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## SENATE BILL NO. 210

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 10, 1998)

(Patron Prior to Substitute—Senator Stolle)

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.

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 an 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 retiring with a retirement allowance as provided in § 51.1-155 or § 51.1-206, an eligible member may elect to participate in the plan in accordance with the provisions of this article.

## § 51.1-172. Eligibility.

An eligible 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 fifty-five with thirty or more years of service credit, if he is a member of the Retirement System, or (ii) attained age fifty with twenty-five 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 participation 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 elected by the eligible member.

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

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

A. Each participant shall be regularly employed full-time on a salaried basis pursuant to a

60 temporary appointment for the term of his participation in the plan. The salary and terms of the  
61 participant's employment shall continue as in effect prior to the effective date of participation in the  
62 plan, except that the participant shall be eligible for salary increases during his participation in the  
63 plan on the same basis as other employees of the employer generally. A participant shall not gain any  
64 tenure, immunity from discharge, or other beneficial change in status as an employee not provided to  
65 other employees generally as a result of the participant's participation in the plan.

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

69 C. No participant shall be eligible for a disability retirement allowance pursuant to § 51.1-157 or  
70 § 51.1-209.

71 D. The amount of life insurance on a participant shall be determined in a manner consistent with  
72 subsection B of § 51.1-505.

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

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

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

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

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

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

87 § 51.1-175. Designation of death beneficiary.

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

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

96 § 51.1-176. Establishment of plan account; contributions; interest.

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

99 B. The monthly amount that would have been paid to the participant if the participant had elected to  
100 cease employment and receive a retirement benefit allowance under the option selected in accordance  
101 with subsection B of § 51.1-173 rather than entering the plan, shall be credited to the participant's plan  
102 account.

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

108 D. Neither employer contributions, employee contributions, cost of living allowances, additional  
109 allowances, nor post-retirement supplements, including the allowance provided for in subsection B of  
110 § 51.1-206, shall be credited to 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 D. Upon termination of participation in the plan, the participant's retirement shall commence.

120 § 51.1-178. Payment of plan account balance.

121 A. Upon the termination of his participation in the plan, a participant shall receive a lump sum

122 payment equal to the participant's plan account balance; however, if the Board approves a method of  
123 payment other than by lump sum payment, the participant shall have the option of receiving such  
124 balance by such other method of payment.

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

127 § 51.1-179. Retirement allowance benefits payable to participants.

128 A. Upon the termination of his participation in the plan, a participant shall commence receiving a  
129 retirement allowance equal to the amount of the retirement allowance the participant would have  
130 received if he had not elected to participate in the plan and had retired on the date his election to  
131 participate in the plan became effective, adjusted only for accrued cost of living allowances awarded to  
132 retired members generally during the period of his participation in the plan and the supplement  
133 provided for in subsection B of § 51.1-206, if otherwise eligible. Salary and other compensation paid to  
134 a participant during his participation in the plan shall not be considered in determining the participant's  
135 average final compensation when calculating his retirement benefit allowance.

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

138 § 51.1-180. Exemption of assets from execution and assignment.

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

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