Department of Planning and Budget
2018 Fiscal Impact Statement

1. **Bill Number:** HB40

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

2. **Patron:** Levine

3. **Committee:** Commerce and Labor

4. **Title:** Family and Medical Leave Insurance Program; established, effective clause.

5. **Summary:** Entitles individuals to a family and medical leave insurance benefit payment for each month they are engaged in qualified caregiving, not to exceed 60 qualified caregiving days per year. Qualified caregiving means an activity, except regular employment, for a reason an individual is entitled to leave under the federal Family and Medical Leave Act of 1993. Benefits would amount to 66 percent of an individual's monthly wages, based on highest annual earnings from the prior three years, up to a capped monthly amount, and would be indexed to the national average wage index. If a person takes the maximum number of days, the benefits would range from a minimum benefit of $580 to a maximum benefit of $4,000 per month in the program's first year. To be eligible for benefits, an individual is required to (i) be insured for disability insurance benefits under the Social Security Act at the time his application is filed; (ii) have earned income from employment during the 12 months before filing the application; (iii) have filed an application for a family and medical leave insurance benefit; and (iv) have been engaged in qualified caregiving, or anticipate being so engaged, during the 90-day period before the application is filed or within 30 days thereafter. The measure establishes the Family and Medical Leave Insurance Fund and requires family and medical leave insurance benefit payments to be made only from this Fund. A tax of 0.2 percent is imposed on the wages received by every individual, and an excise tax of 0.2 percent of the wages paid in any calendar year by the employer with respect to their employment is imposed on employers. The measure has a delayed effective date of January 1, 2019.

6. **Budget Amendment Necessary**: Yes, a new item would need to be established under the Virginia Employment Commission. See Item 8, below.

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

8. **Fiscal Implications:** It is anticipated that this bill will have a nongeneral fund expenditure and nongeneral fund revenue impact. The bill establishes a new program, the Family and Medical Leave Insurance Program, to be administered by the Virginia Employment Commission (VEC). Currently, VEC provides temporary income support from funds derived from a tax paid by state employers to the Unemployment Insurance Trust Fund. Similarly, this bill establishes the Family and Medical Leave Insurance Fund (FMLIF) to be comprised of an employee and employer tax. All funds collected shall be deposited to the FMLIF to be

used solely for the purposes of paying family and medical leave insurance benefits to individuals and for administration of the Fund. Although the bill provides that expenses for administering this program may be paid from funds that may be made available by the federal government under Title III of the Social Security Act, or in the event that is not possible, then administrative expenses are to be paid from the employment administration account or the fund in which funds granted under Title III are deposited, VEC indicates that the U.S. Department of Labor has indicated that such federal funds cannot be used toward the administration of the Family and Medical Leave Insurance Program.

Similar to the current unemployment insurance program, VEC anticipates that to fully implement this program an additional $14 million and 125 positions will be required annually. Because the bill has a delayed effective date of January 1, 2019, the FY 2019 estimated cost to administer the program is $7.0 million, plus start-up costs including: $10 million to $15 million to develop the new software system; $1 million to $3 million for software licenses for the new system; $3 million to $5 million for infrastructure costs related to setting up and outfitting new locations; and $5 million to $10 million for supporting services software and infrastructure (human resources, finance, etc.).

The bill establishes an employee and employer tax, and directs VEC to collect the tax. The new employee tax is to be equal to 0.2 percent of the wages received by an individual with respect to employment; the new employer tax is to be equal to 0.2 percent of the wages paid in a calendar year by the employer with respect to their employment. The revenue collected pursuant to these new taxes is to be deposited to the FMLIF. According to VEC, the estimated annual revenue for this fund once it is fully implemented could be between $609.2 million and $744.0 million depending on its definition of taxable wage base and whether or not every employee and employer is assessed the tax, or just taxable employers. Because the program would begin in the middle of FY 2019, revenue for FY 2019 is estimated to be approximately one-half of the anticipated annual revenue, or between $309.6 million and $377.0 million.

According to the U.S. Department of Labor, 13.2 percent of eligible employees use Family and Medical Leave Insurance in a year. Based on an estimate of Virginia's eligible employees, VEC anticipates that of those employees who use Family and Medical Leave Insurance, approximately 118,000 per year, would do so for caregiver related activities. Using Virginia's average wages, the estimated annual benefits for those individuals could be $627.6 million once the program is fully implemented. The estimated benefits in the first year of implementation are between $309.6 million and $377.0 million because the bill does not take effect until January 1, 2019.

According to the Department of Taxation (TAX), the impact of this bill on general fund revenue is indeterminate.

Any impact on the Department of Human Resources Management (DHRM) or state agencies is indeterminate at this time. According to DHRM, state employees may already use annual leave, family/personal leave, 33 percent of their sick leave, and leave share for a qualifying family medical illness for up to 12 weeks. In such instances, the employees would continue to be paid appropriated salaries. The income replacement benefit offered in this bill would be much less than full pay, so it is anticipated that those with no other leave resources would access it.

9. **Specific Agency or Political Subdivisions Affected:** Virginia Employment Commission; Department of Taxation; Department of Human Resource Management; all state agencies; courts.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.