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## HOUSE BILL NO. 1914

Offered January 18, 1999

*A BILL to enact a program for supplemental payments to certain federal retirees.*

Patron—Hamilton (By Request)

Referred to Committee on Finance

Whereas, during its special session in July 1994, the General Assembly passed legislation authorizing the Tax Commissioner to enter into settlement agreements with retired federal and military Virginia taxpayers who were held to have overpaid state income taxes on their federal pension benefits in tax years 1985 through 1988; and

Whereas, under the terms of the settlement legislation, the approximately 150,000 federal retirees who accepted the Commonwealth's settlement offer were paid, over a period from March 31, 1995, to March 31, 1999, a sum equal to 76.5459 percent of their tax overpayments for tax years 1985 through 1988, with interest as provided in the legislation; and

Whereas, the settlement legislation gave wrongfully taxed federal and military retirees the option to pursue litigation against the Commonwealth and be bound by the outcome of the case styled Harper v. Virginia Department of Taxation; and

Whereas, approximately 14,300 retirees elected to be bound by the result of the Harper case; and

Whereas, during the 1995 and 1996 Sessions, the General Assembly enacted the first and second supplemental federal retiree settlement programs, which allowed retired federal and military taxpayers who did not meet the requirements for participating in the original settlement, the opportunity to participate in the settlement; and

Whereas, on September 15, 1995, the Supreme Court of Virginia issued its opinion in Harper v. Virginia Department of Taxation, in which it held that the plaintiffs in the case were entitled to a full refund, with interest, of their tax overpayments for tax years 1985 through 1988; and

Whereas, it is the sense of the General Assembly that the retirees who accepted the Commonwealth's settlement offer should receive 100 percent of the amount of their tax overpayments, notwithstanding their prior acceptance of a refund of 76.5459 percent of the amount of such overpayment; now, therefore,

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

**1. § 1.** *That the Tax Commissioner is hereby authorized to determine which retired federal and military taxpayers participated in the Federal Retiree Settlement Act (the Second Enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I), the first supplemental federal retiree settlement program (Chapters 185 and 203 of the 1995 Acts of Assembly), and the second supplemental federal retiree settlement program (Chapter 719 of the 1996 Acts of Assembly), and as the result of accepting the settlement offered thereby became entitled to a refund of 76.5459 percent of their tax overpayments for tax years 1985 through 1988, with interest as provided in the legislation (which retired federal and military taxpayers are herein collectively referred to as the "Settling Retirees"). The Tax Commissioner shall determine the amount required to make payments to each Settling Retiree in the amount of 23.4541 percent of the Settling Retiree's disputed refund, as such term is defined in the Federal Retiree Settlement Act, together with interest thereon from September 15, 1995, until July 31, 1999, at the rate provided in the case of payment of refunds under § 58.1-15 of the Code of Virginia, which aggregate amount is herein referred to as the "Settlement Balance." Subject to appropriation by the 1999 Session of the General Assembly of sufficient funds to pay the Settlement Balance, the Tax Commissioner is authorized to make supplemental settlement payments to Settling Retirees to fully compensate such persons for their overpayment of taxes with respect to retirement or pension benefits received from a federal retirement system, on the following terms and conditions:*

*1. The payments shall be made directly from a special fund or from a trust or other legal entity from which payments to Settling Retirees was made under the Federal Retiree Settlement Act. Subject to appropriation as provided in the general appropriation act, the Settlement Balance shall be deposited in the special fund, trust, or other legal entity pending disbursement pursuant to this act. All earnings on investment of these funds shall be held in the special fund, trust, or other legal entity until the payments to the Settling Retirees are made, at which time such earnings shall revert to the general fund. Payments shall be sent to Settling Retirees, or their executors, administrators or other personal representatives, as applicable, in the same manner as payments were made under the Federal Retiree Settlement Act.*

*2. The payments shall be disbursed by the Tax Commissioner or his designees to the Settling Retirees*

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60 *in a single payment to be made on July 31, 1999, or as soon thereafter as practical.*

61 *3. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection*  
62 *pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 1 of Title 58.1.*

63 *4. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or*  
64 *agreements as may be necessary to (i) effect compromise or settlement of disputed claims for payment*  
65 *under this act through creation of a trust or other legal entity or (ii) obtain administrative or investment*  
66 *services relevant to any such settlement or compromise. Any such contracts or agreements for services*  
67 *shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia*  
68 *Public Procurement Act (§ 11-35 et seq.).*

69 *5. Except and to the extent specifically authorized in this act, nothing in this act shall be construed*  
70 *or interpreted to revive any claim barred by Chapter 5 of the 1994 Acts of Assembly, Special Session I,*  
71 *and nothing in this act shall be construed or interpreted to authorize any taxpayer to be entitled to any*  
72 *relief granted in the Harper litigation to the extent that it exceeds the amounts authorized to be paid by*  
73 *this act.*