

Department of Planning and Budget 2019 Fiscal Impact Statement

1. **Bill Number:** HB1804-H1

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Hugo

3. **Committee:** Appropriations

4. **Title:** Workers' compensation; presumption of compensability for certain diseases.

5. **Summary:** Adds cancers of the colon, brain, or testicular to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters and certain employees develop the cancer. The measure removes the compensability requirement that the employee who develops cancer encountered toxic substance in the line of duty.

The substitute prohibits the provisions of the bill from becoming effective unless reenacted by the 2020 Session of the General Assembly. The 2020 Session of the General Assembly, in considering and enacting any legislation relating to workers' compensation and the presumption of compensability for certain cancers, is required to consider any research, findings, and recommendations of the Joint Legislative Audit and Review Commission review of the Virginia Workers' Compensation program.

6. **Budget Amendment Necessary:** No – see Item 8. According to the Virginia Retirement System (VRS), the inclusion of additional presumptions for diseases presumed to have occurred in the line of duty would increase the number of VRS work-related disability retirements that would have otherwise resulted in non-work-related disability retirements. Since a work-related disability retirement generally costs more than a non-work-related disability retirement, the bill would increase VRS disability retirement costs and, consequently, employer contribution rates. However, the volume of the impact is not known at this time.

The bill also contains an enactment clause, which prohibits the bill from becoming effective unless it is reenacted by the 2020 Session of the General Assembly.

7. **Fiscal Impact Estimates:** Preliminary – see Item 8.

8. **Fiscal Implications:** An updated examination of the claims data maintained by the Department of Human Resource Management's Workers' Compensation program (Program) did not return any claims filed for a cancer under § 65.2-402, Code of Virginia. While the Program does not have any claims under this statute, there is one claim, filed posthumously,

for a cancer of the heart that the Virginia Workers' Compensation Commission (VWC) awarded under the heart/lung presumption as a heart disease. In that case, because the injured worker was deceased when the claim was filed, there were no medical benefits awarded, only lost wage benefits for the widow and eligible children, plus burial expenses. The total paid to date on that claim is \$260,497 and the estimated total cost of the claim is \$469,870.

It is important to note that the state agencies identified in the statute would be responsible for any increase in their workers' compensation costs through experience-based premiums, if additional claims were incurred.

According to VRS, in addition to the effects the proposed legislation may have on workers' compensation, the bill could also affect eligibility for VRS traditional disability retirement because VRS automatically approves disability retirements if the employee is approved for workers' compensation. Increasing the population eligible for benefits, or the types of diseases or circumstances under which an employee is eligible for benefits, will impact the VRS plan experience and by extension potentially increase contribution rates.

Because the Virginia Line of Duty Act (LODA), Chapter 4, Title 9.1 of the Code of Virginia, uses certain workers' compensation presumptions in determining whether a disability or death occurred in the line of duty for specific categories of employees, the addition of these presumptions would add to the costs for the Line of Duty Death and Health Benefits Fund (Fund). The Fund includes state agencies and participating local governments. This change could also increase costs for localities that have opted to cover LODA expenses independently of the Fund (nonparticipating employers).

In order to obtain an estimate of the impact of adding specific cancers to the LODA presumptions, VRS adjusted the LODA valuation model's current cost assumptions to reflect the estimated impact to expected cash flows:

- 3.61% increase to health care claims and Health Insurance Credit Program (HIC) receipts.
- 10.8% increase to death benefit claims.

The average impact of applying the legislation prospectively (deaths and disabilities occurring on or after July 1, 2019) is shown below:

| Item | Fiscal Year Ending June 30 | | | | | |
|---|----------------------------|-----------------|-----------------|-----------------|-----------------|-------------------|
| | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
| Employer Contribution Rate (\$ Per FTE) | | | | | | |
| Number of FTE Employees | 19,013.65 | 19,013.65 | 19,013.65 | 19,013.65 | 19,013.65 | 19,013.65 |
| Proposed Legislation - Prospective Only | \$708.49 | \$781.95 | \$783.43 | \$937.11 | \$938.77 | \$1,029.00 |
| June 30, 2018 Valuation | <u>\$705.77</u> | <u>\$778.02</u> | <u>\$778.02</u> | <u>\$930.16</u> | <u>\$930.16</u> | <u>\$1,018.78</u> |
| Additional Cost per FTE | \$2.72 | \$3.93 | \$5.41 | \$6.95 | \$8.61 | \$10.22 |
| Estimated Additional Contributions | \$51,700 | \$74,700 | \$102,900 | \$132,100 | \$163,700 | \$194,300 |

Because of the unpredictable nature of future claims, VRS has also included a range of possible cost impacts in addition to the median expected claims shown above. Due to the number of cancers presumed, costs may likely be expected to be above the average impact.

Additional Cost Per Full-Time Equivalent (FTE) Position

| Range | Fiscal Year Ending June 30 | | | | | |
|----------------|----------------------------|--------|---------|---------|---------|---------|
| | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
| 25% Impact | \$1.36 | \$1.97 | \$2.71 | \$3.48 | \$4.31 | \$5.11 |
| Average Impact | \$2.72 | \$3.93 | \$5.41 | \$6.95 | \$8.61 | \$10.22 |
| 75% Impact | \$4.08 | \$5.90 | \$8.12 | \$10.43 | \$12.92 | \$15.33 |
| 100% Impact | \$5.44 | \$7.86 | \$10.82 | \$13.90 | \$17.22 | \$20.44 |

Additional Contribution Requirement

| Range | Fiscal Year Ending June 30 | | | | | |
|----------------|----------------------------|------------|------------|------------|------------|------------|
| | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
| 25% Impact | \$ 25,900 | \$ 37,400 | \$ 51,400 | \$ 66,100 | \$ 81,900 | \$ 97,200 |
| Average Impact | \$ 51,700 | \$ 74,700 | \$ 102,900 | \$ 132,100 | \$ 163,700 | \$ 194,300 |
| 75% Impact | \$ 77,600 | \$ 112,100 | \$ 154,300 | \$ 198,200 | \$ 245,600 | \$ 291,500 |
| 100% Impact | \$ 103,400 | \$ 149,400 | \$ 205,700 | \$ 264,300 | \$ 327,400 | \$ 388,600 |

It is unclear whether the proposed legislation would apply to prior deaths and disabilities due to these cancers. Allowing retroactive application of this provision, for deaths and disabilities incurred prior to July 1, 2019, could cost significantly more. Initial estimates when including prior claims added more than \$600,000 per year in additional annual premiums to apply the bill retroactively.

The results were developed using the LODA Fund’s claim incidence experience for the cause of “Cancer” as provided for the June 30, 2018 valuation. Based on analysis of this data, along with analysis of national average disability claims statistics due to cancer and the analysis of statistics regarding cancer incidence due to environmental toxins, VRS assumed that all members coded with a cause of “Cancer” whose claims were initially denied or considered not line of duty would be now be approved under the bill. All other valuation assumptions and methods are those used and disclosed in the “Report on the Actuarial Valuation of the Line of Duty Act Fund, Prepared as of June 30, 2018”.

The cost increase assumptions would apply pro rata to individual localities that are funding LODA costs independently from the Fund.

The proposed legislation would also increase the number of VRS work-related disability retirements by an unknown amount. Currently, individuals disabled by these cancer types would be retired under regular disability retirement provisions (i.e., from a cause not compensable under the Workers’ Compensation Act). The proposed legislation would make it more likely that someone disabled by these types of cancer would be retired under the provisions of work-related disability retirement. Because work-related disability retirement is a more expensive benefit, there would be an unknown increase over time for employer contributions for those employers whose employees become disabled and retire

under these provisions. Because most state employees are now covered under the Virginia Sickness and Disability Program, the impact on employer contribution rates due to increased work-related disability retirements would primarily be for political subdivisions.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Retirement System, Department of Human Resource Management, Virginia Workers' Compensation Commission, and all state agencies and localities with LODA-eligible personnel.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** The proposed legislation, as amended, is a companion to Senate Bill 1030-H1 (Cosgrove).

Because the Line of Duty Act, Code of Virginia § 9.1-400 et seq., references certain workers' compensation presumptions in determining disability for certain categories of covered employees, any expansion of the presumptions will have an impact on LODA costs. It is difficult to determine exactly what the impact would be. The Fund is made up of all state agencies with LODA-eligible employees, as well as political subdivisions that opted in to the Fund. An increase in LODA disabilities would therefore impact state general and non-general fund contributions on behalf of state agencies, as well as all political subdivisions with LODA eligible employees or volunteers.

It is uncertain how many individuals would qualify for LODA benefits under the provisions of this bill, and as such, the fiscal impact to the Fund is indeterminate and the costs indicated above are estimates only. However, the addition of categories of presumptions has the potential to increase the costs of the entire pool, which by extension could increase both the health insurance premiums for individuals covered by the LODA Health Benefits Plan and the contribution rate charged to participating employers. Additionally, the Fund is funded on a pay-as-you-go basis, so to the extent that costly claims are brought into the LODA Health Benefits Plan, there may be cash flow issues until the contribution rates are recalculated. An increase in the contribution rate charged to participating employers would have a general fund and nongeneral fund impact. VRS is responsible for administering the Fund, which pays for the benefits provided under LODA for employees of participating employers, including health insurance premiums and death benefits. The VRS Board of Trustees establishes a per LODA-eligible employee contribution rate which is paid by participating employers, including all state agencies with LODA-eligible personnel, and is used to maintain the Fund. Higher LODA contribution rates would require additional general fund and nongeneral fund support to state agencies with LODA-eligible personnel.