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## SENATE BILL NO. 1369

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations  
on January 25, 2023)

(Patron Prior to Substitute—Senator Vogel)

*A BILL to amend and reenact § 51.1-169 of the Code of Virginia, relating to Virginia Retirement System; increased retirement allowance for assistant attorneys for the Commonwealth and public defenders.*

**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; *provided, however, in the case of an assistant attorney for the Commonwealth or a public defender who is participating in the hybrid retirement program, the employer shall make a matching contribution, up to a maximum of four percent of creditable compensation for the payroll period, on behalf of the employee of 100 percent of the amount 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

60 benefit according to the following schedule:

- 61 a. Upon completion of two years of active participation, 50 percent.
- 62 b. Upon completion of three years of active participation, 75 percent.
- 63 c. Upon completion of four years of active participation, 100 percent.

64 For purposes of this subdivision, "active participation" includes creditable service, as defined in  
65 § 51.1-124.3, in any retirement plan established by this title and administered by the Retirement System.

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

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

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

73 C. Except as otherwise provided in subsection G:

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

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

86 3. If an employee's voluntary contributions under subdivision C 2 are less than four percent of  
87 creditable compensation, the contribution will increase by one-half of one percent, beginning on January  
88 1, 2017, and every three years thereafter, until the employee's voluntary contributions under subdivision  
89 C 2 reach four percent of creditable compensation. The increase will be effective beginning with the  
90 first pay period that begins in such calendar year unless the employee elects not to increase the  
91 voluntary contribution in a manner prescribed by the Board.

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

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

97 D. 1. The amount of the service retirement allowance under the defined benefit component of the  
98 program shall be governed by § 51.1-155 for all creditable service credited prior to the effective date of  
99 the member's participation in the program. For all other creditable service, the allowance shall equal one  
100 percent of a member's average final compensation multiplied by the amount of his creditable service  
101 while in the program. For judges who are participating in the hybrid retirement program, creditable  
102 service shall be determined as provided in § 51.1-303 and service retirement eligibility shall be  
103 determined as provided in § 51.1-305.

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

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

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

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

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

120 2. No employee who is an active member in the hybrid retirement program maintained under this  
121 section shall also be an active member of any other optional retirement plan maintained under the

provisions of Chapter 1 (§ 51.1-124.1 et seq.).

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

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

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

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

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

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

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

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

4. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of the Commonwealth that provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, the political subdivision shall not be liable for any loss resulting

183 from such employee's or beneficiary's (i) investment of voluntary contributions in the political  
184 subdivision's 403(b) plan or matching contributions in the political subdivision's 403(b) plan or local  
185 cash match plan, (ii) exercise of discretion over the assets in any of his accounts, or (iii) inaction with  
186 respect to the assets in any of his accounts that results in such assets being placed in a default  
187 investment option selected by the political subdivision, provided that the investment options for the  
188 affected individual account and the particular default investment option for such individual account are  
189 selected in accordance with subsection A of § 51.1-803, applied mutatis mutandis. Under no  
190 circumstances shall the Commonwealth, the Board, employees of the Retirement System, the Investment  
191 Advisory Committee of the Retirement System, or any other advisory committee established by the  
192 Board bear any liability with respect to any plan or individual account described in this subsection.

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

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

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

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

207 **2. That the provisions of this act shall apply to matching contributions made by an employer**  
208 **pursuant to subdivision B 2 of § 51.1-169 of the Code of Virginia, as amended by this act, on or**  
209 **after July 1, 2023.**