

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 232

An Act to amend and reenact §§ 2.1-116, 62.1-128, 62.1-132.1, 62.1-132.6, and 62.1-132.7 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 51.1-126.4, 51.1-502.3, 62.1-129.1 and 62.1-148, relating to Virginia Port Authority employees.

[H 2155]

Approved March 10, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116, 62.1-128, 62.1-132.1, 62.1-132.6, and 62.1-132.7 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 51.1-126.4, 51.1-502.3, 62.1-129.1 and 62.1-148 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;
18. [Repealed.]
19. Employees of the Medical College of Virginia Hospitals Authority;
20. 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;
21. 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; ~~and~~
22. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; *and*
23. *Officers and employees of the Virginia Port Authority.*
§ 51.1-126.4. *Employees of the Virginia Port Authority.*
A. *The Virginia Port Authority, hereinafter referred to as the Authority, may establish one or more*

retirement plans covering in whole or in part its employees. The Authority is authorized to make contributions for the benefit of its employees who elect to participate in such plan or arrangement rather than in any other retirement system established by this chapter. Any such alternative retirement plan shall become effective at such time as determined by the Authority. The Authority shall notify the Virginia Retirement System of the establishment of such plan no later than ninety days prior to the effective date. Any present employee of the Authority may make an irrevocable election to participate in the retirement plan established by this chapter or any plan provided by the Authority. Such election shall be made no later than 180 days after the effective date of the plan provided for in this section on forms supplied by the Virginia Retirement System. Any employee hired on or after the effective date of the plan provided for in this section shall become a participant in that plan, subject to the eligibility criteria of that plan.

B. No employee of the Authority who is an active member of a 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 Authority to any other retirement plan established on behalf of its employees as provided in subsection A shall be the contribution by the Commonwealth which would be required if the employee were a member of the retirement system established by this chapter or eight percent of creditable compensation, whichever is less.

D. The Authority shall develop policies and procedures for the administration of any retirement plan it establishes under this section. A copy of such policies and procedures shall be filed with the Board of Trustees of the Virginia Retirement System.

E. Pursuant to § 62.1-129.1, employees of the Authority shall be eligible to continue their participation in the Virginia Retirement System or may participate in an alternative retirement plan offered pursuant to this section.

§ 51.1-502.3. Certain employees of the Virginia Port Authority.

The Virginia Port Authority may purchase group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part its employees who elect to participate in any retirement plan established under the provisions of § 51.1-126.4. In addition, the Authority may increase the coverage under such policies to make available to each active insured employee optional life and accidental death and dismemberment insurance as provided in § 51.1-512. All eligible employees of the Authority shall be covered by the policies purchased by the Authority 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 the Authority to which this section applies except §§ 51.1-510 and 51.1-511.

§ 62.1-128. Authority created.

The Virginia Port Authority, hereinafter referred to as the Authority, is created as a body corporate ~~and as such shall have, and is hereby vested with,~~ and as a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the powers ~~and duties hereinafter conferred in~~ by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth.

§ 62.1-129.1. Employees; employment; personnel rules; health insurance; retirement plans.

A. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The Board of Commissioners of the Authority shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, religion, color, sex or national origin.

B. The Authority shall issue a written notice to its employees regarding the Authority's status. The date upon which such written notice is issued shall be referred to herein as the "option date." Each employee may, by written request made within 180 days of the option date, elect not to become employed by the Authority. Any employee of the Virginia Port Authority who: (i) elects not to become employed by the Authority and who is not reemployed by any other department, institution, board, commission or agency of the Commonwealth; (ii) is not offered the opportunity to remain employed by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.1-116.20 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the Workforce Transition Act.

C. Any employee of the Authority who is a member of any plan providing health insurance coverage pursuant to Chapter 2 (§ 2.1-11.1 et seq.) of Title 2.1, shall continue to be a member of such health insurance plan under the same terms and conditions. Notwithstanding subdivision A 2 of § 2.1-20.1, the

costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to: (i) establish a health insurance plan for the benefit of its employees and (ii) enter into agreements with the Department of Personnel and Training providing for the coverage of its employees under the state employees' health insurance plan, provided that such agreement requires the Authority to pay the costs of providing health insurance coverage under such plan.

D. Any retired employee of the Authority shall be eligible to receive the health insurance credit set forth in § 2.1-20.1:2 provided the retired employee meets the eligibility criteria set forth in that section.

E. Any Authority employee who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1, shall continue to be a member of the Virginia Retirement System or other authorized retirement plan under the same terms and conditions. Alternatively, such employee may elect to become a member of the retirement program established by the Authority for the benefit of its employees pursuant to § 51.1-126.4. The following rules shall apply:

1. The Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or other such authorized retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for any employee who elects to remain a member of the Virginia Retirement System or other such authorized retirement plan.

2. Employees who elect to become members of the alternative retirement plan established by the Authority pursuant to § 51.1-126.4 shall be given full credit for their creditable service as defined in § 51.1-124.3, and vesting and benefit accrual under the retirement plan. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan authorized pursuant to Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

3. For employees who elect to become members of the alternative retirement plan established by the Authority, the Virginia Retirement System, or other such authorized plan, shall transfer to the alternative retirement plan, established by the Authority, assets equal to the actuarially determined present value of the accrued basic benefits as of the transfer date. For purposes hereof, the "basic benefits" means the benefits accrued under the Virginia Retirement System or other such authorized retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3. The actuarial present value shall be determined by using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan so that the transfer of assets to the alternative retirement plan established by the Authority will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan. The Authority shall reimburse the Virginia Retirement System for the cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who transfer to an Authority retirement plan.

§ 62.1-132.1. General powers.

The Authority is vested with the powers of a body corporate. ~~It may sue and be sued, make contracts, adopt and use a common seal, and alter such seal at its pleasure., including, without limitation, to:~~

1. Sue and be sued;
2. Make contracts;
3. Adopt and use a common seal, and alter such seal at its pleasure;
4. Procure insurance, participate in insurance plans, and provide self-insurance. The purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled; and
5. Develop policies and procedures generally applicable to the procurement of goods, services and construction based on competitive principles.

§ 62.1-132.6. Powers not restrictive; exemption from the Virginia Personnel Act.

A. The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter.

B. The provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 shall not apply to the Authority.

§ 62.1-132.7. Employment of personnel and legal counsel.

A. ~~Subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1,~~ The Authority may appoint, employ, dismiss, and fix and pay compensation ~~of~~ to employees, officers, agents, advisers, and consultants, including financial and technical advisers, engineers, and public accountants within and without the Commonwealth and the United States without regard to whether such employees are citizens of the United States. The Authority shall determine the duties and compensation of its employees, officers, agents, advisers, and consultants without the approval of any other agency or instrumentality.

B. The authority may retain legal counsel, subject to the approval of the Attorney General, to

represent the Authority in rate cases and all other hearings, controversies, or matters involving the interests of the Authority.

§ 62.1-148. Chapter liberally construed.

This chapter shall constitute full and complete authority for the doing of the acts and things herein authorized and shall be liberally construed to effect the purposes hereof.