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HOUSE BILL NO. 1967

Offered January 11, 2017

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A BILL to amend and reenact § 51.1-169 of the Code of Virginia, relating to the Virginia Retirement System; hybrid retirement program.

Patron—Massie

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:**1. That § 51.1-169 of the Code of Virginia is 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 meets the definition of "emergency medical services personnel" in § 32.1-111.1 or is employed as a firefighter, 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 or rehired 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~~ *two* 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~~ *1.5* 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) in the amount of 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.

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b. Upon completion of three years of active participation, 75 percent.

c. Upon completion of four years of active participation, 100 percent.

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

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

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

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

C. Except as otherwise provided in subsection G:

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

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

b. An employee commencing or recommencing participation in the hybrid retirement program on or after January 1, 2018, shall have the initial contribution under subdivision a set at one-half of one percent of creditable compensation unless such employee elects, in a manner prescribed by the Board, not to make such contribution.

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

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

5. Disclosure of all services, fees, restrictions, and surrender penalties associated with employee voluntary contributions under subdivision C 2 shall be provided by the Board on an annual basis to an employee who does not make the election provided in subdivision G 1.

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

2. No member shall retire for disability under the defined benefit component of the program, provided, however, that judges who are participating in the hybrid retirement program may retire for disability under §§ 51.1-307 and 51.1-308.

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

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

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

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

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

124 3. If a member of the hybrid retirement program maintained under this section is at any time in
125 service as an employee in a position covered for retirement purposes under the provisions of Chapter 1
126 (§ 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
127 benefit payments under the hybrid retirement program maintained under this section shall be suspended
128 while so employed; provided, however, reemployment shall have no effect on a payment under the
129 defined contribution component of the program if the benefit is being paid in an annuity form under an
130 annuity contract purchased with the member's account balance.

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

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

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

149 G. 1. Any political subdivision of the Commonwealth that has established a plan pursuant to § 403(b)
150 of the Internal Revenue Code of 1986, as amended (a "403(b) plan"), may, at its option, elect to allow
151 its employees the option to direct that voluntary contributions to the defined contribution component of
152 the program under subdivision C 2 be made to such 403(b) plan and the corresponding employer
153 matching contributions under subdivision B 2 be made to such 403(b) plan or the appropriate local cash
154 match plan established under § 51.1-610. All such voluntary contributions by an employee to such
155 403(b) plan shall be made on a pretax basis. Any such political subdivision of the Commonwealth that
156 so directs shall develop policies and procedures for administering such contributions, subject to and in
157 accordance with applicable federal law and regulations. The policies and procedures shall provide for the
158 administration of vesting provisions as provided in subdivision B 3, the establishment of and uses for a
159 forfeiture account as provided in subdivision B 3, and automatic contribution escalation provisions as
160 provided in subdivision C 3, all with regard to employee voluntary contributions and corresponding
161 employer matching contributions.

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

164 2. The governing body of any political subdivision of the Commonwealth electing to allow its
165 employees to use its 403(b) plan or a local cash match plan as described in subdivision 1 shall adopt a
166 resolution on or before November 1, 2015, and submit such resolution to the Board to notify the Board
167 of its election, which shall be effective January 1, 2016, and shall remain effective for 12 months.
168 Thereafter, the governing body of any political subdivision of the Commonwealth may make or change
169 its election for its employees no more often than annually by adopting a resolution on or before
170 November 1 of each year notifying the Board of a new or changed election, which shall become
171 effective on January 1.

172 3. A person who participates in the hybrid retirement program maintained under this section may
173 make an election to participate in the 403(b) plan established by his employer under subdivision G 1.
174 Such election shall be exercised no later than November 30, 2015, and shall be effective January 1,
175 2016. If an election is not made by November 30, 2015, such employee shall be deemed to have elected
176 not to participate in the 403(b) plan established by his employer under subdivision G 1. Thereafter, such
177 employee may make or change his election on or before November 30 of each year by notifying his
178 employer of a new or changed election, which shall become effective the following January 1. If an
179 election is not made or changed by November 30, such employee shall be deemed to have elected not to
180 change the prior year's election.

181 4. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of

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

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

197 6. Disclosure of all services, fees, restrictions, and surrender penalties associated with employee
198 voluntary contributions under *this* subsection G shall be provided by the political subdivision of the
199 Commonwealth on an annual basis to an employee who makes the election provided in subdivision G 1.
200 Such employee shall also be provided with a side-by-side comparison of the long-term effects of generic
201 expense ratios on his investments.

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

206 8. The Board shall develop policies and procedures for administering the provisions of this
207 subsection.