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SENATE BILL NO. 1355**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 4, 2009)

(Patron Prior to Substitute—Senator Wagner)

A BILL to amend and reenact §§ 15.2-1547, 15.2-1548, 15.2-1549, and 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 authorizing the Virginia Retirement System to manage and invest assets in certain trusts and equivalent arrangements established by local governments and other local entities for the funding of postemployment benefits other than pensions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1547, 15.2-1548, 15.2-1549, and 51.1-124.31 of the Code of Virginia are 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:

§ 15.2-1547. 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.

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

Finally, in lieu of establishing the finance board as described in this section, and with the prior agreement of the Board of Trustees of the Virginia Retirement System, the governing body of any county, city, or town, school division, or other political subdivision that has established a trust, trusts, or equivalent arrangement to fund postemployment benefits other than pensions may participate in the

60 *Commonwealth Other Postemployment Benefits Fund established pursuant to § 51.1-169 as a*
61 *participating locality, school division, or other political subdivision.*

62 Except in the case of gross negligence or intentional misconduct, any member of a finance board
63 established pursuant to this section, any director of finance or another appointed official with a similarly
64 named position, or any member of a retirement board, who is acting in accordance with the provisions
65 of this article, shall not incur any liability for investment losses suffered by a trust established pursuant
66 to this article. Members of any such finance board shall be subject to removal from office as set forth in
67 §§ 24.2-230 through 24.2-238.

68 § 15.2-1548. Finance boards or alternatives thereto to manage the assets of trusts or equivalent
69 arrangements to fund postemployment benefits other than pensions and provide annual reports;
70 exemption from Public Procurement Act.

71 Except as otherwise provided herein, any finance board or any other person or entity serving as an
72 alternative thereto pursuant to § 15.2-1547 shall retain the services of an investment manager, invest its
73 funds in accordance with § 15.2-1549, maintain records of all of its proceedings, make such records
74 available for inspection by the public, invest the assets of the trust or equivalent arrangement in
75 accordance with the provisions of this article, and provide the governing body that created it an annual
76 report on the fund's performance and financial status. In lieu of any finance board or other person or
77 entity serving as an alternative thereto pursuant to § 15.2-1547 serving as trustee, the investment
78 manager may serve as trustee of the funds. The selection of services related to the management,
79 purchase, or sale of authorized investments, including but not limited to actuarial services, shall not be
80 subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). *In the event that*
81 *the governing body of a locality, the appointed or elected school board, or the governing body of any*
82 *other political subdivision has created a trust, trusts, or equivalent arrangements pursuant to this article*
83 *and has agreed to participate in the Commonwealth Other Postemployment Benefits Fund established*
84 *pursuant to § 51.1-169 as a participating locality, school division, or other political subdivision, then*
85 *any such governing body shall not be required to retain the services of an investment manager.*

86 § 15.2-1549. Investment of assets of trusts or equivalent arrangement for postemployment benefits
87 other than pensions.

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

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

100 § 51.1-124.31. Pooling of assets for investment.

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

105 § 51.1-124.37. Investment of assets of the Commonwealth Other Postemployment Benefits Fund.

106 A. In addition to such other powers as shall be vested in the Board, the Board shall have the full
107 power to invest, reinvest, and manage the assets of the Commonwealth Other Postemployment Benefits
108 Fund established under § 51.1-169. The Board shall maintain a separate accounting for the assets of the
109 Commonwealth Other Postemployment Benefits Fund.

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

117 C. No officer, director, or member of the Board or of any advisory committee of the Retirement
118 System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in
119 subsection B above shall be held personally liable for losses suffered by the Retirement System on
120 investments made under the authority of this section. In addition, neither the Commonwealth nor any
121 agency or department thereof shall incur any liability for any losses suffered by a participating entity as

described in subsection F (or for any losses suffered by the trust or equivalent arrangement established by such participating entity pursuant to § 15.2-1544 or for any losses suffered by a beneficiary thereof) on any investments made by the Retirement System 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 any entity that 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 of entities participating in the Fund as provided in subsection F of § 51.1-124.37 and the dependents of such retirees. For purposes of this section, "participating entity" shall mean any entity participating in the Fund as provided in subsection F of § 51.1-124.37.

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 § 15.2-1544.

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 § 15.2-1545, and any postemployment benefit to be covered by the Fund shall be clearly defined and strictly construed.