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## SENATE BILL NO. 210

Offered January 14, 1998

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 51.1 an article numbered 10, consisting of sections numbered 51.1-170 through 51.1-180, relating to a deferred retirement option plan.

Patrons—Stolle, Chichester, Hawkins and Schrock

Referred to the Committee on Finance

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

**1. That the Code of Virginia is amended by adding in Chapter 1 of Title 51.1 an article numbered 10, consisting of sections numbered 51.1-170 through 51.1-180 as follows:**

*Article 10.*

*Deferred Retirement Option Plan.*

*§ 51.1-170. Definitions.*

*As used in this article, unless the context requires a different meaning:*

*"Eligible member" means a member who satisfies the requirements of § 51.1-172 and is a (i) qualified state employee, (ii) state police officer, (iii) teacher, or (iv) qualified local employee.*

*"Member" means a member of the Retirement System or the State Police Officers' Retirement System.*

*"Participant" means a retired eligible member participating in the plan.*

*"Plan" means the deferred retirement option plan established pursuant to this article.*

*"Qualified local employee" means an employee of a political subdivision who is regularly employed full time on a salaried basis and whose tenure is not restricted as to temporary or provisional appointment.*

*"Qualified state employee" means a state employee as defined in § 51.1-124.3, but not the Governor, Lieutenant Governor, Attorney General, members of the General Assembly, or any person described in subdivision 3, 4, or 21 of § 2.1-116.*

*§ 51.1-171. Establishment of plan; participation in plan.*

*A. The Board shall establish and administer a deferred retirement option plan for eligible members in accordance with the provisions of this article.*

*B. In lieu of receiving a retirement allowance as provided in § 51.1-155 or § 51.1-206, upon retiring from service under subsection A of § 51.1-153 or subsection A of § 51.1-205, an eligible member may elect to participate in the plan in accordance with the provisions of this article.*

*§ 51.1-172. Eligibility.*

*A retiring member shall not participate in the plan unless:*

*1. The member's employer certifies to the Board that the member has received satisfactory performance evaluations for the three years preceding the member's retirement;*

*2. The member is eligible for unreduced retirement service retirement benefits by having (i) attained age 55 with 30 or more years of service credit, if he is a member of the Retirement System, or (ii) attained age 50 with 25 or more years of service credit, if he is a member of the State Police Officers' Retirement System; and*

*3. The member, in addition to attaining the age and having the years of service credit required under subdivision 2, has attained such additional age or has such additional years of service credit, or both, as the Board, in its discretion based on quadrennial actuarial investigations conducted pursuant to subdivision A 4 of § 51.1-124.22, determines is appropriate in order that participation by eligible members with such age and service credit will not effect the normal employer contribution rates determined pursuant to §§ 51.1-145 and 51.1-204. The Board may establish separate additional age and service credit requirements pursuant to this subdivision for members of the Retirement System and members of the State Police Officers' Retirement System.*

*§ 51.1-173. Election to participate in plan; retirement allowance payment election.*

*A. In order to participate in the plan, an eligible member shall notify the Board in writing of his election to participate in the plan at the time that he provides the Board with the written notification setting forth the date his retirement is to become effective as required by § 51.1-153 or § 51.1-205. The term of participation in the plan shall commence on the effective date of the eligible member's retirement from service.*

*B. Upon retiring from service and commencing participation in the plan, a participant shall irrevocably elect to have his retirement allowance payable upon termination of his participation in the plan under one of the options set forth in subdivision A 1, A 2 or A 4 of § 51.1-165, subject to the*

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60 option to revoke such election as provided in subsection E of § 51.1-165.

61 § 51.1-174. Status of participants; benefits.

62 A. Each participant shall be regularly employed full-time on a salaried basis pursuant to a  
63 temporary appointment for the term of his participation in the plan. The salary and terms of the  
64 participant's employment shall continue as in effect prior to the participant's retirement, except that the  
65 participant shall be eligible for salary increases during his participation in the plan on the same basis  
66 as other employees of the employer generally. A participant shall not gain any tenure, immunity from  
67 discharge, or other beneficial change in status as an employee not provided to other employees  
68 generally as a result of the participant's participation in the plan.

69 B. No participant shall receive a health insurance credit pursuant to § 2.1-20.1:2 while participating  
70 in the plan. The effective date of retirement of a participant for purposes of § 2.1-20.1:2 shall be the  
71 date his participation in the program terminates.

72 C. No participant shall be eligible for a disability retirement allowance pursuant to § 51.1-157 or  
73 § 51.1-209.

74 D. The reduction in the amount of life insurance on retired members pursuant to subsection B of  
75 § 51.1-505 shall not be affected by the participant's participation in the plan.

76 E. No participant shall receive retirement service credit during his participation in the plan. Neither  
77 employee contributions nor employer contributions shall be made or credited to a participant's  
78 retirement contribution account during his participation in the plan.

79 F. Participants who are employed by the Commonwealth shall be :

80 1. Exempt from the provisions of the Virginia Personnel Act (§ 2.1-110 et seq.); however, such a  
81 participant shall be eligible to participate in a grievance procedure established pursuant to § 2.1-116.05  
82 with respect to a performance evaluation conducted by his employer during his participation in the  
83 plan;

84 2. Deemed to be a state employee for purposes of participating in the health insurance coverage  
85 plan established pursuant to § 2.1-20.1; and

86 3. Ineligible for any early retirement incentive or other benefit improvement provided or offered to  
87 employees of the Commonwealth, unless such benefit improvement applies to all retired members.

88 G. Participants who are teachers or qualified local employees shall be covered by any health  
89 insurance coverage plan provided by the participant's employer to other full-time employees generally.

90 § 51.1-175. Designation of death beneficiary.

91 A. Each participant shall designate the recipient of a refund of the balance in the participant's plan  
92 account if the participant dies during his participation in the plan. Such designation shall be made in  
93 the manner provided in subsection A of § 51.1-162. If no designation has been made, the balance of a  
94 participant's plan account shall be payable in the order of precedence provided in subsection A of  
95 § 51.1-162.

96 B. If a participant dies while participating in the plan, the participant's beneficiaries shall be entitled  
97 to receive the death benefits payable at death according to the election made by the participant  
98 pursuant to subdivision B of § 51.1-173.

99 § 51.1-176. Establishment of plan account; contributions; interest.

100 A. The Board shall establish a plan account for each participant, which shall be separate from the  
101 participant's member retirement contribution account.

102 B. The monthly retirement benefit allowance that would have been paid to the participant when he  
103 retired from service if the participant had elected to cease employment and receive such allowance  
104 rather than entering the plan, shall be paid into the participant's plan account.

105 C. Amounts paid into a participant's plan account shall earn interest at a rate equal to the lesser of  
106 (i) the retirement system's assumed valuation interest rate, as determined by the Board, or (ii) the actual  
107 rate earned on the trust funds of the Retirement System; however, in no event shall the rate be less than  
108 four percent per annum. Interest shall be credited daily to the participant's plan account balance.

109 D. Neither employer contributions, employee contributions, cost of living allowances, additional  
110 allowances, nor post-retirement supplements shall be paid into a participant's plan account.

111 § 51.1-177. Term of participation in plan.

112 A. The duration of a participant's participation in the plan shall not exceed three years.

113 B. A participant may elect to withdraw from the plan prior to the expiration of the three-year period.

114 C. Participation in the plan shall terminate upon the first to occur of (i) the participant's withdrawal  
115 from the plan; (ii) the participant's employer notifying the Board the participant has received an  
116 unsatisfactory performance evaluation and, if such evaluation was appealed, the evaluation was not  
117 upgraded upon final review; (iii) the death of the participant; or (iv) the cessation of the participant's  
118 employment, whether by elimination of the participant's position or for any other permissible reason.

119 § 51.1-178. Payment of plan account balance.

120 A. Upon the termination of his participation in the plan, a participant shall receive a lump sum  
121 payment equal to the participant's plan account balance; however, if the Board approves a method of

122 payment other than by lump sum payment, the participant shall have the option of receiving such  
123 balance by such other method of payment.

124 B. If a participant dies during his period of participation in the plan, a lump sum payment equal to  
125 the participant's plan account balance shall be paid as provided in § 51.1-175.

126 § 51.1-179. Retirement allowance benefits payable to participants.

127 A. Upon the termination of his participation in the plan, a participant shall commence receiving a  
128 retirement allowance equal to the amount of the retirement allowance the participant would have  
129 received if he had not elected to participate in the plan when he retired from service, adjusted only for  
130 accrued cost of living allowances awarded to retired members generally during the period of his  
131 participation in the plan. Salary and other compensation paid to a participant during his participation  
132 in the plan shall not be considered in determining the participant's average final compensation when  
133 calculating his retirement benefit allowance.

134 B. If a participant dies during his period of participation in the plan and has selected a survivorship  
135 option under § 51.1-173, the retirement benefit allowance shall be payable pursuant to such provision.

136 § 51.1-180. Exemption of assets from execution and assignment.

137 Balances in plan accounts and other benefits accrued or accruing to participants shall be exempt  
138 from execution, attachment, garnishment or other process to the same extent, and subject to the same  
139 exceptions, as are retirement contribution account balances, retirement benefit allowances, and other  
140 benefits pursuant to § 51.1-124.4.

141 2. That the provisions of this act shall become effective on the last to occur of (i) July 1, 1999, or  
142 (ii) the first day of the third month following the date that the Board of Trustees of the Virginia  
143 Retirement System obtains a ruling from the Internal Revenue Service that affirmatively states  
144 that the deferred retirement option plan established by this act shall be treated as a qualified plan  
145 for federal income tax purposes.