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HOUSE BILL NO. 775

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 29, 2020)

(Patron Prior to Substitute—Delegate Ayala)

A BILL to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 15, consisting of sections numbered 51.1-1500 through 51.1-1506, relating to My Virginia Plan; multiple employer retirement plan for private employers and their employees.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 51.1 a chapter numbered 15, consisting of sections numbered 51.1-1500 through 51.1-1506, as follows:

CHAPTER 15.

MY VIRGINIA PLAN.

§ 51.1-1500. Definitions.

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

"Board" means the governing board of the Virginia College Savings Plan.

"Eligible employee" means an employee of an eligible employer in the Commonwealth who meets Internal Revenue Service requirements to make contributions to a retirement account.

"Eligible employer" means a self-employed individual, sole proprietor, or nongovernmental employer.

"Enrollee" means any eligible employee of a participating employer who enrolls in the Plan.

"Individual account information" means names, addresses, telephone numbers, amounts contributed, earnings, and any personal identification information of an enrollee.

"My Virginia Plan" or "the Plan" means the defined contribution retirement plan for persons employed for compensation in the Commonwealth established in §51.1-1501.

"Participating employer" means any eligible employer with an enrollee.

§ 51.1-1501. Powers and duties of the Board.

A. The Board shall develop the Plan and conduct a market and legal analysis of the Plan.

B. The Board shall have the following powers:

1. To establish, implement, and maintain the Plan;

2. To adopt regulations for the administration of the Plan;

3. To direct the investment of the funds contributed to accounts in the Plan consistent with objectives and restrictions established by the Board. In doing so, the Board shall exercise the judgment and care then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money;

4. To collect application, account, or administrative fees to defray the costs of administering the Plan; and

5. To make and enter into contracts, agreements, or arrangements and to retain, employ, and contract for any of the following considered necessary or desirable for carrying out the purposes of this chapter:

a. Services of private and public financial institutions, depositories, consultants, investment advisors, investment administrators, and third-party plan administrators;

b. Research and technical services;

c. Services of other agencies to assist the Board in its duties;

d. Evaluation of and procurement of pooled private insurance of the Plan; and

e. Development and implementation of an outreach plan to gain input and disseminate information regarding the Plan and retirement savings in general.

§ 51.1-1502. Requirements for the Plan.

The Plan developed and established by the Board shall:

1. Allow enrollees to contribute to an account established under the Plan through payroll deduction;

2. Allow an eligible employer to offer eligible employees the opportunity to contribute to the Plan through payroll deduction;

3. Provide for automatic enrollment of all eligible employees of a participating employer;

4. Have a default contribution rate, as determined by the Board and promulgated by regulation;

5. Offer default escalation of contribution levels that may be increased or decreased within the limits allowed under the Internal Revenue Code;

6. Provide for contributions to the Plan to be deposited directly with the investment administrator for the Plan;

7. Whenever possible, use existing employer and public infrastructure to facilitate contributions to

60 *the Plan, recordkeeping, and outreach;*
61 *8. Allow but not require a participating employer to contribute to the account of an enrollee;*
62 *9. Require the maintenance of separate records and accounting for each account in the Plan;*
63 *10. Provide for reports on the status of Plan accounts to be provided to enrollees at least annually;*
64 *11. Allow for an enrollee to maintain an account regardless of his place of employment and to roll*
65 *over funds into other retirement accounts;*
66 *12. Pool accounts established under the Plan for investment;*
67 *13. Be professionally managed;*
68 *14. Provide that the Commonwealth has no proprietary interest in the contributions to or earnings*
69 *on amounts contributed to accounts established under the Plan;*
70 *15. Provide that the investment administrator for the Plan is the trustee of all contributions and*
71 *earnings on amounts contributed to accounts established under the Plan;*
72 *16. Keep administration fees in the Plan low;*
73 *17. Allow the use of public and private sector partnerships to administer and invest the contributions*
74 *to the Plan under the supervision and guidance of the Board; and*
75 *18. Coordinate with the efforts of other states that pursue legal guidance for similar retirement*
76 *savings programs.*

77 **§ 51.1-1503. Plan regulations.**

78 *A. The Board shall adopt regulations that establish the process for:*

- 79 *1. Voluntary enrollment in the Plan by eligible employers;*
80 *2. Enrollees to make default contributions to Plan accounts and to adjust contribution levels;*
81 *3. Participating employers to withhold enrollee contributions to Plan accounts from enrollee wages*
82 *and send the contributions to the investment administrator for the Plan;*
83 *4. Enrollees to make nonpayroll contributions to Plan accounts;*
84 *5. Setting minimum, maximum, and default contribution levels in accordance with limits established*
85 *by the Internal Revenue Code; and*
86 *6. Withdrawing from Plan accounts.*

87 *B. The Board shall adopt regulations that mandate the content and frequency of required disclosures*
88 *to enrollees and participating employers, which shall include:*

- 89 *1. Benefits and risks associated with making contributions to the Plan;*
90 *2. Instructions for making contributions to the Plan;*
91 *3. Instructions for participating in the Plan with a contribution level that is different from the default*
92 *contribution rate;*
93 *4. The process for withdrawal of retirement savings;*
94 *5. A statement that an enrollee seeking financial advice should contact a financial advisor, that a*
95 *participating employer is not qualified to provide financial advice, and that a participating employer is*
96 *not liable for any decision made by an enrollee related to the Plan; and*
97 *6. A statement that neither the funds in Plan accounts nor a rate of return are guaranteed by the*
98 *Commonwealth.*

99 **§ 51.1-1504. Confidentiality of account information.**

100 *The Board and any entity working with the Board on the Plan shall keep individual account*
101 *information confidential:*

- 102 *1. Except to the extent necessary to administer the Plan and comply with Title 58.1 (§ 58.1-1 et seq.)*
103 *and the Internal Revenue Code; and*
104 *2. Unless the enrollee who is the subject of the individual account information agrees in writing that*
105 *such information may be disclosed.*

106 **§ 51.1-1505. Reporting.**

107 *The Board shall report biennially to the Chairmen of the House Committee on Appropriations and*
108 *the Senate Committee on Finance and Appropriations on the effectiveness and efficiency of the Plan.*
109 *The report shall include nonidentifying information regarding levels of enrollment and retirement*
110 *savings levels of enrollees.*

111 **§ 51.1-1506. Indemnification.**

112 *The Plan, the Board, each board member, and the Commonwealth shall not guarantee any rate of*
113 *return or interest rate on any contribution, nor shall they be liable for any loss incurred by any person*
114 *as a result of participating in the Plan.*

115 **2. That the Virginia College Savings Plan shall analyze current state and federal programs that**
116 **encourage citizens to save for retirement by participating in retirement savings plans, including**
117 **plans pursuant to §§ 401(k), 403(b), 408(k), 408(p), and 457(b) of the Internal Revenue Code. The**
118 **scope of the analysis shall include (i) an examination of potential retirement savings options for**
119 **self-employed individuals, part-time employees, and full-time employees whose employers do not**
120 **offer a retirement savings plan; (ii) the level of interest by Virginia employers in participating in a**
121 **voluntary state-sponsored private retirement option; (iii) the likely costs to start up such a plan**

122 and an estimate of time to reach self-sufficiency and potential funding options; (iv) the experience
123 of other states that have implemented or are implementing a state-sponsored private retirement
124 solution for employers and employees; and (v) the appropriate state agency and structure to
125 implement the solution. The analysis may include recommendations for statutory changes or
126 amendments to the general appropriation act. The Virginia College Savings Plan, in undertaking
127 the analysis, shall convene a group of stakeholders to assist and provide insight into the feasibility
128 and preferred structure of a Plan. The Virginia College Savings Plan shall report its findings and
129 recommendations to the General Assembly on or before December 15, 2020.
130 3. That the provisions of the first enactment of this act shall not become effective unless reenacted
131 by the 2021 or subsequent Session of the General Assembly.