14102516D

SENATE BILL NO. 385

Offered January 8, 2014

Prefiled January 7, 2014

A BILL to amend and reenact §§ 51.1-124.30 and 51.1-803 of the Code of Virginia, relating to the Virginia Retirement System and local government retirement systems; investments.

Patron—Reeves

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-124.30 and 51.1-803 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-124.30. Board as trustee of funds; investments; standard of care; liability for losses.

A. The Board shall be the trustee of the funds of the Retirement System that it administers and of those resulting from the abolished system. Subject to the provisions of this chapter, the Board shall have full power to invest and reinvest such funds as authorized by law.

B. The Board shall have the power to borrow money in such amounts as may be necessary to discharge current obligations under this chapter whenever in its judgment it would be more advantageous to borrow money than to sell securities held by the Retirement System. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Board, but in no case is the due date of any note or other evidence of debt to be beyond the end of the biennium succeeding the biennium in which the debt is incurred. Securities held by the Retirement System may be hypothecated by the Board as security for the payment of any debt incurred under this section.

C. The Board shall discharge its duties with respect to the Retirement System solely in the interest of the beneficiaries thereof and shall invest the assets of the Retirement System with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

Investments may include, but are not limited to, investment grade life insurance policies and annuity policies on members or retirees of the Retirement System, provided the member or retiree consents to the Retirement System having an insurable interest in him. The Board shall offer the member or retiree a monetary benefit to a beneficiary selected by the member or retiree. The Board may borrow funds from commercial financial institutions with which to purchase these life insurance policies and annuities.

D. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in subsection C above shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this chapter.

E. In the case of a plan administered by the Board which provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, the Board 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.

F. In the case of an automatic rollover of a mandatory cash-out, as that term is defined under I.R.C. § 401 (a)(31)(B) of the United States Internal Revenue Code of 1986 (including as such section is amended or renumbered, or any successor provision thereto) and regulations thereunder applicable to governmental plans, the Board shall not be liable for any loss resulting from the Board's selection of an individual retirement plan provider and investment product where the selection is made in accordance with guidelines to be adopted by the Board that are similar to the safe harbor guidelines adopted by the United States Department of Labor for this purpose.

§ 51.1-803. Investments of retirement systems.

A. If the governing body of any county, city, or town establishes a retirement system pursuant to the provisions of this article, any funds that may be allocated, segregated, or otherwise designated for the retirement system, which are on hand at any time and are not necessary for immediate payment of pensions or benefits, shall be invested with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

Investments may include, but are not limited to, investment grade life insurance policies and annuity policies on members or retirees of the local government retirement system, provided the member or retiree consents to such retirement system having an insurable interest in him. The local government shall offer the member or retiree a monetary benefit to a beneficiary selected by the member or retiree. The local government's retirement system may borrow funds from commercial financial institutions with which to purchase these life insurance policies and annuities.

B. The selection of services related to the management, purchase, or sale of investments authorized by this section, including but not limited to actuarial services, shall be governed by the standard of care set forth in this section and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of Title 2.2.

C. In the case of an automatic rollover of a mandatory cash-out, as that term is defined under I.R.C. Section 401 (a) (31) (B) of the United States Internal Revenue Code of 1986 (including as such section is amended or renumbered or any successor provision thereto) and regulations thereunder applicable to governmental plans, the governing body shall not be liable for any loss resulting from the governing body's selection of an individual retirement plan provider and investment product where the selection is made in accordance with guidelines to be adopted by the governing body that are similar to the safe harbor guidelines adopted by the United States Department of Labor for this purpose.