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HOUSE BILL NO. 118

Offered January 13, 2010

Prefiled January 5, 2010

A BILL to amend and reenact § 51.1-156 of the Code of Virginia, relating to the Virginia Retirement System; disability retirement.

Patron—Purkey

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:**1. That § 51.1-156 of the Code of Virginia is amended and reenacted as follows:**

§ 51.1-156. Disability retirement.

A. Any member in service or within ninety days after termination of service who has not withdrawn his accumulated contributions as provided for in § 51.1-128 may retire for disability not compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.) upon written notification to the Board setting forth the date the retirement is to become effective.

B. Any member in service or within ninety days after termination of service may retire for disability from a cause compensable under the Virginia Workers' Compensation Act upon written notification to the Board setting forth the date the retirement is to become effective.

C. 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 the disability, the Virginia Workers' Compensation Commission shall determine whether the member's disability is from a cause compensable under the Virginia Workers' Compensation Act.

D. The effective date of retirement shall be after the member's last day of service but shall not be more than ninety days prior to the filing of the notice of retirement. The Board may waive the ninety-day requirement upon a showing of good cause.

E. 1. After a medical examination of the member or after reviewing pertinent medical records, the Medical Board shall certify that (i) the member is and has been continuously since the effective date of retirement if prior to filing of the notification, mentally or physically incapacitated for the further performance of duty, (ii) the incapacity is likely to be permanent, and (iii) the member should be retired. A member shall not be retired for disability for any condition which existed at the time of becoming a member unless medical evidence, convincing to the Board, supports the fact that the pre-existing condition has worsened substantially.

2. a. Notwithstanding the provisions of subdivision 1, at the sole discretion of the employer, a member whose employer is a county, city, or town shall not be retired for disability if the member refuses to accept employment in any position offered to him by his employer (i) whose duties he is capable of performing, and (ii) whose salary and benefits are not less than those of the position from which he is separated.

b. If the position from which the member is separated is covered by the benefits permitted by § 51.1-138, the member has at least fifteen years of service in such a position, and the member accepts a position pursuant to subdivision 2 a that is not otherwise covered by the benefits permitted by § 51.1-138, then the member shall continue to be covered under the benefits permitted by § 51.1-138 in his new position. Such member, upon retirement, shall be entitled to the law-enforcement photo identification card as provided in § 9.1-1000.

F. In the event 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.

G. Any member who has been on leave of absence without pay for a period exceeding twenty-four months shall not be entitled to retire under the provisions of this section. This subsection shall not apply to any member who is disabled while on leave without pay while performing active duty military service in the armed forces of the United States.

H. For good cause shown, the Board may waive the ninety-day notification periods set forth in subsections A and B. For purposes of this section, good cause shall exist and the Board shall waive such ninety-day notification periods if (i) the member would otherwise qualify for disability retirement but for failing to comply with the requirements of subsection A or B and (ii) the Medical Board, acting solely in its own discretion after reviewing objective medical evidence of the disability and its cause, certifies that: (a) the disability and its cause existed on the date the member's employment was terminated, (b) the member had no knowledge of the existence of the disability and its cause at any time within ninety days after the date the member's employment was terminated, and (c) the member could

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59 not, with reasonable inquiry, have ascertained the existence of the disability and its cause within ninety
60 days after the date the member's employment was terminated.