

Department of Planning and Budget

2016 Fiscal Impact Statement

1. Bill Number: HB1345

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

2. Patron: Jones

3. Committee: Senate Finance

4. Title: Line of Duty Act

5. Summary: Revises the Line of Duty Act (the Act) by codifying revisions to the Act from the Appropriation Act and, among other changes, transferring overall administration of the Act to the Virginia Retirement System, transferring administration of health insurance benefits under the Act to the Department of Human Resource Management, and creating the Line of Duty Health Benefits Plans, separate health benefits plans for beneficiaries under the Act. The bill also expands the presumption of death or illness clauses under the Act to include those found in §65.2-402.1, *Code of Virginia*. Additionally, individuals who are receiving continued health insurance coverage shall cease receiving coverage if the deceased person's death or disabled person's disability occurs on or after July 1, 2017 and if the individual is Medicare eligible due to age. The bill's third enactment clause includes a provision that a state certification required for employment for any individual who is eligible to receive LODA benefits and as a direct or proximate result of the performance of his duty becomes temporarily disabled for no longer than two years shall not expire during the period of the individual's disability. The Virginia Retirement System and the Department of Human Resource Management may also enter into an agreement with the Tax Commissioner to receive tax information that will assist in enforcing the requirement of the Act. The bill has a delayed effective date of July 1, 2017, except for a provision that requires nonparticipating employers to pay their pro rata share of estimated implementation costs to the Virginia Retirement System and the Department of Human Resource Management which becomes effective July 1, 2016.

6. Budget Amendment Necessary: Yes.

- DHRM and VRS will need appropriation for the agencies' administrative costs and an increase in authorized positions in fiscal year 2018 in Item 84 (Health Benefits Services) and Item 489 (Personnel Management Services), respectively.
- Due to the Internal Revenue Service's (IRS) exclusive benefit rule, which prohibits staff being paid by assets from certain qualified health insurance and retirement plans from working on programs unrelated to the purpose of the plans or not for the exclusive benefit of the plan employees and their beneficiaries, both of these agencies will require budget language authorizing existing staff to be reimbursed by the existing Line of Duty Act Fund during the transition period in fiscal year 2017.

- The current Line of Duty Act budget language in Item 269 should be amended to indicate that its provisions are only effective until July 1, 2017.
- The appropriation for the costs of the death benefit payments and the health insurance benefit payments in fiscal year 2018 should be moved to VRS (Item 489 – Personnel Management Services) and DHRM (Item 85 – Personnel Management Services), respectively.

7. Fiscal Impact Estimates:

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2016	\$0	-	-
2017	\$0	-	-
2018	\$444,040	4.5	LODA Fund and nonparticipating employers
2019	\$316,990	4.5	LODA Fund and nonparticipating employers
2020	\$316,990	4.5	LODA Fund and nonparticipating employers
2021	\$316,990	4.5	LODA Fund and nonparticipating employers
2022	\$316,990	4.5	LODA Fund and nonparticipating employers

- 8. Fiscal Implications:** This legislation transfers overall administration of the Line of Duty Act (LODA) program from the Department of Accounts (DOA) to the Virginia Retirement System (VRS). The administration of health insurance benefits through the program would be transferred to the Department of Human Resource Management (DHRM). DHRM is also instructed to establish separate health insurance plans, the LODA Health Benefits Plans (“the Plans”), which will provide the continued health insurance coverage benefit provided under the Act regardless of whether the employee’s employer is a participating or nonparticipating employer. The bill also changes the eligibility determination process and codifies language currently found in the Appropriation Act. Additionally, the bill clarifies that all benefit payments, including health insurance premiums, and administrative costs will be paid by the Line of Duty Death and Health Benefits Trust Fund if an employee works for a participating employer. Nonparticipating employers will continue to be responsible for paying the death benefit provided under the Act, but will now pay DHRM health insurance premiums for individuals enrolled in the Plans and will reimburse VRS and DHRM for administrative costs incurred.

DOA Impact

DOA currently has two employees responsible for administering the program. The fiscal year 2015 administrative costs of the program to DOA was \$188,973. These costs are reimbursed from the existing Line of Duty Fund (to be renamed the Line of Duty Death and Health Benefits Trust Fund, or “the Fund”). Of this amount, \$150,900 represents the direct cost of the program, primarily salary and benefits of the two employees. The remaining \$38,073 represents the indirect costs billed to the program, such as rent costs. DOA notes that the indirect costs will have to be absorbed by the agency’s existing appropriation, while the \$146,906 in direct costs is transferred to the successor agencies.

VRS Impact

VRS would be responsible for administering most aspects of the LODA program, including eligibility determination for affected employees. VRS indicates it will need 2.5 new positions to administer the program at an annual cost of \$196,558 for salary and benefits. Two of the positions will be in VRS' customer programs to review program applications, medical reports, accident reports, submit claims to a medical review board for eligibility determinations, communicate with employees/beneficiaries and employers, and pay benefits as appropriate. The half of a position will be dedicated to accounting functions. These positions would be filled beginning in FY2018.

VRS will have certain implementation costs such as systems programming and testing in order to implement the program. VRS indicates that a manual processing system for case management, accounting, and auditing could be implemented for \$87,050. This fiscal impact statement assumes implementation of this manual processing system. As an alternative, an automated system could be developed instead for a total cost of \$325,980 which the agency notes would provide better intake, case management, communication, and financial and compliance controls. Due to the fourth enactment clause of the bill, the implementation costs will be paid for by the Fund and nonparticipating employers.

Under current LODA program practices, the Virginia State Police (VSP) as well as local police and sheriff's offices are responsible for the initial investigation of LODA claims for eligibility. The investigation typically costs between \$400 and \$700 per claim. The investigating agency is reimbursed for its investigation by the employer of the claimant, regardless of whether the employer is a participating or nonparticipating employer. This legislation shifts the investigation responsibility to VRS, which may request the VSP's assistance as needed and allows VRS to recover its costs from either the Fund or nonparticipating employers, depending on the case. VRS assumes that it will request VSP's assistance in all cases. VSP indicated that in FY 2014 it charged for 63 disability investigations and 8 death investigations and in FY 2015 for 87 disability and 14 death investigations for an average approximate cost of \$32,000 per year. It is not known at this time how much of this cost would be recovered from the LODA Fund and how much would continue to be recovered from nonparticipating employers. The total average cost has been included in estimated impact calculations, however only the cost for investigations on behalf of participating employers would be a new cost to the LODA Fund because currently all employers pay for the cost of investigations.

VRS indicates that it plans to use a LODA determination process similar to the one it uses for its disability retirement determinations and use a medical board to evaluate disability claims. Each disability review currently costs \$560. DOA has historically reviewed 80 to 100 claims annually, although VRS notes that this number has been increasing over time. VRS assumes it will review 100 claims annually, including appeals and also recall cases contemplated in the bill, for a cost of \$56,000.

The bill allows beneficiaries and claimants who are aggrieved by the determination of VRS to appeal the decision through a process established by VRS. VRS notes that this process would

be through an independent fact finder review that costs approximately \$2,850, which includes the costs of the fact finder and a court reporter. VRS estimates ten appeals annually, at a cost of \$28,500.

The total estimated cost to VRS during the first year of implementation is \$400,108, assuming that a manual processing system is implemented. After implementation, VRS' estimated annual cost is \$313,058, however VRS notes that this figure is based on the assumptions discussed above and could vary depending on the number of claims.

DHRM Impact

This legislation directs DHRM to administer the provisions of the Act related to continued health insurance coverage for disabled persons, eligible spouses and eligible dependents, including survivors of deceased employees/volunteers covered under the Act. This legislation also establishes separate LODA Health Benefits Plans for anyone determined to be eligible for continued health benefits under the Act. DHRM is authorized to establish a separate plan for individuals who are Medicare eligible due to a disability under Social Security Disability Insurance or a Railroad Retirement Board Disability Annuity. DHRM will be responsible for tracking premiums to be paid by the Fund or nonparticipating employers, Medicare eligibility of any LODA Health Benefits Plan participants, age of eligible dependents, marital status of eligible and surviving spouses, work status and income of any disabled former employee, and any other eligibility requirements included in regulation and by policy. DHRM indicates it will establish a process by which nonparticipating employers pay the costs, including premium costs, for their employees and eligible family members in the LODA Health Benefits Plans, and DHRM will provide documentation to VRS to establish the appropriate payment for direct and indirect costs incurred in administering the plan for participating employers. DHRM must also monitor for instances where a person is receiving health insurance benefits but would otherwise qualify for a health insurance credit under §51.1-1400, *Code of Virginia*. The Act requires such credits to be deposited into the Fund or to the nonparticipating employer.

DHRM indicates it will need two additional staff members at an annual cost of \$192,905 for salaries, benefits, and associated non-personnel costs. DHRM will also have to pay for an actuarial review to establish a line of credit for the Plans, estimated at \$40,000.

Department of Taxation

This version of the bill allows VRS and DHRM to enter into an agreement with the Tax Commissioner to receive tax information that will assist in enforcing the requirement of the Act, specifically the income requirements of subdivision C.4. of §9.1-401. The Department of Taxation indicated that this activity will not generate a fiscal impact.

Premium Impact

Participating employers are assessed a per eligible employee premium each year under the current program. The legislation does not change this provision. For certain state agencies, some or all of the cost of the premiums is paid by the general fund, based on the funding source for the eligible employees. Changes to the administrative costs charged to the Fund

may impact the assessed premium, but it is important to note that the agency costs discussed above are not solely paid by participating employers and thus, the Fund. Some portion of the costs will be paid by the nonparticipating employers. For reference, the VRS Board of Trustees has set the LODA premium for participating employers at \$567.37 per eligible employee for the 2016-2018 biennium.

This legislation expands the presumption of death or disability clauses in the Act to include those related to infectious diseases, as provided in §65.2-402.1, *Code of Virginia*. This action could increase the number of LODA claims and will depend on whether any eligible individuals become disabled or deceased due to these infectious diseases. The impact on premiums as a result of this change is currently unknown.

The legislation modifies two existing health insurance benefit provisions. First, surviving spouses would now have continued health insurance coverage until death. Under existing law, the surviving spouse has coverage until death or coverage by an alternative health insurance plan. VRS notes its actuary already assumes that surviving spouses will receive continued coverage until death, so this change will not impact premium projections. The second change makes continued health insurance coverage for dependents subject to the same eligibility and termination rules applicable to dependents for the plan in which they are enrolled. Under provisions of the Affordable Care Act (ACA), this change will allow dependents to remain covered until age 26. Under current law the Line of Duty Act ends coverage at age 21 or 25, depending on if the dependent is a full time student. VRS notes its actuary does not have sufficient information at this time on which to base a projection, but did not believe that this change would have a significant impact on premiums.

This fiscal impact statement focuses on the administrative expenditures of the LODA program. Programmatic expenditures are dependent on future deaths and injuries. The Joint Legislative Audit and Review Commission's (JLARC) 2014 study of the Line of Duty Act estimated that several of the provisions of this bill, including establishing a separate health insurance plan for LODA beneficiaries, would generate long term savings for the program. These savings may reduce premiums for participating employers over time.

Total Administrative Impact

Administrative costs incurred to the program currently include \$188,973 in costs incurred by DOA. Based on the estimated staffing needs for DHRM and VRS, the staffing costs of the program will be \$389,463 annually. The bill allows the costs of the eligibility determinations and investigations to be charged to the Fund in instances where the claimant works for a participating employer. Currently, such costs are paid by the employer directly. Based on the information provided by VRS, this cost is estimated to be \$116,500 annually. A portion of this increase will be a new cost to the Fund only, as non-participating employers have already been reimbursing VSP for the eligibility investigations. The total administrative costs estimated under this legislation are \$505,963 annually, an increase of \$316,990. The first year of implementation is expected to be \$127,050 higher due to the manual system implementation by VRS, and the actuarial study by DHRM for the health plan's reserves.

Other Provisions

This legislation contains an enactment clause which includes a provision that a state certification required for employment for any individual who is eligible to receive LODA benefits and as a direct or proximate result of the performance of his duty becomes temporarily disabled for no longer than two years shall not expire during the period of the individual's disability. State agencies that provide such certifications, including the Departments of Emergency Management, Criminal Justice Services, Fire Programs, and Health, may develop and promulgate regulations to carry out the provisions of this legislation and suspend a person's certification when, but for the provisions of this legislation, it would otherwise lapse. Such agencies are required to provide a reasonable time frame for individuals covered under the provisions of this legislation who wish to return to work to become recertified. These provisions are not expected to create a fiscal impact.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Accounts, Department of Human Resource Management, Virginia Retirement System, all state agencies with Line of Duty Act eligible personnel, all state agencies which provide certification to Line of Duty Act eligible personnel include the Department of Criminal Justice Services, Department of Emergency Management, Department of Fire Programs, and Department of Health, and all localities.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

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