

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 51.1-126 of the Code of Virginia, relating to optional retirement plans maintained by institutions of higher education.*

[S 79]

Approved

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

**1. That § 51.1-126 of the Code of Virginia is amended and reenacted as follows:**

**§ 51.1-126. Employees of institutions of higher education.**

For purposes of this section, "optional retirement plan" means a retirement plan covering the employee for retirement purposes other than the Virginia Retirement System defined benefit retirement plan established under this chapter or the hybrid retirement program described in § 51.1-169.

A. 1. The Board shall maintain an optional retirement plan covering employees engaged in the performance of teaching, administrative, or research duties with an institution of higher education and any institution of higher education is authorized to make contributions to such plan for the benefit of its employees participating in such plan. Except (i) as provided in subsection B for institutions of higher education that have established their own optional retirement plan and (ii) for employees described in subdivision A 2, every employee hired by an institution of higher education on or after July 1, 2003, engaged in the performance of teaching, administrative, or research duties shall make an irrevocable election to participate in either: (a) the Virginia Retirement System defined benefit retirement plan established by this chapter until January 1, 2014, and thereafter, the hybrid retirement program described in § 51.1-169; or (b) an optional retirement plan maintained by the Board. Such election shall be exercised no later than 60 days from the time of the employee's entry upon the performance of his duties. If an election is not made within such 60 days, such employee shall be deemed to have elected to participate in the Virginia Retirement System defined benefit retirement plan or the hybrid retirement program described in § 51.1-169, as applicable.

2. Any employee (i) hired on or after July 1, 2003, by an institution of higher education engaged in the performance of teaching, administrative, or research duties; and (ii) who at the time of hiring is in continuous service in the performance of such teaching, administrative, or research duties shall participate in the optional retirement plan maintained by the Board if the most recent retirement plan covering the employee prior to such hiring was an optional retirement plan. If the most recent retirement plan covering the employee prior to such hiring was the Virginia Retirement System defined benefit retirement plan or the hybrid retirement program described in § 51.1-169, such person shall participate in such defined benefit retirement plan or such hybrid retirement program, as applicable, from the time of his entry upon the performance of his duties.

B. 1. Any institution of higher education, upon receipt of approval by the Board in writing, may establish and maintain its own optional retirement plan covering its employees who are engaged in the performance of teaching, administrative, or research duties. Upon such approval, such institution is authorized to make contributions to its own optional retirement plan for the benefit of its employees who elect to participate or who are required to participate in such plan as provided in this subsection.

2. Every employee, with the exception of employees described in subdivision B 3, (i) hired on or after July 1, 2003, by an institution of higher education that has established and is maintaining its own optional retirement plan pursuant to this subsection and (ii) engaged in the performance of teaching, administrative, or research duties shall make an irrevocable election to participate in either: (a) the Virginia Retirement System defined benefit retirement plan established by this chapter until January 1, 2014, and thereafter, the hybrid retirement program described in § 51.1-169, as applicable; or (b) such optional retirement plan of the institution of higher education. Such employee shall not be provided any election to participate in an optional retirement plan maintained by the Board.

The election shall be exercised no later than 60 days from the time of the employee's entry upon the performance of his duties. If an election is not made within such 60 days, such employee shall be deemed to have elected to participate in the Virginia Retirement System defined benefit retirement plan established by this chapter or the hybrid retirement program described in § 51.1-169, as applicable.

3. Any employee (i) hired on or after July 1, 2003, by an institution of higher education engaged in the performance of teaching, administrative, or research duties; and (ii) who at the time of hiring is in continuous service in the performance of such teaching, administrative, or research duties shall participate in the optional retirement plan established by the institution of higher education pursuant to this subsection if the most recent retirement plan covering the employee prior to such hiring was an

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57 optional retirement plan. If the most recent retirement plan covering the employee prior to such hiring  
 58 was the Virginia Retirement System defined benefit retirement plan or the hybrid retirement program  
 59 described in § 51.1-169, such person shall participate in such defined benefit retirement plan or such  
 60 hybrid retirement program, as applicable, from the time of his entry upon the performance of his duties.

61 C. Any employee engaged in the performance of teaching, administrative, or research duties at an  
 62 institution of higher education who was covered under an optional retirement plan for retirement  
 63 purposes, other than the optional retirement plan established by such institution pursuant to subdivision  
 64 B 1, shall, at the time such institution establishes its own optional retirement plan pursuant to  
 65 subdivision B 1, automatically and immediately begin to participate in the optional retirement plan  
 66 established pursuant to subdivision B 1, notwithstanding such employee's prior election to participate in  
 67 a different optional retirement plan.

68 D. 1. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 upon any  
 69 institution of higher education for administering and overseeing the institution's retirement plan  
 70 established pursuant to subsection A shall be charged for each employee participating in such plan and  
 71 shall be for costs incurred by the Retirement System that are directly related to the administration and  
 72 oversight of such plan.

73 2. Each institution of higher education may charge and collect a reimbursement fee from each  
 74 employee participating in the institution's retirement plan established pursuant to subsection A. The total  
 75 amount charged and collected for such fee from all such employees for any year shall not exceed the  
 76 total of the costs described in subdivision D 1 and charged to the institution for such year.

77 E. 1. No employee of an institution of higher education who is an active member in any plan  
 78 maintained by the Board or established by an institution of higher education, pursuant to this section,  
 79 shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

80 2. If a member of the optional retirement plan maintained under this section is at any time in service  
 81 as an employee in a position covered for retirement purposes under the provisions of Chapters 1  
 82 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3 (§ 51.1-300 et seq.), his  
 83 benefit payments under the optional retirement plan maintained under this section shall be suspended  
 84 while so employed; provided, however, reemployment shall have no effect on the payment under the  
 85 optional plan maintained under this section if the benefits are being paid in an annuity form under an  
 86 annuity contract purchased with the member's account balance.

87 F. 1. The contribution by the Commonwealth on behalf of an employee participating in an optional  
 88 retirement plan maintained by the Board or on behalf of an employee participating in an optional  
 89 retirement plan established by his institution of higher education under this section to such employee's  
 90 retirement plan shall be (i) at least 8.5 percent but not in excess of 8.9 percent of creditable  
 91 compensation for any person who becomes a member on or after July 1, 2010, and (ii) 10.4 percent of  
 92 creditable compensation for all other employees. Any institution of higher education that elects a  
 93 contribution in excess of 8.5 percent of creditable compensation for any employee described in clause (i)  
 94 shall provide for the same percentage of creditable compensation as contributions for each of its  
 95 employees described in clause (i) who participates in such optional retirement plan. The portion of the  
 96 contribution in excess of 8.5 percent of creditable compensation pursuant to clause (i) shall not be  
 97 funded from the general fund of the state treasury, but shall be paid by the institution of higher  
 98 education from other funds. In addition, any person who becomes a member on or after July 1, 2010,  
 99 shall, pursuant to procedures established by the Board, pay member contributions on a salary reduction  
 100 basis in accordance with § 414(h) of the Internal Revenue Code, in an amount equal to five percent of  
 101 his creditable compensation, to the optional retirement plan maintained by the Board on his behalf or the  
 102 optional retirement plan established by his institution of higher education on his behalf, as applicable.  
 103 Each employee making such member contribution shall be deemed to consent and agree to any salary  
 104 reduction for purposes of the member contribution. Such member contributions shall be in addition to all  
 105 contributions pursuant to clause (i). An institution of higher education may make an additional  
 106 contribution for participants who, before January 1, 1991, exercised the election to participate in the plan  
 107 provided by the institution employing them. Such additional contributions shall be made using funds  
 108 other than general funds, tuition or fees, up to an additional 2.17 percent of creditable compensation.

109 2. ~~These~~ *The governing board of any institution of higher education that establishes its own optional*  
 110 *retirement plan pursuant to this section may establish a policy regarding the number of years of service,*  
 111 *or portion thereof, that an employee must perform before such employee shall be entitled to receive all*  
 112 *contributions made on his behalf by the institution to the optional retirement plan. If an employee has*  
 113 *less than the number of years of service, or portion thereof, established by the governing board at the*  
 114 *time he ceases employment, other than by death or involuntary separation due to causes other than job*  
 115 *performance or misconduct, as determined by the institution of higher education in its sole discretion,*  
 116 *he shall not receive or be entitled to that portion of the contributions that was paid by the institution on*  
 117 *his behalf for which he does not have the required service. The institution of higher education may*

118 *establish a forfeiture account for such employer contributions forgone by the employee and may specify*  
119 *the uses of funds in the forfeiture account. The provisions of this subdivision shall apply only to any*  
120 *person who (i) becomes a participant in the institution of higher education's optional retirement plan on*  
121 *or after July 1, 2014, and (ii) is not an employee described under subdivision B 3. Any future change to*  
122 *a policy established by the governing board of an institution of higher education pursuant to this*  
123 *subdivision regarding the number of years of service required for an employee to receive all*  
124 *contributions made by the institution to the optional retirement plan shall apply only to new employees*  
125 *hired on or after the date of the change.*

126 3. The contribution rates established pursuant to subdivision 1 shall be examined by the Board at  
127 least once every six years. The examination shall consider the salary peer group mean contribution as  
128 determined by the State Council of Higher Education and the Virginia Retirement System actuary, and,  
129 if deemed advisable, recommend a revision to the rate of contribution by the Commonwealth.

130 G. With respect to any employee who elects pursuant to subsection A or B to participate in the  
131 Virginia Retirement System defined benefit retirement plan established by this chapter or the hybrid  
132 retirement program described in § 51.1-169, the institution of higher education shall collect and pay all  
133 employee and employer contributions to the Virginia Retirement System for retirement and group life  
134 insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) for such employees.

135 H. The Virginia Retirement System shall develop policies and procedures for the administration of  
136 the optional retirement plan it maintains. To assist the Virginia Retirement System in developing such  
137 policies and procedures, the Board may appoint an advisory committee of higher education employees to  
138 supply guidance in the process.

139 I. As a condition of the Board granting approval to an institution of higher education to establish its  
140 own optional retirement plan, the institution of higher education shall develop policies and procedures  
141 for the administration of such plan and shall submit such policies and procedures to the Board as part of  
142 the Board-approval process required under this section. In addition, an institution of higher education  
143 that is granted approval by the Board to establish its own optional retirement plan covering employees  
144 engaged in the performance of teaching, administrative, or research duties shall not adopt or implement  
145 policies and procedures that are substantially different from the policies and procedures approved by the  
146 Board in the initial approval process unless the Board, in writing, approves such substantially different  
147 policies and procedures.

148 J. The Board shall establish guidelines for the employee elections referred to in subdivision B 2 and  
149 shall review and, if deemed advisable, recommend revisions to the contribution rates as described in  
150 subsection F. Except for the duties described in subsection I, the Board shall have no duties and  
151 responsibilities with respect to such plans established pursuant to subsection B.