Department of Planning and Budget
2015 Fiscal Impact Statement

1. **Bill Number:** HB2204

   House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

   Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron:** Jones

3. **Committee:** Appropriations

4. **Title:** Line of Duty Act.

5. **Summary:** Revises the Line of Duty Act (the Act) by codifying revisions to the Act in the appropriation act, transferring overall administration of the Act to the Virginia Retirement System, transferring administration of health insurance benefits under the Act to the Department of Human Resource Management, and providing for an administrative appeal process. The bill becomes effective July 1, 2016.

6. **Budget Amendment Necessary**: No. This legislation would not go into effect until fiscal year 2017. No amendment to the current biennial Appropriation Act is required.

7. **Fiscal Impact Estimates:** Preliminary, see Item 8.

   7a. Expenditure Impact: Impact estimates reflect only estimated new costs and positions

Fiscal Year	*Dollars*	*Positions*	*Fund*
2015	$0	-	-
2016	$0	-	-
2017	$342,198	2	LODA Fund and non-participating employers
2018	$255,148	2	LODA Fund and non-participating employers
2019	$255,148	2	LODA Fund and non-participating employers
2020	$255,148	2	LODA Fund and non-participating employers
2021	$255,148	2	LODA Fund and non-participating employers

8. **Fiscal Implications:** This legislation transfers overall administration of the Line of Duty Act (LODA) program from the Department of Accounts (DOA) to the Virginia Retirement System (VRS). The administration of health insurance benefits through the program would be transferred to the Department of Human Resource Management (DHRM). The bill also changes the eligibility determination process and codifies language currently found in the Appropriation Act. Additionally, the bill clarifies that all benefit payments and administrative costs will be paid by the Line of Duty Death and Health Benefits Trust Fund if an employee

works for a participating employer. Nonparticipating employers must pay their own program costs and reimburse VRS and DHRM for administrative costs incurred.

DOA Impact

DOA currently has two employees responsible for administering the program. The fiscal year 2014 administrative costs of the program to DOA was $182,622. These costs are reimbursed from the existing Line of Duty Fund (to be renamed the Line of Duty Death and Health Benefits Trust Fund, or "the Fund"). Of this amount, $146,906 represents the direct cost of the program, primarily salary and benefits of the two employees. The remaining $35,716 represents the indirect costs billed to the program, such as rent costs. DOA notes that the indirect costs will have to be absorbed by the agency's existing appropriation, while the $146,906 in direct costs is transferred to the successor agencies.

VRS Impact

VRS would be responsible for administering most aspects of the program, including eligibility determination for affected employees. VRS will require 2.5 new positions to administer the program at an annual cost of $184,558 for salary and benefits. Two of the positions will be in VRS' customer programs to review program applications, medical reports, accident reports, submit claims to a medical review board for eligibility determinations, communicate with employees/beneficiaries and employers, and pay benefits as appropriate. The half of a position will be dedicated to accounting functions. VRS anticipates an additional starting year cost of $87,050 for systems programming and testing in order to implement the program.

Under current LODA program practices, the Virginia State Police (VSP) is responsible for the initial investigation of LODA claims for eligibility. The investigation typically costs between $400 and $700 per claim. VSP is reimbursed for its investigation by the employer of the claimant, regardless of whether the employer is a participating or nonparticipating employer. This legislation shifts the investigation responsibility to VRS, who may request the State Police's assistance as needed and allows VRS to recover its costs from either the Fund or non-participating employers, depending on the case. VRS indicates that it plans to use a similar process to the one it uses for its current disability retirement determinations and use a medical board to evaluate disability claims. Each review costs $560. DOA has historically reviewed 80 to 100 claims annually, though VRS notes that this number has been growing over time. VRS assumes it will review 100 claims annually for a cost of $56,000. Additionally, the agency assumes they will request VSP's assistance in ten cases annually, at a cost of $7,000. As stated previously, the funding source for this amount will depend on the employer of the claimant.

The bill allows beneficiaries, claimants, and employers who are aggrieved by the determination of VRS to appeal the decision through a process established by VRS. VRS notes that this process would be through an independent fact finder review that costs approximately $2,850 per instance, which includes the costs of the fact finder and a court reporter. VRS estimates ten appeals annually, at a cost of $28,500.

The total estimated cost to VRS for the first year of implementation is $363,108. After implementation, the estimated annual cost is $276,058, however VRS notes that this figure is based on the assumptions discussed above and could reach $350,000 depending on the case load.

DHRM Impact

This legislation directs DHRM to administer the provisions of the Act related to continued health insurance coverage for disabled persons, their spouses, their dependents, and the surviving spouses of deceased persons covered under the Act. DHRM's primary responsibility will be making determinations of comparability between health plans for beneficiaries. The Act requires that the continued health insurance coverage that a person receives be the same plan of benefits to the health insurance plan the deceased or disabled person was entitled to on his last day of active duty or comparable benefits established as a result of a replacement plan. DHRM will be required to track dependents to ensure they still qualify for coverage, as well as process health insurance claims and reimbursements that are to be paid from the Fund for participating employers. DHRM must also monitor for instances where a person is receiving health insurance benefits but would otherwise qualify for a health insurance credit under §51.1-1400, *Code of Virginia*. The Act requires such credits to be deposited into the Fund or to the nonparticipating employer.

DHRM will require two additional staff member at an annual cost of $161,712 for salary and benefits. The funding source for these positions will be the Fund or a nonparticipating employer.

Premium Impact

Participating employers are assessed a per eligible employee premium each year under the current program. The legislation does not change this provision. For certain state agencies, some or all of the cost of the premiums is paid by the general fund, based on the funding source for the eligible employees. Changes to the administrative costs charged to the Fund may impact the assessed premium, but it is important to note that the agency costs discussed above are not solely paid by participating employers and thus, the Fund. Some portion of the costs will be paid by the nonparticipating employers. For reference, the current LODA premium for participating employers is $518.84 per eligible employee.

The legislation modifies two existing health insurance benefit provisions. First, surviving spouses would now have continued health insurance coverage until death. Under existing law, the surviving spouse has coverage until death or coverage by an alternative health insurance plan. VRS notes its actuary already assumes that surviving spouses will receive continued coverage until death, so this change will not impact premium projections. The second change makes continued health insurance coverage for dependents subject to the same eligibility and termination rules applicable to dependents for the plan in which they are enrolled. Under provisions of the Affordable Care Act (ACA), this change will allow dependents to remain covered until age 26. Under current law the Line of Duty Act ends coverage at age 21 or 25, depending on if the dependent is a full time student. VRS notes it actuary does not have sufficient information at this time on which to base a projection, but did not believe that this change would have a significant impact on premiums.

Total Administrative Impact
Administrative costs incurred to the program currently include $182,622 in costs incurred by DOA. Based on the estimated staffing needs for DHRM and VRS, the staffing costs of the program will be $346,270 annually. The bill allows the costs of the eligibility determinations and investigations to be charged to the Fund in instances where the claimant works for a participating employer. Currently, such costs are paid by the employer directly. Based on the information provided by VRS, this cost is estimated to be $91,500 annually. A portion of this increase will be a new cost to the Fund only, as non-participating employers have already been reimbursing VSP for the eligibility investigations. The total administrative costs estimated under this legislation are $437,770 annually, an increase of $255,148. The first year of implementation is expected to be $87,050 higher due to the systems programming and testing estimated by VRS.

9. **Specific Agency or Political Subdivisions Affected:** Department of Accounts, Department of Human Resource Management, Virginia Retirement System, all state agencies with Line of Duty Act eligible personnel, and all localities.

10. **Technical Amendment Necessary:** VRS requests four technical amendments:

    The Fund is currently named the "Line of Duty Act Fund" in the Appropriation Act (Chapter 2, 2014 Special Session I Virginia Acts of Assembly, Item 264). In order to clarify that the money currently being held in the "Line of Duty Act Fund" is now to be held in the "Line of Duty Death and Health Benefits Trust Fund," an amendment may be helpful.

    Line 79 after "Fund" insert "(formerly the "Line of Duty Act Fund")

    Line 138, after "by" delete "by"

    VRS is concerned that 30 days will not be long enough to make an eligibility determination, and requests 45 days. VRS plans to send claims for a medical board review and that process will take 10 to 15 days at a minimum.

    Line 218, after "within" strike "30" and insert 45

    VRS is concerned that allowing employer appeals could lead to a series of appeals and counter appeals that could significantly delay the award of benefits, and would appreciate consideration of the following amendment:

    Line 237, after "beneficiary," delete *employer*

11. **Other Comments:** A new provision in the bill would provide employers with the right to appeal a determination of eligibility for benefits through a process established by VRS. It is

VRS' understanding that the structure of the Administrative Process Act (APA) does not include provisions related to an employer submitting an appeal, because the APA provisions relate to the individual or individuals denied benefits by the case decision. Accordingly, it is not clear that the employer would be eligible to petition for an appeal under the APA. Further, allowing an employer, in addition to the individual filing the claim, the ability to appeal could lead to a nearly endless series of appeals and counter appeals.

To address the employer's concern that it should be allowed to participate in the appeal process as well as to provide an opportunity for an employer to submit evidence in such a cases, VRS recommends that the employer be allowed to provide contrary evidence as part of the initial determination. Subsequently any such information provided would become part of the agency record under the Administrative Process Act (§ 2.2-4000, et seq. of the Code of Virginia).

The legislation also codifies the Appropriation Act language that provides for advancing burial expenses for those who die in the line of duty. This is not an additional cost to the Fund as it is anticipated that these expenses will be reimbursed from group life benefits, to the extent these benefits are available. There is no mechanism provided for the reimbursement of burial expenses advanced to the family of a deceased volunteer. VRS recommends that the participating locality reimburse burial expenses advanced on behalf of a deceased volunteer.

Since LODA benefits are not considered part of the VRS plan benefits, the disability claim evaluations will have to be explicitly performed and paid for using LODA funds. The "exclusive benefit rule", an IRS rule that must be met in order to maintain the tax qualification of the plan, states that a plan must use its plan assets only for the exclusive benefit of the plan employees and their beneficiaries. Current expenses for LODA administration and eligibility determination are reimbursed from the LODA Fund.

VRS already manages the investment of the Line of Duty Fund (to be renamed the Line of Duty Death and Health Benefits Trust Fund). The legislation adds a new section in Title 51.1, § 51.1-124.37, which codifies the terms and conditions of VRS' investment of the LODA Fund. This new section codifies the existing investment practice, which is to allow VRS to place LODA Fund monies into investments at its discretion. The bill codifies the current provisions that shield individuals associated with VRS from personal liability for investment losses, so long as the investments were made within the applicable standard of care. The bill applies §§ 51.1-124.32 through 51.1-124.35 to VRS' investment activities with respect to the LODA Fund. VRS is permitted to assess the LODA Fund a reasonable fee for the services provided.

C: Secretary of Administration, Secretary of Finance, Virginia Retirement System
Date: February 5, 2015
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