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SENATE BILL NO. 1162

Offered January 14, 2015

Prefiled January 13, 2015

A *BILL to amend and reenact §§ 51.1-169 and 51.1-610 of the Code of Virginia, relating to hybrid retirement program; school division deferred compensation and cash match plans.*

Patron—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 51.1-169 and 51.1-610 of the Code of Virginia are amended and reenacted as follows:****§ 51.1-169. Hybrid retirement program.**

A. For purposes of this section, "hybrid retirement program" or "program" means a hybrid retirement program covering any employee in a position covered for retirement purposes under the provisions of Chapter 1 (§ 51.1-124.1 et seq.) for retirement purposes other than the Virginia Retirement System defined benefit retirement plan established under Chapter 1 (§ 51.1-124.1 et seq.). Persons who are participants in, or eligible to be participants in, the retirement plans under the provisions of Chapter 2 (§ 51.1-200 et seq.), Chapter 2.1 (§ 51.1-211 et seq.), the optional retirement plans established under §§ 51.1-126.1, 51.1-126.3, 51.1-126.4, and 51.1-126.7, or a person eligible to earn the benefits permitted by § 51.1-138 shall not be eligible to participate in the hybrid retirement program. Any person who is employed as a firefighter, emergency medical technician, or law-enforcement officer as those terms are defined in § 15.2-1512.2 and whose employing political subdivision has legally adopted an irrevocable resolution as described in subdivision B 4 of § 51.1-153 and subdivision A 3 of § 51.1-155 shall not be eligible to participate in the hybrid retirement program. No member of the Judicial Retirement System under Chapter 3 (§ 51.1-300 et seq.) shall be eligible to participate in the hybrid retirement program described in § 51.1-169 except members appointed to an original term on or after January 1, 2014.

The Board shall maintain the hybrid retirement program established by this section, and any employer is authorized to make contributions under such program for the benefit of its employees participating in such program. Every person who is otherwise eligible to participate in the program but is not a member of a retirement plan administered by the Virginia Retirement System the first time he is hired on or after January 1, 2014, in a covered position, shall participate in the hybrid retirement program established by this section.

A person who participates in the otherwise applicable defined benefit retirement plan established by this title and administered by the Virginia Retirement System under this chapter may make an irrevocable election to participate in the hybrid retirement program maintained under this section. Such election shall be exercised no later than April 30, 2014. If an election is not made by April 30, 2014, such employee shall be deemed to have elected not to participate in the hybrid retirement program and shall continue to participate in his current retirement plan.

B. Except as otherwise provided in subsection G:

1. The employer shall make contributions to the defined benefit component of the program in accordance with § 51.1-145.

2. The employer shall make a mandatory contribution to the defined contribution component of the program on behalf of an employee participating in the program in the amount of one percent of creditable compensation, *which shall be made to the appropriate cash match plan established for the employee under § 51.1-608.* In addition, the employer shall make a matching contribution on behalf of the employee based on the employee's voluntary contributions under the defined contribution component of the program to the deferred compensation plan established under § 51.1-602, up to a maximum of 2.5 percent of creditable compensation for the payroll period, as follows: (i) 100 percent of the first one percent of creditable compensation contributed by the employee to the defined contribution component of the program under subdivision C 2 for the payroll period, and (ii) 50 percent of the next three percent of creditable compensation contributed by the employee to the defined contribution component of the program under subdivision C 2 for the payroll period. The matching contribution by the employer shall be made to the appropriate cash match plan established for the employee under § 51.1-608.

3. The total amount contributed by the employer under subdivision 2 shall vest to the employee's benefit according to the following schedule:

- a. Upon completion of two years of active participation, 50 percent.
- b. Upon completion of three years of active participation, 75 percent.
- c. Upon completion of four years of active participation, 100 percent.

59 For purposes of this subdivision, "active participation" includes creditable service, as defined in
60 § 51.1-124.3, in any retirement plan established by this title and administered by the Retirement System.

61 If an employee terminates employment with an employer prior to achieving 100 percent vesting,
62 contributions made by an employer on behalf of the employee under subdivision 2 that are not vested,
63 shall be forfeited. The Board may establish a forfeiture account and may specify the uses of the
64 forfeiture account.

65 4. An employee may direct the investment of contributions made by an employer under subdivision
66 B 2.

67 5. No loans or hardship distributions shall be available from contributions made by an employer
68 under subdivision B 2.

69 *C. Except as otherwise provided in subsection G:*

70 1. An employee participating in the hybrid retirement program maintained under this section shall,
71 pursuant to procedures established by the Board, make mandatory contributions on a salary reduction
72 basis in accordance with § 414(h) of the Internal Revenue Code (i) to the defined benefit component of
73 the program in the amount of four percent of creditable compensation in lieu of the amount described in
74 subsection A of § 51.1-144 and (ii) to the defined contribution component of the program in the amount
75 of one percent of creditable compensation, *which shall be made to the appropriate cash match plan*
76 *established for the employee under § 51.1-608.*

77 2. An employee participating in the hybrid retirement program may also make voluntary
78 contributions to the defined contribution component of the program of up to four percent of creditable
79 compensation or the limit on elective deferrals pursuant to § 457(b) of the Internal Revenue Code,
80 whichever is less. The contribution by the employee shall be made to the appropriate deferred
81 compensation plan established by the employee under § 51.1-602.

82 3. If an employee's voluntary contributions under subdivision C 2 are less than four percent of
83 creditable compensation, the contribution will increase by one-half of one percent, beginning on January
84 1, 2017, and every three years thereafter, until the employee's voluntary contributions under subdivision
85 C 2 reach four percent of creditable compensation. The increase will be effective beginning with the
86 first pay period that begins in such calendar year unless the employee elects not to increase the
87 voluntary contribution in a manner prescribed by the Board.

88 4. No loans or hardship distributions shall be available from contributions made by an employee
89 under this subsection.

90 5. *Disclosure of all services, fees, restrictions, and surrender penalties associated with employee*
91 *voluntary contributions under subdivision C 2 shall be provided by the Board to an employee at*
92 *enrollment, or at such later time upon request.*

93 D. 1. The amount of the service retirement allowance under the defined benefit component of the
94 program shall be governed by § 51.1-155 for all creditable service credited prior to the effective date of
95 the member's participation in the program. For all other creditable service, the allowance shall equal one
96 percent of a member's average final compensation multiplied by the amount of his creditable service
97 while in the program. For judges who are participating in the hybrid retirement program, creditable
98 service shall be determined as provided in § 51.1-303 and service retirement eligibility shall be
99 determined as provided in § 51.1-305.

100 2. No member shall retire for disability under the defined benefit component of the program.

101 3. Except as provided in subdivision 1, any employee participating in the hybrid retirement program
102 maintained under this section shall be considered to be a person who becomes a member on or after
103 July 1, 2010.

104 4. In all other respects, administration of the defined benefit component of the program shall be
105 governed by the provisions of Chapter 1 (§ 51.1-124.1 et seq.).

106 E. With respect to any employee who elects, pursuant to subsection A, to participate in the otherwise
107 applicable defined benefit retirement plan established by this title and administered by the Virginia
108 Retirement System, the employer shall collect and pay all employee and employer contributions to the
109 Virginia Retirement System for retirement and group life insurance in accordance with the provisions of
110 Chapter 1 (§ 51.1-124.1 et seq.) for such employee.

111 F. 1. The Board shall develop policies and procedures for administering the hybrid retirement
112 program it maintains, including the establishment of guidelines for employee elections and deferrals
113 under the program.

114 2. No employee who is an active member in the hybrid retirement program maintained under this
115 section shall also be an active member of any other optional retirement plan maintained under the
116 provisions of Chapter 1 (§ 51.1-124.1 et seq.).

117 3. If a member of the hybrid retirement program maintained under this section is at any time in
118 service as an employee in a position covered for retirement purposes under the provisions of Chapter 1
119 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3 (§ 51.1-300 et seq.), his
120 benefit payments under the hybrid retirement program maintained under this section shall be suspended

while so employed; provided, however, reemployment shall have no effect on a payment under the defined contribution component of the program if the benefit is being paid in an annuity form under an annuity contract purchased with the member's account balance.

4. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 on any employer for administering and overseeing the hybrid retirement program maintained under this section shall be charged for each employee participating in such program and shall be for costs incurred by the Virginia Retirement System that are directly related to the administration and oversight of such program. Notwithstanding the foregoing, the Board is authorized to collect all or a portion of such fee directly from the employee.

5. The creditable compensation for any employee on whose behalf employee or employer contributions are made into the hybrid retirement program shall not exceed the limit on compensation as adjusted by the Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to eligible participants under state and local governmental plans under § 401(a)(17) of the Internal Revenue Code as amended in 1993 and as contained in § 13212(d)(3) of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

6. The Board may contract with private corporations or institutions, subject to the standards set forth in § 51.1-124.30, to provide investment products as well as any other goods and services related to the administration of the hybrid retirement program, *except as provided in subsection G*. The Virginia Retirement System is hereby authorized to perform related services, including but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, and asset purchase, control, and safekeeping.

G.1. Any political subdivision of the Commonwealth that has established a plan pursuant to § 403(b) of the Internal Revenue Code of 1986, as amended (a "403(b) plan"), may, at its option, elect to allow its employees the option to direct that voluntary contributions to the defined contribution component of the program under subdivision C 2 be made to such 403(b) plan and the corresponding employer matching contributions under subdivision B 2 be made to such 403(b) plan or the appropriate local cash match plan established under § 51.1-610. All such voluntary contributions by an employee to such 403(b) plan shall be made on a pretax basis. Any such political subdivision of the Commonwealth that so directs shall develop policies and procedures for administering such contributions, subject to and in accordance with applicable federal law and regulations. The policies and procedures shall provide for the administration of:

a. Vesting provisions as provided in subdivision B 3, the establishment of and uses for a forfeiture account as provided in subdivision B 3, and automatic contribution escalation provisions as provided in subdivision C 3, all with regard to employee voluntary contributions and corresponding employer matching contributions; and

b. Loans or hardship distributions for employee voluntary contributions under subdivision C 2 and employer matching contributions corresponding to employee voluntary contributions under subdivision B 2, notwithstanding the prohibitions on such loans or distributions in subdivisions B 5 and C 4.

In all other respects, the political subdivision shall be subject to the provisions of the hybrid retirement program described in this section.

2. The governing body of any political subdivision of the Commonwealth electing to allow its employees to use its 403(b) plan or a local cash match plan as described in subdivision 1 shall adopt a resolution on or before November 1, 2015, and submit such resolution to the Board to notify the Board of its election, which shall be effective January 1, 2106, and shall remain effective for a minimum period of 18 months. Thereafter, the governing body of any political subdivision of the Commonwealth may make or change its election for its employees no more often than annually by adopting a resolution on or before March 1 of each year notifying the Board of a new or changed election, which shall become effective on July 1.

3. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of the Commonwealth that provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, the political subdivision shall not be liable for any loss resulting from such employee's or beneficiary's (i) investment of voluntary contributions in the political subdivision's 403(b) plan or matching contributions in the political subdivision's 403(b) plan or local cash match plan, (ii) exercise of discretion over the assets in any of his accounts, or (iii) inaction with respect to the assets in any of his accounts that results in such assets being placed in a default investment option selected by the political subdivision, provided that the investment options for the affected individual account and the particular default investment option for such individual account are selected in accordance with subsection A of § 51.1-803, applied *mutatis mutandis*. Under no circumstances shall the Commonwealth, the Board, employees of the Retirement System, the Investment Advisory Committee of the Retirement System, or any other advisory committee established by the Board bear any liability with respect to any plan or individual account described in this subsection.

182 4. The provisions of this subsection shall not apply to any political subdivision of the Commonwealth
183 that has entered into an agreement with the Retirement System pursuant to § 51.1-603.1 or 51.1-611
184 except with regard to a 403(b) plan.

185 5. Disclosure of all services, fees, restrictions, and surrender penalties associated with employee
186 voluntary contributions under subsection G shall be provided by the political subdivision of the
187 Commonwealth to an employee at enrollment, or at such later time upon request.

188 6. The Board shall not be responsible for administration of or recordkeeping related to voluntary
189 contributions to the defined contribution component of the program made to a 403(b) plan or the
190 corresponding employer matching contributions made to a 403(b) plan or the appropriate local cash
191 match plan established under § 51.1-610 that are authorized by subdivision G 1.

192 **§ 51.1-610. Local cash match plans.**

193 A. Any county, municipality, authority, or other political subdivision of the Commonwealth may by
194 ordinance or resolution adopt and establish for itself and its employees a cash match plan. Any such
195 cash match plan may include constitutional officers and their employees. The ordinance or resolution
196 adopting or establishing such plan shall create or designate an appropriate board or officer to administer
197 the plan, and shall confer upon such board or officer the authority to do all things by way of
198 supervision, administration, and implementation of the plan, including the power to contract with private
199 corporations or institutions for services in connection therewith.

200 B. If it deems it advisable, any county, municipality, authority, or other political subdivision of the
201 Commonwealth, which by ordinance or resolution adopts and establishes for itself and its employees a
202 cash match plan, may create a trust or other special fund for the segregation of the funds or assets
203 resulting from contributions.

204 C. No amount shall be credited pursuant to any cash match plan created pursuant to this section on
205 behalf of a qualified participant who is participating in the hybrid retirement program described in
206 ~~§ 51.1-169~~ if the qualified participant has not contributed the maximum amount of voluntary
207 contributions under subdivision C 2 of ~~§ 51.1-169~~.

208 2. That the provisions of this act shall become effective on January 1, 2016, except the provisions
209 of subdivision G 2 of § 51.1-169 of the Code of Virginia, as created by this act, which shall become
210 effective in due course.