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HOUSE BILL NO. 2155

Offered January 16, 1997

A BILL 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 and 62.1-129.1, relating to Virginia Port Authority employees.

Patrons—Heilig, Diamonstein, Drake, Forbes, Jones, J.C., Katzen, McDonnell, Robinson, Sherwood, Tata, Wagner and Wardrup; Senators: Earley, Lucas, Martin, Newman, Potts, Quayle, Stolle, Waddell, Walker and Woods

Referred to Committee on Appropriations

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 is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 51.1-126.4 and 62.1-129.1 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

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60 22. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the  
61 provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; and

62 23. Officers and employees of the Virginia Port Authority.

63 § 51.1-126.4. Employees of the Virginia Port Authority.

64 A. The Virginia Port Authority, hereinafter referred to as the Authority, may establish one or more  
65 retirement plans covering in whole or in part its employees. The Authority is authorized to make  
66 contributions for the benefit of its employees who elect to participate in such plan or arrangement  
67 rather than in any other retirement system established by this chapter. Any such alternative retirement  
68 plan shall become effective at such time as determined by the Authority. Any employee of the Authority  
69 may make an irrevocable election to participate in the retirement plan established by this chapter or  
70 any plan provided by the Authority. The election herein provided shall, as to any employee of the  
71 Authority employed following the effective date of any plan established pursuant to this section, be  
72 exercised not later than thirty-one days from the time of entry upon the performance of his duties.

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

76 C. The contribution by the Authority to any other retirement plan established on behalf of its  
77 employees as provided in subsection A shall be the contribution by the Commonwealth which would be  
78 required if the employee were a member of the retirement system established by this chapter or eight  
79 percent of creditable compensation, whichever is less.

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

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

86 § 62.1-128. Authority created.

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

93 § 62.1-129.1. Employees; employment; personnel rules; health insurance; retirement plans.

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

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

111 C. Any employee of the Authority who is a member of any plan providing health insurance coverage  
112 pursuant to Chapter 2 (§ 2.1-11.1 et seq.) of Title 2.1, shall continue to be a member of such health  
113 insurance plan under the same terms and conditions. Notwithstanding subdivision A 2 of § 2.1-20.1, the  
114 costs of providing health insurance coverage to such employees who elect to continue to be members of  
115 the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee  
116 may elect to become a member of any health insurance plan established by the Authority. The Authority  
117 is authorized to: (i) establish a health insurance plan for the benefit of its employees and (ii) enter into  
118 agreements with the Department of Personnel and Training providing for the coverage of its employees  
119 under the state employees' health insurance plan, provided that such agreement requires the Authority to  
120 pay the costs of providing health insurance coverage under such plan.

121 D. Any Authority employee who is a member of the Virginia Retirement System or other retirement

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

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

131 2. Employees who elect to become members of the alternative retirement plan established by the  
132 Authority pursuant to § 51.1-126.4 shall be given full credit for their creditable service as defined in  
133 § 51.1-124.3, and vesting and benefit accrual under the retirement plan. For any such employee,  
134 employment with the Authority shall be treated as employment with any nonparticipating employer for  
135 purposes of the Virginia Retirement System or other retirement plan authorized pursuant to Article 4  
136 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

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

148 § 62.1-132.1. General powers.

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

152 1. Sue and be sued;

153 2. Make contracts;

154 3. Adopt and use a common seal, and alter such seal at its pleasure;

155 4. Procure insurance, participate in insurance plans and provide self-insurance. The purchase of  
156 insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority  
157 shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its  
158 officers, directors, employees, or agents are otherwise entitled.

159 5. Develop policies and procedures generally applicable to the procurement of goods, services and  
160 construction based on competitive principles.

161 § 62.1-132.6. Powers not restrictive; exemption from the Virginia Personnel Act.

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

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

166 § 62.1-132.7. Employment of personnel and legal counsel.

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

173 B. The authority may retain legal counsel, subject to the approval of the Attorney General, to  
174 represent the Authority in rate cases and all other hearings, controversies, or matters involving the  
175 interests of the Authority.