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**SENATE BILL NO. 813**

Offered January 14, 2015

Prefiled January 2, 2015

A *BILL to amend and reenact §§ 51.1-124.4, 51.1-126.4, 51.1-145, 51.1-162, 51.1-168, 51.1-169, 51.1-207, 51.1-218, 51.1-308, 51.1-1100, and 51.1-1153 of the Code of Virginia, relating to the Virginia Retirement System.*

Patron—Watkins

Referred to Committee on Finance

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

1. That §§ 51.1-124.4, 51.1-126.4, 51.1-145, 51.1-162, 51.1-168, 51.1-169, 51.1-207, 51.1-218, 51.1-308, 51.1-1100, and 51.1-1153 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-124.4. **Exemption of assets from taxation; exemption of benefits and assets from execution and assignment; trust funds; unclaimed property; eligible rollover distribution.**

A. The assets of the retirement systems created under this title are hereby exempted from any state, county, or municipal tax. Retirement allowances and other benefits accrued or accruing to any person under this title and the assets of the retirement systems created under this title shall not be subject to execution, attachment, garnishment, or any other process whatsoever, except any process for a debt to any employer who has employed such person, and except for administrative actions pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 or any court process to enforce a child or child and spousal support obligation, nor shall any assignment thereof, other than a voluntary, irrevocable assignment of group life insurance pursuant to § 51.1-510, be enforceable in any court. However, retirement benefits and assets created under this title which are deemed to be marital property pursuant to Chapter 6 (§ 20-89.1 et seq.) of Title 20 may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to § 20-107.3. The assets of the retirement systems administered by the Board are trust funds and shall be used solely for the benefit of members and beneficiaries and to administer the retirement systems. The Board shall establish procedures whereby persons entitled to property held by the Board, which would be presumed abandoned under the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.), may recover it.

B. Notwithstanding any provision of this chapter to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The terms "eligible rollover distribution," "eligible retirement plan" and "distributee" have the meanings prescribed by § 401(a)(31) of the Internal Revenue Code (including as such section is amended or renumbered, or any successor provision thereto) and the regulations thereunder, as may be amended. *Such terms shall include non-spouse designated beneficiaries and inherited individual retirement accounts in accordance with § 402(c)(11) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans.* In the event of a mandatory cash-out, as that term is defined under the Internal Revenue Code and the regulations thereunder applicable to governmental plans, greater than \$1,000, if the member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly in accordance with this section, then the Board shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board in accordance with subsection F of § 51.1-124.30.

C. *The provisions of this chapter and Chapters 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.) and 3 (§ 51.1-300 et seq.) are intended to meet the requirements of § 401(a) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans.*

**§ 51.1-126.4. Employees of the Virginia Port Authority.**

A. The Virginia Port Authority, hereinafter referred to as the Authority, may establish one or more retirement plans covering in whole or in part its employees. The Authority is authorized to make contributions for the benefit of its employees who elect to participate in such plan or arrangement rather than in any other retirement system established by this chapter. Any such alternative retirement plan shall become effective at such time as determined by the Authority. The Authority shall notify the Virginia Retirement System of the establishment of such plan no later than ninety days prior to the effective date. Any present employee of the Authority may make an irrevocable election to participate in the retirement plan established by this chapter or any plan provided by the Authority. Such election shall be made no later than 180 days after the effective date of the plan provided for in this section on forms

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59 supplied by the Virginia Retirement System. Any employee hired on or after the effective date of the  
60 plan provided for in this section shall become a participant in that plan, subject to the eligibility criteria  
61 of that plan.

62 B. No employee of the Authority who is an active member of a plan established under this section  
63 shall also be an active member of the retirement system established by this chapter or a beneficiary of  
64 such other plan other than as a contingent annuitant.

65 C. ~~The contribution by the Authority to any other retirement plan established on behalf of its~~  
66 ~~employees as provided in subsection A shall be the contribution by the Commonwealth which would be~~  
67 ~~required if the employee were a member of the retirement system established by this chapter or eight~~  
68 ~~percent of creditable compensation, whichever is less.~~

69 D. The Authority shall develop policies and procedures for the administration of any retirement plan  
70 it establishes under this section. A copy of such policies and procedures shall be filed with the Board of  
71 Trustees of the Virginia Retirement System.

72 E. ~~D.~~ Pursuant to § 62.1-129.1, employees of the Authority shall be eligible to continue their  
73 participation in the Virginia Retirement System or may participate in an alternative retirement plan  
74 offered pursuant to this section.

75 **§ 51.1-145. Employer contributions.**

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

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

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

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

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

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

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

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

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

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

116 K. The appropriation bill which is submitted to the General Assembly by the Governor prior to each  
117 regular session that begins in an even-numbered year shall include the contributions which will become  
118 due and payable to the retirement allowance account from the state treasury during the following  
119 biennium. The amount of the contributions shall be based on the contribution rates certified by the  
120 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 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.

*O. Employer contributions may be returned to the employer only as determined in accordance with § 401(a) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans.*

**§ 51.1-162. Death before retirement.**

A. If a member dies before retirement, and if no benefits are payable under subsection B, the amount of his accumulated contributions shall be paid to the designated beneficiary or to a surviving relative according to the order of precedence set forth in this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member under this chapter or the abolished system. Each member shall designate who is to receive a refund of accumulated contributions credited to his account in the event of the death of the member prior to retirement. The designation must be made in a manner prescribed by the Board.

If no designation has been made, or the death of the designated person occurs prior to the death of the member and another designation has not been made, the proceeds shall be paid to the persons surviving at the death of the member in the following order of precedence:

First, to the spouse of the member;

Second, if no surviving spouse, to the children of the member and descendants of deceased children, per stirpes;

Third, if none of the above, to the parents of the member;

Fourth, if none of the above, to the duly appointed executor or administrator of the estate of the member;

Fifth, if none of the above, to other next of kin of the member entitled under the laws of the domicile of the member at the time of his death.

B. *To the extent required by § 401(a)(37) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans,* if a member dies in service, including a member who is on leave without pay while performing active duty military service in the armed forces of the United States, and if no benefits are payable under subsection C of this section, a retirement allowance shall be paid to the person or persons designated as provided in subsection A of this section if the person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s). If no designation has been made, or if the death of the designated person occurs prior to the death of the member and another designation has not been made, a retirement allowance shall be paid in the following order of precedence to the member's (a) surviving spouse, (b) minor children, or (c) parent(s). The retirement allowance shall be paid to the first person qualifying in the orders of precedence set out in this subsection. If more than one minor child survives the deceased member, the allowance shall be divided among them in a manner determined by the Board. If more than one parent survives the deceased member, the allowance shall be divided among them in a manner determined by the Board. The retirement allowance shall be continued during the lifetime of the person or in the case of a minor child until the child dies or attains the age of majority, whichever occurs first. The retirement allowance shall equal the deceased retirement allowance that would have been payable under the joint and survivor option so that the same amount would be continued to such person after the member's death. If the member dies prior to his fifty-fifth birthday, then, for purposes of this subsection, the member shall be presumed to be age 55 on his date of death. However, if the member dies in service prior to his sixtieth birthday and is (1) a person who becomes a member on or after July 1, 2010, (2) a member who does not have at least 60 months of creditable service as of January 1, 2013, or (3) a member of the hybrid retirement program described in § 51.1-169, then, for purposes of this subsection, the member shall be presumed to be age 60 on his date of death. When determining the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subdivision A 4 of § 51.1-155 shall not apply. If the person elects in writing, the amount of the member's accumulated contributions or lump sum payment shall be paid to him exclusively, in lieu of any other benefits under this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member under this chapter.

C. If a member dies in service from a cause compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), a retirement allowance shall be paid to the member's surviving spouse. If no compensation is finally awarded under the Virginia Workers' Compensation Act due to legal proceedings or otherwise resulting in settlement from the persons causing such death, the Virginia Workers'

Compensation Commission shall determine whether the member's death was from a cause compensable under the Virginia Workers' Compensation Act. If the member leaves no surviving spouse or the surviving spouse dies, any minor children of the deceased member shall be paid an allowance until the children die or attain the age of majority, whichever occurs first. If more than one minor child survives the deceased member, the allowance shall be divided in a manner determined by the Board. If the deceased member leaves neither surviving spouse nor minor child, the allowance, divided in a manner determined by the Board, shall be paid to the member's parents during their lives.

The retirement allowance payable hereunder to a qualifying survivor shall be the annual amount which when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member equals 50 percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the retirement system when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

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

**§ 51.1-168. Limits on creditable compensation; maximum benefits; mandatory payment of allowance.**

A. Notwithstanding any other provision of law, creditable compensation used for computing any benefit or employee contribution under or to the Retirement System shall not exceed \$200,000 (as adjusted in \$5,000 increments from time to time by the adjustment factor described in I.R.C. § 415 (d) on the basis of a base period of the calendar quarter beginning July 1, 2001). In determining average final compensation for periods beginning on or after July 1, 2001, the limit on creditable compensation applied to compensation attributable to periods prior to July 1, 2001, shall be \$200,000. Notwithstanding the foregoing, compensation for any employee who became a member of the Retirement System (i) prior to the ninetieth day after the opening date of the 1996 Session of the General Assembly, on whose behalf employee or employer contributions are made into the Retirement System, and for whom annual compensation is used for computing any benefit, shall not exceed the limit on compensation as adjusted by the Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to eligible participants under state and local governmental plans under I.R.C. § 401 (a) (17) as amended in 1993 and as contained in § 13212 (d) (3) of the Omnibus Budget Reconciliation Act of 1993 (P. L. 103-66).

B. Notwithstanding any other provision of law, the annual benefit under the Retirement System of a member and any related death or other benefit shall, if necessary, be reduced to the extent required by § 415 (b) of the Internal Revenue Code, as adjusted by the Secretary of the Treasury pursuant to § 415 (d) of the Internal Revenue Code. Any adjustment pursuant to § 415 (d) of the Internal Revenue Code shall apply to all members including those who have died, retired, or otherwise terminated service with a nonforfeitable right to a retirement allowance before the effective date of such adjustment. If an employee participating in the Retirement System is also a participant in another defined benefit plan sponsored or maintained by an employer participating in the Retirement System and subject to the limitations under § 415 of the Internal Revenue Code, such employer shall apply the combined limit test required by § 415 (b) of the Internal Revenue Code to all such plans, to the extent required by § 415 of the Internal Revenue Code. Whenever a reduction in annual benefits is required to meet the annual benefit limit required by § 415 (b) of the Internal Revenue Code, the annual benefits under such employer's other plan or plans will be reduced before benefits under the Retirement System.

C. Any vendor for a defined benefit plan sponsored or maintained by an employer that participates in the Retirement System shall (i) request and maintain the records needed, (ii) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (iii) advise the employer of any annual benefit that exceeds the applicable limitation. If there is no vendor for these services, the employer shall (a) request and maintain the records needed, (b) perform the testing services required to assure compliance with the limitations described in § 415 (b) of the Internal Revenue Code, including testing required where the employer maintains or sponsors another plan that must be tested together with the Retirement System, and (c) reduce any annual benefit that exceeds the applicable limitation.

D. On and after January 1, 1989, the retirement allowance of a member who has terminated employment shall begin no later than the later of (i) April 1 of the calendar year following the calendar year that the member attains seventy and one-half years of age or (ii) April 1 of the calendar year

following the calendar year in which the member terminates employment. If the member fails, following reasonable notification, to elect a form of payment by such required beginning date, the retirement allowance shall be paid as a single life annuity and the spousal acknowledgement otherwise required by § 51.1-165.1 shall not be required. *Notwithstanding any other provisions of law, § 401(a)(9) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans are incorporated by reference.*

**§ 51.1-169. Hybrid retirement program.**

A. For purposes of this section, "hybrid retirement program" or "program" means a hybrid retirement program covering any employee in a position covered for retirement purposes under the provisions of Chapter 1 (§ 51.1-124.1 et seq.) for retirement purposes other than the Virginia Retirement System defined benefit retirement plan established under Chapter 1 (§ 51.1-124.1 et seq.). Persons who are participants in, or eligible to be participants in, the retirement plans under the provisions of Chapter 2 (§ 51.1-200 et seq.), Chapter 2.1 (§ 51.1-211 et seq.), the optional retirement plans established under §§ 51.1-126.1, 51.1-126.3, 51.1-126.4, and 51.1-126.7, or a person eligible to earn the benefits permitted by § 51.1-138 shall not be eligible to participate in the hybrid retirement program. Any person who is employed as a firefighter, emergency medical technician, or law-enforcement officer as those terms are defined in § 15.2-1512.2 and whose employing political subdivision has legally adopted an irrevocable resolution as described in subdivision B 4 of § 51.1-153 and subdivision A 3 of § 51.1-155 shall not be eligible to participate in the hybrid retirement program. No member of the Judicial Retirement System under Chapter 3 (§ 51.1-300 et seq.) shall be eligible to participate in the hybrid retirement program described in § 51.1-169 except members appointed to an original term on or after January 1, 2014.

The Board shall maintain the hybrid retirement program established by this section, and any employer is authorized to make contributions under such program for the benefit of its employees participating in such program. Every person who is otherwise eligible to participate in the program but is not a member of a retirement plan administered by the Virginia Retirement System the first time he is hired *or rehired* on or after January 1, 2014, in a covered position, shall participate in the hybrid retirement program established by this section.

A person who participates in the otherwise applicable defined benefit retirement plan established by this title and administered by the Virginia Retirement System under this chapter may make an irrevocable election to participate in the hybrid retirement program maintained under this section. Such election shall be exercised no later than April 30, 2014. If an election is not made by April 30, 2014, such employee shall be deemed to have elected not to participate in the hybrid retirement program and shall continue to participate in his current retirement plan.

B. 1. The employer shall make contributions to the defined benefit component of the program in accordance with § 51.1-145.

2. The employer shall make a mandatory contribution to the defined contribution component of the program on behalf of an employee participating in the program in the amount of one percent of creditable compensation. In addition, the employer shall make a matching contribution on behalf of the employee based on the employee's voluntary contributions under the defined contribution component of the program to the deferred compensation plan established under § 51.1-602, up to a maximum of 2.5 percent of creditable compensation for the payroll period, as follows: (i) 100 percent of the first one percent of creditable compensation contributed by the employee to the defined contribution component of the program under subdivision C 2 for the payroll period, and (ii) 50 percent of the next three percent of creditable compensation contributed by the employee to the defined contribution component of the program under subdivision C 2 for the payroll period. The matching contribution by the employer shall be made to the appropriate cash match plan established for the employee under § 51.1-608.

3. The total amount contributed by the employer under subdivision 2 shall vest to the employee's benefit according to the following schedule:

- a. Upon completion of two years of active participation, 50 percent.
- b. Upon completion of three years of active participation, 75 percent.
- c. Upon completion of four years of active participation, 100 percent.

For purposes of this subdivision, "active participation" includes creditable service, as defined in § 51.1-124.3, in any retirement plan established by this title and administered by the Retirement System.

If an employee terminates employment with an employer prior to achieving 100 percent vesting, contributions made by an employer on behalf of the employee under subdivision 2 that are not vested, shall be forfeited. The Board may establish a forfeiture account and may specify the uses of the forfeiture account.

4. An employee may direct the investment of contributions made by an employer under subdivision B 2.

5. No loans or hardship distributions shall be available from contributions made by an employer under subdivision B 2.

C. 1. An employee participating in the hybrid retirement program maintained under this section shall,

pursuant to procedures established by the Board, make mandatory contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code (i) to the defined benefit component of the program in the amount of four percent of creditable compensation in lieu of the amount described in subsection A of § 51.1-144 and (ii) to the defined contribution component of the program in the amount of one percent of creditable compensation.

2. An employee participating in the hybrid retirement program may also make voluntary contributions to the defined contribution component of the program of up to four percent of creditable compensation or the limit on elective deferrals pursuant to § 457(b) of the Internal Revenue Code, whichever is less. The contribution by the employee shall be made to the appropriate deferred compensation plan established by the employee under § 51.1-602.

3. If an employee's voluntary contributions under subdivision C 2 are less than four percent of creditable compensation, the contribution will increase by one-half of one percent, beginning on January 1, 2017, and every three years thereafter, until the employee's voluntary contributions under subdivision C 2 reach four percent of creditable compensation. The increase will be effective beginning with the first pay period that begins in such calendar year unless the employee elects not to increase the voluntary contribution in a manner prescribed by the Board.

4. No loans or hardship distributions shall be available from contributions made by an employee under this subsection.

D. 1. The amount of the service retirement allowance under the defined benefit component of the program shall be governed by § 51.1-155 for all creditable service credited prior to the effective date of the member's participation in the program. For all other creditable service, the allowance shall equal one percent of a member's average final compensation multiplied by the amount of his creditable service while in the program. For judges who are participating in the hybrid retirement program, creditable service shall be determined as provided in § 51.1-303 and service retirement eligibility shall be determined as provided in § 51.1-305.

2. No member shall retire for disability under the defined benefit component of the program, *provided, however, that judges who are participating in the hybrid retirement program may retire for disability under §§ 51.1-307 and 51.1-308.*

3. Except as provided in subdivision 1, any employee participating in the hybrid retirement program maintained under this section shall be considered to be a person who becomes a member on or after July 1, 2010.

4. In all other respects, administration of the defined benefit component of the program shall be governed by the provisions of Chapter 1 (§ 51.1-124.1 et seq.).

E. With respect to any employee who elects, pursuant to subsection A, to participate in the otherwise applicable defined benefit retirement plan established by this title and administered by the Virginia Retirement System, the employer shall collect and pay all employee and employer contributions to the Virginia Retirement System for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) for such employee.

F. 1. The Board shall develop policies and procedures for administering the hybrid retirement program it maintains, including the establishment of guidelines for employee elections and deferrals under the program.

2. No employee who is an active member in the hybrid retirement program maintained under this section shall also be an active member of any other optional retirement plan maintained under the provisions of Chapter 1 (§ 51.1-124.1 et seq.).

3. If a member of the hybrid retirement program maintained under this section is at any time in service as an employee in a position covered for retirement purposes under the provisions of Chapter 1 (§ 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 benefit payments under the hybrid retirement program maintained under this section shall be suspended while so employed; provided, however, reemployment shall have no effect on a payment under the defined contribution component of the program if the benefit is being paid in an annuity form under an annuity contract purchased with the member's account balance.

4. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 on any employer for administering and overseeing the hybrid retirement program maintained under this section shall be charged for each employee participating in such program and shall be for costs incurred by the Virginia Retirement System that are directly related to the administration and oversight of such program. Notwithstanding the foregoing, the Board is authorized to collect all or a portion of such fee directly from the employee.

5. The creditable compensation for any employee on whose behalf employee or employer contributions are made into the hybrid retirement program shall not exceed the limit on compensation as adjusted by the Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to eligible participants under state and local governmental plans under § 401(a)(17) of the

Internal Revenue Code as amended in 1993 and as contained in § 13212(d)(3) of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

6. The Board may contract with private corporations or institutions, subject to the standards set forth in § 51.1-124.30, to provide investment products as well as any other goods and services related to the administration of the hybrid retirement program. The Virginia Retirement System is hereby authorized to perform related services, including but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, and asset purchase, control, and safekeeping.

**§ 51.1-207. Death before retirement.**

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

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

B. If a member dies in service, including a member who is on leave without pay while *To the extent required by § 401(a)(37) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans, if a member dies in service, including a member performing active duty military service in the armed forces of the United States, and if no benefits are payable under subsection C, a retirement allowance shall be paid to the person designated as provided in subsection A of this section if the person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s).* If no designation has been made, or if the death of the designated person occurs prior to the death of the member and another designation has not been made, a retirement allowance shall be paid in the same order of precedence as set forth in subsection B of § 51.1-162. The retirement allowance shall be continued during the lifetime of the person or in the case of a minor child until the child dies or attains the age of majority, whichever occurs first. The retirement allowance shall equal the decreased retirement allowance that would have been payable under the joint and survivor option so that the same amount would be continued to such person after the member's death. If the member dies prior to his fiftieth birthday, then, for purposes of this subsection, the member shall be presumed to be age 50 on his date of death. When determining the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subsection B of § 51.1-206 shall not apply. If the person elects in writing, the amount of the member's accumulated contributions shall be paid to the person exclusively, in lieu of any other benefits under this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member.

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

The retirement allowance, payable hereunder to a qualifying survivor, shall be the annual amount which when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member, shall equal 50 percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the retirement system when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by written notification to the Board within 90 days after the death of the member in order to make



available a retirement allowance under the provisions of subsection B.

**§ 51.1-218. Death before retirement.**

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

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

B. ~~If a member dies in service, including a member who is on leave without pay while~~ *To the extent required by § 401(a)(37) of the Internal Revenue Code, as amended or renumbered, and the regulations thereunder applicable to governmental plans, if a member dies in service, including a member performing active duty military service in the armed forces of the United States, and if no benefits are payable under subsection C, a retirement allowance shall be paid to the person designated as provided in subsection A of this section if the person is the member's (i) surviving spouse, (ii) minor child, or (iii) parent(s).* If no designation has been made, or if the death of the designated person occurs prior to the death of the member and another designation has not been made, a retirement allowance shall be paid in the same order of precedence as set forth in subsection B of § 51.1-162. The retirement allowance shall be continued during the lifetime of the person or in the case of a minor child until the child dies or attains the age of majority, whichever occurs first. The retirement allowance shall equal the decreased retirement allowance that would have been payable under the joint and survivor option so that the same amount would be continued to such person after the member's death. If the member dies prior to his fiftieth birthday, then, for purposes of this subsection, the member shall be presumed to be age 50 on his date of death. When determining the allowance that would have been payable to the member had the member retired on the date of his death, the provisions of subsection B of § 51.1-217 shall not apply. If the person elects in writing, the amount of the member's accumulated contributions shall be paid to the person exclusively, in lieu of any other benefits under this section. This amount shall be reduced by the amount of any retirement allowance previously received by the member.

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

The retirement allowance, payable hereunder to a qualifying survivor, shall be the annual amount which, when added to the compensation payable under the Virginia Workers' Compensation Act for the death of the member, shall equal 50 percent of the member's average final compensation if the survivor does not qualify for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member. If the survivor qualifies for death benefits under the provisions of the Social Security Act in effect on the date of the death of the member, the allowance payable from the Retirement System when added to the compensation payable under the Virginia Workers' Compensation Act shall equal thirty-three and one-third percent of the member's average final compensation.

Any beneficiary entitled to the entire amount of a retirement allowance under the provisions of this subsection as a result of the death of a member shall be entitled to waive his rights to the allowance by written notification to the Board within 90 days after the death of the member in order to make available a retirement allowance under the provisions of subsection B.

**§ 51.1-308. Disability retirement allowance.**

A. Allowance payable on retirement. - Upon retirement for disability, a member who has five or more years of creditable service shall receive an annual retirement allowance payable during his lifetime and continued disability equal to 1.70 percent of average final compensation when multiplied by the

smaller of (i) twice the amount of creditable service or (ii) the amount of creditable service he would have completed at age 60 if he had remained in service to that age. ~~Notwithstanding the foregoing~~ However, for a member appointed or elected to an original term commencing on or after January 1, 2013, the allowance shall equal 1.65 percent of his average final compensation multiplied by the smaller of (a) twice the amount of his creditable service or (b) the amount of creditable service he would have completed at age 60 if he had remained in service to that age *applicable percentage shall be 1.65 percent, and for a member participating in the hybrid retirement program described in § 51.1-169, the applicable percentage shall be one percent.* If a member has already attained age 60, the amount of creditable service at his date of retirement shall be used.

In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of the member.

B. Workers' compensation guarantee. - If a member retires for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual retirement allowance shall, subject to the provisions of subsection D, equal 66 and two-thirds percent of the member's average final compensation if the member does not qualify for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system shall equal 50 percent of his average final compensation. A member shall be entitled to the larger of the retirement allowance as determined under the provisions of subsection A of this section or under the provisions of this subsection.

C. General disability retirement guarantee. - The disability retirement allowance payable to a member who immediately prior to July 1, 1970, was a member of one of the previous systems shall be at least an amount equal to the disability retirement allowance to which he would have been entitled under the provisions of the previous system.

D. Determination of retirement allowance. - For the purposes 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.

E. Reduction of allowance. - Any allowance payable to a member who retires for disability from a cause compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of any payments under the provisions of the Act in effect on the date of retirement of the member and the excess of the allowance shall be paid to such member. When the time for compensation payments under the Act has elapsed, the member shall receive the full amount of the allowance payable during his lifetime and continued disability. If the member's payments under the Virginia Workers' Compensation Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his allowance shall be computed as if he were receiving the compensation to which he would otherwise be entitled.

F. Special retirement allowance guarantee. - Any member retired from a cause which is not compensable under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement allowance during his lifetime and continued disability which equals 50 percent of the member's average final compensation if the member does not qualify for primary social security benefits under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies for primary social security benefits under the provisions of the Social Security Act in effect on the date of retirement, the allowance payable from the retirement system shall equal 33 and one-third percent of his average final compensation.

#### **§ 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.

#### **§ 51.1-1153. Participation in the program.**

A. All eligible employees shall become participants in this program, provided, however, that the governing body of an employer may adopt a resolution on or before January 1, 2014, which shall be submitted to the Board, requesting that its eligible employees not participate in the program because the employer has or will establish, and continue to maintain, comparable disability coverage for such eligible employees. The election by the governing body of an employer not to participate in this program shall be irrevocable. The employer need not consider the provisions of § 51.1-1178 when determining the comparability of its disability coverage to this program. *As the context requires, the term "participating employee" includes the employees of an employer electing not to participate in the program under this subdivision.*

B. The effective date of participation in the program for participating employees shall be their first day of employment or the effective date of their participation in the hybrid retirement program described in § 51.1-169, whichever is later.

C. Notwithstanding any provision to the contrary, no participating employee shall receive benefits under Article 2 (§ 51.1-1154 et seq.) until the participating employee completes one year of continuous service.

D. Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) termination of employment or (ii) death. 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.