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SENATE BILL NO. 1355

Offered January 14, 2009

Prefiled January 14, 2009

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 of Chapter 1 of Title 51.1 a section numbered 51.1-124.37 and by adding in Article 9 of Chapter 1 of Title 51.1 a section numbered 51.1-169, 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—Wagner

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 of Chapter 1 of Title 51.1 a section numbered 51.1-124.37 and by adding in Article 9 of Chapter 1 of Title 51.1 a section numbered 51.1-169 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 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 § 15.2-1547 designates the Board as trustee and manager of a trust or equivalent arrangement established pursuant to § 15.2-1544. 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 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

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59 subdivisions, and their dependents. For purposes of this section, "participating entity" shall mean the
60 Commonwealth or any locality or political subdivision participating in the Fund.

61 C. Deposits to the Fund by a participating entity shall be made by appropriation from such
62 participating entity, or from payroll deductions or withholding from salaries, wages, pensions, or other
63 retiree payments. Deposits to the Fund by any participating entity shall be deemed to have been made
64 to a separate and independent fund, mutually exclusive of any deposit by another participating entity
65 and segregated from the deposits from all other participating entities. Deposits together with any
66 earnings on those deposits are irrevocable, shall be exempt from state and local taxation, shall not be
67 subject to execution, attachment, garnishment, or any other process, and are not subject to the claims of
68 creditors of any participating entity. However, any moneys or other property held in the Fund for any
69 participating entity may be transferred to any other trust, trusts, or equivalent arrangement established
70 by the participating entity pursuant to § 15.2-1544.

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

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

81 F. "Postemployment benefits" shall have the same meanings as set forth in § 15.2-1545, and any
82 postemployment benefit to be covered by the Fund shall be clearly defined and strictly construed.