

Department of Planning and Budget

2020 Special Session I - Fiscal Impact Statement

1. Bill Number: HB5028

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Jones

3. Committee: Appropriations

4. Title: Workers' compensation; presumption of compensability for COVID-19.

5. Summary: Establishes a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, first responders, health care providers, and school board employees is an occupational diseases compensable under the Workers' Compensation Act. The provisions of the bill will be effective retroactive to January 1, 2020.

6. Budget Amendment Necessary: No – see Item 8.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: The fiscal impact of establishing a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, first responders, healthcare providers, and school board employees is an occupational disease compensable under the Workers' Compensation Act cannot be determined at this time because the cost will be dependent on the number of workers' compensation claims filed, the number of initial deaths, and any associated long-term impacts that COVID-19 may have on state employees. The state's workers' compensation program, Line of Duty Act (LODA) program, the Virginia Retirement System (VRS) disability retirement program, or the VRS managed disability programs may be impacted by the proposed legislation.

Department of Human Resource Management

According to the Department of Human Resource Management (DHRM), the proposed legislation may impact the experience-based workers' compensation premiums paid by state agencies to cover state employees under this presumption. The impact to a state agency's workers' compensation premium cannot be determined at this as the cost will be dependent upon the number of COVID-19 claims filed with DHRM's Office of Workers' Compensation (OWC) program. The burden of proof, which currently in the Virginia Workers' Compensation System is on the injured worker to prove their claim for benefits should be covered by the Workers' Compensation Act, is being shifted over to the employer to produce a "preponderance of evidence to the contrary". This shift will likely mean that claims which

were routinely denied, or not investigated for compensability will likely be accepted, or the employer will have to bear the financial burden of producing the preponderance of evidence. As a result, the OWC may have to increase its current staffing model to accommodate the expected increase in the number of workers' compensation claims investigated. The expected number of additional staff needed at the OWC is not known at this time as the number of additional staff will be dependent upon the number of COVID-19 claims investigated.

Virginia Retirement System

According to VRS, the proposed legislation modifies the Workers' Compensation title and will potentially impact the LODA program, VRS disability retirement program, or the VRS managed disability programs. These programs will be impacted because they have a work-related component of benefits dependent on whether an injury or death occurs in the course of employment as determined by the Virginia Workers' Compensation Commission (VWC). There are numerous references to Workers' Compensation Act provisions within the statutory framework for VRS-administered programs. Therefore, any changes to these Workers' Compensation Act provisions may have a fiscal impact to VRS-administered programs.

The ultimate impact of the presumptions will be dependent on number of initial deaths and any associated long-term impacts that COVID-19 may have on individuals. Since COVID-19 was only discovered a few months ago, its long-term effects are unknown, and while researchers are trying to look at parallels with two other coronaviruses, SARS and MERS-CoV, it will take time to have a full picture of the longer-term consequences of infection with COVID-19. COVID-19 can cause a range of symptoms of varying severity. It is becoming clear that the coronavirus doesn't just attack the respiratory system, and some people have reported gastrointestinal issues and renal problems. New studies raise concerns that the COVID-19 infections can also leave an impact on the heart, raising concerns about lasting damage. In May, the Attorney General issued an official opinion on some questions regarding COVID-19 and Workers' Compensation, which can be found at <https://www.oag.state.va.us/files/opinions/2020/20-020-Stolle-issued.pdf>.

Not all occupational diseases and conditions used in the Workers' Compensation context are applicable in the LODA context. Currently, the only presumption statutes from the Workers' Compensation Act that impact LODA are §§ 65.2-402 and -402.1 (note: other presumptions, such as §§ 27-40.1, 27-40.2, and 51.1-813, also apply to LODA but are not codified in the Workers' Compensation Act). To the extent that a bill impacts a presumption statute that already applies to LODA, then there will be an impact to the LODA program and the LODA premiums paid by program participants. Otherwise, changes to presumption statutes will not impact LODA unless a new statute is cross-referenced in the definition of a "deceased person" in § 9.1-400.

The retirement allowance calculation for a VRS disability retirement depends on whether the disabling condition is work-related. If the disabling condition is not compensable under the Workers' Compensation Act, then it is not a work-related disability. If the disabling condition is compensable under the Workers' Compensation Act, then it is a work-related disability. Members retiring due to a work-related disability receive a higher VRS disability

retirement benefit. Any bill that impacts the likelihood of compensability under the Workers' Compensation Act impacts the likelihood that a VRS member's disabling disease or condition will be considered work-related.

VRS managed disability programs include the Virginia Sickness and Disability Program (VSDP) for state employees and the Virginia Local Disability Program (VLDP) or a comparable plan for local employees who are in the Hybrid Retirement Plan. In both VSDP and VLDP, the calculation of benefits depends on whether the disabling condition is work-related. If the disabling condition is not compensable under the Workers' Compensation Act, then it is not a work-related disability. If the disabling condition is compensable under the Workers' Compensation Act, then it is a work-related disability. Members receiving VSDP, VLDP, or comparable benefits due to a work-related disability receive a higher benefit. Any bill that impacts the likelihood of compensability under the Workers' Compensation Act impacts the calculation of VSDP and VLDP benefits.

Virginia Workers' Compensation Commission

According to the VWC, the proposed legislation is not expected to have a fiscal impact for the agency.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, Virginia Workers' Compensation Commission, Virginia Retirement System, and all state agencies.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is similar to SB 5066-S1 (Saslaw). SB 5066-S1 does not include school board employees among the list of state employees covered under the presumption that COVID-19 causing the death or disability is an occupational disease compensable under the Workers' Compensation Act.