Virginia Retirement System
2020 Fiscal Impact Statement

1. **Bill Number:** SB54-E

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

2. **Patron:** Cosgrove and DeSteph

3. **Committee:** Finance and Appropriations

4. **Title:** Virginia Retirement System; retired law-enforcement officers employed as school security officers.

5. **Summary:** Allows a retired law-enforcement officer to continue to receive his service retirement allowance during a subsequent period of employment by a local school division as a school security officer (SSO). The engrossed bill amends Line 106 to increase the bona fide break in service from 60 days to one year. The engrossed bill also has an enactment clause requiring that an appropriation be included in the appropriation act in order for the bill to become effective.

6. **Budget Amendment Necessary**: Yes. Item 494. VRS estimates implementation costs for the bill at $344,218 in FY 2020, with minimal ongoing costs in FY 2021 and beyond. This does not include the impact to current or future contribution rates or to the funded status of the plans, which are discussed below.

   Programming will be required for employers to be able to enroll these retirees, to ensure that their retirement benefits are not suspended, and that service is not added to their records. This is similar to the current procedure for retirees in the teacher critical shortage program. There may also be impacts on VRS' continued modernization program, which, among other initiatives, has migrated from a mainframe-based system to a client server environment, but the cost and length of any delay cannot be calculated at this time. To mitigate impacts to the modernization program's ongoing implementation schedule (continued work required to move toward online-retirement processing), a manual process for collecting employer contributions may need to be deployed until an automated solution can be fully developed, tested, and put into production. Additionally, a temporary, full-time position will be needed in Finance.

7. **Fiscal Impact Estimates:**

Fiscal Impact Estimates (based on 5% increase in retirements—10% increase will result in higher fiscal impact):

Fiscal Year	*Dollars*	*Positions*	*General Fund*	*Non-General Fund & Local Funds*
2020				447,000
2021	3,572,000		655,000	2,917,000
2022	3,572,000		655,000	2,917,000
2023	3,572,000		655,000	2,917,000
2024	3,572,000		655,000	2,917,000
2025	3,572,000		655,000	2,917,000
2026	3,572,000		655,000	2,917,000

See fiscal implications in section 8 below for a detailed breakdown of estimated costs.

8. **Fiscal Implications:** Outside benefits counsel has confirmed that Internal Revenue Service (IRS) guidance allows specifically for a bona fide break in service with no prearrangement for re-employment, and the IRS makes the determination of whether or not there is a break in service using a facts and circumstances test. The IRS has not established a safe harbor severance period. IRS regulations under Internal Revenue Code (IRC) § 410, as cited in Private Letter Ruling 201147038, suggest that a one-year period without performing service might be considered a safe harbor. VRS uses a one-year break in service for the teacher critical shortage program. In 2001, the Joint Legislative Audit and Review Commission (JLARC) adopted a resolution concurring with VRS regarding the minimum twelve month separation before a retiree could be rehired into a critical shortage position without loss of retirement benefits, consistent with the recommendation of the JLARC actuarial consultant.

Failure to meet the facts and circumstances test for a bona fide break in service could jeopardize VRS' plan qualification status, thereby affecting all members and retirees. Typically, individual retirees who return to work at more than 80% of a full-time position or are found not to have legitimately retired by completing the bona fide break in service must un-retire, with their retirement benefit ceasing, and the retirees must repay any benefit payments received since the time they returned to work. This may also affect eligibility for the State Retiree Health Plan administered by DHRM.

The engrossed bill adopts a one-year break in service before a retired law-enforcement officer can return to work as a SSO. Also, under this bill, employer contributions are required while the retiree works, although the retiree will not receive corresponding service credit.

VRS employer contribution rates are established as a percentage of an employer's VRS-covered payroll. When a position is removed from VRS coverage by a return-to-work exception or otherwise, there is a decrease in the funding of retirement benefits. In particular, legacy unfunded liabilities will not be paid off as expected. This bill does require that an employer include compensation paid to a retiree hired into a SSO position in its VRS-covered payroll for purposes of calculating employer retirement contributions, which helps to mitigate this impact.

The potential impact of the bill on the cost-sharing Teacher plan would depend on whether retirees fill existing SSO positions or new additional positions.

Allowing a VRS retiree to return to work and be actively employed while continuing to receive a retirement allowance would impact both retirement and other post-employment benefits (OPEB) plans.

Under the engrossed bill, a member who has retired from a sworn law-enforcement officer position under Title 51.1 (SPORS, VaLORS, or local law-enforcement officers) and who, following a one-year break in service, is hired by a local school division as a SSO, as defined in § 9.1-101, may work full-time as a SSO and continue to receive a retirement benefit (i.e., an in-service distribution). The bill also provides that the retiree will not be eligible to receive any cash match contributions pursuant to Chapter 6.1 (§ 51.1-607 *et seq.*) for which active employees are eligible.

Anyone who retired from a similar hazardous duty position due to disability would lose the disability retirement benefit upon returning to work in a SSO position. Likewise, Line of Duty Act (LODA) benefits would cease for a LODA beneficiary who returns to work as a SSO.

The retiree would not receive any future benefit accruals while working and would, therefore, not be required to make member contributions to the plan. Retirees who return to work under this provision would be considered retired for retirement, group life, health insurance credit, VSDP and/or VLDP benefits, if applicable. The member would be eligible to receive cost-of-living increases on the service retirement benefit while receiving the in-service distribution.

SSOs are currently covered under the Teacher retirement plan. Preliminary results from the 2018-2019 annual school safety survey, developed by the Department of Criminal Justice Services, indicates that 476 schools statewide reported having either full- or part-time SSOs, with approximately 898 SSO positions according to the survey data.

Eighty-seven grants totaling more than $3.47 million have been awarded to 53 localities throughout Virginia. This funding will enable local law enforcement agencies to fund new school resource officer (SRO) and SSO positions at K-12 public schools. The grants were awarded by the Criminal Justice Services Board at their May 9, 2019 meeting as well as the Executive Committee, on behalf of the Board, at a special meeting.

Funding for the grants came from the state-funded School Resource Officer/School Security Officer Incentive Grant Program. In 2019, Governor Northam approved the General Assembly's amendment to add an additional $3 million for this program in order to increase the number of schools in the Commonwealth with SROs or SSOs.

See section 11 of this impact statement for more information on the differences between SSOs and SROs.

Return-to-work provisions have the potential to have financial impacts on VRS retirement plans due to the following implications:

- **Can incentivize members to retire earlier than originally expected.** Since members would be able to receive a retirement benefit and continue to receive compensation for working in a VRS covered position, provisions of the bill could change retirement patterns. To illustrate, if members retire earlier than anticipated, the plan pays benefits earlier than expected and for a longer period of time. In addition, the plan has less time in which to earn investment income on member and employer contributions which is necessary to fund benefits. Requiring longer breaks in service, such as a year or more, would help to avoid prearrangements of subsequent re-employment (precluded by the Internal Revenue Code) and mitigate altering retirement patterns of current members.

- **Can impact allocation of cost-sharing if replacing current covered positions with retirees**. Employers filling positions with retirees under the provisions of the bill could impact cost-sharing allocations if the payroll of these members is exempt from inclusion in valuation pay. As an example, payroll of a school division that hires retirees as SSOs will be smaller than anticipated if these positions that were formerly filled by active employees will now be filled by retirees, for whom no employer contributions are being made. This impact can be avoided by requiring that the payroll of retired members be included in the plan's covered payroll for VRS reporting, as is the case in this bill. While the member and employer would pay no normal cost since the member will not accrue additional benefit service, the covered payroll could still be used to amortize the legacy unfunded liability payment. This would protect against artificially increasing the amortization rate for other employers in the Teacher plan who may not fill VRS covered positions with retired members.

The implications of incentivized early retirement would impact individual political subdivision plans, SPORS, or VaLORS under the provisions of the bill, and the amount of impact would vary based on utilization of the provision within each of the plans. The additional costs of earlier than expected retirements would be borne by the local employers of the retiring members through additional pension and health insurance credit payments paid over longer periods of time, or in the case of a member in SPORS or VaLORS, the cost would be shared by the pool of employers in those plans.

While the costs for individual political subdivision plans are difficult to model due to each plan being separately rated, below we have shown estimated costs associated with SPORS, VaLORS, and political subdivisions in aggregate assuming that the provisions of the bill would create an increased incentive to take an in-service distribution and return to work. Determining the anticipated demand is difficult due to not knowing the number of SSO positions (current or new) that will be filled by retired law-enforcement officers in addition to the positions made available through grant funding. For illustrative purposes, we have modeled the impacts of a 5% and 10% increase in assumed retirements for sworn law-enforcement officers due to the proposed changes in plan provisions. To the extent actual experience varies from that assumed, the costs will vary from the estimates provided herein.

Exhibit 1 below shows the current expected retirements for each of the plans described above for members currently eligible for retirement under the hazardous duty provisions. Based on the population as of the last actuarial valuation, we would normally expect approximately 995 retirements from this population during the year. Increasing expected retirements by 5% would provide for approximately 50 more retirements under this illustration. Increasing expected retirements by 10% would provide for approximately 99 more retirements under this illustration.

Exhibit 1 – Expected Retirements Based on Current Assumptions

SPORS - Members Eligible for Retirement

Age	Years of Service 6-24	Years of Service 25+	Total Eligible for Retirement	Expected Retirements	Modeled 5% Increase in Retirements	Modeled 10% Increase in Retirements
50-54	114	112	226	17	3	6
55-59	50	98	148	14		
60-64	13	53	66	11		
65+	2	16	18	18		
Total	179	279	458	60		

VaLORS - Members Eligible for Retirement

Age	Years of Service 6-24	Years of Service 25+	Total Eligible for Retirement	Expected Retirements	Modeled 5% Increase in Retirements	Modeled 10% Increase in Retirements
50-54	651	83	734	82	16	31
55-59	507	59	566	60		
60-64	259	37	296	75		
65+	72	23	95	95		
Total	1,489	202	1,691	312		

Political Subdivision Hazardous Duty - Members Eligible for Retirement

Age	Years of Service 6-24	Years of Service 25+	Total Eligible for Retirement	Expected Retirements	Modeled 5% Increase in Retirements	Modeled 10% Increase in Retirements
50-54	1,757	463	2,220	190	31	62
55-59	953	288	1,241	128		
60-64	409	133	542	154		
65+	99	52	151	151		
Total	3,218	936	4,154	623		

The proposed changes would have an impact on both the plan normal cost rate as well as an immediate impact on the accrued liability. Exhibit 2 below shows that the estimated total increase in unfunded liability across all retirement plans in aggregate would be approximately $37.9 million while the increase in unfunded liability for the OPEBs would be approximately $190,000 if the provisions of the bill were enacted, assuming a 5% increase in retirements. The estimated total increase in unfunded liability across all retirement plans in aggregate would be approximately $73.3 million while the increase in unfunded liability for the OPEBs would be approximately $378,000, assuming a 10% increase in retirements. Actual experience may vary from that which has been modeled.

Exhibit 2 – Estimated Increase in Unfunded Liabilities

Impact on Unfunded Liabilities of Retirement Plans

		5% Increase in Retirements		10% Increase in Retirements	
Plan	Unfunded Liability 6/30/2019 Valuation	Unfunded Liability with Proposed Legislation	Increase in Unfunded Liability	Unfunded Liability with Proposed Legislation	Increase in Unfunded Liability
SPORS	$322,488,000	$326,469,000	$3,981,000	$330,310,000	$7,822,000
VaLORS	$726,243,000	$730,214,000	$3,971,000	$733,874,000	$7,631,000
Political Subdivisions (In Aggregate)	$3,353,576,000	$3,383,542,000	$29,966,000	$3,411,379,000	$57,803,000
Total	$4,402,307,000	$4,440,225,000	$37,918,000	$4,475,563,000	$73,256,000

Impact on Unfunded Liabilities of OPEB Plans

		5% Increase in Retirements		10% Increase in Retirements	
Plan	Unfunded Liability 6/30/2019 Valuation	Unfunded Liability with Proposed Legislation	Increase in Unfunded Liability	Unfunded Liability with Proposed Legislation	Increase in Unfunded Liability
HIC - State	$917,335,000	$917,632,000	$297,000	$917,914,000	$579,000
HIC - Political Subdivisions (In Aggregate)	$19,285,000	$19,329,000	$44,000	$19,372,000	$87,000
VSDP	($236,474,000)	($236,539,000)	($65,000)	($236,601,000)	($127,000)
Group Life	$1,672,916,000	$1,672,830,000	($86,000)	$1,672,755,000	($161,000)
Total	$2,373,062,000	$2,373,252,000	$190,000	$2,373,440,000	$378,000

The increase in liability modeled here is due to both anticipated retirements from current members already eligible to retire plus anticipated future retirements occurring earlier than expected.

Exhibit 3 below shows the combined cost impacts to both retirement and OPEB plans assuming the bill is enacted effective July 1, 2020 and a 5% increase in retirements. The increase in costs reflects the increase in normal cost rates as well as an additional rate to pay down the increase in the unfunded liabilities associated with this bill over the next 20 years.

These costs are associated with encouraging early retirement and do not include any potential impacts to the Teacher plan discussed above.

Exhibit 3 – Expected Increase in Annual Funding – 5% Increase in Retirements

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
State - General Fund	$ -	$ -	$ -	$ -	$ -	$ -
SPORS - General Fund	386,000	386,000	386,000	386,000	386,000	386,000
VaLORS - General Fund	269,000	269,000	269,000	269,000	269,000	269,000
JRS - General Fund	-	-	-	-	-	-
Teacher - General Fund	-	-	-	-	-	-
TOTAL General Fund	$ 655,000	$ 655,000	$ 655,000	$ 655,000	$ 655,000	$ 655,000
State - Non-General Funds	$ -	$ -	$ -	$ -	$ -	$ -
SPORS - Non-General Funds	64,000	64,000	64,000	64,000	64,000	64,000
VaLORS - Non-General Funds	27,000	27,000	27,000	27,000	27,000	27,000
TOTAL - Non-General Funds	$ 91,000	$ 91,000	$ 91,000	$ 91,000	$ 91,000	$ 91,000
Teacher - Local Funds	$ -	$ -	$ -	$ -	$ -	$ -
Political Subdivisions - Local Funds	$ 2,826,000	$ 2,826,000	$ 2,826,000	$ 2,826,000	$ 2,826,000	$ 2,826,000
TOTAL Local Funds	$ 2,826,000	$ 2,826,000	$ 2,826,000	$ 2,826,000	$ 2,826,000	$ 2,826,000
Grand Totals	$ 3,572,000	$ 3,572,000	$ 3,572,000	$ 3,572,000	$ 3,572,000	$ 3,572,000

Estimated projections based on employee data and valuation results as of June 30, 2019 and assume a level population throughout projection period.
Payrolls beyond 2021 are assumed to remain level throughout projection period.
Projections are based on a 5% increase in assumed retirements for sworn law-enforcement officers due to the proposed changes in plan proivisions.

Exhibit 4 below shows the combined cost impacts to both retirement and OPEB plans assuming the bill is enacted effective July 1, 2020 and a 10% increase in retirements. The increase in costs reflects the increase in normal cost rates as well as an additional rate to pay down the increase in the unfunded liabilities associated with this bill over the next 20 years. These costs are associated with encouraging early retirement and do not include any potential impacts to the Teacher plan discussed above. While impacts to Teacher plan are not shown, we believe any impacts to the Teacher plan will be minimal due to the requirement that payroll associated with return to work members will be included in contributions to pay down unfunded liabilities.

Exhibit 4 – Expected Increase in Annual Funding – 10% Increase in Retirements

	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
State - General Fund	$ -	$ -	$ -	$ -	$ -	$ -
SPORS - General Fund	772,000	772,000	772,000	772,000	772,000	772,000
VaLORS - General Fund	538,000	538,000	538,000	538,000	538,000	538,000
JRS - General Fund	-	-	-	-	-	-
Teacher - General Fund	-	-	-	-	-	-
TOTAL General Fund	$ 1,310,000	$ 1,310,000	$ 1,310,000	$ 1,310,000	$ 1,310,000	$ 1,310,000
State - Non-General Funds	$ -	$ -	$ -	$ -	$ -	$ -
SPORS - Non-General Funds	128,000	128,000	128,000	128,000	128,000	128,000
VaLORS - Non-General Funds	54,000	54,000	54,000	54,000	54,000	54,000
TOTAL - Non-General Funds	$ 182,000	$ 182,000	$ 182,000	$ 182,000	$ 182,000	$ 182,000
Teacher - Local Funds	$ -	$ -	$ -	$ -	$ -	$ -
Political Subdivisions - Local Funds	$ 6,122,000	$ 6,122,000	$ 6,122,000	$ 6,122,000	$ 6,122,000	$ 6,122,000
TOTAL Local Funds	$ 6,122,000	$ 6,122,000	$ 6,122,000	$ 6,122,000	$ 6,122,000	$ 6,122,000
Grand Totals	$ 7,614,000	$ 7,614,000	$ 7,614,000	$ 7,614,000	$ 7,614,000	$ 7,614,000

Estimated projections based on employee data and valuation results as of June 30, 2019 and assume a level population throughout projection period.
Payrolls beyond 2021 are assumed to remain level throughout projection period.
Projections are based on a 10% increase in assumed retirements for sworn law-enforcement officers due to the proposed changes in plan proivisions.

9. **Specific Agency or Political Subdivisions Affected:** VRS, political subdivisions, any public school division that employs retired law enforcement officers as SSOs, and agencies employing SPORS and VaLORS members.

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

11. **Other Comments:**

Background

Currently, a VRS retiree cannot collect a VRS retirement benefit while simultaneously working full-time in a VRS-covered position absent specific statutory authority that is in compliance with applicable Internal Revenue Code provisions. There are limited exceptions to this rule under the *Code of Virginia*, such as retirees working in statutorily-defined critical shortage teaching positions. Most often, however, an individual working in a full-time position for a VRS-participating employer cannot simultaneously collect a VRS retirement benefit. In the case of a VRS retiree returning to work full-time in a VRS-covered position, the retiree must "unretire" and resume active VRS participation. When the individual chooses to subsequently retire again, VRS will recalculate the new retirement benefit to include the additional service credit earned.

The engrossed bill would permit certain retired law enforcement officers (SPORS, VaLORS, and local law-enforcement officers) to return to otherwise VRS-covered employment as a SSO, but without impact to the retiree's monthly benefit. The retiree would not accrue additional service credit and would not be eligible for any cash match payments that are available to similarly situated active employees under chapter 6.1 of title 51.1 (§ 51.1-607 *et seq.*). Please note that while the language of the bill refers to an election by the retiree, there is no actual election and the provisions of the bill would automatically apply to any eligible retiree who returns to work full-time as a SSO. The employer would be required to pay contributions for these employees.

<u>One-Year Break in Service</u>

The engrossed bill provides for a one-year break in service, consistent with the teacher critical shortage provisions.

<u>Current Return-to-Work Options</u>

Retirees may currently return to work part-time without losing VRS retirement benefits following a bona fide break in service with no prearrangement. In most cases a VRS retiree may return to work on a part-time basis with a VRS-participating employer and continue receiving retirement benefits. When working in a "non-covered" (i.e., part-time, temporary, or provisional) position, a VRS retiree is not in violation of § 51.1-155(B) and may continue to work while also collecting his or her retirement benefit. To be considered working in a non-covered position on the basis of part-time employment, a retiree must work 80% or less of the hours required of the comparable full-time position. In the case of someone working under a 9-, 10-, or 11-month contract with a school division (e.g., a SSO), this 80% threshold would be based on the 9-, 10-, or 11-month full-time equivalent position. Alternatively, if a county, rather than a school division, hired personnel to provide school security services as a SRO, the 80% threshold would be based on a normal full-time work schedule (i.e., 2,080 hours per year). Under this approach (e.g., a SRO hired by a county or city), a VRS retiree would be available to work more hours per year in a part-time position compared to a SSO with a 9-, 10-, or 11-month contract hired by a school division.

The following table demonstrates the number of hours that a VRS retiree may currently work on a part-time basis depending on the number of months of the full-time equivalent position:

Contract duration for full-time equivalent position:	Part-time work limit (hours per year) based on the 80% threshold:	Approximate part-time work limit (hours per week)*
12 months	1,664	32
11 months	1,525	29
10 months	1,387	27
9 months	1,248	24

*Part-time work in excess of 29 hours may implicate requirements of the Affordable Care Act (ACA).

Health Insurance Impact

Health care issues related to retirees returning to work should also be considered. Each school division's health insurance provisions likely differ, but typically if a retiree is eligible for active employee coverage, he or she would move to the active plan, if eligible. In most cases, when a retiree comes back to active employment that provides eligibility for health insurance coverage, the retiree prefers to have the employer contribution. In general, Medicare would consider that the active coverage should be primary when coverage due to current active employment is available. While the state's policy allows for a retiree to return to the retiree health insurance program immediately upon loss of active coverage, because each school division may offer different health care insurance coverage, it is difficult to generalize about the health care impact of a retiree returning to work for a non-state employer.

The employer shared responsibility provisions of the Affordable Care Act (ACA) require that applicable large employers (generally, 50+ employees) offer affordable, minimum essential coverage to full-time (30 or more hours/week) employees and their dependents. The employee does not have to take the coverage, but in order to comply with ACA requirements, the employer would need to confirm through ACA reporting that the offer was made. A retiree health plan may or may not include provisions allowing for the retiree to leave the retiree health care program in order to receive coverage in another plan and then return to the former retiree health plan at a later date.

Difference Between School Resource Officers and School Security Officers

SSOs perform a different role from SROs and generally receive different benefits.

Important to understanding the bill is the precise role of a SSO. The *Code of Virginia* currently authorizes two primary positions that can provide varying levels of security services in a public school: a SRO, employed by a political subdivision, and a SSO, employed by a school division. The bill applies only to SSOs. Section 9.1-101 sets forth the statutory differences between these two positions:

	School Resource Officer	**School Security Officer**
Employer	Local law enforcement agency	Local school board
Purpose	Provide law enforcement and security services in Virginia public elementary and secondary schools	Maintain order and discipline, prevent crime; investigate violations of school board policies; detain students violating the law or school board policies on school property or at school-sponsored events; ensure the safety, security, and welfare of all students, faculty, staff and visitors

SRO and SSO eligibility for enhanced hazardous duty benefits as active employees also varies. A SRO, if actively employed by a sheriff's office, automatically receives enhanced hazardous duty coverage. A SRO actively employed by a local police department, however, is eligible for enhanced hazardous duty coverage only if the political subdivision has elected such coverage under § 51.1-138 (note: most political subdivisions have elected these benefits to some degree). A SSO is not currently eligible for enhanced hazardous duty coverage since it is a position employed by a local school board, which does not provide for hazardous duty benefits within the VRS Teacher Plan.

Whereas a SRO can carry a firearm by virtue of being a certified law enforcement officer, House Bill 1392 (2017) added specific requirements that govern whether a SSO may carry a firearm. These requirements became effective July 1, 2017, in § 22.1-280.2:1, as amended in 2019:

> [A] school security officer may carry a firearm in the performance of his duties if (i) within 10 years immediately prior to being hired by the local school board or private or religious school he (a) was an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth or (b) was employed by a law-enforcement agency of the United States or any state or political subdivision thereof and his duties were substantially similar to those of a law-enforcement officer as defined in § 9.1-101; (ii) he retired or resigned from his position as a law-enforcement officer in good standing; (iii) he meets the training and qualifications described in subsection C of § 18.2-308.016; (iv) he has provided proof of completion of a training course that includes training in active shooter emergency response, emergency evacuation procedure, and threat assessment to the Department of Criminal Justice Services pursuant to subdivision 42 of § 9.1-102, provided that if he received such training from a local law-enforcement agency he received the training in the locality in which he is employed; (v) the local school board or private or religious school solicits input from the chief law-enforcement officer of the locality regarding the qualifications of the school security officer and receives verification from such chief law-enforcement officer that the school security officer is not prohibited by state or federal law from possessing, purchasing, or transporting a firearm; and (vi) the local school board or private or religious school grants him the authority to carry a firearm in the performance of his duties.

Additional information in the following chart, which was developed by the Virginia Department of Criminal Justice Services (DCJS), demonstrates the differences between a SRO and SSO.

Legislation

School Resource Officer	School Security Officer
1. Law enforcement agency employee	1. School employee
2. Complying with federal, state and local statutes	2. Complying with/guided by local school policies and regulations
3. Under direction of law enforcement command	3. Under direction of local school principal or designee
4. Assigned to school and community activities	4. Primarily assigned to school campus activities
5. Responsible for enforcing state law	5. Responsible for enforcing school policy
6. Responsible for custody and arrest in conformance with law	6. Responsible for detaining individuals
7. Search must be in accordance with State and Federal law	7. Can search students and others based upon reasonable suspicion
8. Laws and custody requirement procedures apply	8. May detain and question students
9. Act under the standards of law	9. Act in absence of parents (*in loco parentis*)
10. Use of force permissible as guided by department policy	10. Use of force should be limited and only used in accordance with local school policy

DCJS
Virginia Department of Criminal Justice Services
www.dcjs.virginia.gov

Teacher Critical Shortage Program

There is currently a limited exception in § 51.1-155(B)(3) that allows a VRS retiree to return to work full-time in a VRS-covered, critical shortage teaching position without impact to his or her retirement allowance. These provisions are set to expire July 1, 2025, and were intended to address the difficulty that some schools face in recruiting qualified teachers. In order to take advantage of this provision, however, each of the following requirements must be met:

- The VRS retiree must have been receiving a retirement allowance for a certain period of time preceding his employment as provided by law;
  - Note: VRS requires one year for the "certain period of time." Further, the one-year break in service was established in conjunction with the Joint Legislative Audit and Review Commission (JLARC), and in 2001 consistent with the recommendation of the JLARC actuarial consultant JLARC adopted a resolution concurring with VRS regarding the minimum twelve-month separation before a retiree could be rehired into a teacher critical shortage position without loss of retirement benefits.

- The VRS retiree cannot be receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; and

- At the time the VRS retiree is employed, the teaching position to which he or she is assigned must be among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § 22.1-23, by the relevant division superintendent, pursuant to § 22.1-70.3, or by the relevant local school board, pursuant to subdivision 9 of § 22.1-79.

A key reason that the critical shortage teaching exception has not resulted in major shifts in retirement patterns is because of the requirement that an individual must have been receiving a retirement allowance for at least one full year before becoming eligible to return in the critical shortage capacity and without impact to the retirement allowance. In addition, the one-year requirement reduces the risk for abuse of the rules that might otherwise result in an unlawful prearrangement, which is contrary to provisions of the Internal Revenue Code (IRC), between an employer and retiring employee to establish post-retirement employment. Ensuring that an unlawful prearrangement to return to work does not take place is critical in pension plans, because not doing so can adversely impact both the member and VRS' qualified plan status under the IRC.

Based on information reported by school divisions to VRS, below are statistics on the number of full-time critical shortage teaching positions filled with a VRS retiree since FY 2009.

DOE Region	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	Total CS Positions	% of total CS positions
Region 1	9	12	9	6	5	8	3	1		4	7	11	75	13.07%
Region 2	13	7	8	11	8	6	5	6	15	14	17	17	127	22.13%
Region 3	7	5	3	3	2	2	2	2	1	7	3	16	53	9.23%
Region 4	29	17	14	13	17	16	3	5	18	18	22	18	190	33.10%
Region 5	2	2	2	2	2	2	1	1	1	3	2	1	21	3.66%
Region 6	5	4	2	2	2	3	5	1	3	6	6	5	44	7.67%
Region 7	7	5	3	3	3					2	1	3	27	4.70%
Region 8	2	1	3	4	2	1	1	1	1	4	6	11	37	6.45%
Total	74	53	44	44	41	38	20	17	39	58	64	82	574	100.00%

Region 1 - Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Surry, Sussex, Colonial Heights, Hopewell, Petersburg, Richmond

Region 2 - Accomack, Isle of Wight, James City (Williamsburg), Northampton, Southampton, York, Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg (James City County)

Region 3 - Caroline, Essex, Gloucester, King George, King William, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Spotsylvania, Stafford, Westmoreland, Colonial Beach, Fredericksburg, West Point

Region 4 - Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Shenandoah, Warren, Alexandria, Falls Church, Manassas, Manassas Park, Winchester

Region 5 - Albemarle, Amherst, Augusta, Bath, Bedford, Campbell, Fluvanna, Greene, Highland, Louisa, Nelson, Rockbridge, Rockingham, Buena Vista, Charlottesville, Harrisonburg, Lexington, Lynchburg, Staunton, Waynesboro

Region 6 - Alleghany, Botetourt, Craig, Floyd, Franklin, Henry, Montgomery, Patrick, Pittsylvania, Roanoke, Covington, Danville, Martinsville, Roanoke, Salem

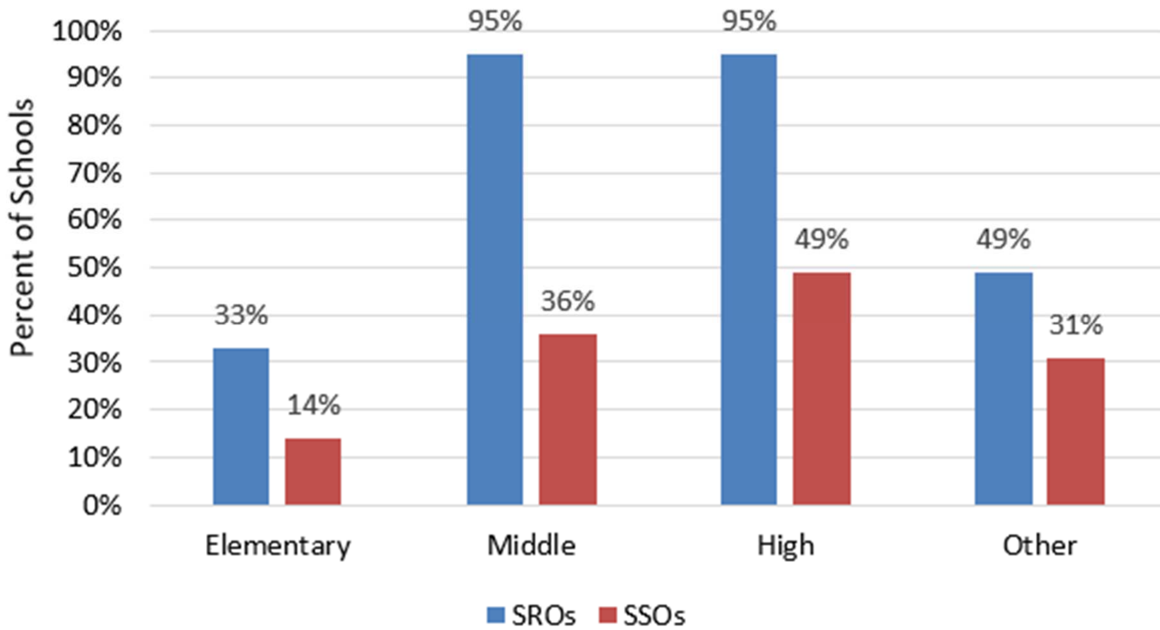
Region 7 - Bland, Buchanan, Carroll, Dickenson, Giles, Grayson, Lee, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe, Bristol, Galax, Norton, Radford

Region 8 - Amelia, Appomattox, Brunswick, Buckingham, Charlotte, Cumberland, Greensville, Halifax, Lunenburg, Mecklenburg, Nottoway, Prince Edward

Security Personnel Working in Public Schools

The following section discusses the potential population of retirees who could take advantage of the return-to-work exception for SSOs in the bill.

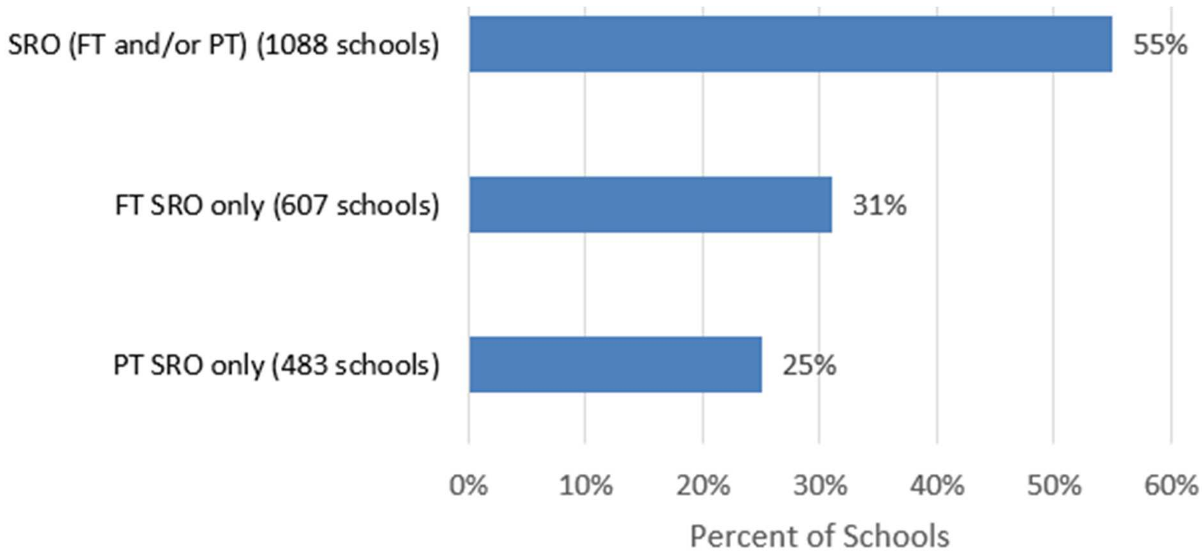
DCJS maintains data relating to the safety of public schools in the Commonwealth. Included in this data is the number of security personnel working in public schools, which DCJS reports annually based on school divisions' survey responses. For purposes of this fiscal impact statement, DCJS provided preliminary results from its 2018-2019 survey, which included responses from 1,961 public schools. Of these, 1,122 were elementary schools, 345 were middle schools, 316 were high schools, and 178 were others. Following are survey results relating to the employment of SROs and SSOs:



Source: Preliminary results from the 2018-2019 school safety survey provided by DCJS.

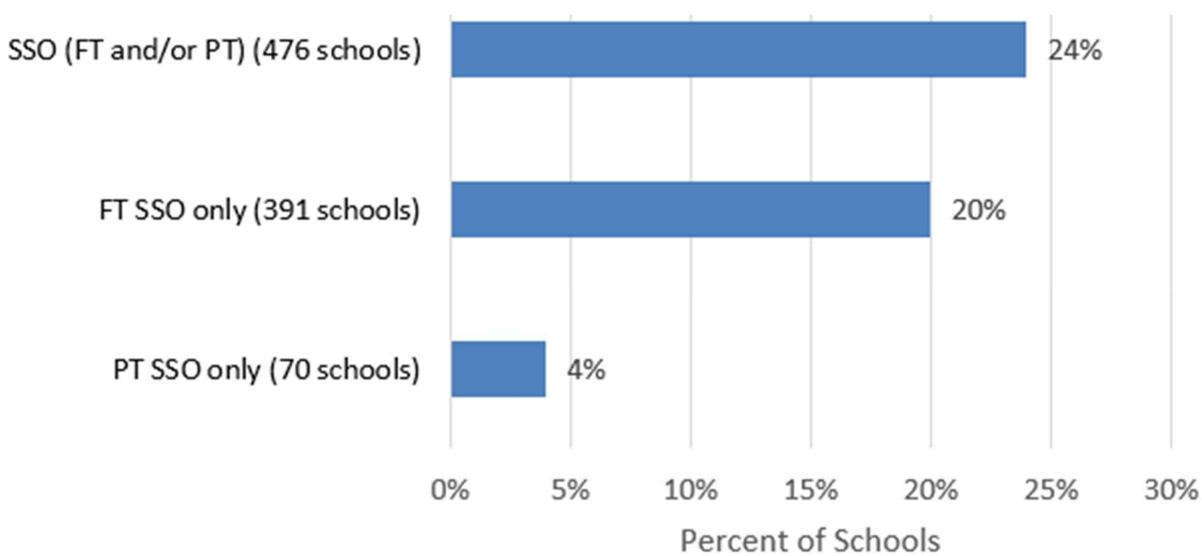
According to the DCJS survey, almost two-thirds of schools (64%) used safety/security personnel (e.g., SROs, SSOs, or other types of officers) in a full-time or part-time capacity. SROs worked in 55% of schools, SSOs worked in 24% of schools, and private security worked in 1% of schools. Additional data demonstrates the full-time/part-time breakdown of SSOs and SROs:

SROs



Source: Preliminary results from the 2018-2019 school safety survey provided by DCJS.

SSOs



Source: Preliminary results from the 2018-2019 school safety survey provided by DCJS.

<u>Additional Information Related to Disability Retirement and LODA Benefits Eligibility</u>

It is possible for a retired officer's level of compensation to affect his eligibility for benefits under LODA if the current earned income equals or exceeds the salary of the position at the time of disability, indexed for inflation. (*See* Va. Code § 9.1-401(C)(4)). The majority of retired officers receiving LODA benefits are also drawing a disability retirement benefit that would make them ineligible for work as a SSO or result in the loss of disability retirement benefits as well as LODA benefits.

A sworn officer who is receiving a disability retirement benefit cannot return to a sworn officer position and continue to receive his disability retirement benefit. The retiree may also lose LODA eligibility as noted above if he or she returns to full duty in any position listed in the definition of “deceased person” in Va. Code § 9.1-401(C)(3).

VRS has communicated clearly and consistently through its publications and other outlets that a disability retiree cannot return to a position that requires the same or similar duties as those performed prior to disability retirement. Similarly, any retiree receiving LODA benefits must be careful to weigh the implications, if any, of the contemplated work on the retiree’s continued eligibility for those LODA benefits.

In light of the recent focus on strengthening school safety, VRS developed a guide for employers that use school safety officers and school resource officers. The guide is on the VRS employers’ web site at the following link:
https://employers.varetire.org/pdf/publications/Hiring-Reporting-SROs-SSOs.pdf

The engrossed bill is similar to HB 1495, as amended. However, HB 1495 as amended provides that a retiree would not be eligible to return to work while simultaneously collecting a pension if he or she retired pursuant to 1) an early retirement incentive program provided by a school division, 2) an early retirement incentive program provided by a VRS-participating employer, or 3) certain incentives provided under the Workforce Transition Act. HB 1495 as amended also requires an actuarial investigation of the experience under the bill, and that the provisions of the bill expire on July 1, 2025.

Date: 2-5-2020
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