

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB9-S1

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

2. Patron: Saslaw

3. Committee: Finance and Appropriations

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

5. Summary: Adds cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters or certain employees develop the cancer. The measure removes the compensability requirement that the employee who develops cancer had contact with a toxic substance encountered in the line of duty. The substitute adds a five year service requirement for the presumption of hypertension and heart disease and lowers the twelve year service requirement for cancers to five years.

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 and changes to the length of service requirements 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 cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act. These cancers are not currently on the list of presumed cancers. The measure also removes the compensability requirement that the employee who develops cancer had contact with a toxic substance encountered in the line of duty. In addition the bill lowers the required number of years of service for eligibility of cancer presumptions from twelve years down to five years of non-consecutive service, and adds a five year service requirement for heart and hypertension eligibility as no current requirement exists.

According to VRS, some state employees are still eligible for disability retirement; others, including any 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 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 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).

Including a service requirement for hypertension and heart disease will likely reduce the number of VRS traditional disability retirement, VSDP, VLDP, and LODA claims, which will likely lower costs. The estimated impact is reflected in the health care claims and death estimates below.

In order to obtain an estimate of the impact of adding specific cancers to the LODA presumptions, the VRS plan actuary adjusted the LODA valuation model's current cost assumptions to reflect the estimated impact to expected cash flows. Using the estimated number of additional annual workers' compensation claims among firefighters in Virginia provided in the JLARC Workers' Compensation System and Disease Presumptions study from December 2019, and also using historical claim experience from the LODA Fund the VRS plan actuary estimated the proposed bill would increase death claims by 25.5% and disability claims by 1.5%.

- 1.5% increase to health care claims and Health Insurance Credit Program (HIC) receipts.
- 25.5% increase to death benefit claims.

Estimated Additional Workers' Compensation Claims (Provided by JLARC actuary)

Estimated additional annual WC claims		
Cancer	Low	High
Brain	0.7	1.1
Testicular	0.7	1.1
Colon	3.6	4.1
All Cancers	5.1	6.4

The provision of the bill that removes the compensability requirement that the employee who develops cancer had contact with a toxic substance encountered in the line of duty is not easily measured and therefore is not estimated in the cost estimates below.

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					
	2022	2023	2024	2025	2026	2027
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	\$700.43	\$701.47	\$903.86	\$905.05	\$1,016.90	\$1,018.15
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	\$5.25	\$6.29	\$7.33	\$8.52	\$9.77	\$11.02
Estimated Additional Contributions	\$101,000	\$121,000	\$141,100	\$164,000	\$188,000	\$212,100

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. Due to the number of cancers presumed, costs may likely be expected to be above the average impact.

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

Range	Fiscal Year Ending June 30					
	2022	2023	2024	2025	2026	2027
25% Impact	\$2.63	\$3.15	\$3.67	\$4.26	\$4.89	\$5.51
Average Impact	\$5.25	\$6.29	\$7.33	\$8.52	\$9.77	\$11.02
75% Impact	\$7.88	\$9.44	\$11.00	\$12.78	\$14.66	\$16.53
100% Impact	\$10.50	\$12.58	\$14.66	\$17.04	\$19.54	\$22.04

Additional Contribution Requirement

Range	Fiscal Year Ending June 30					
	2022	2023	2024	2025	2026	2027
25% Impact	\$ 50,500	\$ 60,500	\$ 70,500	\$ 82,000	\$ 94,000	\$ 106,000
Average Impact	\$ 101,000	\$ 121,000	\$ 141,100	\$ 164,000	\$ 188,000	\$ 212,100
75% Impact	\$ 151,500	\$ 181,600	\$ 211,600	\$ 245,900	\$ 282,000	\$ 318,100
100% Impact	\$ 202,100	\$ 242,100	\$ 282,100	\$ 327,900	\$ 376,000	\$ 424,100

Please note that it is unclear from the legislation whether this bill 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, 2020, could cost significantly more, as shown below:

Cost Impact on the LODA Fund - Retroactive Application

Item	Fiscal Year Ending June 30					
	2022	2023	2024	2025	2026	2027
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	\$760.60	\$729.01	\$932.13	\$934.36	\$1,046.21	\$1,048.24
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	\$65.42	\$33.83	\$35.60	\$37.83	\$39.08	\$41.11
Estimated Additional Contributions	\$1,258,900	\$651,000	\$685,100	\$728,000	\$752,000	\$791,100

Based on analysis of the JLARC study 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, 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,

individuals disabled by these cancer types and who are eligible for disability retirement would be retired under regular disability retirement provisions (i.e., from a cause not compensable under the Virginia Workers' Compensation Act). The legislation would make it more likely that someone disabled by these types of cancer and who is eligible for disability retirement 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. 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 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 that have elected enhanced hazardous duty benefits.

These bills add cancers of the colon, brain, and testes 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 also removes the compensability requirement that the employee who develops cancer had contact with a toxic substance encountered in the line of duty. The JLARC study that was presented in December, 2019 contained similar recommendations.

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 experience-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.

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 Fund, the Department of Human Resource Management, all state agencies with LODA-eligible personnel, all localities with LODA-eligible personnel, and the Virginia Workers' Compensation Commission.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is identical to HB 783-H1 (Askew), which incorporates HB 44 (Brewer), HB 121 (Carroll Foy), HB 733 (Reid), and HB 1536 (Wyatt).

This bill would add cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act unless such presumption is overcome by a preponderance of competent evidence to the contrary. These cancers are not currently on the list of presumed cancers. The measure adds a five-year service requirement for hypertension and heart disease, reduces the service requirement for eligibility for the presumption for all covered cancer types from twelve years to five years, and removes the requirement that the employee who develops cancer must have had contact with a toxic substance encountered in the line of duty.

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 that may not be equally mitigated by the addition of the service requirement for hypertension and heart disease, 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 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 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.