

A. Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall present his claim to the chief officer, or his designee, of the appropriate division or department that last employed the deceased or disabled person on forms to be provided by the State Comptroller's office.

B. In the case of a police department or a sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, the chief officer, or his designee, of such department or office shall investigate and report upon the circumstances surrounding the deceased or

disabled person and report his findings to the Comptroller within 10 business days after completion of the investigation. The Comptroller, the Attorney General, or any such chief officer, in his discretion, may submit a request to the Superintendent of the Department of State Police to perform the investigation pursuant to subsection C.

C. In all other cases, upon receipt of the claim the chief officer, or his designee, of the appropriate division or department shall submit a request to the Superintendent of the Department of the State Police, who shall investigate and report upon the circumstances surrounding the deceased or disabled person, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The Superintendent, or his designee, shall report his findings to the Comptroller within 10 business days after completion of the investigation. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department shall be reimbursed for the cost of investigations conducted pursuant to this section from the ~~appropriate employer that last employed the deceased or disabled employee~~ *Line of Duty Death and Health Benefits Fund or the general fund of the state treasury*.

D. Within 10 business days of being notified by an employee, or an employee's representative, that such employee is permanently and totally disabled due to a work-related injury suffered in the line of duty, the agency or department employing the disabled person shall provide him with information about the continued health insurance coverage provided under this act and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the employee or the employee's representative.

§ 9.1-404. Order of Comptroller.

A. If it appears to the Comptroller that the requirements of either subsection A or B of § 9.1-402 have been satisfied, he shall issue his warrant in the appropriate amount for payment out of the *Line of Duty Death and Health Benefits Fund or the* general fund of the state treasury to the surviving spouse or to such persons and subject to such conditions as may be proper in his administrative discretion, and in the event there is no beneficiary, the Comptroller shall issue the payment to the estate of the deceased person. The Comptroller shall issue a decision, and payment, if appropriate, shall be made no later than forty-five days following receipt of the report required under § 9.1-403.

B. If it appears to the Comptroller that the requirements of either subsection A or B of § 9.1-401 have been satisfied, he shall issue his warrants in the appropriate amounts for payment from the *Line of Duty Death and Health Benefits Fund or the* general fund of the state treasury to ensure continued health care coverage for the persons designated under § 9.1-401. The Comptroller shall issue a decision, and payments, if appropriate, shall commence no later than forty-five days following receipt of the report required under § 9.1-403. The payments shall be retroactive to the first date that the disability existed *but such period of retroactivity shall not exceed five years from the date the decision is issued*.

§ 9.1-405. Appeal from decision of Comptroller.

Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person aggrieved by the decision of the Comptroller shall present a petition to the court in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides.

The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct the Comptroller to issue his warrant in the appropriate amount for the payment out of the *Line of Duty Death and Health Benefits Fund or the* general fund of the state treasury to such persons and subject to such conditions as may be proper. If, in the case of a deceased person, there is no beneficiary, the judge shall direct such payment as is due under § 9.1-402 to the estate of the deceased person.

§ 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and Use Tax Trust Fund; localities' share.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Communications Sales and Use Tax Trust Fund (the Fund). The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after the payment (i) for the telephone relay service center is made to the Department ~~of~~ *for the* Deaf and Hard-of-Hearing in accordance with the provisions of § 51.5-115 ~~and~~, (ii) of any franchise fee amount due to localities in accordance with any cable franchise in effect as of January 1, 2007*, and (iii) after an amount equal to the health benefits portion for local employees is deposited annually into the Line of Duty Death and Health Benefits Fund established pursuant to § 9.1-400.1*.

B. The localities' share of the net revenue distributable under this section among the counties, cities, and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. The net revenue distributable among the counties, cities, and towns shall be apportioned and distributed monthly according to each county's, city's, and town's pro rata distribution from the Fund in fiscal year 2010. Beginning July 1, 2011, the percentage share of the distribution due to Lancaster County shall be adjusted as if, in addition to the revenues Lancaster County received from telecommunications and television cable taxes in fiscal year 2006, it received $270,497 in local consumer utility taxes on telephone service in fiscal year 2006.

An amount equal to the total franchise fee paid to each locality with a cable franchise existing on the effective date of this section at the rate in existence on January 1, 2007, shall be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

The Department of Taxation shall adjust the percentage share of distribution from the Fund due to each locality entitled to a distribution from the Fund upon a ruling by the Tax Commissioner in favor of a county, city, or town, provided that any such ruling in favor of a county, city, or town shall not result in more than an aggregate of $100,000 being redistributed from all other counties, cities, and towns. Counties, cities, and towns are authorized to request such ruling. The Tax Commissioner shall issue no such ruling changing the current distribution in favor of a county, city, or town unless the county, city, or town provides evidence to the Tax Commissioner that it had collected telecommunications and television cable funds (local consumer utility tax on landlines and wireless, E-911, business license tax in excess of 0.5 percent, cable franchise fee, video programming excise tax, local consumer utility tax on cable television) in fiscal year 2006 from local tax rates adopted on or before January 1, 2006.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

2. That the initial terms of the nonlegislative citizen members of the Line of Duty Act Review Board appointed by the Governor pursuant to this act shall be staggered as follows: (i) one member appointed for a term of one year, (ii) two members appointed for terms of two years, and (iii) one member appointed for a term of three years.