CHAPTER 995

An Act to amend and reenact §§ 2.1-116, 51.1-126, 51.1-126.1, and 51.1-502.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 23-77.4, 51.1-126.2, and 51.1-502.2, relating to the University of Virginia Medical Center.

[H 884]

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 51.1-126, 51.1-126.1, and 51.1-502.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 23-77.4, 51.1-126.2, and 51.1-502.2, as follows:

§ 2.1-116. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;

2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents, and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the national guard and the naval militia;

10. Student employees in institutions of learning, and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;

12. County, city, town and district officers, deputies, assistants and employees;

13. The employees of the Virginia Workers' Compensation Commission;

14. The following officers and employees of the Virginia Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;

15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;

16. Employees of the State Lottery Department;

17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs; ~~and~~

18. Employees of the Medical College of Virginia Hospitals ~~and the University of Virginia Medical Center~~ who are determined by the Department of Personnel and Training to be health care providers; however, any changes in compensation plans for such employees shall be subject to the review and approval of the Secretary of Education. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; ~~and~~

19. *Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; and*

20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions, shall be deemed to serve on an employment at will basis. An agency may not exceed two employees who serve in this exempt capacity.

§ 23-77.4. Medical center management.

The General Assembly recognizes and finds that the economic viability of the University of Virginia

Medical Center, hereafter referred to as the Medical Center, together with the requirement for its specialized management and operation, and the need of the Medical Center to participate in cooperative arrangements reflective of changes in health care delivery, as set forth in § 23-77.3, are dependent upon the ability of the management of the Medical Center to make and implement promptly decisions necessary to conduct the affairs of the Medical Center in an efficient, competitive manner. The General Assembly also recognizes and finds that it is critical to, and in the best interests of, the Commonwealth that the University continue to fulfill its mission of providing quality medical and health sciences education and related research and, through the presence of its Medical Center, continue to provide for the care, treatment, health-related services, and education activities associated with Virginia patients, including indigent and medically indigent patients. Because the General Assembly finds that the ability of the University to fulfill this mission is highly dependent upon revenues derived from providing health care through its Medical Center, and because the General Assembly also finds that the ability of the Medical Center to continue to be a reliable source of such revenues is heavily dependent upon its ability to compete with other providers of health care which are not subject to the requirements of law applicable to agencies of the Commonwealth, the University is hereby authorized to implement the following modifications to the management and operation of the affairs of the Medical Center in order to enhance its economic viability:

1. Capital projects.

a. For any Medical Center capital project entirely funded by a nongeneral fund appropriation made by the General Assembly, all post-appropriation review, approval, administrative, and policy and procedure functions performed by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other agency that supports the functions performed by these departments are hereby delegated to the University, subject to the following stipulations and conditions: (i) the Board of Visitors shall develop and implement an appropriate system of policies, procedures, reviews and approvals for Medical Center capital projects to which this subdivision applies; (ii) the system so adopted shall provide for the review and approval of any Medical Center capital project to which this subdivision applies in order to ensure that, except as provided in clause (iii), the cost of any such capital project does not exceed the sum appropriated therefor and that the project otherwise complies with all requirements of the Code of Virginia regarding capital projects, excluding only the post-appropriation review, approval, administrative, and policy and procedure functions performed by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other agency that supports the functions performed by these departments; (iii) the Board of Visitors may, during any fiscal year, approve a transfer of up to a total of fifteen percent of the total nongeneral fund appropriation for the Medical Center in order to supplement funds appropriated for a capital project or capital projects of the Medical Center, provided that the Board of Visitors finds that the transfer is necessary to effectuate the original intention of the General Assembly in making the appropriation for the capital project or projects in question; (iv) the University shall report to the Department of General Services on the status of any such capital project prior to commencement of construction of, and at the time of acceptance of, any such capital project; and (v) the University shall ensure that Building Officials and Code Administrators (BOCA) Code and fire safety inspections of any such project are conducted and that such projects are inspected by the State Fire Marshal or his designee prior to certification for building occupancy by the University's assistant state building official to whom such inspection responsibility has been delegated pursuant to § 36-98.1. Nothing in this section shall be deemed to relieve the University of any reporting requirement pursuant to §§ 2.1-403 and 2.1-404. Notwithstanding the foregoing, the terms and structure of any financing of any capital project to which this subdivision applies shall be approved pursuant to § 2.1-179.

b. No capital project to which this subdivision applies shall be materially increased in size or materially changed in scope beyond the plans and justifications which were the basis for the project's appropriation unless: (i) the Governor determines that such increase in size or change in scope is necessary due to an emergency or (ii) the General Assembly approves the increase or change in a subsequent appropriation for the project. After construction of any such capital project has commenced, no such increase or change may be made during construction unless the conditions in (i) or (ii) have been satisfied.

2. Leases of property.

a. The University shall be exempt from the provisions of § 2.1-504.2 and from any rules, regulations and guidelines of the Division of Engineering and Buildings in relation to leases of real property which it enters into on behalf of the Medical Center and, pursuant to policies and procedures adopted by the Board of Visitors, may enter into such leases subject to the following conditions: (i) the lease must be an operating lease and not a capital lease as defined in guidelines established by the Secretary of Finance and Generally Accepted Accounting Principles (GAAP); (ii) the University's decision to enter into such a lease shall be based upon cost, demonstrated need, and compliance with guidelines adopted by the Board of Visitors which direct that competition be sought to the maximum practical degree, that all costs of occupancy be considered, and that the use of the space to be leased actually is necessary

and is efficiently planned; (iii) the form of the lease is approved by the Special Assistant Attorney General representing the University; (iv) the lease otherwise meets all requirements of law; (v) the leased property is certified for occupancy by the building official of the political subdivision in which the leased property is located; and (vi) upon entering such leases and upon any subsequent amendment of such leases, the University shall provide copies of all lease documents and any attachments thereto to the Department of General Services.

b. Notwithstanding the provisions of §§ 2.1-511 and 23-4.1, but subject to policies and procedures adopted by the Board of Visitors, the University may lease, for a purpose consistent with the mission of the Medical Center and for a term not to exceed fifty years, property in the possession or control of the Medical Center.

c. Notwithstanding the foregoing, the terms and structure of any financing arrangements secured by capital leases or other similar lease financing agreements shall be approved pursuant to § 2.1-179.

3. Procurement of goods, services and construction.

Contracts awarded by the University in compliance with this section, on behalf of the Medical Center, for the procurement of goods, services, including professional services, and construction, shall be exempt from (i) the Virginia Public Procurement Act (§ 11-35 et seq.), except as provided below; (ii) Article 3 (§ 2.1-435 et seq.) of Chapter 32 of Title 2.1; and (iii) Article 5 (§ 2.1-480 et seq.) of Chapter 32 of Title 2.1 regarding the review and approval of contracts for the construction of Medical Center capital projects; however, the provisions of this paragraph may not be implemented by the University until such time as the Board of Visitors has adopted guidelines generally applicable to the procurement of goods, services and construction by the Medical Center or by the University on behalf of the Medical Center. Such guidelines shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The guidelines shall implement a system of competitive negotiation for professional services; shall prohibit discrimination because of race, religion, color, sex, or national origin of the bidder or offeror in the solicitation or award of contracts; may take into account in all cases the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; may implement a prequalification procedure for contractors or products; may include provisions for cooperative procurement arrangements with private health or educational institutions, or with public agencies or institutions of the several states, territories of the United States or the District of Columbia; shall incorporate the prompt payment principles of §§ 11-62.10 and 11-62.11; and may implement provisions of law. The following sections of the Virginia Public Procurement Act shall continue to apply to procurements by the Medical Center or by the University on behalf of the Medical Center: §§ 11-49, 11-51, 11-52 (which section shall not be construed to require compliance with the prequalification application procedures of subsection B of § 11-46), 11-54, 11-56 through 11-61, and 11-72 through 11-80.

§ 51.1-126. Certain employees of institutions of higher education.

A. Any institution of higher education which has established, or establishes, a retirement plan covering in whole or in part its employees who are engaged in the performance of teaching, administrative, or research duties is hereby authorized to make contributions for the benefit of its employees who elect to participate in such plan rather than in the retirement system established by this chapter. Any present or future employee of such institution may elect to participate in either the retirement system established by this chapter or the plan provided by the institution employing him, in accordance with guidelines established by the Virginia Retirement System. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties. *The University of Virginia is authorized on and after July 1, 1996, to transfer any University of Virginia Medical Center employee who is a participant in a retirement plan established pursuant to this section to any retirement plan established pursuant to § 51.1-126.2 as an alternative to the retirement system established by this chapter, provided that the employee has elected to transfer to the plan established pursuant to § 51.1-126.2. All University of Virginia Medical Center employees who are (i) first employed by the Medical Center on or after the effective date of any retirement plan established pursuant to § 51.1-126.2 and (ii) engaged in the performance of teaching, administrative or research duties, shall be afforded the retirement plan election options provided by § 51.1-126.2 rather than the election options provided by this section.*

B. No employee of an institution of higher education who is an active member in a plan established under this section shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

C. 1. The contribution by the Commonwealth to such employee's retirement plan shall be 10.4 percent of creditable compensation. An institution of higher education may adopt a supplementation program for participants who, before January 1, 1991, exercise or have exercised the election to participate in the plan provided by the institution employing him as referred to in subsection A. Under such supplementation program, the institution may supplement such contribution using funds other than general funds, tuition or fees, up to an additional 2.17 percent of creditable compensation. *Any employee of the University of Virginia Medical Center who participated in a retirement plan established pursuant to this section prior to the effective date of such employee's transfer to a retirement plan established*

under § 51.1-126.2 shall continue to receive the contribution by the Commonwealth, and any supplementation thereof by the University, at the contribution and supplementation rates which were in effect on the effective date of such transfer.

2. These contribution rates shall be examined by the Secretary of Administration prior to July 1, 1996, and at least once every six years thereafter. The Secretary shall consider the salary peer group mean contribution as determined by the State Council of Higher Education and the position of the Virginia Retirement System actuary, and, if necessary, recommend a revision to the rate of contribution by the Commonwealth.

D. The Virginia Retirement System shall develop policies and procedures, as approved by the Secretaries of Administration and Education, for the administration of all retirement plans established pursuant to this section. Such policies and procedures shall not, under any circumstances, result in the elimination of any benefit program at any institution as such benefit program existed on June 30, 1991.

§ 51.1-126.1. Certain employees of teaching hospitals.

A. Any teaching hospital affiliated with an institution of higher education, *other than the University of Virginia Medical Center,* may establish a retirement plan covering in whole or in part its employees who are health care providers, as determined by the Department of Personnel and Training pursuant to § 2.1-116, and is authorized to make contributions for the benefit of its employees who elect to participate in such plan or arrangement rather than in the retirement system established by this chapter. Any such alternative retirement plan shall not become effective until July 1, 1991, or any time thereafter, as determined by such teaching hospital. Any health care provider employed by such teaching hospital on or after July 1, 1991, may make an irrevocable election to participate in either the retirement plan established by this chapter or the plan provided by the teaching hospital, in accordance with guidelines established by the Virginia Retirement System. The election herein provided shall, as to any health care provider employed after the alternative retirement plan implementation date, be exercised not later than thirty-one days from the time of entry upon the performance of his duties.

B. No health care provider employed by a teaching hospital who is an active member of a plan established under this section shall also be an active member of the retirement system or a beneficiary other than a contingent annuitant.

C. The contribution by the Commonwealth to any other retirement plan established on behalf of health care providers as provided in subsection A shall be the contribution by the Commonwealth which would be required if the health care provider were a member of the retirement system or eight percent of creditable compensation, whichever is less.

D. If the institution of higher education with which the teaching hospital is affiliated has adopted a retirement plan under § 51.1-126 for its employees who are engaged in the performance of teaching, administrative, or research duties, the plan established under this section shall offer the same investment opportunities as are available to the participants of the plan established under § 51.1-126.

E. The Virginia Retirement System shall develop policies and procedures, as approved by the Secretaries of Administration and Education, for the administration of the retirement plan established under this section.

§ 51.1-126.2. Employees of the University of Virginia Medical Center.

A. The University of Virginia Medical Center, hereafter referred to as the Medical Center, may establish one or more retirement plans covering in whole or in part its employees, including employees who, prior to the effective date of any plan established pursuant to this section, had been participants in any plan established pursuant to § 51.1-126 or § 51.1-126.1. The Medical Center is authorized to make contributions for the benefit of its employees who elect to participate in any plan established pursuant to this section rather than in any other retirement plan established by this chapter. Any such alternative retirement plans for Medical Center employees shall not become effective until such time as the Board of Visitors of the University of Virginia may determine. Any employee of the Medical Center may make an irrevocable election to participate in the retirement system established by this chapter or any plan provided by the Medical Center in accordance with guidelines established by the University of Virginia Board of Visitors. The election herein provided shall, as to any Medical Center employee commencing employment following the effective date of any plan established pursuant to this section, be exercised not later than ninety days following the date the employee commences performing his duties.

B. No employee of the Medical Center who is an active member of any plan established under this section shall also be an active member of the retirement system established by this chapter or a beneficiary of such other plan other than as a contingent annuitant.

C. The contribution by the Medical Center to any retirement plan established on behalf of employees of the Medical Center as provided in subsection A shall be eight percent of creditable compensation.

D. The guidelines adopted by the Board of Visitors under subsection A shall be filed with the Board of Trustees of the Virginia Retirement System.

§ 51.1-502.1. Certain employees of teaching hospitals.

Any teaching hospital affiliated with an institution of higher education, *other than the University of Virginia Medical Center,* may purchase group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part its employees who are health care providers, as

determined by the Department of Personnel and Training pursuant to § 2.1-116. In addition, any such teaching hospital may increase the coverage under such policies to make available to each active insured employee optional life, accidental death and dismemberment insurance as provided in § 51.1-512. All health care providers employed by such teaching hospital on or after July 1, 1992, shall be covered by the policies purchased by the teaching hospital as soon as such policies become effective and may not elect to be covered by the Board's group insurance program under § 51.1-501. Nor shall they be required to present at their own expense evidence of insurability satisfactory to an insurance company upon changing from one form of coverage to another provided by this chapter. No other section of this chapter shall apply to insurance coverage offered by a teaching hospital *to which this section applies*, except §§ 51.1-510 and 51.1-511.

Notwithstanding the definition of "state employee" contained in § 51.1-124.3, a health care provider, as determined in accordance with subdivision A ~~19~~ *18* of § 2.1-116, may be enrolled in a health care plan other than that provided for in § 2.1-20.1, at the election of ~~the~~ *a* teaching hospital *to which this section applies,* and subject to the review and approval of the Secretary of Education.

§ 51.1-502.2. Employees of the University of Virginia Medical Center.

The University of Virginia Medical Center, hereafter referred to as the Medical Center, may purchase basic group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part any of its employees who have elected to participate in any retirement plan established pursuant to § 51.1-126.2. In addition, the Medical Center may establish, administer and make available to each active insured employee who has elected to participate in any such retirement plan a program of optional insurance, including life, accidental death and dismemberment, and disability insurance. All employees of the Medical Center who have elected to participate in any Medical Center retirement plan established pursuant to § 51.1-126.2 shall be eligible to obtain coverage under the aforesaid basic insurance policies purchased by the Medical Center and to obtain coverage under the optional insurance program at the employee's expense as soon as such policies become effective and may not thereafter be covered by the insurance program established pursuant to § 51.1-501. Nor shall they be required to present at their own expense evidence of insurability satisfactory to an insurance company upon changing from one form of coverage to another form of coverage provided pursuant to this section. No other section of this chapter shall apply to any insurance coverage offered by the Medical Center except §§ 51.1-510 and 51.1-511; provided that any administrative or ministerial functions performed by or on behalf of the Board of the Virginia Retirement System under §§ 51.1-510 and 51.1-511 shall be performed by the Medical Center.

Any Medical Center employee who elects to participate in the retirement system established by Chapter 1 of Title 51.1 may not be covered by any basic group life, accidental death and dismemberment, and disability insurance policies purchased by the Medical Center pursuant to this section, but shall continue to be eligible to obtain coverage under the insurance program established pursuant to § 51.1-501.

Notwithstanding the definition of "state employee" contained in § 51.1-124.3, all employees of the Medical Center may be enrolled in a health care plan other than that provided for in § 2.1-20.1 at the election of the Medical Center and subject to the review and approval of the Board of Visitors of the University of Virginia; provided, however, that any Medical Center employee who was first employed by the Medical Center prior to July 1, 1996, and who had not been classified as a health care provider under the provisions of § 51.1-502.1 prior to July 1, 1996, shall be provided the option of enrolling in a health care plan elected by the Medical Center or enrolling in the health care plan established pursuant to § 2.1-20.1 until such time as the University of Virginia Board of Visitors may determine that it is not in the best interest of the University to continue to provide that option to any employees of the Medical Center. If the Board of Visitors determines that such health plan option will not continue to be provided, any Medical Center employees who must re-enroll in a different health plan shall be allowed to do so with a waiver of preexisting medical conditions for the employees and, if applicable, their spouses and dependents.

Subject to such eligibility criteria as it may establish, the Medical Center may make available to any of its employees the insurance programs established pursuant to this section, including health plan coverage, notwithstanding the fact that such employees may not be eligible for participation in any retirement plan established pursuant to § 51.1-126.2 or the retirement system established pursuant to Chapter 1 of Title 51.1 of the Code of Virginia.

The eligibility of any employee of the Medical Center for participation in any insurance program established pursuant to this section shall not of itself render such employees eligible for participation in the Virginia Retirement System or any optional retirement program.

2. That any alternative retirement plan for health care provider employees of the University of Virginia Medical Center which was in effect prior to July 1, 1996, pursuant to § 51.1-126.1 of the Code of Virginia, shall remain in effect until the alternative retirement plan for such employees established pursuant to § 51.1-126.2 of the Code of Virginia is implemented.

3. That any program of insurance established prior to July 1, 1996, by the University of Virginia Medical Center for health care provider employees pursuant to § 51.1-502.1 shall remain in effect

until basic and optional programs of insurance have become effective pursuant to § 51.1-502.2.