

## Department of Planning and Budget 2022 Fiscal Impact Statement

**1. Bill Number:** SB289

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

**2. Patron:** DeSteph

**3. Committee:** Finance and Appropriations

**4. Title:** Workers' compensation; anxiety disorder or depressive disorder incurred by law-enforcement officers and firefighters.

**5. Summary:** Provides that an anxiety disorder or depressive disorder, as both are defined in the bill, incurred by a law-enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act on the same basis as post-traumatic stress disorder. The bill provides that a mental health professional must diagnose the law-enforcement officer or firefighter as suffering from anxiety disorder or depressive disorder as a result of a qualifying event, as defined in the Code, and includes other conditions for compensability.

**6. Budget Amendment Necessary:** Yes - see Item 8.

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

**8. Fiscal Implications:** The proposed legislation would add anxiety disorder or depressive disorder incurred by law-enforcement officers and firefighters as compensable conditions under the Virginia Workers' Compensation Act. Fiscal impact estimates have been provided by the Department of Human Resource Management, Attorney General and Department of Law, Virginia Retirement System, and Virginia Workers' Compensation Commission.

Department of Human Resource Management

The Department of Human Resource Management's (DHRM) Office of Workers' Compensation (OWC) expects the proposed legislation will have an impact to its OWC program, the workers' compensation unit at the Attorney General and Department of Law (OAG), and state agencies which receive workers' compensation coverage through DHRM's OWC program that have employees identified in the proposed legislation. The proposed legislation is expected to increase the number of workers' compensation claims filed and accepted, which would impact the experienced-based workers' compensation premium paid by state agencies. However, the expected increase in the premium paid by state agencies cannot be determined at this time. In reviewing its OWC claims files, DHRM reports that approximately 12% of claims have been accepted with benefits paid, with an average cost/claim of \$21,012.00. If every claim filed had been accepted, DHRM estimates that its OWC program would need to increase its claims reserves by approximately \$1,680,960 to cover the exposure.

### Attorney General and Department of Law

The OAG's Workers' Compensation Unit handled 390 cases in 2020 and 370 cases in 2021, averaging about 100 cases per attorney. The proposed legislation will increase claims and related litigation, but it is not possible to estimate the number of litigated claims that will result. The OAG unit assigned to DHRM's OWC estimates that it would need one additional lawyer for each 100 new claims it litigates, and one additional support staff member for every 150 new claims. The Workers' Compensation Unit is funded through a Memorandum of Understanding (MOU) with DHRM. Any additional costs to support the OAG's staff would be covered through the MOU with DHRM.

### Virginia Retirement System

The Virginia Retirement System (VRS) has provided estimates of the cost impact on the full-time equivalent (FTE) contribution rate for participating Line of Duty Act (LODA) employers. The bill covers an incident or exposure occurring in the line of duty on or after July 1, 2020.

#### *Estimated Cost Results*

The estimated cost results associated with this proposed change can be found in the tables below. The estimated costs shown are the increase in the FTE rate for the participating LODA employers due to increased claims associated with the additional compensable conditions. Since this bill defines a Qualifying Event as an incident or exposure occurring in the line of duty on or after July 1, 2020, VRS has only provided the impact of applying the additional compensable conditions prospectively. Currently, § 65.2-107 covers post-traumatic stress disorder incurred by law-enforcement officers and firefighters for an incident or exposure occurring in the line of duty on or after July 1, 2020. The proposed bill adds anxiety disorder or depressive disorder as compensable conditions under the conditions outlined in the statute. As shown in the Line of Duty Act Eligibility Determination Report 2021, 10.98% of all claims are due to post-traumatic stress disorder (PTSD). The claims represent both participating and non-participating members and disability and death claims.

Based on the Annual Statistical Report on the Social Security Disability Insurance Program 2020, 12.4% of Social Security Disability claims are due to depressive, bipolar, and related disorders while 4.3% are due to other mental disorders. Also, the National Alliance on Mental Illness (NAMI) noted that compared to the general population, law enforcement report much higher rates of depression, PTSD, burnout, and other anxiety related mental health conditions. Therefore, VRS estimates the following adjustment to the valuation model's current cost assumptions to reflect the estimated impact to cash flows:

- 50% increase in PTSD claims to model the addition of anxiety and depressive disorder as additional compensable conditions, leading to a 5.49% increase in health care claims,
- 0% increase to death benefit claims.

VRS assumed no increase in death benefit claims due to PTSD. However, NAMI noted that more police die by suicide than in the line of duty. If additional death claims are included in the cost calculations, the cost impact would be higher.

The average impact of applying the legislation is shown below:

#### Cost Impact on the LODA Fund

Item	Fiscal Year Ending June 30					
	2023	2024	2025	2026	2027	2028
Employer Contribution Rate (\$ Per FTE)						
Number of FTE Employees	19,087.20	19,087.20	19,087.20	19,087.20	19,087.20	19,087.20
Proposed Legislation - Prospective Only	\$691.56	\$691.56	\$1,074.63	\$1,074.63	\$1,252.59	\$1,252.59
June 30, 2021 Valuation	<u>\$681.84</u>	<u>\$681.84</u>	<u>\$1,057.92</u>	<u>\$1,057.92</u>	<u>\$1,228.64</u>	<u>\$1,228.64</u>
Additional Cost per FTE	\$9.72	\$9.72	\$16.71	\$16.71	\$23.95	\$23.95
Estimated Additional Contributions	\$185,500	\$185,500	\$318,900	\$318,900	\$457,000	\$457,000

Due to the LODA fund being “pay-as-you-go”, the costs above assume that a corresponding adjustment in the LODA premium rate will occur in the FY 2023-24 Appropriation Act, and additional premiums would be immediately collected to cover the expected increase in costs. If an adjustment to the rates is not provided in the FY 2023-2024 Appropriation Act, then future rates could be more severely impacted based on any claims associated with this legislation occurring during the upcoming biennium without corresponding premiums to cover increased claims.

Because of the unpredictable nature of future claims, VRS also has included a range of possible cost impacts in addition to the median expected claims shown above. Due to the nature of PTSD, anxiety, and depression and the fact that they often go unreported, costs may likely be expected to be above the average impact.

#### Cost Impact on the LODA Fund Additional Cost Per FTE

Range	Fiscal Year Ending June 30					
	2023	2024	2025	2026	2027	2028
25% Impact	\$4.86	\$4.86	\$8.36	\$8.36	\$11.97	\$11.97
Average Impact	\$9.72	\$9.72	\$16.71	\$16.71	\$23.95	\$23.95
75% Impact	\$14.58	\$14.58	\$25.07	\$25.07	\$35.92	\$35.92
100% Impact	\$19.44	\$19.44	\$33.42	\$33.42	\$47.89	\$47.89

#### Additional Contribution Requirement

Range	Fiscal Year Ending June 30					
	2023	2024	2025	2026	2027	2028
25% Impact	\$ 92,800	\$ 92,800	\$ 159,500	\$ 159,500	\$ 228,500	\$ 228,500
Average Impact	\$ 185,500	\$ 185,500	\$ 318,900	\$ 318,900	\$ 457,000	\$ 457,000
75% Impact	\$ 278,300	\$ 278,300	\$ 478,400	\$ 478,400	\$ 685,600	\$ 685,600
100% Impact	\$ 371,100	\$ 371,100	\$ 637,900	\$ 637,900	\$ 914,100	\$ 914,100

Unless otherwise noted, VRS has estimated the impact of the proposed bill based on the data, actuarial assumptions and methods used in the June 30, 2021 actuarial valuation of the Line of Duty Act Fund. To the extent actual experience varies from that assumed, the costs will vary from the estimates provided herein.

*Line of Duty Act*

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. 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.

#### *VRS Disability Retirement*

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.

#### *VRS Managed Disability*

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.

#### Virginia Workers' Compensation Commission

The Virginia Workers' Compensation Commission expects the proposed legislation will have a minimal or no fiscal impact for the agency.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, Virginia Workers' Compensation Commission, Attorney General and Department of Law, Virginia Retirement System, all state agencies and localities that employ law-enforcement officers and firefighters, all state agencies with LODA-eligible personnel, and all localities with LODA-eligible personnel.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is a companion to HB 742 (Bell).

The fiscal impact statement was revised to include specific agencies impacted by the proposed legislation.