

Department of Planning and Budget 2019 Fiscal Impact Statement

1. **Bill Number:** HB2281

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

2. **Patron:** Filler-Corn

3. **Committee:** Commerce and Labor

4. **Title:** Workers' compensation; occupation disease presumptions; PTSD.

5. **Summary:** Establishes a presumption that if certain firefighters, law-enforcement officers, hazardous materials officers, animal protection police officers, or 9-1-1 emergency call takers, dispatchers, or similarly situated employees (i) receive a diagnosis of post-traumatic stress disorder (PTSD) from a licensed physician, licensed clinical psychologist, licensed professional counselor, or licensed clinical social worker; (ii) suffer death or any impairment resulting in total or partial disability from work caused by the PTSD; and (iii) receive statement from such a provider that the PTSD was caused by a single critical event or multiple exposures to critical events that occurred in the course of the employment, then the PTSD is an occupational disease, suffered in the line of duty, that is covered by the Virginia Workers' Compensation Act unless such presumption is overcome by a preponderance of competent evidence to the contrary. The measure provides that a "critical event" includes an event that results in serious injury or death to an individual; deals with a minor who has been injured, killed, abused, exploited, or a victim of a crime; deals with mass casualties; results in injury to or the death of a coworker; involves an immediate threat to the life of the claimant or another individual; or involves the abuse, cruelty, injury, exploitation, or death of an animal.

6. **Budget Amendment Necessary:** Indeterminate – see Item 8. According to the Virginia Retirement System (VRS), the inclusion of PTSD as a disease presumed to have occurred in the line of duty would increase the number of VRS work-related disability retirements that would have otherwise resulted in non-work-related disability retirements. Since a work-related disability retirement generally costs more than a non-work-related disability retirement, the bill would increase VRS disability retirement costs and, consequently, employer contribution rates. However, the volume of the impact is not known at this time.

Also, the proposed legislation could increase the number of claims for benefits under the Line of Duty Act (LODA), which could increase the premiums charged to employers participating in the Line of Duty Death and Health Benefits Trust Fund.

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

- 8. Fiscal Implications:** Post-traumatic stress disorder (PTSD) may be considered an injury by accident if it is related to a physical injury or is a purely psychological injury arising from a single sudden shock or fright in the course of employment and may be considered an occupational disease when it is suffered from repeated stress. According to the Department of Human Resource Management's Workers' Compensation Program (Program), the types of claims the proposed legislation establishes as a presumption have rarely been found compensable because the employees identified in the bill are usually trained to deal with the "critical events" defined in subsection D.

An update of the Program's claims database has identified four claims for a compensable PTSD claim that either have no physical injury or the physical component was not the primary condition treated. The average expected ultimate cost of these claims is \$194,476.76.

The effect of the presumption moves the burden of proof from the injured worker to the employer and is difficult to overcome, which will result in more of these cases being filed and accepted. Because workers' compensation premiums are experience-based, state agencies will be expected to bear the cost of any premium increase due to the provisions of this bill.

According to VRS, the addition of a condition that is statutorily presumed to be work-related would generally increase VRS disability retirement costs and employer contribution rates. When a VRS member retires for disability, the benefits paid out depend on whether the member's disabling condition was related to his or her employment. Compared to a non-work-related disability, a work-related disability benefit provides a higher guaranteed retirement allowance, as well as a refund of the member contribution account.

For disability retirements, VRS does not determine whether a disabling condition is work-related. Instead, the determination is statutorily defined as whether the condition is compensable under the Virginia Workers' Compensation Act. If a condition is compensable under the Virginia Workers' Compensation Act and the member otherwise satisfies VRS disability retirement requirements set forth in § 51.1-156 of the Code of Virginia, then the member is eligible for a work-related disability retirement. If a condition is not compensable under the Virginia Workers' Compensation Act but satisfies VRS disability retirement requirements, then the member is eligible for a non-work-related disability retirement.

The bill adds a condition, PTSD in certain circumstances, which is presumed to be a work-related condition under the Virginia Workers' Compensation Act. As a result, the bill could increase the number of work-related disability retirements, the costs of which are funded through employer contribution rates.

Because the bill adds the condition to the list of presumptions in § 65.2-400, Code of Virginia, the bill could also increase the number of claims for benefits under the Line of Duty Act (LODA). The definition of "disabled person" in LODA (specifically, § 9.1-400) includes § 65.2-400, Code of Virginia, in the list of statutory presumptions that can apply to a claim

for LODA benefits. An increased number of approved claims for LODA benefits could in turn increase the premiums charged to employers participating in the Line of Duty Death and Health Benefits Trust Fund. All state employers with LODA-eligible employees participate in the Fund, as well as many political subdivisions with LODA-eligible employees. Employers who fund their LODA costs via self-insurance or private insurance may also experience increased costs.

9. Specific Agency or Political Subdivisions Affected: Department of Human Resource Management, Virginia Retirement System, Workers' Compensation Commission, all employers of VRS members who are eligible for disability retirement, and all employers of LODA-eligible employees or volunteers.

10. Technical Amendment Necessary: No.

11. Other Comments: The proposed legislation is a companion to House Bill 2513 (Hugo) and Senate Bill 1465 (McPike) and similar to House Bill 1706 (Kory).

Because the Line of Duty Act, Code of Virginia § 9.1-400 et seq., references certain workers' compensation presumptions in determining disability for certain categories of covered employees, any expansion of the presumptions will have an impact on LODA costs. It is difficult to determine exactly what the impact would be. The Fund is made up of all state agencies with LODA-eligible employees, as well as political subdivisions that opted in to the Fund. An increase in LODA disabilities would therefore impact state general and non-general fund contributions on behalf of state agencies, as well as all political subdivisions with LODA eligible employees or volunteers.

It is uncertain how many individuals would qualify for LODA benefits under the provisions of this bill, and as such, the fiscal impact to the Fund is indeterminate. However, the addition of categories of presumptions has the potential to increase the costs of the entire pool, which by extension could increase both the health insurance premiums for individuals covered by the LODA Health Benefits Plan and the contribution rate charged to participating employers. Additionally, the Fund is funded on a pay-as-you-go basis, so to the extent that costly claims are brought into the LODA Health Benefits Plan, there may be cash flow issues until the contribution rates are recalculated. An increase in the contribution rate charged to participating employers would have a general fund and nongeneral fund impact. VRS is responsible for administering the Fund, which pays for the benefits provided under LODA for employees of participating employers, including health insurance premiums and death benefits. The VRS Board of Trustees establishes a per LODA-eligible employee contribution rate which is paid by participating employers, including all state agencies with LODA-eligible personnel, and is used to maintain the Fund. Higher LODA contribution rates would require additional general fund and nongeneral fund support to state agencies with LODA-eligible personnel.