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SENATE BILL NO. 789

Offered January 10, 2007

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A BILL to amend and reenact § 51.1-124.31 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3.1 (§ 51.1-124.30 et seq.) of Chapter 1 of Title 51.1 a section numbered 51.1-124.37, by adding in Article 9 (§ 51.1-152 et seq.) of Chapter 1 of Title 51.1 a section numbered 51.1-169 and by adding in Chapter 8 of Title 51.1 an article numbered 4, consisting of §§ 51.1-824 through 51.1-829, relating to the creation of trusts or equivalent arrangements to fund the costs of providing postemployment benefits other than pensions for the Commonwealth and for counties, cities, towns, school divisions, and other political subdivisions of the Commonwealth.

Patron—Stosch

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-124.31 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3.1 (§ 51.1-124.30 et seq.) of Chapter 1 of Title 51.1 a section numbered 51.1-124.37, by adding in Article 9 (§ 51.1-152 et seq.) of Chapter 1 of Title 51.1 a section numbered 51.1-169, and by adding in Chapter 8 of Title 51.1 an article numbered 4, consisting of §§ 51.1-824 through 51.1-829, as follows:

§ 51.1-124.31. Pooling of assets for investment.

The Board may invest on a pooled or consolidated basis the assets of (i) any retirement system or program it administers or on a pooled or consolidated basis (ii) any fund for which the Board shall have been given the full power to invest, reinvest, and manage the assets. The Board shall maintain a separate accounting of the funds assets of each of the retirement systems, and programs, and funds.

§ 51.1-124.37. Investment of assets of the Commonwealth Other Postemployment Benefits Fund.

A. In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage the assets of the Commonwealth Other Postemployment Benefits Fund. The Board shall maintain a separate accounting for the assets of the Commonwealth Other Postemployment Benefits Fund.

B. The Board shall invest the assets of the Commonwealth Other Postemployment Benefits Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. The Board's election to invest the assets of the Commonwealth Other Postemployment Benefits Fund on a pooled or consolidated basis under § 51.1-124.31 shall be considered to be within this standard of care.

C. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in subsection B above shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this section.

D. The provisions of §§ 51.1-124.32, 51.1-124.33, 51.1-124.34, and 51.1-124.35 shall apply to the Board's activities with respect to funds in the Commonwealth Other Postemployment Benefits Fund.

E. The Board may assess the Commonwealth Other Postemployment Benefits Fund participants a reasonable administrative fee for its services.

F. Participants in the Commonwealth Other Postemployment Benefits Fund may include the Commonwealth, its agencies, institutions, boards, and authorities and any political subdivision of the Commonwealth, which by prior agreement pursuant to § 51.1-827 designates the Board as trustee and manager of a trust or equivalent arrangement established pursuant to § 51.1-824. The Board shall maintain a separate accounting of the assets of each participant in the Fund.

§ 51.1-169. Commonwealth Other Postemployment Benefits Fund.

A. There is hereby created the Commonwealth Other Postemployment Benefits Fund (the Fund). The funds of the Commonwealth Other Postemployment Benefits Fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the active or former employees (and their dependents or beneficiaries) entitled to postemployment benefits other than pensions covered by the Fund.

B. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for postemployment benefits

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covered by the Fund and administrative expenses. The Fund is established to pay certain postemployment benefits of retirees, from the Commonwealth and participating localities or political subdivisions, and their dependents. For purposes of this section, "participating entity" shall mean the Commonwealth or any locality or political subdivision participating in the Fund.

C. Deposits to the Fund by a participating entity shall be made by appropriation from such participating entity, or from payroll deductions or withholding from salaries, wages, pensions, or other retiree payments. Deposits to the Fund by any participating entity shall be deemed to have been made to a separate and independent fund, mutually exclusive of any deposit by another participating entity and segregated from the deposits from all other participating entities. Deposits together with any earnings on those deposits are irrevocable, shall be exempt from state and local taxation, shall not be subject to execution, attachment, garnishment or any other process, and are not subject to the claims of creditors of any participating entity. However, any moneys or other property held in the Fund for any participating entity may be transferred to any other trust, trusts, or equivalent arrangement established by the participating entity pursuant to § 51.1-824.

D. Notwithstanding any other provision of law, the moneys and other property comprising the Fund shall be invested, reinvested and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.37.

E. If a participating entity repeals or terminates all postemployment benefits for which that participating entity has made deposits to the Fund, the remaining assets for that participating entity shall be used to provide any benefits continuing to be due to active or former employees (and their dependents or beneficiaries) of that participating entity who may continue to be due benefits. If there are no active or former employees or beneficiaries due such postemployment benefits for which the trust or equivalent arrangement for that participating entity was established, then any remaining assets may revert to that participating entity.

F. "Postemployment benefits" shall have the same meanings as set forth in § 51.1-825, and any postemployment benefit to be covered by the Fund shall be clearly defined and strictly construed.

Article 4.

Local trusts to fund postemployment benefits other than pensions.

§ 51.1-824. Counties, cities, towns, school divisions, and certain political subdivisions may establish local trusts or equivalent arrangements to fund postemployment benefits other than pensions.

The governing body of any county, city, or town may establish a trust, trusts, or equivalent arrangements for the purpose of accumulating and investing assets to fund postemployment benefits other than pensions, as defined herein. Deposits to any such trust, trusts, or equivalent arrangements and any earnings on those deposits shall be irrevocable; shall be dedicated to providing benefits to retirees and their beneficiaries in accordance with the terms of the plans or programs providing postemployment benefits other than pensions; and shall be exempt from taxation and execution, attachment, garnishment, or any other process. For the purposes of this article, an equivalent arrangement shall mean any fund or similar arrangement established by the governing body pursuant to this article under which funds are irrevocably allocated, segregated, or otherwise dedicated to providing postemployment benefits other than pension benefits to retirees and their beneficiaries. The governing body of any such county, city, or town also may make appropriations to any such trust, trusts, or equivalent arrangements, and any such governing body may require active and former employees covered by a postemployment benefit plan or program to contribute to such a trust or equivalent arrangement through payments or deductions from their wages, salaries, or pensions. Officers and employees who are subject to inclusion in the retirement plans described in § 51.1-800 also may be included in any such trust, trusts, or equivalent arrangements by the governing body.

The governing body also may authorize the governing body of any other political subdivision that is appointed in whole or in part by the governing body of such county, city, or town, to establish and fund a trust, trusts, or equivalent arrangements for its active and former employees. Any appointed or elected school board may establish and fund such a trust, trusts, or equivalent arrangements for its active and former employees. The governing body of any county, city, or town also may enter into agreements with the appointed or elected school board that provides public schools within its boundaries or with any other political subdivision, which is appointed in whole or in part by the governing body of any such county, city, or town, to permit any such school board or such other political subdivision to participate in any trust, trusts, or equivalent arrangements established by the governing body of any such county, city, or town.

The governing body of any such county, city, or town, the school board of the local school divisions, and the governing body of any other political subdivision that establishes or participates in any such trust, trusts, or equivalent arrangements, shall have the right to revise or discontinue its plans or programs providing such postemployment benefits other than pensions for its active and former officers and employees as it may deem necessary or transfer any assets held in any trust or equivalent arrangement established pursuant to this article to any other trust, trusts, or equivalent arrangement

established pursuant to this article; provided, however, any amendment, suspension, or revocation of any plans or programs providing such postemployment benefits other than pensions or transfer of assets held in a trust or equivalent arrangement shall not have the effect of diverting the assets of any trust, trusts, or equivalent arrangements to purposes other than the exclusive benefit of the active or former employees or their dependents or beneficiaries entitled to such postemployment benefit. If all plans or programs providing such postemployment benefits other than pensions for which a trust or equivalent arrangement is established are repealed or terminated by the governing body that created such trust, trusts or equivalent arrangements, then there shall be no continuing responsibility for that governing body to continue to make appropriations to such trust, trusts or equivalent arrangements, and the assets of any such trust, trusts or equivalent arrangements shall be used to provide any benefits continuing to be due to active or former employees (and their dependents or beneficiaries) under such plans or programs. If there are no active or former employees (or dependents or beneficiaries) due a benefit under any plan or program providing such postemployment benefits other than pensions for which the trust or equivalent arrangement was established, then any remaining assets may revert to the locality.

§ 51.1-825. Postemployment benefits other than pensions defined.

Postemployment benefits other than pensions covered by the trust, trusts, or equivalent arrangement shall be defined by the governing body of the county, city, or town, by the appointed or elected school board, or by the governing body of any other political subdivision that creates any such program or trust. Such benefits may include but are not limited to medical, dental, and life insurance provided to individuals who have terminated their service and to the dependents of such individuals and may be provided by purchasing insurance, by a program of self-insurance, or by a combination of both. Such postemployment benefits other than pensions may be provided to the officers and employees or to their dependents, estates, or designated beneficiaries. Any benefits arising from any postemployment benefits other than pension plans shall be clearly defined and strictly construed.

§ 51.1-826. Assets of trusts or equivalent arrangements for postemployment benefits other than pensions.

The assets of any trust or equivalent arrangement for postemployment benefits other than pensions shall be exempt from state and local taxation, and the assets of any such trust or equivalent arrangement shall not be subject to execution, attachment, garnishment, or any other process.

§ 51.1-827. Creation of local finance boards to manage the assets of postemployment benefits trust or equivalent arrangement; composition of such boards; alternatives to such boards; liability; and removal from office.

Except as otherwise provided herein, the governing body of any county, city, or town that establishes a trust, trusts, or equivalent arrangements for postemployment benefits other than pensions pursuant to this article also shall create a finance board to serve as trustee of such a trust, trusts, or equivalent arrangements and to manage and invest the assets of that trust, trusts, or equivalent arrangements. Such a finance board shall be composed of at least three members who shall include the chief financial officer of the locality, the treasurer of the locality, and at least one other additional person who shall be a citizen of the Commonwealth with proven integrity, business ability, and demonstrated experience in cash management and in investments. If the locality does not have a chief financial officer or a treasurer, then that position may be filled by the chief administrative officer of the locality or by a citizen who meets the qualifications set forth above. The citizen member shall be appointed initially by the governing body of the locality for a term of two years and if more than one citizen is appointed to serve on any such board, then the local governing body may appoint those citizens for staggered terms of one and two years. Subsequent appointments shall be for two-year terms or to fill the balance of any unexpired term. The finance board shall annually elect one of its members as chairman and another as vice-chairman. The finance board shall meet at least four times a year, and a majority of the members shall constitute a quorum.

Any school board of a local school division or the governing body of any other political subdivision that establishes its own postemployment benefits trust, trusts, or equivalent arrangements pursuant to this article shall create a finance board to serve as trustee of such a trust, trusts, or equivalent arrangements and to manage and invest the assets of that trust, trusts, or equivalent arrangements. Such a finance board shall be composed of at least three members consisting of the chief administrative officer of the entity, the chief financial officer of the entity, and at least one additional person who shall be a citizen of the Commonwealth and who meets the qualifications set forth above. The citizen member shall be appointed initially by the governing body of the locality for a term of two years and if more than one citizen is appointed to serve on any such board, then the local governing body may appoint those citizens for staggered terms of one and two years. Subsequent appointments shall be for two-year terms or to fill the balance of any unexpired term. The finance board shall annually elect one of its members as chairman and another as vice-chairman. The finance board shall meet at least four times a year, and a majority of the members shall constitute a quorum.

182 *Alternatively, and in lieu of establishing the finance board as described in this section, the governing*
183 *body of any county, city, or town, school division or other political subdivision that has established a*
184 *retirement board or deferred compensation board to manage pension benefits provided to or for its*
185 *active and former employees may designate that retirement board or deferred compensation board to*
186 *serve as trustee and to manage the assets of a trust or equivalent arrangement established pursuant to*
187 *this article. Any such retirement board or deferred compensation board shall have all the powers and*
188 *duties of the finance board described in this article, mutatis mutandis.*

189 *Finally, alternatively, in lieu of establishing the finance board as described in this section, and with*
190 *the prior agreement of the Board of Trustees of the Virginia Retirement System, the governing body of*
191 *any county, city, or town, school division or other political subdivision that has established a trust,*
192 *trusts, or equivalent arrangement to fund postemployment benefits other than pensions may participate*
193 *in the Commonwealth Other Postemployment Benefits Fund established pursuant to § 51.1-169 as a*
194 *participating locality, school division, or other political subdivision.*

195 *Except in the case of gross negligence or intentional misconduct, any member of a finance board*
196 *established pursuant to this section, any director of finance or another appointed official with a*
197 *similarly named position, or any member of a retirement board, who is acting in accordance with the*
198 *provisions of this article, shall not incur any liability for investment losses suffered by a trust*
199 *established pursuant to this article. Members of any such finance board shall be subject to removal*
200 *from office as set forth in §§ 24.2-230 through 24.2-238.*

201 *§ 51.1-828. Finance boards or alternatives thereto to manage the assets of trusts or equivalent*
202 *arrangements to fund postemployment benefits other than pensions and provide annual reports;*
203 *exemption from Public Procurement Act.*

204 *Except as otherwise provided herein, any finance board or any other person or entity serving as an*
205 *alternative thereto pursuant to § 51.1-827 shall retain the services of an investment manager, invest its*
206 *funds in accordance with § 51.1-829, maintain records of all of its proceedings, make such records*
207 *available for inspection by the public, invest the assets of the trust or equivalent arrangement in*
208 *accordance with the provisions of this article, and provide the governing body that created it an annual*
209 *report on the fund's performance and financial status. In lieu of any finance board or other person or*
210 *entity serving as an alternative thereto pursuant to § 51.1-827 serving as trustee, the investment*
211 *manager may serve as trustee of the funds. The selection of services related to the management,*
212 *purchase, or sale of authorized investments, including but not limited to actuarial services, shall not be*
213 *subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). In the event that*
214 *the governing body of a locality, the appointed or elected school board, or the governing body of any*
215 *other political subdivision has created a trust, trusts, or equivalent arrangements pursuant to this article*
216 *and agreed to participate in the Commonwealth Other Postemployment Benefits Fund established*
217 *pursuant to § 51.1-169 as a participating locality, school division, or other political subdivision, then*
218 *any such governing body shall not be required to retain the services of an investment manager.*

219 *§ 51.1-829. Investment of assets of trusts or equivalent arrangement for postemployment benefits*
220 *other than pensions; Board of Trustees of the Virginia Retirement System.*

221 *All funds appropriated to a trust or equivalent arrangement for postemployment benefits other than*
222 *pensions, as defined in § 51.1-825, and all funds accrued from the investment of any such funds that are*
223 *on hand at any time and are not necessary for immediate payment of benefits shall be invested by the*
224 *finance board, by any person or entity serving as an alternative thereto pursuant to § 51.1-827, or by*
225 *an investment manager who is serving as a trustee of the funds. All such funds shall be invested in*
226 *accordance with the prudent person standard established by § 51.1-803 and such investments shall not*
227 *be limited by Chapter 45 (§ 2.2-4500 et seq) of Title 2.2.*

228 *Provided, however, in the event the governing body of a locality, a school division, or another*
229 *political subdivision has created a trust, trusts, or equivalent arrangements pursuant to this article, and*
230 *agreed to participate in the Commonwealth Other Postemployment Benefits Fund established pursuant to*
231 *§ 51.1-169 as a participating locality, school division, or other political subdivision, then such*
232 *governing body shall be deemed to have satisfied the provisions of § 51.1-803.*

233 **2. That any trust or equivalent arrangement created by any county, city, or town, or school**
234 **division prior to July 1, 2007, to provide postemployment benefits other than pensions and which**
235 **is consistent with the provisions of this Act is hereby validated and confirmed, and all such trusts**
236 **or equivalent arrangements are declared to be validly created and established.**