

**Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement**

PUBLISHED: 1/28/2025 4:59 PM

ORIGINAL

Bill Number: SB1292 S1 **Patron:** Durant
Bill Title: Virginia Retirement System; return to work.

Bill Summary: Allows a retired sworn law-enforcement officer who returns to employment as an instructor at a criminal justice academy to continue receiving his service retirement allowance. Such employment shall not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment. Under current law, a retired law-enforcement officer may return to full-time employment without impact on his retirement benefits only if he returns to work as a school security officer. The bill has a sunset date of July 1, 2028.

Budget Amendment Necessary: Yes **Items Impacted:** 486

Explanation:

VRS will need a NGF appropriation of approximately \$369,500 in FY 2026 to cover the cost of programming and testing, as well as updating employee and employer communications, with ongoing costs of approximately \$16,000 for program management through FY 2028 when the bill sunsets. 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.

Fiscal Summary:

Benefit(s) impacted: Retirement benefits. This bill adds an additional return-to-work exemption for law enforcement officers in § 51.1-155(B)(4) to return to work as an instructor at a criminal justice academy. The new exemption is 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: The six-month break in service provision is not expected to have a large impact with respect to changing the 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): Because the bill maintains the existing six-calendar-month break in service and requires employers to include the retirees' salary in the computation of employer contributions, the bill 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.

**Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement**

Specific Agency or Political Subdivisions Affected: VRS, and criminal justice academies who hire retired law-enforcement officers as instructors, as well as current employers of law-enforcement officers throughout the state.

VRS cost to implement: Approximately \$369,500 for FY 2026 primarily for programming and communications, with ongoing costs of approximately \$16,000 annually for program management.

Employer cost to implement: Minimal employer costs are anticipated for implementation.

Other VRS and employer impacts: VRS will need to reach out to employers to communicate this limited exception applicable only to retiree law-enforcement officers.

GF budget impacts: No immediate impacts expected.

NGF budget impacts: Approximately \$369,500 in FY 2026 for VRS implementation, with ongoing costs of approximately \$16,000 annually.

Details regarding the specific costs can be found in the “Fiscal Analysis” section.

General Fund Expenditure Impact:

<u>Agency</u>	<u>FY2025</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>
TOTAL						

Nongeneral Fund Expenditure Impact:

<u>Agency</u>	<u>FY2025</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>
VRS		\$369,500	\$16,000	\$16,000		
TOTAL		\$369,500	\$16,000	\$16,000		

Position Impact:

<u>Agency</u>	<u>FY2025</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>
TOTAL						

Fiscal Analysis:

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

Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement

(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 (earlier 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. These impacts generally also apply to retired law-enforcement officers returning to work as an instructor at criminal justice academies.

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

**Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement**

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. 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 law-enforcement members who were eligible to retire as of June 30, 2024. Members who have qualified for unreduced retirement are more likely to take advantage of return-to-work provisions and, as the tables below show, 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, 2024

	Count	% of Active Population
Total Actives	18,016	
Eligible for Full Unreduced Retirement Age 60 or Older	573	3.2%
Eligible for Full Unreduced Retirement Under Age 60	759	4.2%
Eligible for Reduced Retirement Under Age 60	1,705	9.5%
Total Eligible to Retire as of June 30, 2024	3,037	16.9%

Source: VRS data

**Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement**

Table 8. SPORS Active Population June 30, 2024

	Count	% of Active Population
Total Actives	1,881	
Eligible for Full Unreduced Retirement Age 60 or Older	77	4.1%
Eligible for Full Unreduced Retirement Under Age 60	245	13.0%
Eligible for Reduced Retirement Under Age 60	116	6.2%
Total Eligible to Retire as of June 30, 2024	438	23.3%

Source: VRS data

Table 9. VaLORS Law Enforcement Active Duty Population June 30, 2024

	Count	% of Active Population
Total Actives	1,914	
Eligible for Full Unreduced Retirement Age 60 or Older	84	4.4%
Eligible for Full Unreduced Retirement Under Age 60	87	4.5%
Eligible for Reduced Retirement Under Age 60	231	12.1%
Total Eligible to Retire as of June 30, 2024	402	21.0%

Source: VRS data

Because Va. Code 55.1-155(B)(4) requires employers to include the retirees' salary in the computation of employer contributions, the bill is not expected to have a significant impact on employer contribution rates, as the payment of 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 as an instructor at a criminal justice academy after a six-month break in service. For example, if the member was making \$80,000 per year and had 25 years of

**Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement**

service, they could commence their benefit of approximately \$37,000 per year and also receive annual compensation in their new position at a criminal justice academy 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, if this hypothetical member were rehired at the same \$80,000 salary, they would be receiving \$133,884 per year, which would represent an increase in annual income of 67.4% when including the retirement benefits. 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.

Other:

Overview

The bill adds an exemption for a retired law-enforcement officer to return to work full time as an instructor at a criminal justice academy 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*.

Va. Code § 15.2-1706 requires that all law-enforcement and jail officers be certified through training at an approved criminal justice training academy. Localities and other political subdivisions are authorized to form regional criminal justice training academies pursuant to Article 5 (Va. Code § 15.2-1747 et seq.) of Chapter 17 of Title 15.2. There are 10 regional criminal justice training academies currently operating in Virginia. Funding for regional criminal justice training academies comes primarily from the public safety agencies that are members of the academy and fees for training. Regional criminal justice training academies do receive some GF and NGF funding through the Department of Criminal Justice Services (Item 394 of the budget bill). There are 30 other public criminal justice academies, including one state academy and 29 local academies.

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

Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement

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) earlier 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 resulting from 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 14, 2025, VRS data shows that the number of retirees filling RSSO positions has doubled since the break-in-service rule was changed from 12 months to 6 months before the 2022-2023 school year.

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 in service, 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

**Virginia Retirement System
2025 General Assembly Session
State Fiscal Impact Statement**

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 similar to HB 1986 for law-enforcement retirees returning to work as law-enforcement officers.