

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 53

An Act to amend and reenact §§ 51.1-124.3, 51.1-142.2, 51.1-159, 51.1-513.2, and 51.1-513.3 of the Code of Virginia, relating to Virginia Retirement System; technical amendments.

[H 846]

Approved February 28, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-124.3, 51.1-142.2, 51.1-159, 51.1-513.2, and 51.1-513.3 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-124.3. Definitions.

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

"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.

"Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, all amounts the member may contribute to purchase creditable service, all member contributions contributed by the employer on behalf of the employee, on or after July 1, 1980, except those amounts contributed on behalf of members of the General Assembly who are otherwise retired under the provisions of this chapter, and all interest accruing to these funds. If a member is retired for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), dies in service prior to retirement, or requests a refund of contributions in accordance with § 51.1-161, "accumulated contributions" shall include all member contributions paid by the employer on behalf of the member on and after July 1, 1980, and all interest which would have accrued to these funds.

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial tables adopted by the Board.

"Average final compensation" means the average annual creditable compensation of a member during his 60 highest consecutive months of creditable service or during the entire period of his creditable service if less than 60 months. However, for any member who (i) is not a person who becomes a member on or after July 1, 2010, and (ii) as of January 1, 2013, has at least 60 months of creditable service, "average final compensation" means the average annual creditable compensation of a member during his 36 highest consecutive months of creditable service. A participant in the hybrid retirement program described in § 51.1-169 shall be considered to be a person who becomes a member on or after July 1, 2010, for the purposes of this definition.

If a member ceased employment prior to July 1, 1974, "average final compensation" means the average annual creditable compensation during the five highest consecutive years of creditable service.

"Beneficiary" means any person entitled to receive benefits under this chapter.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Creditable compensation" means the full compensation payable annually to an employee working full time in his covered position. For any state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who is (i) compensated on a salaried basis, and (ii) working full time in a covered position pursuant to a contract of employment for a period of at least nine months, creditable compensation means the full compensation payable over the term of any contract entered into between the employee and the employer, without regard to whether or not the term of the contract coincides with the normal scholastic year. However, if the contract is for more than one year, creditable compensation means that compensation paid for the current year of the contract.

Remuneration received by members of the General Assembly not otherwise retired under the provisions of this chapter pursuant to §§ 30-19.11 and 30-19.12 shall be deemed creditable compensation. In addition, for any member of the General Assembly, creditable compensation shall include the full amount of salaries payable to such member for working in covered positions, regardless of whether a contractual salary is reduced and not paid to such member because of service in the General Assembly.

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

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

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

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

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

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

"Medical Board" means the ~~board~~ *boards composed of physicians or other health care professionals* as provided by this chapter.

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

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

"Normal retirement date" means a member's sixty-fifth birthday. However, for any (i) person who becomes a member on or after July 1, 2010, or (ii) member who does not have at least 60 months of creditable service as of January 1, 2013, under this chapter his normal retirement date shall be the date that the member attains his "retirement age" as defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended).

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

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

"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 provisions of the federal Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as otherwise specifically provided.

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

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

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

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

"Retirement System" means the Virginia Retirement System.

"Service" means service as an employee.

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

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

§ 51.1-142.2. Prior service or membership credit for certain members; service credit for accumulated sick leave.

Certain members may purchase credit for service as provided in this section.

A. 1. Any member in service may purchase service credit from the following categories of service or leave: (i) leave of absence for educational purposes that was previously approved by the member's employer; (ii) leave of absence for a serious health condition of the member or of an immediate family member, all as defined in the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., as amended, and previously certified by the member's employer; (iii) up to one year of service credit per occurrence of leave for any unpaid leave of absence due to the birth, adoption, or death of a qualifying

child, as defined in § 51.1-500; (iv) service as a full-time employee of another state, a public school system of another state, or a political subdivision of the Commonwealth or another state, as certified by such state, public school system, or political subdivision; (v) full-time service of a political subdivision of this state not credited to the member under an agreement as provided for in § 51.1-143.1, as certified by such political subdivision; (vi) *full-time* civilian service of the United States; (vii) full-time service at a private institution of higher education if the private institution is merged with a public institution of higher education and graduates of the private institution are then issued new degrees from the public institution; or (viii) any period of time when the member was employed part time or in a wage position by a participating employer and not otherwise eligible to participate in the retirement system because the member was not an employee as defined in § 51.1-124.3. However, no member in service shall be allowed to purchase more than a total of four years of service credit pursuant to this subdivision.

2. In addition to the service credit that may be purchased under subdivision 1, any member in service may purchase up to four years of service credit for prior active duty military service in the armed forces of the United States, provided that the discharge from a period of active duty status with the armed forces was not dishonorable.

3. The service credit to be credited to a member under this subsection shall be calculated at the ratio of one year, or portion thereof, of service credit to one year, or portion thereof, of service purchased, except for employment service purchased under clause (viii) of subdivision 1, which shall be calculated at the ratio of one month of service credit for each 173 hours of service as certified by the employer.

For each year or portion thereof to be credited at the time of purchase under this subsection, the member shall pay the approximate normal cost of the retirement plan under which the member is covered at the time of such purchase, as determined by the Board in its sole discretion. If the member does not purchase, or enter into a purchase of service credit contract for, the service made available in this subsection within the first 24 months of the member's active service following his first date of hire or the final day of any applicable leave of absence, as applicable, then, for each year or portion thereof to be credited at the time of purchase, the member shall pay the actuarial equivalent cost. To the extent the member becomes inactive during the 24 months following his first date of hire or the final day of any applicable leave of absence, such periods shall not be included in the 24 months of active service.

Except as otherwise required by Chapter 1223 of Title 10 of the United States Code, as amended, no service credit may be purchased under this section if it is included in the calculation of any retirement allowance received or to be received by the member from this or another retirement system, or if there is a balance in a defined contribution account that serves as a primary retirement account related to such service.

For purposes of this subsection, "active duty military service" means full-time service of at least 180 consecutive days in the United States Army, Navy, Air Force, Marines, Coast Guard, or reserve components thereof.

B. Any member in service may purchase all prior service credit for creditable service lost from ceasing to be a member under this chapter, as provided in § 51.1-128, because of the withdrawal of his accumulated contributions. For each year or portion thereof to be credited at the time of purchase under this subsection, the member shall pay the withdrawn amount to be purchased plus interest accrued daily and compounded annually from the date of withdrawal to the date of payment at the assumed rate of return established by the Board for the actuarial valuation of the retirement system that is in effect at the time of the purchase. The Board shall develop guidelines and procedures for administering this subsection.

C. Any member in service may purchase service credit for accumulated sick leave on his effective date of retirement based upon such sums as the employer may provide as payment for any unused sick leave balances. The cost of service credit purchased under this subsection shall be the actuarial equivalent cost of such service.

D. Any member receiving benefits under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.) may, in a manner prescribed by the Board and prior to the effective date of retirement, purchase service that is not reported to the retirement system by the member's employer while the member is receiving such benefits.

For each year or portion thereof to be credited at the time of purchase under this subsection, the member shall pay the approximate normal cost of the retirement plan under which the member is covered, as determined by the Board in its sole discretion. If the member does not purchase, or enter into a purchase of service credit contract for, any service made available in this subsection within the first 24 months of the member's active service following his first date of hire or the final day of any applicable leave of absence, then, for each year or portion thereof to be credited at the time of purchase, the member shall pay the actuarial equivalent cost. To the extent the member becomes inactive during the 24 months following his first date of hire or the final day of any applicable leave of absence, such periods shall not be included in the 24 months of active service.

E. Payment may be made in a lump sum at the time of purchase or by payroll deduction. Any number of additional deductions may be permitted at any time. Should any deduction be terminated before the member purchases the entire period contracted for, the member shall be credited with the

number of full or partial months of service for which full payment has been made. If any deduction is continued after the entire period has been purchased, the member shall be credited with no more than the amount of service for which he was eligible and for which he paid, and the excess amount deducted shall be refunded to the member.

F. Any employer may elect to pay an equivalent amount in lieu of all member contributions required of its employees for the purchase of service credit pursuant to this section. These contributions shall not be considered wages for purposes of Chapter 7 (§ 51.1-700 et seq.), nor shall they be considered salary for purposes of this chapter.

G. In any case where member and employer contributions, as required under this chapter, were not made because of an error in the payroll, personnel, or other classification system of an employer participating in the retirement system, service that has not been credited because of such error may be purchased on the following basis:

1. The most recent three years of service credit shall be purchased, using applicable member and employer contribution rates and creditable compensation in effect for such period, in a manner and at the cost prescribed by the Board; and

2. All other years of service credit shall be purchased by the employer at an actuarial equivalent cost.

H. Any member may receive credit at no cost for service rendered in the armed forces of the United States provided (i) the member was on leave of absence from a covered position, (ii) the discharge from a period of active duty with the armed forces was not dishonorable, (iii) the member has not withdrawn his accumulated contributions, (iv) the member is not disabled or killed while on leave without pay while performing active duty military service in the armed forces of the United States, and (v) the member reenters service in a covered position within one year after discharge from the armed forces. In order to receive such service, the member must complete such forms and other requirements as are required by the Board and the retirement system.

§ 51.1-159. Medical examinations of persons retired for disability.

A. Once each year following retirement, the Board may require a former member who retired for disability and who has not attained his normal retirement age to undergo a medical examination by the Medical Board or a physician or ~~physicians~~ *other health care professional* designated by the Medical Board. If the former member refuses to submit to the required medical examination, his retirement allowance shall be discontinued until he complies. If he does not comply within six months of the date of the request, all of his rights to any further disability retirement allowance shall cease, subject to the provisions of § 51.1-160.

B. If the Medical Board determines that a beneficiary is not disabled after reviewing the findings of any of the medical examinations provided for in this section, all rights to any further disability allowance shall cease, subject to the provisions of § 51.1-160.

§ 51.1-513.2. Long-term care coverage program.

A. The Board shall maintain and administer a long-term care coverage *or similar benefit* program for any state employee working an average of at least 20 hours per week, and for any other person who has five or more years of creditable service with any retirement plan administered by the Virginia Retirement System. The long-term care coverage program may also extend coverage to eligible family members of such state employee or other person. The Board is authorized to contract for and purchase insurance coverage or to use other actuarially sound funding necessary to effectuate this provision. Participation in the long-term care coverage program shall be voluntary, subject to policies and procedures adopted by the Board.

B. Any person eligible to participate in the long-term care coverage program pursuant to § 51.1-513.3 will not be eligible for this plan.

C. Notwithstanding the provisions of subsection A, the Board may self-insure long-term care benefits provided under § 51.1-513.2 or 51.1-513.3 in accordance with the standards set forth in § 51.1-124.30.

§ 51.1-513.3. Long-term care insurance program for employees of local governments, local officers, and teachers.

A. The Board shall maintain and administer a plan or plans, hereinafter "plan" or "plans," for providing long-term care coverage *or a similar benefit program* for employees of local governments, local officers, and teachers. The plan or plans may also extend coverage to eligible family members of such employees of local governments, local officers, or teachers. The plan or plans may, but need not, be rated separately from any plan developed to provide long-term care coverage for state employees under § 51.1-513.2. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to policies and procedures adopted by the Board.

B. For the purposes of this section:

"Employees of local governments" shall include all officers and employees, working an average of at least 20 hours per week, of the governing body of any county, city, or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public

authority or body corporate, as distinguished from § 15.2-1300, *or* 15.2-1303, or similar statutes, provided that the officers and employees of a social services department; welfare board; community services board or behavioral health authority; or library board of a county, city, or town shall be deemed to be employees of local government.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees, working an average of at least 20 hours per week, of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board working an average of at least 20 hours per week.