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SENATE BILL NO. 422

Offered January 8, 2014

Prefiled January 7, 2014

A *BILL to amend and reenact §§ 51.1-169, 51.1-600, 51.1-603, 51.1-603.1, 51.1-607, 51.1-610, and 51.1-611 of the Code of Virginia, relating to hybrid retirement program; local 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, 51.1-600, 51.1-603, 51.1-603.1, 51.1-607, 51.1-610, and 51.1-611 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.). Except as provided in § 51.1-302, 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.), Chapter 3 (§ 51.1-300 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.

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. 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. 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 *or 403(b) plan* established under § 51.1-602 *or 51.1-603*, 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 *or 51.1-610*.

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 continuous participation in the program, 50 percent.
- b. Upon completion of three years of continuous participation in the program, 75 percent.
- c. Upon completion of four years of continuous participation in the program, 100 percent.

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SB422

59 If an employee terminates employment with an employer prior to achieving 100 percent vesting,
60 contributions made by an employer on behalf of the employee under subdivision 2 that are not vested,
61 shall be forfeited. The Board *or a county, municipality, authority, or other political subdivision of the*
62 *Commonwealth, as appropriate*, may establish a forfeiture account and may specify the uses of the
63 forfeiture account.

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

66 5. No loans or hardship distributions shall be available from *mandatory contributions or matching*
67 *contributions on behalf of the employee based on the employee's voluntary contributions under the*
68 *defined contribution component of the program to the deferred compensation plan established under*
69 *§ 51.1-602* made by an employer under subdivision B 2.

70 C. 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.

76 2. An employee participating in the hybrid retirement program may also make voluntary
77 contributions to the defined contribution component of the program of up to four percent of creditable
78 compensation or the limit on elective deferrals pursuant to §§ 403(b) and 457(b) of the Internal
79 Revenue Code, whichever is less. The contribution by the employee shall be made to the appropriate
80 deferred compensation plan *or 403(b) plan* established by the employee under § 51.1-602 *or 51.1-603*.

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

88 4. No loans or hardship distributions shall be available from *mandatory or voluntary* contributions
89 *under the defined contribution component of the program to the deferred compensation plan established*
90 *under § 51.1-602* made by an employee under this subsection.

91 D. 1. The amount of the service retirement allowance under the defined benefit component of the
92 program shall be governed by § 51.1-155, except that the allowance shall equal one percent of a
93 member's average final compensation multiplied by the amount of his creditable service while in the
94 program. For judges who are participating in the hybrid retirement program, creditable service shall be
95 determined as provided in § 51.1-303.

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

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

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

104 F. 1. The Board *or a county, municipality, authority, or other political subdivision of the*
105 *Commonwealth, as appropriate*, shall develop policies and procedures for administering the ~~hybrid~~
106 ~~retirement~~ program it maintains, including the establishment of guidelines for employee elections and
107 deferrals under the program.

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

111 3. If a member of the hybrid retirement program maintained under this section is at any time in
112 service as an employee in a position covered for retirement purposes under the provisions of Chapter 1
113 (§ 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
114 benefit payments under the hybrid retirement program maintained under this section shall be suspended
115 while so employed; provided, however, reemployment shall have no effect on a payment under the
116 defined contribution component of the program if the benefit is being paid in an annuity form under an
117 annuity contract purchased with the member's account balance.

118 4. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 on any employer
119 for administering and overseeing the hybrid retirement program maintained under this section shall be
120 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.

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. 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.

§ 51.1-600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"403(b) plan" means a plan by which an employee defers some portion of income until some stated time in the future; provides that the federal and state income tax on such income will be deferred until the actual receipt of such income; and is established pursuant to the provisions of § 403(b) of the Internal Revenue Code of 1986, as amended.

"Act" means the Government Employees Deferred Compensation Plan Act.

"Board" means the Board of Trustees of the Virginia Retirement System.

"Deferred compensation plan" means a plan by which an employee defers some portion of income until some stated time in the future; provides that the federal and state income tax on such income will be deferred until the actual receipt of such income; and is established pursuant to the provisions of § 457 of the Internal Revenue Code of 1986, as amended.

"Employee" means, in the case of the plan described in § 51.1-602, all persons employed by a participating employer, including appointed or elected officials. In the case of a plan adopted by a county, municipality, authority or other political subdivision pursuant to § 51.1-603, an employee shall be defined by such county, municipality, authority or other political subdivision.

"Participating employer" means the Commonwealth or any political subdivision that has elected pursuant to § 51.1-603.1 to participate in the deferred compensation plan established by the Board pursuant to this chapter.

§ 51.1-603. Local deferred compensation or 403(b) plans.

A. Any county, municipality, authority, or other political subdivision of the Commonwealth may by ordinance or resolution adopt and establish for itself and its employees a deferred compensation plan *or 403(b) plan*. Any such deferred compensation plan *or 403(b) plan* may include constitutional officers and their employees, *as appropriate*. The ordinance or resolution adopting or establishing such plan shall create or designate an appropriate board or officer to administer the plan, and shall confer upon such board or officer the authority to do all things by way of supervision, administration, and implementation of the plan, including the power to contract with private corporations or institutions for services in connection therewith. The deferral of compensation may be accomplished by payroll deductions by the appropriate officer of the county, municipality, authority, or other political subdivision.

B. If it deems it advisable, any county, municipality, authority, or other political subdivision of the Commonwealth, which by ordinance or resolution adopts and establishes for itself and its employees a deferred compensation plan *or 403(b) plan*, may (i) create a trust or other special fund for the segregation of the funds or assets resulting from compensation deferred at the request of its employees for the implementation of such plan or (ii) provide that its employees who commence employment or reemployment on or after a specified date, and who have not affirmatively elected to participate in such deferred compensation plan ~~or in a plan established by such political subdivision pursuant to § 403(b) of the Internal Revenue Code of 1986, as amended~~ *or 403(b) plan*, shall participate in either such deferred compensation plan or 403(b) plan, as determined by the political subdivision, at such initial default amount or rate of deferral as it may determine, unless such employee elects, in a manner prescribed by the plan administrator, not to participate in the plan.

C. *In the case of a plan administered by the Board or a county, municipality, authority, or other political subdivision of the Commonwealth, as appropriate, which provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, the Board and a county, municipality, authority, or other political subdivision of the Commonwealth, as appropriate, shall not be liable for any loss resulting from such employee's or beneficiary's (i) exercise of discretion over the assets in his account or (ii) inaction with respect to the assets in his account that results in such assets being placed in a default investment option selected by the Board or a county, municipality, authority, or other political subdivision of the Commonwealth, as appropriate.*

§ 51.1-603.1. Participation by employees of political subdivisions in deferred compensation plan

182 of Virginia Retirement System.

183 A. The Virginia Retirement System may enter into an agreement with any political subdivision of the
184 Commonwealth to permit participation by the political subdivision's employees in the deferred
185 compensation plan established and administered by the Board pursuant to § 51.1-602, except that
186 political subdivisions of the Commonwealth otherwise participating in the retirement system pursuant to
187 Article 5 (§ 51.1-130 et seq.) of Chapter 1 shall participate in (i) the deferred compensation plan
188 established and administered by the Board pursuant to § 51.1-602 to the extent necessary to provide
189 benefits under the hybrid retirement program described in § 51.1-169 or (ii) *the deferred compensation*
190 *plan or 403(b) plan established and administered by a political subdivision pursuant to § 51.1-603.*

191 B. The political subdivision may provide in the agreement that its employees who (i) commence
192 employment or reemployment on or after a specified date occurring on or after the effective date of this
193 provision in the agreement, (ii) are not participating in the hybrid retirement program described in
194 § 51.1-169, and (iii) have not affirmatively elected to participate in the plan described in § 51.1-602 or a
195 plan established by such political subdivision pursuant to § 403(b) of the Internal Revenue Code of
196 1986, as amended, shall participate in either such plan described in § 51.1-602 or a 403(b) plan, as
197 determined by the political subdivision, unless such employee elects, in a manner prescribed by the
198 Board, not to participate in such plan. The amount of the deferral for any such employee participating in
199 the plan shall equal, on a semimonthly basis, \$20 of otherwise payable compensation, unless the
200 employee elects to defer a greater amount.

201 § 51.1-607. Definitions.

202 As used in this chapter, unless the context requires a different meaning:

203 "Board" means the Board of Trustees of the Virginia Retirement System.

204 "Cash match plan" means a plan established pursuant to the provisions of § 401 (a) of the Internal
205 Revenue Code of 1986, as amended, to which a participating employer contributes based on
206 contributions made by an employee to a deferred compensation plan or to a plan established pursuant to
207 § 403 (b) or 457(b) of the Internal Revenue Code of 1986, as amended. Alternatively, if the Board or a
208 county, municipality, authority, or other political subdivision of the Commonwealth determines that it is
209 appropriate, such plan may be established pursuant to § 403 (b) or 457(b) of the Internal Revenue Code
210 of 1986, as amended.

211 "Deferred compensation plan" means a plan described in Chapter 6 (§ 51.1-600 et seq.) of this title.

212 "Employee" means, in the case of the plan described in § 51.1-608, any salaried person, including
213 appointed or elected officials, providing services for a participating employer. In the case of a plan
214 adopted by a county, municipality, authority or other political subdivision pursuant to § 51.1-610, an
215 employee shall be defined by such county, municipality, authority or other political subdivision.

216 "Participating employer" means the Commonwealth or any political subdivision that has elected
217 pursuant to § 51.1-603.1 to participate in the deferred compensation plan established by the Board
218 pursuant to Chapter 6 (§ 51.1-600 et seq.) of this title or a sponsor of a plan established pursuant to
219 § 403 (b) or 457(b) of the Internal Revenue Code of 1986, as amended.

220 "Qualified participant" means, in the case of a plan established pursuant to § 51.1-608, an employee
221 of a participating employer who is making continuous deferrals of at least ten dollars per pay period to
222 the deferred compensation plan established by the Board pursuant to Chapter 6 (§ 51.1-600 et seq.) of
223 this title or to a plan established pursuant to § 403 (b) of the Internal Revenue Code of 1986, as
224 amended. The determination of whether an employee is making continuous deferrals shall be made by
225 the Board. In the case of a plan established pursuant to subsection D of § 51.1-608 or § 51.1-610,
226 qualified participant means an employee described by the governing body establishing such plan in the
227 documents setting forth the details of such plan.

228 § 51.1-610. Local cash match plans.

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

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

240 C. No amount shall be credited pursuant to any cash match plan created pursuant to this section on
241 behalf of a qualified participant who is participating in the hybrid retirement program described in
242 § 51.1-169 if the qualified participant has not contributed the maximum amount of voluntary
243 contributions under subdivision C 2 of § 51.1-169 In the case of a plan administered by the Board or a

county, municipality, authority, or other political subdivision of the Commonwealth, as appropriate, which provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, the Board and a county, municipality, authority, or other political subdivision of the Commonwealth, as appropriate, shall not be liable for any loss resulting from such employee's or beneficiary's (i) exercise of discretion over the assets in his account or (ii) inaction with respect to the assets in his account that results in such assets being placed in a default investment option selected by the Board or a county, municipality, authority, or other political subdivision of the Commonwealth, as appropriate.

§ 51.1-611. Participation by employees of political subdivisions in cash match plan of Virginia Retirement System.

The Virginia Retirement System may enter into an agreement with any political subdivision of the Commonwealth to permit participation by the political subdivision's employees in the cash match plan established and administered by the Board pursuant to § 51.1-607, except that political subdivisions of the Commonwealth otherwise participating in the retirement system pursuant to Article 5 (§ 51.1-130 et seq.) of Chapter 1 shall participate in the cash match plan (i) established and administered by the Board pursuant to § 51.1-608 to the extent necessary to provide benefits under the hybrid retirement program described in § 51.1-169 or (ii) established and administered by a political subdivision of the Commonwealth pursuant to § 51.1-610.