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SENATE BILL NO. 1289

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 51.1-155 of the Code of Virginia, relating to Virginia Retirement System; school bus drivers; return to employment.

Patron—Deeds

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-155 of the Code of Virginia is amended and reenacted as follows:

§ 51.1-155. Service retirement allowance.

A. Retirement allowance. — A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. — The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service. Notwithstanding the foregoing, for a member who (i) is a person who becomes a member on or after July 1, 2010, or (ii) does not have at least 60 months of creditable service as of January 1, 2013, the allowance shall equal the sum of (a) 1.65 percent of his average final compensation multiplied by the amount of his creditable service performed or purchased on or after January 1, 2013, and (b) 1.70 percent of his average final compensation multiplied by the amount of all other creditable service.

2. Early retirement; applicable to teachers, state employees, and certain others. — The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than 30 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of 30 years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3.

3. Early retirement; applicable to employees of certain political subdivisions, any person who becomes a member on or after July 1, 2010, and any member who does not have at least 60 months of creditable service as of January 1, 2013. — The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals 30 or more years but the sum of his age at retirement plus his creditable service at retirement is less than 90, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to 90 or more had he remained in service until such date. If the member has less than 30 years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least 30 years of creditable service and his then creditable service plus his then attained age would have been equal to 90 or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system and any other employees as provided by law. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2. No such election shall be made for a person who becomes a member on or after July 1, 2010, or a member who does not have at least 60 months of creditable service as of January 1, 2013. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

Notwithstanding the foregoing, a political subdivision by legally adopted resolution may declare to the Board that, for purposes of this subdivision, subdivisions B 1 and B 3 and subsection D of § 51.1-153, 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 (i) shall not be considered a person who becomes a member on or after July 1, 2010, and (ii) shall be deemed to have at least 60 months of creditable service as of January 1, 2013. Such resolution shall be irrevocable.

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59 4. Additional allowance. — In addition to the allowance payable under subdivisions 1, 2, and 3, a
60 member shall receive an additional allowance which shall be the actuarial equivalent, for his attained
61 age at the time of retirement, of the excess of his accumulated contributions transferred from the
62 abolished system to the retirement system, including interest credited at the rate of two percent
63 compounded annually since the transfer to the date of retirement, over the annual amounts equal to four
64 percent of his annual creditable compensation at the date of abolishment for a period equal to his period
65 of membership in the abolished system.

66 5. 50/10 retirement. — The allowance shall be payable in a monthly stream of payments equal to the
67 greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated
68 service and deferred retirement to age 55 or (ii) the actuarially calculated present value of the member's
69 accumulated contributions, including accrued interest.

70 B. Beneficiary serving in position covered by this title.

71 1. Except as provided in subdivisions 2, 3, and 4, if a beneficiary of a service retirement allowance
72 under this chapter or the provisions of Chapters 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3
73 (§ 51.1-300 et seq.) is at any time in service as an employee in a position covered for retirement
74 purposes under the provisions of this or any chapter other than Chapter 6 (§ 51.1-600 et seq.), 6.1
75 (§ 51.1-607 et seq.), or 7 (§ 51.1-700 et seq.), his retirement allowance shall cease while so employed.
76 Any member who retires and later returns to covered employment shall not be entitled to select a
77 different retirement option for a subsequent retirement.

78 2. Active members of the General Assembly who are eligible to receive a retirement allowance under
79 this title, excluding their service as a member of the General Assembly, shall be eligible to receive a
80 retirement allowance based on their creditable service and average final compensation for service other
81 than as a member of the General Assembly. Such members of the General Assembly shall continue to
82 be reported as any other members of the retirement system. Upon ceasing to serve in the General
83 Assembly, members of the General Assembly receiving a retirement allowance based on their creditable
84 service and average final compensation for service other than as a member of the General Assembly
85 shall have their retirement allowance recomputed prospectively to include their service as a member of
86 the General Assembly. Active members of the General Assembly shall be prohibited from receiving a
87 service retirement allowance under this title based solely on their service as a member of the General
88 Assembly.

89 3. *a.* (Expires July 1, 2025) Any person receiving a service retirement allowance under this chapter,
90 who is hired by a local *public* school board as an instructional or administrative employee required to be
91 licensed by the Board of Education or as a school bus driver, may elect to continue to receive the
92 retirement allowance during such employment, under the following conditions:

93 ~~(a)~~ (1) The person has ~~been receiving such retirement allowance for a break in service of~~ at least 12
94 calendar months preceding his employment ~~or is eligible pursuant to subdivision b;~~

95 ~~(b)~~ (2) The person is not receiving a retirement benefit pursuant to an early retirement incentive
96 program from any local *public* school division within the Commonwealth; and

97 ~~(c)~~ (3) At the time the person is employed, the position to which he is assigned is among those
98 identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § 22.1-23, by the
99 relevant division superintendent, pursuant to § 22.1-70.3, or by the relevant local *public* school board,
100 pursuant to subdivision 9 of § 22.1-79.

101 *b.* A person shall not be required to meet the provisions of subdivision *a* (1) if such person was a
102 retiree employed by a local public school division as a school bus driver and had a bona fide break in
103 service of at least three calendar months between retirement from service as a school bus driver and a
104 return to employment as a school bus driver in a local public school division with a critical shortage of
105 school bus drivers as identified by the Superintendent of Public Instruction pursuant to subdivision 4 of
106 § 22.1-23, by the relevant division superintendent, pursuant to § 22.1-70.3, or by the relevant local
107 public school board, pursuant to subdivision 9 of § 22.1-79, so long as such critical shortage reflects a
108 vacancy rate of school bus drivers for the local public school division that is greater than 20 percent.
109 Such bona fide break in service shall include any period during which the person would have otherwise
110 worked. Such critical shortage and vacancy rate for school bus drivers in the local public school
111 division shall be reevaluated on a semi-annual basis to determine whether a critical shortage continues
112 to exist and whether the vacancy rate of school bus drivers in the local public school division continues
113 to exceed 20 percent. The local public school division shall provide an annual report to the General
114 Assembly identifying critical shortages, vacancy rates, and employment of school bus drivers pursuant to
115 this subdivision, including those reemployed out of retirement, in the prior year.

116 If the person elects to continue to receive the retirement allowance during the period of such
117 employment described in subdivision *a* or *b*, then his service performed and compensation received
118 during such period of time will not increase, decrease, or affect in any way his retirement benefits
119 before, during, or after such employment, nor shall such person be eligible to receive any retirement
120 benefits available to him pursuant to Chapter 6.1 (§ 51.1-607 et seq.).

121 4. Any person receiving a service retirement allowance under this title for service as a sworn
122 law-enforcement officer and who is employed in a local school division as a school security officer, as
123 defined in § 9.1-101, may elect to continue to receive the retirement allowance during such employment
124 under the following conditions: (i) the person has a break in service of at least 12 calendar months
125 between retirement for service as a sworn law-enforcement officer and employment as a school security
126 officer; (ii) the person is not receiving a retirement benefit pursuant to an early retirement incentive
127 program from any local school division within the Commonwealth; (iii) the person is not receiving a
128 retirement benefit pursuant to an early retirement incentive program from any employer, as defined in §
129 51.1-124.3; and (iv) the person did not participate in any incentive program established under the second
130 or third enactment of Chapters 152 and 811 of the Acts of Assembly of 1995. If the person elects to
131 continue to receive the retirement allowance during the period of such employment, then his service
132 performed and compensation received during such period of time will not increase, decrease, or affect in
133 any way his retirement benefits before, during, or after such employment, nor shall such person be
134 eligible to receive any retirement benefits available to him pursuant to Chapter 6.1 (§ 51.1-607 et seq.).
135 In addition, the employer shall include the person's compensation in membership payroll subject to
136 employer contributions under § 51.1-145.

137 At least once in each four-year period, in conjunction with the actuarial investigation made under
138 subdivision A 4 of § 51.1-124.22, there shall be an actuarial investigation made of the experience under
139 subdivisions B 3 and 4 of this section, and the retirement system shall submit a report to the General
140 Assembly advising it of the results of such investigation.

141 **2. That the Secretary of Education and the Secretary of Transportation shall convene a**
142 **workgroup, including engagement with representatives of the United States Department of**
143 **Transportation and the United States Department of Education, to identify specific strategies that**
144 **could be implemented to temporarily and permanently address shortages of bus drivers in local**
145 **school divisions across Virginia.**