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SENATE BILL NO. 1384

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 29, 2019)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend and reenact § 51.1-169 of the Code of Virginia, relating to Virginia Retirement System; increased retirement allowance for certain judges.

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 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 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.

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.
- 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.

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

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

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

67 C. Except as otherwise provided in subsection G:

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

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

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

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

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

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 for all creditable service credited prior to the effective date of
93 the member's participation in the program. For all other creditable service, the allowance shall equal one
94 percent of a member's average final compensation multiplied by the amount of his creditable service
95 while in the program. *Notwithstanding the foregoing, for judges who (i) are participating in the hybrid*
96 *retirement program, (ii) are appointed to an original term on or after July 1, 2019, and (iii) are at least*
97 *55 years old at the time of such appointment, the allowance shall equal 1.70 percent of the member's*
98 *average final compensation multiplied by the amount of his creditable service credited while in the*
99 *program.* For all judges who are participating in the hybrid retirement program, creditable service shall
100 be determined as provided in § 51.1-303 and service retirement eligibility shall be determined as
101 provided in § 51.1-305.

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

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

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

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

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

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

121 3. If a member of the hybrid retirement program maintained under this section is at any time in

122 service as an employee in a position covered for retirement purposes under the provisions of Chapter 1
123 (§ 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
124 benefit payments under the hybrid retirement program maintained under this section shall be suspended
125 while so employed; provided, however, reemployment shall have no effect on a payment under the
126 defined contribution component of the program if the benefit is being paid in an annuity form under an
127 annuity contract purchased with the member's account balance.

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

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

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

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

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

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

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

178 4. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of
179 the Commonwealth that provides individual accounts permitting an employee or beneficiary to exercise
180 discretion over assets in his account, the political subdivision shall not be liable for any loss resulting
181 from such employee's or beneficiary's (i) investment of voluntary contributions in the political
182 subdivision's 403(b) plan or matching contributions in the political subdivision's 403(b) plan or local

183 cash match plan, (ii) exercise of discretion over the assets in any of his accounts, or (iii) inaction with
184 respect to the assets in any of his accounts that results in such assets being placed in a default
185 investment option selected by the political subdivision, provided that the investment options for the
186 affected individual account and the particular default investment option for such individual account are
187 selected in accordance with subsection A of § 51.1-803, applied mutatis mutandis. Under no
188 circumstances shall the Commonwealth, the Board, employees of the Retirement System, the Investment
189 Advisory Committee of the Retirement System, or any other advisory committee established by the
190 Board bear any liability with respect to any plan or individual account described in this subsection.

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

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

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

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

205 **2. That the provisions of this act shall not become effective unless an appropriation effectuating**
206 **the purposes of this act is included in a general appropriation act passed in 2018 by the General**
207 **Assembly that becomes law.**