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SENATE BILL NO. 789

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 16, 2007)

(Patron Prior to Substitute—Senator Stosch)

A BILL to amend the Code of Virginia by adding in Chapter 15 of Title 15.2 an article numbered 8, consisting of §§ 15.2-1544 through 15.2-1549, relating to the creation of trusts or equivalent arrangements to fund the costs of providing postemployment benefits other than pensions for counties, cities, towns, school divisions, and other political subdivisions of the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 15 of Title 15.2 an article numbered 8, consisting of §§ 15.2-1544 through 15.2-1549, as follows:

Article 8.

Local trusts to fund postemployment benefits other than pensions.

§ 15.2-1544. 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

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60 programs. If there are no active or former employees (or dependents or beneficiaries) due a benefit
61 under any plan or program providing such postemployment benefits other than pensions for which the
62 trust or equivalent arrangement was established, then any remaining assets may revert to the locality.

63 § 15.2-1545. Postemployment benefits other than pensions defined.

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

73 § 15.2-1546. Assets of trusts or equivalent arrangements for postemployment benefits other than
74 pensions.

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

78 § 15.2-1547. Creation of local finance boards to manage the assets of postemployment benefits trust
79 or equivalent arrangement; composition of such boards; alternatives to such boards; liability; and
80 removal from office.

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

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

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

117 Except in the case of gross negligence or intentional misconduct, any member of a finance board
118 established pursuant to this section, any director of finance or another appointed official with a
119 similarly named position, or any member of a retirement board, who is acting in accordance with the
120 provisions of this article, shall not incur any liability for investment losses suffered by a trust
121 established pursuant to this article. Members of any such finance board shall be subject to removal

from office as set forth in §§ 24.2-230 through 24.2-238.

§ 15.2-1548. Finance boards or alternatives thereto to manage the assets of trusts or equivalent arrangements to fund postemployment benefits other than pensions and provide annual reports; exemption from Public Procurement Act.

Except as otherwise provided herein, any finance board or any other person or entity serving as an alternative thereto pursuant to § 15.2-1547 shall retain the services of an investment manager, invest its funds in accordance with § 15.2-1549, maintain records of all of its proceedings, make such records available for inspection by the public, invest the assets of the trust or equivalent arrangement in accordance with the provisions of this article, and provide the governing body that created it an annual report on the fund's performance and financial status. In lieu of any finance board or other person or entity serving as an alternative thereto pursuant to § 15.2-1547 serving as trustee, the investment manager may serve as trustee of the funds. The selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

§ 15.2-1549. Investment of assets of trusts or equivalent arrangement for postemployment benefits other than pensions.

All funds appropriated to a trust or equivalent arrangement for postemployment benefits other than pensions, as defined in § 15.2-1545, and all funds accrued from the investment of any such funds that are on hand at any time and are not necessary for immediate payment of benefits shall be invested by the finance board, by any person or entity serving as an alternative thereto pursuant to § 15.2-1547, or by an investment manager who is serving as a trustee of the funds. All such funds shall be invested in accordance with the prudent person standard established by § 51.1-803 and such investments shall not be limited by Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2.

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