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HOUSE BILL NO. 1234

Offered January 25, 1994

A BILL to amend and reenact § 51.1-138 of the Code of Virginia and to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 2.1, consisting of sections numbered 51.1-210 through 51.1-218, relating to the creation of the Law-Enforcement Officers' Retirement System within the Virginia Retirement System.

Patrons—Croshaw and Hull

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-138 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 51.1 a chapter numbered 2.1, consisting of sections numbered 51.1-210 through 51.1-218, as follows:

§ 51.1-138. Benefits.

A. Employees who become members under this article and on whose behalf contributions are paid as provided in this article shall be entitled to benefits under the retirement system.

B. By resolution legally adopted and approved by the Board, the employer may elect to provide benefits equivalent to those provided under the State Police Officers' Retirement System, as set out in Chapter 2 of this title except for § 51.1-209, in lieu of the benefits that would otherwise be provided hereunder for any employees who are employed in (i) law-enforcement positions comparably hazardous to that of a state police officer, including any sworn law-enforcement officer who has the duty and obligation to enforce the penal and traffic laws of this Commonwealth as directed by his superior officer, if so certified by his appointing authority, or (ii) positions as full-time salaried fire fighters. Sheriffs of political subdivisions which participate in the retirement system shall receive benefits equivalent to those of state police officers, except for the benefits provided under § 51.1-209, regardless of whether the employer has elected to provide equivalent benefits as set out in this subsection *participate in the Law-Enforcement Officers' Retirement System pursuant to Chapter 2.1 (§ 51.1-210 et seq.) of this title.*

C. Each employer providing the benefits of subsection B for its employees prior to July 1, 1990, may elect to provide for the early retirement of employees as set forth in this subsection in lieu of the early retirement and death before retirement provisions of the State Police Officers' Retirement System. Such election must be made to the Board in writing prior to July 1, 1990. Any member in service on or after his fifty-fifth birthday with five or more years of creditable service may retire upon written notification to the Board setting forth at what time the retirement is to become effective. The effective date shall be after his last day of service but shall not be more than ninety days prior to the filing of such notice. The member shall receive an allowance which shall be determined in the same manner as for retirement at an employee's normal retirement with creditable service and average final compensation being determined as of the date of his 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) the member's normal retirement date or (ii) the first date on or after the member's fifty-fifth birthday on which the member would have completed a total of thirty years of creditable service.

Members retiring under the provisions of this subsection shall be entitled to receive post-retirement supplements as provided in § 51.1-166. In computing the amount of any supplement, any additional allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded. In the case of death before retirement, members whose employers elect to provide benefits in accordance with the provisions of this subsection and who have not attained the age of fifty-five on the date of death shall be assumed to be fifty-five years of age for the purposes of reducing the benefits on an actuarial equivalent basis.

D. C. The retirement system shall not be liable for the payment of any retirement allowances or other benefits on behalf of a member or beneficiary of a member for which reserves have not been previously created from funds contributed by the employer or the members for such benefits.

CHAPTER 2.1.

LAW-ENFORCEMENT OFFICERS' RETIREMENT SYSTEM

§ 51.1-210. *Law-Enforcement Officers' Retirement System created; administration; application of provisions of Virginia Retirement System.*

The Law-Enforcement Officers' Retirement System is created and shall be administered by the Board

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60 of Trustees of the Virginia Retirement System. Except as otherwise provided, the provisions of Chapter 1
61 (§ 51.1-100 et seq.) of this title shall apply to and govern the operation of the Law-Enforcement
62 Officers' Retirement System.

63 § 51.1-211. Definitions.

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

65 "Employee" means (i) a law-enforcement officer, employed full time or part time by a police
66 department or sheriff's office which is a part of or administered by any political subdivision of the
67 Commonwealth, who is responsible for the prevention and detection of crime and the enforcement of the
68 penal, traffic, or highway laws of the Commonwealth and (ii) a full-time salaried fire fighter.

69 "Member" means any person included in the membership of the retirement system as provided in this
70 chapter.

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

72 "Retirement system" means the Law-Enforcement Officers' Retirement System.

73 § 51.1-212. Membership in retirement system.

74 Membership in the Law-Enforcement Officers' Retirement System shall be at the election of the
75 employer by resolution legally adopted and approved by the Board of Trustees of the Virginia
76 Retirement System. In such resolution, the employer shall notify the Board of the employer's election to
77 provide either the base benefit or the enhanced benefit pursuant to § 51.1-216.

78 § 51.1-213. Creditable service.

79 A. Service qualifying for credit under the provisions of the Virginia Retirement System shall be
80 included as creditable service for the purposes of this chapter, provided the requirements set forth in
81 Chapter 1 of this title for crediting service have been complied with and any payment required is
82 credited to the member's contribution account.

83 B. Service purchased in accordance with the provisions of § 51.1-143 shall not be considered:

84 1. In determining the actuarial equivalent for early retirement;

85 2. In determining the twenty years of service requirement of subsection B of § 51.1-216. except for
86 that which had been rendered in a hazardous position and had been credited in the retirement system of
87 a political subdivision of this Commonwealth;

88 3. Twice in determining any disability allowance payable under this chapter.

89 C. If a member ceases to be employed as a law-enforcement officer, has not received a refund of the
90 accumulated contributions credited to his member's contribution account, and accepts employment in a
91 position covered by the Virginia Retirement System, he shall be entitled to credit for his previous
92 creditable service under this chapter. His accumulated contributions shall be transferred and credited to
93 his member's contribution account in the appropriate retirement system. Future retirement rights shall
94 be as set forth under the provisions of the appropriate retirement system.

95 § 51.1-214. Employer contributions.

96 The employer shall contribute an amount equal to the sum of the normal contribution, any accrued
97 liability contribution, and any supplementary contribution. The amount shall be determined and paid as
98 provided in Chapter 1 (§ 51.1-100 et seq.) of this title.

99 § 51.1-215. Service retirement generally.

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

108 B. Early retirement. Any member in service with twenty-five or more years of creditable service may
109 retire upon written notification to the Board setting forth the date the retirement is to become effective.

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

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

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

behalf.

§ 51.1-216. Service retirement allowance.

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

1. Base benefit at 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.

2. Enhanced benefit at normal retirement. At the employer's election pursuant to § 51.1-200.3, the allowance shall equal 1.50 percent of the first \$13,200 of average final compensation plus 2.00 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 2.00 percent of his average final compensation multiplied by the amount of creditable service. The cost of the enhanced benefit in excess of the base benefit shall be borne by the employee.

3. 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 creditable 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 date on which he would have completed a total of twenty-five years of creditable service.

B. In addition to the allowance payable under subsection A of this section, a member shall receive an additional allowance equal to \$7,752 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 § 51.1-215 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.

§ 51.1-217. Death before retirement.

A. Each member shall designate who is to receive a refund of accumulated contributions credited to his account in the event of the death of the member prior to retirement. The designation must be made on a form prepared by the Board, signed and acknowledged by the member before a person authorized to take acknowledgments, and filed with the Board. The designation may be changed by the member by the written designation of some other person, signed, acknowledged, and filed with the Board. If the death of the designated person occurs prior to the death of the member and another designation has not been made, payment shall be made to the executors or administrators of the estate of the member.

If no designation has been made, the proceeds shall be paid to the persons surviving at the death of the member in the following order of precedence:

First, to the spouse of the member;

Second, if no surviving spouse, to the children of the member and descendants of deceased children, per stirpes;

Third, if none of the above, to the parents of the member;

Fourth, if none of the above, to the duly appointed executor or administrator of the estate of the member;

Fifth, if none of the above, to other next of kin of the member entitled under the laws of the domicile of the member at the time of his death.

If a member dies at any time before retirement and if no benefits are payable under subsection B, the amount of his accumulated contributions shall be paid to the designated beneficiary or to the persons qualifying in the order of precedence. This amount shall be reduced by the amount of any retirement allowance previously received by the member.

B. If a member dies in service and if no benefits are payable under subsection C, a retirement allowance shall be paid to the person designated as provided in subsection A of this section if the person is the (i) surviving spouse, (ii) minor child, (iii) mother, or (iv) father of the member. The retirement allowance shall be paid to the first person qualifying in the order of precedence set out in this subsection. If more than one minor child survives the deceased member, the allowance shall be divided among them in a manner determined by the Board. The retirement allowance shall be continued during the lifetime of the person or in the case of a minor child until the child dies or attains the age of

majority, whichever occurs first. The allowance shall equal one-half of the retirement allowance that would have been payable to the member had the member retired for early service retirement on the date of his death and elected to have his allowance payable under the joint and last-survivor option so that one-half thereof would be continued to such person after the member's death. In the case of a member who had not attained twenty-five years of service on his date of death, it shall be assumed that the member had attained twenty-five years of service on his date of death for the purpose of reducing the benefit on an actuarial equivalent basis. If a member dies after attaining his sixtieth birthday, the allowance shall equal the decreased retirement allowance that would have been payable to the member had the member retired at his normal retirement age on the date of his death and elected to have his allowance payable under the joint and last-survivor option so that the same amount would be continued to such person after the member's death. When determining the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subsection B of § 51.1-216 shall not apply. If the person elects in writing under seal and duly acknowledged, the amount of the member's accumulated contributions shall be paid to the person exclusively, in lieu of any other benefits under this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member.

C. If a member dies in service from a cause compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), a retirement allowance shall be paid to the member's surviving spouse. If no compensation is finally awarded under the Virginia Workers' Compensation Act due to legal proceedings or otherwise resulting in settlement from the persons causing such death, the Virginia Workers' Compensation Commission shall determine whether the member's death was from a cause compensable under the Virginia Workers' Compensation Act. If the member leaves no surviving spouse, or the surviving spouse dies or remarries, any minor children of the deceased member shall be paid an allowance until the children die or attain the age of majority, whichever occurs first. If more than one minor child survives the deceased member, the allowance shall be divided in a manner determined by the Board. If the deceased member leaves neither surviving spouse nor minor child, the allowance shall be paid to the member's parents wholly dependent upon him for support, divided in a manner determined by the Board, during the lives of the parents.

The retirement allowance, payable hereunder to a qualifying survivor, shall be the annual amount which when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member, shall equal fifty percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the retirement system when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by written notification to the Board within ninety days after the death of the member in order to make available a retirement allowance under the provisions of subsection B of this section.

§ 51.1-218. Post-retirement supplements.

In computing the amount of any post-retirement supplements, any additional allowances being paid under the provisions of subsection B of § 51.1-216 shall be disregarded. Any recipient of an allowance which initially commenced on or prior to January 1, 1990, shall be entitled to post-retirement supplements effective July 1, 1991.