VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 449

An Act to amend and reenact §§ 2.1-20.1:2, 23-50.16:5, 23-50.16:24, and 23-50.16:32 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 23-50.16:24.1 and 23-50.16:24.2; and to repeal § 51.1-126.2 of the Code of Virginia, relating to the Medical College of Virginia Hospitals Authority.

[H 227]

Approved April 13, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-20.1:2, 23-50.16:5, 23-50.16:24, and 23-50.16:32 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 23-50.16:24.1 and 23-50.16:24.2 as follows:

§ 2.1-20.1:2. Health insurance credits for retired state employees.

A. The Commonwealth shall pay the cost of coverage for state employees retired under the Virginia Retirement System, State Police Officers Retirement System, Judicial Retirement System or any retirement system authorized pursuant to § 51.1-126 who (i) served no less than fifteen years of creditable service as regularly employed full-time employees of the Commonwealth or (ii) rendered service as a temporary employee of the General Assembly in 1972 and became a member of the retirement system from 1972 to 1985 immediately following such temporary service. *Notwithstanding the preceding, the Medical College of Virginia Hospitals Authority shall pay the cost of coverage for employees of such Authority who (i) retired under the Virginia Retirement System or any retirement system authorized pursuant to §§ 23-50.16:24.1, 51.1-126, 51.1-126.1, or former § 51.1-126.2; (ii) were employed by such Authority prior to July 1, 1998, and were not subsequently rehired by such Authority on or after July 1, 1998; and (iii) served no less than fifteen years of creditable service as regularly employed full-time employees of such Authority or the Commonwealth.* An amount of two dollars and fifty cents per year of creditable service not to exceed a maximum monthly allowance of seventy-five dollars shall be credited monthly to any retired state employee participating in the state health plan established by § 2.1-20.1 or a personal health insurance plan as provided herein. However, such credit shall not exceed the health insurance premium for retiree-only coverage as provided under such personal health insurance plan. Any retired state employee retired under the provisions of §§ 51.1-156 and 51.1-307 shall receive the maximum credit provided by this section. Any member who elects to defer his retirement pursuant to subsection C of § 51.1-153 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement.

B. 1. For those retired state employees participating in the state health plan, such credit shall be applied to the monthly premium deducted from benefits payable to retired state employees in accordance with Chapters 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.) and 3 (§ 51.1-300 et seq.) of Title 51.1. In the event that either no benefit is payable or the benefit payable is insufficient to deduct the entire health care premium, the Virginia Retirement System shall transfer funds in an amount equivalent to the credits that would otherwise have been payable to the Department of Personnel and Training. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

2. For those retired state employees electing not to participate in the state health plan and who purchase an alternative personal health insurance policy from a carrier or organization of his own choosing, such retirees shall be eligible to receive a reimbursement equal to the credit in the amount specified in subdivision B 3. Such reimbursement, not to exceed the actual premium paid, and reduced by the administrative charge for processing the reimbursement, shall be paid upon presentation of documentation satisfactory to the Virginia Retirement System that the premium for such personal health insurance policy has been paid. Eligibility for reimbursement under this section shall be determined in a manner prescribed by the Virginia Retirement System. The retired state employee's election to participate shall be deemed continuing and automatically renewed unless such retiree affirmatively revokes, in writing, his participation. Subject to the limitations of subdivision B 3, the reimbursement amount shall increase or decrease, in like amount, if the retiree's private health insurance policy premium increases or decreases.

3. The reimbursement shall be in the amount of the credit provided in subsection A or the amount of premium paid for the personal health insurance policy, whichever is less.

4. A retired state employee who fails to elect to participate in the state health plan within thirty-one days of the effective date of retirement, or who, once having elected to participate, discontinues participation, is barred from participating in the state health plan thereafter.

C. The Virginia Retirement System shall actuarially determine the amount necessary to fund all credits provided by this section and shall reflect the cost of such credits in the employer contribution

rate pursuant to § 51.1-145.

§ 23-50.16:5. Board of Directors; appointment; officers; employees.

A. The Authority shall be governed by a Board of Directors consisting of sixteen members as follows: four members to be appointed by the Governor; three members to be appointed by the Speaker of the House of Delegates; two members to be appointed by the Senate Committee on Privileges and Elections; five members of the Board of Visitors of Virginia Commonwealth University, to be appointed by the Rector, all of whom shall also be members of the Board of Visitors of Virginia Commonwealth University at all times while serving on the Board; and the President of Virginia Commonwealth University and the Dean of the Virginia Commonwealth University School of Medicine, who shall serve as ex officio voting members during their respective terms of office.

Of the appointments to be made on and after July 1, 1996, two gubernatorial appointees shall be appointed for three-year terms, one for a two-year term, and one for a one-year term; one appointee each by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections shall be appointed for three-year terms, and one each for two-year terms; one appointee by the Speaker of the House shall be appointed for a one-year term; and two Board of Visitors members shall be appointed for three-year terms, two for two-year terms, and one for a one-year term. Thereafter, all appointments shall be for terms of three years each, except appointments to fill unexpired vacancies which shall be made for the remainder of the unexpired terms.

No person shall be eligible to serve more than two consecutive full three-year terms as an appointed member, but after the expiration of a term of two years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, or after one year following the expiration of a second full three-year term, two additional three-year terms may be served by a member if so appointed. The terms of members serving by virtue of their office shall expire upon termination of their holding such office. All members shall continue to hold office until their successors have been appointed and have qualified.

All appointed members, other than those who are members of the Board of Visitors, shall have demonstrated experience or expertise in business, health-care management or legal affairs. Immediately after their appointments, members shall enter upon the performance of their duties. The Board members appointed from the Board of Visitors and the ex officio members shall not vote on matters that would require them to breach their fiduciary duties to the University or to the Authority.

B. All appointments, including the initial appointments to the Board and appointments to fill vacancies, are subject to confirmation by the affirmative vote of a majority of those voting in each house of the General Assembly if in session when such appointments are made and, if not in session, at its first regular session subsequent to such appointment. Any member whose nomination is subject to confirmation during a regular session of the General Assembly shall be deemed terminated when the General Assembly rejects the nomination or when it adjourns without confirming the nomination, whichever is earlier. No such termination shall affect the validity of any action taken by such member prior to such termination.

C. A Board member may be removed for malfeasance, misfeasance, incompetence or gross neglect of duty by the individual or entity that appointed him or, if such appointing individual no longer holds the office creating the right of appointment, by the current holder of that office.

D. The Board shall elect annually one of their number as chairman and another as vice-chairman. The Board shall also elect a secretary and treasurer and such assistant secretaries and assistant treasurers as the Board may authorize for terms determined by the Board, each of whom may or may not be a member of the Board. The same person may serve as both secretary and treasurer. The Board may also appoint an executive committee and other standing or special committees and prescribe their duties and powers, and any executive committee may exercise all such powers and duties of the Board under this chapter as the Board may delegate.

E. The Board may provide for the appointment, employment and removal of a director, officers, employees and agents of the Authority, including engineers, consultants, lawyers and accountants, for such compensation and upon other terms as the Board deems appropriate.

F. The Board shall meet at least four times each year and may hold such special meetings as it deems appropriate. The Board may adopt, amend and repeal such rules, regulations, procedures and bylaws, not contrary to law or inconsistent with this chapter, as it deems expedient for its own governance and for the governance and management of the Authority. A majority of the Board shall constitute a quorum for meetings, and the Board may act by a majority of those present at any meeting.

G. Board members shall ~~not be entitled to compensation, but shall~~ be entitled to reimbursement for necessary and reasonable travel and other expenses incurred while engaged in the performance of their duties.

H. The provisions of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.) shall apply to the members of the Board and the employees of the Authority.

§ 23-50.16:24. Employees of the Authority.

A. Until July 1, 2001, employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be employed on such terms and conditions as

established by the Authority. The Board of Directors of the Authority shall develop and adopt policies and procedures that will afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants and shall prohibit discrimination because of race, religion, color, sex or national origin. Any grievance procedure adopted by the Board other than that contained in Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 shall take effect no earlier than July 1, 1997; however, such grievance procedure shall not take effect unless the Authority delivers copies of such grievance procedure to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance on or before January 1, 1997.

B. The Authority shall issue a written notice to all persons whose employment will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the Medical College of Virginia Hospitals who: (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.1-116.20 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.

C. Without limiting its power generally with respect to employees, the Authority may employ any person employed by the University in the operation of the hospital facilities and may assume obligations under any employment agreement for such person and the University may assign any such contract to the Authority.

D. The Authority and the University may also enter into agreements providing for the purchase of services of employees of the University utilized in the operation of the hospital facilities by payment of such amounts as may be agreed upon to cover all or part of the salaries and other costs of such employees.

E. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this chapter and who is a member of any plan for providing health insurance coverage pursuant to Chapter 2 (§ 2.1-11.1 et seq.) of Title 2.1, shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred. Notwithstanding subdivision A 2 of § 2.1-20.1, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to (i) establish a health insurance plan for the benefit of its employees, residents and interns and (ii) enter into agreements with the Department of Personnel and Training providing for the coverage of its employees, interns and residents under the state employees' health insurance plan, provided that such agreement shall require the Authority to pay the costs of providing health insurance coverage under such plan.

F. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement System, or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1, shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred. Alternatively, such employee *(and any employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be covered by the Virginia Retirement System)* may elect, *during an open enrollment period from April 1, 2001, through April 30, 2001,* to become a member of the retirement program established by the Authority for the benefit of its employees pursuant to § ~~51.1-126.2~~ *23-50.16:24.1 by transferring assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. The Authority shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who elect to transfer to the Authority's retirement plan*. The following rules shall apply:

1. With respect to any transferred employee who elects to remain a member of the Virginia Retirement System or other such authorized retirement plan, the Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or other such authorized retirement plan for retirement ~~and group life insurance~~ in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for such transferred employees.

2. Transferred employees who elect to become members of the retirement program established by the Authority for the benefit of its employees shall be given full credit for their creditable service as defined in § 51.1-124.3, vesting and benefit accrual under the retirement program established by the Authority. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan as

authorized by Article 4 *(§ 51.1-125 et seq.)* of Chapter 1 of Title 51.1.

3. For transferred employees who elect to become members of the retirement program established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the retirement plan established by the Authority assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For purposes hereof, the basic benefits shall be the benefit accrued under the Virginia Retirement System or other such authorized retirement plan, based on creditable service and average final compensation as defined in § 51.1-124.3 and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan, so that the transfer of assets to the retirement plan established by the Authority will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan.

§ 23-50.16:24.1. Retirement benefits for employees of the Authority.

A. The Authority may establish one or more retirement plans covering in whole or in part its employees, including employees who, prior to the effective date of any plan established pursuant to this section, had been participants in any plan established pursuant to §§ 51.1-126, 51.1-126.1, or former § 51.1-126.2. 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 Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1. Any such alternative retirement plan shall become effective at such time as determined by the Authority.

B. Notwithstanding any other provision of law to the contrary, any employee of the Authority employed prior to July 1, 1998, may make an irrevocable election to participate in the retirement plan established by Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 or any plan established by the Authority, in accordance with guidelines established by the Authority. The election herein provided shall, as to any employee of the Authority employed following the effective date of any plan established pursuant to this section, be exercised not later than thirty-one days from the time of entry upon the performance of his duties. Any employee of the Authority hired on or after July 1, 1998, shall participate in a plan established by the Authority, subject to the plan's eligibility criteria.

C. No employee of the Authority who is an active member of a plan established under this section shall also be an active member of the retirement system established pursuant to Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 or a beneficiary of such retirement system other than as a contingent annuitant.

D. Notwithstanding any other provision of law to the contrary, the contribution by the Authority to any other retirement plan established on behalf of employees of the Authority hired before July 1, 1998, pursuant to subsection A shall be (i) equal to the contribution the Commonwealth would be required to make if the employee were a member of the retirement system established by Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 or (ii) eight percent of creditable compensation, whichever is less. The contribution by the Authority to any retirement plan established on behalf of employees of the Authority hired on or after July 1, 1998, pursuant to subsection A shall be determined by the Board.

E. If the institution of higher education with which the Authority is affiliated has adopted a retirement plan under § 51.1-126 for its employees who are engaged in the performance of teaching, administrative, or research duties, the plan established under this section shall offer similar investment opportunities as are available to the participants of the plan established pursuant to § 51.1-126.

F. The Authority shall develop policies and procedures for the administration of any retirement plan established by the Authority under this section. A copy of such policies and procedures shall be filed with the Board of Trustees of the Virginia Retirement System.

§ 23-50.16:24.2. Insurance for employees of the Authority.

The Authority shall purchase group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part its employees. Authority employees shall not be required to present at their own expense evidence of insurability satisfactory to an insurance company for basic group life insurance coverage. Any employee hired prior to July 1, 1998, shall be provided basic group life insurance at the same level of coverage as provided by the Virginia Retirement System. Any employee hired on or after July 1, 1998, shall be provided basic group life insurance at a level of coverage determined by the Board, provided that the level of coverage shall not be less than the equivalent of one times the employee's annual salary. The Authority may require employees hired on or after July 1, 1998, to pay all or a portion of the required basic group life insurance coverage, which may be collected through a payroll deduction program. The Authority may increase the insurance coverage under such policies to make available to active insured employees optional life, accidental death and dismemberment, and disability insurance. Authority employees shall not be covered by the Virginia Retirement System's group insurance program under § 51.1-501.

§ 23-50.16:32. Confidential and public information.

A. The Authority shall be subject to the provisions of the Freedom of Information Act (§ 2.1-340 et seq.), which shall include the exceptions set forth in subdivision ~~62~~ *66* of subsection B of § 2.1-342 and subdivision ~~24~~ *25* of subsection A of § 2.1-344.

B. For purposes of the Freedom of Information Act (§ 2.1-340 et seq.), meetings of the Board shall

not be considered meetings of the Board of Visitors of the University. Meetings of the Board may be conducted through telephonic or video means as provided in § 2.1-343.1 C through F or similar provisions of any successor law.

2. That § 51.1-126.2 of the Code of Virginia is repealed.