

## Virginia Retirement System 2013 Fiscal Impact Statement

**1. Bill Number:** HB1625

**House of Origin**    ☒ Introduced    ☐ Substitute    ☐ Engrossed  
**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Farrell

**3. Committee:** Appropriations

**4. Title:** Virginia Retirement System; collection of overpayments to retirees and beneficiaries.

**5. Summary:** Virginia Retirement System; collection of overpayments to retirees and beneficiaries. Prohibits VRS from collecting overpayments made to a retiree or beneficiary if the proximate cause of the overpayment was a computational error made by VRS or one of its employees, subsidiaries, affiliates, agents, or contractors and the retiree or beneficiary could not reasonably have been expected to detect the error or overpayment. Under the bill, VRS would correct the error as soon as practicable in order that the amount legally due would be paid to the retiree or beneficiary on a going forward basis.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** See Fiscal Implications below.

**8. Fiscal Implications:** VRS currently has approximately \$26 million in overpayments outstanding, caused by a computational error in the calculation of the 2009 cost of living allowance (COLA). This error affected approximately 133,000 retirees. The error has been corrected for future benefit payments, and the Board has authorized the recovery of the majority of the amount that was already paid in error from future Group Life Insurance benefits. In addition, the contractor has also committed to pay approximately \$1.2 million of the overpayment amount. This bill would prohibit the collection of these overpayments, as well as other overpayments in smaller amounts related to individual situations. The inability to recoup all overpayments that are a result of a computational error by VRS would result in an increase in the Plan's unfunded liability. The bill would not preclude the corrected recalculation of the benefits on a prospective basis.

**9. Specific Agency or Political Subdivisions Affected:** VRS

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill would prohibit VRS from collecting from a member or beneficiary any prior overpayment proximately caused by a computational error by VRS, its

employees, subsidiaries, affiliates, agents, or contractors, if the member could not reasonably have been expected to detect the error or overpayment. Under the bill, the Board would be allowed to correct the records as soon as practicable on a going forward basis, but could not collect prior overpayments. The bill specifically prohibits the Board from collecting overpayments from group life insurance proceeds payable under subsection B of § 51.1-510.

A majority of the \$26 million in COLA overpayments discussed above have yet to be collected. Nearly 8,000 of the impacted participants, however, have already reimbursed the plan or have had their benefit actuarially reduced to offset for the overpayment. Since this legislation would be effective prospectively beginning July 1, 2013, it would likely create a disparity amongst impacted members as it would prohibit future collection of the overpayment from similarly situated participants.

As a plan fiduciary, VRS is required to act in the best interests of the trust fund and all of its members. Authorization has been put in place in the *Code* to allow the Board to recoup erroneous overpayments in order to make the fund whole, although the Board does have the ability to waive recovery where the Board believes it would constitute a hardship (§ 51.1-124.9 (A) (2)). Without this authorization to recoup overpayments, VRS would be unable to continue to act in the best interest of all fund participants in the event of overpayment situations. It is also incumbent upon VRS, to the extent possible, to ensure that participants receive only the benefit to which they are legally entitled, and to protect the integrity of the fund so that future payouts and participants are protected. If overpayments are not recovered where possible, it could also lead to intergenerational inequities where future members must bear the cost of overpayments that were not recouped from the affected members.

**Date:** 01.17.13

**Document:** HB1625.DOC