

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 778

*An Act to amend and reenact § 51.1-155 of the Code of Virginia and to repeal the second enactment of Chapters 689 and 700 of the Acts of Assembly of 2001, relating to continuation of retirement benefits for certain persons hired into certain teaching positions.*

[H 1137]

Approved April 7, 2002

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

**1. That § 51.1-155 of the Code of Virginia is amended and reenacted as follows:**

§ 51.1-155. Service retirement allowance.

A. Retirement allowance. - A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service.

2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than thirty years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of thirty years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3 of this subsection.

3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals thirty or more years but the sum of his age at retirement plus his creditable service at retirement is less than ninety, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to ninety or more had he remained in service until such date. If the member has less than thirty years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least thirty years of creditable service and his then creditable service plus his then attained age would have been equal to ninety or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. - In addition to the allowance payable under subdivisions 1, 2, and 3 of this subsection, a member shall receive an additional allowance which shall be the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated service and deferred retirement to age fifty-five or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. Beneficiary serving in position covered by this title.

1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed. Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.

2. Active members of the General Assembly who are eligible to receive a retirement allowance under this title, excluding their service as a member of the General Assembly, shall be eligible to receive a

retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly. Such members of the General Assembly shall continue to be reported as any other members of the retirement system. Upon ceasing to serve in the General Assembly, members of the General Assembly receiving a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly shall have their retirement allowance recomputed prospectively to include their service as a member of the General Assembly. Active members of the General Assembly shall be prohibited from receiving a service retirement allowance under this title based solely on their service as a member of the General Assembly.

3. (Expires July 1, 2006) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:

~~(a)~~ a. The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education; *and*

~~(b)~~ b. The person has been receiving such retirement allowance for a ~~certain~~ period of *at least thirty days of time* preceding his employment as ~~provided by law~~; *and*

~~(c)~~ The person is not receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; *and*

~~(d)~~ c. At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § 22.1-23; *and*

*d. The person is hired pursuant to a contract that does not exceed one year in duration; and*

*e. The person hired may only be employed for a single year period.*

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

**2. That the second enactment of Chapters 689 and 700 of the Acts of Assembly of 2001 is repealed.**

**3. That the provisions of this act shall not become effective unless the Virginia Retirement System receives a written ruling from the Internal Revenue Service (IRS) that affirmatively states that the provisions of this act, were they to become effective, will not in any way adversely affect the qualified plan status of the Virginia Retirement System under federal law. The Virginia Retirement System shall seek such IRS ruling as soon as practicable in regard to the impact on such qualified plan status from the provisions of this act. Upon receipt of a written response from IRS on such question, the Virginia Retirement System shall communicate the determination made by IRS to the chairmen of the Senate Committee on Finance and the House Committee on Appropriations, and the Secretary of Education. The Virginia Retirement System shall make the final determination, which shall be consistent with such IRS ruling or determination, of whether the provisions of this act in any way adversely affect the qualified plan status of the Virginia Retirement System under federal law.**