

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: SB741

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: McPike

3. Committee: Finance and Appropriations

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 a 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 additional presumptions for diseases presumed to have occurred in the line of duty or applying presumptions to additional categories of employees 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. Any increase in the number of LODA claims or groups of employees who are eligible for certain presumptions 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 creates a presumption that PTSD under certain conditions is an occupational disease compensable under the Virginia Workers' Compensation Act for certain firefighters, law-enforcement officers, hazardous materials officers, animal protection police officers, or 9-1-1 emergency call takers, dispatchers, or similarly situated employees.

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, because the Virginia Line of Duty Act (LODA), Chapter 4, Title 9.1 of the Code of Virginia, also uses certain workers' compensation presumptions 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 this presumption for certain firefighters, law-enforcement officers, hazardous materials officers, animal protection police officers, or 9-1-1 emergency call takers, dispatchers, or similarly situated employees, many of whom are covered under LODA, would add to the costs for the Line of Duty Death and Health Benefits Fund (Fund). The Fund includes state agencies and participating local governments. This change could also increase costs for localities that have opted to cover LODA expenses independently of the Fund (nonparticipating employers).

Please note that it is unclear from the legislation whether this bill would apply to prior deaths and disabilities. Allowing retroactive application of this provision for deaths and disabilities incurred prior to July 1, 2020 could cost significantly more.

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, firefighters, law-enforcement officers, hazardous materials officers, animal protection police officers, or 9-1-1 emergency call takers, dispatchers, or similarly situated employees 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 Workers' Compensation Act). The legislation would make it more likely that an affected employee 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 listed in section D of the proposed legislation 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.

9. Specific Agency or Political Subdivisions Affected: VRS as administrator of the LODA Fund, Department of Human Resource Management, agencies and localities that employ the affected employees, all state agencies with LODA eligible personnel, all localities with LODA eligible personnel, and the Virginia Workers' Compensation Commission.

10. Technical Amendment Necessary: No.

11. Other Comments: The bill is similar to HB 438 (Heretick) and SB 561-S1 (Vogel), which add PTSD as a compensable condition.

This bill would add, for certain firefighters, law-enforcement officers, hazardous materials officers, animal protection police officers, or 9-1-1 emergency call takers, dispatchers, or

similarly situated employees, a presumption that PTSD is work-related unless such presumption is overcome by a preponderance of competent evidence to the contrary.

The addition of this presumption would, over time, have an impact on LODA costs for employers who participate in the Fund. Given the large population of the specified affected employees across the Commonwealth, the increase in LODA death and disability determinations is likely to be material. The addition of this presumption 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.

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 and the costs indicated above are estimates only. 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. 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.