

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: HB438-ER

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

2. Patron: Heretick

3. Committee: Passed Both Houses

4. Title: Workers' compensation; compensability of post-traumatic stress disorder incurred by a law-enforcement officer or firefighter.

5. Summary: Provides that post-traumatic stress disorder (PTSD) incurred by a law-enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act if a mental health professional examines a law-enforcement officer or firefighter and diagnoses the individual as suffering from PTSD as a result of the individual's undergoing a qualifying event, defined as an incident or exposure occurring in the line of duty on or after July 1, 2020, (i) resulting in serious bodily injury or death to any person or persons (ii) involving a minor who has been injured, killed, abused, or exploited, (iii) involving an immediate threat to life of the claimant or another individual, (iv) involving mass casualties, or (v) responding to crime scenes for investigation. Other conditions for compensability include (i) if PTSD resulted from the law-enforcement officer or firefighter acting in the line of duty and, in the case of a firefighter, such firefighter complied with certain federal Occupational Safety and Health Act standards; (ii) if the law-enforcement officer's or firefighter's undergoing a qualifying event was a substantial factor in causing his PTSD; (iii) if such qualifying event, and not another event or source of stress, was the primary cause of PTSD; and (iv) if PTSD did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action of the officer or firefighter. The measure also establishes requirements for resilience and self-care technique training.

6. Budget Amendment Necessary: According to the Virginia Retirement System (VRS), the inclusion of additional compensable conditions under the Virginia Workers' Compensation Act would increase the number of Line of Duty Act (LODA) claims as well as 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. The new § 65.2-107 establishes a compensable condition, not a presumption. Any increase in the number of LODA claims or groups of employees who are determined to have a compensable condition will increase costs. All state agencies with eligible employees are in the LODA Fund, and the premiums would be projected to increase as estimated below. However, the volume of the impact is not known at this time.

7. **Fiscal Impact Estimates:** Indeterminate – see Item 8.
8. **Fiscal Implications:** The bill adds PTSD under certain specified conditions as a compensable condition under the Virginia Workers' Compensation Act for law-enforcement officers and firefighters.

According to VRS, some state employees are still eligible for disability retirement; others, including most employees hired or rehired after January 1, 1999, are covered by the Virginia Sickness and Disability Program (VSDP), which is a managed disability plan that does not provide a lifetime benefit. In addition to the effects this may have on workers' compensation, the bill could also affect eligibility for VRS traditional disability retirement because VRS relies on the compensability determination by the Virginia Workers' Compensation Commission for its determination of whether a disability retirement claim is work- or non-work-related. Most local employees hired on or after January 1, 2014, with the exception of hazardous duty employees whose employer has elected enhanced benefits, are in the Hybrid Retirement Program, which includes coverage under either the Virginia Local Disability Program (VLDP) or a comparable plan. This provision would likely increase the number of traditional work-related disability retirements or the number of short- and long-term work-related disability claims approved under VLDP or a comparable plan as the workers' compensation determinations are used in the approval process. Increasing the population eligible for benefits, or the types of diseases or circumstances under which an employee is eligible for benefits, will impact the VRS plan experience and by extension potentially increase contribution rates. VSDP also uses workers' compensation determinations for approving work-related short- and long-term disability benefits.

Additionally, Chapter 4, Title 9.1 of the Code of Virginia, also uses certain compensable conditions under workers' compensation to assist in determining whether a disability or death occurred in the line of duty for specific categories of employees covered by LODA, the addition of PTSD as a compensable condition for law-enforcement officers and firefighters, who are covered under LODA, would add to the costs for the Line of Duty Death and Health Benefits Fund (Fund). The Fund includes all state agencies, as well as participating local governments that participate in the Fund. This change could also increase costs for localities that have opted to cover LODA expenses independently of the Fund (nonparticipating employers).

Cost increases would apply pro rata to individual localities that are funding LODA costs independently from the Fund.

The legislation would also increase the number of VRS work-related disability retirements by an unknown amount for those members who are eligible for disability retirement. Currently, law-enforcement officers and firefighters disabled by PTSD and who are eligible for disability retirement would be retired under regular disability retirement provisions (i.e., from a cause not compensable under the Virginia Workers' Compensation Act). The legislation would make it more likely that a law-enforcement officer or firefighter disabled by PTSD and who is eligible for disability retirement would be retired under the provisions of work-

related disability retirement. A comparison of work-related and non-work-related disability retirement benefits is shown below.

Work-related Disability Retirement	Non-work-related Disability Retirement
Member receives balance in member contribution account	Member does not receive balance in member contribution account
Minimum benefit guarantee is 66 2/3 percent of AFC if member does not qualify for social security disability income and 50 percent of AFC if he or she does qualify for SSDI	Minimum benefit guarantee is 33 1/3 percent of AFC if member does qualify for social security disability income and 50 percent of AFC if he or she does not qualify for SSDI
Disability retirement benefit is non-taxable	Disability retirement benefit is taxable
Disability retirement benefit is offset by Workers' Compensation wage indemnity benefit	No Workers' Compensation wage indemnity benefit

Because work-related disability retirement is a more expensive benefit, there would be an unknown increase over time for employer contributions for those employers whose employees become disabled and retire under these provisions. Because most state employees are now covered under the VSDP, the impact on employer contribution rates due to increased work-related disability retirements would primarily be for political subdivisions.

According to the Department of Human Resource Management (DHRM), the agency may experience an increase in the number of claims filed with the Office of Workers' Compensation (OWC); however, the administrative costs associated with the increase in workers' compensation claims filed are expected to be minimal. The Commonwealth's workers' compensation premiums are experienced-based and the state agencies that employ the affected employees would be responsible for any increase in workers' compensation premiums that may result due to the passage of the proposed legislation; however, the potential increase in workers' compensation premiums cannot be determined at this time.

The bill requires each police basic training program conducted or administered by the Virginia State Police or a municipal police department in the Commonwealth to provide, in consultation with the Department of Behavioral Health and Developmental Services (DBHDS), resilience and self-care technique training for any individual who begins basic training as a law-enforcement officer on or after July 1, 2021. The bill also requires each fire basic training program conducted or administered by the Department of Fire Programs or a municipal fire department in the Commonwealth to provide, in consultation with DBHDS, resilience and self-care technique training for any individual who begins basic training as a firefighter on or after July 1, 2021. The bill is not expected to have a fiscal impact for the Virginia State Police or DBHDS. The Department of Fire Programs expects to implement the requirements of this legislation using resources within its current operating budget.

- 9. Specific Agency or Political Subdivisions Affected:** VRS as administrator of the LODA Fund, Department of Human Resource Management, agencies and localities that employ law-enforcement officers and firefighters, all state agencies with LODA-eligible personnel, localities with LODA-eligible personnel, Virginia Workers' Compensation Commission, Department of Behavioral Health and Developmental Services, Department of Fire Programs, and Virginia State Police.

10. Technical Amendment Necessary:

Line 72, strike “(i)”.

Strike line 73.

Line 74 strike “and peer support policy developed pursuant to subsection F, (ii)”.

Line 74, before “make” insert “(i)”.

Line 75, after “firefighters”, strike “;”.

Line 75, strike “(iii)” and insert “(ii)”.

Subsection D requires each employer of law-enforcement officers or firefighters to adopt and maintain a written policy that meets or exceeds the standards of the model incident and peer support policy, no later than January 1, 2021, developed pursuant to subsection F; however, subsection F of the bill no longer refers to the development of a model critical incident.

11. Other Comments: This bill is identical to SB 561-ER (Vogel). Senate budget amendment Item 477 #2s provides \$1.9 million general fund appropriation in fiscal years 2021 and 2022 to support the costs related to adding PTSD as a compensable injury for firefighters and certain law-enforcement officers, and the conditions for such compensability, under the Virginia Workers’ Compensation Act.

This bill would add a diagnosis of PTSD for a law-enforcement officer or firefighter, under certain circumstances set out in the bill, as a compensable condition under the Virginia Workers’ Compensation Act for an incident or exposure occurring in the line of duty on or after July 1, 2020. The addition of this compensable condition for law-enforcement officers and firefighters could lead to an increase in the number of approved claims for both work-related traditional disability retirement and short- and long-term work-related disability claims under VSDP and VLDP or a comparable local plan.

The addition of this compensable condition would, over time, have an impact on LODA costs for employers who participate in the LODA Fund. Law-enforcement officers and firefighters are covered under LODA and the addition of this compensable condition will likely lead to an increase in the number of individuals who become eligible for LODA benefits. Given the large population of law-enforcement officers and firefighters across the Commonwealth, the increase in LODA disability determinations is likely to be material.

Because workers’ compensation compensability determinations are used in evaluating Line of Duty Act claims, any expansion of compensable conditions 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 and the costs indicated above are estimates only. However, the addition of compensable conditions 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. An increase in LODA Health Benefits Plan costs would also affect the costs for political subdivisions with LODA-eligible employees or volunteers who either self-insure for LODA costs or use a private insurance carrier. Additionally, the Fund is funded on a pay-as-you-go basis, so to the extent that 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 both 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.

In December 2019, JLARC delivered its report, Virginia's Workers' Compensation System and Disease Presumptions. See <http://jlarc.virginia.gov/pdfs/reports/Rpt530.pdf> for a copy of the full report.