

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: SB1038-ER

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: McPike

3. Committee: Passed Both Houses

4. Title: Workers' compensation; presumption for arson and hazardous materials investigators.

5. Summary: Expands the workers' compensation presumption of compensability for certain cancers causing the death or disability of certain employees who have completed five years of service in their position to include (i) arson investigators or bomb investigators employed by the Department of State Police and (ii) members of the State Police Officers' Retirement System who collect, analyze, or handle hazardous materials, as defined in § 44-146.34, infectious biological substances and radiological agents, as defined in § 18.2-52.1, fentanyl or fentanyl analogs, or methamphetamine, its salts, isomers, or salts of its isomers.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications: According to the Department of Human Resource Management (DHRM), the proposed legislation is expected to have a fiscal impact for the Department of State Police (VSP). The number of workers' compensation claims filed by VSP would likely increase and the agency would need additional funding to pay for the projected increase of its experience-based premium.

The expected increase in the number of claims filed by VSP may require DHRM's Office of Workers' Compensation (OWC) to expand its current claims team, as well as increase the number of staff at the Workers' Compensation unit at the Attorney General and Department of Law (OAG) to handle the increase in workload. The fiscal impact to OWC, OAG, and VSP cannot be determined at this time due to the unknown size and scope of the potential exposure.

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. The proposed legislation amends § 65.2-402. 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, Department of State Police, state agencies with LODA-eligible employees, and localities.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to HB 1410-ER.