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SENATE BILL NO. 812

Offered January 8, 2003

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A BILL to amend and reenact §§ 51.1-138, 51.1-206, 51.1-207, 51.1-208, and 51.1-217 of the Code of Virginia, relating to the retirement allowances of state police officers and certain local law-enforcement officers.

 Patron—Stolle

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-138, 51.1-206, 51.1-207, 51.1-208, and 51.1-217 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-138. Benefits.

A. Employees who become members under this article and on whose behalf contributions are paid as provided in this article shall be entitled to benefits under the retirement system.

B. By resolution legally adopted and approved by the Board, the employer may elect to provide benefits equivalent to those provided under the State Police Officers' Retirement System, as set out in Chapter 2 (§ 51.1-200 et seq.) of this title except for § 51.1-209, in lieu of the benefits that would otherwise be provided hereunder for any employees who are employed in (i) law-enforcement positions comparably hazardous to that of a state police officer, including any sworn law-enforcement officer who has the duty and obligation to enforce the penal and traffic laws of this Commonwealth as directed by his superior officer, if so certified by his appointing authority, (ii) positions as full-time salaried fire fighters, or (iii) positions as regional jail superintendents and jail officers of regional jail farms, regional jails or jail authorities, as approved by the respective jail board or authority and by the participating political subdivisions of such entities. Sheriffs of political subdivisions which participate in the retirement system shall receive benefits equivalent to those of state police officers, except for the benefits provided under § 51.1-209, regardless of whether the employer has elected to provide equivalent benefits as set out in this subsection.

C. Each employer providing the benefits of subsection B for its employees prior to July 1, 1990, may elect to provide for the early retirement of employees as set forth in this subsection in lieu of the early retirement and death before retirement provisions of the State Police Officers' Retirement System. Such election must be made to the Board in writing prior to July 1, 1990. Any member in service on or after his fifty-fifth birthday with five or more years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of Title 51.1, or (iii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title 51.1 may retire upon written notification to the Board setting forth at what time the retirement is to become effective. The effective date shall be after his last day of service but shall not be more than ninety days prior to the filing of such notice. The member shall receive an allowance which shall be determined in the same manner as for retirement at an employee's normal retirement with creditable service and average final compensation being determined as of the date of his 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 (a) the member's normal retirement date or (b) the first date on or after the member's fifty-fifth birthday on which the member would have completed a total of thirty years of creditable service.

Members retiring under the provisions of this subsection shall be entitled to receive post-retirement supplements as provided in § 51.1-166. ~~In computing the amount of any supplement, any additional allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded.~~ In the case of death before retirement, members whose employers elect to provide benefits in accordance with the provisions of this subsection and who have not attained the age of fifty on the date of death shall be assumed to be fifty years of age for the purposes of reducing the benefits on an actuarial equivalent basis.

D. The retirement system shall not be liable for the payment of any retirement allowances or other benefits on behalf of a member or beneficiary of a member for which reserves have not been previously created from funds contributed by the employer or the members for such benefits.

§ 51.1-206. Service retirement allowance.

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

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59 1. Normal retirement. - The allowance shall equal ~~4.70~~ 2.50 percent of his average final
60 compensation multiplied by the amount of creditable service.

61 For retirements between October 1, 1994, and December 31, 1998, any state police officer who is a
62 member or beneficiary of a retirement system administered by the Board shall receive an additional
63 retirement allowance equal to three percent of the service or disability retirement allowance payable
64 under this section. Average final compensation attributable to service as Governor, Lieutenant Governor,
65 Attorney General, or member of the General Assembly shall not be included in computing this
66 additional retirement allowance.

67 2. Early retirement. - The allowance shall be determined in the same manner as for normal retirement
68 with creditable service and average final compensation being determined as of the date of actual
69 retirement. If the member has less than twenty-five years of service at retirement, the amount of the
70 retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual
71 retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his
72 fiftieth birthday on which he would have completed a total of twenty-five years of creditable service.

73 3. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the
74 greater of (i) the amount the member would receive if he had taken early retirement or (ii) the
75 actuarially calculated present value of the member's accumulated contributions, including accrued
76 interest.

77 B. In addition to the allowance payable under subsection A, a member shall receive annually from
78 the date of his retirement until his retirement age, as such term is defined under the Social Security Act
79 (42 U.S.C. § 416 et seq., as now or hereafter amended), an allowance equal to \$9,264. Beginning July 1,
80 2001, and biennially thereafter, such allowance shall be reviewed and adjusted by the Board to an
81 amount recommended by the actuary of the Virginia Retirement System based upon increases in social
82 security benefits in the interim.

83 This subsection shall not apply to the following: (i) any member who qualifies for retirement under
84 subsection C of § 51.1-205 and is credited with less than twenty years' service rendered in a hazardous
85 position or (ii) any member employed initially on or after July 1, 1974, who is credited with less than
86 twenty years' service rendered in a hazardous position.

87 CB. If a beneficiary of a service retirement allowance under this chapter is at any time in service as
88 an employee in a position covered for retirement purposes under the provisions of this or any chapter
89 other than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so
90 employed.

91 § 51.1-207. Death before retirement.

92 A. If a member dies before retirement, and if no benefits are payable under subsection B, the amount
93 of his accumulated contributions shall be paid to the designated beneficiary or to a surviving relative
94 according to the same order of precedence as set forth in subsection A of § 51.1-162. This amount shall
95 be reduced by the amount of any retirement allowance previously received by the member under this
96 chapter or the abolished system. Each member shall designate who is to receive a refund of accumulated
97 contributions credited to his account in the event of the death of the member prior to retirement. The
98 designation must be made on a form prepared by the Board, signed and acknowledged by the member
99 before a person authorized to take acknowledgments, and filed in a manner prescribed by the Board.
100 The designation may be changed by the member by the written designation of some other person,
101 signed, acknowledged, and filed in a manner prescribed by the Board.

102 If no designation has been made, or the death of the designated person occurs prior to the death of
103 the member and another designation has not been made, the proceeds shall be paid to the persons
104 surviving at the death of the member in the same order of precedence as set forth in subsection A of
105 § 51.1-162.

106 B. If a member dies in service and if no benefits are payable under subsection C, a retirement
107 allowance shall be paid to the person designated as provided in subsection A of this section if the
108 person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s). If no designation has
109 been made, or if the death of the designated person occurs prior to the death of the member and another
110 designation has not been made, a retirement allowance shall be paid in the same order of precedence as
111 set forth in subsection B of § 51.1-162. The retirement allowance shall be continued during the lifetime
112 of the person or in the case of a minor child until the child dies or attains the age of majority,
113 whichever occurs first. The retirement allowance shall equal the decreased retirement allowance that
114 would have been payable under the joint and survivor option so that the same amount would be
115 continued to such person after the member's death. If the member dies prior to his fiftieth birthday, then,
116 for purposes of this subsection, the member shall be presumed to be age fifty on his date of death.
117 ~~When determining the allowance that would have been payable to the member had the member retired~~
118 ~~on the date of his death, the provisions of subsection B of § 51.1-206 shall not apply.~~ If the person
119 elects in writing under seal and duly acknowledged, the amount of the member's accumulated
120 contributions shall be paid to the person exclusively, in lieu of any other benefits under this section.

This amount shall be reduced by the amount of any retirement allowance previously received by the member.

C. If a member dies in service from a cause compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), a retirement allowance shall be paid to the member's surviving spouse. If no compensation is finally awarded under the Virginia Workers' Compensation Act due to legal proceedings or otherwise resulting in settlement from the persons causing such death, the Virginia Workers' Compensation Commission shall determine whether the member's death was from a cause compensable under the Virginia Workers' Compensation Act. If the member leaves no surviving spouse or the surviving spouse dies, any minor children of the deceased member shall be paid an allowance until the children die or attain the age of majority, whichever occurs first. If more than one minor child survives the deceased member, the allowance shall be divided in a manner determined by the Board. If the deceased member leaves neither surviving spouse nor minor child, the allowance, divided in a manner determined by the Board, shall be paid to the member's parents during their lives.

The retirement allowance, payable hereunder to a qualifying survivor, shall be the annual amount which when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member, shall equal fifty percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the retirement system when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by written notification to the Board within ninety days after the death of the member in order to make available a retirement allowance under the provisions of subsection B of this section.

§ 51.1-208. Post-retirement supplements.

~~In computing the amount of any post-retirement supplements, any additional allowances being paid under the provisions of subsection B of § 51.1-206 shall be disregarded.~~ Any recipient of an allowance which initially commenced on or prior to January 1, 1990, shall be entitled to post-retirement supplements effective July 1, 1991.

§ 51.1-217. Service retirement allowance.

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

1. Normal retirement

a. Notwithstanding the provisions of §§ 51.1-155, 51.1-155.1 and 51.1-155.2, for any employee commencing employment or reemployment on or after July 1, 2001, and for any employee who makes the election provided in § 51.1-221, the allowance shall equal (i) two percent of his average final compensation multiplied by the amount of creditable service earned (a) as a member in the retirement system established by this chapter, (b) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of Title 51.1, or (c) while earning the benefits permitted by § 51.1-138; and (ii) 1.70 percent of his average final compensation multiplied by all other creditable service, if any; and

b. For any other employee, the allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of creditable service.

2. Early retirement. - 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.

a. For an individual retiring pursuant to subdivision B 1 of § 51.1-216, who is not retiring directly from service as an employee as defined in § 51.1-212, and who has less than thirty years of service shall retire under the provisions of the retirement system for which he is a member as of his retirement date; and

b. For all other individuals retiring pursuant to subdivision B 1 of § 51.1-216, and for an individual retiring pursuant to subdivision B 2 of § 51.1-216 who has less than twenty-five 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 or after his fiftieth birthday on which he would have completed a total of twenty-five years of creditable service.

B. Any person who is an employee on June 30, 2001, and on July 1, 2001, who does not make the election provided in § 51.1-221, shall receive, in addition to the allowance payable under subsection A, from the date of his retirement until his sixty-fifth birthday, an annual allowance equal to \$9,264. Beginning July 1, 2001, and biennially thereafter, such allowance shall be reviewed and adjusted by the Board to an amount recommended by the actuary of the Virginia Retirement System based upon increases in Social Security benefits in the interim. This subsection shall not apply to the following: (i)

182 any member who qualifies for retirement under subsection C of § 51.1-216 and is credited with less than
183 twenty years' service rendered in a hazardous position or (ii) any member employed initially on or after
184 July 1, 1974, who is credited with less than twenty years' service rendered in a hazardous position.

185 C. If a beneficiary of a service retirement allowance under this chapter is at any time in service as an
186 employee in a position covered for retirement purposes under the provisions of this or any chapter other
187 than Chapter 7 (§ 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

188 D. No person shall be eligible to receive any of the allowances provided in this section if he receives
189 retirement benefits under Chapter 2 (§ 51.1-200 et seq.) of Title 51.1 or under § 51.1-138. No person
190 shall receive any allowance pursuant to subdivision A 1 (i) if he has received an allowance pursuant to
191 ~~subsection B of § 51.1-206 or~~ subsection B of § 51.1-217 *or at any time received an additional*
192 *retirement allowance for service rendered in a hazardous position pursuant to § 51.1-206*, unless, after
193 receiving the allowance pursuant to ~~subsection B of § 51.1-206 or~~ subsection B of § 51.1-217 *or after*
194 *receiving an additional retirement allowance for service rendered in a hazardous position pursuant to*
195 *§ 51.1-206*, he becomes employed or reemployed as an employee defined in § 51.1-212, and thereafter
196 earns five or more years of creditable service (a) as a member in the retirement system established by
197 this chapter, (b) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of
198 Title 51.1, or (c) while earning the benefits permitted by § 51.1-138.

199 **2. That the provisions of this act shall not apply to (i) retirement benefits for retirements that are**
200 **effective prior to July 1, 2003, or (ii) retirement benefits relating to a member who died while in**
201 **service prior to July 1, 2003.**

202 **3. That if (i) any person is not in service on June 30, 2003, and July 1, 2003, and (ii) such person**
203 **retires as an employee as defined in § 51.1-201 on or after July 1, 2003, such person shall not be**
204 **eligible to receive a retirement allowance based on 2.50 percent of his average final compensation**
205 **unless such person has earned 5 or more years of creditable service subsequent to July 1, 2003, (a)**
206 **as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of Title 51.1,**
207 **(b) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of Title**
208 **51.1, or (c) while earning the benefits permitted by § 51.1-138.**