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SENATE BILL NO. 950
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Appropriations
 on February 14, 2025)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend and reenact §§ 51.1-169, 51.1-304, 51.1-306, 51.1-306.1, and 51.1-308 of the Code of Virginia, relating to Virginia Retirement System; judges.

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-169, 51.1-304, 51.1-306, 51.1-306.1, and 51.1-308 of the Code of Virginia are 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.

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

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

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

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

66 C. Except as otherwise provided in subsection G:

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

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

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

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

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

90 D. 1. The amount of the service retirement allowance under the defined benefit component of the program
91 shall be governed by § 51.1-155 for all creditable service credited prior to the effective date of the member's
92 participation in the program. For all other creditable service, the allowance shall equal one percent of a
93 member's average final compensation multiplied by the amount of his creditable service while in the
94 program. ~~For judges who are participating in the hybrid retirement program, creditable service shall be~~
95 ~~determined as provided in § 51.1-303 and service retirement eligibility shall be determined as provided in §~~
96 ~~51.1-305.~~

97 2. No member shall retire for disability under the defined benefit component of the program; ~~provided,~~
98 ~~however, that judges who are participating in the hybrid retirement program may retire for disability under §§~~
99 ~~51.1-307 and 51.1-308.~~

100 3. Except as provided in subdivision 1, any employee participating in the hybrid retirement program
101 maintained under this section shall be considered to be a person who becomes a member on or after July 1,
102 2010.

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

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

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

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

115 3. If a member of the hybrid retirement program maintained under this section is at any time in service as
116 an employee in a position covered for retirement purposes under the provisions of Chapter 1 (§ 51.1-124.1 et
117 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
118 hybrid retirement program maintained under this section shall be suspended while so employed; provided,
119 however, reemployment shall have no effect on a payment under the defined contribution component of the
120 program if the benefit is being paid in an annuity form under an annuity contract purchased with the
121 member's account balance.

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

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

133 6. The Board may contract with private corporations or institutions, subject to the standards set forth in §
134 51.1-124.30, to provide investment products as well as any other goods and services related to the
135 administration of the hybrid retirement program, except as provided in subsection G. The Virginia Retirement
136 System is hereby authorized to perform related services, including but not limited to, providing consolidated
137 billing, individual and collective recordkeeping and accountings, and asset purchase, control, and
138 safekeeping.

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

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

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

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

168 4. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of the
169 Commonwealth that provides individual accounts permitting an employee or beneficiary to exercise
170 discretion over assets in his account, the political subdivision shall not be liable for any loss resulting from
171 such employee's or beneficiary's (i) investment of voluntary contributions in the political subdivision's 403(b)
172 plan or matching contributions in the political subdivision's 403(b) plan or local cash match plan, (ii) exercise
173 of discretion over the assets in any of his accounts, or (iii) inaction with respect to the assets in any of his
174 accounts that results in such assets being placed in a default investment option selected by the political
175 subdivision, provided that the investment options for the affected individual account and the particular default
176 investment option for such individual account are selected in accordance with subsection A of § 51.1-803,
177 applied mutatis mutandis. Under no circumstances shall the Commonwealth, the Board, employees of the
178 Retirement System, the Investment Advisory Committee of the Retirement System, or any other advisory
179 committee established by the Board bear any liability with respect to any plan or individual account described
180 in this subsection.

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

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

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

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

194 **§ 51.1-304. Contributions by Commonwealth.**

195 The Commonwealth shall contribute an amount equal to the sum of the normal contribution, any accrued
196 liability contribution, and any supplementary contribution. The amount shall be determined and paid as
197 provided in Chapter 1 (§ 51.1-124.1 et seq.). Notwithstanding the foregoing provisions of this section,
198 member contributions and employer contributions for judges appointed or elected to an original term
199 commencing on or after January 1, 2014, and prior to July 1, 2026, shall be determined and paid (i) under the
200 provisions of the hybrid retirement program described in § 51.1-169 for service rendered as a judge prior to
201 July 1, 2026, and (ii) as provided in Article 7 (§ 51.1-144 et seq.) of Chapter 1 for service rendered as a
202 judge on or after July 1, 2026. However, during any period that a judge is absent for a period of greater than
203 three months from his duties, the employer shall not make any contributions otherwise required pursuant to
204 subdivision B 2 of § 51.1-169, unless that absence is due to a medical condition, disability, active duty
205 military leave, or family emergency and the existence of the medical condition, disability, active duty
206 military leave, or family emergency is documented in a written communication signed under penalty of
207 perjury by the judge or other authorized representative and submitted promptly to the Virginia Retirement
208 System and the Executive Secretary of the Supreme Court of Virginia.

209 **§ 51.1-306. Service retirement allowance.**

210 A. Retirement allowance. -- A member shall receive an annual retirement allowance, payable for life as
211 follows:

212 1. Normal retirement. -- ~~The~~

213 a. For a member appointed or elected to an original term commencing prior to January 1, 2013, the
214 allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of creditable
215 service. ~~Notwithstanding the foregoing, for~~

216 b. For a member appointed or elected to an original term commencing on or after January 1, 2013, and
217 prior to January 1, 2014, the allowance shall equal the sum of ~~(a)~~ (i) 1.65 percent of his average final
218 compensation multiplied by the amount of his creditable service performed or purchased on or after January
219 1, 2013, and ~~(b)~~ (ii) 1.70 percent of his average final compensation multiplied by the amount of all other
220 creditable service.

221 c. For a member appointed or elected to an original term commencing on or after January 1, 2014, and
222 prior to July 1, 2026, the allowance shall equal the sum of (i) one percent of his average final compensation
223 multiplied by the amount of creditable service performed or purchased on or after January 1, 2014, and prior
224 to July 1, 2026; (ii) 1.65 percent of his average final compensation multiplied by the amount of creditable
225 service performed or purchased on or after July 1, 2026; and (iii) the percentage of his average final
226 compensation applicable to any other retirement plan administered by the Virginia Retirement System
227 multiplied by the amount of all creditable service performed or purchased while participating in such other
228 retirement plan.

229 d. For a member appointed or elected to an original term commencing on or after July 1, 2026, the
230 allowance shall equal the sum of (i) 1.65 percent of his average final compensation multiplied by the amount
231 of creditable service performed or purchased on or after July 1, 2026, and (iii) the percentage of his average
232 final compensation applicable to any other retirement plan administered by the Virginia Retirement System
233 multiplied by the amount of all creditable service performed or purchased while participating in such other
234 retirement plan.

235 In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of
236 the member.

237 For retirements between October 1, 1994, and December 31, 1998, any judge who is a member or
238 beneficiary of a retirement system administered by the Board shall receive an additional retirement allowance
239 equal to three percent of the service retirement allowance payable under this section. Average final
240 compensation attributable to service as Governor, Lieutenant Governor, Attorney General, or member of the
241 General Assembly shall not be included in computing this additional retirement allowance.

242 2. Early retirement. -- The allowance shall be determined in the same manner as for normal retirement
243 with creditable service and average final compensation being determined as of the date of actual retirement. If
244 the member has not attained his sixtieth birthday or has less than 30 years of service, the amount of the
245 retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual

246 retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on or after his sixtieth
247 birthday on which he would have completed a total of 30 years of creditable service.

248 In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of
249 the member.

250 B. Normal and early retirement guarantees. -- Any member who was a member of one of the previous
251 systems immediately prior to July 1, 1970, and who would have been eligible for retirement benefits
252 thereunder shall be guaranteed a minimum retirement allowance no less than that for which he would have
253 qualified had he continued to participate therein.

254 C. Determination of retirement allowance. -- For the purposes of subsection B of this section, the
255 retirement allowance shall be determined on the assumption that the retirement allowance is payable to the
256 member alone and that no optional retirement allowance is elected.

257 D. Beneficiary serving in position covered by this title. -- If a beneficiary of a service retirement
258 allowance under this chapter or under any of the previous systems is at any time in service as an employee in
259 a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§
260 51.1-700 et seq.) of this title, his retirement allowance shall cease while so employed.

261 **§ 51.1-306.1. Service retirement allowance for judges appointed or elected after January 1, 2014.**

262 Notwithstanding any contrary provision of this chapter, the service retirement allowance for judges
263 appointed or elected to an original term commencing on or after January 1, 2014, *and prior to July 1, 2026*,
264 shall be determined (i) under the provisions of the hybrid retirement program described in § 51.1-169 *for*
265 *service rendered as a judge prior to July 1, 2026, and (ii) pursuant to § 51.1-306 for service rendered as a*
266 *judge on or after July 1, 2026.*

267 **§ 51.1-308. Disability retirement allowance.**

268 A. Allowance payable on retirement. —

269 1. Upon retirement for disability, a member who has five or more years of creditable service shall receive
270 an annual retirement allowance payable during his lifetime and continued disability equal to 1.70 percent of
271 average final compensation when multiplied by the smaller of (i) twice the amount of creditable service or (ii)
272 the amount of creditable service he would have completed at age 60 if he had remained in service to that age.
273 ~~However, for~~ *If a member has already attained age 60, the amount of creditable service at his date of*
274 *retirement shall be used.*

275 2. *For a member appointed or elected to an original term commencing on or after January 1, 2013, and*
276 *prior to January 1, 2014, the applicable percentage used to calculate the disability retirement allowance*
277 *pursuant to subdivision 1 shall be 1.65 percent; and for*

278 3. ~~For a member participating in the hybrid retirement program described in § 51.1-169, appointed or~~
279 ~~elected to an original term commencing on or after January 1, 2014, and prior to July 1, 2026, the applicable~~
280 ~~percentage used to calculate the disability retirement allowance pursuant to subdivision 1 shall be (i) one~~
281 ~~percent for service rendered between January 1, 2014, and July 1, 2026, and (ii) 1.65 percent for service~~
282 ~~rendered on or after July 1, 2026. If a member has already attained age 60, the amount of creditable service~~
283 ~~at his date of retirement shall be used.~~

284 4. *For a member appointed or elected to an original term commencing on or after July 1, 2026, the*
285 *applicable percentage used to calculate the disability retirement allowance pursuant to subdivision 1 shall be*
286 *1.65 percent.*

287 In no case shall the annual retirement allowance exceed 78 percent of the average final compensation of
288 the member.

289 B. Workers' compensation guarantee. — If a member retires for disability from a cause which is
290 compensable under the Virginia Workers' Compensation Act (§ 65.2-100 et seq.), the amount of the annual
291 retirement allowance shall, subject to the provisions of subsection D, equal 66 and two-thirds percent of the
292 member's average final compensation if the member does not qualify for social security disability benefits
293 under the provisions of the Social Security Act in effect on the date of his retirement. If the member qualifies
294 for social security disability benefits or has attained his normal retirement age under the provisions of the
295 Social Security Act in effect on the date of his retirement, the allowance payable from the retirement system
296 shall equal 50 percent of his average final compensation. A member shall be entitled to the larger of the
297 retirement allowance as determined under the provisions of subsection A or under the provisions of this
298 subsection.

299 C. General disability retirement guarantee. — The disability retirement allowance payable to a member
300 who immediately prior to July 1, 1970, was a member of one of the previous systems shall be at least an
301 amount equal to the disability retirement allowance to which he would have been entitled under the
302 provisions of the previous system.

303 D. Determination of retirement allowance. — For the purposes of this section, the retirement allowance
304 shall be determined on the assumption that the retirement allowance is payable to the member alone and that
305 no optional retirement allowance is elected.

306 E. Reduction of allowance. — Any allowance payable to a member who retires for disability from a cause
307 compensable under the Virginia Workers' Compensation Act shall be reduced by the amount of any payments

308 under the provisions of the Act in effect on the date of retirement of the member and the excess of the
309 allowance shall be paid to such member. When the time for compensation payments under the Act has
310 elapsed, the member shall receive the full amount of the allowance payable during his lifetime and continued
311 disability. If the member's payments under the Virginia Workers' Compensation Act are adjusted or
312 terminated for refusal to work or to comply with the requirements of § 65.2-603, his allowance shall be
313 computed as if he were receiving the compensation to which he would otherwise be entitled.

314 F. Special retirement allowance guarantee. — Any member retired from a cause which is not compensable
315 under the Virginia Workers' Compensation Act shall be guaranteed an annual retirement allowance during his
316 lifetime and continued disability which equals 50 percent of the member's average final compensation if the
317 member does not qualify for social security disability benefits under the provisions of the Social Security Act
318 in effect on the date of his retirement. If the member qualifies for social security disability benefits or has
319 attained his normal retirement age under the provisions of the Social Security Act in effect on the date of
320 retirement, the allowance payable from the retirement system shall equal 33 and one-third percent of his
321 average final compensation.

322 **2. That the provisions of this act, in accordance with § 51.1-124.8 of the Code of Virginia, shall not**
323 **apply to any person retired under the provisions of Title 51.1 of the Code of Virginia prior to July 1,**
324 **2026.**