

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 737

*An Act to amend and reenact §§ 51.1-124.3, 51.1-126, 51.1-142.2, 51.1-144, 51.1-153, 51.1-155, 51.1-166, 51.1-301, and 51.1-303 of the Code of Virginia, relating to retirement plans under the Virginia Retirement System.*

[H 1189]

Approved April 13, 2010

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

**1. That §§ 51.1-124.3, 51.1-126, 51.1-142.2, 51.1-144, 51.1-153, 51.1-155, 51.1-166, 51.1-301, and 51.1-303 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-124.3. Definitions.

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

"Abolished system" means the Virginia Retirement Act, §§ 51-30 through 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952.

"Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, all amounts the member may contribute to purchase creditable service, all member contributions contributed by the employer on behalf of the employee, on or after July 1, 1980, except those amounts contributed on behalf of members of the General Assembly who are otherwise retired under the provisions of this chapter, and all interest accruing to these funds. If a member is retired for disability from a cause which is compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), dies in service prior to retirement, or requests a refund of contributions in accordance with § 51.1-161, "accumulated contributions" shall include all member contributions paid by the employer on behalf of the member on and after July 1, 1980, and all interest which would have accrued to these funds.

"Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial tables adopted by the Board.

"Average final compensation" means the average annual creditable compensation of a member during his 36 highest consecutive months of creditable service or during the entire period of his creditable service if less than 36 months. *However, for any person who becomes a member on or after July 1, 2010, "average final compensation" means the average annual creditable compensation of a member during his 60 highest consecutive months of creditable service or during the entire period of his creditable service if less than 60 months.*

If a member ceased employment prior to July 1, 1974, "average final compensation" means the average annual creditable compensation during the five highest consecutive years of creditable service.

"Beneficiary" means any person entitled to receive benefits under this chapter.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Creditable compensation" means the full compensation payable annually to an employee working full time in his covered position. For any state employee of a public institution of higher education or a teaching hospital affiliated with a public institution of higher education who is (i) compensated on a salaried basis, and (ii) working full time in a covered position pursuant to a contract of employment for a period of at least nine months, creditable compensation means the full compensation payable over the term of any contract entered into between the employee and the employer, without regard to whether or not the term of the contract coincides with the normal scholastic year. However, if the contract is for more than one year, creditable compensation means that compensation paid for the current year of the contract.

Remuneration received by members of the General Assembly not otherwise retired under the provisions of this chapter pursuant to §§ 30-19.11 and 30-19.12 shall be deemed creditable compensation. In addition, for any member of the General Assembly, creditable compensation shall include the full amount of salaries payable to such member for working in covered positions, regardless of whether a contractual salary is reduced and not paid to such member because of service in the General Assembly.

"Creditable service" means prior service as set forth in § 51.1-142.2 plus membership service for which credit is allowable.

"Employee" means any teacher, state employee, officer, or employee of a locality participating in the Retirement System.

"Employer" means the Commonwealth in the case of a state employee, the local public school board in the case of a teacher, or the political subdivision participating in the Retirement System.

"Joint Rules Committee" means those members of the House of Delegates and the Senate designated by the Speaker of the House and the Chairman of the Senate Committee on Rules, respectively, to meet

with each other and to act jointly on behalf of the Committee on Rules for each house.

"Local officer" means the treasurer, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, or sheriff of any county or city, or deputy or employee of any such officer.

"Medical Board" means the board of physicians as provided by this chapter.

"Member" means any person included in the membership of the Retirement System.

"Membership service" means service as an employee rendered while a contributing member of the Retirement System except as provided in this chapter.

"Normal retirement date" means a member's sixty-fifth birthday. *However, for any person who becomes a member on or after July 1, 2010, under this chapter his normal retirement date shall be the date that the member attains his "retirement age" as defined under the Social Security Act (42 U.S.C. § 416 et seq., as now or hereafter amended).*

*"Person who becomes a member on or after July 1, 2010," means a person who is not a member of a retirement plan administered by the Virginia Retirement System the first time he is hired on or after July 1, 2010, in a covered position. Subsequent separation from such position and subsequent employment in a covered position shall not alter the status of a person who becomes a member on or after July 1, 2010.*

"Political subdivision" means any county, city, or town, any political entity, subdivision, branch, or unit of the Commonwealth, or any commission, public authority, or body corporate created by or under an act of the General Assembly specifying the powers, privileges, or authority capable of exercise by the commission, public authority, or body corporate.

"Primary social security benefit" means, with respect to any member, the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the provisions of the federal Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as otherwise specifically provided.

"Prior service" means service rendered prior to becoming a member of the Retirement System.

"Purchase of service contract" means a contract entered into by the member and the Retirement System for the purchase of service credit by the member as provided in § 51.1-142.2.

"Retirement allowance" means the retirement payments to which a member is entitled.

*"Retirement plan administered by the Virginia Retirement System" means a retirement plan established under this title administered by the Virginia Retirement System, or by an agency that has been delegated administrative responsibility by the Virginia Retirement System, but such term shall exclude any plan established under Chapter 6 (§ 51.1-600 et seq.) or Chapter 6.1 (§ 58.1-607 et seq.) of this title.*

"Retirement System" means the Virginia Retirement System.

"Service" means service as an employee.

"State employee" means any person who is regularly employed full time on a salaried basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution, or agency thereof. "State employee" shall include any faculty member, but not including adjunct faculty, of a public institution of higher education (a) who is compensated on a salary basis, (b) whose tenure is not restricted as to temporary or provisional appointment, and (c) who regularly works at least 20 hours but less than 40 hours per week (or works the equivalent of one-half of a full time equivalent position) engaged in the performance of teaching, administrative, or research duties at such institution; such faculty member shall be deemed an eligible employee for purposes of the retirement provisions under §§ 51.1-126, 51.1-126.1, and 51.1-126.3. "State employee" shall also include the Governor, Lieutenant Governor, Attorney General, and members of the General Assembly but shall not include (i) any local officer, (ii) any employee of a political subdivision of the Commonwealth, (iii) individuals employed by the Department for the Blind and Vision Impaired pursuant to § 51.5-72, (iv) any member of the State Police Officers' Retirement System, (v) any member of the Judicial Retirement System, or (vi) any member of the Virginia Law Officers' Retirement System.

"Teacher" means any person who is regularly employed full time on a salaried basis as a professional or clerical employee of a county, city, or other local public school board.

§ 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.

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 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.

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, such person shall participate in such defined benefit retirement plan 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 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.

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 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, such person shall participate in such defined benefit retirement plan from the time of his entry upon the performance of his duties.

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

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

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

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

2. If a member of the optional retirement plan maintained under this section is at any time in service as an employee in a position covered for retirement purposes under the provisions of Chapters 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 optional retirement plan maintained under this section shall be suspended while so employed; provided, however, reemployment shall have no effect on the payment under the optional plan maintained under this section if the benefits are being paid in an annuity form under an annuity contract purchased with the member's account balance.

F. 1. The contribution by the Commonwealth on behalf of an employee participating in an optional retirement plan maintained by the Board or on behalf of an employee participating in an optional

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

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

G. With respect to any employee who elects pursuant to subsection A or B to participate in the Virginia Retirement System defined benefit retirement plan established by this chapter, the institution of higher education 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 employees.

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

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

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

§ 51.1-142.2. Prior service or membership credit for certain members; service credit for accumulated sick leave.

Certain members may purchase credit for service as provided in this section.

A. ~~1.~~ *Except as provided in subdivisions 1 and 2, in order to receive credit for the service made available in subsection B, a member in service shall be required to make a payment for each year, or portion thereof, to be credited at the time of purchase, equal to five percent of his creditable compensation or five percent of his average final compensation, whichever is greater, unless the member in service is purchasing the service made available in subsection B through a pre-tax or post-tax deduction, in which case the cost to purchase each year, or portion thereof, of such service shall be five percent of his creditable compensation.*

1. *A person who becomes a member on or after July 1, 2010, shall pay an amount equal to a rate approximating the normal cost for the retirement program under which the member is covered, with such rate for each retirement program to be determined by the Board, and reviewed by the Board no less than every six years. However, if the member does not purchase, or enter into a purchase of service contract for the service made available in subsection B within one year from his first date of hire or within one year of the final day of any leave of absence under subdivision B 2, as applicable, then, for each year or portion thereof to be credited at the time of purchase, the member shall pay an amount*

equal to the actuarial equivalent cost.

However, if a person becoming a member on or after July 1, 2001, 2. If a member other than a member described in subdivision 1 does not purchase, or enter into a purchase of service contract for, such service the service made available in subsection B within three years from his first date of hire or within three years of the final day of any leave of absence under subdivision B 2, as applicable, then, for each year or portion thereof to be credited at the time of purchase, the member shall pay an amount equal to the actuarial equivalent cost.

2. If a member in service on June 30, 2001, and July 1, 2001, did not, prior to July 1, 2001, purchase, or enter into a contract with the Retirement System to purchase, such service under former § 51.1-142, then, for each year, or portion thereof, to be credited at the time of purchase, the member shall pay an amount equal to the actuarial equivalent cost, unless such member purchases, or enters into a purchase of service contract for, such service within three years from the date he became eligible to purchase the service or by July 1, 2004, whichever is later. If the service is purchased or a purchase of service contract is entered into within such time period, the cost to the member for each year to be credited at the time of purchase shall be five percent of his creditable compensation or five percent of his average final compensation, whichever is greater, unless the member in service is purchasing such service through a pre tax or post tax deduction, in which case the cost to purchase each year, or portion thereof, of such service shall be five percent of his creditable compensation. If such member first becomes eligible to purchase any of the service under subsection B after July 1, 2001, the cost of such service or portion thereof shall be as provided in subsection A, except that the three year period in which to purchase, or enter into a purchase of service contract for, such service shall commence on the first day the member becomes eligible to purchase the service.

3. When a member requests credit for a portion of the period, the most recent portion shall be credited. Payment may be made in a lump sum at the time of purchase or by an additional payroll deduction. Only one additional deduction shall be permitted at any time. Should the additional deduction be terminated prior to purchasing the entire period that might otherwise be credited, the member shall be credited with the number of additional months of service for which full payment is made. If the additional deduction is continued beyond the point at which the entire period has been purchased, the member shall be credited with no more than the entire period that might otherwise have been credited and the excess amount deducted shall be refunded to the member.

Any employer may elect to pay an equivalent amount in lieu of all member contributions required of its employees for the purpose of service credit pursuant to this section. These contributions shall not be considered wages for purposes of Chapter 7 (§ 51.1-700 et seq.) of this title, nor shall they be considered to be salary for purposes of this chapter.

B. 1. Any member in service may purchase prior service credit for (i) active duty military service in the armed forces of the United States, provided that the discharge from a period of active duty status with the armed forces was not dishonorable, (ii) creditable service of another state or of a political subdivision or public school system of this or another state, as certified by such state, political subdivision or public school system, (iii) creditable service of a political subdivision of this state not credited to the member under an agreement as provided for in § 51.1-143.1, as certified by such political subdivision, (iv) civilian service of the United States, (v) creditable service at a private institution of higher education if the private institution is merged with a public institution of higher education and graduates of the private institution are then issued new degrees from the public institution, or (vi) any period of time when the member was employed by a participating employer and not otherwise eligible to participate in the retirement system because the member was not an employee as defined in § 51.1-124.3.

For purposes of this subsection "active duty military service" means full-time service of at least 180 consecutive days in the United States Army, Navy, Air Force, Marines, Coast Guard, or reserve components thereof.

2. Any member (i) granted a leave of absence for educational purposes may purchase service credit for such leave of absence; or (ii) granted any unpaid leave of absence due to the birth or adoption of a child may purchase up to one year of service credit per occurrence of leave.

C. Any member in service may purchase service credit for creditable service lost from ceasing to be a member under this chapter, as provided in § 51.1-128, because of the withdrawal of his accumulated contributions. Notwithstanding any other provision in this section, the cost to purchase such service shall be five percent of his creditable compensation or five percent of his average final compensation, whichever is greater, unless the member in service is purchasing such service through a pre-tax or post-tax deduction, in which case the cost to purchase each year, or portion thereof, of such service shall be five percent of his creditable compensation. If the member either purchases or enters into a contract to purchase such service within three years of the date he became eligible to purchase the service or by July 1, 2004, whichever is later, then the service may be purchased in a lump sum at the time of purchase or through an additional payroll deduction. Any purchase of such service made at a time later than such period shall be made in a lump sum at the time of purchase.

D. Any member in service may purchase service credit for accumulated sick leave on his effective

date of retirement based upon such sums as the employer may provide as payment for any unused sick leave balances. The cost of service credit purchased under this subsection shall be the actuarial equivalent cost of such service.

E. In any case where member and employer contributions, as required under this chapter, were not made because of an error in the payroll, personnel, or other classification system of an employer participating in the retirement system, service that has not been credited because of such error may be purchased on the following basis:

1. The most recent three years of service shall be purchased, using applicable member and employer contribution rates and creditable compensation in effect for such period, in a manner and cost prescribed by the Board; and

2. All other years of service the employer shall purchase at an actuarial equivalent cost.

F. The service credit to be credited to a member under this section shall be calculated at the ratio of one year, or portion thereof, of service credit to one year, or portion thereof, of service purchased, except for part-time service purchased under clause (vi) of subdivision B 1 which shall be calculated at the ratio of one month of service credit for each 173 hours of service as certified by the employer and as purchased by the member. Up to a maximum of four years of service credit may be purchased for each of clauses (i) through (vi) of subdivision B 1 and clause (i) and (ii) of subdivision B 2. In addition, a member in service may purchase service credit for every year or portion thereof for service lost from cessation of membership as described in subsection C.

Except as otherwise required by Chapter 1223 of Title 10 of the United States Code, the service credit made available under this section may not be purchased if, before being purchased or at the time of such purchase pursuant to this section, the service to be purchased is service that is included in the calculation of any retirement allowance received or to be received by the member from this or another retirement system.

G. Any member may receive credit at no cost for service rendered in the armed forces of the United States provided (i) the member was on leave of absence from a covered position, (ii) the discharge from a period of active duty with the armed forces was not dishonorable, (iii) the member has not withdrawn his accumulated contributions, (iv) the member is not disabled or killed while on leave without pay while performing active duty military service in the armed forces of the United States, and (v) the member reenters service in a covered position within one year after discharge from the armed forces. In order to receive such service, the member must complete such forms and other requirements as are required by the Board and the retirement system.

§ 51.1-144. Member contributions.

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

The employer shall deduct the contribution payable by the member. Every employee accepting employment shall be deemed to consent and agree to any deductions from his compensation required by this chapter. No deduction shall be taken from the compensation of a member after his normal retirement date if the member elects not to contribute.

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

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

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

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

F. ~~Any~~ 1. *Except as provided in subdivision 2, any employer may elect to pay an equivalent amount in lieu of all member contributions required of its employees. Such payments shall be credited to the members' contribution account. These contributions shall not be considered wages for purposes of Chapter 7 (§ 51.1-700 et seq.) of this title, nor shall they be considered to be salary for purposes of this chapter.*

2. *A person who becomes a member on or after July 1, 2010, shall be required to pay member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code in the amount of five percent of creditable compensation if the person is (i) a member covered by the defined benefit plan established under this chapter, (ii) a member of the State Police Officers' Retirement System under Chapter 2 (§ 51.1-200 et seq.), (iii) a member of the Virginia Law Officers' Retirement System under Chapter 2.1 (§ 51.1-211 et seq.), (iv) a member of the Judicial Retirement*

*System under Chapter 3 (§ 51.1-300 et seq.), or (v) earning the benefits permitted by § 51.1-138.*

*Each county, city, town, local public school board, or other local employer may elect to pay an equivalent amount in lieu of the member contributions required of its employees described in this subdivision. The county, city, town, local public school board, or other local employer may pay, in whole percentages, up to five percent of the creditable compensation otherwise required of such employees, provided that the employer pays the same percentage of creditable compensation for all such employees, and is paying all member contributions required under this section for all of its other member employees not described in this subdivision. Any portion of the five percent of creditable compensation required of a person who becomes a member on or after July 1, 2010, that is not paid by the county, city, town, local public school board, or other local employer, shall be paid by such person.*

*No employer other than a county, city, town, local public school board, or other local employer shall be allowed to elect to pay any amount of the member contributions required of a person who becomes a member on or after July 1, 2010.*

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

*G. ~~Any~~ Subject to the provisions of subsection F, any employer whose employees are paying member contributions to the retirement system on a salary reduction basis in accordance with § 414 (h) of the Internal Revenue Code may ~~pay a portion~~ phase-in the payment of the member contributions on behalf of ~~all~~ of its employees upon notification to the Board of the employer's intent to make such partial payment payments. Any employer paying a portion of the member contributions for its employees (i) shall do so in such manner that the entire member contribution for all of its employees shall be paid by the employer starting not later than six years from the commencement of such partial payment, or a period of time approved by the Board upon submission of a plan by the employer, and (ii) shall not pay a portion of the member contribution in any incremental amount with a fractional part of less than one-half of one percent of creditable compensation. The Board shall approve the period of time by which the phase-in shall be completed not to exceed six years from the commencement of the phased-in payments.*

*H. Any employer that, by resolution of its governing body, elects to provide retirement coverage for its employees in accordance with § 51.1-130 on or after September 1, 1998, shall allow its employees to pay member contributions to the retirement system on a salary reduction basis in accordance with § 414 (h) of the Internal Revenue Code in lieu of paying the member contribution on behalf of its employees in accordance with the provisions of subsection F.*

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

*§ 51.1-153. Service retirement.*

*A. Normal retirement. - Any member in service at his normal retirement date with five or more years of creditable service may retire at any time upon written notification to the Board setting forth the date the retirement is to become effective. Any member in service who was denied membership prior to July 1, 1987, as a result of being age sixty or over when first employed may retire at any time after his normal retirement date and the requirement of having five or more years of service shall not apply.*

*B. Early retirement. - 1. Any member in service who has attained his fifty-fifth birthday with five or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective.*

*However, a person who becomes a member on or after July 1, 2010, under this chapter shall be allowed to retire under this subdivision prior to his normal retirement date only if the person is in service and has attained his sixtieth birthday with five or more years of creditable service, and the benefit for such person shall be calculated in accordance with the provisions of subdivision A 3 of § 51.1-155.*

*2. ~~Any~~ Subject to the provisions of subdivision 3, any state employee, teacher, or employee of a political subdivision who is a member of the retirement system may retire prior to his normal retirement date after attaining age fifty and thirty years of creditable service, upon written notification to the Board setting forth the date the retirement is to become effective. The benefit for such member shall be calculated in accordance with the provisions of subdivision A 1 of § 51.1-155.*

*3. A person who becomes a member on or after July 1, 2010, as a state employee, teacher, or employee of a political subdivision may retire prior to his normal retirement date after the sum of his age and years of creditable service equals 90, upon written notification to the Board setting forth the date the retirement is to become effective. The benefit for such member shall be calculated in accordance with the provisions of subdivision A 1 of § 51.1-155.*

*C. Deferred retirement for members terminating service. - Any member who terminates service after five or more years of creditable service, regardless of termination date, may retire under the provisions*

of subsection A, B, or D of this section if he has not withdrawn his accumulated contributions prior to the effective date of his retirement or if he has five or more years of creditable service for which his employer has paid the contributions and such contributions cannot be withdrawn. For the purposes of this subsection, any requirements as to the member being in service shall not apply. No member shall be entitled to the benefits of this subsection if his employer certifies that his service was terminated because of dishonesty, malfeasance, or misfeasance in office. The certification may be appealed to the Board.

D. 50/10 retirement. - Any member in service on or after January 1, 1994, who has attained his fiftieth birthday with ten or more years of creditable service may retire prior to his normal retirement date upon written notification to the Board setting forth the date the retirement is to become effective. *A person who becomes a member on or after July 1, 2010, shall not be allowed to retire pursuant to this subsection.*

E. Effective date of retirement. - The effective date of retirement shall be after the last day of service of the member, but shall not be more than ninety days prior to the filing of the notice of retirement.

F. Notification on behalf of member. - If the member is physically or mentally unable to submit written notification of his intention to retire, the member's appointing authority may submit notification on his behalf.

§ 51.1-155. Service retirement allowance.

A. Retirement allowance. - A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service.

2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than 30 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of 30 years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3.

3. Early retirement; applicable to employees of certain political subdivisions *and any person who becomes a member on or after July 1, 2010.* - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals 30 or more years but the sum of his age at retirement plus his creditable service at retirement is less than 90, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to 90 or more had he remained in service until such date. If the member has less than 30 years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least 30 years of creditable service and his then creditable service plus his then attained age would have been equal to 90 or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system *and any other employees as provided by law.* The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2. *No such election shall be made for a person who becomes a member on or after July 1, 2010.* Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. - In addition to the allowance payable under subdivisions 1, 2, and 3, a member shall receive an additional allowance which shall be the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated service and deferred retirement to age 55 or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. Beneficiary serving in position covered by this title.

1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance under this chapter or the provisions of Chapters 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3

(§ 51.1-300 et seq.) is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 6 (§ 51.1-600 et seq.), 6.1 (§ 51.1-607 et seq.), or 7 (§ 51.1-700 et seq.), his retirement allowance shall cease while so employed. Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.

2. Active members of the General Assembly who are eligible to receive a retirement allowance under this title, excluding their service as a member of the General Assembly, shall be eligible to receive a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly. Such members of the General Assembly shall continue to be reported as any other members of the retirement system. Upon ceasing to serve in the General Assembly, members of the General Assembly receiving a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly shall have their retirement allowance recomputed prospectively to include their service as a member of the General Assembly. Active members of the General Assembly shall be prohibited from receiving a service retirement allowance under this title based solely on their service as a member of the General Assembly.

3. (Expires July 1, 2015) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:

(a) The person has been receiving such retirement allowance for a certain period of time preceding his employment as provided by law;

(b) The person is not receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; and

(c) At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § 22.1-23, by the relevant division superintendent, pursuant to § 22.1-70.3, or by the relevant local school board, pursuant to subdivision 9 of § 22.1-79.

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

§ 51.1-166. Post-retirement supplements generally.

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

B. The amounts of the post-retirement supplements shall be determined as percentages of the allowances supplemented hereby. The percentages shall be determined annually by reference to the increase in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor. The percentages shall be based on monthly averages and shall be the difference between the average for the calendar year in which the allowance initially commenced and the average for the calendar year immediately prior to the calendar year in which the post-retirement supplement is paid. The annual increase in the Consumer Price Index shall be considered only to the extent of *the first three percent plus one-half of such the next four percent of any additional increase up to seven percent, or a maximum increase in the post-retirement supplement of five percent in any given year. However, for a person who becomes a member on or after July 1, 2010, the annual increase in the Consumer Price Index shall be considered only to the extent of the first two percent plus one-half of the next eight percent of any additional increase, or a maximum increase in the post-retirement supplement of six percent in any given year.*

Beginning July 1, 1997, contribution rates calculated pursuant to § 51.1-145 for all employers shall include an amount not less than twenty percent of the total annual amount necessary to fund all post-retirement supplements. Contribution rates for all employers shall increase thereafter until, beginning July 1, 2002, such rates shall include an amount equal to 100 percent of the total annual amount necessary to fund all post-retirement supplements. All contribution rates shall be computed in accordance with recognized actuarial principles on the basis of methods and assumptions approved by the Board.

Nothing in this section shall prohibit an employer from contributing, prior to July 1, 2002, 100 percent of the total annual amount necessary to fund its post-retirement supplements.

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

payable, which shall thereupon be terminated.

D. Any recipient of an allowance which initially commenced on or prior to January 1, 1990, shall be entitled to post-retirement supplements effective July 1, 1991.

§ 51.1-301. Definitions.

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

"Appointing authority" means the General Assembly or the Governor.

"Creditable service" means prior service plus membership service, as further defined in and modified by § 51.1-303, for which credit is allowable under this chapter.

"Judge" means any justice or judge of a court of record of the Commonwealth, any member of the State Corporation Commission or Virginia Workers' Compensation Commission, any judge of a district court of the Commonwealth other than a substitute judge of such district court, and any executive secretary of the Supreme Court assuming such position between December 1, 1975, and January 31, 1976.

*"Normal retirement date" means a member's sixty-fifth birthday.*

"Previous systems" means the systems established under the provisions of Chapters 2 (§ 51-3 et seq.) and 2.2 (§ 51-29.8 et seq.) of Title 51, and, in the case of judges of regional juvenile and domestic relations courts, the Virginia Retirement System.

"Primary social security benefit" means, with respect to any member, the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his date of retirement, under the provisions of this chapter except as otherwise specifically provided.

"Retirement system" means the Judicial Retirement System.

"Service" means service as a judge.

§ 51.1-303. Creditable service.

A. For those members in service on December 31, 1994, service as a judge shall be multiplied by a factor of 3 1/2, the weighted years of service factor, to calculate years of creditable service. To calculate years of creditable service for those members appointed or elected to an original term commencing on or after January 1, 1995, service as a judge shall be multiplied by the weighted years of service factor of 2 1/2. *To calculate years of creditable service for those members appointed or elected to an original term commencing on or after July 1, 2010, the following formula shall be used: if (i) the member was less than 45 years old at the time he was appointed or elected to such original term, then service as a judge shall be multiplied by the weighted years of service factor of 1.5, (ii) the member was at least 45 years old but less than 55 years old at the time he was appointed or elected to such original term, then service as a judge shall be multiplied by the weighted years of service factor of 2.0, and (iii) the member was at least 55 years old at the time he was appointed or elected to such original term, then service as a judge shall be multiplied by the weighted years of service factor of 2.5.* For purposes of this section, "original term" means the first term for which the member was appointed or elected to a position covered by the Judicial Retirement System.

B. Service qualifying for credit under the provisions of the Virginia Retirement System, the State Police Officers' Retirement System, and the Virginia Law Officers' Retirement System shall be included as creditable service for the purposes of this chapter, provided the requirements of those systems for crediting service have been complied with. Service purchased in accordance with the provisions of § 51.1-142.2 shall not be considered in determining the actuarial equivalent for early retirement nor shall it be considered twice in determining any disability allowance payable under this chapter.

C. If a member ceases to be a judge, has not received a refund of the accumulated contributions credited to his member's contribution account, and accepts employment in a position covered by the Virginia Retirement System, he shall be entitled to credit for his previous creditable service under this chapter. The amount of service transferred to the credit of the member in the Virginia Retirement System shall not exceed the amount of credit which would provide a benefit of 78 percent of average final compensation determined on the assumption that the member was eligible for normal retirement as of the date of transfer and that he had elected no optional allowance. Future retirement rights shall be as provided in the Virginia Retirement System.

**2. That the effective date of the initial determinations of the normal cost rates referred to in subdivision A 1 of § 51.1-142.2 of the Code of Virginia shall be January 1, 2011. Therefore, for a person who becomes a member on or after July 1, 2010, the applicable one-year period under subdivision A 1 of § 51.1-142.2 for purchasing service at the aforementioned normal cost rates shall begin no earlier than January 1, 2011.**

**3. That any person who prior to March 15, 2010, has entered into a written contract for employment in a covered position, for retirement purposes under Title 51.1 of the Code of Virginia, shall not be deemed to be a "person who becomes a member on or after July 1, 2010," as defined in § 51.1-124.3 of the Code of Virginia solely because the person commences employment pursuant to the contract on or after July 1, 2010.**