Department of Planning and Budget
2021 Fiscal Impact Statement

1. **Bill Number:** HB2016

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

2. **Patron:** Ayala

3. **Committee:** Labor and Commerce

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, 2024. 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 2023. 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) HB1800/SB 1100 as Introduced. See Item 8.

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

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

Fiscal Year	*Dollars*	*Positions*	*Fund*
2021	0	0	n/a
2022	$70,100,000	250	GF
2023	$33,500,000	250	GF
2024	$33,500,000	250	NGF
2025	$33,500,000	250	NGF
2026	$33,500,000	250	NGF
2027	$33,500,000	250	NGF

Expenditure Impact: Virginia Employment Commission (payment of benefits)

Fiscal Year	*Dollars*	*Fund*
2021	0	n/a
2022	0	n/a
2023	0	n/a
2024	$579 Million	NGF
2025	$1.181 Billion	NGF
2026	$1.205 Billion	NGF
2027	$1.229 Billion	NGF

Revenue Impact: Virginia Employment Commission (from new taxes)

Fiscal Year	*Dollars*	*Fund*
2021		n/a
2022	0	n/a
2023	$758.5 Million	NGF
2024	$1.621 Billion	NGF
2025	$1.653 Billion	NGF
2026	$1.686 Billion	NGF
2027	$1.683 Billion	NGF

Expenditure Impact: Central Appropriations

Fiscal Year	*Dollars*	*Fund*
2021	0	n/a
2022	0	n/a
2023	$5,035,006	GF
	$7,033,809	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
2027	$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.

This fiscal estimate 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 (such as those funded entirely from nongeneral funds) are not available at this time. This bill establishes the Paid Family and Medical Leave Program and the Family and Medical Leave Insurance Trust Fund (the 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 payroll contributions established in the bill are the revenue sources for the Fund.

Virginia Employment Commission

As administrator of the family and medical leave program and the Fund, 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 anticipates that start-up costs will be $70.1 million in FY 2022 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, 2025. The expenditure impact in Item 7 above reflects the initial general fund investment.

VEC based its start-up cost estimates on the District of Columbia's (DC) plan for implementing a state paid family leave program. Virginia's program likely 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 $70.1 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 requirements; 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 to establish and administer the pre-implementation phase of the paid family and medical leave program 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.

Additionally, the bill requires VEC to procure an independent actuarial study to determine the full amount needed in the Family and Medical Leave Insurance Trust Fund to begin paying benefits by January 1, 2024. The study is required to include a recommendation on the rate of payroll contributions as created by the bill, which will be the lowest rate that ensures the solvency of the Fund. The Commissioner of the VEC will take the recommendation into account when fixing the contribution rate as created by the bill. VEC estimates $100,000 in start-up costs for the independent actuarial study.

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 be fully functional, 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, none of VEC's 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, 2022, to begin collecting the premium or payroll contributions from employers to pay benefits under the program beginning on January 1, 2023, and to begin making payments to eligible individuals beginning on January 1, 2024. Collections will be deposited to the Fund and payments will be made from the Fund.

According to the bill, for calendar years 2023 and 2024, VEC is to set the premium based on sound actuarial principles, and beginning with calendar year 2025, 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, 2025.

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 based on a projected utilization rate of 2.73 percent, an average weekly wage of $1,184, and an average duration of 11.08 weeks. The actual amount paid could change depending on the average weekly wage and these other 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 – it is estimated that revenues from the premium will be between $758.5 million in FY 2023 and $1.68 billion in FY 2026 and FY 2027; similarly, it is estimated that expenditures from the Fund for both benefits and administration will be as high as $1.23 billion in FY 2027. This is reflected in the first and second 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 2020 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 implementing the new Cardinal Human Capital Management (HCM) system, which would require modifications.

In addition to these statewide systems, there are also multiple state agencies that use their own systems for time, labor, payroll and benefits. The costs to modify these systems will be paid from both general fund and nongeneral fund resources, depending upon the agency and the systems that are impacted. 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 on employers due to the requirements to provide the necessary information to VEC, to handle the complexities of coordinating the various overlapping benefits to ensure that the correct amounts are paid and overpayments do not occur, and to 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 bill would create a new leave program for public and private employees to be administered by the VEC. The bill would require covered employers under the Virginia Retirement Service (VRS) to offer leave outside the requirements of the Virginia Sickness and Disability Program (VSDP) and the Virginia Local Disability Program (VLDP). VRS's impact only addresses the impact to VSDP/VLDP and not to state leave policies or leave policies of other VRS-covered employers such as school divisions and political subdivisions. In general, this bill provides redundant Short Term Disability (STD) coverage for members in the VSDP/VLDP. A VSDP/VLDP claim starts on the date the treatment provider indicates a member cannot work. With similar language in the bill, VRS would have to allow the two programs to run concurrently.

The bill would provide up to 12 weeks of paid leave in a year for Family Medical Leave Act (FMLA) qualifying events. The benefit amount would be 80 percent of the employee's average weekly wage. Eligibility would start immediately upon being hired and would cover members in their first year of service. VSDP/VLDP does not cover employees during their first year of service for non-work related injuries or illnesses and requires a seven-day waiting period before benefits begin. The bill specifies that there is no such waiting period for the paid leave provided in the bill.

This bill would create overlap with VSDP and VLDP for pregnancy and other medical absences that qualify for the Family Medical Leave Act (FMLA). For state employees, the Department of Human Resource Management (DHRM) also provides parental leave under Policy 4.21. VSDP statutes contain language that allow VRS to offset the benefits paid under this bill from VSDP/VLDP benefits, so an employee would not receive both benefits for the same condition or illness.

Under the bill, the maximum number of weeks during which family and medical leave insurance benefits are payable in an application year is 12 weeks. VSDP/VLDP STD is paid for up to 26 weeks per claim (125 work days), and there is no annual limit on the number of weeks a member may receive STD, assuming a member files multiple STD claims during a calendar year (e.g., there could be more than one VSDP/VLDP claim in a single year), so VSDP/VLDP STD would continue after the paid medical leave established in the bill ends.

VRS' ability to offset under the VSDP/VLDP removes any conflict between the programs.

There are states that provide STD benefits to employees who work in those states (NY, NJ, CA, HI, and there may be others), but those programs typically pay 60 percent and do not cover the rest of the FMLA qualifying events, like exigency leave.

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 also would need to update their own policies and procedures to account for the new leave type.

Department of Medical Assistance Services

The Department of Medical Assistance Services (DMAS) does not expect this bill to have a fiscal impact in the 2020-2022 biennium as the provision goes into effect in calendar year 2023 for coverage in calendar year 2024. The impacts to employer paid rates will not be determined until after fiscal year 2022. Starting in calendar year 2023, this policy would increase in billable rates for consumer directed care. In this model of care, the Medicaid members select their personal care, respite or companion care attendants and the Medicaid program pays for the wages of the attendant plus appropriate employer taxes and benefits. If, for example, this new benefit were to be paid for by a 0.65 percent contribution from the attendants' paychecks one could assume that this would be shared with half coming from the attendant and half coming from the employer just like other employee/employer cost sharing under this legislation. In the case of consumer-directed care, that employer paid amount would result in a 0.325 percent increase to billable rates.

DMAS pays consumer directed attendants approximately $560 million a year. Of this amount, approximately $138 million is for care delivered as a fee for service and the remainder is delivered through Virginia's Commonwealth Coordinated Care Plus managed care program. Assuming that a 0.325 percent increase in billable rates was necessary to cover the employer's share of this program's cost, the fiscal impact of this bill is estimated at approximately $1.82 million ($560 million x 0.325 percent). The federal government is not expected to support costs associated with a family and medical leave program, as such this expense is assumed to be entirely supported with general fund dollars. Should DMAS determine that federal funds are available for this function, then the estimated cost can be reduced to half of this estimate. In addition, it is assumed that the overall amount of "take home" pay provided to personal care workers would be reduced by a similar amount since they are expected to cover the employee share of this program.

Many other providers such as personal care agencies, hospitals, nursing homes, intermediate care facilities, intellectual and developmental disabled waiver providers, group homes, day support, community service boards and private clinics would also be impacted by this proposal. While the bill does not explicitly authorize rate increases to cover these increased costs, it is expected that such costs would eventually impact future rates. DMAS is currently examining data associated with this issue and this statement will be revised should additional estimates become available.

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.

State-Supported Local Employees and School Division Employees Funded through the Standards of Quality
Currently, for state-supported local employees funded through the State Compensation Board, the Commonwealth provides funds for the position's salary, and payroll taxes under the Federal Insurance Contributions Act (social security and Medicare tax) and certain rates for VRS and Group Life provided for in Item 75, paragraph Q, of the Appropriation Act. For other state-supported local government employees, the Commonwealth contributes toward the affected position's salary. Item 477, paragraph L., of the Appropriation Act also provides for the state's payment of the health insurance credit contributions for the Compensation Board, local social services boards, and general registrars. It is unclear whether the Commonwealth would be required to cover the employer share of the tax established in this bill; however, if the Commonwealth is required to do so, it is anticipated that this would result in a general fund expenditure impact of $3,217,737 annually beginning in FY 2023. This is based on a tax in the amount of 0.65 percent of wages, split between the employer and employee, with the employer paying 0.325.

To provide a fiscal impact estimate for this bill, the Virginia Department of Education (VDOE) calculated an estimated state cost using the HB1800 fiscal year 2022 base. Using this base, VDOE estimates an additional state general fund cost of $11,172,224 each year based on VEC's calculated premium of 0.65 percent of wages, split between employer and employee. Because the Standards of Quality (SOQ) model supports benefit rates up to four basis points, the estimate was generated by increasing the professional and non-professional VRS rates by 0.33 percent to represent the employer share (the model cannot use 0.325 percent). This fiscal impact estimate does not reflect the actual, final state cost of the employer share for school division employees funded through the SOQs. This estimate is based on HB1800 as introduced for the 2021 General Assembly Session. The actual state cost in outgoing years is indeterminate at this time and would be based on the Direct Aid to Public Education budget as rebenchmarked for future biennia.

Local school divisions will be required to provide local matching funds for this additional state support based on each school division's local composite index. Additionally, local school divisions will be required to support the entire cost of the employer share for positions that the division employs beyond those required by the SOQs and that are paid from local funds. Any actual impact to local school divisions is indeterminate at this time.

9. **Specific Agency or Political Subdivisions Affected:** Virginia Employment Commission; Department of Human Resource Management; Department of Accounts; Virginia Retirement System; Department of Medical Assistance Services; 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:** None.