Virginia Retirement System
2021 Fiscal Impact Statement

1. **Bill Number:** HB 2195

   House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

   Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** Leftwich

3. **Committee:** pending

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

5. **Summary:** Provides that if a retired law-enforcement officer was employed by a local school division as a school security officer on January 1, 2020, and had a bona fide break in service of at least one month between retirement and employment as a school security officer, such person is not required to establish a 12-month break in service that would otherwise be required by law.

6. **Summary of Impacts**

   <u>Benefit(s) impacted:</u> For retirees who were employed part-time as a School Security Officer (SSO) as of January 1, 2020, this is a change to the new return to work exemption effective July 1, 2020 and is inconsistent with current teacher and school bus driver return to work exemptions.

   <u>Impact to unfunded liability (see Item 9 for details):</u> Because this provision only applies to a closed group of existing retirees, it is not expected to change retirement patterns of future retirees and therefore is not expected to add to unfunded liability.

   <u>Impact to contribution rate(s) (see Item 9 for details):</u> Because this legislation requires employers to continue to include the members' salary in computation of employer rates, the provision is not expected to have any impact on employer contribution rates. Employer contributions for these retirees help mitigate any impact on contribution rates.

   <u>Specific Agency or Political Subdivisions Affected (see Item 10):</u> VRS, all school divisions and the political subdivisions that fund them.

   <u>VRS cost to implement (see Item 7 & Item 8 for details):</u> Some internal costs are anticipated. Changes will be handled manually due to this applying to a closed group of existing retirees. This will require revising forms and processes that were recently implemented for the SSO return to work legislation that went into effect July 1, 2020 (SB 54 and HB 1495, 2020 regular session).

   <u>Employer cost to implement (see Item 7 & Item 8 for details):</u> Minimal employer costs are anticipated.

Other VRS and employer impacts (see Item 7, Item 9, Item 11, & Item 12 for details): VRS will need to reach out to individual school divisions to communicate this limited exception applicable only to certain retirees.

GF budget impacts (see Item 8 for details): None.

NGF budget impacts (see Item 8 for details): $16,000 NGF for VRS.

7. **Budget Amendment Necessary**: No.
8. **Fiscal Impact Estimates:** Approximately $16,000 in internal NGF costs for VRS to manually implement this change to recently implemented programming.
9. **Fiscal Implications:** Internal Revenue Service (IRS) guidance under Internal Revenue Code (IRC) § 410, as cited in Private Letter Ruling 201147038, suggests that a one-year period without performing service might be considered a safe harbor to establish severance from employment prior to a retiree returning to work for a plan employer. 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. Qualification as a governmental plan allows pre-tax employee contributions and exemption from taxation on investment earnings, among other tax benefits. Historically, investment earnings fund approximately 2/3 of benefit costs.

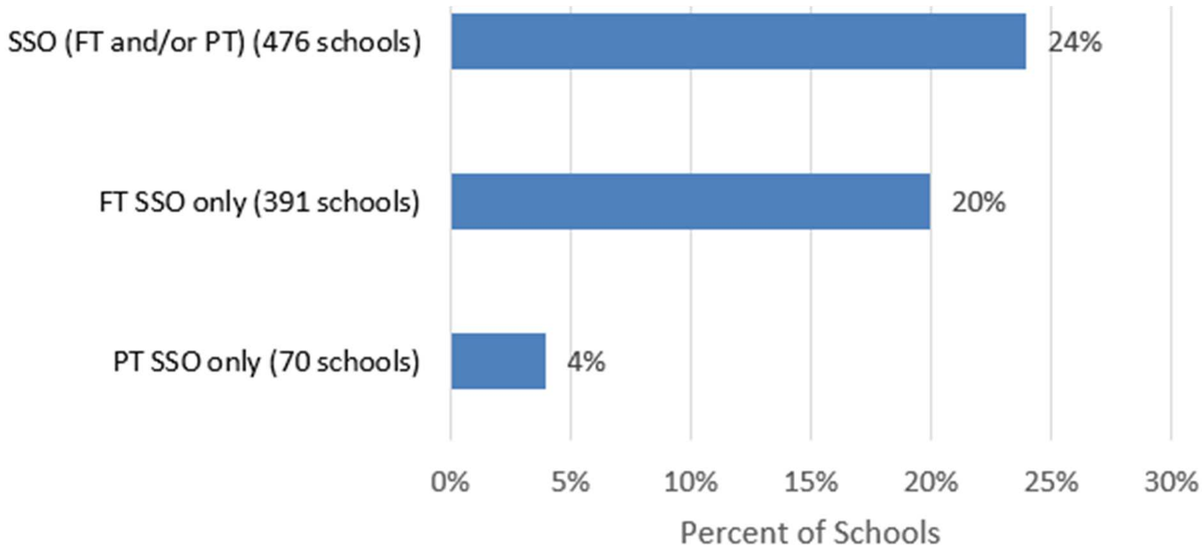
   Outside benefits counsel has confirmed that IRS guidance allows specifically for a bona fide break in service with no prearrangement for re-employment, and the IRS makes the determination of whether or not there is a break in service using a facts and circumstances test. The IRS has not established a definite safe harbor severance period but has indicated that 12 months may be a sufficient period of time.

   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 one-year 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. In addition, to be eligible for this program the teaching position must be 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.

   Existing law (SB 54 and HB 1495 from the 2020 regular session that went into effect on July 1, 2020) requires a 12-calendar-month break in service before any retiree can return to work full time as an SSO. This is consistent with VRS practice for the teacher critical shortage program and serves to help mitigate the impact of changes to retirement patterns and the potential for impermissible prearrangements under the IRC.

   The number of retirees potentially affected by this legislation is unknown. Based on a 2018-2019 survey from the Department of Criminal Justice Services, approximately 24% of schools employed either a full-time or part time SSO, and less than 5% employed only a part-time SSO.

SSOs



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

10. **Specific Agency or Political Subdivisions Affected:** VRS, public school divisions, and political subdivisions that fund school divisions.

11. **Technical Amendment Necessary:** No.

12. **Other Comments:** This legislation would allow retirees who were employed part-time as an SSO on January 1, 2020 to begin working full-time as an SSO without having the 12-calendar month break that would otherwise be required in order for a retiree to return to work full time in a VRS covered position. The effective date is July 1, 2021. Because this provision would apply to a limited group of existing retirees, it is not expected to have an impact on future retirement patterns.

    The 12-calendar-month break, as explained earlier, is intended to satisfy IRS guidance, to protect the VRS plan qualification, and to minimize the incentive for employees to retire earlier than they otherwise would. When an employee retires earlier than assumed, it adds costs to the plan since retirement benefits will be paid for a longer period of time than anticipated when contribution rates were set.

    From a policy perspective, VRS is committed to the long-standing use of a 12-calendar-month break in service for any new retirees before allowing them to return to work full time in order to be consistent with IRS guidance and to protect the trust fund by making it less likely that employees will retire earlier than anticipated to take advantage of return to work provisions.

    This legislation would be a departure from that long-standing policy position. The bill is identical to SB 1137.

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