

1 SENATE BILL NO. 1369

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on Finance and Appropriations  
4 on January 25, 2023)

5 (Patron Prior to Substitute--Senator Vogel)

6 A BILL to amend and reenact § 51.1-169 of the Code of Virginia, relating to Virginia Retirement System;  
7 increased retirement allowance for assistant attorneys for the Commonwealth and public  
8 defenders.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That § 51.1-169 of the Code of Virginia is amended and reenacted as follows:**

11 **§ 51.1-169. Hybrid retirement program.**

12 A. For purposes of this section, "hybrid retirement program" or "program" means a hybrid  
13 retirement program covering any employee in a position covered for retirement purposes under the  
14 provisions of Chapter 1 (§ 51.1-124.1 et seq.) for retirement purposes other than the Virginia Retirement  
15 System defined benefit retirement plan established under Chapter 1 (§ 51.1-124.1 et seq.). Persons who  
16 are participants in, or eligible to be participants in, the retirement plans under the provisions of Chapter 2  
17 (§ 51.1-200 et seq.), Chapter 2.1 (§ 51.1-211 et seq.), the optional retirement plans established under §§  
18 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  
19 § 51.1-138 shall not be eligible to participate in the hybrid retirement program. Any person who meets the  
20 definition of "emergency medical services personnel" in § 32.1-111.1 or is employed as a firefighter, or  
21 law-enforcement officer as those terms are defined in § 15.2-1512.2 and whose employing political  
22 subdivision has legally adopted an irrevocable resolution as described in subdivision B 4 of § 51.1-153  
23 and subdivision A 3 of § 51.1-155 shall not be eligible to participate in the hybrid retirement program. No  
24 member of the Judicial Retirement System under Chapter 3 (§ 51.1-300 et seq.) shall be eligible to  
25 participate in the hybrid retirement program described in § 51.1-169 except members appointed to an  
26 original term on or after January 1, 2014.

27           The Board shall maintain the hybrid retirement program established by this section, and any  
28 employer is authorized to make contributions under such program for the benefit of its employees  
29 participating in such program. Every person who is otherwise eligible to participate in the program but is  
30 not a member of a retirement plan administered by the Virginia Retirement System the first time he is  
31 hired or rehired on or after January 1, 2014, in a covered position, shall participate in the hybrid retirement  
32 program established by this section.

33           A person who participates in the otherwise applicable defined benefit retirement plan established  
34 by this title and administered by the Virginia Retirement System under this chapter may make an  
35 irrevocable election to participate in the hybrid retirement program maintained under this section. Such  
36 election shall be exercised no later than April 30, 2014. If an election is not made by April 30, 2014, such  
37 employee shall be deemed to have elected not to participate in the hybrid retirement program and shall  
38 continue to participate in his current retirement plan.

39           B. Except as otherwise provided in subsection G:

40           1. The employer shall make contributions to the defined benefit component of the program in  
41 accordance with § 51.1-145.

42           2. The employer shall make a mandatory contribution to the defined contribution component of  
43 the program on behalf of an employee participating in the program in the amount of one percent of  
44 creditable compensation, which shall be made to the appropriate cash match plan established for the  
45 employee under § 51.1-608. In addition, the employer shall make a matching contribution on behalf of  
46 the employee based on the employee's voluntary contributions under the defined contribution component  
47 of the program to the deferred compensation plan established under § 51.1-602, up to a maximum of 2.5  
48 percent of creditable compensation for the payroll period, as follows: (i) 100 percent of the first one  
49 percent of creditable compensation contributed by the employee to the defined contribution component of  
50 the program under subdivision C 2 for the payroll period, and (ii) 50 percent of the next three percent of  
51 creditable compensation contributed by the employee to the defined contribution component of the  
52 program under subdivision C 2 for the payroll period; provided, however, in the case of an assistant  
53 attorney for the Commonwealth or a public defender who is participating in the hybrid retirement program.

54 the employer shall make a matching contribution, up to a maximum of four percent of creditable  
55 compensation for the payroll period, on behalf of the employee of 100 percent of the amount contributed  
56 by the employee to the defined contribution component of the program under subdivision C 2 for the  
57 payroll period. The matching contribution by the employer shall be made to the appropriate cash match  
58 plan established for the employee under § 51.1-608.

59 3. The total amount contributed by the employer under subdivision 2 shall vest to the employee's  
60 benefit according to the following schedule:

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

64 For purposes of this subdivision, "active participation" includes creditable service, as defined in §  
65 51.1-124.3, in any retirement plan established by this title and administered by the Retirement System.

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

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

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

73 C. Except as otherwise provided in subsection G:

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

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

86           3. If an employee's voluntary contributions under subdivision C 2 are less than four percent of  
87 creditable compensation, the contribution will increase by one-half of one percent, beginning on January  
88 1, 2017, and every three years thereafter, until the employee's voluntary contributions under subdivision  
89 C 2 reach four percent of creditable compensation. The increase will be effective beginning with the first  
90 pay period that begins in such calendar year unless the employee elects not to increase the voluntary  
91 contribution in a manner prescribed by the Board.

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

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

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

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

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

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

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

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

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

123           3. If a member of the hybrid retirement program maintained under this section is at any time in  
124 service as an employee in a position covered for retirement purposes under the provisions of Chapter 1 (§  
125 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3 (§ 51.1-300 et seq.), his benefit  
126 payments under the hybrid retirement program maintained under this section shall be suspended while so  
127 employed; provided, however, reemployment shall have no effect on a payment under the defined  
128 contribution component of the program if the benefit is being paid in an annuity form under an annuity  
129 contract purchased with the member's account balance.

130           4. Any administrative fee imposed pursuant to subdivision A 13 of § 51.1-124.22 on any employer  
131 for administering and overseeing the hybrid retirement program maintained under this section shall be  
132 charged for each employee participating in such program and shall be for costs incurred by the Virginia  
133 Retirement System that are directly related to the administration and oversight of such program.

134 Notwithstanding the foregoing, the Board is authorized to collect all or a portion of such fee directly from  
135 the employee.

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

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

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

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

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

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

179 4. In the case of a 403(b) plan or local cash match plan administered by a political subdivision of  
180 the Commonwealth that provides individual accounts permitting an employee or beneficiary to exercise  
181 discretion over assets in his account, the political subdivision shall not be liable for any loss resulting from  
182 such employee's or beneficiary's (i) investment of voluntary contributions in the political subdivision's  
183 403(b) plan or matching contributions in the political subdivision's 403(b) plan or local cash match plan,  
184 (ii) exercise of discretion over the assets in any of his accounts, or (iii) inaction with respect to the assets  
185 in any of his accounts that results in such assets being placed in a default investment option selected by  
186 the political subdivision, provided that the investment options for the affected individual account and the  
187 particular default investment option for such individual account are selected in accordance with subsection

188 A of § 51.1-803, applied mutatis mutandis. Under no circumstances shall the Commonwealth, the Board,  
189 employees of the Retirement System, the Investment Advisory Committee of the Retirement System, or  
190 any other advisory committee established by the Board bear any liability with respect to any plan or  
191 individual account described in this subsection.

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

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

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

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

206 **2. That the provisions of this act shall apply to matching contributions made by an employer**  
207 **pursuant to subdivision B 2 of § 51.1-169 of the Code of Virginia, as amended by this act, on or after**  
208 **July 1, 2023.**

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