

2022 Fiscal Impact Statement

1. Bill Number: SB 17

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron prior to substitute: Hackworth

3. Committee: Senate Finance and Appropriations

4. Title: Virginia Retirement System; employment of retired law-enforcement officers.

5. Summary: The substitute provides that the Director of the Department of Criminal Justice Services shall exempt a law-enforcement officer who has demonstrated sensitivity to cultural diversity issues, had previous experience and training as a law-enforcement officer, is currently receiving or is eligible to receive a service retirement allowance in accordance with what would have been the new subdivision B 5 of § 51.1-155 created in the introduced bill, and has a break in service of no longer than 60 calendar months between retirement and the new employment from the mandatory attendance of all courses which are required for the successful completion of the compulsory minimum training standards.

The substitute no longer creates an exemption to VRS return to work rules.

Under the substitute, former law-enforcement officers who have been retired for five years or less under what would have been the new subdivision B 5 of § 51.1-155 created in the introduced bill must be granted an exemption from certain DCJS-required training, if hired by a state or local law enforcement agency to work part-time in accordance with existing VRS return to work rules. The substitute may still impact Line of Duty Act (LODA) benefits for retirees who are receiving LODA benefits and returning to work part time.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: DCJS indicates that no fiscal impact is expected on the agency. State and local law-enforcement agencies will be responsible for adhering to VRS return to work rules when hiring VRS retirees for part-time employment following a bona fide break in service. VRS does not expect a fiscal impact since this is existing procedure.

8. Fiscal Implications: DCJS would have to opine on the impacts of the training exemption.

Since VRS return to work rules will apply to retirees returning to work, minimal VRS impact is expected. Rehiring retired hazardous duty employees even part-time may have additional impacts on workers' compensation benefits and Line of Duty Act (LODA) benefits. State and local law-enforcement agencies will be responsible for adhering to VRS return to work rules when hiring VRS retirees.

Current Return-to-Work Options

Retirees may currently return to work part-time without losing VRS retirement benefits following a bona fide break in service of one full calendar month during a time the employee would otherwise have worked and with no prearrangement. In most cases a VRS retiree may return to work on a part-time basis with a VRS-participating employer and continue receiving retirement benefits if these requirements are met. When working in a “non-covered” (i.e., part-time, temporary, or provisional) position, a VRS retiree is not in violation of § 51.1-155(B) and may continue to work while also collecting his or her retirement benefit. To be considered working in a non-covered position based on part-time employment, a retiree must work 80% or less of the hours required of the comparable full-time position. For a 40-hour week, this translates to 32 hours per week or 1,664 hours per year.

For the LODA fund, we assume certain reemployed members would continue to be eligible to submit a claim for LODA benefits if disabled or killed in the line of duty or under a presumptive cause. The cost impact to LODA would be indeterminate although there may potentially be more claims since this population will typically be older than active employees. However, current LODA beneficiaries cannot return to active employment in positions covered by LODA without their LODA benefit ceasing.

Retirement eligibility provisions for hazardous duty employees (SPORS, VaLORS, and local law enforcement) allow them to retire earlier than employees in other VRS plans. As noted by the Joint Legislative Audit and Review Commission (JLARC) in its 2008 *Review of State Employee Total Compensation* report, <http://jlarc.virginia.gov/pdfs/reports/Rpt378.pdf>, these employees typically have job requirements that make them less fit for duty as they age. This has implications for their colleagues and the public. This may also lead to increased workers’ compensation claims and LODA claims.

In addition, many of these members are also provided with an enhanced hazardous duty supplement, which in theory is being provided as a financial bridge for members from an earlier retirement until eligibility for Social Security and Medicare benefits. Also, in part since hazardous duty employees are eligible to retire earlier than general employees, they were not placed in the Hybrid Retirement Plan because they were not anticipated to have enough years of service to accumulate adequate retirement savings in the Hybrid.

9. Specific Agency or Political Subdivisions Affected: DCJS, any state or local law enforcement agency hiring (on a part-time basis) former law enforcements officers who have been retired less than five years, and any person receiving a service retirement allowance under Title 51.1 for service as a sworn law-enforcement officer who returns to work part time as a law enforcement officer, as defined in § 9.1-101 under the provisions of this legislation.

10. Technical Amendment Necessary: Yes. Line 21 references subdivision B 5 of § 51.1-155, that would have been created in the original bill.

On line 21, strike “subdivision B 5 of.”

11. Other Comments: DCJS would have to opine on any questions related to the implications of requiring an exemption of training and certification requirements.

Under the substitute, a member who has retired from a sworn law-enforcement officer position under Title 51.1 (SPORS, VaLORS, or local law-enforcement officers) no more than five years earlier and who is hired by a law enforcement agency on a part-time basis as a law enforcement officer, must be exempted by DCJS from certain training requirements.

Background

Currently, a VRS retiree cannot collect a VRS retirement benefit while simultaneously working full-time in a VRS-covered position absent specific statutory authority that complies with applicable Internal Revenue Code provisions. There are limited exceptions to this rule under the *Code of Virginia*, such as retirees working in statutorily defined critical shortage bus driver and teaching positions and SSO positions. Most often, however, an individual working in a full-time position for a VRS-participating employer cannot simultaneously collect a VRS retirement benefit. In the case of a VRS retiree returning to work full-time in a VRS-covered position, the retiree must “unretire” and resume active VRS participation. When the individual chooses to subsequently retire again, VRS will recalculate the new retirement benefit to include the additional service credit earned.

Additional Information Related to Disability Retirement and LODA Benefits Eligibility

A retired law enforcement officer who is receiving Line of Duty Act (LODA) benefits and who is rehired as a retiree into the same position would lose those benefits under § 9.1-401(C)(3).

Many retired officers receiving LODA benefits are also drawing a disability retirement benefit that may possibly make them ineligible for work as a law enforcement officer under the bill. VRS has communicated clearly and consistently through its publications and other outlets that a disability retiree cannot return to a position that requires the same or similar duties as those performed prior to disability retirement. Similarly, if a LODA recipient returns to an active LODA-eligible position, their LODA benefit must cease.

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