Department of Planning and Budget
2020 Fiscal Impact Statement

1. **Bill Number:** HB328

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

2. **Patron:** Levine

3. **Committee:** Appropriations

4. **Title:** Family and Medical Leave Insurance Program.

5. **Summary:** Entitles individuals to a family and medical leave insurance (FMLI) 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 their 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 their application is filed; (ii) have earned income from employment during the 12 months before filing the application; (iii) have filed an application for a FMLI 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 FMLI 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, 2021. *This impact statement has been revised to include an expenditure table for the payment of benefits for clarity. Previously, the benefits were included in the operational costs to VEC.*

6. **Budget Amendment Necessary**: Yes, a new item would need to be established under the Virginia Employment Commission; and, Item 477 (Central Appropriations) HB/SB 30. See Item 8, below.

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

Expenditure Impact: Virginia Employment Commission (operational costs to VEC)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2020	0	0	n/a
2021	$70,000,000	250	NGF
2022	$33,500,000	250	NGF
2023	$33,500,000	250	NGF

2024	$33,500,000	250	NGF
2025	$33,500,000	250	NGF
2026	$33,500,000	250	NGF

Expenditure Impact: Virginia Employment Commission (payment of benefits)

Fiscal Year	***Dollars***	***Fund***
2020	0	n/a
2021	$939,202,271	NGF
2022	Indeterminate	NGF
2023	Indeterminate	NGF
2024	Indeterminate	NGF
2025	Indeterminate	NGF
2026	Indeterminate	NGF

Revenue Impact: Virginia Employment Commission (from new taxes)

Fiscal Year	***Dollars***	***Fund***
2020	0	0
2021	$906,181,864	NGF
2022	$933,640,987	NGF
2023	$961,932,176	NGF
2024	$991,080,645	NGF
2025	$1,021,112,370	NGF
2026	$1,050,075,202	NGF

Expenditure Impact: Central Appropriations

Fiscal Year	***Dollars***	***Fund***
2020	0	n/a
2021	$6,196,931	GF
	$8,656,996	NGF
2022	$6,196,931	GF
	$8,656,996	NGF
2023	$6,196,931	GF
	$8,656,996	NGF
2024	$6,196,931	GF
	$8,656,996	NGF
2025	$6,196,931	GF
	$8,656,996	NGF
2026	$6,196,931	GF
	$8,656,996	NGF

*In Central Appropriations, no appropriation is provided for the nongeneral fund portion.

8. **Fiscal Implications:** This fiscal impact estimate is preliminary and reflects anticipated impacts to the Virginia Employment Commission, Department of Human Resource Management, Department of Accounts, Virginia Retirement System, Department of Taxation, and state agencies. Any impacts to other potentially affected state entities are not available at this time.

   This bill establishes the Paid Family and Medical Leave Insurance Program and the Paid Family and Medical Leave Insurance Fund. To the extent that sufficient moneys in the Fund are available, the Fund is to be used to provide eligible individuals a family and medical leave insurance benefit and for the Fund's administration. The two new taxes established in the bill are the revenue sources for the Fund.

Virginia Employment Commission:
It is anticipated that this bill will have a nongeneral fund expenditure impact and a nongeneral fund revenue impact to the Virginia Employment Commission (VEC). VEC is to administer the new program. VEC anticipates that start-up costs will be $70.0 million in FY 2021 and ongoing operational costs will be $33.5 million annually. These anticipated costs are reflected in the first table in item 7, above. Until such time as revenue could be generated to offset the upfront expenses, VEC would require a line of credit, treasury loan, or general fund appropriation.

According to VEC, VEC based its start-up cost estimates on the District of Columbia's (DC) plan for implementing a state paid family leave program. Virginia's program would be most similar to DC since it, like Virginia, does not have an office of disability insurance; however, cost estimates for DC did not include the procurement costs for developing a benefit system. In states with an office of disability insurance, this program became another benefit offered under its disability insurance. New York uses private insurance carriers to manage its program.

VEC estimates that it would require start-up costs of approximately $70.0 million in order to develop and implement the required IT systems and staffing (250 FTEs) for the program. A detailed procurement would have to be completed, but VEC based this estimate on the cost to develop similar systems.

This estimate includes $60.0 million for the procurement, design, development, and implementation of the tax and benefits systems. The tax system must include: employer registration; employer account maintenance; wage reports; paid family leave tax payments; general ledger; tax refunds; tax compliance (penalties and interest); paid family leave field audit; and, management reports. The benefit system must include: claims filing management; adjudication of medical, family, and parental leave claims; verification of medical licensures; payment and administration of benefits; repayment recovery; fraud prevention tools; and, analytics.

In addition to the procurement/development of a tax and benefits systems, VEC estimates that the agency will need to hire key program staff for the establishment and administration of the paid family and medical leave insurance program pre-implementation at an estimated cost of $5.0 million. This includes staff for the new Information Technology Division, Division of Tax, Division of Benefits, Appeals, Customer Relations, and Support Services. Additionally, $2.5 million would be needed for furniture and office equipment; and $2.5 million for training and business process development.

VEC anticipates that ongoing operational costs would be approximately $33.5 million annually. This is comparable to the agency's administration of the state's federal Unemployment Insurance Program. This includes $14.0 million in ongoing staff costs for salaries and benefits and $16.0 million in ongoing IT costs to cover anticipated VITA expenses, call center systems, and other IT services. VEC anticipates that to fully function, the paid family and medical leave insurance program will need 250 FTEs; this is comparable to the agency's administration of the state's federal Unemployment Insurance Program. Other operational expenses such as facilities expenses, telecommunications, postage, legal services and other items could be an additional $3.5 million annually. Since this is a state-directed program, no federal funds could be used to support any component of this new program,

VEC anticipates that the agency will begin making benefits payments in FY 2022. The bill states that family and medical leave insurance benefits shall not be paid from any source other than the Fund. The third table in item 7, above, reflects the anticipated revenue the new taxes will generate. As established in the bill, employee and employer contributions are assessed in the amount of 0.2 percent each. VEC estimated tax revenues by multiplying the projected total annual wages by 0.4 percent. The bill establishes the maximum and minimum benefit amount for the first full year of the program.

VEC estimates that the total amount to be paid in benefits in FY 2022 will be $939.2 million, on the average weekly wage, based on a projected utilization rate of 2.73 percent, an average weekly wage of $1,184, depending on the year, and an average duration of 11.08 weeks. This is reflected in the second table in item 7, above.The actual amount paid could change based on these variables. The projected utilization rate and average duration in VEC's estimates are based on the Department of Labor's 2012 and 2014 Family and Medical Leave Report. Average Weekly Wages are derived from projections used in the UI Trust Fund Model. Benefits for subsequent years are indeterminate.

At this time, VEC anticipates that the estimated revenue and earned interest on the estimated revenues should provide enough revenue to support the program. However, under the provisions of the bill, the total amount of benefits to be paid to eligible individuals is subject to available moneys in the Fund.

Central Appropriations:
The fourth table in item 7, above, reflects the anticipated state general fund and nongeneral fund impact of the 0.20 percent employer tax the Commonwealth would be required to pay for state employees. These are preliminary estimates based on FY 2019 salary and wage expenditures. As the tax is a percentage of wages, the actual amount in any fiscal year will depend on total payroll expenses. The general fund portion would need to be appropriated and provided to general fund supported agencies; agencies supported by nongeneral fund revenue would be responsible for providing the nongeneral fund portion. In some cases, the additional nongeneral fund expense may require increases in fees, licenses, or permits.

Statewide Impact:
It is anticipated that implementing the new family and medical leave insurance program will have impacts to the Commonwealth's technology infrastructure that have not yet been determined. Impacts are expected to occur for systems that manage time, labor, payroll, and benefits offered. The Commonwealth is currently in the process of developing the new Cardinal Human Capital Management (HCM) system, which is expected to be deployed by October 2021. Therefore, any immediate changes created by this legislation that are

necessary to its implementation are expected to cause significant disruption to the project schedule and cost.

The Department of Human Resource Management's Personnel Management Information System (PMIS) and the Department of Account's central payroll and leave system, Commonwealth Integrated Payroll Personnel System (CIPPS), will be decommissioned and are expected to be replaced by the new Cardinal HCM system in October 2021, based upon the current project schedule. Technology staff are currently dedicated to day-to-day operational systems maintenance and critical Cardinal transition tasks and labor-intensive system reconfigurations to these systems have been discontinued since they will be decommissioned; therefore, systems changes to support this legislation are not expected to be implemented in PMIS or CIPPS.
In addition to these statewide systems, there are also multiple state agencies that use their own systems for time, labor, payroll and benefits. The cost to revise or replace these systems cannot be determined at this time.

The statewide administrative impact and impact to the Department of Human Resource Management and the Department of Accounts is indeterminate.

Virginia Retirement System:
This bill generally applies to individuals taking leave to be a caregiver. Virginia Retirement System programs do not provide benefits for caregiving other than to allow the purchase of leave taken due to the serious health condition of an immediate family member, both as defined in the Family and Medical Leave Act, and certified by the member's employer. (See § 51.1-142.2 (A)(1), Code of Virginia.)

Department of Taxation:
It is anticipated that this bill will not result in a fiscal impact to the Department of Taxation as the agency would not collect the new tax.

9. **Specific Agency or Political Subdivisions Affected:** Virginia Employment Commission; Department of Human Resource Management; Department of Accounts; Virginia Retirement System; Department of Taxation; all state agencies; political subdivisions; school divisions.

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

11. **Other Comments:** HB824 and SB770 also create a paid family and medical leave program.