

Virginia Retirement System

2024 Fiscal Impact Statement

1. **Bill Number:** HB 1393

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. **Patron:** Jones

3. **Committee:** Pending

4. **Title:** Virginia Retirement System; return to work for law-enforcement officers;

5. **Summary:** Allows a retired law-enforcement officer to return to work full time as a law-enforcement officer and continue to receive his pension under the Virginia Retirement System (VRS). Such person shall be required to have a break in service of at least six calendar months before re-employment. The bill shall become effective January 1, 2025.

6. **Summary of Impacts**

Benefit(s) impacted: For retirees who may return to work full-time as law-enforcement officers under the bill, this is an addition to the return-to-work exemption in § 51.1-155(B)(4) and, therefore, consistent with the current school security officer return to work exemption. See [RD578- Return to Work for Law-Enforcement Officers Retired from VRS- Ch. 722 of the 2023 Acts of Assembly- November 1, 2023 report](#) for more information.

Impact to unfunded liability (see Item 9 for details): This six-month provision is not expected to have a large impact with respect to changing retirement patterns of future retirees and therefore is not expected to meaningfully impact unfunded liabilities. Requiring employer contributions and a six-month break in service, as this bill does, will help mitigate the impact to the trust fund, though it will not fully remediate the impacts to the trust fund.

Impact to contribution rate(s) (see Item 9 for details): Because this legislation maintains the existing six-calendar-month break in service and requires employers to include the members' salary in the computation of employer contributions, the provision is not expected to have as much of an impact on employer contribution rates than would otherwise be the case without requiring employer contributions for these retirees. Employer contributions for these retirees will help mitigate the impacts related to adverse plan experience (i.e., paying benefits sooner and for longer periods of time) on contribution rates.

Specific Agency or Political Subdivisions Affected (see Item 10): VRS, and state or local employers who hire retirees as law-enforcement officers, as well as current employers of law-enforcement officers throughout the State.

VRS cost to implement (see Item 7 and Item 8 for details): Approximately \$365,000 for FY 2025 primarily for programming and communications, with minimal ongoing costs.

Employer cost to implement (see Item 7 and Item 8 for details): Minimal employer costs are anticipated for implementation.

Other VRS and employer impacts (see Item 7, Item 9, Item 11, and Item 12 for details): VRS will need to reach out to employers to communicate this limited exception applicable only to retiree law-enforcement officers.

GF budget impacts (see Item 8 for details): No immediate impact expected.

NGF budget impacts (see Item 8 for details): Approximately \$365,000 in FY 2025 for VRS implementation, with minimal ongoing costs.

7. **Budget Amendment Necessary:** Yes. Item 484. VRS will need a NGF appropriation of approximately \$365,000 in FY 2025 to cover the cost of programming and testing, as well as updating employee and employer communications, with minimal ongoing costs. This does not include the potential impact to future contribution rates or to the funded status of the state or local plans, which are discussed below.
8. **Fiscal Impact Estimates:** More detail on the fiscal impact is explained in Item 9 below.
9. **Fiscal Implications:** In December 2022, the Virginia Retirement System (VRS) published [Return to Work Provisions Governing Virginia Retirement System \(VRS\) Retirees \(RD856\)- December 15, 2022](#), required by Item 498 of Chapter 2 of the 2022 Special Session I Acts of Assembly. This report comprised a review of the return-to-work (RTW) provisions in place at the time governing VRS retirees, including an overview of the Internal Revenue Service (IRS) laws and regulations regarding return to work, an analysis of Virginia's return-to-work provisions compared to those of other public employee pension plans, and an actuarial analysis of potential modifications to the return-to-work provisions.

Subsequently, in 2023, the General Assembly passed HB 1630 (Chapter 707), SB 1289 (Chapter 690) and SB 1479 (Chapter 708), adopting some of the modifications discussed in RD856. In addition, the General Assembly passed SB 1411 (Chapter 722), which directed VRS and the Department of Criminal Justice Services, in consultation with the Joint Legislative Audit and Review Commission, to review options for allowing law-enforcement officers to return to work as law-enforcement officers after retirement. See [RD578- Return to Work for Law-Enforcement Officers Retired from VRS- Ch. 722 of the 2023 Acts of Assembly- November 1, 2023 report](#) for more information. This report reviewed several potential return-to-work options for retired law-enforcement officers, including the six-month break-in-service provision contained in this bill.

Historically, the current retirement benefits afforded most law-enforcement officers in the Commonwealth (early retirement age; shorter service requirement; higher retirement multiplier; hazardous duty supplement) were designed to compensate for the risks, both physical and mental, experienced on the job by law-enforcement officers, as well as to permit earlier retirement of officers before there is any decline in their ability to physically perform the duties of a law-enforcement officer. Further, the hazardous duty supplement was

designed to bridge the gap between hazardous duty employees' earlier retirement age and Social Security eligibility.

The impacts of allowing law-enforcement officers to return to work in any law-enforcement position after a six-month break in service were discussed in the 2022 and 2023 reports. These include the impacts and effect of benefits such as the Affordable Care Act (ACA) and ancillary benefits other than pensions, including COLA, the hazardous duty supplement, the health insurance credit, and workers' compensation claims.

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.

While VRS along with benefits counsel believes that a 12-month break in service before a retiree can return to work full time remains optimal to ensure compliance with IRS guidance and to minimize any potential negative impacts from changing retirement patterns, the report referenced above includes several options for consideration, including reducing the required break in service for law-enforcement officers to six months.

Law-enforcement officers employed by the Department of State Police are covered by the State Police Officers' Retirement System (SPORS) (Va. Code § 51.1-200 et seq.), and many other law-enforcement officers employed by the Commonwealth are covered by the Virginia Law Officers' Retirement System (VaLORS) (Va. Code § 51.1-211 et seq.). Local governments also have the option under Va. Code § 51.1-138 to provide enhanced hazardous duty benefits to their law-enforcement officers that are similar to those offered to State Police officers and such enhanced hazardous duty benefits must be provided to deputy sheriffs. Law-enforcement officers who are members of SPORS or VaLORS and local law-enforcement officers who are eligible for enhanced hazardous duty benefits have earlier age and service requirements for retirement eligibility than other VRS members. These law-enforcement officers become eligible for an unreduced retirement benefit at age 50 with at least 25 years of service credit or age 60 with at least five years of service credit and become eligible for a reduced retirement benefit as early as age 50 with five years of service credit.

The tables below provide the number of SPORS, VaLORS, and local hazardous duty members who were eligible to retire as of June 30, 2023. Members who have qualified for

unreduced retirement are more likely to take advantage of return-to-work provisions and, as the exhibit shows below, represent about 8% of the current active hazardous duty population. We also expect that members in the third group with eligibility for reduced benefits could elect to retire and continue working in certain circumstances in order to boost take home pay by collecting a retirement benefit and continuing to be paid a full-time salary.

Table 7. Local Law Enforcement Active Population June 30, 2023

	Count	% of Active Population
Total Actives	17,710	
Eligible for Full Unreduced Retirement Age 60 or Older	544	3.1%
Eligible for Full Unreduced Retirement Under Age 60	774	4.4%
Eligible for Reduced Retirement Under Age 60	1,774	10.0%
Total Eligible to Retire as of June 30, 2023	3,092	17.5%

Source: VRS data

Table 8. SPORS Active Population June 30, 2023

	Count	% of Active Population
Total Actives	1,920	
Eligible for Full Unreduced Retirement Age 60 or Older	82	4.3%
Eligible for Full Unreduced Retirement Under Age 60	230	12.0%
Eligible for Reduced Retirement Under Age 60	130	6.8%
Total Eligible to Retire as of June 30, 2023	442	23.0%

Source: VRS data

Table 9. VaLORS Law Enforcement Active Duty Population June 30, 2023

	Count	% of Active Population
Total Actives	1,868	
Eligible for Full Unreduced Retirement Age 60 or Older	79	4.2%
Eligible for Full Unreduced Retirement Under Age 60	88	4.7%
Eligible for Reduced Retirement Under Age 60	222	11.9%
Total Eligible to Retire as of June 30, 2023	389	20.8%

Source: VRS data

Because the bill requires employers to include the members' salary in the computation of employer contributions, it is not expected to have a significant impact on employer rates, as employer contributions for these retirees will help mitigate any impact on contribution rates. While requiring employer contributions helps to mitigate a shrinking payroll, it will not help to diminish the negative impact of changing retirement patterns, which will increase liabilities and employer costs over time. The magnitude of the increase will be dependent on the volume of members who retire earlier than expected to later return to work under these provisions. The plans from which they retire could see an increase in costs due to the increased liability associated with retiring earlier than expected in order to receive a pension, potentially a hazardous duty supplement, and active healthcare, as well as a full-time salary.

Under the bill, a retired law-enforcement officer, such as a SPORS member, could commence their retirement benefits and then return to work after a six-month break in service. For example, if the member was making \$80,000 per year and had 25 years of service, they could commence their benefit of approximately \$37,000 per year and continue to receive their annual compensation of \$80,000 if they remained actively working. In addition, they would also receive the hazardous duty supplement, currently \$16,884 per year, until they reach their Social Security normal retirement age. In sum, this hypothetical SPORS member would be receiving \$133,884 per year, which would represent an increase in annual income of 67.4%. In addition, the member would likely be eligible for the health insurance credit. The member would also be eligible for COLAs, hazardous duty supplement adjustments, and pay increases going forward.

Eligibility for active employee health insurance coverage, which is typically subsidized by employers, will likely encourage even more active employees to retire earlier than anticipated. One reason many employees delay retirement until age 65 is Medicare eligibility. If active employees can retire at age 50, receive a pension with cost-of-living adjustments and potentially a hazardous duty supplement, and, after a six-month break, receive a full-time salary, and employer-subsidized health insurance, it is likely that most retirement-eligible

employees would pursue this option. It is important to remember that a law-enforcement officer could retire with a reduced benefit as early as age 50 with at least 5 years of service credit or with an unreduced benefit at age 60 with at least five years of service credit or age 50 with at least 25 years of service credit.

10. Specific Agency or Political Subdivisions Affected: VRS and the Commonwealth and its agencies and political subdivisions that employ law-enforcement officers.

11. Technical Amendment Necessary: No.

12. Other Comments:

Overview

The bill adds an exemption for a retired law-enforcement officer to return to work full time as a law-enforcement officer after a six-month break in service. The bill does not change the current requirement for employers to include retirees' compensation in membership payroll subject to employer contributions under § 51.1-145 of the *Code of Virginia*.

As discussed in the 2023 report, numerous reports to the General Assembly have explained that enhanced retirement benefits, including early retirement, are required for law-enforcement officers (i) to compensate for the physical and mental stresses associated with their duties, which often necessitate that such officers have a shorter working life than other employees and (ii) to ensure that law-enforcement officers who remain on the job possess the physical and mental capabilities to perform their work and protect themselves and members of the public from injury. For example, a 1973 report, [HD5 \(1973\) - Report of the Virginia Advisory Legislative Council, State Police Compensation and Retirement](#), noted that “a relatively early retirement is necessary to protect citizens from officers who no longer possess the physical or mental attributes necessary to perform these complex and high stress tasks and to protect these older officers from possible serious injury due to decreased physiologic and psychologic capabilities.”

Law-enforcement officers are typically eligible for unreduced retirement benefits earlier than general employees (both earlier age and fewer years of service requirements), and they receive greater benefit payments for the same amount of service. In general, the three main categories of enhanced retirement benefits received by law-enforcement officers are (i) early age and service retirement provisions, (ii) a higher retirement multiplier used to calculate retirement benefits, and (iii) a hazardous duty supplement. There may be differences in the enhanced benefits received depending on the law-enforcement officer's employer, and not all law-enforcement officers are entitled to each category of benefits.

Importance of Employer Contributions

Requiring employer contributions for retirees who return to work, as this bill does, is critically important to mitigating potentially negative impacts to plan funded status and future contribution rates related to employees retiring earlier than anticipated. While not completely making up for the impact of changing retirement patterns, requiring employer contributions

helps to make up for some of the potential negative actuarial consequences related to filling VRS active covered positions with retirees. It should be noted that based on limited experience and data following the 2023 changes to the break-in-service legislative requirements from 12 to six months for critical shortage and retiree school security officer (RSSO) positions, there has been a noticeable increase in the number of retirees returning to these positions. As of January 8, 2024, VRS data shows that twice as many retirees are filling RSSO positions.

Eligibility for Active Employee Healthcare Coverage

Eligibility for active employee health insurance coverage, which is typically subsidized by employers, will likely encourage even more active employees to retire earlier than anticipated. One reason many employees delay retirement until age 65 is Medicare eligibility. If active employees can retire at age 50, receive a pension with cost-of-living adjustments and potentially a hazardous duty supplement, and, after a 6-month break, receive a full-time salary, and employer-subsidized health insurance, it is likely that many retirement-eligible employees would pursue this option.

Significance of Required Break in Service

The break-in-service requirement 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 and consistent with advice from benefits counsel, VRS remains committed to the use of a break in service sufficient such that it serves to maintain compliance with the Internal Revenue Code, demonstrates no pre-arranged agreement for reemployment and protects the trust fund by making it less likely that employees will retire earlier than anticipated to take advantage of return-to-work provisions.

No Prearrangement for Re-employment

Importantly, regardless of the break in service period of time, the IRS requires that a member cannot have a prearranged agreement prior to retirement to return to employment. Thus, the longer the required separation from service is, the less likely that the member and employer entered into a prearranged agreement for reemployment.

Importance of Maintaining Plan Qualification

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. In addition, if the IRS were to determine

that a separation in service has not taken place, plan distributions to a retiree younger than age 59 ½ would incur a 10% tax penalty payable by the retiree, not the plan.

The bill is identical to HB 99.

Date: 1/17/2024

Document: HB1393.DOC/VRS