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SENATE BILL NO. 396

Offered January 10, 2024

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A BILL to amend and reenact § 51.1-306.1 of the Code of Virginia, relating to Virginia Retirement System; judges.

Patron—McDougle

Referred to Committee on Appropriations

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. 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 benefit according to the following schedule:

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

59 For purposes of this subdivision, "active participation" includes creditable service, as defined in § 51.1-  
60 124.3, in any retirement plan established by this title and administered by the Retirement System.

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

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

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

67 C. Except as otherwise provided in subsection G:

68 1. An employee participating in the hybrid retirement program maintained under this section shall,  
69 pursuant to procedures established by the Board, make mandatory contributions on a salary reduction basis in  
70 accordance with § 414(h) of the Internal Revenue Code (i) to the defined benefit component of the program  
71 in the amount of four percent of creditable compensation in lieu of the amount described in subsection A of §  
72 51.1-144 and (ii) to the defined contribution component of the program in the amount of one percent of  
73 creditable compensation, which shall be made to the appropriate cash match plan established for the  
74 employee under § 51.1-608.

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

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

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

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

91 D. 1. The amount of the service retirement allowance under the defined benefit component of the program  
92 shall be governed by § 51.1-155 for all creditable service credited prior to the effective date of the member's  
93 participation in the program. For all other creditable service, the allowance shall equal one percent of a  
94 member's average final compensation multiplied by the amount of his creditable service while in the  
95 program. *Notwithstanding the foregoing, for judges who are (i) participating in the hybrid retirement*  
96 *program and (ii) at least 55 years old at the time of such appointment, the allowance shall equal 1.7 percent*  
97 *of the member's average final compensation multiplied by the amount of his creditable service while in the*  
98 *program.* For all judges who are participating in the hybrid retirement program, creditable service shall be  
99 determined as provided in § 51.1-303 and service retirement eligibility shall be determined as provided in §  
100 51.1-305.

101 2. No member shall retire for disability under the defined benefit component of the program, provided,  
102 however, that judges who are participating in the hybrid retirement program may retire for disability under §§  
103 51.1-307 and 51.1-308.

104 3. Except as provided in subdivision 1, any employee participating in the hybrid retirement program  
105 maintained under this section shall be considered to be a person who becomes a member on or after July 1,  
106 2010.

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

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

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

116 2. No employee who is an active member in the hybrid retirement program maintained under this section  
117 shall also be an active member of any other optional retirement plan maintained under the provisions of  
118 Chapter 1 (§ 51.1-124.1 et seq.).

119 3. If a member of the hybrid retirement program maintained under this section is at any time in service as

120 an employee in a position covered for retirement purposes under the provisions of Chapter 1 (§ 51.1-124.1 et  
 121 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  
 122 hybrid retirement program maintained under this section shall be suspended while so employed; provided,  
 123 however, reemployment shall have no effect on a payment under the defined contribution component of the  
 124 program if the benefit is being paid in an annuity form under an annuity contract purchased with the  
 125 member's account balance.

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

131 5. The creditable compensation for any employee on whose behalf employee or employer contributions  
 132 are made into the hybrid retirement program shall not exceed the limit on compensation as adjusted by the  
 133 Commissioner of the Internal Revenue Service pursuant to the transition provisions applicable to eligible  
 134 participants under state and local governmental plans under § 401(a)(17) of the Internal Revenue Code as  
 135 amended in 1993 and as contained in § 13212(d)(3) of the Omnibus Budget Reconciliation Act of 1993 (P.L.  
 136 103-66).

137 6. The Board may contract with private corporations or institutions, subject to the standards set forth in §  
 138 51.1-124.30, to provide investment products as well as any other goods and services related to the  
 139 administration of the hybrid retirement program, except as provided in subsection G. The Virginia Retirement  
 140 System is hereby authorized to perform related services, including but not limited to, providing consolidated  
 141 billing, individual and collective recordkeeping and accountings, and asset purchase, control, and  
 142 safekeeping.

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

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

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

164 3. A person who participates in the hybrid retirement program maintained under this section may make an  
 165 election to participate in the 403(b) plan established by his employer under subdivision G 1. Such election  
 166 shall be exercised no later than November 30, 2015, and shall be effective January 1, 2016. If an election is  
 167 not made by November 30, 2015, such employee shall be deemed to have elected not to participate in the  
 168 403(b) plan established by his employer under subdivision G 1. Thereafter, such employee may make or  
 169 change his election on or before November 30 of each year by notifying his employer of a new or changed  
 170 election, which shall become effective the following January 1. If an election is not made or changed by  
 171 November 30, such employee shall be deemed to have elected not to change the prior year's election.

172 4. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of the  
 173 Commonwealth that provides individual accounts permitting an employee or beneficiary to exercise  
 174 discretion over assets in his account, the political subdivision shall not be liable for any loss resulting from  
 175 such employee's or beneficiary's (i) investment of voluntary contributions in the political subdivision's 403(b)  
 176 plan or matching contributions in the political subdivision's 403(b) plan or local cash match plan, (ii) exercise  
 177 of discretion over the assets in any of his accounts, or (iii) inaction with respect to the assets in any of his  
 178 accounts that results in such assets being placed in a default investment option selected by the political  
 179 subdivision, provided that the investment options for the affected individual account and the particular default  
 180 investment option for such individual account are selected in accordance with subsection A of § 51.1-803,

181 applied mutatis mutandis. Under no circumstances shall the Commonwealth, the Board, employees of the  
182 Retirement System, the Investment Advisory Committee of the Retirement System, or any other advisory  
183 committee established by the Board bear any liability with respect to any plan or individual account described  
184 in this subsection.

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

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

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

197 **2. That the provisions of this act shall become effective on July 1, 2025.**

198 **3. That the provisions of this act amending the service retirement allowance for judges shall apply only**  
199 **to service earned as a judge on or after July 1, 2025.**