

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: SB904-H1

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed

Second House ☐ In Committee ☒ Substitute ☐ Enrolled

2. Patron: DeSteph

3. Committee: Commerce and Energy

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

5. Summary: The substitute provides that an anxiety disorder or depressive disorder, as both are defined in the bill, incurred by a law-enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act on the same basis as post-traumatic stress disorder. The bill provides that a mental health professional must diagnose the law-enforcement officer or firefighter as suffering from anxiety disorder or depressive disorder as a result of a qualifying event and includes other conditions for compensability. A qualifying event is defined as an incident or exposure occurring in the line of duty on or after July 1, 2020, for post-traumatic stress disorder and for purposes of subdivisions one through four of this definition in the Code, on or after July 1, 2023, for anxiety disorder or depressive disorder.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: According to the Department of Human Resource Management (DHRM), the proposed legislation would result in more workers' compensation claims being accepted. As more claims are accepted, the experience-based premium paid by state agencies that employ law-enforcement officers and firefighters may increase. However, the additional funding to pay for the increase of an agency's experience-based premium for workers' compensation coverage cannot be determined at this time.

The proposed legislation also may have a fiscal impact for DHRM's Office of Workers' Compensation (OWC), and the Attorney General and Department of Law (OAG) unit assigned to litigate the state's workers' compensation claims. DHRM's OWC may have to expand its current claims team; however, because the increase in the number of claims is unknown, the additional staff at OWC cannot be determined at this time. The OAG estimates it would need one additional lawyer for each 100 new claims litigated, and one additional support staff member for every 150 new claims. The funding for the additional staff would be

supported through an increase in the memorandum of understanding (MOU) with DHRM, or additional appropriation provided to the OAG's Workers' Compensation Unit.

According to the Virginia Retirement System (VRS), the proposed legislation may impact the Line of Duty Act (LODA) program, the VRS disability retirement program, or the VRS managed disability programs. This is due to these programs having a work-related component of benefits dependent on whether an injury or death occurs in the course of employment as determined by the Virginia Workers' Compensation Commission. There are numerous references to Workers' Compensation Act provisions within the statutory framework for VRS-administered programs. Therefore, any changes to the Workers' Compensation Act provisions can impact and add costs to the VRS-administered programs.

Line of Duty Act

The proposed legislation is expected to add eligibility for LODA benefits either by expanding the presumptions or by increasing the pool of people who would be eligible under an existing presumption. While the impact will not be immediate, it will likely accelerate the increase in LODA premiums as more conditions and members are covered by presumptions that increase the likelihood of future claims.

Not all occupational diseases and conditions used in the Workers' Compensation context are applicable in the LODA context. Currently, the only presumption statutes from the Workers' Compensation Act that impact LODA are §§ 65.2-402 and 65.2-402.1. Other presumptions, such as §§ 27-40.1, 27-40.2, and 51.1-813, also apply to LODA but are not codified in the Workers' Compensation Act.

To the extent that a bill impacts a presumption statute that already applies to LODA, then there will be an impact to the LODA program. Otherwise, changes to presumption statutes will not impact LODA unless a new statute is cross-referenced in the definition of a "deceased person" in § 9.1-400.

VRS Disability Retirement

The retirement allowance calculation for a VRS disability retirement depends on whether the disabling condition is work-related. If the disabling condition is not compensable under the Workers' Compensation Act, then it is not a work-related disability. If the disabling condition is compensable under the Workers' Compensation Act, then it is a work-related disability. Members retiring due to a work-related disability receive a higher VRS disability retirement benefit. Any bill that impacts the likelihood of compensability under the Workers' Compensation Act impacts the likelihood that a VRS member's disabling disease or condition will be considered work-related.

VRS Managed Disability

VRS managed disability programs include the Virginia Sickness and Disability Program (VSDP) for state employees and the Virginia Local Disability Program (VLDP) or a comparable plan for local employees who are in the Hybrid Retirement Plan. In both VSDP and VLDP, the calculation of benefits depends on whether the disabling condition is work-related. If the disabling condition is not compensable under the Workers' Compensation Act,

then it is not a work-related disability. If the disabling condition is compensable under the Workers' Compensation Act, then it is a work-related disability. Members receiving VSDP, VLDP, or comparable benefits due to a work-related disability receive a higher benefit. Any bill that impacts the likelihood of compensability under the Workers' Compensation Act impacts the calculation of VSDP and VLDP benefits.

According to the Virginia Workers' Compensation Commission, the proposed legislation is expected to have minimal or no fiscal impact for the agency.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, Attorney General and Department of Law, Virginia Retirement System, Virginia Workers' Compensation Commission, state agencies that employ law-enforcement officers and firefighters, state agencies with LODA-eligible employees, and localities.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is similar to HB 1775-S1. The Senate substitute for HB 1775 defines a qualifying event to mean an incident or exposure occurring in the line of duty on or after July 1, 2020, for post-traumatic stress disorder and on or after July 1, 2023, for anxiety disorder or depressive disorder.

The Senate substitute for HB 1775 also requires each law-enforcement recruit training program conducted or administered by a county, city, or town police department, sheriff's office, state agency, or other employer of law-enforcement officers to provide, in consultation with the Department of Behavioral Health and Developmental Services, resilience and self-care technique training for any individual who begins basic training as a law-enforcement officer on or after July 1, 2023.