

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB438

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

2. Patron: Heretick

3. Committee: Labor and Commerce

4. Title: Workers' compensation; post-traumatic stress disorder; law-enforcement officers and firefighters.

5. Summary: Provides that post-traumatic stress disorder incurred by a law-enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act if a mental health professional examines a law-enforcement officer or firefighter and diagnoses the individual as suffering from post-traumatic stress disorder as a result of the individual's undergoing a qualifying event, which includes an event occurring in the line of duty on or after July 1, 2020, in which a law-enforcement officer or firefighter views a deceased minor, witnesses the death of a person or an incident involving the death of a person, witnesses an injury to a person who subsequently dies, has physical contact with and treats an injured person who subsequently dies, transports an injured person who subsequently dies, or witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim. Other conditions for compensability include (i) if the post-traumatic stress disorder resulted from the law-enforcement officer or firefighter acting in the line of duty and, in the case of a firefighter, such firefighter complied with certain federal Occupational Safety and Health Act standards; (ii) if the law-enforcement officer's or firefighter's undergoing a qualifying event was a substantial factor in causing his post-traumatic stress disorder; (iii) if such qualifying event, and not another event or source of stress, was the primary cause of the post-traumatic stress disorder; and (iv) if the post-traumatic stress disorder did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action of the officer or firefighter. The measure establishes procedural requirements on employers that contest a claim for such benefits. The measure also establishes requirements for resilience and self-care technique training.

6. Budget Amendment Necessary: Indeterminate – see Item 8. According to the Virginia Retirement System (VRS), the inclusion of additional compensable conditions under the Workers' Compensation Act 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. The new § 65.2-107 establishes a compensable condition, not a presumption. Any increase in the number of LODA claims or groups of employees who are determined to have a compensable condition

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 PTSD under certain specified conditions as a compensable condition under the Workers' Compensation Act for law-enforcement officers and firefighters.

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. Most local employees hired on or after January 1, 2014, with the exception of hazardous duty employees whose employer has elected enhanced benefits, are in the Hybrid Retirement Program, which includes coverage under either the Virginia Local Disability Program (VLDP) or a comparable plan. This provision would likely increase the number of traditional work-related disability retirements or the number of short- and long-term work-related disability claims approved under VLDP or a comparable plan as the workers' compensation determinations are used in the approval process. 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, also uses certain compensable conditions under workers' compensation 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 PTSD as a compensable condition for law-enforcement officers and firefighters, who are covered under LODA, would add to the costs for the Line of Duty Death and Health Benefits Fund (Fund). The Fund includes all state agencies, as well as participating local governments that participate in the Fund. This change could also increase costs for localities that have opted to cover LODA expenses independently of the Fund (nonparticipating employers).

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.

Cost increases 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, law-enforcement officers and firefighters disabled by PTSD 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 law-enforcement officer or firefighter disabled by PTSD 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. Because most state employees are now covered under the VSDP, the impact on employer contribution rates due to increased work-related disability retirements would primarily be for political subdivisions.

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 state agencies that employ the affected employees 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.

The proposed legislation requires the Department of Criminal Justice Services (DCJS), along with the Department of Fire Programs, to develop a model critical incident and peer support policy to support the mental health care and wellness of law-enforcement officers and firefighters, no later than September 1, 2020. As DCJS does not currently have experts in critical incident stress management and peer support on staff, an outside contractor would need to be hired to complete this mandate. Based on similar projects, the estimated cost would be approximately \$15,000 to hire a contractor with the requisite subject matter expertise to effectively draft, edit, and publish a model policy within the specified deadline.

In consultation with the Department of Behavioral Health and Developmental Services (DBHDS), the Department of Fire Programs and any other state or municipal entity providing training to a firefighter shall provide resilience and self-care technique training for any individual who begins initial training as a firefighter on or after July 1, 2020.

The proposed legislation requires each employer of law-enforcement officers or firefighters to (i) adopt and maintain a written policy that meets or exceeds the standards of the model critical incident and peer support policy developed pursuant to subsection F, (ii) make peer support available to such law-enforcement officers and firefighters, and (iii) refer a law-enforcement officer or firefighter seeking mental health care services to a mental health professional no later than January 1, 2021.

The proposed legislation also requires each police basic training program conducted or administered by the Department of State Police or a municipal police department in the Commonwealth to provide, in consultation with DBHDS, resilience and self-care technique training for any individual who begins basic training as a law-enforcement officer, on or after July 1, 2020.

- 9. Specific Agency or Political Subdivisions Affected:** VRS as administrator of the LODA Fund, Department of Human Resource Management, agencies and localities that employ law-enforcement officers and firefighters, all state agencies with LODA eligible personnel, localities with LODA eligible personnel, Virginia Workers' Compensation Commission, Department of Behavioral Health and Developmental Services, Department of Criminal Justice Services, Department of Fire Programs, and Department of State Police.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** The bill is identical to SB 561-S1 (Vogel), and similar to SB 741 (McPike), which adds PTSD as a presumption.

This bill would add a diagnosis of PTSD for a law-enforcement officer or firefighter, under certain circumstances set out in the bill, as a compensable condition under the Workers' Compensation Act. The addition of this compensable condition for law-enforcement officers and firefighters could lead to an increase in the number of approved claims for both work-related traditional disability retirement and short- and long-term work-related disability claims under VSDP and VLDP or a comparable local plan.

The addition of this compensable condition would, over time, have an impact on LODA costs for employers who participate in the LODA Fund. Law-enforcement officers and firefighters are covered under LODA and the addition of this compensable condition will likely lead to an increase in the number of individuals who become eligible for LODA benefits. Given the large population of law-enforcement officers and firefighters across the Commonwealth, the increase in LODA disability determinations is likely to be material.

Because Workers' Compensation compensability determinations are used in evaluating Line of Duty Act claims, any expansion of compensable conditions 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 compensable conditions 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.