

Department of Planning and Budget 2013 Fiscal Impact Statement

1. Bill Number: SB1091

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Hanger

3. Committee: Finance

4. Title: Local participation in risk management plan.

5. Summary: Provides that participation by constitutional officers in the Department of the Treasury's risk management plan shall be determined by the local governing body of the locality served by the officers rather than by the State Compensation Board (SCB). Also, local governments and constitutional officers choosing not to participate in the risk management plan shall not be subject to payment of any premium or administrative costs.

6. Budget Amendment Necessary: Yes. Item 276, HB1500/SB800.

Insert : “ F. The Department of the Treasury is authorized to direct the State Comptroller to withhold from payments to localities amounts for any claims and expenses arising from either current or future claims associated with localities electing to withdraw from the Department's Risk Management Programs for Constitutional Officers and Regional Jails (VARISK) and Virginia Liability Risk Management Plan for Localities (VARISK2).”

7. Fiscal Impact Estimates are indeterminate. See item 8, below.

8. Fiscal Implications: *This revised fiscal impact statement reflects additional information provided by the Department of the Treasury's Division of Risk Management (DRM) and the SCB.* DRM and the SCB indicated that the proposed bill will have the following implications to the Commonwealth:

According to DRM, the resolution of claims can take several years. In the event that a locality elects not to participate in the risk management plan that DRM administers, sufficient funds would need to be available to address any pending claims against that locality, or any open claims against that locality that have not been adjudicated. Based on the most recent actuarial analysis of the plan, \$15 million is required for payment of current active claims, claims that will be reported by the end of the fiscal year, and claims that have been incurred but not yet reported. It is unknown which localities may elect not to participate in the risk management plan that DRM administers; an estimate of how much of the \$15 million that will need to be covered prior to their election is indeterminate.

According to SCB, §15.2-1606, Code of Virginia, requires the Compensation Board to reimburse localities for expenses incurred when a court assigns defense counsel in a civil matter where the matter is not covered by the office's insurance. As the bill does not require that a locality that chooses not to participate in the risk management plan secure comparable coverage to that provided under the risk management plan, the Commonwealth could incur additional, unbudgeted expenditures. The extent of such expenditures is indeterminate.

However, in the event that a locality elects not to participate in the risk management plan, and then either does not provide coverage or the coverage the locality provides does not address the civil actions for which the officer or employee is made a defendant that otherwise would have been covered under DRM's plan, the court may assign counsel, fix compensation, and require reimbursement of compensation and expenses incurred in defense of the charge. Under §15.2-1606, Code of Virginia, SCB would be required to reimburse the locality for these fees and expenses.

Over the last five years, DRM paid an average of \$2.46 million per year for legal defense for claims covered under DRM's plan. The amount DRM pays is based on rates negotiated by the Office of the Attorney General with private attorneys located across the state. In the event that all localities choose not to participate in DRM's plan and do not provide adequate coverage through liability insurance for their constitutional officers, and the courts were to fix compensation of assigned counsel at similar rates to those currently negotiated by DRM, SCB could incur legal defense costs comparable to that currently paid by DRM. Over the last three years, SCB paid an average of \$30,000 per year for defense counsel. Because of the relatively small costs in previous years, SCB was able to absorb these costs within existing resources. Although any such expenditures are indeterminate, SCB could not absorb annual costs of the magnitude of \$2.46 million within existing resources without impacting constitutional officer budgets.

The fiscal impact at the local level is indeterminate. The number of localities that may elect not to enroll their constitutional officers in DRM's risk management plan is unknown. According to DRM, a significant reduction in the number of plan participants would have an impact on plan maintenance. Because the cost of coverage is directly affected by the size of the pool, the remaining participants may experience increased costs.

9. Specific Agency or Political Subdivisions Affected: Localities, the State Compensation Board, and the Department of the Treasury's Division of Risk Management.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: 1/29/13

Document: G:/tmw/2013 Session/Legislation/SB1091.docx