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HOUSE BILL NO. 292

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 9, 1996)

(Patron Prior to Substitute—Delegate Brickley)

A BILL to enact a second supplemental federal retiree settlement program.

Whereas, during its special session in July 1994, the General Assembly passed legislation authorizing the Tax Commissioner to enter into settlement agreements with retired federal and military Virginia taxpayers affected by the *Harper v. Virginia Department of Taxation* case; and

Whereas, such legislation contained a November 1, 1994, deadline for the affected taxpayers to file certain forms and other supporting documentation, where necessary, with the Department of Taxation in order to participate in the settlement; and

Whereas, such legislation also contained a February 1, 1995, deadline for the affected taxpayers to deliver a settlement agreement accepting the final settlement offer to the Department of Taxation; and

Whereas, a large number of such taxpayers failed to provide the necessary supporting documentation, missed a deadline for filing, or mailed or otherwise sent the appropriate documentation which was not received by the Department of Taxation, thereby missing the opportunity to participate in the settlement; and

Whereas, during the 1995 Session, the General Assembly passed legislation (Chapters 185 and 203 of the 1995 Acts of Assembly) granting retired federal and military taxpayers who failed to provide the necessary supporting documentation or missed the deadline for filing a response or delivering a settlement agreement, due to circumstances beyond their control, a period of 60 days, which expired May 15, 1995, to participate in the settlement by providing the documentation, filing the response, or delivering the settlement agreement; and

Whereas, a large number of retired federal and military taxpayers again missed the opportunity to participate in the settlement by failing to provide the necessary supporting documentation, file a response, or deliver a settlement agreement by May 15, 1995; and

Whereas, the General Assembly wants as many of the affected taxpayers as possible to participate in the settlement; and

Whereas, it is the intent of the General Assembly that this act provide the final opportunity for affected taxpayers to submit any claim to the General Assembly for a tax refund pursuant to the settlement program or for any other relief related to the *Harper* case; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *The Tax Commissioner is hereby authorized to determine which retired federal and military taxpayers were denied participation in either the Federal Retiree Settlement Act (Enactment clause 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I) or the supplemental federal retiree settlement program (Chapters 185 and 203 of the 1995 Acts of Assembly); and is authorized to enter into settlement agreements with such taxpayers in an amount equal to the settlement amounts retirees will receive or have received under the Federal Retiree Settlement Act.*

1. *To be eligible to receive these payments, a taxpayer must (i) have failed to fully or partially participate in either the original settlement program or the supplemental settlement program; (ii) have notified the Tax Department by June 10, 1996, that he or she is not currently participating or did not participate in the prior settlement programs; (iii) provide the Department with the information the Department deems to be necessary for purposes of determining the validity of and quantifying a taxpayer's claimed tax overpayment; and (iv) submit a properly executed settlement agreement, which releases the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income received during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. To meet the notice requirement of clause (ii) above, the taxpayer's contact with the Department to put it on notice must be documented in the Department's records.*

2. *The payments shall be made over a four-year period in annual installments and shall be disbursed by the Tax Commissioner or his designees to the taxpayers participating in the settlement as follows:*

a. *The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act. Disbursements to these taxpayers shall be limited to an amount equal to the percentage of disputed refunds and shall not include any additional amounts.*

b. *Disbursements shall be made in up to four payments, the first of which shall be made on July 31, 1996, or as soon thereafter as practical with each of the remaining three disbursements to be made on each March 31 thereafter through 1999.*

60 c. Payments under the settlement program created by this act shall be to taxpayers over the same
61 payment schedule as if the taxpayers were participating in the Federal Retiree Settlement Act, except
62 that the initial payment shall be equal to the first two payments that the participants would have
63 received had they participated in the Federal Retiree Settlement Act.

64 d. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection
65 pursuant to Article 21 (§ 58.1-520 et seq.) of Chapter 1 of Title 58.1.

66 3. The Tax Commissioner is authorized to order payments to be made out of the state treasury as if
67 the amount each affected taxpayer is entitled to receive pursuant to this act is a refund pursuant to
68 § 58.1-309.

69 4. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on
70 behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which
71 the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the
72 signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the
73 settlement payments that it may be required to pay under the law to the nonsigning spouse.

74 5. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or
75 agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims
76 through creation of a trust or other legal entity or (ii) to obtain administrative or investment services
77 relevant to any such settlement or compromise. Any such contracts or agreements for services shall be
78 approved by the Attorney General and shall be exempt from the provisions of the Virginia Public
79 Procurement Act (§ 11-35 et seq.).

80 6. Except and to the extent specifically authorized in this act, nothing in this act shall be construed
81 or interpreted to revive any claim barred by Chapter 5 of the 1994 Acts of Assembly, Special Session I,
82 and nothing in this act shall be construed or interpreted to authorize any taxpayer to be entitled to the
83 relief granted in the Harper litigation.

84 **2. That an emergency exists and this act is in force from its passage.**