

December 15, 2022

Report to the General Assembly

Return to Work Provisions Governing VRS Retirees

Item 498, Chapter 2 of the 2022 Special Session I Acts
of Assembly

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Return to Work Options for VRS Retirees

Under the Virginia Retirement System, several options are available to employ VRS retirees part-time or, in certain circumstances, employ retired teachers, school bus drivers and school security officers full-time, or employ retirees in other positions on an interim, temporary full-time basis with VRS approval. In all cases, various rules apply, including [§ 51.1-155\(B\)\(3\)](#). It's important to fully inform the retiree of [VRS and IRS guidelines for returning to work](#).

Working Part-Time While Retired

Any retiree may work in part-time positions that require 80% or less of the hours of comparable full-time permanent positions, while continuing to receive a retirement benefit. For example, a retiree could work 32 hours a week if a comparable full-time position requires 40 hours per week. If returning to a position with their former employer, retirees must have a bona fide break in service of at least one full calendar month* from their retirement date over a period they normally would work.



Full-Time K-12 and Bus Driver Critical Shortage Positions

Teacher, principal and assistant principal positions may be designated as critical shortage positions, as well as school bus driver positions. Retirees can serve in these full-time and temporary positions while continuing to receive retirement benefits. The Virginia Department of Education designates critical shortage positions annually. The retiree must have retired from a VRS-covered position, with a break in service of at least 12 consecutive months before beginning work in a critical shortage position. Positions are for the current school year and yearly certification of eligibility is required. The retiree will not earn additional service credit.



Full-Time Retiree School Security Officer Positions

Retired sworn law-enforcement officers may return to work full-time as a retiree school security officer at a Virginia public school while continuing to receive retirement benefits. The retiree will not earn additional service credit. Employers are required to include the retiree's compensation in membership payroll subject to employer contributions.



Full-Time VRS-Covered Employment

Retirees may return to full-time, VRS-covered employment. Retirement benefits cease on the first day of employment until the employee retires again. Future retirement benefits, including the cost of living adjustment, may be impacted. The retiree will earn additional service credit.



Interim (Temporary) Full-Time Positions

With prior VRS approval, retirees may return to work full time in an interim, or temporary, position for up to six months while continuing to receive retirement benefits. The employer submits the request to VRS before hiring the retiree. The retiree will not earn additional service credit. If returning to a position with their former employer, retirees must have a bona fide break in service of at least one full calendar month* from their retirement date over a period they normally would work.



Before Hiring a Retiree

Employers may not pre-arrange for an employee to return to work after retirement. Employers should call VRS employer support at [888-827-3847](tel:888-827-3847) if they have questions or need additional guidance.



VRS Resources

- [Retirees Returning to Work](http://varetire.org) (varetire.org)
- [Hiring Retirees to Return to Work](#) (video overview)
- [VRS Employer Manual](#)



*Before employing a retiree, the employer should contact their human resource department to ensure compliance with break-in-service rules unique to the federal Affordable Care Act. State agencies should follow Department of Human Resource Management guidance.

Executive Summary

Why We Did This Report

Item 498 of Chapter 2 of the 2022 Special Session I Acts of Assembly tasked the Virginia Retirement System (VRS) with conducting a review of the current return-to-work (RTW) provisions governing its 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.

What We Found

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. Retirees can choose to stop their retirement benefit and return to full-time active employment. Alternatively, there are currently 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, 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 three position categories allowed under the *Code of Virginia* after the required 12 consecutive calendar month break in service.

Virginia's current return-to-work provisions are largely consistent with the provisions in numerous other states and are generally aligned with national trends regarding return to work. However, some plans are narrowing their current RTW rules and increasing break-in-service requirements. In addition, VRS' return-to-work provisions overall are designed to balance protecting the plans while allowing flexibility for employers and retirees.

Section 414 of the Internal Revenue Code (IRC) establishes numerous requirements that qualified governmental plans, including VRS, must comply with in order to qualify for favorable tax provisions. These requirements include when and how a retiree may return to work for a system employer following retirement while continuing to receive a retirement benefit (an "in-service distribution").

Maintaining VRS' status as a governmental plan is paramount as such status allows members to make pre-tax retirement contributions and provides an exemption from taxation for the trust fund's investment earnings. These and other benefits allow members to retain more of their salary and, since investment income accounts for approximately two-thirds of a retiree's pension benefit, exemption of investment earnings from taxation is critically important for VRS members as well as the overall fiscal

health of VRS. Further, investment income contributes to VRS' funded status, which impacts the Commonwealth's bond rating.

Current return-to-work provisions provide flexibility, even when compared to other state plans. At present, VRS allows retirees to return to work at 80 percent of a full-time position with a one full calendar month break in service over a period where the employee would otherwise work and still receive their retirement benefit. In addition, there are multiple categories of critical shortage positions where full-time employment is allowed after a one-year break in service. If part-time service (defined as 80 percent of a full-time schedule) and the existing critical shortage provisions are not sufficient for workforce needs, then an expansion of current return-to-work rules with certain protections for the plans could be considered.

If the current 12-month break-in-service provision for full-time employment following retirement is reduced, then requiring a break in service of at least six months for those members who have not reached normal retirement age would provide additional flexibility for members and employers, while avoiding the likelihood of increased adverse actuarial impacts to the plans. Another option to increase flexibility would be to allow anyone who has reached normal retirement age (age 65 or Social Security Normal retirement age for general employees and age 60 for hazardous duty) to retire and return to work without a break in service. However, and importantly, this approach would need to be coupled with employer contributions and under the Internal Revenue Code specified age limitations. If the break-in-service requirement is further reduced below six months without age restrictions, then there would be changes in retirement patterns and deleterious impacts to the fund, including increased cash flow requirements and resulting higher employer costs. Further, VRS will be unable to ascertain the full extent of the magnitude of the impacts until systematically observing plan experience in the VRS quadrennial actuarial experience study. In summary, no matter what approach is taken, VRS in conjunction with the plan actuary strongly recommends use of a sunset clause including actuarial analysis conducted in conjunction with VRS' quadrennial experience study; continued employer contributions for full-time return-to-work options, similar to the approach taken with school security officers; a break-in service requirement of at least six months or normal retirement age restrictions as outlined in the body of the report.

VRS recommends the inclusion of employer contributions for all full-time return-to-work provisions, similar to the existing Code of Virginia requirements for retirees returning to work as school security officers.

Returning To Work After Retirement

The IRS in Private Letter Ruling (PLR) 201147038 references several court cases that confirm the word "retire" has its usual meaning: "to withdraw from one's position or occupation; to conclude one's working or professional career."

The Commonwealth and the IRS recognize that there are circumstances under which a retiree should be allowed to return to work. Allowing retirees to return to work may also help employers address temporary workforce shortages and provide retirees with additional income. The return to work

by retirees is not likely to be a long-term solution to workforce issues if there are fewer workers to replace these employees when they leave the workforce.

In addition, return-to-work provisions could result in detrimental changes to retirement patterns, incentivizing retirements earlier than plan assumptions (which are based on historical experience), and could be viewed as facilitating “double dipping” by employees (i.e., the concurrent receipt of a pension benefit and a salary both funded by public dollars), or even triple-dipping if a retiree also receives the hazardous duty supplement or cost of living adjustment, a practice generally viewed with circumspection in the media and disfavored by members of the public, such as concerned citizen and taxpayer organizations. Further, as more positions are filled by retirees, less is paid into the VRS Trust Fund in expected employer contributions calculated to fund retirement benefits if employer contributions are not required for retirees who return to work. This will result in future contribution rates increasing to make up for the smaller active employee payroll that is used to calculate contribution rates. In the pooled plans, this could result in all employers paying higher contributions, even if they do not fill positions with retirees instead of active members. Under the current *Code of Virginia*, the required break in service, limited exemptions, and employer contributions required for retirees returning as school security officers are the only protections for the VRS Trust Fund.

In 2022, the National Association of State Retirement Administrators (NASRA) surveyed governmental state and some larger municipal retirement plans about their post-retirement employment options — what VRS calls return to work. As seen in the survey responses, a variety of post-retirement employment options exist depending on individual plan design as well as interpretation of IRS rules.

Federal Law and Internal Revenue Service Guidance

The fundamental element of any return-to-work provision is the bona fide break in service required by the IRS, i.e., the amount of time a retiree must have been separated from employment before returning to a covered position. The IRS has provided limited guidance regarding if and when a retiree may return to covered employment while still being considered retired. The IRS utilizes a facts and circumstances test to determine if there is a bona fide break in service. As such, state return-to-work laws and plan policies typically are designed to adhere to the IRS bona fide break-in-service requirement. This serves to protect the retirement plan from violating IRC rules related to prearrangement and from unexpected and detrimental changes in retirement patterns, and to prevent double dipping.

IRS guidance under IRC § 410, as cited in Private Letter Ruling 201147038, suggests that a one-year period without performing service might be considered sufficient to establish the requisite break in service to constitute a separation from employment. Additionally, the IRS indicated in Information Letter (INFO) 2000-0245 that, for purposes of retirement, an employee who moves from full-time to part-time service with the same employer has not experienced a complete severance of service and may not be eligible for a distribution from their retirement account.

In addition, the Affordable Care Act (ACA) requires, generally, a 13-week (approximately three-month) or 26-week (approximately six-month) break in service, depending on the position, that must be adhered to when an employer rehires a former employee to avoid a potential ACA tax penalty. This federal law applies to all employers rehiring a former employee, regardless of whether the employee

retired or separated from service without retiring. The Department of Human Resource Management (DHRM) has provided guidance to state employers related to the ACA break in service. Other VRS participating employers must rely upon their own benefits counsel for ACA guidance. The coordination of this federal law with VRS and IRS retirement requirements may contribute to employers' difficulty in discerning what post-retirement employment options are available for retirees. VRS participating employers are strongly encouraged to consult their human resource departments or DHRM in the case of state agencies, for further information.

Virginia Law and Policy

In keeping with the available IRS guidance, and as required by the *Code of Virginia* § 51.1-155(B)(3) and (4), VRS uses a 12-month break in service when looking at statutory exceptions for retirees wishing to return to work full-time in a VRS-covered position. This 12-month break-in-service requirement has been in place since 2001 and was the result of considerable analysis and review by VRS and the Joint Legislative Audit and Review Commission (JLARC). This break-in-service requirement is intended to satisfy IRS guidance, to protect the VRS plan qualification under the IRC, and to minimize the incentive for employees to retire earlier than they otherwise would. Failure to meet the IRS' facts and circumstances test for a bona fide break in service could jeopardize VRS' plan qualification status, thereby affecting all members and retirees.

When returning to work part-time, retirees are required by VRS policy to have a break in service of one full calendar month during a time when the retiree would otherwise have worked. As required by the IRS, neither the full-time nor part-time return-to-work option allows for the post-retirement work with a VRS employer to be prearranged prior to retirement.

Actuarial and Plan Impacts of Return to Work

Gabriel, Roeder, Smith & Company (GRS), VRS' plan actuary, commended Virginia's current return-to-work program as consisting of solid, well-thought-out options. GRS suggests that best practices are to require a break in service of sufficient length to discourage employees from retiring simply to take advantage of the return-to-work capability.

It is difficult to create a return-to-work program that incentivizes retired members to return to work without also encouraging current active members to subsequently retire and keep working. If current active members are the only ones who take advantage of this program, there are generally no workforce gains.

When an employee retires earlier than assumed, it adds costs to the plan since retirement benefits may be paid for a longer period than anticipated when contribution rates were set. Further, the plan has less time to generate the investment earnings needed to fund benefits. Historically, approximately two-thirds of benefits are funded by investment income, so this is an important element to consider.

Retirees returning to work full-time under existing exemptions in the *Code of Virginia* do not accrue additional retirement benefits. Further, return to work is considered an exception only for these limited circumstances since it can potentially have negative impacts on VRS retirement plans by incentivizing members to retire earlier than originally expected and increasing cost-sharing requirements for all employers in the plans if replacing current covered positions with retirees. The

implications of incentivized early retirement would impact individual political subdivision plans and VRS plans, and the amount of the impact would vary based on utilization of the provision within each of the plans.

Effect of Changes to Retirement Patterns

Earlier than anticipated retirements require payment of retirement benefits for a longer period than was assumed when contribution rates were set, and over time will lead to higher contribution rates. Higher contribution rates will directly impact state and local budgets. In addition to impacts to VRS, changes in retirement patterns could impact the Commonwealth's bond ratings if the changes result in a lower funded status for the plans.

Current Virginia Return-to-Work Options

Since retirement is understood as leaving the workforce, in general, under current law a retiree who returns to VRS-covered (typically full-time) employment must "unretire" and become an active member again, ending the retirement benefit in accordance with [§ 51.1-155\(B\)\(1\)](#) of the *Code of Virginia*. Retirees who unretire, stop receiving a retirement benefit, and return to active VRS-covered employment, accrue additional service and compensation. Since 2008, at least 712 previously retired members have stopped receiving their retirement benefit and returned to active employment.

Part-time or Non-covered Employment

Benefits counsel has confirmed that, in general, retirees can continue to receive retirement benefits while working in a part-time position with a VRS-participating employer after a break in service of one full calendar month over a period when they would otherwise be working. Part-time employees do not accrue retirement benefits and are not reported to VRS. Therefore, VRS does not have records available to determine how many VRS retirees are taking advantage of the ability to return to work part-time while continuing to receive a retirement benefit. However, VRS conducted a survey of participating employers to obtain data regarding part-time employment of VRS retirees. Of the 726 total employers to whom the survey was sent (individual state agencies, local school boards, and political subdivisions), 206 unique responses were received, with 134 indicating they have hired retirees part-time in the past five years. Additionally, of the 72 VRS-participating employers that have not hired VRS retirees part-time within the past five years, eight plan to hire VRS retirees into a part-time position within the next two years.

Interim Employment

In some limited cases, retirees can work in a full-time interim position for up to six months without interruption in retirement benefits. These arrangements are generally for executive positions, such as county administrators, chief financial officers, and other positions that are crucial to the organization and may be difficult to fill quickly. Employers must receive VRS approval before hiring a retiree in the position and VRS requires a one full calendar month break in service. Since 2014, VRS has approved 98 interim arrangements; 61 of those were with 25 employers.

Full-Time Employment Exemptions: Critical Shortage and School Security Officer Positions

In general, a retiree is not permitted to be employed full-time and continue to receive VRS benefits. The General Assembly has established three position categories that are exempt from this general rule and an eligible retiree may return to work full-time in one of these position categories if they meet the statutory requirements:

- instructional or administrative employees licensed by the Board of Education in a critical shortage position (since 2001),
- school bus drivers in a critical shortage position (since 2020), and
- school security officers (since 2020).

Before being employed full-time in any of these statutory position categories, a retiree must have a break in service of 12 consecutive calendar months from the date of retirement. Benefits counsel advises that in order to comply with IRC, the break in service must be over a period when the employee would otherwise be working. To comply with IRS guidance, this break in service includes work in any capacity, such as volunteer service, part-time work, or potentially contracting for a third-party and assigned to the employer from which the member retired.

Critical Shortage Teachers and School Bus Drivers

As the name suggests, the critical shortage program was designed by the General Assembly to be narrowly tailored to address the unique workforce issues being experienced by Virginia's public schools. Thus, the critical shortage program is available for positions that meet the statutory requirements, specifically that the teacher or bus driver position has been identified to be in a critical shortage area by the Superintendent of Public Instruction, school division superintendent, or local school board. Every year, the Virginia Department of Education (VDOE) determines what positions are designated as critical shortage. For the 2022-2023 school year, the critical shortage endorsement areas designated by VDOE include the majority of teaching positions, including all elementary and middle school positions; and secondary school positions in mathematics, science, foreign language, English, history, and special education.

Under § 51.1-155(B)(3) of the *Code of Virginia*, the service performed and compensation received by a retiree employed in a critical shortage position will not increase, decrease, or affect in any way the retiree's retirement benefits. In other words, retirees returning to work in a critical shortage position do not accrue retirement benefits and are not reported to VRS as active members. Employer contributions are not currently required for retirees filling critical shortage positions.

Since 2008, the earliest year for which VRS has data, a total of 699 critical shortage teacher positions have been filled by VRS retirees. As shown in Table 6 in the report, the number of retirees filling critical shortage teacher positions does not appear to follow any particular pattern.

Since 2020 when the exemption was enacted, 64 critical shortage school bus driver positions have been filled by VRS retirees.

On September 1, 2022, the Governor of Virginia issued Executive Directive Number Three (ED3), directing the Superintendent of Public Instruction to coordinate with VRS to ensure that all vacant K-12 teaching positions would be classified as critical shortage positions. Data is not yet available on the

number of positions that may be classified as critical shortage teaching positions under ED3 or the impact an increase in critical shortage positions may have on filling the positions and on retirement patterns. As noted previously, the majority of teaching positions are already designated as critical shortage.

School Security Officers

In 2020, the General Assembly enacted § 51.1-155(B)(4) of the *Code of Virginia*, which permitted retired law-enforcement officers to return to work full-time as school security officers (SSO) while still receiving their retirement benefits. Like the critical shortage program, under § 51.1-155(B)(4) of the *Code of Virginia*, a retired law-enforcement officer (i) must have been retired for at least 12 consecutive calendar months preceding employment as a school security officer and (ii) cannot have retired under an early retirement incentive program. Similarly, § 51.1-155(B)(4) provides that the service performed and compensation received by a retiree employed as an SSO will not increase, decrease, or affect in any way the retiree's retirement benefits. In other words, retirees returning to work in an SSO position do not accrue retirement benefits and are not reported to VRS as active members.

There is one primary difference, however, between the critical shortage program and the employment of retired law-enforcement officers as school security officers. The employer of a retired law-enforcement officer in a SSO position is required to include the officer's compensation in the employer's membership payroll subject to the requisite employer contributions to VRS. Receiving employer contributions for these SSOs serves to help mitigate the impact on the VRS Trust Fund of having a retiree rather than an active member in the position. Actuaries encourage the use of the practice of providing employer contributions for retirees who return to work in order to minimize the impact of changing retirement patterns on pension trust funds.

Since 2020 when the exemption was enacted, 43 school security officer positions have been filled by VRS retirees.

Return-To-Work Provisions in Retirement Plans of Other States

Post-retirement employment options can vary substantially from plan to plan. In part, this is a result of differing plan designs and interpretations of the IRS rules and other guidance. Each plan's design and return-to-work requirements will impact the plan's funded status, in conjunction with other factors such as discount rate and contribution rates.

In 2022, NASRA updated data utilized in a 2018 report, *Balancing Objectives in Public Employee Post-Retirement Employment Policies: Reassessing Barriers to Continued Work*, a report on post-retirement employment policies—return-to-work policies—for public retirement systems across the United States published by NASRA and the Center for State and Local Government Excellence (SLGE). The data reveals several common features of return-to-work provisions in other states, including the duration of the break-in-service requirement; setting caps on hours, duration of post-retirement employment, or earnings from post-retirement employment; limiting post-retirement full-time employment to specific hard to fill positions like education or law enforcement; and requiring employers to pay contributions into the plan for retirees who have returned to work.

There were 85 plans from all 50 states, the District of Columbia, and Puerto Rico that responded to NASRA's 2022 request for data. Of those, two do not allow post-retirement employment within the

same retirement system at all. The others allow return to work within the same retirement system in some manner and under a variety of structures. For example, though not included in the NASRA state plan survey, federal civilian retirees may return to employment after retirement and after at least four calendar-day break in service, but their salary is reduced by the amount of their retirement benefit. Generally, plans allow retirees to return to work part-time or on a temporary basis, similar to VRS' part-time or interim scenarios. Table 9 in the report describes how many plans, including the Office of Personnel Management return-to-work guidance for federal retirees, allow full-time post-retirement employment versus part-time or temporary post-retirement employment.

Highlighted in the report are several plans that have made recent changes. Notably, more than one plan is narrowing its previous return-to-work rules and increasing the length of its break-in-service requirement. However, there do not appear to be consistent return-to-work rules from plan to plan.

Table 10 in the report summarizes the plans that limit the number of hours a retiree may work when returning to work after retirement, the duration of post-retirement employment, the earnings allowed during post-retirement employment, or some combination of these limits.

Table 11 in the report provides a comparison of VRS break-in-service requirements with those of other plans. VRS' policy requiring retirees to have a break in service of at least one full calendar month prior to returning to work with a VRS-participating employer part-time is similar to statutory and agency policies of many retirement systems.

Table 12 in the report gives a broad picture of plans that require employer contributions or both employer and employee contributions. To summarize, 47 plans require contributions of some type, generally paid by the employer. Thirty-six plans do not require contributions. For some plans, the data was not available.

According to data provided by NASRA, plans rarely allow an additional retirement benefit for time a retiree works while receiving a retirement benefit, since return to work generally is considered an exception to the rule of stopping work entirely.

Recommendation and Options for Consideration

From a fiduciary standpoint, any return-to-work program should be structured to balance providing some flexibility for retirees to return to work in certain circumstances without incentivizing current active employees to simply retire earlier in order to collect both retirement benefits and an active salary. If the General Assembly's intent is to solve for particular workforce issues, then a targeted approach may isolate the variables that may help fill positions without more broadly negatively impacting the retirement plan.

The recommendation and options that follow are designed with risk mitigation in mind. Since, as noted previously under [§ 51.1-160](#) of the *Code of Virginia*, VRS members receiving a disability retirement generally cannot return to work and continue to receive their retirement benefits, none of the options discussed below allow VRS members retired for disability to return to work and continue to receive a disability retirement benefit.

Options can be considered alone or in some cases in conjunction with other options presented. As demonstrated by the analysis of retirement plans from other states, Virginia's current return-to-work

provisions are consistent with many of these other plans. It should also be noted that the analysis of other retirement plans establishes that there is no consensus rule in these plans, i.e., there is not one set of return-to-work provisions that can be considered the norm for all retirement plans. Instead, return-to-work provisions in other states must be viewed as a function of each individual plan's design, funded status, demographics, experience, and goals.

The potential policy options analyzed in this report include:

- Recommendation: Require employer contributions for all retirees who return to full-time employment. This and all options assume that the existing sunset provision and quadrennial actuarial investigation requirement remain in place to ensure ongoing review and analysis as well as avoid potential negative impacts to the plans.
- Option One: Reduce the length of the existing break-in-service requirement for critical shortage teachers and bus drivers, and school security officers to six months without adding any other categories of retirees who may return to work full-time. Require employer contributions for critical shortage teachers and bus drivers, in addition to the contributions required for retiree school security officers.
- Option Two: Allow retirees who have reached a specific age to return to work with no break in service, consistent with IRS guidance. Require employer contributions for any retiree returning to work full-time.

Consistent with the IRC, all options described require that employees and employers do not prearrange for a retiree to return to work after retirement.

VRS also recommends that § 51.1-155 of the *Code of Virginia* be amended to clarify that retirees returning to work with a VRS-participating employer in any capacity while receiving a retirement benefit are not eligible for VRS death in service or disability retirement benefits since these individuals are retired rather than active employees. The General Assembly may wish to clarify this policy in statute, especially if expansion options that allow more retirees to return to work are enacted.

While options for modifications to the current return-to-work policy are laid out below, there are additional factors to consider:

- ACA – Policy options discussed in this report do not take into account requirements under the federal Affordable Care Act. VRS does not have the expertise to opine on the interaction of ACA with retirement RTW provisions.
- Cost-of-living adjustment (COLA) - Current retirees receive a COLA in accordance with § 51.1-166 of the *Code of Virginia*. Should members opting to return to active employment in a VRS-covered position continue to receive COLAs, designed to address the impact of inflation on retirement benefits, while actively employed in a full-time position with a VRS employer?
- Enhanced Hazardous Duty Supplement – The enhanced hazardous duty supplement, currently \$14,664 annually, is provided to certain hazardous duty retirees in accordance with § 51.1-206(B), § 51.1-217(B), or § 51.1-138 (B) of the *Code of Virginia*. The supplement was created to help hazardous duty members who generally retire at an earlier age due to the physical and mental requirements of the job, and adds to their income from the date of retirement until age 65 or Social Security retirement age (depending on the plan from which they retire) in an effort

to bridge their income until they become eligible for Social Security. Is this supplement needed if they return to an active full-time VRS covered position?

- Health insurance credit (HIC) – Many VRS retirees qualify for a HIC under Title 51.1, Chapter 14 of the *Code of Virginia*, which can be used to offset the cost of healthcare premiums in retirement. If they return to active employment at a VRS-covered position and elect active employee health care, often subsidized by the employer, should they be allowed to use HIC benefits to further offset the cost of active healthcare premiums?

A full discussion of the recommendation and options is available beginning on page 42.

VRS will need sufficient time to implement programming and communication efforts to its employers and members for any changes to existing VRS statutes. The analysis of each option includes an estimate of the time and funding that may be necessary for implementation. Depending on the complexity of programming and depth of communication needs, VRS' implementation costs are estimated to range from \$150,000 to \$620,000. This does not include potential impacts to the VRS Trust Fund such as generating liabilities from experience that differs from assumptions or to employer contribution rates.

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Glossary

Break in Service: a period of time during which the employee does not work, to demonstrate a true separation from employment. To meet Internal Revenue Service requirements, this break in service must be during a time when the employee would otherwise normally have worked.

Funded status: the financial status of a pension plan, measured by subtracting pension fund obligations from assets. A portion of the assets required to pay pension obligations are collected from employer contributions and employee contributions during an employee's working years, invested by the pension plan, and then the contributions and interest earned on the investments are used to pay the pension fund obligations.

Options: refers to additional policy changes that the General Assembly could choose to make.

Plan design: refers to the framework of a retirement plan, such as whether a plan offers defined benefit (DB), defined contribution (DC) components, or both; participation requirements; required employer and employee contributions; vesting requirements; benefit levels; methods of benefit distributions; and other factors that impact what comprises the retirement plan.

Post-retirement employment: when a retiree, who is receiving a retirement benefit, goes back to work for an employer in the same retirement system. May also refer to when an employee who has reached a specific age (Social Security Normal Retirement Age, or plan normal retirement age, or another specified age) begins receiving a retirement benefit while continuing to work. See also return to work.

Prearrangement (to return to work): an express or tacit understanding between a retiree and the retiree's former employer that there will be a position waiting for the retiree after the bona fide break-in-service period has elapsed.

Provisions: existing laws and rules. Includes the *Code of Virginia*, the Internal Revenue Code, and Virginia Retirement System policies.

Return to Work (RTW): when a retiree, who is receiving a retirement benefit, goes back to work for an employer in the same retirement system and continues to receive a retirement benefit. See also post-retirement employment. Currently, 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 during a period that the employee would otherwise be working; (ii) an interim position that lasts no longer than six months after the required one-month break in service and approval from VRS; or (iii) a full-time position in one of the three position categories allowed under the *Code of Virginia* after the required 12-month break in service. None of these allow prearrangement of the post-retirement work.

Introduction

Item 498 of Chapter 2 of the 2022 Special Session I Acts of Assembly tasked the Virginia Retirement System (VRS) with conducting a review of the current return-to-work (RTW) provisions governing its retirees. The specific requirement in Item 498 of the 2022 Appropriation Act is cited below:

I. The Virginia Retirement System shall conduct a review of Virginia's current return to work provisions. The review shall include an overview of the Internal Revenue Service laws and regulations regarding return to work, an analysis of Virginia's return to work provisions comparative to those of other public employee pension plans, and an actuarial analysis of potential modifications to the return to work provisions. The Virginia Retirement System shall complete the review and report its findings to the Chairs of the House Appropriation and Senate Finance and Appropriations Committees by December 15, 2022.

This report summarizes the existing options for VRS retirees who wish to return to work in a part-time or full-time capacity while their monthly retirement benefit continues. This report also considers the variety of post-retirement employment options established by retirement plans in other states and analyzes how the most common of those options compare to current Virginia return-to-work provisions, taking into consideration how implementing any of these changes would impact VRS' statutory duty to protect the actuarial soundness of the plan as well as compliance with state and federal law. To address these questions, VRS reviewed the Internal Revenue Service (IRS) rules and the *Code of Virginia*, collected data from other governmental pension plans, and performed actuarial analyses of several possible changes to return-to-work provisions in the *Code of Virginia* that the General Assembly may consider. In preparing this report, VRS considered whether the proposals would continue stable contribution rates for employers, and ensure the soundness of the overall plan, as required by the *Code of Virginia*, while adhering to the requirements of the Internal Revenue Code of 1986 (IRC)¹ and available guidance from the IRS.

For retirement purposes, Return to Work refers to post-retirement employment. This is when a retiree, who is receiving a retirement benefit, goes back to work for an employer in the same retirement system and continues to receive a retirement benefit.

Return to work (RTW) 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. For retirement purposes, the Commonwealth of Virginia is considered a single employer when contemplating employment with any state public body. Currently, there are several avenues for a retiree to return to work with a VRS-covered employer and continue to receive retirement benefits. 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 during a period that the employee would otherwise be working; (ii) an interim position that lasts no longer than six months

¹ U.S. Code, Title 26.

after the required one full calendar month break in service and approval from VRS; or (iii) a full-time position in one of the three position categories allowed under the *Code of Virginia* after the required 12 consecutive calendar month break in service. No prearrangement of the return to work post-retirement is allowed. The review of return-to-work provisions in retirement plans in other states discussed in detail below demonstrates that Virginia’s current return-to-work provisions are largely consistent with the provisions in numerous other states and are generally aligned with national trends regarding return to work.

Background

The Constitution of Virginia, Art. X, § 11, requires the Virginia General Assembly to maintain a retirement system for state employees and employees of participating political subdivisions and school divisions. The Virginia Retirement System, established by the General Assembly as an independent state agency in Title 51.1 of the *Code of Virginia*, oversees the provision of pension and other post-retirement benefits to retirees. VRS is required by state statute to provide “adequate benefits and pensions to members, encourag[e] stable employer contribution rates, and ensur[e] the overall soundness of” the plan.²

Additionally, § 414 of the IRC establishes numerous requirements that qualified governmental plans, such as VRS, must comply with in order to qualify for favorable tax provisions under the IRC. These requirements include when and how a retiree may return to work for a system employer following retirement while continuing to receive a retirement benefit (an “in-service distribution”).

As of September 2022, VRS is the 17th largest public or private pension fund in the United States and the 46th largest in the world. VRS serves more than 750,000 active and inactive members, retirees, and beneficiaries. Members from approximately 835 employers participate in VRS.

As of June 30, 2022, VRS total fiduciary net position was \$102,509,400,000.³ Plans within VRS have a funded status ranging from 78.18% to 97.25%:⁴

- VRS State Plan = 86.44%
- VRS Teacher Plan = 85.46%
- VRS Political Subdivisions (aggregate total) = 97.25% (individual local employers may have a higher or a lower funded status)
- State Police Officers’ Retirement System (SPORS) = 81.27%
- Virginia Law Officers’ Retirement System (VaLORS) = 78.18%
- Judicial Retirement System (JRS) = 90.17%

² Va. Code § 51.1-124.1.

³ [VRS Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2021 \(varetire.org\)](#). Unaudited data from fiscal year 2022: VRS total fiduciary net position was \$100,944,400; funded status of VRS State Plan= 81.28%, of VRS Teacher Plan= 81.01%, of VRS political subdivisions= 91.41% (aggregate), of SPORS= 72.71%, of VaLORS= 73.43%, of JRS= 90.17%.

⁴ When the General Assembly first authorized retirees to return to work full-time in 2001, VRS had 427,414 active, inactive, and retired members and 785 employers, including public school teachers; political subdivision employees from cities, towns, special authorities and commissions; state agency employees; public college and university personnel; state police; Virginia law officers; and the judiciary. VRS managed \$34.4 billion in assets and was 107.3% funded. [2002 Comprehensive Annual Financial Report \(varetire.org\)](#)

VRS' prudent financial management, the General Assembly's commitment to fully funding employer contribution rates, supplemental contributions, and pension reforms undertaken in the past decade have strengthened the health of the VRS Trust Fund.

Maintaining VRS' status as a governmental plan is paramount as such status allows members to make pre-tax retirement contributions and provides an exemption from taxation for the trust fund's investment earnings.

Maintaining VRS' status as a qualified governmental plan is paramount as such status allows members to make pre-tax retirement contributions and provides an exemption from taxation for the VRS Trust Fund's investment earnings. These and other benefits allow members to retain more of their salary (after-tax contributions would further erode take-home salary) and, since investment income accounts for approximately two-thirds of a retiree's pension benefit,⁵ exemption of investment earnings from taxation is critically important for its members as well as the overall fiscal health of VRS. Further, investment income contributes to VRS' funded status, which impacts the Commonwealth's bond rating.⁶

Returning To Work After Retirement

The IRS in Private Letter Ruling (PLR) 201147038⁷ references several court cases that confirm the word "retire" has its usual meaning: "to withdraw from one's position or occupation; to conclude one's working or professional career."

The Commonwealth and the IRS recognize that there are circumstances under which allowing a retiree to return to work may be appropriate. From an employer's perspective, the most important of these circumstances is likely to fill gaps in the workforce by rehiring a retired employee, either to retain expertise and necessary skill sets or to attract retirees to return to difficult-to-fill positions. In addition, employers may wish to retain employees who might otherwise retire earlier and leave their workforce by allowing these employees to continue working on a full-time basis while receiving a retirement benefit. Retirees may wish to return to work after retirement for financial or personal reasons.

Any VRS retiree can return to work with a VRS employer for up to 80% of the hours of a comparable full-time position (typically 32 hours) after at least one full calendar month break in service during a period when the employee would

⁵ Portion of retirement benefit funded by investment income is based on VRS and third-party actuarial analysis of present value of benefits versus contribution requirements (see VRS Stress Testing reports). Independent studies support this as an average for public sector plans.

⁶ See, e.g., Fitch, July 1, 2021: Long-Term Liability Burden: 'aaa'--Virginia's long-term liability burden is low and well managed. Debt issuance is carefully monitored through both constitutional limitations and stringent institutional practices. A budget-driven deferral of pension contributions weakened the pension system's funded position during the Great Recession, but actuarially determined pension contributions have since been restored. Virginia's net pension liabilities remain below those of most states. [Fitch Affirms Virginia's 'AAA' IDR and GO Bond Ratings; Outlook Stable \(fitchratings.com\)](#)

⁷ See <https://www.irs.gov/pub/irs-wd/1147038.pdf>

otherwise have worked. (The federal Affordable Care Act (ACA) may impose more restrictive requirements—participating employers should consult with their human resources departments or DHRM for state employers). Retirees continue to receive their retirement benefit and do not accrue additional retirement service credit.

VRS retirees can return to a temporary, “interim” full-time employment arrangement with a VRS employer after at least one full calendar month break in service during a period when the employee would otherwise have worked and VRS approval (the federal ACA may impose more restrictive requirements—employers should consult with their human resources departments or DHRM for state employers). Such retirees continue to receive their retirement benefit and do not accrue additional retirement service credit.

VRS retirees can return to full-time employment with a VRS employer as a school security officer, critical shortage teacher, or critical shortage school bus driver after a 12 consecutive calendar- month break in service during a period when the employee would otherwise have worked. Retirees continue to receive their retirement benefit and do not accrue additional retirement service credit.

Allowing retirees to return to work may help employers ameliorate temporary workforce shortages and provide retirees with additional income. However, unless carefully tailored to balance the needs of the employers and the retirees, return-to-work provisions may not provide the value anticipated to accrue. The return to work by retirees is not likely to be a long-term solution to workforce issues if there are fewer workers^{8,9} to replace these employees when they permanently leave the workforce.

More lenient return-to-work provisions could result in detrimental changes to retirement patterns.

In addition, return-to-work provisions could result in detrimental changes to retirement patterns, incentivizing retirements earlier than plan assumptions (which are based on historical experience), and could be viewed as facilitating “double dipping” by employees (i.e., the concurrent receipt of a pension benefit and a salary both funded by public dollars), or even triple-dipping if a retiree also receives the hazardous duty supplement or cost of living adjustment, a practice generally viewed with circumspection in the media and disfavored by members of the public, such as concerned citizen

⁸ Ezrati, Milton. May 30, 2022. Roots of America’s Labor Shortage. [Forbes.com](https://www.forbes.com).

⁹ Dettmers, Sebastian. October 20, 2022. The Great People Shortage is coming- and it’s going to cause global economic chaos. [Declining World Population, Fewer Workers Will Cause Global Economic Crisis \(businessinsider.com\)](https://www.businessinsider.com)

organizations. Further, as more positions are filled by retirees, less is paid into the VRS Trust Fund in expected employer contributions calculated to fund retirement benefits if employer contributions are not required for retirees who return to work. Since the retirement plans have unfunded liabilities, this will result in future contribution rates increasing to make up for the smaller active employee payroll that is used to calculate contribution rates. In the pooled plans, this could result in employers paying higher contributions. This applies to all employers in the pool, even if they do not fill positions with retirees instead of active members. Under the current *Code of Virginia*, the required break in service, limited exemptions, and employer contributions required for retirees returning as school security officers are the only protections for the VRS Trust Fund.

The VRS website has a dedicated section under the Retirees tab entitled “Working After Retirement” that outlines the difference between covered employment (when retirement benefits stop and the retiree becomes an active member again) and non-covered employment (during which the retiree can continue to receive retirement benefits if certain conditions are met).¹⁰ Members and retirees can also review return-to-work information in VRS handbooks, newsletters, and other publications. An infographic on VRS return-to-work options is also included before the Executive Summary. However, it is important to note that, under [§ 51.1-160](#) of the *Code of Virginia*, VRS members receiving a disability retirement generally cannot return to work and continue to receive their retirement benefits. In some cases, this would also apply to Line of Duty Act benefits.

In 2022, the National Association of State Retirement Administrators (NASRA) surveyed governmental state and some larger municipal retirement plans about their post-retirement employment options — what VRS calls return to work. A summary of the results is included in the Return-to-Work Provisions in Retirement Plans from Other States section. As seen in the survey responses, a variety of post-employment retirement options exist depending on individual plan design as well as interpretation of IRS rules.

Federal Law and Internal Revenue Service Guidance

The fundamental element of any return-to-work provision is the bona fide break-in-service requirement, i.e., the amount of time a retiree must have been separated from employment before returning to a covered position. The IRS has provided limited guidance regarding if and when a retiree may return to covered employment while still being considered retired. In November 2022, VRS’ outside benefits counsel reiterated that the IRS has not specifically defined what constitutes a bona fide break in service. Instead, the IRS utilizes a facts and circumstances test to determine if there is a bona fide break in service. As such, state return-to-work laws and plan policies typically are designed to adhere to the IRS bona fide break-in-service requirement, which serves both to protect the retirement plan from violating IRC rules related to prearrangement and from unexpected and detrimental changes in retirement patterns and to prevent double dipping.

According to an Internal Revenue Service Private Letter Ruling, a 12-month break in service after retiring might be a sufficient “bona fide break in service.”

¹⁰ <https://www.varetire.org/retirees/working-after-retirement/index.asp>.

The IRS has not established a definite break-in-service period before a retiree can return to full-time work with a covered employer. However, IRS guidance under IRC § 410, as cited in PLR 201147038, suggests that a one-year period without performing service might be considered sufficient to establish the requisite break in service to constitute a separation from employment prior to a retiree returning to work full-time for a covered employer.¹¹ IRS regulations, 26 CFR § 1.409A-1,¹² cited in the PLR, state that an employee separates from service if the employee dies, retires, or otherwise terminates employment.¹³ Outside benefits counsel has confirmed that IRS guidance allows specifically for a bona fide break in service, provided there is no prearrangement for re-employment, and that the IRS makes the determination of whether there is a break in service using a facts and circumstances test.

Additionally, the IRS indicated in Information Letter (INFO) 2000-0245 that, for purposes of retirement, an employee who moves from full-time to part-time service with the same employer has not experienced a complete severance of service and may not be eligible for a distribution from their retirement account.¹⁴ According to INFO 2000-0245, employees must completely leave employment, may not have a prearrangement to return to service, and potentially may not have any intent to return to work after retirement. INFO 2000-0245 also reiterates that there is no specific definition of “separation of service” other than as defined by case law.

The federal Affordable Care Act has implications for employees or retirees returning full-time to the same employer they left. The requirements of the ACA may be more restrictive than VRS' requirements for retirees. Employers should consult with their human resource departments or DHRM for state employers.

In addition to guidance related to retirement, the Affordable Care Act requires, generally, a 13-week (approximately three-month) or 26-week (approximately six-month) break in service, depending on the position, that must be adhered to avoid a potential ACA tax penalty when an employer rehires a former employee. This federal law applies to all employers rehiring a former employee, regardless of whether the employee retired or separated from service without retiring. It is important to note that, while all agencies of the Commonwealth are treated as one employer for VRS benefit purposes, the ACA rules apply only when a person is returning to the same agency from which they retired or separated. The Department of Human Resource Management has provided guidance to state employers related to

¹¹ VRS was not the requester of PLR 201147038. A ruling in a PLR is specific to the requester, and the specific request that generated the PLR is somewhat complicated and did not directly address the question of whether and how soon after retirement a retiree may return to work, but a PLR can be considered general guidance for any other situation.

¹² See <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/section-1.409A-1>

¹³ There are exceptions for employees on military or sick leave or who have taken a bona fide leave of absence of six months or less. 26 CFR § 1.409A-1. In the case of a bona fide leave of absence that exceeds six months, the employee is considered separated from service on the first date immediately after the six-month period. *Id.*

¹⁴ INFO 2000-0245 is specific to 401(k) accounts, but the guidance can be extrapolated to governmental plan defined benefit accounts. See <https://www.irs.gov/pub/irs-wd/00-0245.pdf>

the ACA break in service.¹⁵ Other VRS participating employers must rely upon their own benefits counsel for ACA guidance. Further, the ACA states that employees working 30 hours or more are considered full-time, while VRS allows up to 80% of the hours for a full-time position, typically 32 hours, to be considered part-time. The coordination of this federal law with VRS and IRS retirement requirements may contribute to employers' difficulty in discerning what post-retirement employment options are available for retirees. As VRS does not administer plans under ACA, VRS cannot opine on how ACA requirements may relate to VRS' post-retirement employment policies. VRS participating employers are strongly encouraged to consult their human resource departments or DHRM in the case of state agencies for further information.

Virginia Law and Policy

In keeping with the available IRS guidance, the *Code of Virginia* § 51.1-155(B)(3) and (4) use a 12-month break in service during a time when the retiree would otherwise have worked when looking at statutory exceptions for retirees wishing to return to work full-time in a VRS-covered position.

In 2001 when the critical shortage teacher program was enacted, VRS and JLARC actuaries, as well as the VRS Board of Trustees and JLARC, agreed that 12 months was an acceptable break in service in order to protect the VRS Trust Fund and VRS' status as a qualified governmental plan, while supporting employers' need to fill positions. At the time, VRS' funded status was 107 percent. Protecting VRS' status as a qualified plan, including favorable tax status for all plan participants and tax treatment for investment earnings, is critical.

The break in service for retirees wishing to return to work part-time with a VRS-participating employer is substantially less than that which is used for full-time return to work. Retirees are required by VRS policy to have a break in service of one full calendar month during a time when the retiree would otherwise have worked.¹⁶ As required by the IRS, neither the full-time nor part-time return-to-work option allows for the post-retirement work with a VRS employer to be prearranged prior to retirement. That means there can be no express or tacit understanding between a retiree and the retiree's former employer that there will be a position waiting for the retiree after the bona fide break-in-service period has elapsed.

Actuarial and Plan Impacts of Return to Work

Gabriel, Roeder, Smith & Company (GRS), VRS' plan actuary, commended Virginia's current return-to-work program as consisting of solid, well-thought-out options. GRS suggests that best

¹⁵ Department of Human Resource Management. 2016. ACA Guidance: "New" vs. "Ongoing" Employees. [aca-guidance---new-vs-ongoing-employees---re-hire-policy-change-3-31-16-final-\(1\).pdf \(virginia.gov\)](#)

¹⁶ A retiree's VRS benefits are not affected if the retiree returns to work full- or part-time in the private sector.

practices are to require a break in service of sufficient length to discourage employees from retiring simply to take advantage of the return-to-work capability (i.e., intentionally double dipping).

If current active members are the only ones who take advantage of a RTW program, there are no workforce gains.

It is difficult to create a return-to-work program that incentivizes retired members to return to work without also encouraging current active members to retire and keep working. If current active members are the only ones who take advantage of this program, the workforce gains would net zero but could potentially serve as a retention tool.

Changes to Virginia's return-to-work provisions could result in changes to retirement patterns by encouraging retirements earlier than they would have taken place absent the ability to return to work, and that could be viewed as facilitating double dipping by employees. Virginia law contains a 12 consecutive calendar month break-in service requirement before a retiree can return to full-time employment that would otherwise be reported to VRS in one of the three authorized position categories. This 12 consecutive calendar month break-in-service requirement has been in place since 2001, the year the first exemption allowing a retiree to return to full-time work was enacted, and was the result of considerable analysis and review by VRS and the Joint Legislative Audit and Review Commission (JLARC).¹⁷ At the time that this exemption was enacted, VRS' funded status was 107 percent. This break-in-service requirement is intended to satisfy IRS guidance, to protect the VRS plan qualification under the IRC, and to minimize the incentive for employees to retire earlier than they otherwise would. Failure to meet the IRS' 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.

If active employees decide to retire earlier than VRS expects in order to receive a retirement benefit and then return to work full-time in order to also receive a paycheck, this removes active members from the pool of contributions being paid into VRS. Over the long-term, employer contribution rates will rise to account for fewer active employees and to cover the additional costs of paying retirement benefits to retirees beginning earlier and for a longer period of time. If payments begin earlier than expected, VRS has less time to earn the required investment income needed to pay benefits. Requiring employer contributions for retirees who return to work full-time would help mitigate the potential negative impacts on the plan and continue the scheduled payoff of legacy unfunded liabilities.

¹⁷ The 2001 JLARC memo and resolution regarding a 12-month break in service is included as Appendix A.

When an employee retires earlier than assumed, it adds costs to the plan since retirement benefits may be paid for a longer period than anticipated when contribution rates were set. Further, the plan has less time to generate the investment earnings needed to fund benefits. Historically, approximately two-thirds of benefits are funded by investment income, so this is an important element to consider.

Retirees returning to work full-time under existing exemptions in the *Code of Virginia* do not accrue additional retirement benefits. Further, return to work is considered an exception only for these limited circumstances since it can potentially negatively impact VRS retirement plans due to the following implications:

- Can incentivize members to retire earlier than originally expected. Since members would be able to receive a retirement benefit, including annual cost of living adjustments and potentially a hazardous duty supplement, and continue to receive compensation for working in a full-time VRS position, provisions allowing such return to work could change retirement patterns by creating an incentive for members to retire earlier than they otherwise would have and then return to full-time employment and receive compensation in addition to the retirement benefit. Due to the high cost of pre-Medicare health insurance, many people work until at least age 65 so they can receive employer subsidized active employee healthcare before becoming Medicare eligible. If employees are able to start their retirement benefit before age 65 and stay on their active healthcare plan, this may increase pre-65 retirements particularly for members who are eligible for unreduced retirement at earlier ages.

To illustrate, if members retire earlier than anticipated, the plan pays benefits earlier than expected and for a longer period. In addition, the plan has less time in which to earn investment income on member and employer contributions, which is necessary to fund benefits.

- Can impact allocation of cost-sharing if replacing current covered positions with retirees. Employers filling positions with retirees could impact cost-sharing allocations if the payroll of these members is exempt from inclusion in valuation pay. Cost-sharing plans are those where multiple employers pay the same contribution rate, and include teachers, the state employees' plan, SPORS, VaLORS, and JRS.

As an example, payroll of an agency that hires retirees will be smaller than anticipated if these positions that were formerly filled by active employees will now be filled by retirees, for whom no employer contributions are being made. Requiring employer contributions for these retirees can help mitigate the potential negative impacts, and is considered by actuaries to be an important technique and best practice to deploy in order to protect plans.

Requiring employer contributions for retirees returning to work while continuing to receive a retirement benefit can help mitigate potential negative impacts to the plan, and is considered by actuaries to be an important technique and best practice to deploy in order to protect plans.

The implications of incentivized early retirement would impact individual political subdivision plans and VRS plans, and the amount of the impact would vary based on utilization of the provision

within each of the plans. The additional costs of earlier than expected retirements would be borne by the local employers of the retiring members through additional pension and health insurance credit payments paid over longer periods of time, or in the case of a member in VRS, SPORS or VaLORS, the cost would be shared by the pool of employers in those plans. There may also be impacts to other post-employment benefit plans, including the health insurance credit and the group life insurance plan.

Hazardous Duty Supplement

Another consideration is that the *Code of Virginia* allows VRS members working in certain hazardous duty positions to retire earlier than most other members, at least in part due to the increased physical nature of these positions. This applies to members of the State Police Officers' Retirement System (SPORS), the Virginia Law Officers' Retirement System (VaLORS), and certain employees of local governments whose employers have elected enhanced hazardous duty benefits. These employees may retire with an unreduced retirement benefit as early as age 60 with at least five years of service or age 50 with at least 25 years of service credit. Alternatively, they may retire with a reduced benefit as early as age 50 with at least five years of service credit. The *Code* also provides that SPORS, local hazardous duty employees and some grandfathered VaLORS members may receive a post-retirement supplement (commonly known as the "hazardous duty supplement"), currently \$14,664 annually, until they reach age 65 (for VaLORS) or Social Security normal retirement age (or SSNRA, for SPORS and local employees). The supplement is designed to help bridge the income gap between earlier retirement and age 65 or SSNRA for eligible members. Continuing to pay the supplement while a retiree is working means that the VRS Trust Fund potentially pays the supplement sooner and longer than it would otherwise.

When an active employee retires and then returns to work, a new employee is not hired. Rather, an employee is moved from the active payroll to the retirement payroll and then returned to the same position they held previously with an employee salary, thereby creating upward pressure on contribution rates to address the lack of payroll growth. While this may potentially be a tool to address immediate workforce retention, it does not necessarily address workforce pipeline issues.

Effect of Changes to Retirement Patterns

Furthermore, earlier than anticipated retirements require payment of retirement benefits for a longer period than was assumed when contribution rates were set, and over time will lead to higher contribution rates. Higher contribution rates will directly impact state and local budgets. In addition to impacts to VRS, changes in retirement patterns could potentially impact the Commonwealth's bond ratings if the changes result in a lower funded status for the plans.

As fiscal impacts, plan designs and return-to-work provisions vary from state to state, making direct comparisons between Virginia's return-to-work provisions and return-to-work provisions in other plans is challenging.

Current Virginia Return-to-Work Options

Since retirement is understood as leaving the workforce, in general, a retiree who returns to VRS-covered (typically full-time) employment must “unretire” and become an active member again, ending the retirement benefit in accordance with [§ 51.1-155\(B\)\(1\)](#) of the *Code of Virginia*.¹⁸ Retirees who unretire, stop receiving a retirement benefit, and return to active VRS-covered employment accrue additional service and compensation.

When a retiree who “unretires” (stops receiving a retirement benefit) and returns to active employment subsequently retires again, their retirement benefit is recalculated to include the additional service credit earned.

At the subsequent retirement date, the additional service and compensation are used in the calculation of the retirement benefit. When they retire a second time, these retirees must retire under the same options that they chose initially.¹⁹ When retiring a second time, retirees will not retain any COLAs they accrued during their first retirement period but, effective the July 1 after they have been retired again for one full calendar year, will be eligible for COLAs on the recalculated retirement benefit.

Table 1 sets out the number of retirees who unretired and stopped receiving their retirement benefit to return to full-time covered employment from July 1, 2007, the earliest VRS had this data available, through October 1, 2022.

¹⁸ The Commonwealth of Virginia, including all state agencies and public colleges and universities, is considered one employer. Public school divisions and political subdivisions are each considered separate employers.

¹⁹ No member can simultaneously be a member in more than one system under Title 51.1, in accordance with [§ 51.1-125](#) (B) of the *Code of Virginia*. Therefore, a retiree cannot receive more than one retirement benefit. Likewise, the *Code* does not permit any retiree to receive simultaneous or stacked benefits from multiple systems covered by Title 51.1 and a retiree is not allowed to “begin over” with a new benefit while receiving a retirement benefit. If the retiree returns to a covered position, as explained above, and there is not an applicable exemption, the retiree will be returned to active employment and the additional benefits will be added to their existing record.

Table 1. Retirees Who Unretired

Fiscal Year	Number of unique retirees who initiated a return to active employment during this fiscal year*	Total number of unique active VRS members who previously retired**
2008	138	121
2009	119	200
2010	86	244
2011	94	289
2012	109	331
2013	91	340
2014	85	351
2015	74	328
2016	110	355
2017	119	369
2018	134	363
2019	141	390
2020	174	465
2021	159	483
2022	257	556
2023***	169	712

Source: VRS data

*Number of unique persons who previously retired and initially “unretired” to return to VRS-covered employment in that particular fiscal year.

**Number of unique persons who previously retired, “unretired” to return to active VRS-covered employment, and are still currently working as of the end of that fiscal year.

***Through October 21, 2022.

As demonstrated in the table, the data suggests that retirees who have returned to covered employment and stopped receiving a retirement benefit are remaining employed in those positions for several years before re-retiring. Table 1 also shows that there was a spike in the number of retirees who “unretired,” stopped receiving their benefit, and returned to active employment during fiscal year 2019 and again in fiscal year 2022. The table also shows that the accumulating total number of retirees who return to active employment has been steadily rising since 2016, or that retirees who return to active employment remain employed longer.

In addition to retirees who return to active employment and whose benefit stops, the *Code* and VRS currently allow several ways for retirees to return to work while receiving a VRS retirement benefit:

- part-time employment (up to 80% of full-time, e.g., up to 32 hours if an employee in the full-time position would be required to work 40 hours);
- employment in a temporary interim position (maximum duration of six months with a potential six-month extension); and

- full-time employment in one of the three position categories set forth in the *Code of Virginia*.²⁰

Part-time or Non-covered Employment

In general, retirees can continue to receive retirement benefits while working in a part-time position with a VRS-participating employer after a break in service of one full calendar month over a period where they would otherwise be working. These rules are generally sufficient to accommodate most post-retirement employment situations. In order for a retiree to return to work on a part-time basis:

- there can be no prearrangement related to the employment;
- the individual must have had at least one full calendar month break in service during a time he or she would normally have worked (i.e., not over the summer for a teacher); and
- the retiree cannot work more than 80% of the hours expected for a full-time employee in the same position. For example, if a full-time employee in that position works 40 hours per week, a retiree may work up to 32 hours per week at the most. (Federal requirements under ACA may be different.)

Part-time employees do not accrue retirement benefits and are not reported to VRS. Therefore, VRS does not have records available to determine how many VRS retirees are taking advantage of the ability to return to work part-time while continuing to receive a retirement benefit.²¹

Anecdotally, there are several examples of additional benefits participating employers may offer retirees to provide as an incentive to work part-time. For example, employers may offer retirees a stipend to assist with the cost of retiree health benefits. Enhanced Retirement Incentive Programs (ERIPs), where some school divisions individually provide various incentives outside of VRS to employees or retirees, are an example. Some employers may offer additional flexibility in scheduling to accommodate retirees.

VRS conducted a survey of participating employers to obtain data regarding part-time employment of VRS retirees. See Appendix B for the survey and results. Of the 726 total employers (individual state agencies, local school boards, and political subdivisions) to whom the survey was sent²², 206 unique responses were received. There were an additional seven employers that submitted multiple responses; these responses were not included in the discussion since the information could not be validated, but are included in Appendix B. Of the 206 responses, 134 indicate they have hired retirees part-time in the past five years. Additionally, of the 72 VRS-participating employers that have not hired VRS retirees part-time within the past five years, eight plan to hire VRS retirees into a part-time position within the next two years. The table below shows details on the number of VRS retirees typically employed in a year in part-time positions with the employers that responded to the survey.

²⁰ Some VRS-participating employers have inquired about return-to-work rules issued by the federal Office of Personnel Management (OPM). OPM rules are applicable only to federal retirees and are not relevant to VRS retirees considering returning to work with a VRS-covered employer, and cannot be used to circumvent provisions in the *Code of Virginia*.

²¹ Likewise, no data exists to determine how many VRS retirees begin part- or full-time work in the private sector.

²² Not including any employers who unsubscribed from VRS emails.

Table 2. Number of VRS Retirees Hired Part-time By Employers Responding to the Survey That Typically Hire Retirees Part-Time

Part-Time Employees	Responses	Percent of Employers That Typically Hire Retirees Part-Time
0	8	5.9
1-5	84	62.7
6-10	21	15.7
11-15	7	5.2
16-20	8	5.9
21-29	2	1.5
30 or more	4	3.0

Source: VRS survey of employers; employers that completed the survey and responded that they typically hire retirees part-time.

According to the survey, 126 of the 206 employers (61.2%) have hired at least one retiree in a part-time position in the past five years. Further, some employers hire retirees on a temporary basis or on a permanent basis, or hire some retirees temporarily and others permanently, as shown in Table 3 below.

Table 3. Employers Hiring VRS Retirees Part-time in Temporary or Permanent Positions

Part-time Retiree Status	Number of Employers
Temporary	52
Permanent	31
Both Temporary and Permanent	51

Source: VRS survey of employers

The results of the survey responses show that participating employers are hiring retirees to work part-time in a wide range of positions. As reported by the employers, Table 4 illustrates the types of part-time positions VRS retirees are filling.

Table 4. Part-time Positions Employers Are Filling with Retirees

Part-time Position Title	Number of Employers
Administrative	69
Substitute Teachers	35
Hazardous Duty	24
School Bus Drivers	21
School Security Officers	7
Other	71

Source: VRS survey of employers

The “Other” category includes ten employers that listed various security positions, eight employers that listed public works positions, six employers that listed tutors or instructional tutors, five employers that listed “specialties” or subject matter experts, and four employers that listed water filtration, water/wastewater operations, or water plant operator positions. Multiple additional positions were listed by three or fewer employers, and are included in Appendix B with the survey results.

Interim Employment

In some limited cases, retirees can work in a full-time interim position for up to six months without interruption in retirement benefits. These arrangements are generally for executive positions, such as county administrators, chief financial officers, and other positions that are crucial to the organization and may be difficult to fill quickly. Examples include working in a vacant position while the employer recruits for a full-time permanent employee or while the incumbent is on leave. Employers must discuss the interim appointment with VRS before hiring a retiree in the position. If a retiree returns to the employer from which they retired, they must also have a bona fide break in service. Since these positions are temporary, VRS requires a one full calendar month break in service.

Retirees who desire to return to work full-time in an interim position must obtain approval from VRS to do so. If VRS approves the interim arrangement, the retiree may work full-time in the interim position for up to six months. VRS must also approve any subsequent extension of the interim arrangement. Retirees returning to work in an interim position do not accrue retirement benefits and are not reported to VRS as an active member.

The interim employment option is not widely used by employers. Due to the impacts of COVID-19 on employment in the Commonwealth, employers requested and VRS allowed additional flexibility in the use of interim work arrangements for retirees. However, employers generally did not make use of this additional flexibility. Since 2014, VRS has approved 98 interim arrangements. This includes extensions if an employer has not hired a full-time employee for the position being filled on an interim basis. Requests may be terminated if VRS staff determine that an employer does not have a proper interim arrangement, or may be denied if employers are not meeting requirements to search for a full-time employee, or if documentation and forms are not submitted accurately or completely. Interim employment use is shown in Table 5.

Table 5: Interim Employment

Year	Number of interim employment arrangements initiated*
2014	12
2015	12
2016	11
2017	12
2018	17
2019	15
2020	3
2021	3
2022**	3

Source: VRS data

*VRS generally allows one extension of up to six months for interim arrangements, which are approved with documentation that the employer continues to actively recruit for a permanent employee. An additional extension may be requested and approved for extenuating circumstances, but is rare.

**Through October 5, 2022.

In some cases, a single retiree may have an extension of a full-time interim assignment with the same employer, work in an interim capacity with multiple employers over time, or be brought back for multiple interim assignments with the same employer.

Of the 98 total instances of full-time interim work arrangements, 37 employers had only one retiree interim work arrangement. Another 25 employers accounted for the remaining 61 retiree interim arrangements with 35 separate retirees. This indicates that employers were extending existing full-time interim arrangements or using the retiree full-time interim work arrangement more than once for the same position or for multiple positions.

Full-Time Employment Exemptions: Critical Shortage and School Security Officer Positions

In general, a retiree is not permitted to be employed full-time in a covered position and continue to receive VRS benefits. The General Assembly has established three position categories that are exempt from this general rule and an eligible retiree may return to work full-time in one of these position categories if they meet the statutory requirements. Each of the three position categories cover positions in Virginia's public schools:

- instructional or administrative employees licensed by the Board of Education in a critical shortage position,
- school bus drivers in a critical shortage position, and
- school security officers.²³

Prior to 2001, a retiree could return to work part-time in accordance with the conditions discussed above, but there was no option for a retiree to return to work full-time for a participating employer while still receiving retirement benefits. Legislation allowing a retiree to return to work full-time as an instructional or administrative employee in a public school ("critical shortage teacher") was enacted in 2001.²⁴ At that time, the funded status of the plan was more than 100 percent. Legislation allowing a retiree to return to work full-time as a critical shortage bus driver²⁵ and allowing a retired law-enforcement officer to return to work as a school security officer²⁶ was enacted in 2020.

As required by the IRS, a retiree's return to work in one of these statutory position categories cannot have been prearranged with the employer prior to retirement. Additionally, before being employed full-time in any of these statutory position categories, a retiree must have a break in service of 12 consecutive calendar months from the date of retirement during a period when the retiree would otherwise have worked. To comply with IRS guidance, this break in service includes work in any capacity, such as volunteer service, part-time work, or potentially contracting for a third-party and being assigned to the employer from which the member retired. Importantly, a retiree who takes a one full calendar month break in service and then returns to work part-time has not completed the required break in service of 12 consecutive calendar months. However, a retiree who has a break in service of 12

²³ Va. Code § 51.1-155.

²⁴ 2001 Va. Acts ch. 689, 700.

²⁵ 2020 Va. Acts ch. 379, 479.

²⁶ 2020 Va. Acts ch. 968, 969.

consecutive calendar months and returns to work part-time is not required to take an additional break in service in order to then work full-time in one of these three exempt positions.

The requirement of a break in service of 12 consecutive calendar months has been in place since the inception of the critical shortage teacher program in 2001. At the time, VRS and JLARC, in consultation with both entities' actuaries, were jointly tasked with setting the length of the break in service for the critical shortage teacher program. After considerable analysis and review, VRS recommended a 12 consecutive calendar month break in service and JLARC adopted a resolution stating that it "concur[s] in the VRS recommended minimum time of separation for a teacher to be 12 calendar months" before a retiree could be rehired into a full-time critical shortage position without loss of retirement benefits.²⁷ The General Assembly has codified the one-year bona fide break-in-service requirement in the *Code of Virginia*.²⁸ In 2020, legislation was enacted that requires VRS to monitor critical shortage use and to report on impacts to the VRS Trust Fund every four years in conjunction with the actuarial experience study required by § 51.1-124.22 of the *Code of Virginia*.²⁹

Section 51.1-155(B)(4) of the Code of Virginia requires VRS to monitor critical shortage use and to report on impacts to the VRS Trust Fund at least once every four years in conjunction with the actuarial experience study required by § 51.1-124.22 of the Code.

In addition to federal ACA requirements regarding separation of service, the federal Healthcare Enhancement for Local Public Safety Officers (HELPS) Act³⁰ also requires a separation of service in order for retired public safety officers to exclude from gross income up to \$3,000 of their retirement plan distributions used to pay for health insurance under. The separation of service required is also not defined in the U.S. Code.

Critical Shortage Teachers and School Bus Drivers

"Critical shortage" is a unique program for school divisions that allows individuals who have retired from a VRS-participating employer to return to work full-time as teachers (and other personnel licensed by the Board of Education) or bus drivers and continue to receive their retirement benefits. The General Assembly implemented the critical shortage program in 2001, amending § 51.1-155 of the *Code of Virginia*.³¹ At its inception, the critical shortage program covered teachers and other licensed school personnel and included a sunset provision, which established July 1, 2005 as the date the program would expire, absent legislative action.³² Since then, the critical shortage program has been extended

²⁷ JLARC, June 13, 2001. Philip A. Leone, JLARC Director. Memo and JLARC resolution concurring in VRS' recommended minimum time of separation for teachers of 12 calendar months. See Appendix A.

²⁸ Va. Code § 51.1-155.

²⁹ 2020 Va. Acts ch. 969.

³⁰ 26 USC § 402(l)(6)(a), specifically.

³¹ 2003 Va. Acts ch. 211.

³² 2001 Va. Acts ch. 689, 700.

multiple times and is currently set to expire on July 1, 2025.³³ School bus drivers were added to the critical shortage program in 2020.³⁴

For the 2022-2023 school year, the critical shortage teacher endorsement areas designated by VDOE include all elementary and middle school positions, as well as secondary school positions in mathematics, science, English, history, foreign language, and special education.

The creation of the critical shortage program was the first time that Virginia retirees had the option to return to work full-time with a VRS-participating employer while continuing to receive their retirement benefits. As the name suggests, the critical shortage program was designed by the General Assembly to be narrowly tailored to address the unique workforce issues being experienced by Virginia's public schools.³⁵ Thus, the critical shortage program is available to school divisions for positions that meet the statutory requirements, specifically that the teacher or bus driver position has been identified to be in a critical shortage area by the Superintendent of Public Instruction, or by the school division superintendent or local school board.³⁶ Every year, the Virginia Department of Education (VDOE) determines what positions are designated as critical shortage.³⁷ For the 2022-2023 school year, the critical shortage endorsement areas designated by VDOE include the majority of teaching positions, including all elementary and middle school positions; secondary school positions in mathematics, science, foreign language, English, history, and special education.³⁸

In addition to being hired for a critical shortage position, retirees must meet the other statutory requirements to be eligible to participate in the program and continue to receive their retirement benefits. Under § 51.1-155(B)(3) of the *Code of Virginia*, a critical shortage teacher or bus driver (i) must have been retired for at least 12 consecutive calendar months preceding employment in the critical shortage position and (ii) cannot have retired under an early retirement incentive program. In addition,

³³ The program's sunset date was extended to July 1, 2010, in 2005 (2005 Va. Acts ch. 609); to July 1, 2015, in 2009 (2009 Va. Acts ch. 590); to July 1, 2020, in 2015 (2015 Va. Acts ch. 326); and to July 1, 2025, in 2019 (2019 Va. Acts ch. 765).

³⁴ 2020 Va. Acts ch. 379, 479.

³⁵ The Virginia Constitution requires that the General Assembly "provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained." Va. Const. art. VIII, § 1.

³⁶ Va. Code § 51.1-155(B)(3)(c). The authority to designate a critical shortage area is set forth in Va. Code § 22.1-23(4) (Superintendent of Public Instruction), Va. Code § 22.1-70.3 (school division superintendent), and Va. Code § 22.1-79(9) (local school board). These provisions allow considerable flexibility in designating critical shortage positions.

³⁷ Virginia Department of Education, June 15, 2022. Written Update on the Commonwealth of Virginia's Critical Shortage Teaching Endorsement Areas for 2022-2023 School Year.

<https://doe.virginia.gov/boe/meetings/2022/06-jun/item-s.pdf>

³⁸ *Id.* In priority order, the critical shortage teaching endorsement areas designated by VDOE for the 2022-2023 school year are (i) elementary education preK-6, (ii) special education, (iii) middle education grades 6-8, (iv) career and technical education, (v) mathematics grades 6-12 (including algebra 1), (vi) science (secondary), (vii) foreign language preK-12, (viii) English (secondary), (ix) history and social science (secondary), and (x) health and physical education.

§ 51.1-155(B)(3) provides that the service performed and compensation received by a retiree employed in a critical shortage position will not increase, decrease, or affect in any way the retiree’s retirement benefits. In other words, retirees returning to work in a critical shortage position do not accrue retirement benefits and are not reported to VRS as active members.

Table 6 shows the number of retirees who were reported to VRS as being employed as a teacher licensed by the Virginia Board of Education in a critical shortage position under § 51.1-155(B)(3) beginning July 1, 2008, the earliest VRS had this data available, and October 5, 2022.

Table 6. Retirees Employed as Critical Shortage Teachers³⁹

School Year	Number of retirees filling critical shortage teacher positions	Total teachers & administrators needed*	Total vacancies**
2008-2009	74		
2009-2010	53		
2010-2011	44		
2011-2012	44		
2012-2013	41		
2013-2014	38		
2014-2015	20		
2015-2016	17		
2016-2017	39	96,130	5,699
2017-2018	58	96,034	6,392
2018-2019	64	98,462	7,613
2019-2020	82	99,898	1,695
2020-2021	53	100,522	1,708
2021-2022	72	100,967	1,892
2022-2023**	18	101,924	2,006

Source: VRS data on retirees and VDOE data on teacher and administrator vacancies (may include additional positions not eligible for critical shortage RTW)

*VDOE data not available for 2008-2016

**VRS data available through October 5, 2022.

As shown in Table 6, the number of retirees filling critical shortage teacher positions does not appear to follow any particular pattern. Table 7 describes the number of retirees who were employed as a school bus driver in a critical shortage position under § 51.1-155(B)(3) beginning July 1, 2020, when the statute authorizing this exemption became effective.

³⁹ For a time, the critical shortage teacher program included speech-language pathologists. A subsequent statutory change to Va. Code § 54.1-2603 removed the requirement for speech-language pathologists to be licensed by VDOE, thus making the position ineligible for the critical shortage program. Very few retirees were employed as a speech-language pathologist under the critical shortage program, with the highest being four in one school year

Table 7. Retirees Employed as Critical Shortage School Bus Drivers⁴⁰

School Year	Number of retirees filling critical shortage bus driver positions	Total bus drivers needed	Total vacancies
2020-2021	20	2,440	281
2021-2022	20	1,847	467
2022-2023*	24	2,761	596

Source: VRS data on retirees and VDOE data on bus driver vacancies

*Through November 15, 2022.

VDOE collects data on the number of teaching positions that are vacant and the number of teaching positions considered to be in a critical shortage area. Based on the VDOE Staffing and Vacancy Report for the 2021-2022 school year, not including adult education, there were 91,522 teaching positions, with 2,581 total positions (2.8%) vacant.

On September 1, 2022, the Governor of Virginia issued Executive Directive Number Three (ED3)⁴¹, directing the Superintendent of Public Instruction to coordinate with VRS to ensure that all vacant K-12 teaching positions would be classified as critical shortage positions.⁴² Classifying all vacant teaching positions as critical shortage going forward would allow retired teachers to fill any so-classified vacant position following a 12-month break in service. Data is not yet available on the number of positions that may be classified as critical shortage teaching positions under ED3 or the impact an increase in critical shortage positions may have on filling the positions and on retirement patterns. As noted previously, the majority of teaching positions, including all elementary and middle school positions; secondary school positions in mathematics, science, foreign language, English, history, and special education, are already designated as critical shortage. In addition, school divisions can designate additional positions as set forth in the *Code*, if, as an example, they do not receive applications for an advertised position. As the current designations are fairly comprehensive, the expansion under ED3 will likely only apply to a limited number of additional positions.

School Security Officers

In 2020, the General Assembly enacted § 51.1-155(B)(4) of the *Code of Virginia*, which permitted retired law-enforcement officers to return to work full-time as school security officers (SSO) while still receiving their retirement benefits. Although there is no requirement for any critical shortage designation before a retired law-enforcement officer may be employed as a school security officer, the critical shortage program and the employment of school security officers have many of the same features. Like the critical shortage program, under § 51.1-155(B)(4) of the *Code of Virginia*, a retired law-enforcement officer (i) must have been retired for at least 12 consecutive calendar months preceding employment as a school security officer and (ii) cannot have retired under an early retirement incentive program. Similarly, § 51.1-155(B)(4) provides that the service performed and compensation received by a retiree employed as an SSO will not increase, decrease, or affect in any way the retiree's retirement

⁴⁰ VRS data does not include specific job titles to be able to determine how many retirees were formerly school bus drivers returning to the same position.

⁴¹ [Microsoft Word - ED 3 - Addressing Teacher Shortages in Virginia Schools.docx](#)

⁴² VRS administers the critical shortage program based on the designations made by the Superintendent of Public Instruction. The authority to make determinations on what positions qualify as critical shortage rests with the Superintendent, local superintendents, and local school boards, not VRS.

benefits, including the cash match under Chapter 6.1 of Title 51.1. In other words, retirees returning to work in an SSO position do not accrue retirement benefits and are not reported to VRS as active members.

Actuaries encourage the practice of requiring employer contributions when retirees return to work in order to minimize the impact of changing retirement patterns on pension trust funds.

There is one primary difference, however, between the critical shortage program and the employment of retired law-enforcement officers as school security officers. The employer of a retired law-enforcement officer in a SSO position is required to include the officer’s compensation in the employer’s membership payroll subject to the requisite employer contributions to VRS.⁴³ Receiving employer contributions for these SSOs serves to help mitigate the impact on the VRS Trust Fund of having a retiree rather than an active member in the position. Actuaries encourage the practice of providing employer contributions for retirees who return to work in order to minimize the impact of changing retirement patterns on pension trust funds. Additionally, retirees returning to work full-time as school security officers not only do not receive any increased benefit to the pension they are receiving, but are also not eligible for additional benefits under Chapter 6.1 of Title 51.1 (the Cash Match Plan).⁴⁴

Table 8 shows the number of retired law-enforcement officers who were employed full-time as a school security officer under § 51.1-155(B)(4) beginning July 1, 2020, when the statute authorizing the exemption became effective.

Table 8. Retirees Employed as Full-Time School Security Officers⁴⁵

Year	Number of retirees filling school security officer positions
2020-2021	10
2021-2022	14
2022-2023*	19

Source: VRS data

*Through November 15, 2022.

Return-To-Work Provisions in Retirement Plans of Other States

Post-retirement employment options can vary substantially from plan to plan. In part, this is a result of differing plan designs and interpretations of the IRS rules and other guidance. Each plan’s design and return-to-work requirements will impact the plan’s funded status, in conjunction with other factors such as discount rate and contribution rates. In 2018, the National Association of State

⁴³ Va. Code § 51.1-155(B)(4).

⁴⁴ [§ 51.1-155](#)(B)(4) of the *Code of Virginia*.

⁴⁵ The COVID-19 pandemic, which began in the spring of 2020, led to a significant number of school divisions moving to virtual schooling in the 2020-2021 and fall of the 2021-2022 school years, thereby reducing the number of school buildings utilizing school security officers.

Retirement Administrators (NASRA) and the Center for State and Local Government Excellence (SLGE) published *Balancing Objectives in Public Employee Post-Retirement Employment Policies: Reassessing Barriers to Continued Work*, a report on post-retirement employment policies—return-to-work policies—for public retirement systems across the United States. The underlying data was updated in 2022,⁴⁶ and discussion of the current data is included below. The data reveals several common features of return-to-work provisions in other states, including the duration of the break-in-service requirement, setting caps on hours, duration, or earnings from post-retirement employment, limiting post-retirement full-time employment to specific hard to fill positions like education or law enforcement, and requiring employers to pay contributions into the plan for retirees who have returned to work. Highlighted are also several plans that have made recent changes. Notably, more than one plan is narrowing its previous return-to-work rules and increasing its break-in-service requirement.

There were 85 plans from all 50 states, the District of Columbia, and Puerto Rico that responded to NASRA’s 2022 request for data. Of those, two do not allow post-retirement employment within the same retirement system at all. The others allow return to work within the same retirement system in some manner and under a variety of structures. Generally, plans allow retirees to return to work part-time or on a temporary basis, similar to VRS’ part-time or interim scenarios. Table 9 describes how many plans, including the Office of Personnel Management (OPM) return-to-work guidance for federal retirees, allow full-time post-retirement employment versus part-time or temporary post-retirement employment.

Table 9. Plans That Allow Full-time or Part-time Return To Work

Full-Time/Part-Time Return to Work	# of plans
No RTW while receiving benefits	2
RTW permitted with a public employer in same state but not permitted in same system	3
FT RTW allowed	13
FT RTW allowed as exception/critical shortage only (including VRS)	8
FT RTW allowed with earnings restriction or earnings/benefit reduction	19
FT RTW with exceptions and earnings limits	3
PT RTW allowed (including VRS)	25
PT RTW allowed with earnings restrictions	11
PT RTW allowed as exception/critical shortage only	2
PT RTW allowed as exception/critical shortage only with earnings restrictions	1
Temporary RTW allowed, may be other requirements (including VRS)	10
Temporary RTW allowed with earnings restrictions	6
Temporary RTW allowed as exception/critical shortage only with earnings restrictions	3

Source: June 2022 NASRA data and OPM.gov

⁴⁶ See <https://www.nasra.org/returntowork>

Some retirement plans allow return to work only if regular or modified employer contributions are paid (shown in Table 12).

Some plans make different allowances for part-time or full-time return to work depending on a number of factors such as type of position, earnings limitations, length of break in service, or age at retirement. Therefore, the entries in the chart do not represent unique respondents and as a result there are more entries in the chart than the number of plans that were reviewed.

Of the plans reviewed that allow retirees to return to work full-time, all generally require some form of a break in service or apply another form of restriction or limitation. When other state plans allow for full-time return to work, it is typically limited to critical shortage positions such as teachers, school bus drivers, and certain public safety positions.⁴⁷

Some plans also require a break in service between the date of retirement and when a retiree may consider returning to work for an employer that participates in the plan. The breaks in service generally range from one month to one year, with plans typically requiring longer breaks in service for full-time employment than they require for a return to part-time employment. A few plans, such as the Arizona State Retirement System, allow only retirees who have reached normal retirement age to work full-time while receiving a retirement benefit, but only if they also meet break-in-service requirements or a limit on the maximum number of hours worked during the year.

Several plans do not allow for post-retirement full-time employment, but only allow post-retirement employment in temporary, on-call, project, or independent contractor roles. Of the plans that allow limited return to work in this fashion, many have additional restrictions such as an earnings limit (for example, Alabama, Delaware, California State Teachers' Retirement System (CalSTRS), Connecticut Teachers' Retirement Board, and others) or a limit on the length of time a retiree may work overall. Alaska limits retirees to two years of temporary, on-call, project, or independent contractor service while others allow a retiree to work up to three months within each fiscal year plus an earnings limitation (for example, Georgia Teachers Retirement System), limit the number of hours per week (for example, Delaware), or limit the number of days per year (for example, Colorado Public Employees' Retirement Association; Connecticut State Employees' Retirement System) that a retiree may work.

Table 10 summarizes the plans that limit the number of hours a retiree may work when returning to work after retirement, the duration of post-retirement employment, the earnings allowed during post-retirement employment, or some combination of these limits.

⁴⁷ California State Teachers' Retirement System, Colorado Public Employees' Retirement Association, Maryland State Retirement and Pension System, and Nevada Public Employees Retirement System, among others. See 2022 NASRA data at <https://www.nasra.org/returntowork>.

Table 10. Limits on Hours Worked, Duration of Employment, or Earnings

Plan RTW Provision Limits	No. of plans	
Number of hours per year	23	including VRS (80% of hours for an equivalent FT position)
Number of hours for exceptions	2	
Duration	7	including VRS (6 months BIS for interim arrangements)
Earnings per year	21	
Hours and earnings	11	
Hours, earnings, and duration	1	
Hours and duration	2	
Earnings and duration	5	

Source: June 2022 NASRA data and OPM.gov

In addition to limiting the number of hours worked or duration of employment after retirement, almost every plan requires a break in service between the date of retirement and when a retiree may consider returning to work for an employer that participates in the plan. Most plans specify the length of the break in service required, frequently depending on whether the retiree wishes to return to work part-time or full-time. Plans may also require a range of break-in-service periods with exceptions or differences related to whether the employer is rehiring the retiree, the retiree’s age or age and service, whether a position is a critical shortage or hard to fill position, and whether a position is elected or non-elected. The breaks in service generally range from one month to one year, with full-time work typically requiring longer breaks in service. For some plans, the limits described in Table 10, above, are less restrictive if the retiree has a longer break in service (such as the Utah Retirement System and the Teachers’ Retirement System of Texas).

Retired federal employees are allowed to return to work full-time for a federal employer, but their salary is decreased by an offset based on their pension. Generally, federal retirees do not receive both a pension and a full-time salary without an offset.

Although not included in the NASRA survey, OPM rules governing retired federal civilian employees generally require that, if a retiree is receiving a regular retirement benefit and returns to work, the retiree’s salary will be reduced. OPM requires that retirees have a break in service of at least four calendar days. Further, in certain circumstances, such as if an individual is receiving a disability retirement benefit, the retirement benefit, retiree health benefits, and retiree life insurance ends.⁴⁸ There are limited exceptions for dual compensation waivers in instances like critical shortage.⁴⁹

Plans reporting data to NASRA have independently determined the break in service appropriate for their plan. Keep in mind though, that plans may deploy additional constraints beyond the break in service, such as earnings or hour limitations. The length of the break in service alone does not provide a

⁴⁸ [What happens to my retirement benefit if I go back to work for the government? | OPM.gov](#)

⁴⁹ [Dual Compensation Waivers \(opm.gov\)](#)

complete picture. Many plans include certain limitations or other requirements in addition to the break in service. Table 11 below displays the wide range of breaks in service utilized by other plans for full-time or part-time return to work. Note that the chart does not generally indicate whether additional specific requirements or limitations apply to certain break-in-service lengths.

Table 11. Break-in-Service Requirements

Break in Service	# of plans
None	1
None, only for specific exceptions (i.e., certain positions, age)	10
Required, not specified	4
Follow IRS rules/regulations, not specified	3
1 day (under specific conditions, i.e., age limits, offsets or certain positions)	5
4 or more calendar days (federal civilian retirees)*	1
1 pay period	1
28 days from date of retirement	1
During month of retirement	1
30 days/1 month (including VRS for part-time RTW)	27*
45 days/1.5 months	2
60 days/2 months	13
75 days/2.5 months	1
90 days/3 months	10
120 days/4 months	2
150 days/5 months	1
180 days/6 months	9
270 days/9 months	1
365 days/1 year (including VRS for full-time RTW exceptions)	16
365 days/1 year notice of intent to enter RTW agreement	1
2 years	1
5 years	1
5 years (certain circumstances)	1

*Of these 27 plans, 10 plans (VRS & 9 others) require 30 day break in service (BIS) for part-time (PT) RTW only or do not allow full-time (FT) RTW at all.

(continued on next page)

Age-Dependent Break in Service	# of plans
None	1
60 days/2 months if \geqage 62 ; 180 days/6 months if <age 62	2
60 days/2 months if normal retirement age (NRA); otherwise 180 days/6 months unless meet exceptions	1
60 days/2 months, unless retired at age 62 or older or at the maximum benefit amount (80% of allowable avg salary)	1
180 days/6 months if <age 65 at time of retirement	1
180 days/6 months if <age 65 and have < 38 years of service; 30 days/1 month if <age 65 and > 38 years of service; none if older than 65	1
180 days/6 months if retired before NRA or age 62	1

Source: June 2022 NASRA data

*OPM guidelines require a separation from service of four or more calendar days, and require that the days of separation be subtracted from the employee's total creditable service. See [Chapter 35 - Glossary of Terms Used in Processing Personnel Actions \(opm.gov\)](#)

Some plans provide for a different break-in-service requirement depending on the age of the retiree at retirement, the number of years the retiree worked prior to retirement, or the position to which the retiree returns. In addition, while plans may use longer or shorter breaks in service, they may have additional provisions that require offsets for salary earned or earnings limitations, caps for number of hours worked, additional contributions, or age restrictions that accompany them, or conditions related to access to health care for retirees returning to work. According to the NASRA data, in Florida for example, retirees cannot return to work during the first six months following retirement and during months seven through twelve may not receive both a salary and a retirement benefit. Many plans have multiple requirements that must be met.

Comparatively, VRS' policy requiring retirees to have a break in service of at least one full calendar month prior to returning to work with a VRS-participating employer on a part-time basis is similar to statutory and agency policies of many retirement systems, as shown in Table 10 above. Virginia's statutory exceptions allowing certain retirees to return to work after retirement full-time in specific limited positions is also comparable to similar statutory and policy provisions of 16 other retirement systems, as shown in the Table 11.

See Table 12 for a broader picture of plans that require employer contributions or both employer and employee contributions.

Table 12. Contributions Required for Retirees Returning to Work

Contributions Required for Retirees Returning to Work	Number
Requires contributions of some type	47
Requires contributions but unclear on type	4
Regular or modified employer contributions	19
Regular or modified employer contributions & additional benefit (reimbursement of health insurance premiums, etc.)	2
Employee contributions only	1
Both employer and employee contributions or equivalent surcharge	19
Other surcharge	2
Does not require any contributions	36

Source: June 2022 NASRA data

As described in more detail in the NASRA survey responses, one of the plans in Table 12 requires full employer contributions on the first \$25,000 of earnings and 30% on earnings over \$25,000, but no contributions for non-covered positions expected to work less than 1,000 hours. Another plan requires employer contributions, and the employer reimburses the plan for retiree health insurance premiums paid by the plan. Similarly, another plan requires employers to pay 100% of the contribution rate attributable to the unfunded actuarial accrued liability for retiree health care and the unfunded actuarial accrued liability for pension for reemployed retirees. Where both employer and employee contributions are required, some plans require the employer to pay both contributions whereas others require the retiree returning to work to pay the employee contribution. One plan allows the employer and employee to mutually agree which of them will pay the employee contribution. According to the NASRA data, Puerto Rico is the only plan that requires that all employees pay individual employee contributions but does not require employer contributions.

According to data provided by NASRA, plans rarely allow an additional retirement benefit for time a retiree works while receiving a retirement benefit, since return to work generally is considered an exception to the rule of stopping work entirely. One exception is in Colorado Public Employees' Retirement Association, where retired judges may perform temporary judicial duties in certain circumstances and receive a limited benefit increase. Other exceptions are Iowa Public Employees Retirement System and Kentucky Teachers Retirement System, which allow limited second retirement benefits. Two plans allow retirees returning to work to contribute to defined contribution (DC) plans.⁵⁰

Recent Updates in Other States

Tennessee recently made several changes related to return-to-work exceptions for specific positions, similar to Virginia's school security officer and critical shortage teacher and school bus driver exceptions. In 2021, the Tennessee legislature created a RTW program that allows retired law enforcement officers to continue to receive a retirement benefit and return to work after at least a nine-month break in service (increased from 60 days), with certain training and notification requirements, compensation limitations of 85% of compensation paid to an active law enforcement officer with similar

⁵⁰ Certain Michigan Office of Retirement Services retirees and retirees of the Municipal Employees' Retirement System of Michigan who are DC plan participants. See NASRA data at <https://www.nasra.org/returntowork>.

experience, employer contributions required, and limiting reemployment to one year with annual renewals possible. In 2022, Tennessee created a similar program for emergency medical services personnel, teachers, and bus drivers. The retiree must be retired for at least 60 days, possess current applicable licenses, retirement benefit reduction to 70% of what would otherwise be payable, employer contributions required, and reemployment duration is limited to one year with annual renewals possible.

In 2021, the Texas Municipal Retirement System reduced the required break in service from eight years to one year.

In 2022, New Mexico removed salary and work hour limits from their return-to-work rules. Retirees still must have a 90-day break in service and receive approval from the New Mexico Educational Retirement Board prior to returning to work. Retirees may return to work for up to three years while receiving a retirement benefit.

The Washington State legislature approved changes in 2022 that permit retirees from three Washington plans to return to work in certain school district positions for up to 1,040 hours per year while continuing to receive retirement benefits. The provision expires July 1, 2025. VRS' existing part-time RTW provisions allow for greater flexibility with 80 percent of a full-time schedule permitted.

The Michigan legislature approved a change, effective July 2022, lengthening the break-in-service requirement for public school teachers from one month to nine months.

Return-To-Work Modifications

It is important to recognize that VRS post-retirement employment provisions have been considered the best approach to maintain the plan's qualified status and not harm the funded status of the VRS Trust Fund, while at the same time providing employers the ability to hire retirees and ensure future benefits for current and future retirees. The current provisions mitigate risk to the plan and avoid potential non-conformance with IRS guidance regarding the bona fide break in service that may adversely impact retirees and, by extension, members.

The current return-to-work provisions were also designed to protect:

- VRS from unfunded liabilities and from losing the benefits of being a qualified governmental plan;
- Political subdivision and Commonwealth employers from higher contribution rates; and
- The Commonwealth's superior bond ratings.

As evidenced by annual actuarial valuations (available at www.varetire.org), VRS is 83% funded as of June 30, 2022 and contribution rates have remained relatively stable.⁵¹ The VRS Trust Fund and the individual plans remain sound. However, the plans are not expected to be fully funded until

⁵¹ Receiving employer contributions on behalf of all retirees who return to work under the existing exemptions (currently, employer contributions are only required for retirees who are employed full-time as school security officers) or any expanded return-to-work options would further mitigate any potential concerns about the impact on the VRS Trust Fund.

approximately 2043. Expanding RTW provisions at any time, but especially when plans are not fully funded, generates additional risk and liabilities.

Considerations

Any return-to-work program should be structured to provide some flexibility for retirees to return to work in certain circumstances without incentivizing current active employees to simply retire earlier in order to collect both retirement benefits and an active salary. If current actives are the majority of the program participants, then employers will not net any new positions. Further, under current law, employers do not pay employer contributions on behalf of retirees working full-time in interim positions or as critical shortage teachers or school bus drivers. Therefore, employers that do not hire retirees full-time effectively subsidize the employer contribution requirements of those employers that do hire retirees if participating in a cost-sharing plan such as the Teacher plan.

Under current law, employers pay employer contributions only on behalf of retirees working full-time as SSOs.

It is also necessary to consider the underlying causes of employee availability to fill vacant positions. While VRS recognizes that there are currently a variety of options, changing post-retirement employment rules in Virginia will likely not fully resolve underlying structural workforce issues. If the General Assembly's intent is to solve for particular workforce issues, then a more targeted approach may be effective in helping to fill specified positions without broad negative implications across the retirement plans.

The options that follow are designed with risk mitigation in mind. Since, as noted previously under [§ 51.1-160](#) of the *Code of Virginia*, VRS members receiving a disability retirement generally cannot return to work and continue to receive their retirement benefits, none of the options discussed below allow VRS members retired for disability to return to work and continue to receive a disability retirement benefit. Opportunities to protect the plan and the Commonwealth include retaining a shorter, but still conservative, break in service to avoid changes to retirement patterns and requiring employer contributions for all retirees who are hired into positions that would otherwise be filled by non-retired active members.

Potential Return-to-Work Modifications

The above analysis demonstrates that there are many different approaches as well as common features shared by the return-to-work provisions in governmental retirement plans from other states. These common features form the basis for the return-to-work modification options presented below. None of the options presented are mutually exclusive, and each can be considered alone or in conjunction with other options presented.

It should be noted at the outset that, as demonstrated by the analysis of retirement plans from other states, Virginia's current return-to-work provisions are consistent with many of these other plans. It should also be noted that the analysis of other retirement plans establishes that there is no consensus

rule in these plans, i.e., there is not one set of return-to-work provisions that can be considered the norm for all retirement plans. Instead, return-to-work provisions in other states must be viewed as a function of each individual plan's design, risk tolerance, funded status, demographics, experience, and goals.

All options in this report assume that the existing sunset provision will be applied to new changes and that the quadrennial actuarial investigation requirement will remain in place. This will serve to monitor the program and help to ensure that there are opportunities to mitigate potential negative impacts to the plans.

Informed by the return-to-work provisions in retirement plans from other states, the modification options analyzed in this report are as follows:

- Recommendation: Require employer contributions for all retirees who return to full-time employment. This and all options assume that the existing sunset provision and quadrennial actuarial investigation requirement remain in place to mitigate potential negative impacts to the plans.
- Option One: Reduce the length of the existing break-in-service requirement to six months for the three existing exemptions (teacher and bus driver critical shortage, and school security officers), and require employer contributions for retirees returning to work full-time as critical shortage teachers and bus drivers (employer contributions are already required for retirees returning as school security officers).
- Option Two: Allow retirees who have attained a specific age to return to work with no break in service, consistent with IRS guidance.
 - VRS recommends the following ages:
 - General employees Plan 1 – Age 65
 - General employees Plan 2/Hybrid – Social Security Normal Retirement Age
 - Hazardous duty members - Age 60.

Under the IRC, no prearrangement is allowed for any return-to-work situation.

As the fiduciary of the plan, VRS encourages a cautious, deliberate approach to any changes in return-to-work laws in Virginia or the enactment of any of these expansion options. Expanding return-to-work rules could have a negative impact on the VRS Trust Fund. In general, VRS would recommend that the General Assembly adhere to the path it took in 2001 when enacting the critical shortage program, and the path that it continues on today and ensure that any expansion be time-delimited with a sunset of no more than five years from its effective date. A sunset provision should coincide with the existing sunset provision in § 51.1-155(B)(3) of the *Code of Virginia*. This allows VRS and the General Assembly to both evaluate the effectiveness of the changes and analyze the effects of changes on the VRS Trust Fund, the funded status of the plans, and future employer contributions. Such an evaluation would be consistent with the statutory requirement that VRS complete an actuarial investigation every four years of the experience under the return-to-work laws governing critical shortage and school

security officer positions.⁵² Table 13 summarizes the options, employees affected, and administrative, implementation, and plan impacts.

Table 13. Summary of Options and Impacts

Options	Policy Change	Additional Employees	Implementation Cost	Expected Plan Impact
Recommendation- Require employer contributions for all who RTW full-time	Protects the VRS Trust Fund	Currently only required for retirees returning as SSOs		A best practice that serves to mitigate impacts to the Trust Fund of retirees returning to work
Option One- Reduce break in service for existing full-time exemptions to six months & require ER contributions	Provides additional flexibility	Applies only to the existing full-time exemptions (teachers, bus drivers, school security officers)	\$150,000 (one-time); could increase if additional critical shortage positions are identified	Requiring employer contributions and a reasonable break in service serve to mitigate impacts to the Trust Fund of retirees returning to work and demonstrates compliance with IRC
Option Two- Allow retirees past a specific age (normal retirement age) to continue to work while receiving a retirement benefit with no break in service and require ER contributions	Provides additional flexibility	Any employee who reaches the plan Normal Retirement Age	\$620,000 (one-time); \$15,000 (ongoing)	Requiring employer contributions and age restrictions serve to mitigate impacts to the Trust Fund of retirees returning to work and demonstrates compliance with IRC

Retirees returning to work with a VRS-participating employer in any capacity while receiving a retirement benefit are not eligible for VRS death in service or disability retirement benefits since these individuals are retirees rather than active employees.

VRS also recommends that § 51.1-155 of the *Code of Virginia* be amended to clarify that retirees returning to work with a VRS-participating employer in any capacity while receiving a retirement benefit

⁵² Va. Code § 51.1-155(B). This requirement was enacted in 2020, 2020 Va. Acts ch. 968, 969, and the initial actuarial analysis will be complete in fiscal year 2025 as part of the quadrennial actuarial experience study.

are not eligible for VRS death in service or disability retirement benefits since these individuals are retirees rather than active employees. Impacts to ancillary benefits, other than pensions, such as COLA, the hazardous duty supplement, and the Health Insurance Credit, should also be considered.

While options for modifications to the current return-to-work policy are laid out below, there are additional questions that the General Assembly may wish to consider if changes are recommended:

- COLA - Current retirees receive a cost-of-living adjustment (COLA) in accordance with § 51.1-166 of the *Code of Virginia*. The COLA helps to address the impact of inflation on retirement benefits. The General Assembly may wish to consider whether members opting to return to active employment in a VRS-covered position should continue to receive COLAs while actively employed in a full-time position with a VRS employer.
- Enhanced Hazardous Duty Supplement – The enhanced hazardous duty supplement is provided to certain hazardous duty members in accordance with § 51.1-206(B), § 51.1-217(B), or § 51.1-138 (B) of the *Code of Virginia*, as discussed earlier. The supplement was created to help hazardous duty members who generally retire at an earlier age due to the physical requirements of the job. The supplement adds to their income from the date of retirement until age 65 or Social Security retirement age (depending on the plan from which they retire) in an effort to bridge their income until they become eligible for Social Security. The General Assembly may wish to consider whether the supplement in its current form is needed if hazardous duty employees return to an active full-time position with a VRS employer.
- HIC – Many VRS retirees qualify for a health insurance credit (HIC) under Title 51.1, Chapter 14 of the *Code of Virginia*, which can be used to offset the cost of healthcare premiums in retirement. If they return to active employment in a VRS-covered position and elect active employee health care, often subsidized by the employer, should they be allowed to use HIC benefits to offset the cost of active healthcare premiums? Retired public safety officers will also need to be aware that returning to work may impact their ability to take advantage of the federal election to exclude from gross income a portion of their retirement plan distributions used to pay for health insurance under § 402(l)(6)(a) U.S.C. (the HELPS Act).

Precedent exists for adjustments to benefits if still actively employed. For instance, the Social Security Administration will offset Social Security Insurance (SSI benefits) \$1 for every \$2 a recipient earns above the annual earnings limit if the person is under the full retirement age. The earnings limit was \$19,560 for 2022. In the year that the recipient reaches the full retirement age, the adjustment is \$1 reduction for each \$3 earned over the limit up to the month the recipient reaches the full retirement age. The 2022 limit on earnings for this purpose is \$51,960.

Communication with employers and time for VRS to implement system programming and other changes will be necessary.

Finally, VRS will need sufficient time to implement programming for any changes to existing VRS statutes and communicate the changes to its employers and members. The analysis below includes an estimate of the time and funding that may be necessary for implementation.

Recommendation: Require Employer Contributions, Continue to Require Sunset and Actuarial Investigation

The recommendation would require that the employer include the retiree's compensation in membership payroll subject to employer contributions. This is currently only required for retirees returning to work full-time as school security officers.⁵³ Used in conjunction with each of the options below, this recommendation also serves to help protect the VRS Trust Fund from some of the potential negative impacts of changing retirement patterns that may result from the implementation of the other options that result in VRS having less time to earn interest to fund benefits and paying benefits for a longer period of time.⁵⁴ This recommendation also presumes that the existing sunset provision and requirement for a quadrennial actuarial investigation will be retained. Employer contributions are not currently required for retirees working part-time, and would not be requested under this recommendation.

The following options presume that the recommendation will be implemented.

Option One: Reduce the Break in Service for Existing Full-Time Exemptions to Six Months and Require Employer Contributions For All

Option One would shorten the break in service for the current statutory exemptions for critical shortage and school security officer positions from 12 months to six months during a time the member would otherwise work. As discussed above and indicated in an IRS private letter ruling, a 12 month break in service could generally be considered sufficient by the IRS. There is no black letter law regarding the specific length of the required break in service. While the 12 month break in service provides greater assurance regarding sufficiency under the IRS, a 6 month break in service along with the accompanying compliance provisions could also serve to meet the IRS facts and circumstances test. However, longer breaks in service, such as the VRS required 12 month break, have commonly been regarded as more favorable as they are generally considered sufficient for demonstrating compliance with IRC and the bona fide break in service without prearrangement requirements.

Importantly, DHRM indicates that a break in service shorter than six months will have implications under the Affordable Care Act (ACA).

Like the existing statutory exceptions, Option One would require that, in addition to the recommended required employer contributions:

- there is no prearrangement for a retiree to return to work;
- the retiree has a break in service at least six consecutive calendar months preceding employment during a time the member would otherwise work;
- the retiree has not retired under an early retirement incentive program; and
- the service performed and compensation received by the retiree during employment will not increase, decrease, or affect in any way his retirement benefits, including the cash match under

⁵³ Va. Code § 51.1-155(B)(4).

⁵⁴ GRS has recommended requiring employer contributions for the current critical shortage positions and any full-time positions that are added in order to mitigate risk to VRS and the Commonwealth.

Chapter 6.1 (§ 51.1-607 et seq.), if the retiree elects to continue to receive the retirement allowance while employed.

From a plan and fund perspective, if it is necessary to provide full-time RTW exemptions for additional or even all positions with a participating employer, the same break-in-service and employer contribution requirements should be applied to any expansion. However, any expansion of the existing three critical shortage exceptions will generate additional plan impacts. A limited expansion of the eligible position categories to include hard-to-fill positions like law enforcement could also be considered. The more limited scope would likely mean less impact to the VRS Trust Fund; however, adding limited additional exceptions could create some administrative challenges for VRS, employers, and retirees as well as programming and implementation costs. While a broader application and expansion of this option could increase flexibility and standardization, it could also increase potential negative impacts to the plans.

Option Two: Retirees Past a Specific Age to Continue to Work While Receiving a Retirement Benefit With No Break in Service

Option Two would set a specific age after which a person who has retired can return to full-time employment with a participating employer while continuing to receive retirement benefits. Under this option, all retirees who reach the specified age would be able to return to work full-time with a participating employer with no break in service. Note that the elimination of the break-in-service requirement cannot be applied universally and can only be applied in circumstances when a retiree has reached a certain age.

Keeping in mind the likely potential detrimental impacts to the plans discussed in the Actuarial Analysis section, Normal Retirement Age (NRA)⁵⁵ for each plan would be the recommended threshold for most VRS members.

VRS recommends the following ages for Option Two:

- General employees Plan 1 – Age 65
- General employees Plan 2/Hybrid – Social Security Normal Retirement Age
- Hazardous duty members - Age 60.

This option may not be appropriate for JRS due to the weighted service accrual used in the plan.

In addition to the requirement that the retiree has reached the requisite age threshold, like the existing statutory exceptions, this option would require that:

- the retiree has not retired under an early retirement incentive program;
- the service performed and compensation received by the retiree during employment will not increase, decrease, or affect in any way his retirement benefits, including the cash match under chapter 6.1 (§ 51.1-607 et seq.), if the retiree elects to continue to receive the retirement allowance while employed; and

⁵⁵ The IRS has established that in-service distributions may be allowed as early as age 59 ½ without a tax penalty, or older as required by the plan.

- the employer must include the person’s compensation in membership payroll subject to employer contributions.

As noted above, a lower age for public safety employees would be applicable since these employees may retire earlier from public safety positions, as early as age 50 with 25 years of service, in recognition of the more hazardous nature of the positions.⁵⁶ Using the NRA for each plan takes this into account. The other eligibility requirements would remain the same as those above for general employees. With respect to the federal HELPS Act, VRS’ outside benefits counsel notes that in order to exclude a portion of retirement plan distributions used to pay health insurance premiums from federal gross income, federal law requires eligible public safety officers to have a break in service.

Actuarial Analysis of Potential Modifications

This analysis considers whether the recommendation and options provide adequate flexibility, continue stable contribution rates for employers, and ensure the soundness of the plan, as required by the *Code of Virginia*. The analysis below assumes that the existing sunset and actuarial investigation provisions in the *Code* will remain in place. It also assumes that employer contributions will continue to be paid for any position filled by a member who receives retirement benefits from VRS while also actively working in a full-time VRS covered position.

Cost impacts to VRS associated with return-to-work provisions are generally associated with changing the patterns of retirement. The funding policy used by VRS collects funds over a member’s working career, and in combination with investment earnings provides the revenue to pay benefits to members after they retire. The age at which a member chooses to retire is a personal decision based on many factors and therefore it is difficult to model cost impacts without any credible experience on how members may react to relaxed provisions around returning to work after retirement or retiring from active status but continuing to work for a VRS employer.

Any provision or policy that essentially incentivizes a member to retire earlier than they would otherwise will ultimately increase the cost of VRS-administered pension plans. Either shortening the period of time over which benefits are funded, or lengthening the amount of time that a member receives benefits, will increase plan liabilities. The magnitude of the increase would depend on the severity of the change and the volume of members that it impacts.

The current return-to-work policy allows retirees the ability to return to work after a one full calendar month break in service as long as they work no more than 80% of the hours of a full-time employee. As mentioned earlier in this report, VRS does not require part-time employees to be reported to VRS, therefore VRS does not have data concerning how many people are currently taking advantage of this policy. However, VRS data indicate that there is no evidence that the current policy causes changes in retirement behavior patterns since it does not incentivize retirement.

⁵⁶ The *Code of Virginia* also allows VRS members working in hazardous duty positions (members of the State Police Officers’ Retirement System (SPORS), the Virginia Law Officers’ Retirement System (VaLORS), and certain employees of local governments whose employers have elected enhanced hazardous duty benefits) to retire earlier than most other members. These employees may retire with an unreduced retirement benefit as early as age 60 with at least five years of service or age 50 with at least 25 years of service credit. Alternatively, they may retire with a reduced benefit as early as age 50 with at least five years of service credit.

Current RTW programs appear to be under-utilized. This could be due to the length of the break-in-service requirement, but there may also be a somewhat limited pool of retirees who wish to return to work on a full-time basis. Retirees may be returning to work on a part-time basis, but comprehensive data is not available.

Similarly, the critical shortage return-to-work policies that are in place also appear to have little impact on VRS costs. Currently, these programs appear to be under-utilized based on the numbers shown earlier in the report. This could be due to the break-in-service requirement, but there may also be a somewhat limited pool of retirees who wish to return to work on a full-time basis. It is important to note that the driving force behind retirement and whether a retiree would even consider returning to work vary by member. The level of their pension benefits, their individual health status, the overall state of the economy, as well as financial well-being, family, and job-related characteristics all can play a part in a decision to return to work.

Analysis of Recommendation: Require Employer Contributions, Continue to Require Sunset and Actuarial Investigation

Funding of VRS retirement programs is based on the premise that the active populations will remain relatively level over time. Allowing retirees to return to work in VRS-covered positions or allowing current actives to retire but continue working could have an impact on the covered populations depending on how many members opt for any of these proposed provisions. When the active member population shrinks, employer contribution rates (which are expressed as a percentage of payroll) will increase in order to collect the necessary amount of contribution dollars for the VRS Trust Fund. This is driven in large part by the legacy unfunded liabilities that are still being paid off over the next 20 years.

In an effort to protect the funding levels of the plans and to avoid increasing contribution rates VRS strongly recommends that as part of any potential change employers be required to make employer contributions for VRS-covered positions even if the full-time position is filled with a retiree returning to work. In addition, since VRS does not have credible experience around the potential uptake of these proposals, VRS recommends a sunset provision and the requirement of actuarial analysis to determine the experience and monitor the impacts of the proposed changes on an ongoing basis.

Analysis of Option One: Reduce the Break in Service for Existing Full-Time Exemptions to Six Months and Require Employer Contributions for All

As noted previously, there is no black letter law regarding the specific length of the required break in service. While the 12 month break in service provides greater assurance regarding sufficiency under the IRS, a 6 month break in service along with the accompanying compliance provisions could also serve to meet the IRS facts and circumstances test. However, longer breaks in service, such as the VRS required 12 month break, have commonly been regarded as more favorable as they are generally considered sufficient for demonstrating compliance with IRC and the bona fide break in service without prearrangement requirements.

Shortening the break in service for current statutory exemptions to six months would maintain compliance with the IRS break-in-service requirement. The longer break-in-service requirements provide greater assurance regarding sufficiency under the IRS and generally do not incentivize existing employees to retire in order to collect a retirement benefit while continuing to work. Requiring a break in service does not prohibit returning to work, but does help protect the plans by not incentivizing members to leave active employment earlier than would otherwise be expected. Due to the current utilization, VRS would not anticipate major changes to retirement patterns if Option One above (a six-month break in service) is incorporated in any potential change to the current policies. Employer contributions serve to further mitigate any impacts related to changes to retirement patterns.

Implementation Costs for Option One

VRS anticipates that, independent of impacts to the VRS Trust Fund, Option One, reducing the break in service to six months for only the current retiree school security officers and critical shortage teachers and bus drivers, and requiring employer contributions for critical shortage teachers and school bus drivers (in addition to the employer contributions already required for school security officers) will have limited administrative impact on VRS. Since VRS is currently implementing major programming changes for employer contribution rates, a delayed effective date of July 1, 2024, would be requested. Based on that effective date, implementation is estimated to be a one-time cost of approximately \$150,000 primarily for programming and communications efforts.

If the *Code of Virginia* allows retirees to return to work in limited additional types of positions after a six consecutive calendar month break in service and continue to receive a retirement benefit, it will have some administrative impact on VRS. Based on a delayed effective date of July 1, 2024, implementation of additional positions with a six-month break in service and required employer contributions is estimated to be a one-time cost of approximately \$480,000 for programming and significant communications efforts to educate employers about additional full-time positions allowed to be filled by retirees. VRS estimates ongoing administrative costs of approximately \$15,000 each year.

Analysis of Option Two: Retirees Past a Specific Age to Continue to Work While Receiving a Retirement Benefit With No Break in Service

Option Two would allow retirees who have reached a specific age to continue to work while receiving a retirement benefit with no break in service. Under this option, all members who reach the specified age and who are vested would be able to return to work full-time with a participating employer with no break in service. While this is offered as an option for return to work, it would be better classified as a retention policy, as it more directly targets current active members rather than retired members. Also, it is important to note that the elimination of the break in service requirement cannot be applied universally and can only be applied in circumstances when a retiree has reached a certain age.

VRS is a mature retirement system and has a fair number of active members who either are already eligible for a full unreduced retirement or currently meet the requirements for an early reduced retirement. Table 14 below shows the number of members currently eligible for retirement.

Table 14. Members Eligible for Retirement as of June 30, 2022

	Total actives	Eligible for full <i>unreduced</i> retirement	% of actives eligible for <i>unreduced</i> retirement	Eligible for reduced early retirement	Total eligible for retirement (reduced or unreduced)	% of actives eligible for retirement
<i>By Plan</i>						
JRS*	462	124	27%	136	260	56%
Local	84,762	6,974	8%	16,663	23,637	28%
Local HD	26,096	1,645	6%	2,548	4,193	16%
SPORS	1,880	293	16%	138	431	23%
State	76,367	8,126	11%	15,990	24,116	32%
Teachers	153,452	7,987	5%	29,937	37,924	25%
VaLORS	7,360	514	7%	901	1,415	19%
Total	350,379	25,663	7%	66,313	91,976	26%
<i>By Benefit Tier</i>						
Plan 1	123,915	22,563	18%	56,505	79,068	64%
Plan 2	78,729	2,001	3%	6,426	8,427	11%
Hybrid	147,735	1,099	1%	3,382	4,481	3%
Total	350,379	25,663	7%	66,313	91,976	26%

Source: VRS data

* This option may not be appropriate for JRS due to the weighted service accrual used in the plan.

Approximately 7% of the active population, or nearly 25,700 members, are already eligible for a full unreduced retirement, but continue to work. Another 66,300 members are eligible for an early reduced retirement, so as of June 30, 2022 in total approximately 26% of the active population have met eligibility to retire.

Based on the population demographics, Option Two has the greatest potential to impact retirement patterns and increase the liabilities of the retirement plans. While the IRS provides flexibility in the setting of the age for benefits to begin without a break in service, VRS along with its plan actuary would strongly caution against selecting an age that is below the current “normal retirement age” as defined in the plan. Selecting an age for Option Two that is below the normal retirement age would have a greater impact on retirement patterns, which would ultimately increase costs significantly across the pension plans.

VRS recommends the following ages for Option Two:

- General employees Plan 1 – Age 65
- General employees Plan 2/Hybrid – Social Security Normal Retirement Age
- Hazardous duty members - Age 60.

Although JRS is discussed in this section, this option may not be appropriate for the judges’ plan due to the weighted service accrual used in the plan.

Table 15 below shows the number of active members as of June 30, 2022 who would meet the eligibility for the proposed Option Two ages, which represents approximately 4% of the active population.

Table 15. Active Members Currently Eligible for Retirement Under Option Two

	Total actives	Estimated Eligible Proposed Option Two	% of actives eligible for Proposed Option Two
<i>By Plan</i>			
JRS	462	113	24%
Local	84,762	4,245	5%
Local HD	26,096	687	3%
SPORS	1,880	78	4%
State	76,367	3,987	5%
Teachers	153,452	3,369	2%
VaLORS	7,360	380	5%
Total	350,379	12,859	4%
<i>By Benefit Tier</i>			
Plan 1	123,915	8,880	7%
Plan 2/Hybrid	191,128	2,834	1%
Enhanced HD	35,336	1,145	3%
Total	350,379	12,859	4%

Source: VRS data

For example, a general employee such as a Plan 1 member in the Teacher plan who attains the age of 65 could begin to receive their retirement benefit, and continue to work without a break-in-service requirement. If the member was making \$60,000 per year and had 25 years of VRS service, they could commence their benefit of approximately \$25,500 per year and continue to receive their annual compensation of \$60,000 if they remained actively working. This would represent an increase in annual income of 42.5%, for a total of approximately \$85,500 per year. The member would be eligible for both COLAs and pay increases going forward. This might encourage older active members to continue to work after retirement longer than they might otherwise.

As another example, a hazardous duty member, such as a SPORS member, who attains the age of 60 could commence their benefits without a break in service. If the member was making \$80,000 per year and had 25 years of service, they could commence their benefit of approximately \$37,000 per year and continue to receive their annual compensation of \$80,000 if they remained actively working. In addition they would also receive the hazardous duty supplement of \$14,664 per year until they reach their SSNRA. This would represent an increase in annual income of 64.5%, for a total of \$131,644 per year. The member would be eligible for both COLAs and pay increases going forward.

Because this option would allow eligible members to collect a retirement benefit, a full-time salary, and continue to have subsidized healthcare, we believe more members would retire earlier than they otherwise would have under this option. Likely most of those eligible for an unreduced retirement would be expected to take advantage of this option. However, it will not help in filling any of the current openings as these members are already active. This option has the potential to increase liabilities due to benefit payments being paid sooner and for a longer amount of time, while providing net zero new employees for employers. As stated above, VRS along with its plan actuary would also strongly recommend requiring employer contributions for these members returning to work full-time in order to protect the funding levels of the plans and to avoid increasing contribution rates due to decreasing active member covered payrolls if positions are filled with retirees.

Due to changes in retirement patterns anticipated with this change, actuarial decrements in the valuation process would need to be adjusted and would in turn increase the plan's liabilities and result in increased costs. Depending on actual experience and how many people elect this option, VRS preliminary estimates indicate that liabilities across all plans could increase by at least \$600 million. In addition, increases in employer contributions across all plans are preliminarily expected to increase by at least \$50 million annually.

Implementation Costs for Option Two

VRS anticipates that, independent of impacts to the VRS Trust Fund, Option Two, allowing retirees who have reached the plan's Normal Retirement Age to begin receiving retirement benefits while continuing to work full-time without a break in service, will have significant administrative impact on VRS. Since VRS is currently implementing major programming changes for employer contribution rates, a delayed effective date of July 1, 2024, would be requested. Based on that effective date, implementation is estimated to be a one-time cost of approximately \$620,000, primarily for significant programming, testing, and communications efforts. Communication efforts include revising all member and retiree handbooks to include the new program, printing several handbooks and guides, as well as revising employer and member web content. Note that implementation assumes employers will be required to include all hired retirees' payroll for employer contribution calculations. VRS estimates ongoing administrative costs of approximately \$15,000 each year.

Conclusion

VRS' current return work provisions align with those in other states and provide flexibility, especially for those retirees returning to work on a part-time basis. In a tight labor market, re-hiring retirees may seem to be an attractive option, but the potential long-term negative impacts to the VRS Trust Fund, including higher future employer contribution rates and higher unfunded liabilities, must be taken into account as well. With over a quarter of the current VRS active employees eligible for reduced or unreduced retirement, a broad expansion of the current return-to-work provisions could have both immediate and long-term negative impacts on the VRS Trust Fund. While a potential retention tool, if active employees are incentivized to retire earlier than they otherwise would in order to retain their retirement benefit, earn a salary, and maintain employer subsidized health care, pension liabilities will increase, but the program would net no new employees for employers. Requiring employer contributions is critical for any expansions of the current return-to-work provisions and would serve to help moderate the impact of such expansions by collecting funds to continue the scheduled payoff of

legacy unfunded liabilities and partially offset paying retirement benefits over a longer period of time for members who choose to retire earlier under these provisions than they would have otherwise.

Appendix

Appendix A- JLARC 2001 Memo



COMMONWEALTH of VIRGINIA

Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building, Capitol Square
Richmond, Virginia 23219

(804) 786-1258

Philip A. Leone
Director

June 13, 2001

Mr. William H. Leighty, Director
Virginia Retirement System
1200 East Main Street
Richmond, Virginia 23219

Dear Mr. *Bill* Leighty:

Enclosed is the resolution adopted by the Joint Legislative Audit and Review Commission, concurring with the VRS proposal regarding the minimum time for separation from employment before they may be rehired without loss of benefits. Consistent with the recommendation of our actuary, William M. Mercer, Incorporated, the Commission also adopted the following recommendations: (1) that VRS implement a written certification that no prior arrangement for rehiring has been made between a teacher and any school division, and (2) that VRS adopt a policy to suspend retirement benefits when it has actual knowledge of such arrangements. The Commission further recommends that the Board adopt written criteria for the suspension of benefits pursuant to any prior arrangement.

Glen Tittermary and Trish Bishop will attend the next meeting of the Board of Trustees in Fairfax to answer any questions about the Commission's action. Please let us know if you need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Philip".

Philip A. Leone
Director

PAL/gst

Enclosure

Motion for Time of Separation for Rehiring of Teachers

That the Commission concurs in the VRS recommended minimum time of separation for teachers to be twelve calendar months.

Further that the Commission recommends that (1) VRS implement a written certification that no prior arrangement for rehiring has been made between a retiring teacher and any school division in the Commonwealth, and (2) VRS adopt a policy to suspend retirement allowances when it has actual knowledge of such arrangements. The Commission recommends that the VRS Board establish written criteria for suspension of benefits pursuant to any prior arrangement.

Appendix B- 2022 Survey of VRS Employers

	Employer type:	Do you plan to hire VRS retirees in five years, part-time, non-VRS-covered positions?	In a typical year, how many VRS retirees do you employ in part-time, non-VRS-covered positions?	Has the number of VRS retirees employed in these positions increase or decreased over the last five years?	Temporary part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	Permanent part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Other, please specify: What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Do you plan to continue to hire VRS retirees in the next two years?
1	Polis-sub	Yes	0	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative					No
2	State	No	No							Administrative					No
3	School	No	No							Administrative					No
4	Polis-sub	Yes	No	Stayed the same	Temporary part-time positions					Administrative					No
5	State	No	No							Administrative					No
6	Polis-sub	No	No							Administrative					No
7	Polis-sub	Yes	No	Stayed the same	Temporary part-time positions					Administrative					No
8	Polis-sub	No	No							Administrative					No
9	State	No	No							Administrative					No
10	Polis-sub	No	No							Administrative					No
11	Polis-sub	No	No							Administrative					No
12	Polis-sub	Yes	No	Increased	Temporary part-time positions					Administrative					No
13	Polis-sub	No	No							Administrative					No
14	Polis-sub	No	No							Administrative					No
15	Polis-sub	Yes	No	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative				Control room specialist	Yes
16	Polis-sub	Yes	No	Increased	Temporary part-time positions	Temporary part-time positions				Administrative				Hourly attorney	Yes
17	Polis-sub	Yes	0	Stayed the same	Temporary part-time positions					Administrative				Public works (buildings & grounds), water plant operator	Yes
18	Polis-sub	No	No							Administrative				Professional	Yes
19	Polis-sub	No	No							Administrative				Public Works	No
20	Polis-sub	No	Yes							Administrative				Yes	
21	School	Yes	0	Increased						Administrative				Yes	
22	State	No	No	Stayed the same						Administrative				Yes	
23	State	No	No	Stayed the same						Administrative				Yes	
24	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Hazardous duty	Substitute teacher	Bus driver	School security officer				Yes	
25	School	Yes	1-5	Increased	Temporary part-time positions	Permanent part-time positions				Administrative				Yes	
26	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative				Yes	
27	Polis-sub	No	Yes							Administrative				Yes	
28	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative				Yes	
29	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative				Other	Yes
30	School	Yes	1-5	Increased	Temporary part-time positions	Permanent part-time positions				Administrative				Professional	Yes
31	State	Yes	1-5	Decreased	Temporary part-time positions	Permanent part-time positions				Administrative				Other	Yes
32	Polis-sub	No	No							Administrative				Other	Yes
33	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative				Public Works	No
34	Polis-sub	Yes	1-5	Increased	Temporary part-time positions	Permanent part-time positions				Administrative				Yes	
35	State	Yes	1-5	Increased						Administrative				Other	Yes
36	State	No	No							Administrative				Other	Yes
37	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative				Other	Yes
38	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative				Other	Yes
39	Polis-sub	No	Yes							Administrative				Other	Yes
40	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative				Other	Yes
41	Polis-sub	Yes	1-5	Decreased	Temporary part-time positions	Permanent part-time positions				Administrative				Other	Yes
42	Polis-sub	Yes	1-5	Decreased	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative				Other	Yes
43	Polis-sub	No	Yes							Administrative				Other	Yes
44	Polis-sub	Yes	1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions				Administrative				Other	Yes

	Employer type:	Do you plan to hire VRS retirees in part-time, non-VRS-covered positions in the next two years?	In a typical year, how many VRS retirees do you employ in part-time, non-VRS-covered positions?	Has the number of VRS retirees employed in these positions increased or decreased over the last five years?	Temporary part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	Permanent part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Other, please specify: What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Do you plan to continue to hire VRS retirees in part-time, non-VRS-covered positions in the next two years?
45	Pol-sub	Yes	1-5	Stayed the same	Temporary part-time positions								Other	No
46	State	Yes	1-5	Increased	Temporary part-time positions								Adjunct instructor	Yes
47	State	Yes	1-5	Decreased	Temporary part-time positions								Other	Yes
48	Pol-sub	No												
49	State	No												
50	School	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher							Yes
51	Pol-sub	No												
52	Pol-sub	No												
53	Pol-sub	Yes	1-5	Stayed the same	Permanent part-time positions								Administrative	No
54	State	Yes	1-5	Stayed the same	Permanent part-time positions								Administrative	Yes
55	State	No											Other	No
56	Pol-sub	Yes	1-5	Decreased	Temporary part-time positions								Administrative	No
57	Pol-sub	Yes	1-5	Increased	Temporary part-time positions		Hazardous duty						Administrative	Yes
58	Pol-sub	No											Administrative	No
59	State	Yes	1-5	Decreased	Temporary part-time positions								Administrative	Other
60	Pol-sub	Yes	1-5	Stayed the same	Temporary part-time positions								Other	Yes
61	Pol-sub	Yes	1-5	Stayed the same	Temporary part-time positions								Water meter reader, public works	No
62	School	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher						Paraprofessional (part-time)	Yes
63	State	Yes	1-5	Stayed the same	Temporary part-time positions								Other	No
64	Pol-sub	Yes	1-5	Decreased	Temporary part-time positions								Safety Officer	Yes
65	Pol-sub	No											Other	Yes
66	School	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher						Administrative	Yes
67	State	Yes	1-5	Stayed the same	Temporary part-time positions								Other	Yes
68	State	Yes	1-5	Increased	Temporary part-time positions								Administrative	Yes
69	Pol-sub	Yes	1-5	Increased	Temporary part-time positions								Administrative	Yes
70	State	Yes	1-5	Stayed the same	Temporary part-time positions								Other	Yes
71	State	Yes	1-5	Stayed the same	Temporary part-time positions								Other	Yes
72	Pol-sub	No											Other	Yes
73	School	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher							Yes
74	School	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher							Yes
75	Pol-sub	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher						Administrative	Yes
76	School	Yes	1-5	Stayed the same	Temporary part-time positions		Substitute teacher							Yes
77	School	Yes	1-5	Increased	Temporary part-time positions		Substitute teacher						Other	Yes

	Employer type:	Over the past five years, have you hired VRS retirees in part-time, non-VRS-covered positions?	Do you plan to hire VRS retirees in part-time, non-VRS-covered positions in the next two years?	In a typical year, how many VRS retirees do you employ in part-time, non-VRS-covered positions?	Has the number of VRS retirees employed in these positions increase or decreased over the last five years?	Temporary part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	Permanent part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Other	Do you plan to continue to hire VRS retirees in part-time, non-VRS-covered positions in the next two years?	
108	poli-sub	Yes		1-5	Stayed the same		Permanent part-time positions									Other	Mental health technician	Yes
109	State	Yes		1-5	Stayed the same		Permanent part-time positions									Other	Museum Interpreter	Yes
110	School	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Substitute teacher								Other	PT	Yes
111	State	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions											Yes
112	poli-sub	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions	Hazardous duty								Administrative		Yes
113	poli-sub	Yes		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
114	poli-sub	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
115	poli-sub	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
116	State	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative	Inventive Detention worker	Yes
117	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
118	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
119	State	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions	Substitute teacher								Administrative		Yes
120	School	Yes		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
121	School	No		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
122	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
123	poli-sub	No		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Substitute teacher								Administrative		Yes
124	School	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
125	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative	Maintenance	Yes
126	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative	Trainer/ Coordinator	Yes
127	poli-sub	Yes		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative	Customer service and library desk staff	Yes
128	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative	Public Works	Yes
129	poli-sub	Yes		1-5	Increased	Temporary part-time positions	Permanent part-time positions	Hazardous duty								Administrative		Yes
130	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative	Adjunct faculty	Yes
131	State	Yes		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
132	State	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
133	poli-sub	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
134		Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
135	State	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative	Specialized in various technical areas maintenance	Yes
136	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
137	State	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Other	IT and Court Analyst	Yes
138	poli-sub	No		1-5	Increased	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
139	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions	Substitute teacher								Administrative		Yes
140	School	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
141	poli-sub	No		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Administrative		Yes
142	poli-sub	Yes		1-5	Stayed the same	Temporary part-time positions	Permanent part-time positions									Other	Direct Care, Therapist	Yes
143	School	Yes		11-15	Increased	Temporary part-time positions	Permanent part-time positions	Substitute teacher								Administrative	Tutor	Yes
144	School	Yes		11-15	Increased	Temporary part-time positions	Permanent part-time positions	Substitute teacher								Administrative		Yes
145	School	Yes		11-15	Stayed the same	Temporary part-time positions	Permanent part-time positions									Other	Administrative Support, tutors, adult education, Special Ed part-time duties	Yes

146	State	Yes		11 - 15	Increased	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative		Yes
147	poli-sub	Yes		11 - 15	Increased	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative		Yes
148	poli-sub	Yes		11 - 15	Increased	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative	Other	Building Inspectors Yes
149	School	Yes		11 - 15	Stayed the same		Permanent part-time positions		Substitute teacher	Bus driver	Administrative	Other	Tutors Yes
150	poli-sub	No	No										
151	poli-sub	Yes		16 - 20	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher		Administrative	Other	tutors Yes
152	School	Yes	No										
153	poli-sub	No	No										
154	State	Yes		16 - 20	Increased		Permanent part-time positions				Administrative	Other	Psychologists, Hospital Security, RNs, Boiler Operators, Maintenance, Console Operators, CNAs, Food Service, Administrative, Rehabilitation Yes
155	State	Yes		16 - 20	Stayed the same	Temporary part-time positions	Permanent part-time positions	Hazardous duty			Administrative	Other	Instructor Yes
156	School	Yes		16 - 20	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver		Other	Part-Time Contracted Teachers Yes
157	poli-sub	No	No										
158	poli-sub	No	No										
159	State	No	No										
160	poli-sub	No	No										
161	poli-sub	No	No										
162	School	Yes		16 - 20	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver			Yes
163	School	Yes		16 - 20	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver	Administrative	Other	Clerical/Support Yes
164	School	Yes		21 - 29	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver	Administrative	Other	Cafeteria subs Yes
165	poli-sub	Yes		21 - 29	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher		Administrative		Yes
166	poli-sub	No	No										
167	poli-sub	No	No										
168	School	Yes	No		Increased	Temporary part-time positions			Substitute teacher				Yes
169	poli-sub	No	No										
170	School	Yes		30 or more	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver		Other	part-time tutors Yes
171	School	Yes		30 or more	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver	Administrative	Other	Instructional Tutors Yes
172	School	Yes		30 or more	Decreased	Temporary part-time positions	Permanent part-time positions						Part-time teachers (60% or less), custodians, food service Yes
173	School	Yes		6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher	Bus driver	Administrative	Other	Subject matter experts Yes
174	State	Yes		6 - 10	Increased	Temporary part-time positions	Permanent part-time positions				Administrative	Other	

Employer type:	Do you plan to hire VRS retirees in the next two years?	In a typical year, how many VRS retirees do you employ in part-time, non-VRS-covered positions?	Has the number of VRS retirees employed in these positions increased or decreased over the last five years?	Temporary part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	Permanent part-time positions: Are these part-time, non-VRS-covered positions temporary, permanent or both?	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Other, please specify: What types of jobs/roles are being filled by retired VRS members who return to work in part-time non-covered positions? Please do not include full-time school security officers, or critical shortage positions (teachers or bus drivers).	Do you plan to continue to hire VRS retirees in part-time, non-VRS-covered positions in the next two years?
175 Polisub	No	No												
176 School	No	No												
177 School	Yes	6 - 10	Decreased	Temporary part-time positions										Yes
178 School	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions									Yes
179 Polisub	No	No												
180 Polisub	No	No												
181 Polisub	No	No												
182 State	No	No												
183 School	Yes	6 - 10	Increased	Temporary part-time positions			School security officer						Reading and Math intervention	Yes
184 State	No	6 - 10	Increased	Temporary part-time positions			Substitute teacher						Tutors	Yes
185 School	Yes	6 - 10	Increased	Temporary part-time positions			Substitute teacher						substitute bus driver, grounds	Yes
186 School	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
187 State	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
188 Polisub	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
189 State	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
190 Polisub	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
191 School	No	No											Other	Yes
192 Polisub	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
193 State	No	No											Administrative	Yes
194 Polisub	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
195 Polisub	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
196 Polisub	Yes	6 - 10	Decreased	Temporary part-time positions	Permanent part-time positions								Administrative	Yes
197 Polisub	No	No											Administrative	Yes
198 School	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
199 State	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions								Administrative	Yes
200 Polisub	No	No											Administrative	Yes
201 Polisub	No	No											Administrative	Yes
202 Polisub	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions								Administrative	Yes
203 School	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions		Substitute teacher						Administrative	Yes
204 State	Yes	6 - 10	Increased	Temporary part-time positions	Permanent part-time positions								Administrative	Yes
205 State	No	Yes											Other	Yes
206 polisub	Yes	6 - 10	Stayed the same	Temporary part-time positions	Permanent part-time positions								Court bailiffs, project manager	Yes

