

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB1542

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

2. Patron: Convirs-Fowler

3. Committee: Labor and Commerce

4. Title: Workers' compensation; occupational disease presumption; Department of Motor Vehicles officers.

5. Summary: Establishes a presumption that hypertension or heart disease causing the death or disability of a full-time sworn member of the enforcement division of the Department of Motor Vehicles is an occupational disease compensable under the Workers' Compensation Act.

6. Budget Amendment Necessary: Indeterminate – 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 Line of Duty Act (LODA) claims as well as 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. Any increase in the number of LODA claims or groups of employees who are eligible for certain presumptions will increase costs. All state agencies with eligible employees are in the LODA Fund, and the premiums would be projected to increase as estimated below. However, the volume of the impact is not known at this time.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: The bill adds full-time sworn members of the enforcement division of the Department of Motor Vehicles (DMV) to the list of public safety employees who are entitled to a presumption that hypertension and heart disease are occupational diseases compensable under the Virginia Workers' Compensation Act.

According to VRS, some state employees are still eligible for disability retirement; others, including most employees hired or rehired after January 1, 1999, are covered by the Virginia Sickness and Disability Program (VSDP), which is a managed disability plan that does not provide a lifetime benefit. In addition to the effects this may have on workers' compensation, the bill could also affect eligibility for VRS traditional disability retirement because VRS relies on the compensability determination by the Virginia Workers' Compensation Commission for its determination of whether a disability retirement claim is work- or non-work-related. 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. VSDP also uses workers' compensation determinations for approving work-related short- and long-term disability benefits.

Additionally, because the Virginia Line of Duty Act (LODA), Chapter 4, Title 9.1 of the Code of Virginia, uses certain Workers' Compensation presumptions to assist in determining whether a disability or death occurred in the line of duty for specific categories of employees covered by LODA, the addition of these presumptions for full-time sworn members of the enforcement division of the DMV, who are covered under LODA, 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).

Analysis of historical LODA claim data shows that a large number of deaths and disabilities are due to hypertension and heart diseases. Based on the current number of full-time sworn members of the enforcement division of the DMV covered by LODA, 73 out of 19,243 full-time equivalent (FTEs) employees covered by the LODA fund, VRS estimated the following adjustment to the valuation model's current cost assumptions to reflect the estimated impact to cash flows:

- Approximate 0.1% increase to health care claims.
- Approximate 0.2% increase to death benefit claims.

The average impact of applying the legislation prospectively (deaths and disabilities occurring on or after July 1, 2020) is shown below:

Cost Impact on the LODA Fund – Prospective Application

Item	Fiscal Year Ending June 30					
	2021	2022	2023	2024	2025	2026
Employer Contribution Rate (\$ Per FTE)						
Number of FTE Employees	19,243.35	19,243.35	19,243.35	19,243.35	19,243.35	19,243.35
Proposed Legislation - Prospective Only	\$695.29	\$695.34	\$896.74	\$896.79	\$1,007.44	\$1,007.50
June 30, 2019 Valuation	<u>\$695.18</u>	<u>\$695.18</u>	<u>\$896.53</u>	<u>\$896.53</u>	<u>\$1,007.13</u>	<u>\$1,007.13</u>
Additional Cost per FTE	\$0.11	\$0.16	\$0.21	\$0.26	\$0.31	\$0.37
Estimated Additional Contributions	\$2,100	\$3,100	\$4,000	\$5,000	\$6,000	\$7,100

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.

**Cost Impact on the LODA Fund
Additional Cost Per FTE**

Range	Fiscal Year Ending June 30					
	2021	2022	2023	2024	2025	2026
25% Impact	\$0.06	\$0.08	\$0.11	\$0.13	\$0.16	\$0.19
Average Impact	\$0.11	\$0.16	\$0.21	\$0.26	\$0.31	\$0.37
75% Impact	\$0.17	\$0.24	\$0.32	\$0.39	\$0.47	\$0.56
100% Impact	\$0.22	\$0.32	\$0.42	\$0.52	\$0.62	\$0.74

Additional Contribution Requirement

Range	Fiscal Year Ending June 30					
	2021	2022	2023	2024	2025	2026
25% Impact	\$ 1,100	\$ 1,500	\$ 2,000	\$ 2,500	\$ 3,000	\$ 3,600
Average Impact	\$ 2,100	\$ 3,100	\$ 4,000	\$ 5,000	\$ 6,000	\$ 7,100
75% Impact	\$ 3,200	\$ 4,600	\$ 6,100	\$ 7,500	\$ 8,900	\$ 10,700
100% Impact	\$ 4,200	\$ 6,200	\$ 8,100	\$ 10,000	\$ 11,900	\$ 14,200

Please note that it is unclear from the legislation whether this bill would apply to prior deaths and disabilities. Allowing retroactive application of this provision for deaths and disabilities incurred prior to July 1, 2020 could cost significantly more, as shown below:

Cost Impact on the LODA Fund – Retroactive Application

Item	Fiscal Year Ending June 30					
	2021	2022	2023	2024	2025	2026
Employer Contribution Rate (\$ Per FTE)						
Number of FTE Employees	19,243.35	19,243.35	19,243.35	19,243.35	19,243.35	19,243.35
Proposed Legislation - Retroactive	\$696.53	\$696.16	\$897.58	\$897.66	\$1,008.32	\$1,008.39
June 30, 2019 Valuation	<u>\$695.18</u>	<u>\$695.18</u>	<u>\$896.53</u>	<u>\$896.53</u>	<u>\$1,007.13</u>	<u>\$1,007.13</u>
Additional Cost per FTE	\$1.35	\$0.98	\$1.05	\$1.13	\$1.19	\$1.26
Estimated Additional Contributions	\$26,000	\$18,900	\$20,200	\$21,700	\$22,900	\$24,200

The results were developed using the LODA Fund’s claim incidence experience for the cause of “Hypertension or Heart Disease” coupled with the proportion of full-time sworn members of the enforcement division of the DMV FTEs to the LODA Fund in total. 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, 2019”.

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

The legislation would also increase the number of VRS work-related disability retirements by an unknown amount for those members who are eligible for disability retirement. Currently, full-time sworn members of the enforcement division of the DMV disabled by these types of diseases and who are eligible for disability retirement would be retired under regular

disability retirement provisions (i.e., from a cause not compensable under the Workers' Compensation Act). The legislation would make it more likely that a full-time sworn member of the enforcement division of the DMV disabled by these types of diseases and who is eligible for disability retirement would be retired under the provisions of work-related disability retirement. A comparison of work-related and non-work-related disability retirement benefits is shown below.

Work-related Disability Retirement	Non-work-related Disability Retirement
Member receives balance in member contribution account	Member does not receive balance in member contribution account
Minimum benefit guarantee is 66 2/3 percent of AFC if member does not qualify for social security disability income and 50 percent of AFC if he or she does qualify for SSDI	Minimum benefit guarantee is 33 1/3 percent of AFC if member does qualify for social security disability income and 50 percent of AFC if he or she does not qualify for SSDI
Disability retirement benefit is non-taxable	Disability retirement benefit is taxable
Disability retirement benefit is offset by Workers' Compensation wage indemnity benefit	No Workers' Compensation wage indemnity benefit

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.

According to the Department of Human Resource Management (DHRM), the agency may experience an increase in the number of claims filed with the Office of Workers' Compensation (OWC); however, the administrative costs associated with the increase in workers' compensation claims filed are expected to be minimal. The Commonwealth's workers' compensation premiums are experienced-based and the DMV would be responsible for any increase in workers' compensation premiums that may result due to the passage of the proposed legislation; however, the potential increase in workers' compensation premiums cannot be determined at this time.

Based on a review of the OWC's claims data, there was 1 claim filed and awarded by the Virginia Workers' Compensation Commission under the heart/lung presumption as 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 estimated total benefit on the claim is \$469,870.

9. Specific Agency or Political Subdivisions Affected: VRS as administrator of the LODA Fund, Department of Motor Vehicles, Department of Human Resource Management, all state agencies with LODA eligible personnel, localities with LODA eligible personnel, and the Virginia Workers' Compensation Commission.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill would add full-time sworn members of the enforcement division of DMV to the category of employees who are eligible for the presumption that a

death or disability caused by hypertension or heart disease is work related unless such presumption is overcome by a preponderance of competent evidence to the contrary.

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 nongeneral 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. An increase in LODA Health Benefits Plan costs would also affect the costs for political subdivisions with LODA eligible employees or volunteers who either self-insure for LODA costs or use a private insurance carrier. Additionally, the Fund is funded on a pay-as-you-go basis, so to the extent that 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 both 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.

In December 2019, JLARC delivered its report, Virginia's Workers' Compensation System and Disease Presumptions. See <http://jlarc.virginia.gov/pdfs/reports/Rpt530.pdf> for a copy of the full report.