SPECIAL RETIREMENT PROGRAMS FOR THE COMMONWEALTH'S INSTITUTIONS OF HIGHER EDUCATION

REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1970

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Richmond, Virginia
December 1, 1970

To:

HONORABLE LINWOOD HOLTON, *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

Presently, faculty and professional personnel in almost every State-supported institution of higher education participate in the Virginia Supplemental Retirement System, which together with Social Security comprises the basic State retirement program for all State employees. At the same time, many private Virginia colleges and universities, the University of Virginia and George Mason College, along with schools throughout the country, participate in privately sponsored retirement programs. The best known of the private programs is that sponsored by the Teachers Insurance and Annuity Association of America—College Retirement Equities Fund.

Virginia law (§ 51-111.28) now permits State-supported institutions of higher education to provide optional retirement plans for faculty and administrative and research personnel in lieu of VSRS participation. (The acronyms VSRS, TIAA-CREF, and ORP equal Virginia Supplemental Retirement System, Teacher's Insurance and Annuity Association of America—College Retirement Equities Fund, and optional retirement plan, respectively, in this report.) Under the authority of § 51-111.28, the University of Virginia and George Mason College participate in TIAA-CREF programs and contribute and finance such programs from their endowment funds or student fees. No State general funds are presently made available for such programs.

The State-supported schools advocate a change whereby the State would permit the same funds which the State now contributes to the VSRS on behalf of their faculty and professional personnel to be used to finance ORP's such as those provided under the TIAA-CREF system. They argue that several features of the TIAA-CREF program, which will be discussed in detail below, are more attractive to prospective and present faculty, that the availability of such a program would assist in recruiting qualified faculty and that State funds would be better spent dollar-for-dollar if used to buy retirement benefits for such personnel through an ORP rather than through the VSRS.

It is the purpose of this report to summarize the Council's investigation of the proposition advocated by the State-supported schools and to present its recommendations on what legislative action should be taken with respect to this matter.

A brief summary of our recommendations is set out immediately below in Part II. The background for this study is given in Part III, and a full discussion of the pros and cons for the recommendations in Part IV. Legislation to implement the recommendations and a commentary on the legislation is carried in the Appendix.

II. SUMMARY OF RECOMMENDATIONS

The Council has reached the basic conclusions that the availability of retirement benefits through TIAA-CREF or similar ORP's at the State's higher education facilities will aid our schools in attracting the best type of faculty and that the shifting of State funds, approximately equivalent to funds which would otherwise be spent to buy retirement coverage through the VSRS, from the VSRS to the financing of ORP's will not be detrimental to the State's basic retirement system.

Based on these conclusions, the Council submits the following recommendations:

(a) The State should contribute financially to certain optional retirement plans established by State-supported institutions of higher education.

(b) The amount which the State contributes to such ORP's should be calculated by multiplying the payroll of participants in such programs by the same employer contribution rate which the State uses to determine its financial contribution to the VSRS for other State employees.

(c) The State's contribution to such plans should be limited by applying the contribution rate to the payroll for only those personnel who meet the age and full-time employment eligibility requirements of the VSRS and are engaged in teaching, professional, administrative or research work for the State-supported schools.

(d) The election by any employee to participate in an optional program should be irrevocable while he is in a position covered by an optional plan so that he will not have a further option to return to the VSRS at a point in time when its benefits might become more attractive to him.

III. BACKGROUND OF THE PRESENT AND PRIOR VALC STUDIES

In the 1970 Regular Session, the General Assembly adopted House Joint Resolution No. 45 which is the directive for this study and report. That Resolution states:

> Whereas, the Virginia Advisory Legislative Council in its report of 1969 "Proposals to Improve the State's Retirement Programs," gave consideration to an optional retirement program for employees of institutions of higher education similar to that available through the Teachers Insurance and Annuity Association of America and College Retirement Equities Fund and based its consideration on calculations that the State would contribute six percent of the compensation of covered employees; and
>
> Whereas, the Council concluded that the advantages in providing such an optional retirement plan for these employees would not offset the disadvantages of increased costs and deviations from the overall State retirement program, and further concluded that other reforms in the basic State programs to increase the portability of benefits and the interest payable on employee contribution would make such an optional plan less necessary; and
>
> Whereas, the Council did not consider possible optional plans which would be based on the State making a contribution for employees of higher education institutions no greater than the contribution being made for other State employees; now, therefore, be it
>
> Resolved by the House of Delegates, the Senate concurring,

That the General Assembly direct the Virginia Advisory Legislative Council to study the possibility of providing an optional retirement program for employees of the State's institutions of higher education on a basis whereby the cost to the State would be no greater than its cost under our basic program.

The Council shall conclude its study and submit a report to the Governor and the General Assembly prior to the next session of the General Assembly, whether regular or extra.

As the Resolution points out, the Council has studied this subject prior to 1970 during a major review of the State's retirement programs. During the course of that prior study, considerable testimony favoring State support for ORP's was received at a December 6, 1968 public hearing.

Following that hearing, the Council employed Bowles, Andrews & Towne, Inc., actuaries for the VSRS, to evaluate the cost factors involved in providing an ORP through TIAA-CREF program in the State-supported schools. For purposes of determining the cost factors involved, the actuaries, Council staff and the Council of Presidents of the State schools cooperated in conducting a survey of the faculty and professional personnel of the schools to determine whether they would elect to change to an optional plan under a TIAA-CREF program if it were assumed that the State and the employee would each contribute 6% of payroll toward the retirement plan. This 6% rate was determined as fairly representative of the contribution rates under such programs. The State cost would depend on the number of persons leaving the VSRS, thereby affecting the cost of the VSRS, as well as the number participating in an ORP and the State's contribution to an ORP. On the basis of this survey, the actuaries submitted their best estimate of the costs involved. They estimated that the State's contribution to the VSRS would be reduced by $573,000 which would be only about one-fourth of the cost to the State of a 6% contribution on a payroll of $38,060,000 for those transferring to the ORP, thus resulting in a net increase in State cost of approximately $1,710,600 annually.

On the basis of this proposal and the costs involved, the Council concluded that it would be undesirable for the State to support any ORP on such a basis—both because of the cost to the State and because one class of State employees would be benefitted disproportionatly in comparison with the large majority of State employees participating in the VSRS.

The Council, reported its conclusion to the Governor and the 1970 General Assembly in House Document No. 16 of the 1970 Session.

During the 1970 Session, the proposal was developed that the State consider supporting such special retirement programs on a cost basis equivalent to that of the VSRS, and the 1970 General Assembly adopted House Joint Resolution No. 45, set out above, directing the continuation of the study on that basis.

IV. PROS AND CONS OF RECOMMENDATIONS

During the course of the present study, the Council again consulted with representatives of the VSRS, its actuaries, the Council of Higher Education, Council of Presidents for the State Schools and the Department of Community Colleges. Review and further study and discussion were undertaken during 1970 so that a second thorough examination of the issues involved was conducted.

The concept of an ORP and the major issues considered by the Council during the past year are set out below in a series of questions and responses designed to give a full picture of the matters involved and the reasons for the recommendations submitted in this report.

A. What is an ORP under the Council's recommendations?

The basic design of any optional retirement program will be a matter of contract between the school involved and the company which provides the retirement coverage.

The prototype ORP is that provided by TIAA-CREF which began in 1918 with the establishment by the Carnegie Foundation for the Advancement of Teaching of TIAA as a legal reserve life insurance company. It was established on a nonprofit basis for the purpose of providing a retirement pooling fund for university teachers. The program is not operated on an agency basis, but its business is conducted and its contracts issued from a central business office. Its charter limits the eligibility of those who may participate to personnel of institutions of higher education and certain nonprofit educational and scientific research organizations and it enjoys a tax exempt status.

The program serves universities and colleges throughout the country, and the key features of its retirement benefit plan are: (1) there is an immediate vesting of rights in an employee which means that the State's or employer's contributions are credited to the employee immediately so that they remain to his credit even when he leaves the employing institution to transfer to another school, (2) the employee's interest is portable or transferable so that he can continue contributing to his basic retirement plan after he has left his first employer, and (3) the program includes an equity plan feature which allows the purchase of shares in what amounts to a mutual fund. This third feature was initiated with the establishment of CREF in 1952 as a companion nonprofit organization. A covered employee may specify that any portion up to 75% of the contributions on his behalf be invested through the CREF program which gives a degree of protection against inflation.

Under the Council's proposals once an ORP is established through TIAA-CREF or a comparable program and approved by the Board of the VSRS, a school would be entitled to receive State funds to support an ORP equivalent to those which would be used otherwise to buy VSRS benefits for the ORP participants. Other conditions on the amount the State will contribute are outlined below and in the Appendix. Essentially, the State's contribution will be based on current payrolls for ORP participants. There will be no specific contributions by the State for past service either in Virginia or out-of-State, but a simple payment based on current payroll for State employees multiplied by the current VSRS employer contribution rate.

B. Will the recommended State contribution to optional retirement plans for State-aided institutions of higher education be costly to the State?

In light of the previous study, this issue gave the Council particular concern.

Under the proposal which we are now recommending, the State would contribute to the schools which institute ORP's an amount calculated by using the same contribution rate which is used to determine the State's contribution to the VSRS for other State employees. This contribution rate is 2.91% for the 1970-72 biennium; it means a much reduced contribution from that contemplated under the 6% rate considered in our previous study.

In practical terms, our proposal would work as follows: Prior to the adoption of a budget bill, the actuaries for the VSRS calculate the amount that will be needed to support the VSRS for State employees for the next biennium. Their calculation is based on the payroll for State employees participating in the VSRS, their age and other actuarial factors. For the 1970-72 biennium the employer contribution which the actuaries calculated amounted to 2.91% of the covered State employee payroll. Under our proposal, the State would contribute to the State schools that same percentage times the payroll attributable to professional personnel participating in optional plans. Thus, this past biennium, the State would have contributed 2.91% times the payroll involved for participants in such optional plans.

There are, however, *three* aspects of this proposal which involve some minimal cost impact.

First, as the actuaries have pointed out to the Council, there may be a certain hidden cost to the State involved in this approach. Generally speaking, it is anticipated that younger personnel would be most interested in the ORP's since older personnel are more likely to have built up attractive credits under the VSRS. The actuarial calculation to determine what the State would have paid into the State system for ORP participants should, ideally, be based on the age and career of each individual electing the optional plan. If such personnel generally are younger than the average age of all State employees, the amount which has to be contributed for them is somewhat less than the amount contributed for all State employees. The average age of the State employees remaining in the VSRS would be slightly increased and the necessary State contributions to support the VSRS might be slightly increased as well.

Second, the employer's contributions under TIAA-CREF vest immediately in the employee, while employees in the VSRS must be in service five years before they have the right to benefit from State contributions through a deferred annuity. If an ORP participant were to leave State service prior to five years' service, he would be able to continue under the TIAA-CREF plan with credit for his and his employer's contributions; if he were a VSRS member and left service before five years, he could withdraw his own contributions but not the State's contributions on his behalf and he would have no right to any deferred annuity. Therefore, if a number of ORP participants were to leave before working five years for the State, the State would not be able to retain its contributions on their behalf in the way that it can retain its contributions for VSRS members.

Third, apart from the two speculative cost features discussed above, there would be one new cost to the State involved in our proposal. Since the University of Virginia and George Mason College are now financing TIAA-CREF programs for their personnel, the State is not paying anything directly to buy retirement coverage for such personnel either through VSRS or TIAA-CREF. The two schools are financing their programs through endowment funds and student fees. Under our recommendations, the State would contribute on behalf of these personnel and this expenditure will come from the general fund of State revenues rather than from the endowment funds and student fees of the schools. Looking at the overall State program for higher education, it can be seen that this cost factor does not in reality involve a new cost, but rather a shift in budget practice since the schools would be using the dollars which the State contribution frees for education purposes either through improving their programs or reducing the cost of education to the student. The Council believes that the State should treat the various schools alike as far as possible with respect to retirement contributions, whether through VSRS or ORP support, once the determination is made that the ORP's are of benefit. The schools would be free to establish different types of ORP's as their resources allow, but the basic State contribution would be made on a uniform basis to maintain a basic parity among State employees.

In summary, it is the belief of Council, supported by testimony of the officials and actuaries of the VSRS, that the cost impact of these three items would be very slight. The first two cost items described above are only conjectural at this point and the cost of contributing on behalf of the University of Virginia and George Mason personnel is minimal when measured against the cost of the VSRS. Accordingly, we conclude that the reduction in the cost of the VSRS attributable to the elimination of coverage and liability for ORP participants should approximate the cost of the ORP and that the significant cost drawback of the 6% proposal studied during the prior interim is almost entirely eliminated by the present proposal for a contribution at the same rate utilized in determining State contributions to the VSRS.

C. Will the encouragement of such optional retirement plans have a harmful effect on the overall State retirement program?

The objection has been raised that State support for optional plans might encourage undesirable deviations from the basic VSRS and might result in requests by other groups to simulate the action of the State-supported institutions of higher education. It is argued that the State has worked hard to bring all employees within the framework of the VSRS, most notably in the last Session, through the adoption of a new Judicial Retirement System which is patterned closely after the VSRS and to be administered by the trustees of the VSRS.

There are several reasons why the Council does not find this argument persuasive. At the present time the statutes authorize State schools to adopt ORP's and, as noted, the University of Virginia and George Mason College have done so. The University of Virginia had established its TIAA-CREF program prior to the creation of the State system. The authorization is general, and any State-supported institution of higher education can utilize endowment funds or student fees to establish and finance an ORP. We are already faced with a deviation from the overall State retirement program in this field. Moreover, it can be argued that under the present approach only the richer schools can afford to waive the State's contribution to the VSRS on behalf of their employees and pay for an ORP. By permitting all schools to use what the State would pay into a State program for such personnel, the schools would be treated on a more equal and fair basis even though we recognize that it will not be likely that all State schools will implement ORP's in the immediate future.

Another factor which lessens the impact of this argument is the fact that the State programs patterned after the VSRS also contain exceptions or deviations which are designed to recognize special circumstances. For example, under the Judicial Retirement System, three and one-half years of credit is given for each year of service in recognition of the fact that judges enjoy shorter careers in State service than State employees generally. Under the State Police Officers Retirement System which is patterned after the VSRS and administered by the trustees of the VSRS, early retirement at age fifty-five, five years sooner than under the VSRS, is permitted since it is felt that the career involved is more strenuous and that early retirement is a valid feature of the retirement plan. In addition, the basic State Police retirement allowance is supplemented by $170 monthly from the date of retirement until age 65 is attained.

The situation confronting the State schools in today's competition to obtain faculty also creates a special circumstance which we feel should be recognized in retirement planning. Faculty members frequently begin a career with one school and transfer to another where opportunities for research permit them to advance within their specialty and then often move again or return to their home base. This type of mobility is recognized in the TIAA-CREF program which provides that a member's interest in contributions to the program vests immediately (rather than only after five years as under the VSRS) and that his interest is portable, i.e. transferable to other schools with TIAA-CREF coverage. This feature means that participants can move from one participating school to another, regardless of State location, without any disruption in their retirement plans and that they can continue to build their potential benefits under one program no matter what specific contribution rates are applicable. Under the VSRS, until a member serves five years in State employment, his rights do not vest and he has no right to retirement benefits. During that time he may, of course, withdraw his own contributions and receive interest on them, but will receive no benefits from any State contribution on his behalf.

We believe that mobility among faculty has to be recognized and that it can work to Virginia's advantage. Since Virginia is essentially an "in-flow" State with respect to the hiring of faculty and hires more faculty from out of Virginia than it supplies to other states, it will be to its advantage to participate in programs such as the TIAA-CREF plan and participate in retirement programs which are portable and which will permit faculty to move freely into Virginia.

One further point should be made which leads us to believe that there is very little danger that State support for ORP's will create pressure for further departures from the basic VSRS pattern. The TIAA-CREF program, as is mentioned above, is limited by its own terms to essentially the type of personnel covered by these recommendations and it is unique in having been developed specifically for the higher education field. We know of no other nationwide program in existence for other types of State employees and so do not anticipate requests from other groups for optional programs on a comparable basis.

In summary, the situation of the higher education personnel is a special one which justifies this limited departure from the VSRS pattern, and the departure recommended herein is not adaptable to other groups of employees and so not apt to generate requests for further deviations from the VSRS because the mobility of higher education personnel is a feature particularly characteristic of that group.

D. Will the State's support of optional retirement plans benefit higher education in Virginia?

The Council investigated carefully the question whether State support for ORP's would in fact benefit Virginia's system of higher education. Testimony was received from the Presidents of the State's schools of higher education, from the Council of Higher Education and from the Department of Community Colleges unanimously advocating a State contribution system which would permit the schools to use the State's contribution to the VSRS on behalf of school personnel to provide an optional retirement program such as the TIAA-CREF plan. This testimony brought out several reasons for the establishment of such programs at the State schools. Basically, the schools emphasized the advantage that the availability of TIAA-CREF coverage would have in recruiting faculty from other institutions of higher education. Advocates of State contributions to ORP's stated on several occasions that the lack of availability of such coverage has been a drawback in specific instances of attracting faculty from other states even though the VSRS is in itself a sound retirement program. These drawbacks stem from the lack of portability of benefits under the Virginia program as compared to the TIAA-CREF plan and as discussed above. Another advantage to the TIAA-CREF plan from the faculty point of view is the CREF feature which permits investment in equity shares as in a mutual fund and acts as a hedge against inflation. Under the TIAA-CREF program, the individual participant is given the option to earmark a certain percentage of his own and his employer's contributions to purchase an interest in an equity fund. This gives a certain balance or diversity to his retirement program which is lacking in the VSRS. It should also be noted that the VSRS carries features which are lacking in programs such as those under TIAA-CREF, such as extensive disability benefits and post-retirement supplements.

The Council was convinced by the testimony of those interested in the higher education field that the combination of the portability and equities fund features of the TIAA-CREF program constitute real attractions to faculty personnel and would assist recruitment efforts. Although Virginia has been able to hire large numbers of faculty from out-of-State institutions of higher education, we believe that recruitment would be made easier if such programs were available in Virginia and that the quality of faculty hired would be enhanced through making such programs available in Virginia.

It has been suggested that the increased portability of benefits would have the effect of making it easier for faculty to leave Virginia to go elsewhere. In the first place since Virginia is a State which hires more faculty from other states than it supplies to other states, the portability feature should work to its benefit. In the second place, it is doubtful whether the State should base its faculty employment philosophy on the premise that the best faculty is necessarily one of long-term employees. Frequently, a shift by a faculty member gives him the opportunity to increase his knowledge in a field to the benefit of Virginia if he returns with improved education credentials.

E. What will the actual impact of State support to such optional retirement plans be in Virginia in the near future?

We have concluded that the recommendations offered in this report will be of benefit to the State's system of higher education and will permit more State schools to enter into ORP agreements with groups such as TIAA-CREF. We envisage no immediate shift by all the schools to the adoption of such plans since the limited State contribution we are recommending will not fund the entire cost of such a plan for any school, assuming the schools will wish to provide an employer contribution greater than that calculated to fund the VSRS for State employees. We believe that more schools will in the future enter into such optional plans and that the plans will prove a benefit in faculty recruiting.

V. CONCLUSION

In summary, we are recommending a change in the present legislation which permits the State's institutions of higher education to establish optional retirement plans such as TIAA-CREF so that such plans will be supported by State general fund contributions based on the rate of State contributions to the VSRS for State employees. The legislation to implement this recommendation is carried in the Appendix with an explanation of the way in which the State's contribution is to be calculated and administered in the commentary to the proposed bill.

Respectfully submitted,

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* See dissenting statement which follows.

VI. DISSENTING STATEMENT OF MESSRS. WILLEY, CLEATON, McMURRAN AND RICHARDSON

This Report which recommends that the faculty, administrative officials and certain other employees of our educational institutions be allowed to withdraw their contributions to the Virginia Supplemental Retirement System and join in special retirement systems such as the Teachers Insurance and Annuity Association and College Retirement Equities Fund represents a backward step. We are opposed to it for reasons which will be set out briefly.

The Virginia Retirement System was first established in 1942 and repealed and re-established in 1952. It has continuously been strengthened and improved. We have sought to limit exceptions and special treatment as far as practicable and have succeeded to a large degree in doing so; at the same time, we have created a retirement system which has many advantages for employees of the State, whether employed by a college or by some agency of the State. This steady progress to a single system with increasing benefits will be stopped and even reversed by the recommendations of this Report, for we can be sure that a number of the colleges are going to take advantage of this proposal at once and that the unitary system which has been established with so much effort will have received a body blow.

We have had the argument advanced that since some of the colleges are already providing TIAA-CREF benefits that it would be unfair to deny them to the others. Without question, once the State takes the step which the majority of the Council proposes, those colleges which are now paying the employer part of the TIAA-CREF program will immediately use the excess funds to provide some benefit for their faculty which the other colleges in turn will not be able to match. Discrimination will be perpetuated forever. At least a continuation of the present system makes it certain that discrimination will get no worse. In fact, in time we might devise a way to terminate such discrimination.

The colleges advanced this program vigorously on the ground that they need it to attract faculty. There are many agencies of the State which have shortages in professional and technical classifications, and they will be coming in soon to seek some special advantage which they can offer to attract and hold skilled personnel in short supply. Doctors and the upper echelon personnel of the mental institutions are eagerly sought after, yet many vacancies exist. Are they not entitled to some special program to attract and hold people in positions which are vacant?

The colleges have made a strong argument that they need the changed program in order to compete for faculty; the change is not limited to faculty for it goes far beyond that to administrative and other personnel. A change which is sought principally on one basis—that of attracting faculty—is recommended on a wider scale on the ostensible ground that the larger group has recruitment problems also. Nothing in our records show this to be so.

The basic State system is bound to suffer not only because of the pressures created by allowing a deviation for one special category of employees, but because of cost impact as well. There will be added costs attributable (1) to the State's picking up part of the tab for present TIAA-CREF programs at the University of Virginia and George Mason College, (2) to the hidden actuarial factors described in the majority report, and (3) to the loss of State contributions retained in the present trust funds when employees leave State employment and the State system after less than five years of service. The fact that such costs are unknown and may be relatively low compared to the overall cost of the State system does not mean that they will be negligible. Our present retirement system is costly and under no circumstances should we incur added costs without knowing exactly what they are and that they can be justified. This last we do not and cannot know.

The proposal will bring about a hornet's nest of problems. Some of those which can be foreseen we have heretofore experienced. For instance, the State retirement system provides disability benefits which the proposed program may not; before the snows of winter have twice come and gone in Richmond, bills will have been offered to provide a special exception for someone who transferred to the new system and then became disabled. Despite our sympathy, are such people to be allowed benefits from both systems?

Another case is one in which a faculty member with four years of service will go into the new system withdrawing his contributions from the Virginia Supplemental Retirement System as he does so. After having been in that other system for some time he will want to return to the State system with prior service credit. Is he to be given the same consideration as a person who remained a member of the State system through thick and thin—should the fickle b rewarded and the steadfast punished?

We have been told many times over the years that the State retirement system serves two purposes: first, to attract and hold skilled and competent employees; and second, to provide a decent and dignified retirement for those employees who by reason of age or infirmity are no longer able to work. Our conviction is that the proposal advanced by the majority will destroy the first objective and it will have an adverse effect on the second objective. Finally, it will make every teacher in our public schools and every State employee a second-class citizen as compared to the faculty and certain administrative employees of the State-supported colleges. The proposal may be expedient, but it is not right.

EDWARD E. WILLEY
ARTHUR H. RICHARDSON
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APPENDIX

A. Draft Legislation

A BILL to amend and reenact § 51-111.28 of the Code of Virginia, relating to optional retirement plans at State-supported institutions of higher education, so as to provide for State contributions to such plans.

Be it enacted by the General Assembly of Virginia:

. That § 51-111.28 of the Code of Virginia be amended and reenacted as follows:

§ 51-111.28. Employees of *State-supported* institutions of higher education.—(*a*) Any *State-supported* institution of higher education, *including the State's community colleges,* which, at the time of the establishment of the Retirement System, has established, or which may thereafter establish, ~~a~~ *an optional* retirement plan ~~or arrangement~~ covering in whole or in part its employees engaged in the performance of teaching, *professional,* administrative or research duties, is hereby authorized to make contributions for the benefit of its employees who ~~elect to continue or be under such plan or arrangement and~~ elect to participate in such plan ~~or arrangement~~ rather than in the Retirement System established by this chapter. ~~Any present or future employee of such institution shall have the option of electing to participate in either the retirement system established by this chapter or the plan or arrangement provided by the institution employing him. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties.~~

(b) With respect to each biennium beginning on and after July one, nineteen hundred seventy-two, the State shall contribute, for each State-supported institution of higher education which has established an optional retirement plan and meets the requirements set forth in subsection (c) below, an amount which shall equal (1) the estimated payroll for the biennium payable by the State for employees of the institution participating in the optional retirement plan who would have been members of the Retirement System were they not covered under the optional retirement plan and for whom the institution may contribute, multiplied by (2) the employer contribution rate, calculated in accord with § 51-111.47 and including the normal, accrued liability and supplementary contribution rates referred to therein, applicable with respect to State employees participating in the Retirement System.

(c) Each institution seeking State contribution for an optional retirement plan shall be required: (1) to obtain the approval of the Board of Trustees of the Retirement System of the optional retirement plan which shall be a plan developed through the Teachers Insurance and Annuity Association of America and College Retirement Equities Fund or a comparable plan, and (2) to submit with its budget estimates to the Governor pursuant to § 2.1-54, an estimate of the amount which equals the payroll for the biennium payable by the State for employees of the institution participating in the optional retirement plan who would have been members of the Retirement System were they not covered under the optional retirement plan and for whom the institution may contribute, multiplied by the employer contribution rate defined in subsection (b) above. The Board of Trustees shall furnish to any such institution upon request such employer contribution rate.

(d) The amounts so requested under subsection (c) above shall be included in the appropriation bill submitted to the General Assembly

as appropriations from the general fund to the respective institutions.

(e) In addition to those employees who have elected to participate in an optional retirement plan prior to July one, nineteen hundred seventy-one, any other employee of a State-supported institution of higher education shall have an election to participate in an optional retirement plan provided by the institution employing him. The election herein provided shall be exercised (1) prior to October one, nineteen hundred seventy-one by any present employee of an institution which has an established optional retirement plan, or (2) not later than thirty days from the time of entry upon the performance of his duties by any future employee of an institution which has an established optional retirement plan, or (3) not later than ninety days from the time of notice to the Board of Trustees of the establishment of an optional retirement plan by any employee employed by an institution at the time of such establishment.

An election hereunder shall be irrevocable so long as an employee electing to participate in an optional retirement plan shall be in a position covered by such a plan.

Any employee who does not make the election provided for herein within the time limit applicable shall be deemed to have elected to participate in the Retirement System.

Any election to participate in an optional retirement plan shall be deemed to constitute a withdrawal from State service for the purposes of Article 8 of this chapter.

(f) Any optional retirement plan established prior to July one, nineteen hundred seventy-one shall be deemed an approved plan for the purposes of subsection (c) above.

2. This act shall be in force and effect on and after July one, nineteen hundred seventy-one.

B. Commentary on Draft Legislation

The bill as drafted is designed to preserve the option which already exists for the State's institutions of higher education to establish and contribute to optional retirement plans. The basic decision as to the terms and content of such a plan remains within the province of the school rather than the State or Board of Trustees of the VSRS. The purpose of the amendments to § 51-111.28 is to provide for State contributions to the ORP's on a uniform and regular basis. The dollar amounts of such contributions will have to be provided for in the biennial appropriation act.

The text of present § 51-111.28 is found in subsection (a) and has been refined by spelling out that the institutions referred to are "State-supported" and meant to include community colleges. The phrase, "a retirement plan or arrangement", previously used is changed to "an optional retirement plan" to give a more accurate description of the purpose of the section which is to authorize alternatives to the VSRS; certain obsolete language is deleted. The word "professional" is added to the types of school personnel covered so that librarians and other professional employees not directly engaged in teaching or research may be covered and merit State contribution under an optional plan. The provisions on employee elections to participate are deleted from subsection (a) and rewritten in the new subsection (e).

Subsection (b) states that the State will contribute a certain amount to such plans for each future biennium. The amount is to be determined by multiplying the estimated State payroll for participants in the ORP by the contribution rate applicable to the State's contribution to the VSRS for State employees. The payroll involved is to cover *only* personnel who (1) meet VSRS eligibility requirements so that the State will not be making any contribution for part-time employees or ones joining a retirement plan when over age 60, and (2) are engaged in teaching, professional, administrative or research activities. The rate to be applied to the payroll will be the same rate as that for the State's contribution to the VSRS on behalf of other State employees and will include the three parts of the new 1970 VSRS formula—the normal rate, the accrued liability or forty-year funding rate and the funding rate for the cost of living increment benefits.

Subsection (c) spells out the steps the schools must take to qualify for their State contribution. First, they must have the plan approved by the Board of Trustees of the VSRS to assure that it is in proper form and that it is either a TIAA-CREF or comparable program that, for example, is financially sound, provides for portable benefits and is conducted on a non-profit basis. Second, they must submit proper budget estimates in the usual manner. Should the Governor or Budget Division need any supporting data to justify the payroll figures cited, there is ample authority for them to require it under Title 2.1 of the Code. The Board of Trustees will have the contribution rate figures and furnish them upon request.

Subsection (d) provides for the incorporation of these State contributions in the budget bill as appropriations to the institutions.

Subsection (e) covers the matter of the employees' elections to join an ORP and covers four contingencies:

(a) for employees as of the effective date of the act (July 1, 1971), who have already joined an ORP at the University of Virginia, for example, there is no further election, since they have already made one under present § 51-111.28;

(b) employees of institutions with an ORP in effect prior to July 1, 1971 who have not elected to join the ORP will be given a new 90-day period to elect to join in view of the added element of State participation;

(c) new employees of any institution with an ORP will be given 30 days to make the election; and

(d) employees at an institution which establishes an ORP in the future will be given 90 days (from the time of notice to the Board of establishment of an ORP) to switch from the VSRS.

The election to join an ORP is to be irrevocable and no employee making it shall be eligible to change back to the VSRS so long as he is in a position covered by an ORP; if, however, he were to change to a Virginia school without an ORP or to public school teaching, he would be eligible and required to participate in the VSRS as any other new employee. The irrevocability feature is designed to assure that the VSRS is not subject to entry by ORP employees who later find the VSRS more attractive, especially with regard to disability benefits, when the cost to the State of VSRS coverage for such employees is apt to be inordinately high.

A provision is included to provide that the failure to make a timely election will be deemed an election to participate in the VSRS so there can be no gaps in coverage. The last provision of subsection (e) is technical and equates the joining of an ORP to withdrawal from service so that the ORP participant will be able to withdraw his contributions, if any, to the VSRS or be able to claim any deferred VSRS annuity to which he may be entitled.

The final subsection (f) is a simple grandfather provision to provide that plans existing July 1, 1971 will be deemed to be approved for purposes of qualifying for the new State contribution.

The Act is to take effect July 1, 1971 so that there will be time to prepare an ORP or to prepare the requisite budget papers to obtain a State contribution to an existing ORP for the 1972-74 biennium. The 1972-74 biennium will be the first for which any State contribution will be made.