

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: HB1905

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Batten

3. Committee: Commerce and Energy

4. Title: Workers' compensation; law-enforcement officers; back, hip, knee, and neck injuries.

5. Summary: Establishes a workers' compensation presumption for back, hip, knee, and neck injuries that cause the death or disability of law-enforcement officers, as defined in the bill, who have completed five years of service and are required to wear a duty belt, as defined in the bill, as a condition of employment.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications: According to the Department of Human Resource Management (DHRM), the proposed legislation would lead to most, if not all, claims filed by law-enforcement officers, as defined in the bill, who wear a duty belt to be accepted. The presumption established in the bill shifts the burden of proof for compensability from the injured worker to the Commonwealth. As more claims are accepted, the experience-based premium paid by state agencies that employ law-enforcement officers may increase. However, the additional funding to pay for the increase of an agency's experience-based premium for workers' compensation coverage cannot be determined at this time.

The proposed legislation also may have a fiscal impact for DHRM's Office of Workers' Compensation (OWC), and the Attorney General and Department of Law (OAG) unit assigned to litigate the state's workers' compensation claims. DHRM's OWC may have to expand its current claims team; however, because the increase in the number of claims is unknown, the additional staff at OWC cannot be determined at this time. The OAG estimates it would need one additional lawyer for each 100 new claims litigated, and one additional support staff member for every 150 new claims. The funding for the additional staff would be supported through an increase in the memorandum of understanding (MOU) with DHRM, or additional appropriation provided to the OAG's Workers' Compensation Unit.

According to the Virginia Retirement System (VRS), the proposed legislation may impact the Line of Duty Act (LODA) program, the VRS disability retirement program, or the VRS

managed disability programs. This is due to these programs having 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. There are numerous references to Workers' Compensation Act provisions within the statutory framework for VRS-administered programs. Therefore, any changes to the Workers' Compensation Act provisions can impact and add costs to the VRS-administered programs.

Line of Duty Act

The proposed legislation is expected to add eligibility for LODA benefits either by expanding the presumptions or by increasing the pool of people who would be eligible under an existing presumption. While the impact will not be immediate, it will likely accelerate the increase in LODA premiums as more conditions and members are covered by presumptions that increase the likelihood of future claims.

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 65.2-402.1. 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. 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

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.

According to the Virginia Workers' Compensation Commission, the proposed legislation is expected to have minimal or no fiscal impact for the agency.

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

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** The fiscal impact statement has been revised to include state agencies with LODA-eligible employees as being impacted by the proposed legislation.