

Commission on Local Government

Estimate of Local Fiscal Impact

2023 General Assembly Session | 01/20/23

In accordance with the provisions of 30-19.03 of the Code of Virginia, the staff of the Commission on Local Government offers the following analysis of legislation impacting local governments.

HB 1988: Employment; paid sick leave, civil penalties. (Patron: Delegate Elizabeth R. Guzman)

Bill Summary: Employment; paid sick leave; civil penalties. Expands provisions of the Code that currently provide paid sick leave for home health workers to cover all employees of private employers and state and local governments. The bill provides that accrued paid sick leave can be carried over to the following year and that employees transferred to a separate division or location remain entitled to previously accrued paid sick leave. The bill provides that paid sick leave may be used for the closure of an employee's place of business by order of a public official due to a public health emergency, for an employee's need to care for a child whose school or place of care has been closed due to a public health emergency, or for an employee to care for himself or a family member who has been exposed to a communicable disease. The bill requires each employer to provide its employees a written notice of its paid sick leave policy at the commencement of employment and prohibits an employer from taking retaliatory personnel action against an employee for exercising the rights provided in the bill.

The bill authorizes the Commissioner of Labor and Industry, in the case of a knowing violation, to subject an employer to a civil penalty not to exceed \$150 for the first violation, \$300 for the second violation, and \$500 for each successive violation. The Commissioner may institute proceedings on behalf of an employee to enforce compliance with the provisions of this bill and to collect specified amounts from the employer that shall be awarded to the employee. Alternatively, an aggrieved employee is authorized to bring a civil action against the employer in which he may recover double the amount of any unpaid sick leave and the amount of any actual damages suffered as the result of the employer's violation. The bill has a delayed effective date of January 1, 2024.

Local Fiscal Impact: Net Additional Expenditure: ___x___ Net Reduction of Revenues: _____

Summary Analysis:

Number of Localities Responding: 8 Cities, 6 Counties, 3 Towns, 1 Other

Localities estimated negative fiscal impacts ranging from \$0 to \$8.33 million over the biennium. While only three localities estimated the potential expenses, three others who do not already have a similar sick leave policy stated that this bill would result in an indeterminate increase in expenditures.

The increases in expenditures resulted from requirements for new staff, additional software and resources, administrative work that would be necessary to convert the city's PTO system to a system with sick days and

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to monitor and track employee sick days, the expansion of benefits, increased response to investigations, and increased potential for claims against the locality, including the possibility of frivolous lawsuits.

Localities suggested potentially using telework agreements in lieu of sick days in instances where public health declarations shut down daily operations, as well as narrowing the bill's definition of "family."

Locality	Expenditure Narrative by Responding Localities
City of Alexandria	While the City's sick leave policy allows employees to maintain their accrued sick leave balance for the duration of their employment with the City, this proposed bill would expand the definition for when sick leave can be used. To assess the potential fiscal impact, we reviewed the amount of COOP leave that was used by City employees in response to the COVID-19 pandemic in the final six months that COOP leave was available (January 1-July 1, 2022); this leave type most closely aligns with the expanded definition of sick leave in this bill. The number of COOP leave hours paid during the this period was 51,123.40 and resulted in a cost of \$846,719.20. Assuming that we are estimating the cost of a full year based on the actual hours used in 2022 (102,246.8 is double the amount of the actual hours used) and the average pay today (\$40.75/hour), the cost has the potential to be as high as \$4,166,557.10.
City of Chesapeake	
City of Danville	Currently in compliance with sick leave accrual. However, the main concern is that the definition of "family" is too broad and could pose issues with implementation.
City of Harrisonburg	The increase in expenditures that would result from this legislation cannot be estimated without significant staff time and effort. However, the city would see significant expenditure increases, largely due to the amount of administrative work that would be necessary to convert the city's PTO system to a system with sick days. Additional administrative work to monitor and track employee sick days would also serve to increase expenditures.
City of Manassas	
City of Norfolk	<p>The City of Norfolk already allows sick leave to be carried over to the following year (but not annual). When an employee is transferred to a new department within the city, their leave balance is not affected. In our emergencies and closures policy, the city provides paid time off in the event the city manager closes the city. We would like to clarify if this provision applies only to the City of Norfolk closings, or if another city closes, and the employee resides in another city, but works for the city of Norfolk.</p> <p>The city already provides new employees with a written notice of our sick leave policy during the new employee orientation.</p> <p>As the City of Norfolk is already in compliance with the provisions of this bill, we do not expect a significant fiscal impact from this bill.</p>
City of Richmond	The total fiscal impact is indeterminate at this time, multicity impact is anticipated with the largest impact on public safety departments (police, fire, and emergency communications) due to the departments utilizing shift scheduling. The expansion of benefits, increased response to investigations, and increased potential for claims against the locality will create indeterminate additional expenditures. Payment of legal fees increases the potential for frivolous claims.
City of Winchester	

Locality	Expenditure Narrative by Responding Localities
Augusta County	
Mecklenburg County	Our County provides our full-time employees with monthly sick leave accruals that would be sufficient to achieve 40.1-33.4 and we allow roll-over, which would achieve the new proposed (E) (and is already accomplished in (A)). There may be some impact related to the employment of part-time employees with the removal of the 30 hour work minimum to qualify, but these costs are variable annually based on part-time occupation and usage, and any impact in FY 2024 itself would be minimal due to the need for people to accrue sufficient enough hours to use with a starting point of 0 hours at the beginning of the fiscal year for a new program.
Prince George County	While this legislation does not directly impact expenditures, it would result in an increased leave liability on financial statements. It also conflicts with local leave payout policies - we could not pay out leave to departing employee as we currently do, and restore leave if employee separates from employment and subsequently returns to employment. We also currently have a sick leave bank and do not permit individual donations of leave to other individual employees.
Pulaski County	We could see this affecting local governments in capital costs as well as operating costs. If we were mandated to shut down a week and be non-operational and pay sick leave, that would account for wages to approximately 250+ employees. If you can make suggestions, why not provide Telework arrangements instead of sick leave pay? We already provide sick leave carryover. Non-VRS Hybrid employees are not capped at the amount of sick leave they can earn. VRS Hybrid employees are capped; however, not until 60 days. That's quite a bit of time they could save to utilize for such events. We also provide the ability to transfer leave between the County and PSA. We already have a Sick Leave Bank Policy that allows employees to participate by donating one day annually to receive up to 30 days of paid leave for non-pandemic situations. It also provides pay of up to 5 days or 40 hours for those that have COVID. It is nearly impossible to estimate the loss of revenues due to so many potential variables. Any department that hosts a revenue stream has the potential for the loss of that revenue stream if and when it is shut down and then the duration of said closure would also impact the amount of net loss.
Roanoke County	We do not have paid sick leave, we have Flexible Leave Plan that can be used at the discretion of the employee and it does roll over.
Sussex County	The County would need to implement new staff, additional software and resources to link with state departments in determining employee's previous benefits if they were to transfer to the County. Also, OPEB would increase due to the availability of more paid sick leave.
Northern Neck PDC	The PDC does not employ home health workers.
Town of Leesburg	
Town of Luray	
Town of Marion	

* Penny value is defined as the amount a locality would need to raise their real estate tax rate to cover the fiscal impacts of the bill, assuming no other changes to revenues or expenditures. It is represented in terms of dollars (e.g., 0.01 is a one cent increase in the real estate tax rate, etc.).