Department of Planning and Budget
2020 Fiscal Impact Statement

1. **Bill Number:** HB825

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

2. **Patron:** Carroll Foy

3. **Committee:** Appropriations

4. **Title:** Paid family and medical leave program.

5. **Summary:** Requires the Virginia Employment Commission to establish and administer a paid family and medical leave program with benefits beginning January 1, 2023. Under the program, benefits are paid to eligible employees for family and medical leave. Funding for the program is provided through premiums assessed to employers and employees beginning in 2022. The amount of a benefit is 80 percent of the employee's average weekly wage, not to exceed 80 percent of the state weekly wage, which amount is required to be adjusted annually to reflect changes in the statewide average weekly wage. The measure caps the duration of paid leave at 12 weeks in any application year. The bill provides self-employed individuals the option of participating in the program.

6. **Budget Amendment Necessary**: Yes, a new item would need to be established under the Virginia Employment Commission; and, Item 477 (Central Appropriations) HB/SB 30. See Item 8, below.

7. **Fiscal Impact Estimates:** Preliminary. See Item 8.

Expenditure Impact: Virginia Employment Commission (operational costs to VEC)

Fiscal Year	***Dollars***	***Positions***	***Fund***
2020	0	0	0
2021	$70,000,000	250	NGF
2022	$33,500,000	250	NGF
2023	$33,500,000	250	NGF
2024	$33,500,000	250	NGF
2025	$33,500,000	250	NGF
2026	$33,500,000	250	NGF

Expenditure Impact: Virginia Employment Commission (payment of benefits)

Fiscal Year	***Dollars***	***Fund***
2020	0	n/a
2021	0	n/a
2022	0	n/a
2023	$1,158 Billion	NGF
2024	$1.181 Billion	NGF
2025	$1.205 Billion	NGF
2026	$1.229 Billion	NGF

Revenue Impact: Virginia Employment Commission (from new taxes)

Fiscal Year	*Dollars*	*Fund*
2020	0	0
2021	0	0
2022	$758.6 Million	NGF
2023	$1.621 Billion	NGF
2024	$1.653 Billion	NGF
2025	$1.686 Billion	NGF
2026	$1.720 Billion	NGF

Expenditure Impact: Central Appropriations

Fiscal Year	*Dollars*	*Fund*
2020	0	n/a
2021	0	n/a
2022	$10,070,012	GF
	$14,067,618	NGF
2023	$10,070,012	GF
	$14,067,618	NGF
2024	$10,070,012	GF
	$14,067,618	NGF
2025	$10,070,012	GF
	$14,067,618	NGF
2026	$10,070,012	GF
	$14,067,618	NGF

*In Central Appropriations, no appropriation is provided for the nongeneral fund portion.

8. **Fiscal Implications:** This fiscal impact estimate is preliminary and reflects anticipated impacts to the Virginia Employment Commission, Department of Human Resource Management, Department of Accounts, Virginia Retirement System, Department of Taxation, and state agencies that are funded for compensation adjustments through Central Appropriations,. Any impacts to other potentially affected state entities are not available at this time.

This bill establishes the Paid Family and Medical Leave Program and the Paid Family and Medical Leave Insurance Trust Fund. To the extent that sufficient moneys in the Fund are available, the Fund is to be used to provide eligible individuals with a family and medical leave benefit and for the Fund's administration. The two new taxes established in the bill are the revenue sources for the Fund.

Virginia Employment Commission

It is anticipated that this bill will have a nongeneral fund expenditure impact and a nongeneral fund revenue impact to the Virginia Employment Commission (VEC). VEC is to administer the new program. VEC anticipates that start-up costs will be $70.0 million in FY 2021 and ongoing operational costs will be $33.5 million annually. These anticipated costs are reflected in the first table in item 7, above. Until such time as revenue could be generated to offset the upfront expenses, VEC would require a line of credit, treasury loan, or general fund appropriation. The bill requires the repayment of any general fund support initially provided for the implementation of this program by January 1, 2024.

VEC based its start-up cost estimates on the District of Columbia's (DC) implementation plan for implementing a state paid family leave program. Virginia's program would be most similar to DC because Virginia does not have an office of disability insurance. Most other states have an office of disability insurance and this program became another benefit offered under disability insurance. New York uses private insurance carriers to manage its program. Cost estimates for DC did not include the procurement costs of developing its benefit system.

VEC estimates that it would require start-up costs of approximately $70.0 million in order to develop and implement the required IT systems and staffing (250 FTEs) for the program. A detailed procurement would have to be completed, but VEC based this estimate on the cost to develop similar systems. This estimate includes $60.0 million for the procurement, design, development and implementation of the tax and benefits systems. The tax system must include: employer registration; employer account maintenance; wage reports; paid family leave tax payments; general ledger; tax refunds; tax compliance (penalties and interest); paid family leave field audit; and, management reports. The benefit system must include: claims filing management; adjudication of medical, family, and parental leave claims; verification of medical licensures; payment and administration of benefits; repayment recovery; fraud prevention tools; and, analytics.

In addition to the procurement of tax and benefits systems, VEC estimates that the agency will need to hire program staff for the establishment and administration of the paid family and medical leave program pre-implementation at an estimated cost of $5.0 million. This includes staff for the new Information Technology Division, Division of Tax, Division of Benefits, Appeals, Customer Relations, and Support Services. Additionally, $2.5 million would be needed for furniture and office equipment; and $2.5 million for training and business process development.

VEC anticipates that ongoing operational costs would be approximately $33.5 million annually. This is comparable to the agency's administration of the state's federal Unemployment Insurance Program. This includes $14.0 million in ongoing staff costs for salaries and benefits and $16.0 million in ongoing IT costs to cover anticipated VITA expenses, call center systems, and other IT services. VEC anticipates that to fully function, the paid family and medical leave program will need 250 FTEs; this is comparable to the agency's administration of the state's federal Unemployment Insurance Program. The $33.5 million also includes $3.5 million annually for other operational expenses such as facilities expenses, telecommunications, postage, legal services and other items. Since this is a state-directed program, no federal funds could be used to support any component of this new program,

The bill directs VEC to promulgate regulations to implement the new program by July 1, 2021, to begin collecting the premium or payroll contributions from employers to pay benefits under the program beginning on January 1, 2022, and to begin making payments to eligible individuals beginning on January 1, 2023. Collections will be deposited to the Fund and payments will be made from the Fund.

According to the bill, for calendar years 2022 and 2023, VEC is to set the premium based on sound actuarial principles, and beginning with calendar year 2024, VEC is to use a methodology described in the bill to set the premium, considering the balance in the Fund at the close of the previous fiscal year and ensuring that the Fund maintains or achieves an annualized amount of not less than 140 percent of the previous fiscal year's expenditure for benefits and for the administration of the program. Additionally, VEC is to consider the bill's requirement that any general fund monies used toward the implementation of this program be repaid to the general fund by January 1, 2024.

According to VEC, in order to support the benefit level established in the bill, premiums would have to be assessed in the amount of 0.65 percent of wages. This amount would be split between the employer and employee. Total annual benefits are estimated to be approximately $1.19 billion annually, depending on the average weekly wage, based on a projected utilization rate of 2.73 percent, an average weekly wage of $1,184, depending on the year, and an average duration of 11.08 weeks. The actual amount paid could change based on these variables. The projected utilization rate and average duration in VEC's estimates are based on the Department of Labor's 2012 and 2014 Family and Medical Leave Report. Average Weekly Wages are derived from projections used in the UI Trust Fund Model. While the premiums and payments are indeterminate, and will be based on demand, actuarial principles and usage, VEC estimates that revenues from the premium will be between $758.6 million in FY 2022 and $1.68 billion in FY 2025 and FY 2026; similarly, VEC estimates that expenditures from the Fund for both benefits and administration will be as high as $1.25 billion in FY 2026. This is reflected in the second and third tables in item 7, above.

Central Appropriations:
The fourth table in item 7, above, reflects the anticipated state general fund and nongeneral fund impact of one-half of the 0.65 percent employer tax the Commonwealth would be required to pay for state employees; as the bill requires each employer to deduct 50 percent, or a lesser agreed upon percentage, from each employee's wages. These are preliminary estimates based on FY 2019 salary and wage expenditures. The general fund portion would need to be appropriated in Central Appropriations for subsequent transfer to general fund supported agencies; agencies with positions supported from nongeneral fund revenue would be responsible for providing the nongeneral fund portion.

Statewide Impact:
It is anticipated that implementing the new family and medical leave program will have impacts to the Commonwealth's technology infrastructure that have not yet been determined. Impacts are expected to occur for systems that manage time, labor, payroll, and benefits offered. The Commonwealth is currently in the process of developing the new Cardinal Human Capital Management (HCM) system, which is expected to be deployed by October 2021. Therefore, if any immediate changes to this system are necessary, such changes likely would cause significant disruption to the project schedule and cost.

The Department of Human Resource Management's Personnel Management Information System (PMIS) and the Department of Account's central payroll and leave system, Commonwealth Integrated Payroll Personnel System (CIPPS), will be decommissioned and are expected to be replaced by the new Cardinal HCM system in October 2021, based upon the current project schedule. Technology staff are currently dedicated to day-to-day operational systems maintenance and critical Cardinal transition tasks. Consequently, all labor-intensive system reconfigurations to these antiquated, legacy systems (PMIS and CIPPS) have been discontinued. Therefore, the systems changes that would be necessary to implement this legislation cannot be implemented in PMIS or CIPPS. Any system changes to the new Cardinal HCM system would need to wait until the new system is implemented to avoid disruption to the system development schedule.

In addition to these statewide systems, there are also multiple state agencies that use their own systems for time, labor, payroll and benefits, including some that have been purchased with general fund appropriations and others that have been purchased with state nongeneral fund or federal fund revenues. A cost estimate for the impact to these agencies is currently indeterminate.

The statewide administrative impact and impact to the Department of Human Resource Management and the Department of Accounts is indeterminate.
The bill is expected to increase the administrative workload of state employers, who would be expected to provide necessary information to VEC, handle the complexities of coordinating the various overlapping benefits to ensure that the correct amounts are paid and overpayments do not occur, and reconcile between the state payroll schedule and that in the bill. The option for individuals to choose to take paid family and medical leave on an intermittent or reduced leave schedule is also expected to increase this complexity.

Virginia Retirement System
The proposed legislation creates an overlap of income replacement coverage under the Virginia Sickness and Disability Program (VSDP) and the Virginia Local Disability Program (VLDP), as well as potential overlap with workers' compensation coverage if the covered individual is seeking this new leave under § 60.2-801(3) for their own work-related health condition that also is compensable under Workers' Compensation. Most political subdivision employees hired for the first time on or after January 1, 2014, are in the Hybrid Retirement Plan. These employees are eligible for VLDP or a comparable plan after the first year of employment with the same employer. Hazardous duty employees in political subdivisions who have elected enhanced benefits are not eligible for the Hybrid Retirement Plan and maintain eligibility for traditional disability retirement. The statutes governing VSDP and VLDP provide for an offset of other employer sponsored or government mandated disability benefit programs against the VSDP or VLDP benefit. VSDP and VLDP would become the secondary income replacement programs for non-work related injuries and illnesses and the tertiary program for work-related injuries and illnesses. The employee would need to apply to VSDP/VLDP, and possibly workers' compensation, disability retirement, and the new paid family leave program separately to obtain all applicable benefits. The bill is anticipated to increase the administrative workload of employers.

The proposed paid family leave benefit will be paid out by VEC. Short-term disability (STD) benefits under VSDP or VLDP are paid by the state agency, political subdivision or school division. During STD, the employer would need to determine the amount of the paid family leave payment and offset (reduce) it against the STD payment. During long-term disability (LTD), ReedGroup (the VSDP/VLDP third party administrator), or various third party administrators for VLDP opt-out employers, would need to calculate the paid family leave offset prior to payment of the LTD benefit. For work-related conditions, the employer and ReedGroup also would need to determine the workers' compensation benefit amount and offset that from the STD or LTD benefit as well.

VSDP STD benefits are paid on the state's payroll cycle. Workers' compensation benefits are paid weekly, then converted by state payroll personnel to fit the state's payroll cycle. Under the proposed legislation, paid family leave is to be paid every two weeks. Determining the correct VSDP offset will be more complicated and will further increase the administrative burden on employers. Similar complications and related burdens will be placed on political subdivisions and school divisions in coordinating any VLDP, workers' compensation, and paid family leave payments within various payroll cycles.

The legislation also provides for coordination of benefits under § 60.2-808. Leave taken with wage replacement also qualifies as leave under the Family Medical Leave Act (FMLA) and will run concurrently with leave taken under the FMLA. Additionally, an employer may require that payment made pursuant to the bill be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer will give employees written notice of this requirement.

The proposed legislation would require changes to the VSDP and VLDP Employer Handbooks and related Employer Manuals, policy language and guidance for state human resources personnel, and guidance for state payroll personnel. Political subdivisions and school divisions would also need to update their own policies and procedures to account for the new leave type.

Department of Taxation
It is anticipated that this bill will not result in a fiscal impact to the Department of Taxation as the agency would not collect the new tax.

9. **Specific Agency or Political Subdivisions Affected:** Virginia Employment Commission; Department of Human Resource Management; Department of Accounts; Virginia Retirement System; Department of Taxation; all state agencies; political subdivisions; school divisions; Circuit Court of the City of Richmond.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** This bill is the companion bill to SB770. HB328 also creates a paid family and medical leave program.