

VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

CHAPTER 811

An Act to amend and reenact §§ 2.1-391, 51.1-153, 51.1-155, 51.1-155.1, 51.1-165, 51.1-205, and 51.1-206 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.5, consisting of sections numbered 2.1-116.20 through 2.1-116.26, relating to retirement and severance benefits for employees of the Commonwealth and the Workforce Transition Act of 1995.

[S 959]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-391, 51.1-153, 51.1-155, 51.1-155.1, 51.1-165, 51.1-205, and 51.1-206 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a Chapter numbered 10.5, consisting of sections numbered 2.1-116.20 through 2.1-116.26, as follows:

CHAPTER 10.5.

WORKFORCE TRANSITION ACT OF 1995.

§ 2.1-116.20. *Short title; purpose.*

A. *This chapter shall be known as the Workforce Transition Act of 1995.*

B. *The purpose of this chapter is to provide a transitional severance benefit, under the conditions specified, to eligible state employees who are involuntarily separated from their employment with the Commonwealth. "Involuntary separation" includes, but is not limited to, terminations and layoffs from employment with the Commonwealth, or being placed on leave without pay-layoff or equivalent status, due to budget reductions, agency reorganizations, workforce down-sizings, or other causes not related to the job performance or misconduct of the employee, but shall not include voluntary resignations. As used in this chapter, a "terminated employee" shall mean an employee who is involuntarily separated from employment with the Commonwealth.*

§ 2.1-116.21. *Duties of Department and executive branch agencies to involuntarily separated employees.*

A. *Prior to terminating or placing on leave without pay-layoff or equivalent status any employee of an agency or institution in the executive branch of government, the management of the agency or institution shall make every effort to place the employee in any vacant position within the agency for which the employee is qualified. If reemployment within the agency or institution is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, the name of the employee shall be forwarded to the Department of Personnel and Training.*

B. *Any preferential employment rights vested in the employee under the Commonwealth's layoff policy shall not be denied, abridged, or modified in any way by the Department of Personnel and Training. The Department shall coordinate the preferential hiring of the employee, at the same salary classification, in any agency or institution of the executive branch of government. The Department shall also establish a program to assist employees in finding employment outside of state government.*

C. *If, as of the date the employee is terminated from employment or placed on leave without pay-layoff or equivalent status, reemployment within his agency or institution or any other agency or institution of the executive branch of government is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, then the employee shall be deemed to be involuntarily separated. If such employee is otherwise eligible, he shall be entitled, under the conditions specified, to receive the transitional severance benefit conferred by this chapter.*

D. *The Department of Personnel and Training shall report all involuntary separations in the executive branch of government to the Department of Planning and Budget, which shall make an appropriate reduction, pursuant to § 2.1-391, in the terminating agency's maximum employment level in preparing its executive budget for the next session of the General Assembly.*

§ 2.1-116.22. *Eligibility for transitional severance benefit.*

A. *Any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ 2.1-110 et seq.), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivision A 2, A 4 (except those persons specified in subsection C of this section), A 7, A 15 or A 16 of § 2.1-116, (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the State Lottery Department, (vii) who is employed by the Medical College of Virginia Hospitals and the University of Virginia Medical Center, or (viii) who is*

employed at a state educational institution as administrative or professional faculty (including presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, and (a) who, on or after January 1, 1995, is involuntarily separated, or is involuntarily separated on or after July 1, 1994, if at the time of involuntary separation had attained age fifty and had fifteen or more years of service, and (b) for whom reemployment with the Commonwealth is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, shall be eligible, under the conditions specified, for the transitional severance benefit conferred by this chapter. The date of involuntary separation shall mean the date an employee was terminated from employment or placed on leave without pay-layoff or equivalent status.

B. An otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefor in its written contract with the Commonwealth.

C. Members of the Judicial Retirement System (§ 51.1-300 et seq.) and officers elected by popular vote shall not be eligible for the transitional severance benefit conferred by this chapter.

D. Eligibility shall commence on the date of involuntary separation.

§ 2.1-116.23. Transitional severance benefit conferred.

A. On his date of involuntary separation, an eligible employee with (i) two years' service or less to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary; (ii) three years through and including nine years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary plus one additional week of salary for every year of service over two years; (iii) ten years through and including fourteen years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to twelve weeks of salary plus two additional weeks of salary for every year of service over nine years; or (iv) fifteen years or more of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to two weeks of salary for every year of service, not to exceed thirty-six weeks of salary.

B. Transitional severance benefits shall be computed by the terminating agency's payroll department. Partial years of service shall be rounded up to the next highest year of service.

C. Transitional severance benefits shall be paid in the same manner as normal salary. In accordance with § 60.2-229, transitional severance benefits shall be allocated to the date of involuntary separation. The right of any employee who receives a transitional severance benefit to also receive unemployment compensation pursuant to § 60.2-100 et seq. shall not be denied, abridged, or modified in any way due to receipt of the transitional severance benefit; however, any employee who is entitled to unemployment compensation shall have his transitional severance benefit reduced by the amount of such unemployment compensation. Any offset to a terminated employee's transitional severance benefit due to reductions for unemployment compensation shall be paid in one lump sum at the time the last transitional severance benefit payment is made.

D. For twelve months after the employee's date of involuntary separation, the employee shall continue to be covered under the (i) health insurance plan created in § 2.1-20.1 for the Commonwealth's employees, if he participated in such plan prior to his date of involuntary separation, and (ii) group life insurance plan administered by the Virginia Retirement System pursuant to Chapter 5 (§ 51.1-500 et seq.) of Title 51.1. During such twelve months, the terminating agency shall continue to pay its share of the terminated employee's premiums. Upon expiration of such twelve month period, the terminated employee shall be eligible to purchase continuing health insurance coverage under COBRA.

E. Transitional severance benefit payments shall cease if a terminated employee is reemployed or hired in an individual capacity as an independent contractor or consultant by any agency or institution of the Commonwealth during the time he is receiving such payments.

F. All transitional severance benefits payable pursuant to this section shall be subject to applicable federal laws and regulations.

§ 2.1-116.24. Retirement program.

A. In lieu of the transitional severance benefit provided in § 2.1-116.23, any otherwise eligible employee who, on the date of involuntary separation, is also (i) a vested member of the Virginia Retirement System or the State Police Officers' Retirement System and (ii) at least fifty years of age, may elect to have the Commonwealth purchase on his behalf years to be credited to either his age or creditable service or a combination of age and creditable service, except that any years of credit purchased on behalf of a member of the Virginia Retirement System or the State Police Officers' Retirement System who is eligible for unreduced retirement shall be added to his creditable service and not his age. The cost of each year of age or creditable service purchased by the Commonwealth shall be equal to fifteen percent of the employee's present annual compensation. The number of years of age or creditable service to be purchased by the Commonwealth shall be equal to the quotient obtained by dividing (i) the cash value of the benefits to which the employee would be entitled under subsections A and D of § 2.1-116.23 by (ii) the cost of each year of age or creditable service. Partial years shall be

rounded up to the next highest year. Deferred retirement under the provisions of §§ 51.1-153 C and 51.1-205 C, and disability retirement under the provisions of § 51.1-156 et seq. and § 51.1-209, shall not be available under this section.

B. In lieu of the (i) transitional severance benefit provided in § 2.1-116.23 and (ii) the retirement program provided in subsection A, any employee who is otherwise eligible may take immediate retirement pursuant to § 51.1-155.1.

C. The retirement allowance for any employee electing to retire under this section who, by adding years to his age, is between ages fifty-five and sixty-five, shall be reduced on the actuarial basis provided in subdivision A 2 of § 51.1-155.

§ 2.1-116.25. Costs associated with this chapter; payment.

A. The terminating agency shall pay all costs associated with the provisions of this chapter within the twelve months following the date of an employee's involuntary separation, or within such shorter period as may be required. The costs shall be paid first from appropriations available to the terminating agency. If such sums are insufficient, then, if the agency's governing authority certifies that the agency is unable to pay the costs when due from appropriations available to the terminating agency without affecting the agency's ability to deliver essential services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations.

B. As used herein, the "governing authority" shall mean (i) for an agency in the executive branch, the Governor or his designee; (ii) for an agency in the judicial branch, the Supreme Court of Virginia; (iii) and for an agency in the legislative branch or an independent agency, the appropriate collegial body.

C. Any treasury loan made pursuant to subsection A shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the Appropriations Act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for the payment of these costs, the general fund shall bear its actual share of such costs.

§ 2.1-116.26. Review of program.

The Senate Finance Committee and the House Appropriations Committee shall periodically review the transitional severance program established by this chapter, and shall report their findings to the Governor and the members of the General Assembly on July 1, 1998, and every three years thereafter.

§ 2.1-391. Duties of Department.

The Department shall have the following duties:

1. Development and direction of an integrated policy analysis, planning, and budgeting process within state government.

2. Review and approval of all sub-state district systems boundaries established or proposed for establishment by state agencies.

3. Formulation of an executive budget as required in this chapter. In implementing this provision, the Department of Planning and Budget shall (i) utilize the resources and determine the manner of participation of any executive agency as the Governor may determine necessary to support an efficient and effective budget process notwithstanding any contrary provision of law and (ii) make an appropriate reduction in the appropriation and maximum employment level of any state agency or institution in the executive branch of government which reports involuntary separations from employment with the Commonwealth due to budget reductions, agency reorganizations, or workforce down-sizings, or voluntary separations from employment with the Commonwealth as provided in the second and third enactments of the act of the General Assembly creating the Workforce Transition Act of 1995 (§ 2.1-116.20 et seq.). In the event an agency reduces its workforce through privatization of certain functions, the funds associated with such functions shall remain with the agency to the extent of the savings resulting from the privatization of such functions.

4. Conduct of policy analysis and program evaluation for the Governor.

5. Continuous review of the activities of state government focusing on budget requirements in the context of the goals and objectives determined by the Governor and the General Assembly and monitoring the progress of agencies in achieving goals and objectives.

6. Operation of a system of budgetary execution to assure that agency activities are conducted within fund limitations provided in the appropriations act and in accordance with gubernatorial and legislative intent.

7. Development and operation of a system of standardized reports of program and financial performance for management.

8. Coordination of statistical data by reviewing, analyzing, monitoring, and evaluating statistical data developed and used by state agencies and by receiving statistical data from outside sources, such as research institutes and the federal government.

9. Assessment of the impact of federal funds on state government by reviewing, analyzing,

monitoring, and evaluating the federal budget, as well as solicitations, applications, and awards for federal financial aid programs on behalf of state agencies.

10. Review and verification of the accuracy of agency estimates of receipts from donations, gifts or other nongeneral fund revenue.

§ 51.1-153. Service retirement.

A. Normal retirement.—Any member in service at his normal retirement date with five or more years of creditable service may retire at any time upon written notification to the Board setting forth the date the retirement is to become effective. Any member in service who was denied membership prior to July 1, 1987, as a result of being age sixty or over when first employed may retire at any time after his normal retirement date and the requirement of having five or more years of service shall not apply.

B. Early retirement.—Any member in service who has attained his fifty-fifth birthday with five or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.

C. Deferred retirement for members terminating service.—Any member who terminates service after five or more years of creditable service may retire under the provisions of subsection A or B of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

D. 50/10 retirement.—Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective. A member who is a state employee shall not be eligible for retirement pursuant to this subsection unless the employee has entered into a binding agreement with the Department of Personnel and Training providing that the employee shall not thereafter re-enter into full-time or part-time employment with any agency in the executive branch of the Commonwealth for a period of two years following retirement.

~~D.~~ E. Effective date of retirement.—The effective date of retirement shall be after the last day of service of the member, but shall not be more than ninety days prior to the filing of the notice of retirement.

~~E.~~ F. Notification on behalf of member.—If the member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification on his behalf.

§ 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 1.50 percent of the first \$13,200 of average final compensation plus 1.65 percent of average final compensation in excess of \$13,200, multiplied by the amount of creditable service. If the member is credited with thirty-five or more years of service, he shall receive 1.65 percent of his average final compensation multiplied by the amount of his creditable service.

On and after October 1, 1994, 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 service 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.

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

3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals thirty or more years but the sum of his age at retirement plus his creditable service at retirement is less than ninety, the amount of the retirement allowance shall be reduced on an actuarial

equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to ninety or more had he remained in service until such date. If the member has less than thirty years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least thirty years of creditable service and his then creditable service plus his then attained age would have been equal to ninety or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

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

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

B. Beneficiary serving in position covered by this title.—If a beneficiary of a service retirement allowance under this chapter, other than a member of the General Assembly, is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

§ 51.1-155.1. Exceptions from general early retirement provisions for certain state employees.

A. Effective January 1, 1994, members of the retirement system, whose positions are described by either subdivision A 3 or A 16 of § 2.1-116 as in effect on January 1, 1994, or agency heads appointed by a state board, state commission, or state council, who are involuntarily separated from state service and who have twenty or more years of creditable service at the date of separation, may retire ~~without the reduction in~~ *with the retirement allowance required by as provided in* subdivision A 2 1 of § 51.1-155, upon attaining age fifty-five.

B. For the purposes of this section, "involuntary separation" means any dismissal, requested resignation, or failure to obtain reappointment, except in case of a conviction for a felony or crime involving moral turpitude or dishonesty.

§ 51.1-165. Optional benefits.

A. Any member *not taking 50/10 retirement as provided in § 51.1-153 or § 51.1-205* may elect to have his retirement allowance payable under one of the options set forth in this ~~section~~ *subsection* and receive the actuarial equivalent of the retirement allowance otherwise payable to him. The election of an optional benefit shall be subject to the approval of the Board.

1. Straight life option. - A member may elect to receive an increased retirement allowance in lieu of any death benefits.

2. Joint and last-survivor option. - A member may elect to receive a decreased retirement allowance during his lifetime and have the retirement allowance, or one-half thereof, continued after his death to a contingent annuitant during the lifetime of such person. If the member's retirement is for disability, the election of the retirement allowance to be continued after the member's death shall be limited to one-half of the decreased retirement allowance received by the member during his lifetime. In case of such an election, death benefits that might otherwise be provided shall not be payable upon the death of the member unless death of the member occurs prior to the effective date of retirement as set forth in subsection B of this section. This option may not be elected by a member if the social security option of subdivision 3 of this subsection has previously been elected, nor may it be elected if the contingent annuitant is not the spouse of the member and the actuarially computed present value of the payments expected to be made to the member is less than one-half of the actuarially computed combined present value of the total payments expected to be made to the member and the contingent annuitant.

3. Social security option. - If a member retires from service on or after January 1, 1994, he may elect to receive a temporary increased retirement allowance beginning on the member's effective date of retirement and continuing until the member reaches age fifty-nine and one-half or any whole age up through age seventy and one-half, as designated by the member at the time of his retirement. Upon attaining the age designated, the temporary allowance shall cease and the retirement allowance shall be reduced on an actuarially equivalent basis. The temporary retirement allowance specified by the member shall not result in more than a fifty percent reduction in the member's benefit as provided in § 51.1-155. Any member electing to receive such an allowance shall not be entitled to a joint and last survivor

benefit.

4. Other options. - Some other benefits may be paid either to the member or to contingent annuitants he elects. However, the actuarially computed expected duration of the payment of any such benefits shall not exceed the actuarially computed life expectancy of the member and his spouse, and the actuarially computed present value of the payments expected to be made to the member shall be greater than one-half of the actuarially computed combined present value of the total payments expected to be made to the member and any contingent annuitant.

B. Any member taking 50/10 retirement as provided in § 51.1-153 or § 51.1-205 may elect to have his retirement allowance payable under the option set forth in this subsection and receive the actuarial equivalent of the retirement allowance otherwise payable to him. The election of this optional benefit shall be subject to the approval of the Board.

50/10 retirement joint and last-survivor option. - A member may elect to receive a decreased retirement allowance during his lifetime and have the retirement allowance continued after his death to a contingent annuitant during the lifetime of such person. The retirement allowance pursuant to this option shall be determined as provided in subdivision A 5 of § 51.1-155, except (i) the present value of future retirement benefits shall be calculated based on the life expectancies of both the member and the contingent annuitant and (ii) the actuarially computed present value of the payments expected to be made under this option shall be actuarially equivalent to the actuarially computed present value of the payments expected to be made to the member as determined pursuant to subdivision A 5 of § 51.1-155.

~~B.~~ C. The election of any one of the options stated in this section shall be null and void if the member dies prior to the Board receiving written notification of the member's effective date of retirement. The election of a joint and last-survivor option shall be null and void if the contingent annuitant dies before the member's retirement. For purposes of this subsection, retirement shall be deemed to commence on the effective date of a member's service retirement or disability. If the death of the member occurs prior to the effective date of retirement but after the Board has received written notification of the member's effective date of retirement, benefits shall be paid in accordance with the provisions of § 51.1-163 and the requirement that the member be in service shall not apply.

~~C.~~ D. A member who has elected any of the options stated in this section may revoke such an election by written notification to the Board any time prior to the later of the effective date of retirement or the date of written notification to the Board of retirement of the member.

~~D.~~ E. A retired member who has elected a joint and last-survivor option may, by written notification to the Board, revoke such election and elect to receive from time of notification either the retirement allowance to which he would have been entitled had no option been elected initially or an allowance actuarially equivalent thereto under a joint and last-survivor option with a different contingent annuitant, if (i) the original contingent annuitant has died, (ii) a final decree of divorce of the retired member from the original contingent annuitant has been entered, or (iii) the written consent of the original contingent annuitant, together with evidence satisfactory to the Board of the good health of the original contingent annuitant, is submitted with the notification. If the provisions of this subsection are invoked by a retired member on the basis of the member's having been divorced from his contingent annuitant and the marriage had been of a duration of twenty years or more, the provisions of this subsection shall not be applicable until the death or remarriage of the former spouse unless such spouse consents in writing to the revocation of the option prior to death or remarriage.

If such an election is made as a result of the death or divorce of the contingent annuitant, the benefit payable to the retired member may be adjusted retroactively for a period of not more than sixty days from the date the Board first receives notification of the desire of the retired member to make such a change.

~~E.~~ F. Subject to the provisions of subsection ~~D~~ E of this section, any member who retires on or after July 1, 1986, and returns to covered employment shall not be entitled to select a different optional benefit upon making application for retirement a second time.

§ 51.1-205. Service retirement generally.

A. Normal retirement.—Any member in service at his normal retirement date with five or more years of creditable service may retire upon written notification to the Board, setting forth the date the retirement is to become effective. Any member, except one appointed by the Governor or elected by the people, who attains seventy years of age shall be retired forthwith. Any employer, subsequent to the employee's normal retirement date, may provide for compulsory service retirement upon a determination that age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or that the employee is incapable of performing his duties in a safe and efficient manner. Any such determination shall be made by the employer.

B. Early retirement.—Any member in service who has attained his fiftieth birthday with five or more years of creditable service may retire upon written notification to the Board setting forth the date the retirement is to become effective.

C. Deferred retirement for members terminating service.—Any member who terminates service after five or more years of creditable service, may retire under the provisions of subsection A or B of this section if he has not withdrawn his accumulated contributions prior to the effective date of his

retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

D. 50/10 retirement.—Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective. A member shall not be eligible for retirement pursuant to this subsection unless the member has entered into a binding agreement with the Department of Personnel and Training providing that the member shall not thereafter re-enter into full-time or part-time employment with any agency in the executive branch of the Commonwealth for a period of two years following retirement.

~~D.~~ *E. Effective date of retirement.*—The effective date of retirement shall be after the last day of service of the member, but shall not be more than ninety days prior to the filing of the notice of retirement.

~~E.~~ *F. Notification on behalf of member.*—If the member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification on his behalf.

§ 51.1-206. Service retirement allowance.

A. A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.50 percent of the first \$13,200 of average final compensation plus 1.65 percent of average final compensation in excess of \$13,200 multiplied by the amount of creditable service. If the member is credited with thirty-five or more years of service, he shall receive 1.65 percent of his average final compensation multiplied by the amount of creditable service.

On and after October 1, 1994, any state police 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 service or disability retirement allowance payable under this section. 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.

2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than twenty-five years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his fiftieth birthday on which he would have completed a total of twenty-five years of creditable service.

3. *50/10 retirement.* - *The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the amount the member would receive if he had he taken early retirement or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.*

B. In addition to the allowance payable under subsection A of this section, a member shall receive an additional allowance equal to \$7,080 annually from date of retirement until his sixty-fifth birthday.

Such allowance shall be reviewed and adjusted by the Board biennially to an amount recommended by the actuary of the Virginia Retirement System based upon increases in social security benefits in the interim. This subsection shall not apply to the following: (i) any member who qualifies for retirement under subsection C of § 51.1-205 and is credited with less than twenty years' service rendered in a hazardous position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than twenty years' service rendered in a hazardous position.

C. If a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

2. That in keeping with the purposes of this act and to induce eligible state employees to voluntarily resign from employment with the Commonwealth, any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ 2.1-110 et seq. of the Code of Virginia), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivision A 2, A 4 (except those persons specified in subsection C of § 2.1-116.22 of the Code of Virginia), A 7, A 15 or A 16 of § 2.1-116 of the Code of Virginia, (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the State Lottery Department, (vii) who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center, or (viii) who is employed at a state educational institution as administrative or professional faculty (but excluding presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, may, subject to the conditions set forth in the fifth enactment of this act, elect to voluntarily resign and receive a severance benefit equivalent to (i)

four weeks of salary if the employee has two years or less of consecutive service or (ii) two weeks of salary for each year of consecutive service, not to exceed thirty-six weeks of salary, if the employee has more than two years of consecutive service, together with the benefits conferred by subsection D of § 2.1-116.23 of the Code of Virginia. Such employee shall also receive, in lieu of any unemployment compensation benefits to which the employee may be entitled, an amount, payable to the employee by the terminating agency on the employee's date of termination, equal to the present value of the maximum unemployment compensation the employee would have received pursuant to Title 60.2 of the Code of Virginia had he been eligible for such benefits by virtue of the termination of his employment, not to exceed \$5,000. The additional terms and conditions specified in § 2.1-116.23 shall apply to those eligible state employees making such election and to the transitional severance benefit payable hereunder. Written application of an eligible employee's election to participate in this incentive program shall be made to his employing agency no later than March 31, 1995. An eligible employee's resignation pursuant to the program established by this enactment shall be effective May 1, 1995, unless an alternative date is authorized by the governing authority, as defined in the fifth enactment of this act, but in no event later than July 1, 1996.

3. That in lieu of receiving a transitional severance benefit under the second enactment of this act, but in keeping with the purposes of this act and to induce eligible state employees to voluntarily retire from employment with the Commonwealth, any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ 2.1-110 et seq. of the Code of Virginia), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivision A 2, A 4 (except those persons specified in subsection C of § 2.1-116.22 of the Code of Virginia), A 7, A 15 or A 16 of § 2.1-116 of the Code of Virginia, (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the State Lottery Department, (vii) who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center, or (viii) who is employed at a state educational institution as administrative or professional faculty (but excluding presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, and who (a) is a vested member of the Virginia Retirement System and (b) is at least fifty years of age, may, subject to the conditions set forth in the fifth enactment of this act, elect to have the Commonwealth purchase on his behalf years to be credited to either his age or creditable service or a combination of age and creditable service, except that any years of credit purchased on behalf of a member of the Virginia Retirement System or the State Police Officers' Retirement System who is eligible for unreduced retirement shall be added to his creditable service and not his age. The cost of each year of age or creditable service purchased by the Commonwealth shall be equal to fifteen percent of the employee's present annual compensation. The number of years of age or creditable service to be purchased by the Commonwealth shall be equal to the quotient obtained by dividing (i) the cash value of the benefits to which the employee would be entitled under the second enactment of this act by (ii) the cost of each year of age or creditable service. The additional terms and conditions specified in § 2.1-116.24 of the Code of Virginia shall apply to those eligible state employees making such election. Written notification of an eligible employee's election to participate in this retirement incentive program shall be received by the Virginia Retirement System no later than March 31, 1995. An eligible employee's retirement pursuant to the program established by this enactment shall be effective May 1, 1995, unless an alternative date is authorized by the governing authority, as defined in the fifth enactment of this act, but in no event later than July 1, 1996.

4. That the costs associated with an employee's resignation or retirement pursuant to the incentive programs established by the second or third enactment of this act shall be paid within twelve months following the date of the employee's resignation or retirement, or within such shorter period as may be required, by the agency with which the employee was employed. The costs shall be paid first from appropriations available to the agency. If such sums are insufficient, then, if the agency's governing authority (as defined in the fifth enactment of this act) certifies that the agency is unable to pay the costs when due from appropriations available to the agency without affecting the agency's ability to deliver essential services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations. Any such treasury loan shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the Appropriations Act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for the payment of these costs, the general fund shall bear its actual share of such costs.

5. That the following employees shall not be eligible for the incentive programs established by the

second and third enactments of this act: (i) members of the Judicial Retirement System (§ 51.1-300 et seq. of the Code of Virginia); (ii) members of the State Police Officers' Retirement System (§ 51.1-200 et seq. of the Code of Virginia), except as provided in the tenth enactment of this act; (iii) "law-enforcement officers" as defined in § 9-169 of the Code of Virginia and "correctional" and "jail officers" as defined in § 53.1-1 of the Code of Virginia, (iv) presidents and teaching and research faculty as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, at state educational institutions, except as provided in the ninth enactment of this act; and (v) employees whose positions are contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance. Otherwise eligible employees desiring to participate in the incentive programs established by the second and third enactments of this act shall submit a signed application to their agency head. Submission of such signed application no later than March 31, 1995, shall satisfy the requirement that written notification of an eligible employee's request to participate in these incentive programs be provided by such date. Such employees shall not be eligible for these incentive programs unless accepted by the appropriate governing authority. The agency shall notify applying employees whether their application has been accepted by April 15, 1995. The criteria for evaluation and acceptance of an application shall be subject to policies and procedures developed by the appropriate governing authority. As used herein, the "governing authority" shall mean (i) for an agency in the executive branch, the Governor or his designee; (ii) for an agency in the judicial branch, the Supreme Court of Virginia; and (iii) for an agency in the legislative branch or an independent agency, the appropriate collegial body.

6. That any eligible employee who elects to participate in an incentive program established by the second or third enactments of this act shall not be employed in any capacity, or hired in an individual capacity as an independent contractor or consultant to perform essentially the same functions as performed by the employee at the time of his resignation or retirement, by the Commonwealth for two years after his date of separation from employment.

7. That in keeping with the purposes of this act, an otherwise eligible employee who, on or after January 1, 1995, elects to participate in any other program providing incentives for voluntary termination of employment offered by the Commonwealth shall be eligible, under the conditions specified, for the benefits established by the second and third enactments of this act, but in no event shall an employee receive the benefits of more than one incentive program.

8. That any employee who leaves his employment with the Commonwealth pursuant to this act shall be paid for his annual and sick leave balances, if any, in accordance with the applicable administrative policies and procedures in effect on July 1, 1994.

9. That in keeping with the purposes of this act and as part of the higher education restructuring plan pursuant to Item 183 E 1, 2 and 3 of Chapter 966 of the Acts of Assembly of 1994, the Board of Visitors may elect to permit full-time teaching and research faculty, including administrative and professional faculty, at any senior institution of higher education or Richard Bland College, and the State Board of Community Colleges may elect to permit full-time teaching and research faculty, including administrative and professional faculty, employed by the Virginia Community College System, to participate in the incentive programs established in the second and third enactments of this act. Upon a Board's election, but no earlier than April 1, 1995, and no later than June 30, 1996, an eligible employee shall make written application to participate in the incentive program described in the (i) second enactment of this act to his employing agency or institution or (ii) third enactment of this act to the Virginia Retirement System. Positions and funds associated with any restructuring plan approved by the Boards shall not be subject to the provisions of § 2.1-391 of the Code of Virginia. Retirements and resignations under this enactment shall be effective no later than July 1, 1996. The costs associated with an employee's resignation or retirement pursuant to the incentive programs established by the second or third enactment of this act shall be paid within twelve months following the date of the employee's resignation or retirement, or within such shorter period as may be required, by the agency with which the employee was employed. The costs shall be paid first from appropriations available to the agency. If such sums are insufficient, then, if the Governor certifies that the agency is unable to pay the costs when due from appropriations available to the agency without affecting the agency's ability to deliver essential services, the State Treasurer shall make a treasury loan to be used to finance the unsatisfied balance of the agency's obligations. Any such treasury loan shall be repaid by the agency from unexpended fund balances available to the agency.

10. That in keeping with the purposes of this act and as part of the restructuring plan of the Department of State Police and upon the Governor's approval, members of the State Police Officers' Retirement System (§ 51.1-200 et seq. of the Code of Virginia) may participate in the incentive programs described in the second and third enactments of this act. Upon the Governor's approval of any restructuring plan, but no earlier than April 1, 1995, and no later than June 30, 1996, an eligible employee shall make written application to participate in the incentive program described in the (i) second enactment of this act to his employing agency or (ii) third enactment of

this act to the Virginia Retirement System. Positions and funds associated with any restructuring plan approved by the Governor shall not be subject to the provisions of § 2.1-391 of the Code of Virginia. Retirements and resignations under this enactment shall be effective no later than July 1, 1996. The costs associated with an employee's resignation or retirement pursuant to the incentive programs established by the second or third enactment of this act shall be paid in the same manner as is prescribed in § 2.1-116.25 of the Code of Virginia.

11. That any employee of the Commonwealth who applied for retirement under the Virginia Retirement System (§ 51.1-124.1 et seq. of the Code of Virginia) or the State Police Officers' Retirement System (§ 51.1-200 et seq. of the Code of Virginia) on or before December 1, 1994, shall not be eligible for the incentive programs established in the second or third enactments of this act, or for the benefits provided by Chapter 10.5 (§ 2.1-116.20 et seq.) of the Code of Virginia.

12. That the Virginia Retirement System shall commence implementation of the provisions of this act amending §§ 51.1-153, 51.1-155, 51.1-155.1, 51.1-165, 51.1-205, and 51.1-206 of the Code of Virginia by May 1, 1995.

13. That an emergency exists and this act is in force from its passage.