

Virginia Retirement System

2023 Fiscal Impact Statement

1. Bill Number: SB 1449 ER

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

2. Patron: Obenshain

3. Committee: Passed House and Senate

4. Title: Judicial Retirement System; creditable service and contributions; extended absence; emergency.

5. Summary: Provides that the entire amount of time a judge is on an extended absence for more than three months that is not due to a medical emergency, disability, active-duty military leave, or family emergency that has been documented by the judge or other authorized representative and submitted to the Executive Secretary of the Supreme Court and to the Virginia Retirement System (VRS) shall be subtracted from his years of creditable service toward retirement benefits and that no employer contributions shall be made for such extended absence period. The substitute contains an emergency clause.

6. Summary of Impacts

Benefit(s) impacted: The substitute would preclude a judge from accruing creditable service toward his retirement benefits under the Judicial Retirement System (JRS) during a period of extended absence (more than three months that the judge or other authorized representative certifies under penalty of perjury is not due to a medical emergency, disability, active-duty military leave, or family emergency). No employer contributions shall be made on behalf of a judge during an extended absence period (not due to a medical emergency, disability, active-duty military leave, or family emergency).

Impact to unfunded liability (see Item 9 for details): None.

Impact to contribution rate(s) (see Item 9 for details): None.

Specific Agency or Political Subdivisions Affected (see Item 10): VRS and the Office of the Executive Secretary (OES).

VRS cost to implement (see Item 7 and Item 8 for details): Approximately \$25,000 for FY 2023.

Employer cost to implement (see Item 7 and Item 8 for details): The Office of the Executive Secretary may have costs to implement the substitute. Costs are not available at this time.

Other VRS and employer impacts (see Item 7, Item 9, Item 11, and Item 12 for details): VRS will incur approximately \$25,000 in administrative costs to implement the substitute, primarily for communications to employers and updated web content and handbooks. OES will need to determine what acceptable written communication is required to document an exception.

GF budget impacts (see Item 8 for details): Implementation of the substitute may result in some minimal savings to JRS for months when contributions are not required for a judge on an extended absence. OES may have costs to implement the substitute. Costs are not available at this time.

NGF budget impacts (see Item 8 for details): Approximately \$25,000 for FY 2023.

7. **Budget Amendment Necessary:** Item 498. VRS would require a NGF appropriation to cover implementation costs of approximately \$25,000 for system programming and communications efforts necessary to implement this legislation.
8. **Fiscal Impact Estimates:** None.
9. **Fiscal Implications:** See Item 12.
10. **Specific Agency or Political Subdivisions Affected:** VRS and OES.
11. **Technical Amendment Necessary:** No.
12. **Other Comments:** The substitute would preclude a judge from accruing creditable service toward retirement benefits under JRS during a period of extended absence (more than three months not due to a medical emergency, disability, active-duty military leave, or family emergency) and no employer contributions shall be made on behalf of a judge during an extended absence period. The substitute requires that the existence of the acceptable leave must be documented in a written communication signed under penalty of perjury by the judge or other authorized representative and submitted promptly to VRS and the OES. VRS does not have access to any employee's leave status, and it would be the employer's responsibility to notify VRS when a judge is on an extended leave of absence.

Effectively, the substitute treats a judge on an extended leave of absence as being in leave without pay status. VRS does not include months of leave without pay in the calculation of the average final compensation (no member or employer contributions are made to the trust or to the DC component of the Hybrid Retirement Plan). Most periods of leave without pay are not eligible for service credit nor may periods of leave without pay be purchased under § 51.1-142.2 unless there is a qualifying leave status, such as birth or adoption of a child. This legislation would require OES to retroactively make the required payroll and employer reporting adjustments once a particular judge reaches three months of extended leave. Retroactive adjustments can cause underpayments or overpayments depending on the adjustments.

If it is known that the absence will be greater than three months from the onset, then presumably the employer simply would not make any contributions to the cash match plan during the absence. However, an issue could arise if the employer anticipates that the length of the absence will be less than three months, but it is extended, and the employer makes employer contributions during part or all of the three-month period. In the event that erroneous contributions are made, the IRS's correction program would require that the employer contributions be held in a forfeiture account and used to offset the employer's next

contributions when due. It would be the employer's responsibility to notify VRS of the retroactive change to begin the correction process.

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