

**Virginia Retirement System
2026 General Assembly Session
Fiscal Impact Statement**

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ORIGINAL

Bill Number: HB 1107

Patron: Kilgore

Bill Title: Virginia Retirement System; service retirement allowance; return to work

Bill Summary: Allows Virginia Retirement System (VRS) members who return to work full time at the Department of Corrections (DOC) as a correctional officer or an instructional employee required to be licensed by the Board of Education to continue to receive their VRS pension if (i) the person has a break in service of at least six calendar months between retirement and returning to work full time for the DOC, (ii) the person is not receiving a retirement benefit pursuant to an early retirement incentive program offered by the DOC, and (iii) those returning to work as a correctional officer successfully complete the minimum training standards established by the Department of Criminal Justice Services within 12 months of the hiring date. If the person makes the election to continue to receive a VRS pension during such new employment at the DOC, then (a) such service and compensation shall not affect any other retirement benefits, (b) such person shall still be eligible for cash match plan benefits, and (c) the employer shall include the person's compensation in membership payroll subject to certain employer contributions.

Budget Amendment Necessary: Yes

Items Impacted: 483

Explanation: VRS will need a NGF appropriation of approximately \$364,700 in FY 2026 to cover the cost of programming and testing, as well as updating employee and employer communications, with minimal ongoing costs for program management. 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. VRS requests a delayed effective date of July 1, 2027. This would allow for adequate time to develop system programming and perform applicable testing. In addition, a delayed effective date provides the agency with some flexibility in assigning existing resources to the programming and implementation of the bill's provisions which could result in lower costs by reducing the need to hire additional contractors and other resources to meet a July 1, 2026 deadline. Further, VRS's costs are specific to the implementation of this legislation if enacted. It cannot be determined at this time whether the enactment of any other bill during this session that would require implementation by VRS would increase or decrease implementation costs.

Fiscal Summary:

Benefit(s) impacted: Retirement benefits. In addition to the return-to-work options available to all retired employees, this bill adds a new exemption, § 51.1-155-(B)(5) for individuals who retired under Chapter 1 of Title 51.1 to return to work only as a DOC correctional officer or with the DOC as an instructional employee required to be licensed by the Board of Education. The new exemption is generally consistent with the current return to work exemptions. See [Return to Work Provisions Governing Virginia Retirement System \(VRS\) Retirees \(RD856\) - December 15, 2022](#) and [RD578- Return to Work for Law-Enforcement](#)

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[Officers Retired from VRS- Ch. 722 of the 2023 Acts of Assembly- November 1, 2023 report](#) for more information. Notably, the bill only allows retirees under Chapter 1 of Title 51.1 to return in the positions set forth in the bill; retirees from the Virginia Law Officers' Retirement System (VaLORS), State Police Officers' Retirement System (SPORS), or Judicial Retirement System (JRS) are ineligible to return to work under the new provisions in the bill.

Impact to unfunded liability: While the new exemption is not expected to have a large impact with respect to changing the overall retirement patterns of future retirees any new exemption will have some impact. 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, though it will not fully remediate the impacts to the trust fund.

Impact to contribution rate(s): Because the bill requires a 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 be the case if employer contributions were not required 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: VRS and DOC, as well as non-DOC current employers of potential correctional officers or instructional employees throughout the state, including school boards.

VRS cost to implement: Approximately \$364,700 for FY 2026 primarily for system programming and communications, with minimal ongoing costs 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 new exception for retirees returning to work as DOC correctional officers or DOC instructional employees. There may be other impacts if suggested amendments are not made.

GF budget impacts: No immediate impacts expected.

NGF budget impacts: Approximately \$364,700 in FY 2026 for VRS implementation, with minimal ongoing costs.

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

General Fund Expenditure Impact:

Agency	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031

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TOTAL

Nongeneral Fund Expenditure Impact:

<u>Agency</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>	<u>FY2031</u>
VRS	\$364,700					
TOTAL	\$364,700					

Position Impact:

<u>Agency</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>	<u>FY2031</u>
TOTAL						

Fiscal Analysis: The bill as written allows only employees who have retired under Chapter 1 of Title 51.1 to return to work at the DOC as either a correctional officer as defined in § 53.1-1 or an instructional employee required to be licensed by the Board of Education and continue to receive their retirement benefit. It does not currently allow retirees from the Virginia Law Officers' Retirement System (VaLORS) or State Police Officers' Retirement System (SPORS) to return to work under the new provision in clause 5.

Return To Work

Return to work refers to a retiree returning to post-retirement employment with the same employer or another employer in the same retirement system while continuing to receive a retirement benefit. There is considerable flexibility within the existing return-to-work provisions, especially for those who are returning on a part-time basis. At any time, retirees can choose to stop their retirement benefit and return to full-time active employment. Alternatively, there are several additional avenues for a retiree to return to work with a VRS-covered employer and continue to receive retirement benefits. As long as there is no prearrangement with the employer, a retiree can accept:

- (i) a part-time position in which the retiree can work up to 80 percent of full-time employment after the required one full calendar month break in service;
- (ii) an interim position that lasts no longer than six months after the required one full calendar month break in service and approval from VRS; or
- (iii) a full-time position in one of the eligible position categories (teacher critical shortage, student support critical shortage, school bus drivers, and school security officers) allowed under the *Code of Virginia* after the required six consecutive calendar month break in service.

The impacts of allowing retirees to return to work full-time after a six-month break in service were discussed in reports published by VRS in 2022 and 2023 at the direction of the General Assembly (see

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[Return to Work Provisions Governing Virginia Retirement System \(VRS\) Retirees \(RD856\) - December 15, 2022](#); Return to Work for Law-Enforcement Officers Retired from VRS (RD578) - November 1, 2023). 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 required break in service for critical shortage public school positions, school bus drivers, and school security officers is currently six months as a result of 2023 legislation.

Under the bill, any employees eligible for retirement under Chapter 1 of Title 51.1, which includes most state employees, all teachers, and all employees of political subdivisions, are eligible to return to work as a correctional officer or an instructional employee with DOC. The bill as written does not allow employees in SPORS, VaLORS, or the Judicial Retirement Service to return to work under the new § 51.1-155(B)(5). The tables below provide the number of such employees under Chapter 1 who were eligible to retire as of June 30, 2025. 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 7% of the current active employee population. We also expect that members 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.

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Table 1. Active Population June 30, 2025

7/1/2025 Active Members	Total actives	Eligible for full <i>unreduced</i> retirement	% of actives eligible for <i>unreduced</i> retirement	Eligible for reduced early retirement	% of actives eligible for <i>reduced</i> retirement	Total eligible for retirement (reduced or <i>unreduced</i>)	% of actives eligible for retirement
State	81,274	7,277	9%	13,779	17%	21,056	26%
Teachers	160,949	8,738	5%	28,421	18%	37,159	23%
Political Subdivisions	124,066	9,073	7%	17,783	14%	26,856	22%
Total	366,289	25,088	7%	59,983	16%	85,071	23%

Source: VRS data

Impact of Expanding Return to Work Under the Bill

Because the new § 51.1-155(B)(5) 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 active healthcare, COLA increases, as well as a full-time salary.

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, receive a pension with cost-of-living adjustments, and, after a six-month break, receive a full-time salary, and employer-subsidized health insurance, it is likely that some retirement-eligible employees would pursue this option.

Other: 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.

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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.

Overview

This bill adds a new exemption, § 51.1-155(B)(5) for individuals who retired under Chapter 1 of Title 51.1, which includes state employees, teachers, and employees of political subdivisions, to return to work as a DOC correctional officer or with the DOC as an instructional employee required to be licensed by the Board of Education. The new exemption is generally consistent with the current return-to-work exemptions for critical shortage public school positions, critical shortage school bus drivers, and school security officers. Notably, retirees from the Virginia Law Officers' Retirement System (VaLORS), State Police Officers' Retirement System (SPORS), or Judicial Retirement System (JRS) are ineligible to return to work under the new provisions in the bill.

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 16, 2026, VRS data shows that the number of retirees filling RSSO positions doubled since the break-in-service rule was changed from 12 months to 6 months before the 2022-2023 school year and more than doubled since then. In 2022-2023 there were 26 retiree school security officers, while there are 66 so far in 2025-2026. Other return-to-work categories show similar increases. However, as this bill is limited to returning in certain positions enumerated in the bill with one employer, the number of VRS-covered members who could take advantage of the provisions in this bill cannot exceed the number of vacant positions covered by the bill existing at the Department of Corrections.

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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, 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

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.

Other Bills

The bill is similar to SB 113 that allows retired law-enforcement officers to return to work in certain civilian roles while continuing to receive retirement benefits. It is also similar to SB 695 that in part allows retired

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law-enforcement officers to return to work as school resource officers. Finally, it is similar to HB 1488, with a delayed effective date of January 1, 2027, that allows retired law-enforcement officers to return to work in any law-enforcement position.