

LD3219743

## SENATE BILL NO. 776

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on January 31, 1995)

(Patron Prior to Substitute—Senator Stosch)

*A BILL to amend and reenact §§ 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, relating to retirement benefits for employees of the Commonwealth.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 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 as follows:**

§ 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or more years of creditable service may retire under the provisions of subsection A or B of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn.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.

Ð 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.

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

60 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial  
61 equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal  
62 retirement date or (ii) the first date on which he would have completed a total of thirty years of  
63 creditable service. The provisions of this subdivision shall apply to teachers and state employees. These  
64 provisions shall also apply to employees of any political subdivision that participates in the retirement  
65 system if the political subdivision makes the election provided in subdivision 3 of this subsection.

66 3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall  
67 be determined in the same manner as for normal retirement with creditable service and average final  
68 compensation being determined as of the date of actual retirement. If the creditable service of the  
69 member equals thirty or more years but the sum of his age at retirement plus his creditable service at  
70 retirement is less than ninety, the amount of the retirement allowance shall be reduced on an actuarial  
71 equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal  
72 retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable  
73 service would have been equal to ninety or more had he remained in service until such date. If the  
74 member has less than thirty years of creditable service, the retirement allowance shall be reduced for the  
75 period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii)  
76 the first date on which he would have completed a total of at least thirty years of creditable service and  
77 his then creditable service plus his then attained age would have been equal to ninety or more.

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

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

89 5. *50/10 retirement.* - *The allowance shall be payable in a monthly stream of payments equal to the*  
90 *greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated*  
91 *service and deferred retirement to age fifty-five or (ii) the actuarially calculated present value of the*  
92 *member's accumulated contributions, including accrued interest.*

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

98 § 51.1-155.1. Exceptions from general early retirement provisions for certain state employees.

99 A. Effective January 1, 1994, members of the retirement system, whose positions are described by  
100 either subdivision A 3 or A 16 of § 2.1-116 as in effect on January 1, 1994, or agency heads appointed  
101 by a state board, state commission, or state council, who are involuntarily separated from state service  
102 and who have twenty or more years of creditable service at the date of separation, may retire ~~without~~  
103 ~~the reduction in~~ with the retirement allowance ~~required by~~ as provided in subdivision A 2 1 of  
104 § 51.1-155, upon attaining age fifty-five.

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

108 § 51.1-165. Optional benefits.

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

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

115 2. Joint and last-survivor option. - A member may elect to receive a decreased retirement allowance  
116 during his lifetime and have the retirement allowance, or one-half thereof, continued after his death to a  
117 contingent annuitant during the lifetime of such person. If the member's retirement is for disability, the  
118 election of the retirement allowance to be continued after the member's death shall be limited to one-half  
119 of the decreased retirement allowance received by the member during his lifetime. In case of such an  
120 election, death benefits that might otherwise be provided shall not be payable upon the death of the  
121 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.

*€ 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.

*Ð 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.

*£ F.* Subject to the provisions of subsection *Ð 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

183 benefit upon making application for retirement a second time.

184 § 51.1-205. Service retirement generally.

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

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

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

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

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

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

217 § 51.1-206. Service retirement allowance.

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

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

223 On and after October 1, 1994, any state police officer who is a member or beneficiary of a  
224 retirement system administered by the Board shall receive an additional retirement allowance equal to  
225 three percent of the service or disability retirement allowance payable under this section. Average final  
226 compensation attributable to service as Governor, Lieutenant Governor, Attorney General, or member of  
227 the General Assembly shall not be included in computing this additional retirement allowance.

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

234 3. 50/10 retirement. - *The allowance shall be payable in a monthly stream of payments equal to the*  
235 *greater of (i) the amount the member would receive if he had he taken early retirement or (ii) the*  
236 *actuarially calculated present value of the member's accumulated contributions, including accrued*  
237 *interest.*

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

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

245 less than twenty years' service rendered in a hazardous position.

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

249 **2. That the Virginia Retirement System shall commence implementation of the provisions of this**  
250 **act by May 1, 1995.**

251 **3. That an emergency exists and this act is in force from its passage.**