

## Virginia Retirement System

### 2023 Fiscal Impact Statement

**1. Bill Number:** SB 1445

**House of Origin**   ☒ Introduced   ☐ Substitute   ☐ Engrossed  
**Second House**   ☐ In Committee   ☐ Substitute   ☐ Enrolled

**2. Patron:** Boysko

**3. Committee:** Finance and Appropriations

**4. Title:** Virginia Retirement System; certain law-enforcement officers; part time.

**5. Summary:** Provides that an employee of a political subdivision or of the Commonwealth who (i) is compensated on a salaried or hourly basis; (ii) works at least 20 hours per week; and (iii) is employed as a law-enforcement officer shall be considered a full-time employee for purposes of participation in the Virginia Retirement System.

**6. Summary of Impacts**

**Benefit(s) impacted:** VRS benefits, potentially including the State Police Officers' Retirement System (SPORS) and the Virginia Law Officers' Retirement System (VaLORS), and enhanced hazardous duty benefits for localities that have elected such benefits. Retirees who have returned to work part-time while remaining retired may not receive additional retirement service credit unless they unretire.

**Impact to unfunded liability (see Item 9 for details):** Adding part-time law-enforcement officers to VRS plans prospectively would not increase the unfunded liability for the plans.

**Impact to contribution rate(s) (see Item 9 for details):** As drafted, the bill would prospectively add part-time law-enforcement officers to the State plan. Such officers would not receive hazardous duty benefits unless the legislation is amended to make them members of SPORS or VaLORS, depending on their employing agency. As long as employer and employee contributions are made, and the service is prospective, it is not expected to have a material impact on the contribution rates. Similarly, adding part-time law-enforcement officers employed by localities for enhanced hazardous duty benefits could increase the contribution rate for each affected local plan, depending on the number of affected officers who are granted VRS benefits under the bill.

**Specific Agency or Political Subdivisions Affected (see Item 10):** VRS and Commonwealth agencies that already or may employ part-time law-enforcement officers; localities that already or may employ part-time law enforcement officers.

**VRS cost to implement (see Item 7 for details):** Approximately \$28,000 in FY 2023.

**Employer cost to implement (see Item 7 for details):** Some employer costs are anticipated for implementation, but the amount is unknown.

**Other VRS and employer impacts (see Item 7, Item 9, Item 11, and Item 12 for details):**

VRS and DHRM will need to reach out to individual state agencies and VRS will need to reach out to localities to communicate this addition of part-time law-enforcement officers to VRS coverage.

**GF budget impacts:** Budget impacts would be contingent on the number of part-time employees added to the various plans.

**NGF budget impacts:** Budget impacts would be contingent on the number of part-time employees added to the various plans. VRS will need a NGF appropriation of \$28,000 for implementation costs.

7. **Budget Amendment Necessary:** Yes. Item 498. VRS will need a NGF appropriation of \$28,000 for implementation costs.
8. **Fiscal Impact Estimates:** Estimated impacts are reflected in Item 9. Under the bill, the Commonwealth and local employers will have to pay employer contributions for these employees when they are likely not doing so presently.
9. **Fiscal Implications:** Adding part-time law-enforcement officers to VRS plans prospectively would not increase the unfunded liability for the plans. Impacts on contribution rates are not expected to be material provided that employer and employee contributions are made and the service is prospective. Employers will, however, need to start paying contributions on behalf of these part-time employees when generally they did not pay contributions previously. The current average employer cost for political subdivisions to provide enhanced hazardous duty benefits as of the last rate-setting valuations was 20.46%, the VaLORS employer contribution rate for fiscal year 2024 is 24.60% of payroll, and the SPORS contribution rate for fiscal year 2024 is 29.98% of payroll.
10. **Specific Agency or Political Subdivisions Affected:** VRS, state agencies that already or may employ part-time law-enforcement officers, localities that already or may employ part-time law enforcement officers.
11. **Technical Amendment Necessary:** Yes.

As drafted, the bill adds law-enforcement officers, as defined in § 9.1-101 who are employed part-time on an hourly or salaried basis to the definition of “state employee” in § 51.1-124.3.

The bill adds employees who are paid hourly as opposed to permanent salaried employees, which is inconsistent with how benefits are administered in a defined benefit retirement system. Hourly, or wage, employees can have non-standard or seasonal hours that make regular reporting and the calculation of employer contributions difficult, if not impossible. Hourly also implies temporary in nature and means that there could be pay periods where there isn’t sufficient pay to even take the required contributions, leading to reconciliation problems. Including hourly employees would also be inconsistent with the definition of creditable compensation in § 51.1-124.3. To address this, VRS suggests that “hourly” be struck to clarify that wage and hourly employees cannot be included in VRS membership.

Instead, employees who may be part-time working at least 20 hours per week, but are compensated on a salaried basis could be included.

In addition, the introduced bill utilizes a definition of law-enforcement officer that may be overly broad for the intended purposes of the bill. Further, the introduced bill places all part-time law-enforcement officers into the State plan and does not take into consideration the fact that certain state law-enforcement officers are not in the State plan but are members of either SPORS or VaLORS.

First, the bill relies on the definition of law-enforcement officer in § 9.1-101 to delineate the part-time law-enforcement officers who will be considered state employees. That definition, however, contains numerous types of law-enforcement officers who are not state employees. In addition to all local law-enforcement officers, the definition in § 9.1-101 includes (i) campus police officers at private institutions of higher education, (ii) officers employed by railroad companies, and (iii) private police officers.

The current definition of “state employee” in § 51.1-124.3 is specifically limited to persons employed “by the Commonwealth or any department, institution, or agency thereof.” However, this qualifier is not contained in the new language added in the bill. Amending the bill to add this qualifier would ensure that the bill does not inadvertently bring into the State plan law-enforcement officers not employed by a state agency. Such an amendment would read as follows:

“State employee” includes any person (a) who is compensated on a salaried basis, (b) who is employed by the Commonwealth or any department, institution, or agency thereof as a law-enforcement officer as defined in § 9.1-101 and (c) who regularly works at least 20 hours per week.

Second, the introduced bill would have the effect of placing certain part-time law-enforcement officers employed by state agencies into a different retirement system (i.e., the State plan) than full-time law-enforcement officers employed by the same agencies (i.e., SPORS or VaLORS). Membership in SPORS is set out in § 9.1-201 and is limited to state police officers. Membership in VaLORS is set out in § 51.1-212 and includes law-enforcement officers employed by certain state agencies.

If the intent of the bill is to provide enhanced benefits for part-time law-enforcement officers in the same manner as their full-time counterparts, adding part-time officers to the definition of “state employee” in § 51.1-124.3 will not accomplish this intent. The enhanced benefits provided to certain state law-enforcement officers are due to their membership in SPORS and VaLORS and members of these plans are specifically excluded from the definition of “state employee.” Placing part-time law-enforcement officers in the same plan as their full-time counterparts would resolve this discrepancy. It is important to note that treating part-time and full-time officers in the same manner will mean that part-time law-enforcement officers in SPORS and VaLORS will be eligible for hazardous duty benefits.

In order to accomplish this result, it would be necessary to amend §§ 51.1-201 and 51.1-212 to specifically include the part-time law-enforcement officers employed by the state agencies covered by SPORS and VaLORS. The amendment to § 51.1-201 would read as follows:

“Employee” means a state police officer. “Employee” includes any state police officer who (a) is compensated on a salaried basis and (b) regularly works at least 20 hours per week.

The amendment to § 51.1-212 would read as follows:

“Employee” means any (i) member of the Capitol Police Force as described in § 30-34.2:1, (ii) campus police officer appointed under the provisions of Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, (iii) conservation police officer in the Department of Wildlife Resources appointed under the provisions of Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, (iv) special agent of the Virginia Alcoholic Beverage Control Authority appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § 9.1-101, (vi) correctional officer as the term is defined in § 53.1-1, and including correctional officers employed at a juvenile correction facility as the term is defined in § 66-25.3, (vii) any parole officer appointed pursuant to § 53.1-143, and (viii) any commercial vehicle enforcement officer employed by the Department of State Police. “Employee” includes any person employed in a position described in clause (i) through (vi) who (a) is compensated on a salaried basis and (b) regularly works at least 20 hours per week.

It should be noted that this amendment to § 51.1-212 would only include part-time law-enforcement officers for agencies covered by VaLORS. VaLORS also includes certain employees of the Department of Corrections (DOC) who are not law-enforcement officers and these DOC employees would not be affected by the amendment.

Finally, as discussed further below in Item 12, part-time classified state employees (i.e., employees who work at least 20 hours per week) who are compensated on a salaried basis are already considered to be full-time employees for purposes of retirement and group life insurance coverage.

- 12. Other Comments:** As drafted, the bill provides that an employee of a political subdivision or of the Commonwealth who (i) is compensated on a salaried or hourly basis; (ii) works at least 20 hours per week; and (iii) is employed as a law-enforcement officer as defined in § 9.1-101 shall be considered a full-time employee for purposes of participation in the Virginia Retirement System. In addition, the bill amends the definition of “state employee” to include any law-enforcement officer, as defined in § 9.1-101.

#### State Employees

For state employees, Q status (quasi-full time, defined by DHRM on page 4 of [Policy 2.2 in the DHRM Policies and Procedures Manual](#)) is established in the Appropriation Act, [Item 4-](#)

[6.03](#)(e). Since 1999, under the Appropriation Act, state employees who are salaried and work at least 20 hours a week are considered full-time employees for participation in VRS.

Any classified employee of the Commonwealth and any person similarly employed in the legislative, judicial and independent agencies who (i) is compensated on a salaried basis and (ii) works at least twenty hours per week shall be considered a full-time employee for the purposes of participation in the Virginia Retirement System's group life insurance and retirement programs. Any part-time magistrate hired prior to July 1, 1999, shall have the option of participating in the programs under this provision.

DHRM policy provides for two categories of Q status employees, both of which are eligible for VRS benefits. The first Q status is when employees work at least 30 hours per week for 12 months of the year. The second Q status is when employees work 40 hours per week for 9, 10, or 11 consecutive months of the year for at least 1560 hours per year. VRS benefits generally are not provided to state employees working less than 30 hours per week. Item 4-6.03 of the Appropriation Act also requires that if the employer has designated a position as permanent salaried (not hourly/P-14 status or adjunct faculty) and the employee works at least 20 hours per week, the state employee will receive VRS benefits. These provisions are available to all state employees, including those employed in law-enforcement positions.

#### Political Subdivision Employees

For political subdivision employers, VRS policy, as discussed in the VRS Employer Manual, is to rely on the political subdivision to define full-time and part-time. A political subdivision could decide to establish 32 hours per week (or some other amount) as the threshold for full-time status as a police officer and VRS would accept that as long as:

1. The new standard is documented (in their HR Policies and/or by resolution).
2. That the standard is consistently applied across the relevant employee population, not just for an individual.
3. The position is permanent and is not hourly.
4. They recognize that the change will establish a lower 80% threshold if they bring a retiree into a part-time position.

Full-time permanent employees receive fringe benefits such as annual leave, sick leave, life insurance and retirement. Not all of these are under VRS authority.

#### Additional Considerations

Under this legislation, employees would earn service credit and be eligible for ancillary benefits, such as group life insurance and the health insurance credit, if the employer has elected those benefits. In addition, the part-time employee would need to pay the 5% member contribution out of a part-time salary.

The bill adds employees who are paid hourly as opposed to salaried employees, which raises concerns for a defined benefit retirement system. Hourly, or wage, employees can have non-standard, intermittent, or seasonal hours that make regular reporting and the calculation of employer contributions difficult, if not impossible. Hourly also implies temporary in nature

and means that there could be pay periods where there isn't sufficient pay to even take the required contributions, leading to reconciliation problems. Historically wage or hourly employees have not been included in membership of the retirement system for these reasons. For these reasons, only permanent salaried employees may be included in VRS membership.

The determination of whether an employee is eligible for VRS benefits is separate from whether the employee must be provided health care coverage under the Affordable Care Act.

If these individuals are retirees, they will need to comply with all return-to-work requirements, including no prearrangement for reemployment after retirement, and a one-calendar-month break in service before returning to work for the same employer. Retirees who have returned to work part-time while remaining retired may not receive additional retirement service credit unless they unretire.

In 2023, the Joint Legislative Audit and Review Commission (JLARC) is undertaking a comprehensive review of hazardous duty eligibility and benefits.

The bill is similar to HB 2318, which also includes correctional officers.

**Date:** 1/19/2023

**Document:** SB1445.DOC/VRS