

November 1, 2023

*Report to the General Assembly*

# **Return to Work for Law-Enforcement Officers Retired from VRS**

Chapter 722 of the 2023 Acts of Assembly

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## Executive Summary

Following publication of the Virginia Retirement System's (VRS) [Return to Work Provisions Governing Virginia Retirement System \(VRS\) Retirees \(RD856\) - - December 15, 2022](#), the 2023 General Assembly shortened the required break in service from 12 months to six months before certain retirees could return to work full time and continue to receive a VRS retirement benefit.

The 2023 General Assembly also passed SB 1411, which directed VRS and the Department of Criminal Justice Services (DCJS), in consultation with the Joint Legislative Audit and Review Commission (JLARC), to review options for allowing law-enforcement officers to return to work as law-enforcement officers after retirement. SB 1411 requires:

That the Virginia Retirement System and the Department of Criminal Justice Services, in consultation with the Joint Legislative Audit and Review Commission, shall review and analyze options for allowing law-enforcement officers to return to work as law-enforcement officers after retirement and to continue to receive their retirement allowance during such employment. The review shall include an analysis of (i) the appropriate break in service required before returning to work; (ii) the level of need for retired law-enforcement officers to fill staffing shortages throughout the Commonwealth; (iii) the effectiveness and efficacy of employing retired law-enforcement officers in different law-enforcement positions, including those involving field operations; (iv) the Commonwealth's current return to work provisions for law-enforcement officers compared to those of other public employee pension plans; and (v) an actuarial analysis of potential modifications to such return to work provisions. The Virginia Retirement System and the Department of Criminal Justice Services shall complete their review and report their findings to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations by November 1, 2023.

## Background – Law Enforcement Retirement Benefits

In general, most law-enforcement officers in the Commonwealth are eligible for enhanced retirement benefits as compared to other government employees, although the required employee contribution to the retirement plan is the same. Law-enforcement officers employed by the Department of State Police are covered by the State Police Officers' Retirement System (SPORS) (Va. Code § 51.1-200 et seq.), and many other law-enforcement officers employed by the Commonwealth are covered by the Virginia Law Officers' Retirement System (VaLORS) (Va. Code § 51.1-211 et seq.). Local governments also have the option under Va. Code § 51.1-138 to provide enhanced hazardous duty benefits to their law-enforcement officers that are similar to those offered to State Police officers and such enhanced hazardous duty benefits must be provided to deputy sheriffs.

Numerous reports to the General Assembly have explained that enhanced retirement benefits, including early retirement, are required for law-enforcement officers (i) to compensate for the physical and mental stresses associated with their duties, which often necessitate that such officers have a shorter working life than other employees and (ii) to ensure that law-enforcement officers who remain on the job possess the physical and mental capabilities to perform their work and protect themselves and members of the public from injury. For example, A 1973 report, [HD5 \(1973\) - Report of the Virginia](#)

[Advisory Legislative Council, State Police Compensation and Retirement](#), noted that “a relatively early retirement is necessary to protect citizens from officers who no longer possess the physical or mental attributes necessary to perform these complex and high stress tasks and to protect these older officers from possible serious injury due to decreased physiologic and psychologic capabilities.”

Law-enforcement officers are typically eligible for unreduced retirement benefits earlier than general employees (both earlier age and fewer years of service requirements) and they receive greater benefit payments for the same amount of service. In general, the three main categories of enhanced retirement benefits received by law-enforcement officers are (i) early age and service retirement provisions, (ii) a higher retirement multiplier used to calculate retirement benefits, and (iii) a hazardous duty supplement. There may be differences in the enhanced benefits received depending on the law-enforcement officer’s employer and not all law-enforcement officers are entitled to each category of benefits.

### Retirement Age and Service Requirements

The normal retirement age under SPORS and VaLORS and for local law-enforcement officers where their employer has opted to provide enhanced benefits is age 60. A member of these plans becomes eligible for an unreduced retirement benefit at age 50 with at least 25 years of service credit or age 60 with at least five years of service credit. For VRS members, normal retirement age is age 65 for Plan 1 members and normal Social Security retirement age for Plan 2 and Hybrid Plan members. A Plan 1 member becomes eligible for an unreduced retirement benefit at age 65 with at least five years of service credit or at age 50 with at least 30 years of service credit. A Plan 2 or Hybrid Plan member becomes eligible for an unreduced retirement benefit at the member’s normal Social Security retirement age with at least five years of service credit or when the member’s age plus the member’s years of service credit equal 90. There is no mandatory retirement age for VaLORS or VRS members.

### Retirement Multiplier

SPORS and VaLORS both provide members a higher retirement multiplier than the retirement multiplier used to calculate the retirement benefit for VRS members, which allows law-enforcement officers to retire earlier as it results in higher income replacement for each year of service credit earned by a law-enforcement officer. For SPORS, the retirement multiplier is 1.85% (local employers providing enhanced benefits to law-enforcement officers can choose a retirement multiplier of either 1.7% or 1.85%). The retirement multiplier for the majority of VaLORS members is 2.0%. For VRS members, the retirement multiplier is 1.7% for Plan 1 members, 1.65% for Plan 2 members, and 1.0% for Hybrid Plan members.

### Hazardous Duty Supplement

Members of SPORS, certain members of VaLORS, and local law-enforcement officers whose employers are providing SPORS-like benefits who retire with at least 20 years of hazardous duty service credit will also receive a hazardous duty supplement, which is a dollar amount added to the officer’s monthly retirement payment. The current amount of the hazardous duty supplement \$16,884 per year. Once an officer is credited with at least 20 years of hazardous duty service, the officer generally retains eligibility for the supplement if the officer moves to a nonhazardous duty position. A retired officer will continue to receive the hazardous duty supplement until the officer reaches normal Social Security

retirement age or, for members of VaLORS eligible for the hazardous duty supplement, age 65. The hazardous duty supplement was first added as a benefit in SPORS in 1966 and was created as a method to provide retired law-enforcement officers with a bridge to Social Security in recognition of the fact that many officers retire well before they would be eligible to receive Social Security benefits.

## Background – Return to Work

Return to work provisions in Virginia, such as those suggested by the report mandate and those implemented beginning with the teacher critical shortage return to work exception in 2001, are in response to the challenges public employers described when recruiting and retaining qualified employees.

In 2017, in response to state agencies' indication that recruiting and retaining qualified employees was difficult, the Joint Legislative Audit and Review Commission published their report, [Total Compensation for State Employees, 2017 \(RD116\)- November 13, 2017](#), reviewing total compensation across the Commonwealth. JLARC made several recommendations in that report, generally focused on the importance of employee compensation and, in part, to "identify cost-effective approaches to ensure agencies can employ an effective workforce." The report found that more employees named salary as the most important factor in compensation over health insurance as the next most important factor. The report also indicated that employees gave salary dissatisfaction as the most common reason for considering leaving a job in the next year.

When considering opportunities to affect recruitment and retention of employees using retirement benefits as a tool, it is essential to understand that return to work exceptions generally do not improve recruitment or retention, and may negatively impact the VRS Trust Fund due to potential changes in retirement patterns that can result in paying benefits longer than anticipated. Conversely, higher salaries translate into overall higher retirement benefits, with minimal, if any, impact to the VRS Trust Fund.

## Current Return To Work Provisions

Return to work refers to a retiree returning to post-retirement employment with the same employer or another employer in the same retirement system after a bona fide break in service while continuing to receive a retirement benefit. The current return-to-work provisions allowed by Virginia law and VRS policy provide considerable flexibility.

- Retirees can choose to stop their retirement benefit and return to full-time active employment, thereby earning additional service credit.
- Alternatively, there are several additional exceptions that allow 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 with the same VRS-participating employer they retired from in which the retiree can work up to 80 percent of full-time employment after the required one full calendar month break in service or with a different VRS-participating employer with no break in service;

- (ii) an interim position with a VRS-participating employer that typically 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 four categories allowed under the *Code of Virginia* after the required six consecutive calendar month break in service.

To comply with IRS guidance, service in any capacity for a VRS-participating employer, such as volunteer service, part-time work, or potentially contracting for a third-party and assigned to the same employer from which the member retired, does not count toward a bona fide break in service. A bona fide break in service requires a complete severance of employment with any VRS-participating employer.

## Recent Changes

The General Assembly recently passed legislation reducing the required break in service from 12 months to six months before certain retirees can return to work full time in positions set out in § 51.1-155(B)(3) and (4) of the *Code of Virginia*. These changes are significant because, as discussed in the 2022 report, changes to the length of the break in service could impact retirement patterns and thereby affect the VRS funded status and contribution rates. The bond rating agencies look skeptically on plan sponsors and employers that do not fully fund the actuarially determined required contributions (ADC) which in turn could impact bond ratings. Given that these changes just took effect, VRS has not had sufficient time to compile reliable data regarding the impact of these changes.

The Commonwealth has appropriated funds over the past several years to provide cash infusions for the VRS Trust Fund. These infusions were intended to help bring down the Fund's unfunded liability. It is likely that policy changes allowing retirees to return to work sooner and still stay within the requirements of federal law will have both an immediate and long-term impact on the unfunded liability of the Fund and on employer contribution rates that can be expected to potentially negate or at best minimize the effect of the recent cash infusions.

## 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 without a prearranged agreement with the employer to reemploy. The one exception, if the plan documents authorize it, is in-service distributions with no break in service allowed by the IRS at normal retirement age but no earlier than age 59 ½ to avoid a tax penalty.

The IRS has provided limited guidance regarding 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. This serves to protect the retirement plan from violating IRC rules related to prearrangement, proper federal tax reporting and withholding and from unexpected and detrimental changes in retirement patterns, and to prevent double dipping, or even triple-dipping if a retiree also receives the hazardous duty supplement or cost of living adjustments.

Section 401 of the Internal Revenue Code (IRC) establishes numerous requirements that VRS as a qualified governmental plan 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”). While the IRC allows in-service distributions without a tax penalty with no break in service as early as age 59 ½, VRS is aware of only one public plan that allows in-service distribution at age 59 ½, and the policy option discussed in this report generally proposes to use existing VRS Normal Retirement Age as the threshold to minimize impacts to the plan.

## Law Enforcement Staffing Levels

The genesis of this report is recent concerns raised by policymakers about agency-reported staffing shortages being experienced by law-enforcement agencies. For example, on October 17, 2022, Governor Youngkin announced his Bold Blue Line Initiative. Among the stated goals of the Initiative is to support the recruitment of new law-enforcement officers to compensate for staffing shortages.

At a national level, a recent report from the Congressional Research Service (CRS) , [Congressional Research Service, State and Local Law Enforcement Officer Staffing \(Sept. 12, 2022\)](#), finds that the rate of full-time law-enforcement officers per 1,000 people has remained relatively consistent over the past decade. The CRS found that the rate of full-time law-enforcement officers per 1,000 people was 2.1 in 2012 through 2017, rose to 2.2 for 2018 through 2020, and returned to 2.1 in 2021. CRS’ report notes that the data provides insight into changes in law-enforcement staffing at a national level, but it does not demonstrate what individual agencies may be experiencing.

Determining current law-enforcement staffing levels in Virginia poses some challenges. There is currently no comprehensive source for data on vacant full-time law-enforcement officer positions throughout the Commonwealth. The Virginia Compensation Board maintains data on authorized positions in sheriffs’ offices and DCJS maintains data on the number of certified law-enforcement officers in the Commonwealth; however, there are certain limitations on this data. For example, DCJS’ data comes from its system (TRACER) that was designed to track law-enforcement officer training records, not the law-enforcement officer population.

DCJS also provided vacancy data from police departments in 12 cities collected as a part of the Governor’s Bold Blue Line Initiative. The vacancy rates in these cities range from 3% to 36% for full-time law-enforcement officer positions. In addition, vacancy rate data for sheriffs’ offices were provided by the Virginia Compensation Board and the Virginia Association for Chiefs of Police surveyed its member agencies for vacancy rate data for full-time law-enforcement officer positions. According to the data, sheriffs’ offices have a vacancy rate of approximately 19% and the vacancy rate among the 97 police departments that responded to this survey is approximately 13%, though the vacancy rates of individual agencies vary based on size and agency type.

## Employment of Retired Law-Enforcement Officers

An important point to consider when determining whether to permit retired law-enforcement officers to return to work in full-time law-enforcement positions is the underlying rationale for the enhanced retirement benefits provided to law-enforcement officers. As discussed at length above, the current retirement benefits afforded most law-enforcement officers in the Commonwealth (early retirement age; shorter service requirement; higher retirement multiplier; hazardous duty supplement) were designed to compensate for the risks, both physical and mental, experienced on the job by law-

enforcement officers, as well as to permit earlier retirement of officers before there is any decline in their ability to physically perform the duties of a law-enforcement officer. Allowing retired law-enforcement officers to return to work full-time as a law-enforcement officer may suggest that the underlying assumptions upon which enhanced retirement benefits for law-enforcement officers could be revisited in light of changed circumstances since the initial provision of enhanced retirement benefits.

Also, while addressing whether retired law-enforcement officers are capable of performing certain law-enforcement duties is beyond the scope of this report, the current state of Virginia law renders such an analysis of the effectiveness and efficacy of employing retired law-enforcement officers in different law-enforcement positions an impossible task. While in practice, officers working at a law-enforcement agency are assigned to different duties and functions, Virginia law does not distinguish between law-enforcement officers based on the types of duties the officers perform. Virginia law requires that all officers must be certified through DCJS and must successfully complete the training requirements established by the *Code of Virginia* and DCJS, but Virginia law only provides for one type of law-enforcement certification and no distinction is made based on the type of work to be performed.

In general, all law-enforcement officers in the Commonwealth are tasked with the same broad fundamental duties and authority. Thus, although an agency may intend to assign a retired officer who has returned to work to a role that is assumed to be less physically demanding than a typical assignment, such as investigating cold cases, that retired officer will still be expected, when feasible, to respond to all situations they encounter necessitating a law-enforcement response. In fact, an officer's public duty to uphold the law may extend while they are off duty.

Finally, there is no current mechanism under Virginia law to limit retired law-enforcement officers who return to work from working in certain law-enforcement capacities or to track what capacities in which retired law-enforcement officers who return to work are employed.

## Policy Options

In keeping with the referenced JLARC reports and the 2022 report, this report discusses four workforce shortage policy options for the General Assembly to consider. They include allowing retired law-enforcement officers to return to work after a six-month break in in service, an in-service distribution option with no break in service to retain existing officers, a retention bonus paid annually each year a law-enforcement officer continues to work following retirement eligibility to retain existing employees, and an overall salary increase to make law-enforcement positions more attractive to new and existing employees. The two policy options that would permit retired law-enforcement officers to return to work, like existing statutory return-to-work exceptions, would require employers to include the retiree's compensation in membership payroll subject to employer contributions.

### Six-Month Break in Service Option

Similar to the existing provisions governing return to work for critical shortage and school security officer positions, this option would allow retired law-enforcement officers to return to work in a full-time law-enforcement officer position after a six-month break in service. There is no black letter law regarding the specific length of the required break in service. Thus, while a 12-month break in service provides greater assurance regarding sufficiency under IRS guidance, a six-month break in service along



with the accompanying compliance provisions could also serve to meet the IRS facts and circumstances test.

Like the existing statutory exceptions for critical shortage and school security officer positions, this option would require that (i) there is no prearrangement for a retiree to return to work; (ii) the retiree has a break in service of at least six consecutive calendar months preceding employment; (iii) the retiree has not retired under an early retirement incentive program; (iv) 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. of the *Code of Virginia*), if the retiree elects to continue to receive the retirement allowance while employed; and (v) the employer must include the retiree's compensation in membership payroll subject to employer contributions.

### In-Service Distribution Option

The 2022 VRS report included a policy option that would allow certain retirees who had reached a specific age to retire and then immediately return to work with no break in service, as permitted by IRS guidelines, and continue to receive their retirement benefit. Throughout this report the option is referred to as an in-service distribution. This option would encourage law-enforcement officers who would otherwise retire and leave service entirely to instead retire and immediately return to service for at least some additional period of time. This would be a significant departure from how VRS currently administers retirement benefits, would require a substantial investment of time, resources, and efforts to implement, and is anticipated to have a detrimental impact on the VRS Trust Fund.

IRS rules allow for in-service distributions as early as age 59½ without a tax penalty and without jeopardizing the plan's tax qualification. Virginia law would need to be amended to allow for in-service distributions. This option does not solve employee pipeline issues, and only temporarily relieves staffing shortages. The in-service distribution option is expected to have a measurable impact on retirement patterns, as evidenced by experience in other states.

Therefore VRS suggests setting the age for the in-service distribution option at 60 for law-enforcement officers (while normal retirement age may be earlier for law-enforcement officers, the IRS early distribution tax penalty of 10% would apply if a distribution is received prior to age 59½). As required under current return to work options in the *Code of Virginia*, employer contributions should be required on behalf of members returning to work using the in-service distribution option.

Currently, members of SPORS and VaLORS retire on average at age 58 and local law-enforcement officers retire on average at age 56. This in-service distribution option would have the same restrictions as existing return-to-work exceptions regarding early retirement programs, not impacting retirement benefits, and the employer paying employer contributions on the individual's compensation.

### Retention Bonus Option

The third policy option, providing retention bonuses to law-enforcement officers for each year they continue active employment past full unreduced retirement eligibility, focuses more on retaining active employees rather than encouraging them to return after retirement. An eligible law-enforcement officer would continue to receive their regular active salary and would receive an annual bonus each year they continue to work after they reach retirement eligibility. Implementing a retention bonus

program could encourage existing officers who would otherwise retire and leave service entirely to instead stay actively employed for at least some additional period of time.

Unlike the in-service distribution option, retention bonuses would not encourage law-enforcement officers who would otherwise stay actively employed to retire and return to work or pursue the in-service distribution option. This option will potentially cost the Commonwealth less overall than expanding return to work options or adding an in-service distribution with no break in service. It would also help preserve the long-term integrity of the VRS Trust Fund. Of vital importance, if the Commonwealth and local employers choose to pay this retention bonus, they would not be paying both a salary and retirement benefits plus other pension benefits such as cost of living adjustments or hazardous duty supplements. Retention bonuses for employees past retirement eligibility might also have a positive impact on retirement patterns since these bonuses could encourage members to stay actively employed longer. This policy choice also could potentially help resolve some staffing shortages, but is still a temporary stopgap that would help maintain the existing workforce rather than providing a comprehensive, long-term solution to develop or recruit new employees.

### Salary Increase Option

The fourth policy option, salary increases for new and existing law-enforcement officers, was described in depth in the 2017 JLARC report on state employee compensation. This option would provide higher starting salaries for new officers as well as more frequent, larger, and more reliable raises for existing officers. This would potentially be instrumental in improving recruitment and retention of law-enforcement officers. Salary increases do not directly impact retirement patterns, do not impact the health of the VRS Trust Fund since they are accompanied by associated employee and employer contributions, and have the added effect of increasing the average final compensation used to calculate retirement benefits thereby increasing retirement benefits.

### Cost Impacts

The impact analysis assumes that the existing sunset and actuarial investigation provisions in § 51.1-155(D) of the *Code* will remain in place. It also assumes that employer contributions will continue to be paid on creditable compensation for any position filled by a retiree who receives retirement benefits from VRS while also actively working in a full-time VRS-covered position. The existing return-to-work exceptions appear to be under-utilized based on the numbers shown in the 2022 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. However, based on limited experience and data following the 2023 changes to the break-in-service legislative requirements from 12 to six months, there has been a noticeable uptick in utilization of the existing return-to-work exceptions.

Cost impacts to VRS associated with return-to-work provisions are generally related to 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 lifetime 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 historical 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 incentivizes a member to retire earlier than they would otherwise will ultimately increase the cost of VRS-administered pension plans and related benefits. 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 significance of the change and the volume of members that it impacts.

#### Cost Impacts of Six-Month Break in Service Option

The six-month break in service option is not expected to have a large impact on changing retirement patterns of future retirees and therefore is not expected to meaningfully impact unfunded liabilities or contribution rates, although requiring employer contributions are an actuarial best practice and will help mitigate the impact. However, it should be noted that based on limited experience and data following the 2023 changes to the break-in-service legislative requirements from 12 to six months for critical shortage and school security officer positions, there has been a noticeable increase in the number of retirees returning to these positions.

The number of SPORS, VaLORS, and local hazardous duty members who were eligible to retire with an unreduced benefit as of June 30, 2023, represents about 8% of the total hazardous duty population. Members who have qualified for unreduced retirement are more likely to take advantage of return-to-work provisions, though we also expect that members who are eligible for reduced benefits could also elect to retire and continue working in certain circumstances in order to boost take home pay by collecting a retirement benefit and continuing to be paid a full-time salary.

Because the six-month break in service option requires employers to include the members' salary in the computation of employer contributions, this option is not expected to have as much of an impact on employer rates as employer contributions for these retirees will help mitigate any impact on contribution rates, but it will not help to mitigate the negative impact of changing retirement patterns, which will increase liabilities and employer costs over time. Moreover, the plans from which the officers retire could see an increase in costs due to the increased liability associated with retiring earlier than expected in order to receive a pension, potentially a hazardous duty supplement, and active healthcare, as well as a full-time salary.

Finally, a retired law-enforcement officer who returns to work under this option could significantly increase their annual income. In addition to receiving their annual compensation, they would receive their retirement benefit and, if eligible, the hazardous duty supplement. The retired officer would also be eligible for cost-of-living adjustments and pay increases going forward, as well as potentially being eligible for the health insurance credit depending on the officer's service. Eligibility for active employee health insurance coverage, which is typically subsidized by employers, will likely encourage even more active law-enforcement officers to retire earlier than anticipated as one reason many employees delay retirement until age 65 is Medicare eligibility. If active law-enforcement officers can retire at age 50, receive a pension with cost-of-living adjustments and potentially a hazardous duty supplement, and, after a six-month break, receive a full-time salary, and employer-subsidized health insurance, it is highly likely that most retirement-eligible employees would pursue this option.

#### Cost Impacts of In-Service Distribution Option

The in-service distribution option would allow retired law-enforcement officers who have reached a specific age (age 60) to continue to work while receiving a retirement benefit with no break in

service. Under this option, all law-enforcement officers who reach the specified age and service requirements 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. It is important to note that the elimination of the break-in-service requirement can only be applied in circumstances when a retiree has reached a certain age due to IRS requirements. VRS is aware of only one public plan that allows in-service distribution at age 59 ½, and the policy option discussed in this report generally proposes to use existing VRS Normal Retirement Age as the threshold to minimize impacts to the plan.

Based on the population demographics, the in-service distribution option has the greatest potential to impact retirement patterns and increase the liabilities and cash flow requirements of the retirement plans. The magnitude of the increase would depend on the significance of the change and the volume of members that it impacts. Approximately 8% of the entire active law enforcement-population, including state and local employees, or nearly 1,800 members, are already eligible for a full unreduced retirement, but continue to work. Over 2,100 other law-enforcement members are eligible for an early reduced retirement, so as of June 30, 2023, in total approximately 18% of the active population have met eligibility to retire.

As an example of the potential impacts, if we assumed that all 82 of the active eligible SPORS members retired at age 60, it would increase the unfunded liability of the SPORS plan by \$5.8 million and increase the cashflow requirements by \$4.8 million. We would expect similar increases across other plans that have hazardous duty law-enforcement members.

Finally, similar to a retired law-enforcement officer who returns to work under the six-month break in service option, an officer who receives an in-service distribution under this option could significantly increase their annual income, which would include their annual compensation, their retirement benefit, and, if eligible, the hazardous duty supplement. The officer would also be eligible for cost-of-living adjustments and pay increases going forward and, depending on the officer's service, the health insurance credit, as well as maintaining active employee health insurance coverage.

#### Cost Impacts of Retention Bonus Option

A retention bonus option would allow active law-enforcement officers who have reached retirement eligibility to continue to work and receive a bonus for each additional year they work past retirement eligibility. This targets current active officers and encourages them to continue working rather than encouraging active officers to retire. Since bonuses are not included in creditable compensation, retention bonuses under this option would not impact employer or employee contributions, the VRS funded status, or employees' retirement benefits.

Approximately 18% of the entire active population of law-enforcement officers, including state and local employees are already either eligible for a full unreduced retirement or currently meet the requirements for early unreduced retirement. The number of those who would qualify for a retention bonus depends on whether the General Assembly would require members to be eligible for a full unreduced retirement (approximately 1,800 members) or whether they would only need to be eligible for an early reduced retirement (approximately 2,100 members). Retention bonuses will necessitate employer resources be provided to fund the bonuses. Costs will vary by employer.

### Cost Impacts of Increased Salary Option

If the General Assembly chooses to implement higher starting or continuing salaries, this would increase law-enforcement officers' overall creditable compensation. These increases would be incorporated into the existing average final compensation and retirement benefit calculation. Since employer and employee contributions are paid as a percentage of salary, no actuarial impact is expected for the VRS Trust Fund, although employer contributions may increase. This option will increase retirement benefits since benefits are calculated based on creditable compensation. Increased salaries will necessitate employer resources be provided to fund increases in compensation. Costs will vary by employer.

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## Why We Did This Report

In December 2022, the Virginia Retirement System (VRS) published [Return to Work Provisions Governing Virginia Retirement System \(VRS\) Retirees \(RD856\)- - December 15, 2022](#), required by Item 498 of Chapter 2 of the 2022 Special Session I Acts of Assembly. This report comprised a review of the return-to-work (RTW) provisions in place at the time governing VRS retirees, including an overview of the Internal Revenue Service (IRS) laws and regulations regarding return to work, an analysis of Virginia's return-to-work provisions compared to those of other public employee pension plans, and an actuarial analysis of potential modifications to the return-to-work provisions.

Subsequently, in 2023, the General Assembly passed HB 1630 (Chapter 707), SB 1289 (Chapter 690) and SB 1479 (Chapter 708), adopting some of the modifications discussed in RD856. In addition, the General Assembly passed SB 1411 (Chapter 722), which directed VRS and the Department of Criminal Justice Services, in consultation with the Joint Legislative Audit and Review Commission, to review options for allowing law-enforcement officers to return to work as law-enforcement officers after retirement. SB 1411 requires:

That the Virginia Retirement System and the Department of Criminal Justice Services, in consultation with the Joint Legislative Audit and Review Commission, shall review and analyze options for allowing law-enforcement officers to return to work as law-enforcement officers after retirement and to continue to receive their retirement allowance during such employment. The review shall include an analysis of (i) the appropriate break in service required before returning to work; (ii) the level of need for retired law-enforcement officers to fill staffing shortages throughout the Commonwealth; (iii) the effectiveness and efficacy of employing retired law-enforcement officers in different law-enforcement positions, including those involving field operations; (iv) the Commonwealth's current return to work provisions for law-enforcement officers compared to those of other public employee pension plans; and (v) an actuarial analysis of potential modifications to such return to work provisions. The Virginia Retirement System and the Department of Criminal Justice Services shall complete their review and report their findings to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations by November 1, 2023.

This report summarizes the existing options for retired law-enforcement officers who wish to return to work as a law-enforcement officer in a part-time or full-time capacity while their monthly retirement benefit continues. This report also reviews a variety of post-retirement employment options for law-enforcement officers established by retirement plans in other states and analyzes how 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 IRS rules and the *Code of Virginia*, worked with the Department of Criminal Justice Services to review the job requirements and duties of law-enforcement officers and to collect data on vacancies in law-enforcement positions throughout the Commonwealth, 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 to provide for 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)<sup>1</sup> and available guidance from the IRS.

This report includes several policy options to be considered.

The first two options involve retired law-enforcement officers returning to full-time employment. Option One would allow retired law-enforcement officers to return to work after a six-month break in service and require employer contributions for retirees returning to work full-time. Option Two would allow retired law-enforcement officers who have attained age 60 to return to work with no break in service and begin receiving an in-service distribution of their retirement benefit, consistent with Internal Revenue Service (IRS) guidelines.<sup>2</sup> Option Two would also require employer contributions.

Other policy options to consider concentrate on recruiting and retaining existing employees rather than encouraging the existing employees to retire and return to work or pursue the in-service distribution option. The third option presented in this report is to formalize a retention bonus for each year law-enforcement officers remain actively employed after becoming eligible for retirement. Finally, the fourth option presented in this report is to increase starting salaries for law-enforcement officers and provide regular salary increases. These options could cost the Commonwealth less overall than expanding return-to-work options or adding an in-service distribution with no break in service and would help preserve the long-term integrity of the VRS Trust Fund.

## Background – Law Enforcement Retirement Benefits

In general, most law-enforcement officers in the Commonwealth are eligible for enhanced retirement benefits as compared to other government employees, although the required employee contribution to the retirement plan is the same. Law-enforcement officers employed by the Department of State Police are covered by the State Police Officers' Retirement System (SPORS) and many other law-enforcement officers employed by the Commonwealth are covered by the Virginia Law Officers' Retirement System (VaLORS). Local governments also have the option to provide enhanced hazardous duty benefits to their law-enforcement officers that are similar to those offered to State Police officers and such enhanced hazardous duty benefits must be provided to deputy sheriffs.<sup>3</sup> Employees in these plans are eligible for unreduced retirement benefits earlier than general employees (both earlier age and fewer years of service requirements) and they receive greater benefit payments for the same amount of service.

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<sup>1</sup> U.S. Code, Title 26.

<sup>2</sup> In this report, in-service distribution refers to any arrangement where a retirement plan participant receives retirement benefits while serving in any position with a participating employer, i.e., an employer participating in VRS. References in this report to in-service distributions are intended to refer to Option Two that does not require a bona fide break in service. These references are not intended to include existing return-to-work opportunities.

<sup>3</sup> As of June 30, 2023, 236 localities provide enhanced hazardous duty benefits to eligible employees which, depending on the locality, may include law-enforcement officers, fire fighters, emergency medical technicians, and jail officers.

## History of Law Enforcement Retirement Benefits

In 1942, the Department of State Police was established as a separate agency.<sup>4</sup> Eight years later in 1950, the General Assembly created SPORS.<sup>5</sup> The original plan provided for retirement at age 55 with 25 years of service and compulsory retirement at age 65. The history of the creation of SPORS, including the rationale for providing enhanced retirement benefits to law-enforcement officers, was detailed at great length in a 1994 report from the Division of Legislative Services and is reproduced below.<sup>6</sup>

### Background History of SPORS

Legislative action to establish a separate retirement system for State Police officers began in 1942, when the Department of State Police separated from the Division of Motor Vehicles to become an independent state agency. At that time State Police rejected coverage under the Virginia Retirement System (“VRS”). The majority of the officers thought the VRS coverage was impractical for their situation. Their dissent prompted studies to determine the need for a special treatment system for the State Police; however, SPORS was not established as a separate system until 1950. Between 1942 and 1950, newly hired State Police officers were covered under VRS. Those officers already on the force who rejected the VRS coverage did not have a retirement plan.

### Rationale Behind SPORS

In the 1988 *Report of the Joint Legislative Audit and Review Commission on an Assessment of Eligibility for State Police Officers Retirement System Benefits*, the Joint Legislative Audit and Review Commission (JLARC) staff reviewed the initial SPORS legislation and related legislative commission reports to determine the legislative intent behind establishing SPORS. In addition, various state officials were interviewed to obtain their impressions on the rationale behind the creation of SPORS. Although JLARC found the initial intent remained somewhat unclear, it did identify a number of important factors. The material on this issue was drawn substantially from their report.

Several reasons for a separate system put forward during the 1940s have recurred in subsequent reports. The legislative commission reports note that the Department of State Police is a unique body of law-enforcement officers. The early studies stressed age effectiveness in performing the duties of the State Police. They also identified the hazards associated with direct law-enforcement as a principal reason for early retirement of State Police.

Age Effectiveness. In the 1944 *Report of the Commission to Consider a Death, Disability and Retirement System for the Virginia State Police Force*, State Police officers were identified as having special retirement needs because:

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<sup>4</sup> 1942 Va. Acts ch. 232.

<sup>5</sup> 1950 Va. Acts ch. 451.

<sup>6</sup> [The Feasibility and Effects of Raising the Retirement Allowance and the Implications of Removing the Age Requirements for Members of the State Police Officers' Retirement System - HD66](#)

. . . usefulness of a member of the State Police as such is ended at the age of fifty to fifty-five; and . . . it would be contrary to the best interests of the Commonwealth of Virginia . . . to have the majority of the State Police rendered unfit for the duties of their service on account of age.

In the 1948 *Report of the Virginia Advisory Legislative Council on Retirement of the State Police*, it was contended that the physical requirements of State Police work made it impossible for officers to remain with the state until the prescribed retirement age (65 at that time). Officers either left their jobs or stayed beyond their useful age, impairing to some degree the work of the force. Therefore, they required a lower age of retirement than other state employees.

There is consensus in the medical research community that the ability to perform physical tasks does decline with age. However, there is much disagreement on the rate of that decline. Aging has been found to adversely affect aerobic capacity, isometric strength, and heat adaptation. However, these effects can be moderated depending on the individual's physical conditioning, hereditary predisposition, and diet (expert testimony as summarized in Judge Thomas A. Higgins' memorandum opinion in *EEOC v. State of Tennessee Wildlife Resources Agency*, 696 F.Supp. 1163 (M.D. Tenn. 1986)). So, while there is a relationship between age and ability to perform, age alone does not cause decline in physical performance. However, this relationship between age and performance has been used in several states as the rationale for early retirement of law-enforcement personnel.

Hazardous Duty. While hazardous duty is not defined in the legislation, the term has been used in reference to State Police officers' duties since the early 1940s. For example, the 1944 report states:

. . . because of the many hazards and risks incident to the duties of the State Police such members should be afforded further protection than is now provided by the Virginia Retirement Act . . . [Moreover, because] the duties of the State Police require strenuous service under conditions often of great danger to the Police . . . more adequate provision should be made to cover disabilities resulting from a performance of duty . . . the retirement age of such persons shall be lowered.

Other Issues. Though the age and hazards issues remained central to the argument for a separate State Police officers retirement system, other issues were identified. The 1944 report noted that "the Commonwealth of Virginia, by careful selection and training, has organized an effective State Police Force." It asserted the need for an adequate system of retirement for the State Police in order to recruit and retain quality personnel.

The 1980 *Report of the Virginia Retirement Study Commission* stated that the "unique characteristics inherent in . . . sworn law-enforcement duty constitute sufficient ground for individual retirement systems." The Commission further observed, in reference to other groups desiring similar coverage, that "SPORS benefits do not and should not

encompass responsibilities which relate to the administrative enforcement of laws, generally, rather than direct enforcement of penal, traffic and highway laws.”

After the creation of SPORS in 1950, local governments participating in VRS have had the option of extending SPORS-like benefits to their law-enforcement officers since 1970.<sup>7</sup> Finally, VaLORS was created in 1999 to provide enhanced retirement benefits for certain law-enforcement officers employed by various agencies of the Commonwealth.<sup>8</sup>

Numerous other reports to the General Assembly have reiterated that enhanced retirement benefits, including early retirement, are required for law-enforcement officers (i) to compensate for the physical and mental stresses associated with their duties which often necessitate that such officers have a shorter working life than other employees and (ii) to ensure that law-enforcement officers who remain on the job possess the physical and mental capabilities to perform their work and protect themselves and members of the public from injury.<sup>9</sup>

These underlying rationales for the current enhanced retirement benefits regime for law-enforcement officers necessarily serve as the foundation when considering any potential return-to-work options for law-enforcement officers.<sup>10</sup>

Further, one of these underlying rationales for enhanced retirement benefits for law-enforcement officers, the physical and mental stresses associated with law-enforcement employment, is

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<sup>7</sup> 1970 Va. Acts ch. 476.

<sup>8</sup> 1999 Va. Acts ch. 595.

<sup>9</sup> [RD48 \(Published 2012\) – Joint Legislative Audit and Review Commission, Review of Retirement Benefits for State and Local Government Employees - December 2011 \(virginia.gov\)](#):

The purpose of providing enhanced retirement benefits to employees covered by the SPORS and VaLORS plans is to allow those employees to retire earlier due to the risks they encounter and duties they perform on behalf of the State.

[HD5 \(1973\) - Report of the Virginia Advisory Legislative Council, State Police Compensation and Retirement:](#)

The basic rationale which underlies the provision of retirement benefits comparable to those . . . contained in the State Police Officer’s Retirement System is that law enforcement officers are engaged in an occupation which may place an inordinate amount of physical and mental stress upon individuals from time to time. An officer may be called upon to pursue a suspected felon at high speeds in an automobile or to sprint down an alley to prevent additional bodily harm resulting from an ongoing assault. He may be called upon to make a life or death decision regarding the use of a firearm or when to apply other uses of force. Frequently, a relatively early retirement is necessary to protect citizens from officers who no longer possess the physical or mental attributes necessary to perform these complex and high stress tasks and to protect these older officers from possible serious injury due to decreased physiologic and psychologic capabilities.

<sup>10</sup> These underlying rationales for providing enhanced retirement benefits to law-enforcement officers have likewise been recognized in federal reports. See [Congressional Research Service, Retirement Benefits for Federal Law Enforcement Personnel \(Sept. 5, 2017\)](#):

The duties of law enforcement personnel place unique physical and psychological demands on individuals employed in those positions. Because physical and mental health decline with age, Congress deemed it necessary to maintain a youthful workforce to ensure the quality of law enforcement services. Law enforcement personnel are subject to a mandatory retirement age to maintain this goal, which leads to an expectation of limited federal service for these employees. Consequently, Congress has established enhanced retirement benefits for individuals in these occupations.

designed to protect officers from injury as they age. This increased potential for injury also impacts other employee benefits, including workers' compensation, short-term disability, long-term disability, and the Line of Duty Act. If retired law-enforcement officers return to work more frequently, as expected if one or more of the options in this report are implemented, the impacts of and claims related to these other benefits are expected to increase, perhaps significantly, but cannot be fully quantified without valid plan experience. A 2011 JLARC report reiterated that allowing law-enforcement officers to retire early reduces the risk of injury to the officer while simultaneously reducing the potential liability for claims that could result from continued employment.

Allowing [SPORS and VaLORS] employees to retire early reduces the risk of serious injury to the employee, their colleagues, and the public. This allows State agencies to better serve the public and achieve their missions and goals while simultaneously reducing their liability for workers' compensation injury claims or other financial reparations.<sup>11</sup>

### Enhanced Retirement Benefits for Law-Enforcement Officers

In general, the three main categories of enhanced retirement benefits received by law-enforcement officers are (i) early age and service retirement provisions, (ii) a higher retirement multiplier used to calculate retirement benefits, and (iii) a hazardous duty supplement. There may be differences in the enhanced benefits received depending on the law-enforcement officer's employer and not all law-enforcement officers are entitled to each category of benefits. The benefits under SPORS are set forth in Chapter 2 (Va. Code § 51.1-200 et seq.). Chapter 2.1 of Title 51.1 of the *Code of Virginia* (§§ 51.1-211 et seq.) governs membership in VaLORS. Localities may opt to provide their law-enforcement officers with SPORS-like benefits pursuant to Va. Code § 51.1-138.<sup>12</sup>

These enhanced retirement benefits for law-enforcement officers stand in contrast to retirement benefits available to state and political subdivision employees under Plan 1, Plan 2, or the Hybrid Plan. Table 1 summarizes the retirement benefits typically available to law-enforcement officers and other governmental employees.

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<sup>11</sup> [RD48 \(Published 2012\) – Joint Legislative Audit and Review Commission, Review of Retirement Benefits for State and Local Government Employees - December 2011 \(virginia.gov\)](#)

<sup>12</sup> With two exceptions, Va. Code § 51.1-138(B) requires a local employer providing enhanced benefits to law-enforcement officers to provide benefits equivalent to those available under SPORS. The two exceptions are (i) the provision for disability retirement for members of SPORS as a result of felonious conduct in Va. Code § 51.1-209 does not apply to a local employer and (ii) a local employer can choose between one of the two retirement multipliers set forth in Va. Code § 51.1-206(A), either using 1.7% of average final compensation or 1.85% of average final compensation to calculate retirement benefits.

Table 1: Retirement Benefits

	State & Political Subdivision Employees & Teachers			Law-Enforcement Officers Enhanced Retirement Benefits		
	Plan 1	Plan 2	Hybrid Plan	SPORS	VaLORS	Political Subdivisions with Enhanced Benefits
<b>Retirement Age &amp; Years of Service (unreduced benefit)</b>	Age 50 & 30 years of service OR Age 65 & 5 years of service	Normal Social Security Retirement Age & 5 years of service OR Age + Service = 90	Normal Social Security Retirement Age & 5 years of service OR Age + Service = 90	Age 50 & 25 years of service OR Age 60 & 5 years of service	Age 50 & 25 years of service OR Age 60 & 5 years of service	Age 50 & 25 years of service OR Age 60 & 5 years of service
<b>Retirement Multiplier</b>	1.7%	1.65%	1.0%	1.85%	2.0% <sup>13</sup>	1.7% or 1.85% <sup>14</sup>
<b>Hazardous Duty Supplement</b>	No	No	No	Yes	No <sup>15</sup>	Yes

### Retirement Age and Service Requirements

The normal retirement age under SPORS and VaLORS and for local law-enforcement officers where their employer has opted to provide enhanced benefits is age 60.<sup>16</sup> A member of these plans becomes eligible for an unreduced retirement benefit at age 50 with at least 25 years of service credit or

<sup>13</sup> The 2.0% retirement multiplier applies to members who join or rejoin VaLORS after July 1, 2001. Members employed in a VaLORS position on June 30, 2001, and on July 1, 2001, could elect the 2.0% retirement multiplier or to retain the 1.7% retirement multiplier and their eligibility for the hazardous duty supplement, provided that they remained continuously employed in a VaLORS position until retirement. Va. Code § 51.1-217.

<sup>14</sup> A local employer that is providing enhanced benefits to its law-enforcement officers can choose to provide a retirement multiplier of either 1.7% or 1.85% pursuant to Va. Code § 51.1-206, so the retirement multiplier for some local law-enforcement officers may be equal to, but not exceed, the retirement multiplier for Plan 1 members.

<sup>15</sup> Members who join or rejoin VaLORS after July 1, 2001, are ineligible for the hazardous duty supplement. Members employed in a VaLORS position on June 30, 2001, and on July 1, 2001, could elect to retain their eligibility for the hazardous duty supplement and the 1.7% retirement multiplier instead of the 2.0% retirement multiplier, provided that they remained continuously employed in a VaLORS position until retirement. Va. Code § 51.1-217.

<sup>16</sup> Va. Code §§ 51.1-201, 51.1-212.

age 60 with at least five years of service credit.<sup>17</sup> Under SPORS, there is a mandatory retirement age of 70.<sup>18</sup> This mandatory retirement age also applies to local law-enforcement officers receiving SPORS-like benefits.<sup>19</sup> There is no mandatory retirement age for members of VaLORS.

The statutorily defined normal retirement age of 60 and the ability to retire with an unreduced benefit at age 50 with at least 25 years of service credit or age 60 with at least five years of service credit stand in contrast to the retirement age and service requirements for members of VRS who are subject to higher retirement ages and longer service requirements. For VRS members, normal retirement age is age 65 for Plan 1 members and normal Social Security retirement age for Plan 2 and Hybrid Plan members.<sup>20</sup> A Plan 1 member becomes eligible for an unreduced retirement benefit at age 65 with at least five years of service credit or at age 50 with at least 30 years of service credit.<sup>21</sup> A Plan 2 or Hybrid Plan member becomes eligible for an unreduced retirement benefit at the member's normal Social Security retirement age with at least five years of service credit or when the member's age plus the member's years of service credit equal 90.<sup>22</sup> There is no mandatory retirement age for VRS members.

### Retirement Multiplier

SPORS and VaLORS both provide members a higher retirement multiplier than the retirement multiplier used to calculate the retirement benefit for VRS members. This higher multiplier is designed to allow law-enforcement officers to retire earlier as it results in higher income replacement for each year service credit earned by a law-enforcement officer. For SPORS, the retirement multiplier is 1.85%.<sup>23</sup> The retirement multiplier for VaLORS members is 2.0 percent.<sup>24</sup> For VRS members, the retirement multiplier is 1.7% for Plan 1 members, 1.65% for Plan 2 members, and 1.0% for Hybrid Plan members.<sup>25</sup> The higher retirement multiplier for law-enforcement officers means that officers enjoy a higher income replacement rate as compared to VRS members who earn the same amount of service credit.

For example, a member of VaLORS who retires after 30 years of service with an average final compensation of \$50,000 would receive an annual retirement benefit of \$30,000 and a member of

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<sup>17</sup> Va. Code §§ 51.1-206, 51.1-216.

<sup>18</sup> Va. Code § 51.1-205. This section also allows an employer (either the Department of State Police or a local employer) to establish an earlier mandatory retirement age upon a determination that age is a bona fide occupational qualification or that the employee is incapable of performing their duties in a safe and efficient manner. By way of comparison, most federal law-enforcement personnel are subject to a mandatory retirement age of 57. 5 U.S.C. §§ 8335, 8425.

<sup>19</sup> 1980-81 Op. Atty Gen. Va. 327 ("If a locality has elected to give its police officers the benefits provided by the State Police Officers Retirement System, then it must also retire its police officers at the times provided" for members of SPORS).

<sup>20</sup> Va. Code § 51.1-124.3.

<sup>21</sup> Va. Code § 51.1-153. Some political subdivisions require employees to reach age 55 with at least 30 years of service credit to be eligible for an unreduced retirement benefit.

<sup>22</sup> Va. Code § 51.1-153.

<sup>23</sup> Va. Code § 51.1-206. A local employer that is providing enhanced benefits to its law-enforcement officers can choose to provide a retirement multiplier of either 1.7% or 1.85%, so the retirement multiplier for some local law-enforcement officers may be equal to, but not exceed, the retirement multiplier for Plan 1 members.

<sup>24</sup> Va. Code § 51.1-217. Certain members of VaLORS are subject to a 1.7% retirement multiplier. These members, however, are also eligible for a hazardous duty supplement while VaLORS members who are subject to the 2.0% multiplier are not eligible for a hazardous duty supplement. See n. 20, *infra*.

<sup>25</sup> Va. Code §§ 51.1-155, 51.1-169.



SPORS with the same length of service and average final compensation would receive an annual retirement of \$27,750.<sup>26</sup> However, and as explained below, SPORS members are eligible for a supplement, currently \$16,884 annually, and VaLORS members in most cases are not eligible for a supplement. By comparison, the annual retirement benefit would be \$25,500 for a similarly situated Plan 1 member and \$24,750 for a similarly situated Plan 2 member.<sup>27</sup>

## Hazardous Duty Supplement

Members of SPORS and local law-enforcement officers whose employers are providing SPORS-like benefits who retire with at least 20 years of hazardous duty service credit will also receive a hazardous duty supplement, which is a dollar amount added to the officer's monthly retirement payment.<sup>28</sup> Once an officer is credited with at least 20 years of hazardous duty service, the officer generally retains eligibility for the supplement if the officer moves to a nonhazardous duty position. A retired officer will continue to receive the hazardous duty supplement until the officer reaches normal Social Security retirement age.<sup>29</sup>

The hazardous duty supplement was first added as a benefit in SPORS in 1966.<sup>30</sup> The hazardous duty supplement was created as a method to provide retired law-enforcement officers with a bridge to Social Security in recognition of the fact that many members of SPORS could retire well before they would be eligible to receive Social Security benefits. JLARC explained the connection between the hazardous duty supplement and Social Security benefits as follows:

[Certain law-enforcement officers] are eligible to retire with full benefits as early as age 50 with at least 25 years of service.

Therefore, these employees tend to have slightly shorter tenures, and they often retire before they are eligible for Social Security benefits, which means they need to rely on their VRS benefit and any personal savings prior to Social Security eligibility. (Most individuals are not eligible to receive any form of Social Security payments before the age of 62.) Therefore, members of these plans would have significantly lower income replacement rates than they would if they had unreduced Social Security benefits. For

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<sup>26</sup> A similarly situated local law-enforcement officer whose employer is providing enhanced retirement benefits would receive an annual retirement benefit of \$27,700 or \$25,500 depending on whether the locality opted to provide a retirement multiplier of 1.85% or 1.7%.

<sup>27</sup> A Hybrid Plan member with 30 years of service credit would receive an annual retirement benefit from the defined contribution portion of the Hybrid Plan of \$15,000.

<sup>28</sup> Va. Code § 51.1-206. Certain sheriff's offices are permitted to opt out of providing the statutory hazardous duty supplement if they provide a higher supplement to their deputies under Va. Code § 51.1-138. When VaLORS was first established in 1999, its members were eligible for the hazardous duty supplement. 1999 Va. Acts ch. 585. In 2001, VaLORS was amended to increase the retirement multiplier for its members from 1.7% to 2.0% in lieu of receiving the hazardous duty multiplier. 2001 Va. Acts ch. 804. Members employed in a VaLORS position on June 30, 2001, and on July 1, 2001, could elect the 2.0% retirement multiplier or to retain the 1.7% retirement multiplier as well as their eligibility for the hazardous duty supplement, provided that they remained continuously employed in a VaLORS position until retirement. Va. Code § 51.1-217. All members who joined VaLORS after July 1, 2001, are ineligible for the hazardous duty supplement.

<sup>29</sup> Va. Code § 51.1-206. VaLORS members who retained their eligibility for the hazardous duty supplement will receive it until they reach age 65. Va. Code § 51.1-217.

<sup>30</sup> 1966 Va. Acts ch. 628.

example, if a SPORS member retired at age 55 with 25 years of service, this individual would only replace approximately 46 percent of their pre-retirement income through their VRS benefit (1.85 X 25). . . . Without Social Security, and assuming pre-retirement earnings of \$40,000 a year, members of these plans would need to replace between 42 and 38 percent of their income through other means, making an affordable retirement less likely at that time.

To assist SPORS members in bridging the income replacement during the period in which these individuals are not yet eligible to receive any form of Social Security, these employees are also eligible for a hazardous duty supplement, which begins when the employee retires and ends when the employee reaches Social Security's normal retirement age.<sup>31</sup>

In 1966 when the hazardous duty supplement was first instituted, it was set at \$1,620 per year.<sup>32</sup> The amount of the hazardous duty supplement has been increased over the years and the current amount is \$16,884 per year. The amount of the hazardous duty supplement is evaluated every two years and may be adjusted based upon increases in Social Security benefits during that two-year period.<sup>33</sup>

## Background – Return to Work

In 2017, in response to state agencies' indication that recruiting and retaining qualified employees was difficult, JLARC published their report, [Total Compensation for State Employees, 2017 \(RD116\)- November 13, 2017](#), reviewing total compensation across the Commonwealth. JLARC made several recommendations in that report, generally focused on the importance of employee compensation and, in part, to "identify cost-effective approaches to ensure agencies can employ an effective workforce." The report found that, when surveyed, more than twice as many employees indicated salary was the most important factor in compensation, over health insurance as the next most important factor. The report indicated that employees gave salary dissatisfaction as the most common reason for considering leaving a job in the next year.

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***The 2017 JLARC report calls salary "the most effective mechanism that Virginia can use to recruit and retain employees..."***

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The report further highlighted that, compared to other employers, state benefits are the most attractive factor in employee compensation since salaries are less competitive. The report determined

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<sup>31</sup> [RD48 \(Published 2012\) – Joint Legislative Audit and Review Commission, Review of Retirement Benefits for State and Local Government Employees - December 2011 \(virginia.gov\)](#). See also [HD5 \(1973\) - Report of the Virginia Advisory Legislative Council, State Police Compensation and Retirement](#):

Under the present system, State Police Officers are allowed to retire at age fifty-five; however, these early retirees are not entitled to Social Security benefits at this time. Presently, § 51-151 of the Code of Virginia provides for a \$170 a month supplement until age sixty-five for early retirees to approximate the primary Social Security benefits.

<sup>32</sup> 1966 Va. Acts ch. 628.

<sup>33</sup> Va. Code § 51.1-206.

that Virginia's retirement benefits were generally 136% of the market median, but salaries were at 91% (see Figure 2-1 on page 14 of the JLARC report). The JLARC report noted that over a ten-year period, the state's spending on compensation decreased as a proportion of the operating budget, while spending on retirement benefits increased.

When considering opportunities to improve recruitment and retention of employees using retirement benefits as a tool, it is essential to understand how VRS benefits are calculated.

- Employers participating in VRS pay an employer contribution rate which is set by the VRS Board of Trustees following valuation by the VRS plan actuary.
- That employer contribution rate is included in the Commonwealth's Appropriation Act and employers pay it as a percentage of payroll.
- Further, employees pay an employee contribution rate as a percentage of their individual salary.
- Both contributions are invested by VRS, and the contributions plus investment income are used to pay the defined benefit (DB) portion of retirement benefits.
- Each retiree's DB benefits are calculated using a formula set forth in the Code of Virginia which includes their individual Average Final Compensation (AFC), which is the highest three consecutive years of salary for Plan 1 members and 60 months for Plan 2 and Hybrid Plan members.
- Additionally, for Hybrid Plan members the defined contribution (DC) component of retirement benefits is also based on a percentage of an employee's salary that they choose to contribute, plus any potential employer match for which they may qualify.<sup>34</sup>

Therefore, higher salaries translate into overall higher retirement benefits, with minimal impact to the status of the VRS Trust Fund.

## 2022 Return to Work Report

VRS' 2022 report covers RTW, federal laws and regulations on RTW, Virginia RTW laws, and RTW in other states in depth. The information is generally not included in this report to avoid repetition. However, some of the same discussion is included as needed to address the study mandate.

As discussed in detail in the 2022 report, 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. The existing return-to-work provisions provide considerable flexibility, 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, thereby earning additional service credit.
- 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:

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<sup>34</sup> This is only applicable to members of the Hybrid Plan. Law-enforcement officers are generally ineligible to be members of the Hybrid Plan.

- (i) a part-time position with the same VRS-covered employer<sup>35</sup> they retired from 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 with a VRS-covered employer that typically 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 four categories allowed under the *Code of Virginia* after the required six consecutive calendar month break in service (effective July 1, 2023; before that date, full-time employment required a 12 consecutive calendar month break in service). For retirees employed in each of these four categories, the employer must include the retiree’s compensation in membership payroll subject to employer contributions.

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***Benefits counsel advises that in order to comply with the IRC, the break in service precludes work in any capacity, such as volunteer service, part-time work, or potentially contracting for a third-party and assigned to the same employer from which the member retired.***

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## Recent Changes

The General Assembly recently passed legislation, effective July 1, 2023, reducing the required break in service from 12 months to six months before certain retirees can return to work full-time in positions set out in § 51.1-155(B)(3) and (4) of the *Code of Virginia*. This legislation also adopted an actuarial best practice and required employers to include the compensation of retirees who return to work in one of these positions in membership payroll subject to required employer contributions.<sup>36</sup> These changes are significant because, as discussed in the 2022 report, changes to the length of the break in service could impact retirement patterns and thereby affect the VRS funded status, contribution rates, and bond ratings. Given that these changes just took effect, VRS has not had sufficient time to compile reliable data regarding the impact of these changes.

The Commonwealth has appropriated funds over the past several years to provide cash infusions for the VRS Trust Fund. These infusions were intended to help bring down the Fund’s unfunded liability. It is likely that policy changes allowing retirees to return to work sooner and still stay within the requirements of federal law will have both an immediate and long-term impact on the unfunded liability of the Fund and on employer contribution rates. Anticipated increases in the unfunded liability as a result of these changes can be expected to potentially negate or at best minimize of the effect of the recent cash infusions.

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<sup>35</sup> For retirement purposes, the Commonwealth is considered one employer.

<sup>36</sup> School divisions have been required to make employer contributions for retired law-enforcement officers employed as school security officers since July 1, 2020. 2020 Va. Acts ch. 968, 969.

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***Most alternative RTW provisions proposed recently will increase the VRS Trust Fund's unfunded liability and increase costs related to future employer contributions. The increased expenses could eliminate the positive effect of recent cash infusions to the Fund.***

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In any scenario that allows retirees to return to work sooner after retirement and continue to receive their retirement allowance, active members are encouraged to retire sooner than they would absent these exceptions. Earlier retirements change retirement patterns and cause deviations from plan assumptions.

VRS' return-to-work provisions are designed to balance protecting the plans while allowing flexibility for employers and retirees. Virginia's provisions are largely consistent with those 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.

### Federal Law and Internal Revenue Service Guidance

Other than in-service distributions allowed by the IRS at no earlier than normal retirement age or age 59½ with no break in service,<sup>37</sup> if the plan documents allow, 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 employment with the same employer or any other covered position without a prearranged agreement with the employer to reemploy. As noted in VRS' 2022 report, the IRS has provided limited guidance regarding 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 require a bona fide break-in-service. This serves to protect the retirement plan from violating IRC rules related to prearrangement and proper federal tax reporting and withholding and from unexpected and detrimental changes in retirement patterns, and to prevent double dipping, or even triple-dipping if a retiree also receives the hazardous duty supplement, intended to help bridge the gap from retirement to Social Security eligibility, or cost of living adjustment.

As further noted in the 2022 report, IRS guidance under IRC § 410, as cited in Private Letter Ruling (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. 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.

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<sup>37</sup> Normal retirement age is defined by the plan but must meet specific IRS rules. If distributions commence at normal retirement age but prior to age 59½, a 10% early distribution tax penalty applies to the member. In general, distributions from the 457(b) components of the VRS Hybrid Plan cannot be made prior to age 59½.

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***IRS guidance (Information Letter (INFO) 2000-0245) indicates that 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 retirement distributions.***

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In addition, as discussed in the 2022 report, to avoid a potential tax penalty 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. This federal law applies to all employers rehiring a former employee, regardless of whether the employee retired or separated from service without retiring. More information is available in the 2022 report, for state employers from the Department of Human Resource Management (DHRM), or for other employers from their human resource department or benefits counsel.

Section 401 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 without a bona fide break in service while continuing to receive a retirement benefit (an “in-service distribution”). Virginia law does not allow for in-service distributions, except for Virginia’s return-to-work provisions expressly providing for a return to work after a break in service for critical shortage positions identified by the Department of Education and school security officers that all require a break in service.<sup>38</sup>

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.<sup>39</sup> These and other benefits allow members to defer taxation 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.

It is also necessary to recognize that a bona fide break in service helps to protect retirees from a 10% early distribution tax penalty assessed by the IRS under 26 U.S.C § 72(t). In Edwards v. Commissioner, T.C. Memo 1989-409, aff’d, 906 F.2d 114 (4th Cir. 1990), the Tax Court decided that just a reduction in an employee's work schedule from full-time to part-time does not constitute a separation from service. Instead, a true separation from service occurs when an employer no longer exercises or retains the right to exercise the direction and control necessary under the common law rules to maintain the relationship of employer and employee. Of importance to retirees, this means that if the IRS finds that a retiree has returned to work with the same employer from which they retired without a bona fide break in service, the retiree may be considered to have received an early distribution from

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<sup>38</sup> While the IRC allows in-service distributions without a tax penalty with no break in service as early as age 59½; Option Two set out in this report proposes to use the existing normal retirement age of 60 as the threshold for retired law-enforcement officers to minimize impact to the plan.

<sup>39</sup> [Tax Consequences of Plan Disqualification | Internal Revenue Service \(irs.gov\)](#).

their retiree account. In such cases, the retiree will have to pay a federal 10% early distribution tax penalty if they are not at least 59½. In addition, the IRS requires VRS to properly report all payments which are potentially subject to the 10% early distribution penalty, and VRS could be liable for any misreporting.

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***A bona fide break in service helps protect retirees who are younger than 59½ from a federal 10% early distribution tax penalty.***

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The U.S. Code requires the additional 10% tax on in-service distributions paid to members prior to age 59 ½ unless an exception applies. Relevant exceptions include:

- distributions made after the member's death;
- distributions made due to the member's disability (defined by federal law);
- substantially equal periodic payments commencing after the member separates from service and payable over the life of the member or the member and designated beneficiary;
- distributions made to a member who separates from service after age 55 (for qualified public safety employees, which includes law-enforcement officers, distributions after separation are allowed at age 50 or after 25 years of public safety service, whichever is earlier);
- distributions pursuant to a qualified or approved domestic relations order; and
- distributions made due to a levy under USC § 6331.<sup>40</sup>

Note that both the substantially equal payments (retirement benefit payments) and distributions to a member after separation (refunds) require a separation of service.

In PLR 201147038, the IRS determined that

Employees who "retire" on one day in order to qualify for a benefit under the Plan, with the explicit understanding between the employee and the employer that they are not separating from service with the employer, are not legitimately retired. Accordingly because these employees would not actually separate from service and cease performing services for the employer when they "retire" these "retirements" would not constitute a legitimate basis to allow participants to qualify for early retirement benefits (which are then immediately suspended). Such "retirements" will violate section 401(a) of the Code and result in disqualification of the Plan under section 401(a) of the Code.

**Note:** In PLR 201147038, the IRS uses the term "early retirement benefit" to describe any benefit that commences prior to normal retirement age as specified in the plan.

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<sup>40</sup> 26 U.S.C § 72(t)

The IRS also stated that

When an employee legitimately retires, he separates from service with the employer. Accordingly if both the employer and employee know at the time of "retirement" that the employee will, with reasonable certainty, continue to perform services for the employer, a termination of employment has not occurred upon "retirement" and the employee has not legitimately retired.

This language is important because the IRS does not refer to the employee stopping work; instead, the IRS says the employee will "continue to perform services." Outside benefits counsel indicates that this includes volunteer services, part-time work, and consulting. Further, in INFO 2000-0245 to U.S. Senator Sarbanes, the IRS explained that a retirement distribution could be made only when the employer/employee relationship is completely severed.

In the 2004 proposed regulations on phased retirement amending Treasury Regulation § 1.401(a)-1(b) and adding § 1.401(a)-3, the IRS stated that

[A]pproaches, such as permitting benefits to be fully available if an employee works reduced hours as part of phased retirement or permitting distributions of the entire accrued benefit to be paid as of a specified age prior to normal retirement age, are fundamentally inconsistent with the §1.401(a)-1(b) principle that benefits be paid only after retirement. (Emphasis added.)

Final Treasury regulations provide that a reduction in hours is not retirement, and retirement benefits may not be paid just due to a reduction in hours. Outside counsel has indicated that this cumulative guidance means that "service" includes part-time work, volunteer service, and contracting, and that all such service must stop during the bona fide break in service.

## 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), as amended effective July 1, 2023, VRS uses a six-month break in service when looking at statutory exceptions for retirees wishing to return to work full-time in a VRS-covered position. (VRS recommends a 12-month break in service.) This six-month break-in-service requirement is a change from the long-standing 12-month break-in-service that had been in place since 2001 and was the result of considerable analysis and review by VRS and JLARC. The 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. Since the break in service was only recently changed, it is unclear whether the IRS will consider a six month break in service sufficient. Also, there has not been enough time to determine what impact this change will have on VRS retirements and retirement patterns.



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***Virginia law currently allows retirees to return to work only for limited positions and only after the required break in service.***

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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.

Current Virginia law and the VRS plan documents do not provide for an in-service distribution without a break in service. Legislation would be required. Current Virginia law allows generally for employers to provide bonus payments. However, legislation tailored to the proposed retention bonuses or amendments to existing language may be required.

## Returning To Work After Retirement

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.” This implies a complete withdrawal or conclusion.

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, however, if there are fewer workers to replace these employees when they ultimately leave the workforce.

However, 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. Detrimental changes to retirement patterns are more likely to occur with shorter breaks in service or with an in-service distribution option with no required break that incentivizes members to retire sooner than anticipated.

This can be mitigated if Virginia imposes a reasonable break in service requirement. Further, the VRS plans are assumed to be ongoing entities. While we do not assume a growing member base, we do assume a level population, meaning that when a member terminates or retires their VRS-covered position will be filled by a new active member. This allows VRS to collect contributions as a percentage of covered payroll. If more positions are filled by retirees and their pay is not included in the covered payroll of the employer, employer contribution rates will inherently increase since they will be spread over a smaller covered payroll. 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 to work are the only protections for the VRS Trust Fund.

## Actuarial and Plan Impacts of Return to Work

When reviewing Virginia laws prior to the 2022 report, 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 and to require employer contributions for returning retirees. 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, it is by nature a stopgap that temporarily maintains the existing workforce rather than a comprehensive, long-term solution to develop or recruit new employees, though it could potentially serve as a retention tool.

Retention bonuses for law-enforcement officers for each year they continue active employment past retirement eligibility might have a positive impact on retirement patterns in that it would be likely to encourage members to stay actively employed longer. The officer would continue to receive their regular active salary and would receive the annual bonus each year after they reach retirement eligibility. This policy choice also could potentially help resolve some staffing shortages, but is also a stopgap that temporarily maintains the existing workforce without providing a comprehensive, long-term solution to develop or recruit new employees.

Higher salaries, more frequent raises, or other compensation changes such as those described in the 2017 JLARC compensation report would be potential long-term tools that would improve staffing pipelines, improve recruitment of new law-enforcement officers, and improve retention of existing officers, without negatively impacting the VRS Trust Fund. Further, as described above, higher salaries increase retirement benefits without significant risk to the Fund and without jeopardizing VRS' plan qualification status.

### 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. For example, while Virginia's current statutory return-to-work exceptions require employer contributions be made for retirees returning to work full-time in a critical shortage position or as a school security officer, these contributions do not fully protect the VRS Trust Fund from the deleterious impacts of paying benefits sooner, longer, and without adequate time to fund the benefits. Over time this scenario will lead to higher contribution rates. This is more likely if Virginia implements an in-service distribution option. Since the IRS does not require a break in service for in-service distributions, there is little reason for a member who meets the age requirements not to retire, begin receiving a retirement benefit, and then immediately return to employment and also receive a salary. Higher contribution rates will directly impact state and local budgets. Less restrictive return to work provisions could result in higher contribution rates. When contribution rates sharply increase, employers' ability to make 100 percent of the actuarially determined required contributions (ADC) diminishes. The bond rating agencies look skeptically on plan sponsors and employers that do not fully fund the ADC which in turn could impact bond ratings.

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***Higher contribution rates are more likely if an in-service distribution is implemented, since there is no break in service required to deter members from retiring immediately upon eligibility, begin receiving a retirement benefit, and immediately returning to employment and receiving a salary.***

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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. Allowing members to retire and immediately return to work, as suggested in Option Two, is expected to impact the VRS Trust Fund more than Option One or current return to work provisions that require a meaningful break in service.

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***Allowing members to retire and return to work with no break in service means that VRS benefits will be paid sooner than expected, with less time for contributions to be invested and generate earnings needed to fund benefits, which will also be paid for longer than expected.***

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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 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.

## 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. Virginia's current return to work opportunities that do not require unretiring were discussed in detail in the 2022 report. Only a summary is provided here for ease of reference.

### Part-time or Non-covered Employment

In general, retirees can continue to receive retirement benefits while working in a part-time position of up to 80% of the hours of a VRS-covered position with a VRS-participating employer after a

bona fide break in service of one full calendar month over a period when they would otherwise be working. Part-time employees generally do not accrue retirement benefits and are not reported to VRS.

## 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 bona fide break in service.

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

In general, a retiree is not permitted to be employed full-time with a VRS-participating employer and continue to receive VRS benefits. The General Assembly has established four position categories that are exempt from this general rule if the employee has a bona fide break in service of six consecutive calendar months from the date of retirement. An eligible retiree may return to work full-time in one of these position categories and continue to receive retirement benefits 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),
- school security officers (since 2020), and
- specialized student support personnel employees in a critical shortage position (since July 1, 2023).

These employed retirees do not accrue additional retirement benefits and all positions require employers to include the compensation of the retirees in membership payroll subject to required employer contributions.

## 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.

Highlighted in VRS' 2022 report is an in-depth discussion of other plans in general, including several plans that have made recent changes. Notably, more than one plan is placing more limits on return to work and increasing the break in service period. According to data provided by the National Association of State Retirement Administrators (NASRA), return to work generally is considered by plans to be an exception to the IRS rule of stopping work entirely.

In reviewing return-to-work provisions governing retired law-enforcement officers in other states, several common features are revealed, including the duration of the break-in-service requirement and setting caps on hours, duration of post-retirement employment, or earnings from post-

retirement employment. This review of return-to-work provisions in retirement plans in other states demonstrates that Virginia's current return-to-work provisions are largely consistent with the provisions in numerous other states.

At the outset, it is important to note that not all states make any special provision for retired law-enforcement officers to return to work, that is, retired law-enforcement officers are subject to the same return-to-work provisions as other government employees. Examples of states that have no law-enforcement-specific return-to-work provisions include Arkansas, Hawaii and Wyoming.<sup>41</sup>

Other states allow retired law-enforcement officers to return to work on part-time or on a temporary basis or impose caps on the number of hours a retired law-enforcement officer may work, similar to VRS' part-time or interim scenarios. For example, in California, retired law-enforcement officers who return to work cannot work more than 960 hours per year, or the equivalent of 24 40-hour weeks.<sup>42</sup> It is worth noting that Virginia's current return-to-work policy for retirees returning to part-time employment already permits a retiree, after a one full calendar month break in service, to work up to 80% of the hours of a full-time employee, which often exceeds the cap in other states on the number of hours a retired law-enforcement officer may work or the amount of compensation they may receive.

Retirement plans in some states set caps on the amounts a retired law-enforcement officer can earn during the officer's post-retirement employment or require a reduction in the amount of retirement benefits paid to the retired law-enforcement officer during the officer's post-retirement employment. For example, in Kansas, a retired law-enforcement officer who returns to work is limited to earning \$25,000 per year if the officer returns to work for an employer for whom the officer worked during the officer's final two years of covered employment.<sup>43</sup>

For this report, particular focus was paid to the jurisdictions contiguous to the Commonwealth (D.C., Kentucky, Maryland, North Carolina, Tennessee, and West Virginia), since Virginia law-enforcement agencies are directly competing with the law-enforcement agencies in these jurisdictions for candidates to fill vacant law-enforcement positions.<sup>44</sup> Table 2 summarizes the relevant return-to-work provisions in the retirement plans in these six jurisdictions. As Table 2 illustrates, the return-to-work provisions in these six jurisdictions often involve a combination of the features discussed above, including break-in-service requirements and caps on hours, earnings, and the duration of post-retirement employment.

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<sup>41</sup> Ark. Code § 24-4-520; Hawaii Rev. Stat. §§ 88-9, 88-42, 88-98; Wyo. Stat. § 9-3-415, 9-3-432.

<sup>42</sup> Cal. Gov't Code § 7522.56.

<sup>43</sup> Kan. Stat. § 74-4957.

<sup>44</sup> According to DCJS, over 43% of the law-enforcement officers who have transferred from an out-of-state law-enforcement agency to a Virginia law-enforcement agency under the Option 5 Out-of-State Lateral Program in the previous two years came from one of these six jurisdictions.

Table 2. Return-to-Work Provisions for Law Enforcement - Contiguous Jurisdictions

State	Break in Service	Years of Service	Duration Limits	Earnings Cap	Other Requirements
<b>D.C.</b> <sup>45</sup>	Not specified	NA	Not to exceed 5 years	Salary is subject to cap that varies depending on the position filled	NA
<b>Kentucky</b> <sup>46</sup>	1 month	Eligibility requires at least 20 years of service credit	Not to exceed 1 year (additional one-year appointments permitted)	NA	Number of retirees an agency can employ is limited based on the size of the agency
<b>Maryland</b> <sup>47</sup>	45 days	NA	NA	<b>Local:</b> Retirement allowance reduced by the amount allowance plus compensation exceeds average final compensation used to calculate allowance <b>State:</b> No reduction	NA
<b>North Carolina</b> <sup>48</sup>	<b>State:</b> 6 months <b>Local:</b> 1 month	NA	NA	Salary paid cannot exceed \$37,240 (2022)	NA

<sup>45</sup> D.C. Code § 5-761.

<sup>46</sup> Ky. Rev. Stat. §§ 61.637, 70.292, 70.293, 95.022.

<sup>47</sup> Md. Code, State Pers. & Pens. §§ 24-405, 26-403, 28-402.

<sup>48</sup> Return-to-work provisions not specific to law-enforcement officers but apply to all employees covered by the retirement system. N.C. Gen. Stat. §§ 128-21, 128-24, 135-1, 135-3.

State	Break in Service	Years of Service	Duration Limits	Earnings Cap	Other Requirements
				amount) or 50% of gross pre-retirement salary	
	60 days	NA	Not to exceed one year (additional one-year appointments permitted)	Retiree's retirement benefit reduced and retiree receives 70% of benefit amount during return-to-work period	NA
<b>Tennessee</b> <sup>49</sup>					
	<b>Deputy sheriffs:</b> 180 days <b>Other officers:</b> Not specified		<b>Deputy sheriffs:</b> Not to exceed 5 years <b>Other officers:</b> Temporary or part-time employment only	<b>Other officers:</b> \$25,000	<b>Deputy sheriffs:</b> Employing sheriff has fewer than 5 full-time deputies in their employ
<b>West Virginia</b> <sup>50</sup>					

As Table 2 shows, the return-to-work provisions for retired law-enforcement officers in the jurisdictions contiguous to Virginia vary significantly, which is to be expected given such provisions are a function of the plan design of each plan. However, the return-to-work provisions in these six jurisdictions share some common features. In general, these plans require a break-in-service before a retiree may return to employment, ranging from one to six months in length. Many of these plans also impose durational limitations on post-retirement employment, restricting the period of post-retirement employment to a fixed number of years. Additionally, the majority of these plans place caps on the amount a retired law-enforcement officer who returns to work may earn in the position or reduce the amount of the retirement allowance the retired law-enforcement officer can receive during the period

<sup>49</sup> Tenn. Code § 8-36-809.

<sup>50</sup> W. Va. Code § 5-10-48, 7-14D-24a, 8-22A-34.

of post-retirement employment. VRS' current 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 comparable to and in many cases more flexible than statutory and agency policies of many retirement systems. Moreover, Virginia's current return-to-work provisions available to law-enforcement officers do not impose earning limits on retirees who return to work or limits on how long a retiree can continue to work in a part-time positions after retirement.

## Law Enforcement Staffing Levels

The genesis of this report are recent concerns raised by policymakers about perceived staffing shortages being experienced by law-enforcement agencies. For example, on October 17, 2022, Governor Youngkin announced his Bold Blue Line Initiative.<sup>51</sup> Among the stated goals of the Initiative is to support the recruitment of new law-enforcement officers to compensate for current staffing shortages, noting in the Governor's press release that some cities in Virginia face vacancy rates approaching 40% and the Virginia Sheriffs' Association estimates vacancy rates nearing 20% in sheriffs' offices.

### Staffing Levels – National

At a national level, a recent report from the Congressional Research Service (CRS) finds that the rate of full-time law-enforcement officers per 1,000 people has remained relatively consistent over the past decade. In its report, [Congressional Research Service, State and Local Law Enforcement Officer Staffing \(Sept. 12, 2022\)](#), CRS reviewed data from the U.S. Census Bureau's Annual Survey of Public Employment and Payroll and found that the rate of full-time law-enforcement officers per 1,000 people was 2.1 in 2012 through 2017, rose to 2.2 for 2018 through 2020, and returned to 2.1 in 2021. During the 10 years of data reviewed, the total number of officers only declined twice from year to year, once in 2013 and once in 2014. CRS' report notes that the data provides insight into changes in law-enforcement staffing at a national level, but it does not demonstrate what individual agencies may be experiencing.

A recent report from the Police Executive Research Forum (PERF) provides some understanding of law enforcement staffing levels on an agency level.<sup>52</sup> PERF surveyed its member law-enforcement agencies regarding their staffing levels. Based on their 182 responses, PERF found that the hiring of law-enforcement officers is increasing "as responding agencies reported hiring more sworn officers in 2022 than in 2021, 2020, or even 2019—the last pre-pandemic year." However, according to the survey, this increase in hiring is offset by increases in both resignations and retirements of current officers. Based on these combination of factors, PERF's survey showed that total staffing of law-enforcement officers has dropped nearly 4.8% from 2019 to 2022.

### Staffing Levels – Virginia

Determining current law-enforcement staffing levels in Virginia poses some challenges. There is currently no comprehensive source for data on vacant full-time law-enforcement officer positions throughout the Commonwealth. The Virginia Compensation Board maintains data on authorized

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<sup>51</sup> [Office of Governor Youngkin Press Release \(Oct. 17, 2022\)](#)

<sup>52</sup> [Police Executive Research Forum, New PERF survey shows police agencies are losing officers faster than they can hire new ones \(Apr. 1, 2023\)](#)



positions in sheriffs’ offices and DCJS maintains data on the number of certified law-enforcement officers in the Commonwealth; however, there are certain limitations on this data. For example, DCJS’ data comes from its system (TRACER) that was designed to track law-enforcement officer training records, not the law-enforcement officer population. Although outside the scope of this report, the General Assembly may wish to review whether there is a need to establish a central repository of data on law-enforcement staffing levels.

In Virginia, vacancy rate data for sheriffs’ offices was received from the Virginia Compensation Board and the Virginia Association for Chiefs of Police surveyed its member agencies for vacancy rate data.

DCJS provided vacancy data from police departments in 12 cities collected as a part of the Governor’s Bold Blue Line Initiative. The vacancy rates in these cities range from 3% to 36% for full-time law-enforcement officer positions. The table below Table 3 provides the law-enforcement officer vacancy rates in the 12 Bold Blue Line Initiative Cities.

Table 3. Law-Enforcement Officer Vacancy Rates – Bold Blue Line Initiative Cities.

City	Authorized Staffing	Current	Vacancy Rate
Chesapeake	401	356	11%
Danville	130	111	9%
Emporia	27	26	3%
Hampton	315	266	16%
Lynchburg	179	149	20%
Martinsville	43	39	9%
Newport News	457	423	7%
Norfolk	617	496	20%
Petersburg	92	87	5%
Portsmouth	253	161	36%
Richmond	755	585	22%
Roanoke	263	208	21%

Source: DCJS

In addition, vacancy rate data for sheriffs’ offices were provided by the Virginia Compensation Board and the Virginia Association for Chiefs of Police surveyed its member agencies for vacancy rate data for full-time law-enforcement officer positions. Ninety-seven police departments provided vacancy rate data in response to this survey. Tables 4 and 5 summarize the survey results by type of police department (agency type) and the vacancy rate data for sheriffs’ offices and Figures 1 and 2 illustrate the vacancy rates from a sample of city and county police departments.

Table 4. Law-Enforcement Officer Vacancy Rates, Police Departments – Survey Results

Agency Type	Authorized Staffing	Vacant Positions	Current Staffing	Vacancy Rate	Number of Agencies
Authority	126	6	120	4.8%	4
County	2,391	227	2,164	9.5%	7
City	3,2521.5	380	2,8721.5	11.7%	22
Private	95	21	74	22.1%	3
Town	829	86	743	10.4%	41
Public College	304	38	266	12.5%	12
Private College	28	5	23	17.9%	2
State Agency <sup>53</sup>	165	81	84	49.1%	6
Total Surveyed	8,060.5	1,039	7,0176.5	12.9%	97

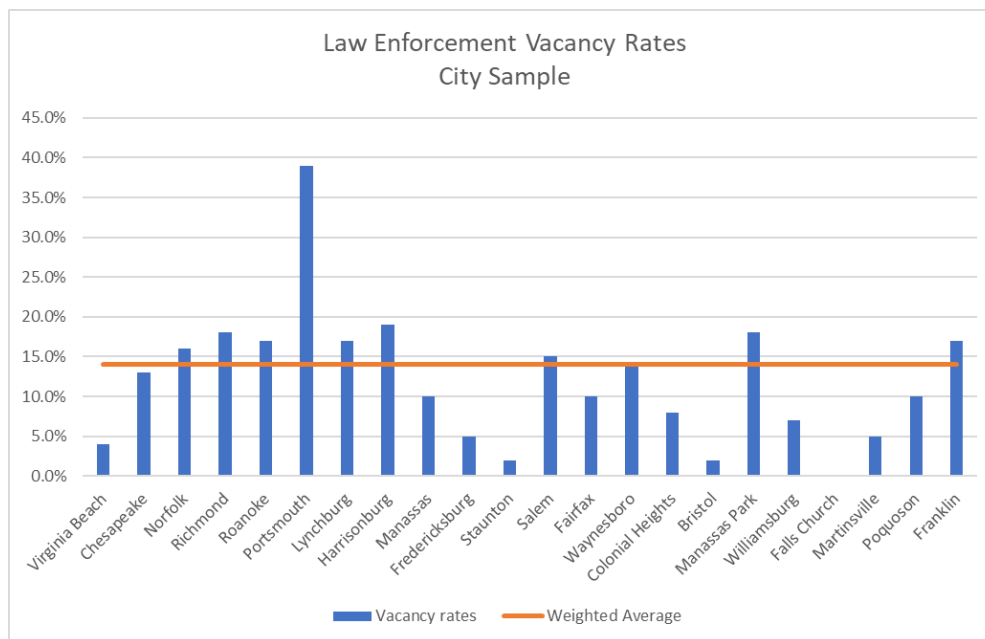
Source: Virginia Association of Chiefs of Police survey data

Table 5. Sheriffs’ Offices Vacancy Rates – Law-Enforcement Positions

	Authorized Staffing	Vacant Positions	Current Staffing	Vacancy Rate
Sheriffs/Deputy Sheriffs – Law-Enforcement Positions	1,895	358	1,537	18.9%

Source: Virginia Compensation Board

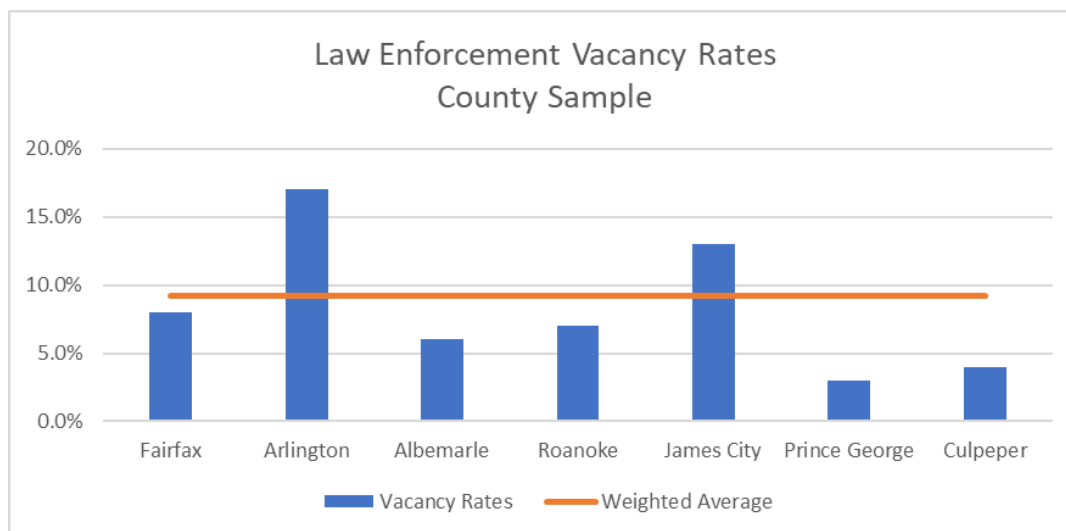
Figure 1: Sample Law-Enforcement Vacancy Rates - Cities



Source: Virginia Association of Chiefs of Police survey data

<sup>53</sup> One state agency, the Department of Motor Vehicles, Law Enforcement Division, reported an authorized staffing level of 81 and 70 vacant positions. If this agency is removed from the data, the remaining five state agencies that responded to the survey have a vacancy rate of 13.1%

Figure 2: Sample Law-Enforcement Vacancy Rates - Counties



Source: Virginia Association of Chiefs of Police survey data

The vacancy rate data set out in the tables above provide an indication of the total number of vacant full-time law-enforcement positions across the Commonwealth. However, given variations in the size and type of law-enforcement agencies and the jurisdictions served by the agencies represented in the data, the vacancy rates above cannot be confidently extrapolated to the entire Commonwealth.

### Employment of Retired Law-Enforcement Officers

While the employment of retired law-enforcement officers in full-time positions to address vacancy rates in Virginia’s law-enforcement agencies may potentially be a tool to address immediate workforce retention, it does not necessarily address workforce pipeline issues. Further, 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. Requiring employer contributions for or on behalf of retirees who return to work full time helps mitigate this impact but does not fully remediate the impacts to the fund.

Another important point to consider when determining whether to permit retired law-enforcement officers to return to work in full-time law-enforcement positions is the underlying rationale for the enhanced retirement benefits provided to law-enforcement officers. As discussed at length above, the current retirement benefits afforded most law-enforcement officers in the Commonwealth (early retirement age; shorter service requirement; higher retirement multiplier; hazardous duty supplement) were designed to compensate for the risks, both physical and mental, experienced on the job by law-enforcement officers, as well as to permit earlier retirement of officers before there is any decline in their ability to physically perform the duties of a law-enforcement officer. Allowing retired law-enforcement officers to return to work full-time as a law-enforcement officer may suggest that the underlying assumptions upon which enhanced retirement benefits for law-enforcement officers could

be revisited in light of changed circumstances since the initial provision of enhanced retirement benefits in 1950 with the creation of SPORS.

Finally, while addressing whether retired law-enforcement officers are capable of performing certain law-enforcement duties is beyond the expertise of VRS, the current state of Virginia law renders such an analysis of the effectiveness and efficacy of employing retired law-enforcement officers in different law-enforcement positions an impossible task. While in practice, officers working at a law-enforcement agency are assigned to different duties and functions (e.g., patrol, detective, etc.), Virginia law does not distinguish between law-enforcement officers based on the types of duties the officers perform.

In general, all law-enforcement officers in the Commonwealth are tasked with the same broad fundamental duties and authority. A law-enforcement officer in Virginia, by definition, “is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth[.]”<sup>54</sup> Thus, although an agency may intend to assign a retired officer who has returned to work to a role that is assumed to be less physically demanding than a typical assignment, such as investigating cold cases, that retired officer will still be expected, when feasible, to respond to all situations they encounter necessitating a law-enforcement response.<sup>55</sup> In fact, an officer’s public duty to uphold the law may extend while they are off duty.<sup>56</sup>

In recognition of the importance of the proper exercise of a law-enforcement officer’s responsibilities, Virginia law requires that all officers be certified through DCJS.<sup>57</sup> In order to obtain or maintain certification, an officer must successfully complete the training requirements established by the *Code of Virginia* and DCJS.<sup>58</sup> Virginia law only provides for one type of law-enforcement certification and a certified law-enforcement officer has all the powers afforded to the officer under the laws of Virginia and no distinction is made based on the type of work to be performed.

Further, it is important to note that law-enforcement certification in Virginia is portable. That means once a law-enforcement officer has been certified, such officer may be employed by any law-enforcement agency in the Commonwealth to perform any function. Thus, a retired law-enforcement officer employed to investigate cold cases by one law-enforcement agency could subsequently be hired for patrol duties by another agency. There is no current mechanism under Virginia law to limit retired law-enforcement officers who return to work from working in certain law-enforcement capacities or to track what capacities in which retired law-enforcement officers who return to work are employed.

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<sup>54</sup> Va. Code § 9.1-101. *See also* Va. Code § 15.2-1704 (officers are “responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.”).

<sup>55</sup> *See Davis v. Commonwealth*, 44 Va. App. 562 (2004) (recognizing that law-enforcement officers are generally considered to be under a duty to act in their lawful and official capacity 24 hours a day). *See also* 1995 Op. Atty Gen. Va. 88 (noting same).

<sup>56</sup> *See Davis*, n. 36, *infra*.

<sup>57</sup> Va. Code § 15.2-1706.

<sup>58</sup> Va. Code §§ 9.1-102, 9.1-114, 15.2-1706. Certification and training requirements apply equally to law-enforcement officers employed full-time or part-time (unless employed part-time for 80 hours or less per year). Va. Code § 9.1-114. Under legislation enacted in 2022, DCJS shall exempt retired law-enforcement officers who return to work as a law-enforcement officer within 60 calendar months from certain training requirements. Va. Code § 9.1-116.

## Potential Return-to-Work Modifications

In the 2022 report, VRS included several options for the General Assembly to consider that would allow VRS retirees to return to work sooner while continuing to receive their retirement benefits. 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 negatively impacting the retirement plan.

The options included in the 2022 report and the additional options included in this report were designed with risk mitigation in mind. Since, as noted in the 2022 report, under [§ 51.1-160](#) of the *Code of Virginia*, VRS members receiving disability retirement generally cannot return to work and continue to receive their retirement benefits, none of the options allow VRS members retired for disability to return to work and continue to receive a disability retirement benefit.

The modification options for retired law-enforcement officers analyzed in this report are as follows:

- Option One: Allow retired law-enforcement officers to return to work after a six-month break in service and require employer contributions for retirees returning to work full-time.
- Option Two: Allow retired law-enforcement officers who have attained age 60 to return to work with no break in service, consistent with IRS guidance, and require employer contributions for retirees returning to work full-time. (Importantly, while law-enforcement officers may be entitled to retire earlier than age 60, retirees who take an in-service distribution prior to age 59½ will be subject to the IRS 10% early distribution penalty if there has not been a separation of service.)
- Retention Bonus: Provide a bonus to each law-enforcement officer for each year the officer remains actively employed after reaching retirement eligibility.
- Salary Increase: Increase starting salaries for law-enforcement officer positions and provide regular salary increases as recommended in the 2017 JLARC compensation report.

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

Of note, the in-service distribution with no break in service option (Option Two) would allow retirees who have reached a specific age to return to work with no break in service, consistent with IRS guidance. This would be a significant departure from how VRS currently administers retirement benefits. As such, the adoption of Option Two would require that VRS as well as employers take great care in implementing the corresponding extensive changes to current practices to ensure benefit delivery to members is not compromised.

Table 6 below summarizes Options One and Two, the retention bonus option, and the salary increase option, as well as the administrative, implementation, and plan impacts of these options.

Table 6. Summary of Options and Impacts\*

Options	Policy Change	Implementation Cost
<b>Option One</b> – Allow retired law-enforcement officers to return to work after a six-month break in service and require employer contributions	Provides additional flexibility for high-need positions	\$361,000 (one time); \$15,000 (per year, ongoing)
<b>Option Two</b> – Allow retired law-enforcement officers who reach age 60 to continue to work with no break in service while receiving retirement benefits and require employer contributions	Provides additional flexibility for high-need positions	\$620,000 (one-time); \$15,000 (per year, ongoing)
<b>Retention Bonus</b> – Provide a bonus to each law-enforcement officer for each year the officer remains actively employed after reaching retirement eligibility	Does not require a break in service and avoids significant changes to retirement patterns	No implementation cost (there may be some minimal cost if VRS reporting is required to determine eligibility)
<b>Salary Increase</b> – Increase starting salaries for law-enforcement officer positions and provide regular salary increases	Does not require a break in service and avoids significant changes to retirement patterns; automatically increases retirement benefits by increasing AFCs	No implementation cost

\*Options One and Two assume employer contributions will be paid; requiring employer contributions and age restrictions serve to help mitigate impacts to the VRS Trust Fund of retirees returning to work, and demonstrates compliance with IRC.

It should be noted at the outset that, as demonstrated in this report and the 2022 report by the analysis of retirement plans from other states, Virginia’s current return-to-work provisions are consistent with many 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.

Consistent with existing Virginia return to work laws, Options One and Two assume that employer contributions are required for any retiree returning to work full-time. This helps to partly

protect employer contribution rates and offset the impact to the VRS Fund when replacing VRS active covered positions with retired members, which could lower covered payroll.

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 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 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.<sup>59</sup>

In assessing these options, the Affordable Care Act (ACA), as well as impacts to ancillary benefits, other than pensions, such as COLA, the hazardous duty supplement, and the health insurance credit, should also be considered. While these were discussed in the 2022 report, the discussion is also relevant to the options in this report. In addition, the continued need for an eligible retired law-enforcement officer to receive the hazardous duty supplement after returning to work full-time should be reviewed.

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***The impact to ancillary benefits, such as COLAs, the hazardous duty supplement, and the HIC should be considered, as well as federal ACA requirements.***

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There are additional questions that the General Assembly may wish to consider if changes are recommended:

- **ACA** – Policy options discussed in this and the 2022 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 retirees opting to return to full-time employment in a VRS-covered position while continuing to receive retirement benefits in addition to a salary also continue to receive COLAs, designed to address the impact of inflation on retirement benefits, while employed in a full-time position with a VRS employer?
- **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 full-time employment in a VRS-covered position after retirement 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?

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<sup>59</sup> 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.

- **Hazardous duty supplement** – When considering the return-to-work options, as this report focuses on retired law-enforcement officers returning to work, special attention must be paid to the hazardous duty supplement, a retirement benefit available exclusively to certain hazardous duty employees. The hazardous duty supplement, currently \$16,884 annually, is provided to certain law-enforcement officers and other hazardous duty retirees in accordance with § 51.1-138 (B), 51.1-206(B), or § 51.1-217(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 in an effort to bridge their income until they become eligible for Social Security. However, if any of the return-to-work options discussed in this report is implemented, a retired law-enforcement officer who returns to work full-time would be receiving both their retirement allowance and a salary, which would presumably far exceed the amount of the hazardous duty supplement, thus obviating the need for a bridge to Social Security while they remain employed full-time. Moreover, continuing to pay the supplement while a retiree is working full time means that the VRS Trust Fund potentially pays the supplement sooner and longer than it would otherwise. Consideration of whether there would be a continued need for the hazardous duty supplement for retired law-enforcement officers who return to work full time should be part of any decision to implement any of the return-to-work options in this report.

For any statutory changes, VRS will need sufficient time to implement programming and communication efforts to its employers and members for any statutory changes. VRS systems are designed to prevent a member from receiving a retirement benefit while receiving a salary as an active employee which results in implementation costs for both Options One and Two. VRS' implementation costs for Option One are approximately \$361,000 in one-time costs, with approximately \$15,000 annually following initial implementation. VRS' implementation costs for Option Two are estimated at approximately \$620,000 in one-time costs, with approximately \$15,000 annually following initial implementation. These costs are 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. It is more costly and will take more time for a provision or a service requirement that applies only to certain positions versus all jobs or all existing exceptions uniformly. Suggested changes to the COLA, hazardous duty supplement, and HIC will also increase costs to implement. Additional information regarding variables in costs are discussed further below. The costs discussed here do not include potential impacts to the VRS Trust Fund such as generating liabilities from experience that differs from assumptions or to employer contribution rates. Since VRS is currently implementing major programming changes for employer contribution rates, a delayed effective date of July 1, 2025, would be requested.

### Option One: Allow Retired Law-Enforcement Officers to Return to Work After a Six-Month Break in Service

Similar to the provisions governing return to work for critical shortage and school security officer positions, Option One would allow retired law-enforcement officers to return to work in a full-time law-enforcement officer position after a six-month break in service. There is no black letter law regarding the specific length of the required break in service. Thus, while a 12-month break in service



provides greater assurance regarding sufficiency under IRS guidance, a six-month break in service along with the accompanying compliance provisions could also serve to meet the IRS facts and circumstances test.

Like the existing statutory exceptions for critical shortage and school security officer positions, Option One would require that:

- there is no prearrangement for a retiree to return to work;
- the retiree has a break in service of at least six consecutive calendar months preceding employment;
- 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. of the *Code of Virginia*), if the retiree elects to continue to receive the retirement allowance while employed; and
- the employer must include the person's compensation in membership payroll subject to employer contributions.

### Option Two: Allow Retired Law-Enforcement Officers Age 60 or Older to Continue to Work While Receiving a Retirement Benefit With No Break in Service

Option Two would set a specific age after which a law-enforcement officer who has retired can, without a break in service, return to full-time employment with a participating employer while continuing to receive an in-service distribution of retirement benefits. 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, if this option were to be selected VRS proposes no earlier than age 60 for Option Two for law-enforcement officers to be allowed to work in a full-time covered position without a break in service.<sup>60</sup>

In addition to the requirement that the retired law-enforcement officer has reached the requisite age threshold, this option would require that, like the existing statutory exceptions:

- 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. of the *Code of Virginia*), if the retiree elects to continue to receive the retirement allowance while employed; and
- the employer must include the person's compensation in membership payroll subject to employer contributions.

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<sup>60</sup> The IRS has established 59½ as the earliest age that in-service distributions may be allowed. 26 U.S.C. § 72(t).

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. VRS cannot provide tax advice or address how Option Two might affect tax benefits from the HELPS Act.

The mental and physical demands of public safety positions should be carefully considered when determining whether to allow in-service distributions with no break in service for individuals in these positions. Also relevant is that while individuals may be eligible for Social Security benefits if they retire earlier, Medicare eligibility does not begin until age 65. Members who retire under an in-service distribution option and then return to work and receive active health insurance coverage will not be immediately impacted. It is uncertain if there may be effects to later Medicare eligibility.

### Policy Option: Retention Bonus

Another policy option to consider that would focus more on retaining law-enforcement officers rather than encouraging them to return after retirement would be to provide retention bonuses for officers for each year they continue active employment past retirement eligibility. An eligible law-enforcement officer would continue to receive their regular active salary and would receive an annual bonus each year they continue to work after they reach retirement eligibility. Implementing a retention bonus program could encourage existing law-enforcement officers who would otherwise retire and leave service entirely to instead stay actively employed longer for at least some additional period of time.

Unlike the in-service distribution option, retention bonuses would not encourage law-enforcement officers who would otherwise stay actively employed to retire and return to work or pursue the in-service distribution option. This new policy option would likely require an appropriation and associated language to provide retention bonuses for each year eligible officers continue active employment past retirement eligibility. While it is not necessary for implementation, as with other bonuses members could choose to defer some or all of this bonus to their defined contribution plan retirement account within the contribution limits permitted by the IRS.

This option will potentially cost the Commonwealth less overall than expanding return to work options or adding an in-service distribution with no break in service. It would also help preserve the long-term integrity of the VRS Trust Fund. Of vital importance, if the Commonwealth and local employers choose to pay this retention bonus they would not be paying both a salary and retirement benefits plus other pension benefits such as cost of living adjustments or hazardous duty supplements.

Retention bonuses for law-enforcement officers past retirement eligibility might also have a positive impact on retirement patterns since these bonuses could encourage officers to stay actively employed longer. This policy choice also could potentially help resolve some staffing shortages, but is still a temporary stopgap that maintains the existing workforce rather than providing a comprehensive, long-term solution to develop or recruit new officers. The retention bonus option would give eligible officers a retention bonus for each year they continue to work after reaching retirement eligibility.

This policy option would not be administered by VRS, although VRS could help confirm retirement eligibility. Bonuses do not directly impact retirement patterns, and do not impact the health of the VRS Trust Fund or retirement benefits since bonuses are not considered creditable compensation

for retirement benefit calculations. The *Code of Virginia* and the Appropriation Act provide authorization for bonuses, although legislation may be required to codify eligibility parameters and budget funding or language may be necessary to ensure funds are available.

### Policy Option: Salary Increase

As noted earlier, the 2017 JLARC report describes more fully suggested salary increases as a key option for improving recruitment and retention of public employees. This option would provide higher starting salaries for new law-enforcement officers. It would also provide more frequent, larger, and more reliable raises for current officers. The *Code of Virginia* and the Appropriation Act provide authorization for salaries, although legislation may be required to codify expectations and budget funding or language may be necessary to ensure funds are available.

This policy option would not be administered by VRS. Salary increases do not directly impact retirement patterns, do not impact the health of the VRS Trust Fund since they are accompanied by associated employee and employer contributions, and have the added effect of increasing the average final compensation used to calculate retirement benefits thereby increasing retirement benefits. However, increased salaries will necessitate employer resources be provided to fund increases in compensation. Costs will vary by employer.

### Actuarial Analysis of Potential Modifications

This analysis considers the impact of the options on continued stable contribution rates for employers and on the soundness of the plan, as required by § 51.1-145 of the *Code of Virginia*. The analysis below assumes that the existing sunset and actuarial investigation provisions in § 51.1-155(D) of the *Code* will remain in place. It also assumes that employer contributions will continue to be paid on creditable compensation for any position filled by a retiree 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 lifetime 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 historical 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 incentivizes a member to retire earlier than they would otherwise will ultimately increase the cost of VRS-administered pension plans and related benefits. 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 significance of the change and the volume of members that it impacts.

The current return-to-work policy allows retirees to return to work part-time with the same employer 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 in the 2022 report, VRS does not require part-time employees to be reported to VRS, therefore VRS does not have data concerning how many retirees 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.

Similarly, the critical shortage return-to-work exceptions that are in place also appear to have minimal impact on VRS costs. Currently, these programs appear to be under-utilized based on the numbers shown in the 2022 report, although, based on data following the 2023 changes to the break-in-service legislative requirements from 12 to six months, there has been a noticeable increase in the utilization of these programs. 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. And, retirees can return to work on a part-time basis after a one full calendar month break in service. It is necessary to recognize that the driving force behind retirement and whether a retiree would even consider returning to work will 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 Option One: Allow Retired Law-Enforcement Officers to Return to Work After a Six-Month Break in Service

Option One is not expected to have a large impact on changing retirement patterns of future retirees and therefore is not expected to meaningfully impact unfunded liabilities or contribution rates, although requiring employer contributions will help mitigate the impact. However, based on limited experience and data following the 2023 changes to the break-in-service legislative requirements from 12 to six months, there has been a noticeable uptick in utilization.

The tables below provide the number of SPORS, VaLORS, and local hazardous duty members who were eligible to retire as of June 30, 2023. Members who have qualified for unreduced retirement are more likely to take advantage of return-to-work provisions, and as the exhibit shows below, that represents about 8% of the current active hazardous duty population. We also expect that members in the third group with eligibility for reduced benefits could also elect to retire and continue working in certain circumstances in order to boost take home pay by collecting a retirement benefit and continuing to be paid a full-time salary.

Table 7. Local Law Enforcement Active Population June 30, 2023

	Count	% of Active Population
<b>Total Actives</b>	17,710	
<b>Eligible for Full Unreduced Retirement Age 60 or Older</b>	544	3.1%
<b>Eligible for Full Unreduced Retirement Under Age 60</b>	774	4.4%
<b>Eligible for Reduced Retirement Under Age 60</b>	1,774	10.0%
<b>Total Eligible to Retire as of June 30, 2023</b>	3,092	17.5%

Source: VRS data

Table 8. SPORS Active Population June 30, 2023

	Count	% of Active Population
<b>Total Actives</b>	1,920	
<b>Eligible for Full Unreduced Retirement Age 60 or Older</b>	82	4.3%
<b>Eligible for Full Unreduced Retirement Under Age 60</b>	230	12.0%
<b>Eligible for Reduced Retirement Under Age 60</b>	130	6.8%
<b>Total Eligible to Retire as of June 30, 2023</b>	442	23.0%

Source: VRS data

Table 9. VaLORS Law Enforcement Active Duty Population June 30, 2023

	Count	% of Active Population
<b>Total Actives</b>	1,868	
<b>Eligible for Full Unreduced Retirement Age 60 or Older</b>	79	4.2%
<b>Eligible for Full Unreduced Retirement Under Age 60</b>	88	4.7%
<b>Eligible for Reduced Retirement Under Age 60</b>	222	11.9%
<b>Total Eligible to Retire as of June 30, 2023</b>	389	20.8%

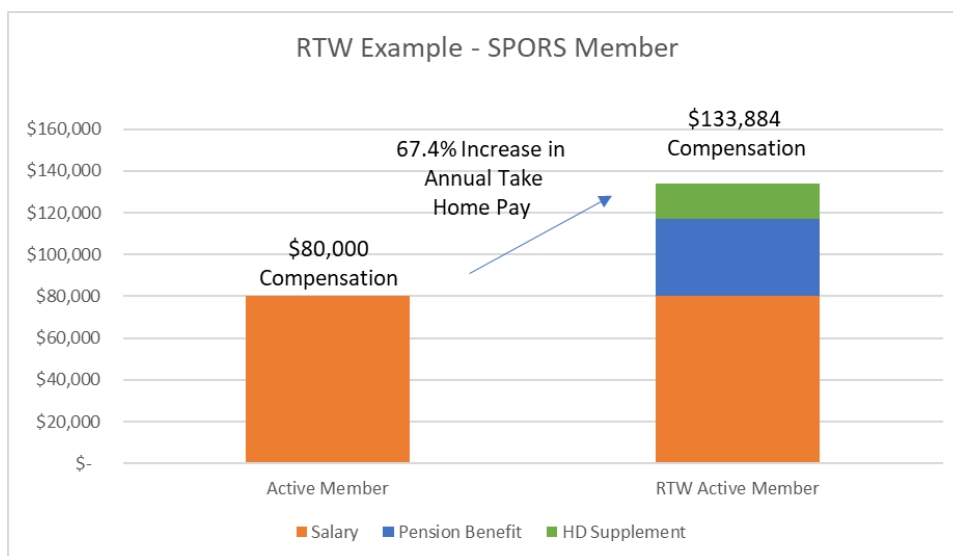
Source: VRS data

Because this option requires employers to include the members' salary in the computation of employer contributions, Option One is not expected to have as much of an impact on employer rates as employer contributions for these retirees will help mitigate any impact on contribution rates. While requiring employer contributions helps to mitigate a shrinking payroll, it will not help to diminish the negative impact of changing retirement patterns, which will increase liabilities and employer costs over time. The magnitude of the increase will be dependent on the volume of members who retire earlier than expected to later return to work under these provisions. The plans from which they retire could see an increase in costs due to the increased liability associated with retiring earlier than expected in order to receive a pension, potentially a hazardous duty supplement, and active healthcare, as well as a full-time salary.

Under Option One, a retired law-enforcement officer, such as a SPORS member, could commence their retirement benefits and then return to work after a six-month break in service. For example, 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 \$16,884 per year until they reach their Social Security normal retirement age. In sum, this hypothetical SPORS member would be receiving \$133,884 per year, which would represent an increase in annual income of 67.4%. In addition, the member would likely be eligible for the health insurance credit. The member would also be eligible for both COLAs and pay increases going forward.

Figure 3: RTW Example – SPORS Member



Eligibility for active employee health insurance coverage, which is typically subsidized by employers, will likely encourage even more active employees to retire earlier than anticipated. One reason many employees delay retirement until age 65 is Medicare eligibility. If active employees can retire at age 50, receive a pension with cost-of-living adjustments and potentially a hazardous duty supplement, and, after a six-month break, receive a full-time salary, and employer-subsidized health insurance, it is likely that most retirement-eligible employees would pursue this option. It is important to remember that a law-enforcement officer could retire with a reduced benefit as early as age 50 with at least 5 years of service credit or with an unreduced benefit at age 60 with at least five years of service credit or age 50 with at least 25 years of service credit.

### Analysis of Option Two: Allow Retired Law-Enforcement Officers Age 60 or Older to Continue to Work While Receiving a Retirement Benefit With No Break in Service

Option Two, which allows for an in-service distribution, would allow retired law-enforcement officers who have reached a specific age to continue to work while receiving a retirement benefit with no break in service. VRS proposes to use age 60 as the threshold for retired law-enforcement officers. The earliest age IRC allows in-service distributions with no break in service and no early distribution penalty is age 59½.

Under this option, all law-enforcement officers who reach the specified age and service requirements 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, due to IRS requirements, in circumstances when a retiree has reached a certain age. Further, this is an approach rarely used by other public pension plans due to the likelihood of changing retirement patterns and associated potential for adverse impacts to plans.

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 10 below shows the number of members currently eligible for retirement.

Table 10. Law Enforcement Members Eligible for Retirement as of June 30, 2023

	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>						
<b>Local</b>	17,710	1,318	7%	1,774	3,092	17%
<b>SPORS</b>	1,920	312	16%	130	442	23%
<b>VaLORS</b>	1,868	167	9%	222	389	21%
<b>Total</b>	<b>21,498</b>	<b>1,797</b>	<b>8%</b>	<b>2,126</b>	<b>3,923</b>	<b>18%</b>

Source: VRS data

Approximately 8% of the entire active law enforcement population, including state and local employees, or nearly 1,800 members, are already eligible for a full unreduced retirement, but continue to work. Over 2,000 other law enforcement members are eligible for an early reduced retirement, so as of June 30, 2023, in total approximately 18% of the active population have met eligibility to retire.

Based on the population demographics, the in-service distribution under Option Two has the greatest potential to impact retirement patterns and increase the liabilities and cash flow requirements of the retirement plans. While the IRS provides some 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 60. Selecting an age for the in-service distribution option that is below that threshold would have a greater impact on retirement patterns, which would ultimately increase costs significantly across the pension plans. Further, retirement distributions prior to age 59 ½ result in tax penalties to the member.

Table 11 below shows the number of active members as of June 30, 2023, who would meet the eligibility requirement for Option Two, i.e., age 60, which represents approximately 3% of the active population.

Table 11. Active Law-Enforcement Officers Currently Eligible for Retirement Under Option Two (age 60) as of June 30, 2023

	Total actives	Estimated Eligible Proposed In- Service Distribution Option	% of actives eligible for Proposed In-Service Distribution Option	Average Retirement Age of Retirees in FY 2023
<i>By Plan</i>				
Local	17,710	544	3%	<b>Age 56/25 YOS</b>
SPORS	1,920	82	4%	<b>Age 58 /30 YOS</b>
ValORS	1,868	79	4%	<b>Age 58 / 22 YOS</b>
<b>Total</b>	<b>21,498</b>	<b>705</b>	3%	

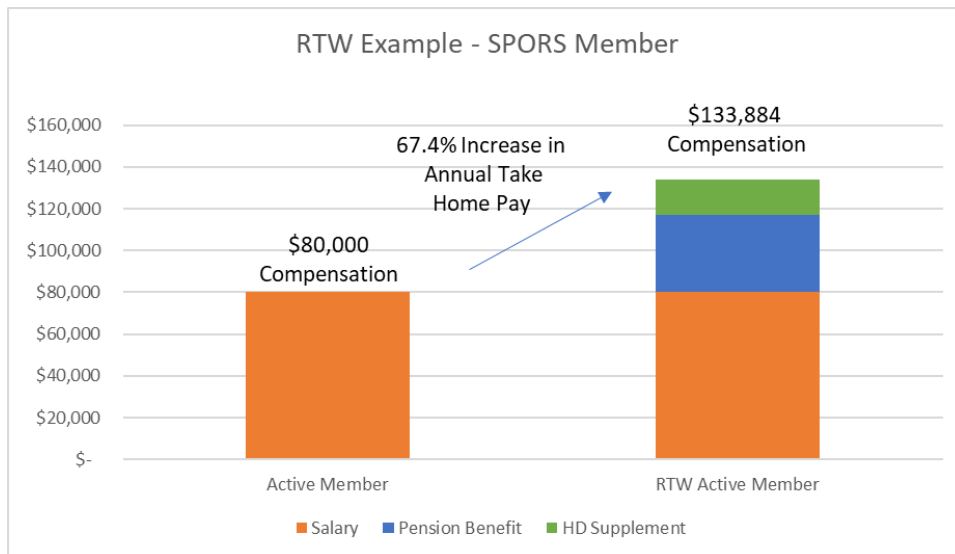
Source: VRS data

As an example of the potential impacts, if we assumed that all 82 of the active eligible SPORS members retired at age 60 it would increase the unfunded liability of the SPORS plan by \$5.8 million and increase the cashflow requirements by \$4.8 million. We would expect similar increases across other plans that have hazardous duty law-enforcement members.

Under Option Two, a hazardous duty member, such as a SPORS member, who attains the age of 60 could commence their benefits without a break in service. For example, 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 \$16,884 per year until they reach their Social Security normal retirement age. Further, they would be eligible for the health insurance credit as well as likely be eligible for employer subsidized active employee health care benefits. In sum, this hypothetical SPORS member would be receiving \$133,884 per year, which would represent an increase in annual income of 67.4%. The member would also be eligible for both COLAs and pay increases going forward.



Figure 4: RTW Example – SPORS Member



Because Option Two 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. Consistent with Virginia’s current laws governing retirees returning to full-time positions, Option Two requires employer contributions for these retirees 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. As noted previously, while employer contributions are beneficial and serve to mitigate the impacts to the plans, importantly they do not fully address the impacts to the plans.

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 plans’ liabilities and result in increased costs.

### Analysis of Retention Bonus Option: Law-Enforcement Officers Who Are Eligible for Retirement Receive a Retention Bonus for Each Additional Year Worked and Continue to Earn Service Credit

A retention bonus option would allow active law-enforcement officers who have reached retirement eligibility to continue to work and receive a bonus for each additional year they work past retirement eligibility. This targets current active officers and encourages them to continue working rather than targeting active officers and encouraging them to retire. Since bonuses are not included in creditable compensation, retention bonuses under this option would not impact employer or employee contributions or the VRS funded status.

As noted above, VRS has a fair number of active law-enforcement officers who either are already eligible for a full unreduced retirement or currently meet the requirements for an early reduced retirement. Table 12 below shows the number of law-enforcement officers currently eligible for retirement who would meet the general requirements for the suggested retention bonus.

Table 12. VRS Law-Enforcement Members Eligible for Retirement-Eligible Retention Bonus Option as of June 30, 2023

	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>						
<b>Local</b>	17,710	1,318	7%	1,774	3,092	17%
<b>SPORS</b>	1,920	312	16%	130	442	23%
<b>ValORS</b>	1,868	167	9%	222	389	21%
<b>Total</b>	<b>21,498</b>	<b>1,797</b>	<b>8%</b>	<b>2,126</b>	<b>3,923</b>	<b>18%</b>

Source: VRS data

Approximately 8% of the entire active population of law-enforcement officers, including state and local employees, or 1,797 members, are already eligible for a full unreduced retirement, but continue to work. Another 2,126 members are eligible for an early reduced retirement, so as of June 30, 2023 in total approximately 18% of the active population have met eligibility to retire.

The General Assembly could choose to limit the bonus only to active members who are eligible for an unreduced retirement or could allow active members to receive all or part of a retention bonus if they are eligible for early retirement. The appropriation required would depend in part on who is eligible for the bonus, as well as the amount the General Assembly allocates for such a bonus.

*Example: Paying a Retention Bonus versus Paying Employer Contributions for Retirees*

Example: Paying a 10% Retention Bonus for SPORS Retirees Remaining Active After Reaching Full Unreduced Retirement Eligibility (312 eligible as of June 30, 2023)	Example: Paying Employer Contributions on the Salary of SPORS Retirees Returning to Work after Six-Month Break in Service
\$80,000 x 10% = \$8,000 per eligible employee (no associated unfunded liabilities)	\$80,000 x 29.98% (FY23-24 SPORS employer contribution rate) = \$23,984 per participating retiree (Requiring employer contributions help but do not completely mitigate unfunded liabilities associated with changing retirement patterns)

Since bonuses are not included in VRS creditable compensation, no VRS implementation cost is expected. If necessary, VRS could provide reports on eligible members. The Department of Accounts and DHRM may require implementation, however, it could be handled similarly to other bonuses. Other

than communications, there may not be specific implementation costs required for this retention bonus option or these would generally be minimal. However, retention bonuses will necessitate employer resources be provided to fund the bonuses. Costs will vary by employer.

### Analysis of Increased Salary Option: All Law-Enforcement Officers Receive Higher Starting Salaries or More Frequent Raises

If the General Assembly chooses to implement higher starting or continuing salaries, this would increase law-enforcement officers' overall creditable compensation. These increases would be incorporated into the existing AFC and retirement benefit calculation. Since employer and employee contributions are paid as a percentage of salary, no actuarial impact is expected for the VRS Trust Fund.<sup>61</sup> As noted earlier in the report, this option will have an overall impact on active members and on retirees, since retirement benefits are calculated based on creditable compensation.

Since VRS creditable compensation is already used in the calculation of retirement benefits and employer and employee contributions are paid as a percentage of salary, no implementation costs are expected. However, increased salaries will necessitate employer resources be provided to fund increases in compensation. Costs will vary by employer.

## Conclusion

VRS' current return-to-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 on a full time 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. The IRS requires that when a break in service is required, there must be a complete severance of employment without a prearranged agreement to reemploy, which means no work at all for a participating employer, not even volunteer work. The IRS makes the determination about whether there has been a complete severance of employment on a case-by-case basis.

In general, most law-enforcement officers in the Commonwealth are eligible for enhanced retirement benefits as compared to other government employees, including being eligible for unreduced retirement benefits earlier than general employees (both at an earlier age and with fewer years of service requirements) and receiving greater benefit payments for the same amount of service. As detailed in this report, the underlying rationale for providing enhanced retirement benefits to law-enforcement officers is (i) to compensate for the physical and mental stresses associated with law-enforcement duties which often necessitate that law-enforcement officers have a shorter working life than other employees and (ii) to ensure that law-enforcement officers who remain on the job possess the physical and mental capabilities to perform their work. Allowing officers to return to work after they have retired may indicate that the underlying rationale for enhanced retirement benefits may need further review.

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<sup>61</sup> Other employee benefits, including the health insurance credit, group life insurance, and short- and long-term disability, may be impacted by higher salaries since the funding of these benefits is based on a percentage of an employer's payroll.

Further, given the number of active law-enforcement officers eligible for reduced or unreduced retirement, a broad expansion of the current return-to-work provisions by introducing even a limited in-service distribution program as outlined in Option Two 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. Further, an in-service distribution with no break in service for law-enforcement officers would appear incongruous with the younger retirement age allowed due to the presumed mental and physical stresses of law-enforcement positions.

If retired law-enforcement officers return to work more frequently, as expected if one or more of the options in this report are implemented, the impacts of and claims related to workers' compensation, short-term disability, long-term disability, and the Line of Duty Act are expected to increase, perhaps significantly, but cannot be fully quantified without valid plan experience.

If the General Assembly moves forward with either Option One or Option Two, requiring employer contributions is critical 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 sooner and over a longer period of time for members who choose to retire earlier under these provisions than they would have otherwise.

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