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HOUSE BILL NO. 451

Offered January 11, 2006

Prefiled January 9, 2006

A BILL to amend and reenact §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia, relating to the Virginia Retirement System; forfeiture of eligibility.

 Patron—Tata

 Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-153, 51.1-205, 51.1-216, and 51.1-305 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-153. Service retirement.

A. Normal retirement. - Any member in service at his normal retirement date with five or more years of creditable service may retire at any time upon written notification to the Board setting forth the date the retirement is to become effective. Any member in service who was denied membership prior to July 1, 1987, as a result of being age sixty or over when first employed may retire at any time after his normal retirement date and the requirement of having five or more years of service shall not apply.

B. Early retirement. - 1. Any member in service who has attained his fifty-fifth birthday with five or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.

2. Any state employee, teacher, or employee of a political subdivision who is a member of the retirement system may retire prior to his normal retirement date after attaining age fifty and thirty years of creditable service, upon written notification to the Board setting forth the date the retirement is to become effective. The benefit for such member shall be calculated in accordance with the provisions of subdivision A 1 of § 51.1-155.

C. Deferred retirement for members terminating service. - Any member who terminates service after five or more years of creditable service, regardless of termination date, may retire under the provisions of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.~~

D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.

E. Effective date of retirement. - The effective date of retirement shall be after the last day of service of the member, but shall not be more than ninety days prior to the filing of the notice of retirement.

F. Notification on behalf of member. - If the member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification on his behalf.

G. *A member of the retirement system whose service is terminated because of dishonesty, malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order issued by a court of competent jurisdiction establishing that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office.*

1. For the purposes of this section, a judgment or order will be considered final if the time within which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action seeking post-judgment or post-order remedy is pending.

2. Upon receipt from the member's employer of either of the above-described documents, VRS shall immediately terminate the member's service and process a refund of the member's accumulated contributions pursuant to the provisions of § 51.1-161.

3. VRS may hold in abeyance the processing of a member's retirement application upon receipt from an employer of notice that the member has been terminated because of dishonesty, malfeasance, or

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59 *misfeasance in office together with: (i) documentation establishing that legal action has been*
60 *commenced to establish the basis for the termination; or (ii) an agreement entered into by the member*
61 *that the retirement application may be suspended.*

62 4. All service credit lost from ceasing to be a member pursuant to the provisions of this section shall
63 be ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain
64 employment in a position covered by the retirement system.

65 § 51.1-205. Service retirement generally.

66 A. Normal retirement. - Any member in service at his normal retirement date with five or more years
67 of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
68 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (iii)
69 while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board,
70 setting forth the date the retirement is to become effective. Any member, except one appointed by the
71 Governor or elected by the people, who attains 70 years of age shall be retired forthwith. Any employer,
72 subsequent to the employee's normal retirement date, may provide for compulsory service retirement
73 upon a determination that age is a bona fide occupational qualification reasonably necessary to the
74 normal operation of the particular business or that the employee is incapable of performing his duties in
75 a safe and efficient manner. Any such determination shall be made by the employer.

76 Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is
77 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this
78 chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements
79 of this section, and §§ 51.1-138 and 51.1-216.

80 B. Early retirement. - Any member in service who has attained his fiftieth birthday with five or more
81 years of creditable service (i) as a member in the retirement system established by this chapter, (ii) as a
82 member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (iii)
83 while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board
84 setting forth the date the retirement is to become effective.

85 Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is
86 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this
87 chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements
88 of this section, and §§ 51.1-138 and 51.1-216.

89 C. Deferred retirement for members terminating service. - Any member who terminates service after
90 five or more years of creditable service (i) as a member in the retirement system established by this
91 chapter, (ii) as a member in the retirement system established by Chapter 2.1 (§ 51.1-211 et seq.) of this
92 title, or (iii) while earning the benefits permitted by § 51.1-138, may retire under the provisions of
93 subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the
94 effective date of his retirement or if he has five or more years of creditable service (a) as a member in
95 the retirement system established by this chapter, (b) as a member in the retirement system established
96 by Chapter 2.1 (§ 51.1-211 et seq.) of this title, or (c) while earning the benefits permitted by
97 § 51.1-138, regardless of termination date, for which his employer has paid the contributions and such
98 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the
99 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~
100 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~
101 ~~misfeasance in office. The certification may be appealed to the Board.~~

102 Effective December 31, 2003, any member in service on June 30, 2002, and July 1, 2002, who is
103 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.), this
104 chapter, or Chapter 2.1 (§ 51.1-211 et seq.) of this title shall not be subject to the vesting requirements
105 of this section, and §§ 51.1-138 and 51.1-216.

106 D. Effective date of retirement. - The effective date of retirement shall be after the last day of
107 service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

108 E. Notification on behalf of member. - If the member is physically or mentally unable to submit
109 written notification of his intention to retire, the member's appointing authority may submit notification
110 on his behalf.

111 F. A member of the retirement system whose service is terminated because of dishonesty,
112 malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or
113 disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order
114 issued by a court of competent jurisdiction establishing that the member's service was terminated
115 because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the
116 member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or
117 misfeasance in office.

118 1. For the purposes of this section, a judgment or order will be considered final if the time within
119 which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action
120 seeking post-judgment or post-order remedy is pending.

2. Upon receipt from the member's employer of either of the above-described documents, VRS shall immediately terminate the member's service and process a refund of the member's accumulated contributions pursuant to the provisions of § 51.1-161.

3. VRS may hold in abeyance the processing of a member's retirement application upon receipt from an employer of notice that the member has been terminated because of dishonesty, malfeasance, or misfeasance in office together with: (i) documentation establishing that legal action has been commenced to establish the basis for the termination; or (ii) an agreement entered into by the member that the retirement application may be suspended.

4. All service credit lost from ceasing to be a member pursuant to the provisions of this section shall be ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain employment in a position covered by the retirement system.

§ 51.1-216. Service retirement generally.

A. Normal retirement.

1. Any employee commencing employment or reemployment on or after July 1, 2001, and any employee who makes the election provided in § 51.1-221, who is a member in service in any retirement program administered by the Virginia Retirement System at his normal retirement date 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 this title, or (iii) while earning the benefits permitted by § 51.1-138, may retire upon written notification to the Board, setting forth the date the retirement is to become effective.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-205.

2. Any other employee who is a member in service at his normal retirement date 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 this title, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to the Board, setting forth the date the retirement is to become effective.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting requirements of this section, and §§ 51.1-138 and 51.1-205.

3. A member of the retirement system whose service is terminated because of dishonesty, malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order issued by a court of competent jurisdiction establishing that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office.

For the purpose of this section, a judgment or order will be considered final if the time within which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action seeking post-judgment or post-order remedy is pending.

Upon receipt from the member's employer of either of the above-described documents, VRS shall immediately terminate the member's service and process a refund of the member's accumulated contributions pursuant to the provisions of § 51.1-161.

VRS may hold in abeyance the processing of a member's retirement application upon receipt from an employer of notice that the member has been terminated because of dishonesty, malfeasance, or misfeasance in office together with: (i) documentation establishing that legal action has been commenced to establish the basis for the termination; or (ii) an agreement entered into by the member that the retirement application may be suspended.

All service credit lost from ceasing to be a member pursuant to the provisions of this section shall be ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain employment in a position covered by the retirement system.

B. Early retirement.

1. Any employee commencing employment or reemployment on or after July 1, 2001, and any employee who makes the election provided in § 51.1-221, who is a member in service in any retirement program administered by the Virginia Retirement System other than the program established by this chapter shall retire pursuant to the early retirement provisions of the retirement program of which he is a member at the time of retirement.

Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is

182 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of
183 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting
184 requirements of this section, and §§ 51.1-138 and 51.1-205.

185 2. Any other employee who is a member in service and who has attained his fiftieth birthday with
186 five or more years of creditable service (i) as a member in the retirement system established by this
187 chapter, (ii) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this
188 title, or (iii) while earning the benefits permitted by § 51.1-138 may retire upon written notification to
189 the Board setting forth the date the retirement is to become effective.

190 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is
191 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of
192 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting
193 requirements of this section, and §§ 51.1-138 and 51.1-205.

194 C. Deferred retirement for members terminating service.

195 1. Any employee commencing employment or reemployment on or after July 1, 2001, and any
196 employee who makes the election provided in § 51.1-221, who terminates service from any position with
197 membership in any retirement program administered by the Virginia Retirement System, may retire
198 under the provisions of subdivision A 1 or B 1 if (i) he is otherwise eligible for such benefits, (ii) he
199 has not withdrawn his accumulated contributions prior to the effective date of his retirement, and (iii) he
200 has five or more years of creditable service (a) as a member in the retirement system established by this
201 chapter, (b) as a member in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this
202 title, or (c) while earning the benefits permitted by § 51.1-138 for which his employer has paid the
203 contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any
204 requirements as to the member being in service shall not apply. No member shall be entitled to the
205 benefits of this subsection if his employer certifies that his service was terminated because of
206 dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

207 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is
208 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of
209 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting
210 requirements of this section, and §§ 51.1-138 and 51.1-205.

211 2. Any other member who terminates service after five or more years of creditable service (i) as a
212 member in the retirement system established by this chapter, (ii) as a member in the retirement system
213 established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (iii) while earning the benefits permitted by
214 § 51.1-138 may retire under the provisions of subdivision A 2 or B 2 if he has not withdrawn his
215 accumulated contributions prior to the effective date of his retirement or if he has five or more years of
216 creditable service (a) as a member in the retirement system established by this chapter, (b) as a member
217 in the retirement system established by Chapter 2 (§ 51.1-200 et seq.) of this title, or (c) while earning
218 the benefits permitted by § 51.1-138 for which his employer has paid the contributions and such
219 contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the
220 member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection~~
221 ~~if his employer certifies that his service was terminated because of dishonesty, malfeasance, or~~
222 ~~misfeasance in office. The certification may be appealed to the Board.~~

223 Effective December 31, 2003, any employee in service on June 30, 2002, and July 1, 2002, who is
224 credited with five or more years of creditable service rendered under Chapter 1 (§ 51.1-100 et seq.) of
225 this title, Chapter 2 (§ 51.1-200 et seq.) of this title, or this chapter shall not be subject to the vesting
226 requirements of this section, and §§ 51.1-138 and 51.1-205.

227 D. Effective date of retirement. - The effective date of retirement shall be after the last day of
228 service, but shall not be more than 90 days prior to the filing of the notice of retirement.

229 E. Notification on behalf of member. - If the member is physically or mentally unable to submit
230 written notification of his intention to retire, the member's appointing authority may submit notification
231 on his behalf.

232 § 51.1-305. Service retirement generally.

233 A. Normal retirement. - Any member in service at his normal retirement date with five or more years
234 of creditable service may retire upon written notification to the Board setting forth the date the
235 retirement is to become effective.

236 B. Early retirement. - Any member in service who has either (i) attained his fifty-fifth birthday with
237 five or more years of creditable service or (ii) in the case of a member of any of the previous systems
238 immediately prior to July 1, 1970, complied with the requirements for retirement set forth under the
239 provisions of such previous system as in effect immediately prior to July 1, 1970, may retire upon
240 written notification to the Board setting forth the date the retirement is to become effective.

241 B1. Mandatory retirement. - Any member who attains 70 years of age shall be retired 20 days after
242 the convening of the next regular session of the General Assembly. However, if the mandatory
243 retirement provisions of this subdivision would require a member of the State Corporation Commission

to be retired before the end of his elected term and such retirement would occur during a session of the General Assembly in which the General Assembly is required, pursuant to § 12.1-6, to elect another member or members of the State Corporation Commission to serve either a regular term or a portion of a regular term, such member who otherwise would be subject to the mandatory retirement provisions of this subdivision shall be retired upon the first to occur of (i) the expiration of the term to which he was elected or (ii) 20 days after the commencing of the regular session of the General Assembly that immediately follows the date such member attains 72 years of age. The provisions of this subsection shall apply only to those members who are elected or appointed to an original or subsequent term commencing after July 1, 1993.

C. Deferred retirement for members terminating service. - Any member who terminates service after five or more years of creditable service may retire under the provisions of subsection A or B of this section, if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. ~~No member shall be entitled to the benefits of this subsection if his appointing authority certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.~~

D. Effective date of retirement. - The effective date of retirement shall be after the last day of service of the member, but shall not be more than 90 days prior to the filing of the notice of retirement.

E. Notification of retirement. - In addition to the notice to the Board required by this section, the same notice shall be given by the member to his appointing authority. If a member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification to the Board on his behalf.

F. A member of the retirement system whose service is terminated because of dishonesty, malfeasance, or misfeasance in office will be divested of his entitlement to any and all service or disability retirement benefits if the member's employer provides VRS with: (i) a final judgment or order issued by a court of competent jurisdiction establishing that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office; or (ii) an agreement entered into by the member acknowledging that the member's service was terminated because of dishonesty, malfeasance, or misfeasance in office.

For the purposes of this section, a judgment or order will be considered final if the time within which notice of appeal must be filed has lapsed, no notice has been filed, and no appeal or other action seeking post-judgment or post-order remedy is pending.

Upon receipt from the member's employer of either of the above-described documents, VRS shall immediately terminate the member's service and process a refund of the member's accumulated contributions pursuant to the provisions of § 51.1-161.

VRS may hold in abeyance the processing of a member's retirement application upon receipt from an employer of notice that the member has been terminated because of dishonesty, malfeasance, or misfeasance in office together with: (i) documentation establishing that legal action has been commenced to establish the basis for the termination; or (ii) an agreement entered into by the member that the retirement application may be suspended.

All service credit lost from ceasing to be a member pursuant to the provisions of this section shall be ineligible for purchase pursuant to § 51.1-142.2 at any future time should the former member obtain employment in a position covered by the retirement system.