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SENATE BILL NO. 995

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 51.1-124.30, 51.1-126.6, 51.1-144, 51.1-145, 51.1-166, 51.1-306, 51.1-601.1, 51.1-603.1, 51.1-609, 51.1-610, 51.1-1100, 51.1-1103, 51.1-1155, 51.1-1156, 51.1-1163, 51.1-1164, and 51.1-1173 of the Code of Virginia, relating to the Virginia Retirement System; technical changes to carry out provisions enacted by the General Assembly in 2012 regarding retirement plans.

Patron—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-124.30, 51.1-126.6, 51.1-144, 51.1-145, 51.1-166, 51.1-306, 51.1-601.1, 51.1-603.1, 51.1-609, 51.1-610, 51.1-1100, 51.1-1103, 51.1-1155, 51.1-1156, 51.1-1163, 51.1-1164, and 51.1-1173 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-124.30. Board as trustee of funds; investments; standard of care; liability for losses.

A. The Board shall be the trustee of the funds of the Retirement System that it administers and of those resulting from the abolished system. Subject to the provisions of this chapter, the Board shall have full power to invest and reinvest such funds as authorized by law.

B. The Board shall have the power to borrow money in such amounts as may be necessary to discharge current obligations under this chapter whenever in its judgment it would be more advantageous to borrow money than to sell securities held by the Retirement System. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Board, but in no case is the due date of any note or other evidence of debt to be beyond the end of the biennium succeeding the biennium in which the debt is incurred. Securities held by the Retirement System may be hypothecated by the Board as security for the payment of any debt incurred under this section.

C. The Board shall discharge its duties with respect to the Retirement System solely in the interest of the beneficiaries thereof and shall invest the assets of the Retirement System with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

D. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in subsection C above shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this chapter.

E. In the case of a plan administered by the Board which provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, ~~if the employee or beneficiary actually exercises discretion over the assets in his account,~~ the Board shall not be liable for any loss resulting from such employee's or beneficiary's *(i)* exercise of ~~control~~ *discretion over the assets in his account or (ii) inaction with respect to the assets in his account that results in such assets being placed in a default investment option selected by the Board*.

F. In the case of an automatic rollover of a mandatory cash-out, as that term is defined under I.R.C. § 401 (a) (31) (B) of the United States Internal Revenue Code of 1986 (including as such section is amended or renumbered, or any successor provision thereto) and regulations thereunder applicable to governmental plans, the Board shall not be liable for any loss resulting from the Board's selection of an individual retirement plan provider and investment product where the selection is made in accordance with guidelines to be adopted by the Board that are similar to the safe harbor guidelines adopted by the United States Department of Labor for this purpose.

§ 51.1-126.6. Certain employees of public school divisions.

A. The Board shall establish a defined contribution plan covering any eligible employee serving in a position designated in § 22.1-60 who elects to participate in the plan.

B. Any school board established pursuant to Article VIII, Section 7 of the Constitution of Virginia and Chapter 5 (§ 22.1-28 et seq.) of Title 22.1 is hereby authorized to make contributions to the optional retirement plan established by the Virginia Retirement System pursuant to this section for the benefit of its eligible employees who elect to participate in such a plan. Any eligible employee of such school board hired on or after the effective date of the plan shall make an irrevocable election to participate in

either (i) the retirement system established by this chapter or (ii) the optional retirement plan established by the Virginia Retirement System pursuant to this section. Such election shall be made in accordance with the guidelines established by the Virginia Retirement System.

C. No employee of any school board who is an active member of the retirement plan established under this section shall also be an active member in the Virginia Retirement System or beneficiary thereof other than as a contingent annuitant. Such eligible employee may, however, be covered under any insurance plan established by the Board under this title for which he would have been otherwise eligible.

D. The contribution by the school board to such employee's defined contribution account shall be determined by the Board of Trustees of the Virginia Retirement System in consultation with its actuary. Contributions to the defined contribution account and all earnings thereon shall be credited to an account to be maintained for each eligible employee who elects to participate. Contributions by the school board to an electing employee's defined contribution account shall be in lieu of contributions to the retirement system required pursuant to § 51.1-145. *In addition, any person who becomes a member on or after July 1, 2010, shall, pursuant to procedures established by the Board, pay member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code, in an amount equal to five percent of his creditable compensation, to the retirement plan established under this section. Each employee making such member contribution shall be deemed to consent and agree to any salary reduction for purposes of the member contribution. Such member contributions shall be in addition to all contributions by the school board to such employee's defined contribution account.*

E. If a member of the optional retirement plan maintained under this section is at any time in service as an employee in a position covered for retirement purposes under the provisions of this chapter, Chapter 2 (§ 51.1-200 et seq.), Chapter 2.1 (§ 51.1-211 et seq.), or Chapter 3 (§ 51.1-300 et seq.) of this title, his benefit payments under the optional retirement plan maintained under this section shall be suspended while so employed; provided, however, reemployment in such position shall have no effect on the payment under the optional retirement plan maintained under this section if the benefits are being paid in an annuity form under a lifetime annuity contract purchased with the member's account balance.

F. Effective January 1, 2014, any reference to "retirement system" or "Virginia Retirement System" in this section, as the context requires, shall mean the hybrid retirement program described in § 51.1-169. The Virginia Retirement System shall develop policies and procedures for the administration of such plan in accordance with existing and future federal and state policies, regulations, and statutes governing the administration of such plans.

§ 51.1-144. Member contributions.

A. Each member shall contribute five percent of his creditable compensation for each pay period for which he receives compensation.

The employer shall deduct the contribution payable by the member. Every employee accepting employment shall be deemed to consent and agree to any deductions from his compensation required by this chapter.

B. In determining the creditable compensation of a member in a payroll period, the Board may consider the rate of compensation payable to the member on the date of entry or removal of his name from the payroll as having been received throughout the month if service for the month is creditable. If service for the month is not creditable, the Board may consider any compensation payable during the month as not being creditable compensation.

C. The minimum compensation provided by law for any member shall be reduced by the deduction required by this section. Except for any benefits provided by this chapter, payment of compensation minus the deductions shall be a full and complete discharge of all claims for services rendered by the member during the period covered by the payment.

D. No deduction shall be made from any member's compensation if the employer's contribution is in default.

E. The Board may modify the method of collecting the contributions of members so that the employer may retain the amounts deducted from members' salaries and have a corresponding amount deducted from state funds otherwise payable to the employer.

F. 1. ~~Except~~ *Only* as provided in subdivisions 3 and 4~~,~~ *may* any employer ~~may~~ elect to pay an equivalent amount in lieu of ~~all~~ *any* member contributions required of its employees. Such payments shall be credited to the members' contribution account. These contributions shall not be considered wages for purposes of Chapter 7 (§ 51.1-700 et seq.), nor shall they be considered to be salary for purposes of this chapter.

2. A person who becomes a member on or after July 1, 2010, shall be required to pay member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code in the amount of five percent of creditable compensation if the person is (i) a member covered by the defined benefit plan established under this chapter, (ii) a member of the State Police Officers' Retirement System under Chapter 2 (§ 51.1-200 et seq.), (iii) a member of the Virginia Law Officers' Retirement

System under Chapter 2.1 (§ 51.1-211 et seq.), (iv) a member of the Judicial Retirement System under Chapter 3 (§ 51.1-300 et seq.), or (v) earning the benefits permitted by § 51.1-138.

3. A member who is an employee of a county, city, town, or other local employer other than a local public school board, regardless of whether the member is a person who becomes a member on or after July 1, 2010, shall be required to pay member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code in the amount of five percent of creditable compensation as follows: (i) any member who commences or recommences employment on or after July 1, 2012, shall be required to contribute five percent of his creditable compensation upon commencing or recommencing employment and (ii) members in service on June 30, 2012, shall be required to contribute five percent of their creditable compensation no later than July 1, 2016. Such member described in subdivision (ii) shall contribute a minimum of an additional one percent of his creditable compensation beginning on each July 1 of 2012, 2013, 2014, 2015, and 2016, or until the member's contribution equals five percent of creditable compensation, but the county, city, town, or other local employer other than a local public school board may elect to require members to contribute more than an additional one percent each year, in whole percentages. In no case shall a member be required to contribute more than five percent of his creditable compensation for each pay period for which he receives compensation. No county, city, town, or other local employer other than a local public school board shall be allowed to elect to pay any amount of member contributions except to pay the difference between five percent and the employee contribution during the phase-in period described in this subdivision for a member who was in service on June 30, 2012.

4. A member who is an employee of a local public school board, regardless of whether the member is a person who becomes a member on or after July 1, 2010, shall be required to pay member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code in the amount of five percent of creditable compensation as follows: (i) any member who commences or recommences employment on or after July 1, 2012, shall be required to contribute five percent of his creditable compensation upon commencing or recommencing employment and (ii) members in service on June 30, 2012, shall be required to contribute five percent of their creditable compensation no later than July 1, 2016. Such member described in subdivision (ii) shall contribute a minimum of an additional one percent of his creditable compensation beginning on each July 1 of 2012, 2013, 2014, 2015, and 2016, or until the member's contribution equals five percent of creditable compensation, but the local public school board employer may elect to require members to contribute more than an additional one percent each year, in whole percentages. In no case shall a member be required to contribute more than five percent of his creditable compensation for each pay period for which he receives compensation. No local public school board employer shall be allowed to elect to pay any amount of member contributions except to pay the difference between five percent and the employee contribution during the phase-in period described in this subdivision for a member who was in service on June 30, 2012.

~~5. Notwithstanding any other provision of this section or other law, only those employers who were paying member contributions as of February 1, 2010, may pay member contributions. The provisions of this subdivision shall not apply to a county, city, town, local public school board, or other local employer.~~

G. The Board may develop procedures to effect the transfer of member contributions paid by employers on or after July 1, 1980, and accrued interest on those contributions, to the member contribution account of the member, if such contributions have been previously deposited into the retirement allowance account of the employer.

§ 51.1-145. Employer contributions.

A. The total annual employer contribution for each employer, expressed as a percentage of the annual membership payroll, shall be determined in a manner so as to remain relatively level from year to year. Each employer shall contribute an amount equal to the sum of the normal contribution, any accrued liability contribution, and any supplementary contribution. The contribution rates for each employer shall be determined after each valuation and shall remain in effect until a new valuation is made. All contribution rates shall be computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board.

B. The normal employer contribution for any period shall be determined as a percentage, equal to the normal contribution rate, of the total covered compensation of the members employed during the period.

C. The normal contribution rate for any employer shall be determined as the percentage represented by the ratio of (i) the annual normal cost to provide the benefits of the retirement system with respect to members employed by the employer in excess of the members' contributions to (ii) the total annual compensation of the members.

D. The accrued liability contribution for any employer for any period shall be determined as a percentage, equal to the accrued liability contribution rate, of the total compensation of the members

during the period.

E. The accrued liability contribution rate for any employer shall be a percentage of the total annual compensation of the members, determined so that a continuation of annual contributions by the employer at the same percentage of total annual compensation over a period of 40 years will be sufficient to amortize the unfunded accrued liability with respect to the employer.

F. The unfunded accrued liability with respect to any employer as of any valuation date shall be determined as the excess of (i) the then present value of the benefits to be provided under the retirement system in the future to members and former members over (ii) the sum of the assets of the retirement system then currently in the members' contribution account and in the employer's retirement allowance account, plus the then present value of the stipulated contributions to be made in the future by the members, plus the then present value of the normal contributions expected to be made in the future by the employer.

G. The supplementary contribution for any employer for any period shall be determined as a percentage, equal to the supplementary contribution rate, of the total compensation of the members employed during the period.

H. Until July 1, 1997, the supplementary contribution rate for any employer shall be determined as the percentage represented by the ratio of (i) the average annual amount of post-retirement supplements, as provided for in this chapter, which is anticipated to become payable during the period to which the rate will be applicable with respect to former members to (ii) the total annual compensation of the members.

I. The Board shall certify to each employer the applicable contribution rate and any changes in the rate.

J. The employer contribution for the year shall be increased to the extent necessary to overcome any insufficiency if the contributions for any employer, when combined with the amount of the retirement allowance account of the employer, are insufficient to provide the benefits payable during the year.

K. The appropriation bill which is submitted to the General Assembly by the Governor prior to each regular session that begins in an even-numbered year shall include the contributions which will become due and payable to the retirement allowance account from the state treasury during the following biennium. The amount of the contributions shall be based on the contribution rates certified by the Board pursuant to subsection I of this section that are applicable to the Commonwealth as an employer and the anticipated compensation during the biennium of the members of the retirement system on behalf of whom the Commonwealth is the employer.

K1. The General Assembly shall set contribution rates that are at least equal to the following percentage of the contribution rates certified by the Board pursuant to subsection I:

1. For members who are state employees as defined in § 51.1-124.3 and who are participating in a retirement plan established pursuant to Chapter 1 (§ 51.1-124.1 et seq.), (i) 67.02 percent for fiscal years beginning July 1, 2012, and July 1, 2013, (ii) 78.02 percent for fiscal years beginning July 1, 2014, and July 1, 2015, (iii) 89.01 percent for fiscal years beginning July 1, 2016, and July 1, 2017, and (iv) 100 percent for fiscal years beginning on or after July 1, 2018;

2. For members who are teachers as defined in § 51.1-124.3 and who are participating in a retirement plan established pursuant to Chapter 1 (§ 51.1-124.1 et seq.), (i) 69.53 percent for fiscal years beginning July 1, 2012, and July 1, 2013, (ii) 79.69 percent for fiscal years beginning July 1, 2014, and July 1, 2015, (iii) 89.84 percent for fiscal years beginning July 1, 2016, and July 1, 2017, and (iv) 100 percent for fiscal years beginning on or after July 1, 2018;

3. For members participating in a retirement plan established pursuant to Chapter 2 (§ 51.1-200 et seq.), (i) 75.84 percent for fiscal years beginning July 1, 2012, and July 1, 2013, (ii) 83.90 percent for fiscal years beginning July 1, 2014, and July 1, 2015, (iii) 91.95 percent for fiscal years beginning July 1, 2016, and July 1, 2017, and (iv) 100 percent for fiscal years beginning on or after July 1, 2018;

4. For members participating in a retirement plan established pursuant to Chapter 2.1 (§ 51.1-211 et seq.), (i) 75.82 percent for fiscal years beginning July 1, 2012, and July 1, 2013, (ii) 83.88 percent for fiscal years beginning July 1, 2014, and July 1, 2015, (iii) 91.94 percent for fiscal years beginning July 1, 2016, and July 1, 2017, and (iv) 100 percent for fiscal years beginning on or after July 1, 2018; and

5. For members participating in a retirement plan established pursuant to Chapter 3 (§ 51.1-300 et seq.), (i) 83.98 percent for fiscal years beginning July 1, 2012, and July 1, 2013, (ii) 89.32 percent for fiscal years beginning July 1, 2014, and July 1, 2015, (iii) 94.66 percent for fiscal years beginning July 1, 2016, and July 1, 2017, and (iv) 100 percent for fiscal years beginning on or after July 1, 2018.

L. In the case of all teachers whose compensation is paid exclusively out of funds derived from local revenues and appropriations from the general fund of the state treasury, the Commonwealth shall contribute to the extent specified in the appropriations act. In the case of any teacher whose compensation is paid out of funds derived in whole or in part from any special fund or from a contributor other than the Commonwealth or a political subdivision thereof, contributions shall be paid out of the special fund or by the other contributor in proportion to that part of the compensation derived

therefrom. In the case of all state employees whose compensation is paid exclusively by the Commonwealth out of the general fund of the state treasury, the Commonwealth shall be the sole contributor, and all contributions shall be paid out of the general fund. In the case of a state employee whose compensation is paid in whole or in part out of any special fund or by any contributor other than the Commonwealth, contributions on behalf of the employee shall be paid out of the special fund or by the other contributor in proportion to that part of the employee's compensation derived therefrom. The governing body of each political subdivision is hereby authorized to make appropriations from the funds of the political subdivision necessary to pay its proportionate share of contributions on behalf of every state employee whose compensation is paid in part by the political subdivision. In the case of each person who has elected to remain a member of a local retirement system, the Commonwealth shall reimburse the local employer an amount equal to the product of the compensation of the person and the employer contribution rate as used to determine the employer contribution for state employees under this section. Each employer shall keep such records and periodically furnish such information as the Board may require and shall inform new employees of their duties and obligations in connection with the retirement system.

M. The employer contribution rate established for each employer may include the cost to administer any defined contribution plan administered by the Virginia Retirement System and available to the employer. The portion of such contribution designated to cover administrative costs of the defined contribution plans shall not be deposited into the trust fund established for the defined benefit plans but shall be separately accounted for and used solely to defray the administrative costs associated with the various defined contributions plans. This provision shall supplement the authority of the Board under §§ 51.1-124.22 and 51.1-602 to charge and collect administrative fees to employers whose employees have available the various defined contribution plans administered by the Virginia Retirement System.

N. Notwithstanding the foregoing, the total employer contribution for each employer~~,~~ *authorized to participate in the hybrid retirement program described in § 51.1-169 for any period,* expressed as a percentage of the employer's payroll for such period, shall be established as the contribution rate payable by such employer with respect to its employees enrolled in the defined benefit plan established under this chapter. The employer's contribution shall be first applied to the defined contribution component of the hybrid retirement program described in § 51.1-169, and the remainder shall be deposited in the employer's retirement allowance account. Institutions of higher education shall also pay contributions to the employer's retirement allowance account in amounts representing the difference between the contribution rate payable with respect to employees enrolled in the defined benefit plan under this chapter and the employer contributions paid to any optional retirement plan it offers on behalf of any of its nonfaculty Covered Employees, as described in Article 6 (§ 23-38.114 et seq.) of Chapter 4.10 of Title 23. The employer contribution rate established for each employer may include the annual rate of contribution payable ~~to~~ *by* such employer with respect to employees enrolled in the optional defined contribution retirement plans established under §§ 51.1-126, 51.1-126.1, 51.1-126.3, and 51.1-126.4.

§ 51.1-166. Post-retirement supplements generally.

A. In addition to the allowances payable under this title, post-retirement supplements shall be payable to the recipients of such allowances. Supplements shall be subject to the same conditions of payment as are allowances.

B. The amounts of the post-retirement supplements shall be determined as percentages of the allowances supplemented hereby. The percentages shall be determined annually by reference to the increase in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor. The percentages shall be based on monthly averages and shall be the difference between (i) the average for the calendar year just ended and (ii) the average for the most recent calendar year used in the determination of the post-retirement supplements currently being paid. The annual increase, if any, in the CPI-U shall be considered only to the extent of the first two percent plus one-half of the next two percent of any additional increase, or a maximum increase in the post-retirement supplement of three percent in any given year. However, for anyone who (a) is not a person who becomes a member on or after July 1, 2010, and (b) has at least 60 months of creditable service as of January 1, 2013, the applicable annual increase, if any, in the CPI-U shall be considered only to the extent of the first three percent plus one-half of the next four percent of any additional increase, or a maximum increase in the post-retirement supplement of five percent in any given year. If the difference in the percentages determined above is zero or less, the post-retirement supplements shall either not commence or shall continue unchanged until such time as an annual determination results in a difference in the percentages that are greater than zero.

Contribution rates for all employers shall include an amount equal to 100 percent of the total annual amount necessary to fund all post-retirement supplements. All contribution rates shall be computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by

the Board.

C. There shall be no change in the amount of any post-retirement supplement between determination dates except as necessary to reflect changes in the amount of the allowance being supplemented. The post-retirement supplement shall remain a constant percentage of the respective allowance being supplemented. No new post-retirement supplement shall be commenced except as of a determination date. The post-retirement supplement determined as of any determination dates shall become effective at the beginning of the fiscal year and shall be in lieu of any post-retirement supplements previously payable, which shall thereupon be terminated.

D. 1. 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.

2. A person who is the recipient of an allowance pursuant to § 2.2-3204, subsection Q of Item 469 of Chapter 890 of the Acts of Assembly of 2011, or § 51.1-155.1, 51.1-155.2, 51.1-157, 51.1-162, 51.1-207, 51.1-218, 51.1-308, 51.1-1117, ~~or~~ 51.1-1128, *51.1-1161, or 51.1-1169* must receive that allowance for one full calendar year before being entitled to post-retirement supplements.

3. Any person who, as of January 1, 2013, (i) is the recipient of an allowance under this title or (ii) would otherwise be eligible for an unreduced allowance under the applicable chapter within five years, including a person described in clause (ii) who commences an unreduced allowance on or after January 1, 2013, must receive that allowance for one full calendar year before being entitled to post-retirement supplements.

4. Any other person who has less than 20 years of creditable service must receive that allowance for one full calendar year after the date he would otherwise have been eligible for an unreduced allowance under the applicable chapter before being entitled to post-retirement supplements.

§ 51.1-306. 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 creditable service. The allowance shall not exceed 78 percent of the average final compensation of the member. Notwithstanding the foregoing, for a member appointed or elected to an original term commencing on or after January 1, 2013, the allowance shall equal *the sum of (a)* 1.65 percent of his average final compensation multiplied by the amount of his creditable service *performed or purchased on or after January 1, 2013, and (b) 1.70 percent of his average final compensation multiplied by the amount of all other creditable service*.

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

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. If the member has not attained his sixtieth birthday or has less than 30 years of service, 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 sixtieth birthday on which he would have completed a total of 30 years of creditable service.

B. Normal and early retirement guarantees. - Any member who was a member of one of the previous systems immediately prior to July 1, 1970, and who would have been eligible for retirement benefits thereunder shall be guaranteed a minimum retirement allowance no less than that for which he would have qualified had he continued to participate therein.

C. Determination of retirement allowance. - For the purposes of subsection B of this section, the retirement allowance shall be determined on the assumption that the retirement allowance is payable to the member alone and that no optional retirement allowance is elected.

D. Beneficiary serving in position covered by this title. - If a beneficiary of a service retirement allowance under this chapter or under any of the previous systems 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.

§ 51.1-601.1. Participation in plan by certain employees.

All employees of the Commonwealth and its agencies commencing employment or who are reemployed on or after January 1, 2008, in a position covered by the Virginia Retirement System, and who *(i)* have not elected to participate in a plan established pursuant to ~~(i)~~ § 403(b) of the Internal Revenue Code of 1986, as amended, or (ii) *do not participate in the hybrid retirement program described in* § 51.1-169, shall participate in the plan described in § 51.1-602, unless such employee

elects, in a manner prescribed by the Board, not to participate in such plan. The amount of the deferral for any such employee participating in the plan shall equal, on a semimonthly basis, $20 of otherwise payable compensation, unless the employee elects to defer a different amount.

§ 51.1-603.1. Participation by employees of political subdivisions in deferred compensation plan of Virginia Retirement System.

A. The Virginia Retirement System may enter into an agreement with any political subdivision of the Commonwealth to permit participation by the political subdivision's employees in the deferred compensation plan established and administered by the Board pursuant to § 51.1-602, except that political subdivisions of the Commonwealth otherwise participating in the retirement system pursuant to Article 5 (§ 51.1-130 et seq.) of Chapter 1 shall participate in the deferred compensation plan established and administered by the Board pursuant to § 51.1-602 to the extent necessary to provide benefits under the hybrid retirement program described in § 51.1-169.

B. The political subdivision may provide in the agreement that its employees who *(i)* commence employment or reemployment on or after a specified date occurring on or after the effective date of this provision in the agreement, *(ii) are not participating in the hybrid retirement program described in § 51.1-169,* and *(iii)* ~~who~~ have not affirmatively elected to participate in the plan described in § 51.1-602 or a plan established by such political subdivision pursuant to § 403(b) of the Internal Revenue Code of 1986, as amended, shall participate in either such plan described in § 51.1-602 or a 403(b) plan, as determined by the political subdivision, unless such employee elects, in a manner prescribed by the Board, not to participate in such plan. The amount of the deferral for any such employee participating in the plan shall equal, on a semimonthly basis, $20 of otherwise payable compensation, unless the employee elects to defer a greater amount.

§ 51.1-609. Contributions on behalf of qualified participants.

A. A participating employer or, on behalf of the Commonwealth, the Department of Accounts or any agency of the Commonwealth not covered under the central payroll system, shall transfer funds from its appropriations to the private corporation or institution designated to hold investments under the plan or plans adopted or established by the participating employer pursuant to § 401 (a) or § 403 (b) of the Internal Revenue Code of 1986, as amended. The funds shall be held, administered and invested as provided for in the applicable document adopted for the administration of such contributions.

B. The amount credited on behalf of a qualified participant pursuant to this section shall not exceed, on a semimonthly basis, the lesser of fifty dollars or fifty percent of the amount that the qualified participant voluntarily contributes to the deferred compensation plan established under this chapter or to a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as amended, unless otherwise determined by the General Assembly through the appropriations process. The amount credited pursuant to this section on behalf of a qualified participant who is an employee of a participating employer other than the Commonwealth shall be a discretionary amount determined by the participating employer's governing body from time to time.

C. No amount shall be credited pursuant to subsection B on behalf of a qualified participant who is participating in the hybrid retirement program described in § 51.1-169 if the qualified participant has not contributed the maximum amount of voluntary contributions under subdivision C 2 of § 51.1-169.

§ 51.1-610. Local cash match plans.

A. Any county, municipality, authority, or other political subdivision of the Commonwealth may by ordinance or resolution adopt and establish for itself and its employees a cash match plan. Any such cash match plan may include constitutional officers and their employees. The ordinance or resolution adopting or establishing such plan shall create or designate an appropriate board or officer to administer the plan, and shall confer upon such board or officer the authority to do all things by way of supervision, administration, and implementation of the plan, including the power to contract with private corporations or institutions for services in connection therewith.

B. If it deems it advisable, any county, municipality, authority, or other political subdivision of the Commonwealth, which by ordinance or resolution adopts and establishes for itself and its employees a cash match plan, may create a trust or other special fund for the segregation of the funds or assets resulting from contributions.

C. No amount shall be credited pursuant to any cash match plan created pursuant to this section on behalf of a qualified participant who is participating in the hybrid retirement program described in § 51.1-169 if the qualified participant has not contributed the maximum amount of voluntary contributions under subdivision C 2 of § 51.1-169.

§ 51.1-1100. Definitions.

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

"Act" means the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

"Company" means an insurance company issuing a long-term disability insurance policy purchased by the Board pursuant to this chapter.

"Disability" means a partial disability or total disability.

"Disability benefit" means income replacement payments payable to a participating employee under a short-term or long-term disability benefit program pursuant to this chapter. Disability benefits do not include benefits payable under the Act.

"Eligible employee" means (i) a state employee as defined in § 51.1-124.3 who is a member of the retirement system, including the hybrid retirement program described in § 51.1-169; (ii) an employee as defined in § 51.1-201; (iii) an employee as defined in § 51.1-212; ~~or~~ (iv) *a judge as defined in § 51.1-301 appointed or elected to an original term commencing on or after January 1, 2014; or (v)* a qualifying part-time employee. Any person participating in a plan established pursuant to § 51.1-126, 51.1-126.1, 51.1-126.4, 51.1-126.5, 51.1-502.1, or 51.1-502.3 shall not be an eligible employee. Employees of the University of Virginia Medical Center covered under the basic insurance policies purchased by the Medical Center shall not be considered eligible employees under this chapter, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board of Visitors, purchases such insurance policies from the Virginia Retirement System.

"Existing employee" means an employee who elected to participate in the Virginia Sickness and Disability Program.

"Partial disability" exists during the first 24 months following the occurrence or commencement of an illness or injury when an employee is earning less than 80 percent of his predisability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis; or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.

"Participating employee" means any eligible employee required or electing to participate in the program.

"Program" means the program providing sick leave, family and personal leave, short-term disability, and long-term disability benefits for participating employees established pursuant to this chapter.

"Qualifying part-time employee" means any person who would qualify as a state employee as defined in § 51.1-124.3 but, rather than being regularly employed full time on a salaried basis, is regularly employed part time for at least 20 hours but less than 40 hours per week on a salaried basis.

"State service" means the employee's total period of state service as an eligible employee, including all periods of classified full-time and classified part-time service and periods of leave without pay, but not including periods during which the employee did not meet the definition of an eligible employee.

"Total disability" exists (i) during the first 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform all of his essential job functions or (ii) after 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform any job for which he is reasonably qualified based on his training or experience and earning less than 80 percent of his predisability earnings.

"Work-related injury" means an injury, as such term is defined in § 65.2-101, to a participating employee for which benefits are payable under the Act and the Commonwealth is the employer for purposes of the Act.

In addition to the definitions listed above, the definitions listed in § 51.1-124.3 shall apply to this chapter except as otherwise provided.

§ 51.1-1103. Participation in the program.

A. All prior elections to participate in the program shall be irrevocable.

B. 1. Except for eligible employees who are employed by an institution of higher education in a faculty position performing teaching, research or administrative duties, all eligible employees commencing employment or who are reemployed on or after January 1, 1999, shall participate in the program. The effective date of participation in the program for such employees shall be their first day of employment.

2. Except for such employees of an institution of higher education, all eligible employees not participating in the program prior to October 1, 2002, shall participate in the program effective January 10, 2003, unless such employee elects not to participate in the program as provided herein. An election not to participate shall be in writing, and on forms prescribed by the Retirement System, and shall be received by the Retirement System during the period commencing on October 1, 2002, but before January 1, 2003. An election not to participate in the program shall be irrevocable and such employee shall be ineligible to participate in the program for the period of his continued employment by the Commonwealth *except that any such employee who elects to participate in the hybrid retirement program described in § 51.1-169 shall participate in the program.*

C. Any eligible employee who is employed by an institution of higher education in a faculty position performing teaching, research or administrative duties may elect to participate in the program established under this chapter or under an existing program provided by the institution. Any eligible employee who is (i) employed by an institution of higher education in a faculty position performing teaching, research or administrative duties prior to October 1, 2002, and (ii) not participating in the program, shall

participate in the program established under this chapter effective January 10, 2003, unless such employee elects not to participate in the manner provided in subdivision B 2. Any eligible employee of an institution of higher education in a faculty position performing teaching, research or administrative duties employed or reemployed on or after October 1, 2002, shall participate in the program unless such employee elects not to participate in the program, in writing and on such forms as prescribed by the Retirement System, within 60 days from the time of entry upon the performance of his duties. The effective date of participation in the program for such employee shall be the first day following the expiration of such 60-day period or January 10, 2003, whichever is later.

Any eligible employee under this subsection shall participate in the sickness and disability program established by his institution of higher education until such time as the employee participates in the program established under this chapter. If the institution of higher education has not established its own sickness and disability program, such eligible employee shall participate in the program established under this chapter effective on his first day of employment.

An election not to participate in the program established under this chapter shall be irrevocable and such employee shall be ineligible to participate in the program for the period of his continued employment by the Commonwealth.

D. Notwithstanding any provision to the contrary, no participating employee commencing employment or reemployment on or after July 1, 2009, shall receive benefits under Article 3 of this Chapter (Nonwork Related Disability Benefits) until the participating employee completes one continuous year of active employment or reemployment.

E. The provisions of this subsection shall apply to any eligible employee who participates in the program under the provisions of subdivision B 2 or subsection C. Any eligible employee, including a person employed by an institution of higher education in a faculty position performing teaching, research or administrative duties, who (i) is a member of the Retirement System, and (ii) commenced employment or was reemployed prior to January 1, 1999, shall have his sick leave balances, as of the effective date of coverage in the program, converted to disability credits, as provided in subsection F.

F. Any eligible employee converting his sick leave balance as provided in subsection E shall receive one hour of disability credit for each hour of sick leave. Disability credits shall be used to continue periods for which the participating employee receives income replacement during periods of short-term and long-term disability at 100 percent of creditable compensation. Disability credits shall be reduced by one day for each day that the participating employee receives short-term or long-term disability benefits.

G. Upon retiring directly from state service and receiving an immediate annuity, the eligible employee's unused disability credits shall be converted to service credit under the Retirement System at the rate of one month of service for each 173 hours of disability credits, rounded to the next highest month, unless the employee elects to be paid for the balance of such disability credits under the same terms and subject to the same conditions as are in effect for the payment of sick leave benefits in the employee's agency on December 31, 1998. Upon leaving state service under any other circumstances, the employee shall be paid for the balance of such disability credits under the same terms and subject to the same conditions as are in effect for the payment of sick leave benefits in the employee's agency on December 31, 1998, unless he elects to have such credits converted to service credit under the Retirement System at the rate of one month of service for each 173 hours of disability credits, rounded to the next highest month. Upon entry into long-term disability, the employee may be paid for the balance of such disability credits under the same terms and subject to the same conditions in effect for payment of sick leave benefits in the employee's agency as of December 31, 1998.

H. Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) termination of employment, (ii) death, or (iii) retirement from service. Eligibility for participation in the program shall be suspended during periods that an employee is placed on nonpay status, including leave without pay, if such nonpay status is due to suspension pending investigation or outcome of employment-related court or disciplinary action.

§ 51.1-1155. Short-term disability benefit.

A. Except as provided in subsection B of § 51.1-1153, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or of maternity leave. If an employee returns to work for one day or less during the seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability *or major chronic condition* shall not require a waiting period.

B. Except as provided in § 51.1-1171, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous participation in the program and (ii) thereafter, a percentage of a participating

employee's creditable compensation during the periods specified below, based on the number of months of continuous participation in the program attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

Months of Continuous Participation	Work Days of 100% Replacement of Creditable Compensation	Work Days of 80% Replacement of Creditable Compensation	Work Days of 60% Replacement of Creditable Compensation
60-119	25	25	75
120-179	25	50	50
180 or more	25	75	25

C. Creditable compensation during periods an employee receives short-term disability benefits shall include salary increases awarded during the period covered by short-term disability benefits.

D. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, ~~or~~ (iii) maternity leave, *or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee*.

§ 51.1-1156. Successive periods of short-term disability.

A. A participating employee's disability, which is related or due to the same cause or causes as a prior disability for which short-term disability benefits were paid, shall be deemed to be a continuation of the prior disability if the employee returns to his position on an active employment basis for less than 45 consecutive calendar days. If a participating employee, after receiving short-term disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to his position on an active employment basis for 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability.

C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty. *The Retirement System shall develop policies and procedures to administer the effects of the 45-day period in connection with participants who are deemed to have a major chronic condition.*

§ 51.1-1163. Supplemental short-term disability benefit.

A. Payments of supplemental short-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any payments for medical, legal or rehabilitation expenses.

B. Supplemental short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability. If an employee returns to work for one day or less during the seven calendar days following the commencement of a disability but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability *or major chronic condition* shall not require any waiting period.

C. Except as provided in § 51.1-1171, supplemental short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous participation in the program and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous participation in the program attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

Months of Continuous Participation	Work Days of 100% Replacement of Creditable Compensation	Work Days of 80% Replacement of Creditable Compensation	Work Days of 60% Replacement of Creditable Compensation
60 to 119	85	25	15

120 or more	85	40	0

D. Creditable compensation during periods an employee receives supplemental short-term disability benefits shall include salary increases awarded during the period of short-term disability coverage.

E. Supplemental short-term disability benefits shall be payable only during periods of total disability, ~~or~~ partial disability, *or periodic absences due to a major chronic condition as defined by the Board or its designee*.

§ 51.1-1164. Successive periods of short-term disability.

A. A participating employee's disability, which is related or due to the same cause or causes as a prior disability for which supplemental short-term disability benefits were paid, shall be deemed to be a continuation of the prior disability if the employee (i) is eligible for benefits payable under the Act, whether or not he is receiving such benefits, and (ii) returns to his position on an active employment basis for less than 45 consecutive calendar days. If a participating employee, after receiving short-term disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to his position on an active employment basis for 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability.

C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty. *The Retirement System shall develop policies and procedures to administer the effects of the 45-day period in connection with participants who are deemed to have a major chronic condition.*

§ 51.1-1173. Health insurance coverage during disability absences.

A. Participating employees enrolled in a health insurance plan ~~established pursuant to § 2.2-2818~~ shall *(i)* continue to be covered during periods of short-term disability and ~~shall~~ *(ii)* have the option of continuing to be covered by such plan during periods of absence covered by long-term disability benefits, *but only to the extent such long-term disability benefits are provided by the employers of such participating employees*.

B. The Commonwealth shall pay the employer's share of the cost of health insurance coverage under such plan for participating employees and for the families or dependents of such employees during periods the employee is receiving short-term disability benefits to the same extent as for other state employees covered by such plan.

C. Participating employees enrolled in such plan established pursuant to § 2.2-2818 shall have the option of continuing to be covered under such plan, and shall pay the full cost for coverage under such plan for themselves and for their families and dependents during periods the employee is receiving long-term disability benefits.