

Virginia Retirement System

2022 Fiscal Impact Statement

1. **Bill Number:** SB 349

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** Surovell

3. **Committee:** Judiciary

4. **Title:** Division of marital property; Virginia Retirement System managed defined contribution plan; calculation of gains and losses.

5. **Summary:** Provides that if the court enters an order to distribute any Virginia Retirement System managed defined contribution plan, the Virginia Retirement System shall, if ordered by the court, calculate gains and losses from the valuation date through the date of distribution of the benefits.

6. **Summary of Impacts**

Benefit(s) impacted: VRS defined contribution accounts.

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.

VRS cost to implement (see Item 7 and Item 8 for details): None. Record keeper fees to perform the required calculations are typically split between the participant (retirement system member) and alternate payee.

Employer cost to implement (see Item 7 and Item 8 for details): None.

Other VRS and employer impacts (see Item 12 for details): The bill would require VRS' defined contribution (DC) plan record keepers to perform a gain/loss calculation in certain instances. Record keeper fees for gain/loss calculations vary, largely based on complexity and provider. To the extent possible VRS will make every effort to work with its TPAs to minimize participant costs. The bill also requires VRS to conduct a survey and submit a report to the General Assembly by October 1, 2022 regarding gain/loss calculation practices of governmental retirement plans throughout the Commonwealth.

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

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

7. **Budget Amendment Necessary:** No.

8. Fiscal Impact Estimates: See Item 12 below.

9. Fiscal Implications: See Item 12 below.

10. Specific Agency or Political Subdivisions Affected: VRS

11. Technical Amendment Necessary: No.

12. Other Comments: This bill relates to the division of retirement benefits that a court deems to be divisible marital assets upon an individual's divorce. The bill would require 1) VRS' defined contribution (DC) plan record keepers to perform a gain/loss calculation in certain instances, and 2) VRS to conduct a survey and submit a report to the General Assembly regarding gain/loss calculation practices of governmental retirement plans throughout the Commonwealth.

Calculation of Gains/Losses

This bill imposes a requirement in the context of any DC retirement plan account administered by VRS. A governmental DC plan account is similar to a private-sector 401(k)-style account.

When a court divides a DC account balance and assigns a portion of it to the account holder's former spouse, the court sometimes also describes the distribution to the former spouse as a sum as of a specific date (i.e., typically the divorcing parties' date of separation) adjusted for gains or losses through the date of distribution to the former spouse. This bill requires the calculation of such gains or losses when so required by a domestic relations order.

For further context and to demonstrate additional points, here are two examples of how a court might describe the amount owed to an account holder's former spouse:

1. Example 1 – In an order dated January 10, 2022, the former spouse is assigned 50% of the account balance as of January 1, 2022, adjusted for gains and losses through the date of distribution.
2. Example 2 – In an order dated January 10, 2022, the former spouse is assigned 50% of the account balance as of November 4, 2008, adjusted for gains or losses through the date of distribution.

Example 1 demonstrates a provision that typically is easy to administer, and a plan's record keeper should be able to calculate the account's actual investment gains and losses incurred since January 1, 2022, even if the calculation and distribution does not occur until a month or so later.

Example 2 serves to demonstrate potential administrative challenges that a plan record keeper might encounter when the valuation date stated in the order (i.e., November 8, 2008 in Example 2) requires a calculation of the account's gains and losses over an extended period. In this scenario, it is possible that the record keeper would not have sufficient historical data to accurately calculate the account's investment gains and losses for the entire applicable period. For example, the record keeper may not have the account's balance as of November

8, 2008. And even if the record keeper knows the balance, it also is possible that the record keeper may not have the full, daily history of investment transactions to accurately trace the account's investment performance over the entire period.

Plan record keepers change over time, and there are industry standard and required protocols for the transition of balance and account information and other relevant data and information for the elements exchanged at the time of conversion from one provider to another. In some cases not all data elements needed to fulfill the court order as drafted may be available to a successor record keeper following a transition. To illustrate further, there are multiple reasons that a record keeper may not have sufficient data to perform a calculation over such an extended period. Most often, the reason might be that a plan has changed record keepers one or more times since the valuation date. For liability and other practical reasons, there is often not a transfer of comprehensive account data when a plan changes from one record keeper to another. Instead, the successor record keeper often receives from the predecessor record keeper only the data that is needed to maintain an accurate accounting prospectively. On the date of a record keeper transition, for example, a successor record keeper would receive each account's current balance and investment allocation. What the successor record keeper typically does not receive is the history of account balances for every day since the account's inception or the history of investment transactions for every day since the account's inception.

Even in Example 1, insufficient data can present a challenge if there is a record keeper transition between valuation date of January 1, 2022, and the date the calculation or distribution occurs.

To account for these data considerations, the bill imposes the calculation requirement only to the extent that VRS or its record keeper have sufficient data to calculate gains and losses accurately back through the applicable valuation date.

VRS has been exploring options with its current record keepers regarding the feasibility of gain/loss calculations given the aforementioned data considerations, and VRS remains committed to further exploration of these options.

Fee Considerations

Current VRS record keepers have indicated that a requirement to perform these gain/loss calculations may result in an additional processing fee for any domestic relations order that requires such a calculation. Each record keeper determines the fees charged, and fees may vary based on the complexity of the calculation. Record keeper fees for gain/loss calculations range from \$250, to \$950, to \$1,800 and higher. Record keepers often split the fees between the participant and alternate payee. That stated, to the extent possible VRS will make every effort to work with its TPAs to minimize participant costs.

Under current VRS policy, processing of domestic relations orders does not cost an additional fee, and the VRS Approved Domestic Relations Order form for DC plans permits

divorcing parties and courts to state any dollar amount up to the entirety of the VRS member's account balance.

Study Requirement

The bill requires that VRS conduct a study addressing two questions:

1. Whether each locality and school system in the Commonwealth has any defined benefit plan, defined contribution plan, or other retirement plans independent of VRS-administered plans; and
2. Whether such defined benefit plan, defined contribution plan, or other retirement plan processes orders that require the plan administrator to calculate gains and losses on benefits that are subject to equitable distribution.

VRS must submit the results of the study by October 1, 2022, to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice.

Date: 1/22/2022

Document: SB349.DOC/VRS