

Department of Planning and Budget 2019 Fiscal Impact Statement

1. Bill Number: HB2772

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Bell, Robert B.

3. Committee: General Laws

4. Title: Certain officers and employees; ability to forswear salary.

5. Summary: Authorizes officers and employees exempt from the Virginia Personnel Act to forswear all or part of their official salary or rate of pay.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary; see Item 8.

8. Fiscal Implications: This bill is expected to require modifications to the Virginia Retirement System systems and handbooks. It is currently uncertain whether additional systems changes may be required to other human resource systems in the state any an potential impact on retirement and other post-employment benefits plans and the benefits for which employees opting to forswear pay may be entitled.

A number of the agencies with officers and employees exempt from the Virginia Personnel Act that the bill would allow to forswear all or a part of their salary or pay electively use the Personnel Management Information System (PMIS) of the Department of Human Resource Management (DHRM) or have their own human resource systems. It is currently unknown if such system can accommodate a reduced salary or salary of zero that may be below the state minimums of any applicable role codes for the positions. It is also unknown whether federal minimum wage requirements would be applicable if such employees chose to forswear salary or pay as allowed by the bill.

Virginia Retirement System:

According to the Virginia Retirement System (VRS), implementation costs are estimated to be \$115,000 for programming changes and updates to member and retiree handbooks based upon its interpretation of the bill. This estimate assumes that VRS will only need to capture reduced salary and not the waived amount. The estimate does not assume that accrued retirement benefits will be impacted by a forsworn salary, although the bill is not clear on this point (i.e., “Any benefits ... shall be calculated on ... actual salary” could be interpreted to mean that one’s average final compensation, for purposes of calculating a retiree’s monthly benefit, should be based on the forsworn salary). If these assumptions do not match the bill’s intent, VRS’ implementation costs may be different than the estimate provided.

VRS is unclear whether the bill negates an employee's creditable compensation history for service prior to the waiver period. The language appears to indicate that benefits, which would include retirement benefits, group life, the health insurance credit, and other ancillary benefits, would be based on the partially or totally waived salary. As a result, the bill could be interpreted such that an employee's average final compensation would be overridden by the forsworn salary, which could produce a \$0 annual pension.

Unfunded retirement and other benefits:

It is also unclear whether the bill eliminates an employee's receipt of VRS service credit for each month that he or she works while receiving a partially or wholly waived salary.

Since VRS benefits are funded as a percentage of creditable compensation, which could be \$0, each employee who takes advantage of HB 2772 may be receiving service credit for which reduced contributions are paid to VRS. The waiver of salary also reduces the covered payroll on which payment of legacy unfunded liabilities are based, which would lower the expected payment towards the unfunded liabilities of the Virginia Retirement System.

In addition to impacting the funding of these plans, anyone who chooses to waive all or a portion of their salary may have an impact on their benefit levels. For instance:

- Ramifications for a member's average final compensation for anyone close to retirement.
- Reduced or waived salary would impact Virginia Sickness and Disability Program benefits, if applicable.
- Group Life death benefit may be impacted if the employee were to die after the waiver.

Mandatory employee contributions:

All active VRS members in Plan 1, Plan 2, or the Hybrid Plan must contribute 5% of pay towards their retirement benefits. For a member who chooses to receive a \$0 salary, member contributions would be \$0 per paycheck, including for the defined contribution component of the Hybrid Plan. As previously mentioned, however, the member may still receive unfunded service credit for each month of VRS-covered employment.

Defined contribution plan participants:

For a VRS-covered employee who participates in a defined contribution plan (e.g., the Optional Retirement Plan for Higher Education, the Optional Retirement Plan for Political Appointees, etc.), a forsworn salary would result in the receipt of zero retirement benefits. Since these plans provide benefits purely based on a percentage of pay, \$0 would be paid into the account of an employee who fully waives his or her salary.

Other post-employment benefits:

In addition to retirement benefits, all other post-employment benefit (OPEB) plans (e.g., the health insurance credit, life insurance benefits, etc.) are similarly situated in that they are funded as a percentage of covered payroll. To the extent that an employee forswears salary,

which may result in forsworn creditable compensation for VRS purposes, there will not be any contribution to fund the employee's OPEBs.

Other comments:

VRS has based its comments on its interpretation of the HB 2772. If the intent of the bill or later versions of it vary from this interpretation, then the impacts to VRS may be different. For example, increased programming changes may impact Modernization efforts and may warrant VRS requesting a delayed effective date.

In addition, if the intent is to base benefits on the salary in effect but forsworn by the employee, and as VRS coverage is mandatory for eligible employees, the collection of mandatory contributions for the defined benefit or defined contribution portions of the retirement benefits will present significant challenges.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Retirement System, Department of Accounts, Department of Human Resource Management, and agencies with officers and employees exempt from the Virginia Personnel Act

10. Technical Amendment Necessary: No.

11. Other Comments: None.