



Virginia
Retirement
System

1200 East Main Street
P.O. Box 2500
Richmond, VA 23218-2500
Toll-free: 1-888-VARETIR (827-3847)
Website: www.varetire.org
Email: vrs@varetire.org
Fax: 804-786-1541

Patricia S. Bishop
Director

October 1, 2015

The Honorable S. Chris Jones
Chairman
House Appropriations Committee
Virginia House of Delegates
Post Office Box 406
General Assembly Building
Richmond, VA 23218

The Honorable Charles J. Colgan and The Honorable Walter A. Stosch
Co-Chairmen
Senate Finance Committee
Senate of Virginia
Post Office Box 396
Richmond, VA 23219

Dear Chairman Jones, Chairman Colgan, and Chairman Stosch:

Chapter 647 of the 2015 Virginia Acts of Assembly, Enactment Clause 2., (HB 2204) requires the Virginia Retirement System to examine the recommendations of the Joint Legislative Audit and Review Commission's report *Virginia's Line of Duty Act* mandated by House Joint Resolution 103 (2014), and with input from stakeholders, identify ways to improve the administration of the Line of Duty Act program. The Virginia Retirement System's report is enclosed. The Department of Human Resource Management's companion report will be submitted separately.

The Virginia Retirement System would like to thank the staff of the Department of Accounts, the Department of Human Resource Management, the Virginia State Police, and the Joint Legislative Audit and Review Commission for their assistance during this review.

Sincerely,

A handwritten signature in cursive script that reads "Patricia S. Bishop".

Patricia S. Bishop
Director

Enclosure

cc: The Honorable Richard D. Brown, Secretary of Finance
Neil Miller, Deputy Secretary of Finance
Sara Redding-Wilson, Director, DHRM
Gene Raney, DHRM
Susan Jones, DHRM
David Von Moll, State Comptroller, DOA
Connie Jones, DOA
Hal E. Greer, Director, JLARC
Nathalie Molliet-Ribet, JLARC
Jeff Lunardi, JLARC
Robert P. Vaughn, Staff Director, House Appropriations Committee
Michael R. Jay, Staff, House Appropriations Committee
Betsey Daley, Staff Director, Senate Finance Committee
Sarah Herzog, Staff, Senate Finance Committee
Brian Logwood, Department of Planning and Budget
Emily Grimes, Department of Planning and Budget
Jason Saunders, Department of Planning and Budget
David Rosenberg, Legislative Information Services
Robert Greene, Chairman, VRS Board of Trustees

Report to the House Appropriations Committee and Senate Finance Committee

Virginia Retirement System Line of Duty Act Report



Virginia Retirement System

October 1, 2015

Table of Contents

Study Mandate 5

VRS Recommendations Summary 6

Line of Duty Act Provides Benefits to Individuals in Certain Covered Positions and Their Families..... 7

 Virginia’s Line of Duty Act Provides Death and Health Insurance Benefits 8

 Program Responsibilities Are Divided Among DOA, VRS, and Employers..... 10

 Occupations Covered by the Line of Duty Act Have Increased Over Time 10

 Number Receiving Benefits Has Grown Since FY 2010..... 11

 Program Costs Are Growing, Driven Primarily by Health Insurance Costs 12

 Benefits Are Funded Through Annual Contributions or Self-Insuring Mechanisms 13

JLARC Report Identified Eligibility and Benefits Changes That Could Improve Sustainability 14

 Options Addressing Eligibility Criteria 15

 Options Addressing Death Benefits and Health Insurance Benefits 18

VRS’ Proposed Process for Administering the Line of Duty Act Upon Enactment of HB 2204 22

 VRS’ Proposed Eligibility Determination and Appeals Process Seeks to Take Advantage of Strengths Associated With Existing Disability Retirement Program 23

 Permitting VRS to Establish Policies and Procedures Will Be Useful in Administering LODA 23

 VRS’ Proposed Process Allows Employers to Participate in Eligibility Determinations, But Not Judicial Appeals 23

 Upon Passage of HB 2204, VRS Anticipates Medical Board Review of Disability Claims 25

 Appeals of Determinations Can Include Medical Board and Independent Fact Finder 26

 Using Administrative Process Act Will Make Circuit Court Appeals More Efficient..... 26

Employers Should Regularly Provide Benefits Information to Line of Duty Act-Covered Personnel..... 27

 Complying With the Constitution of Virginia and the Exclusive Benefit Rule While Administering the Line of Duty Act Program 28

 Adding Certain Administrative Functions 29

Appendix A: Study Mandate 32

Appendix B: Recommendations Provided in JLARC’s “Virginia’s Line of Duty Act” Report (Commission Draft, December 2014)..... 33

Appendix C: Stakeholder Feedback Request..... 35

Appendix D: Line of Duty Coverage in Other States 36

Appendix E: VRS’ Proposed Amendments to HB 2204 43

Abbreviations

APA	Administrative Process Act
DOA	Department of Accounts
DHRM	Department of Human Resource Management
DPB	Department of Planning and Budget
IFF	Independent Fact Finder
GASB	Governmental Accounting Standards Board
GFOA	Government Finance Officers' Association
JLARC	Joint Legislative Audit and Review Commission
LODA	Line of Duty Act
MB	Medical Board
OPEB	Other Post-Employment Benefits
VACo	Virginia Association of Counties
VML	Virginia Municipal League
VRS	Virginia Retirement System
VSP	Virginia State Police
VWCC	Virginia Workers' Compensation Commission

Study Mandate

The 2015 General Assembly made numerous changes to the Line of Duty Act (LODA or the Act) in legislation that requires re-enactment by the 2016 General Assembly in order to go into effect. The changes, part of House Bill (HB) 2204, include transferring administrative responsibility from the Department of Accounts (DOA) to the Virginia Retirement System (VRS), making the Department of Human Resource Management (DHRM) responsible for the Act's health benefits provisions, and providing for an administrative appeals process that would allow employer involvement.¹ The General Assembly also directed VRS and DHRM to report on ways to improve the Act's administration (Appendix A). The following areas were identified for review:

- Develop proposals to clarify the Act's provisions
- Simplify administration of the Act
- Ensure the Act's long-term fiscal viability, and
- Improve how Line of Duty personnel and the interests of the Commonwealth's taxpayers are served.

As part of their efforts, the agencies were specifically directed to examine the recommendations and options contained in the Joint Legislative Audit and Review Commission's (JLARC) 2014 report, [*Virginia's Line of Duty Act*](#). (The options are identified throughout this report and the recommendations appear in Appendix B.) Due to its recent issuance and extensive analysis, VRS relied heavily on the JLARC report's findings, recommendations, and options while addressing the issues identified in HB 2204. In addition, VRS analyzed the existing framework of LODA administration and benefits, the changes contained in HB 2204, and other alternatives that warranted consideration. In particular, VRS reviewed programs in other states that are similar to LODA. VRS also requested feedback from several specific stakeholder groups (Appendix C).

During 2015, the patron of HB 2204 and Chairman of the House Appropriations Committee held a series of work sessions with various stakeholders. These sessions included representatives from first-responder groups, LODA employers, VML, VACo, VRS, DHRM, DOA, JLARC, and others. The goal of the sessions was to gather input from all stakeholders to help reach a consensus on the proposals for changes, if any, to LODA benefits and administration. VRS attended work sessions and otherwise communicated with stakeholders. VRS and DHRM, with input from JLARC staff, shared information on other benefit programs and their relationship to LODA benefits at the May 18th meeting. DHRM also presented several proposals addressing health insurance options at the August 27th meeting. VRS and DOA presented options for addressing eligibility, benefits, and program administration at the September 14th meeting.

¹ 2015 Virginia Acts of Assembly, Chapter 647.

VRS Recommendations Summary

The following recommendations are built on a foundation of HB 2204 and the 2014 JLARC Line of Duty Act report.

- 1. The General Assembly may wish to consider amending the *Code of Virginia* to permit the Virginia Retirement System to develop policies and procedures for administering Chapter 4 of Title 9.1 of the *Code of Virginia*.** Policies and procedures will help ensure that the agency can efficiently resolve and respond to unforeseen circumstances that current statutory language might not specifically contemplate.
- 2. The General Assembly may wish to consider amending the *Code of Virginia* to allow employers to submit information that may assist the Virginia Retirement System in making an eligibility determination decision and to delete language specifically allowing an employer appeal.** HB 2204 provides employers with a right to appeal eligibility determinations as part of a process established by VRS. However, such a change could result in a lengthy appeal and counter-appeal cycle, adding both time and complexity to the process. Instead, VRS recommends permitting an employer to provide information during the VRS eligibility determination process.
- 3. The General Assembly may wish to consider amending the *Code of Virginia* to permit the Virginia Retirement System’s use of its Medical Board on matters regarding eligibility for benefits under the Line of Duty Act.** Whether a claimant is eligible for LODA disability benefits often turns on an individual’s specific medical situation. The VRS Medical Board, which is comprised of physicians or other health care professionals, is an existing resource that can accommodate LODA determinations. Existing language in the Appropriation Act already recognizes the Medical Board’s potential usefulness in processing LODA claims.
- 4. The General Assembly may wish to consider amending the *Code of Virginia* to subject appeals of the Virginia Retirement System’s eligibility determinations to the agency-level and judicial appeal provisions of the Administrative Process Act, § 2.2-4000 et seq. of the *Code of Virginia*.** This would simplify the judicial appeal processes by not treating LODA determinations as a general civil matter with a *de novo* standard of review. Compared to being treated as a general civil matter, the Administrative Process Act (APA) provides a more streamlined and efficient approach for resolving eligibility determinations that are appealed to circuit court. This recommendation also entails designating a LODA eligibility determination as a VRS “case decision” as the term is defined under the APA. Doing so will ensure that denied claims are afforded an informal hearing and review by an independent fact finder at the agency-appeal level.
- 5. The General Assembly may wish to consider amending the language in HB 2204 as passed by the 2015 General Assembly to 1) remove language requiring employers to collect beneficiary information, since the Line of Duty Act already includes default beneficiary provisions, and 2) add related information to the existing Line of Duty Act training requirements.** HB 2204 requires that LODA employers collect beneficiary

designations from each individual employee and volunteer and recertify the designations every three years. Due to the resulting administrative burden, this recommendation would strike that language in HB 2204 as the current LODA provisions already address such beneficiary issues. However, the General Assembly may wish to augment the training requirements already in existence with information related to LODA beneficiary issues.

- 6. The General Assembly may wish to consider amending the *Code of Virginia* to clarify that the Virginia Retirement System will manage the investments of the Line of Duty Act Fund in the same manner as the investments of the VRS Trust Fund.** The *Code of Virginia* currently states that the Line of Duty Act Trust Fund will be invested in the sole interests of beneficiaries thereof. However, as VRS is subject to IRS and constitutional provisions related to the exclusive benefit rule we recommend that assets of the Line of Duty Act Fund be invested alongside and in the same manner as assets of the VRS Trust Fund. This is the same process used with other funds VRS invests, such as the Commonwealth Health Research Fund (§ 51.1-124.36) and Commonwealth’s Attorneys Training Fund (§ 51.1-124.37).
- 7. The General Assembly may wish to consider amending the *Code of Virginia* to clarify the Virginia Retirement System’s authority to enforce collection of the Line of Duty Act Fund premiums from participating employers.** HB 2204 codifies Appropriation Act language requiring participating employers to make annual contributions to the Line of Duty Act Fund. However, HB 2204 does not codify additional Appropriation Act language providing authority to enforce the collection of LODA premiums. Further, VRS does not have authority to enforce the collection for eligibility determinations from nonparticipating employers. This recommendation seeks to codify the Appropriation Act language and clarify that VRS is authorized to enforce premium and reimbursement collection from participating and nonparticipating employers.
- 8. The General Assembly may wish to consider amending the *Code of Virginia* to require participating and nonparticipating employers to provide the Virginia Retirement System with demographic and claim experience data for actuarial determination purposes.** This recommendation will allow VRS to develop its actuarial assumptions using more comprehensive information.

Line of Duty Act Provides Benefits to Individuals in Certain Covered Positions and Their Families

The Line of Duty Act was first enacted in 1972 to provide a \$10,000 death benefit to law-enforcement officers and members of fire companies and rescue squads. The Act covered state and local positions, as well as volunteers. Since its enactment, the Line of Duty Act has gone through considerable changes. Originally designed to cover law-enforcement officers and firefighters, coverage has been expanded to include another 12 types of positions. The kinds of benefits available and who is eligible to receive them have also increased. As a result, the

number of beneficiaries has grown as has the value of the benefits. The employers' costs to fund the benefits have also increased.

Virginia's Line of Duty Act Provides Death and Health Insurance Benefits

Section 9.1-400(B) of the *Code of Virginia* defines "line of duty" as "any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition or employment of service, or law." Under the Act, a disabled person is defined as

[A]ny individual who, as the direct or proximate result of the performance of his duty in any position listed in [§ 9.1-400(B)], has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent.

Table 1 identifies the benefit, the beneficiary, and the duration of the benefit. As the table shows, when the death of an individual covered under the Act is the result of performing his or her duty, the surviving spouse and dependents are eligible for a \$100,000 lump sum payment. (For purposes of this report, the term "LODA-covered personnel" is used to describe individuals covered under the Act, as well as public safety officers and hazardous duty personnel.)

Table 1: Current Benefits Available to LODA-Covered Personnel and Their Families

Benefit	Beneficiary	Duration of Benefit
\$100,000 for death as the direct or proximate result of performing duty on or after January 1, 2006	Surviving spouse and dependents	One-time payment
\$75,000 for death as the direct or proximate result of performing duty on or before December 31, 2005	Surviving spouse and dependents	One-time payment
\$25,000 for death as the presumptive result of performing duty or within five years of retirement date	Surviving spouse and dependents	One-time payment
Payment of health and dental insurance premiums	Disabled public safety officers	Death, recovery or employment in a LODA-covered position
	Spouse	Death or coverage by alternative health insurance
	Dependents	Death, marriage, coverage by alternative health insurance, 21 years of age (25 if a full-time student), or lifetime for mentally or physically disabled
\$20,000 for death of certain members of the National Guard and United States military reserves killed in action in any armed conflict on or after October 7, 2001 ^a	Surviving spouse and dependents	One-time payment

SOURCE: VRS staff analysis of: § 9.1-400 et seq. of the *Code of Virginia*, JLARC, Virginia's Line of Duty Act, Commission Draft, 2014, DOA, Line of Duty Procedures, and 2015 Virginia Acts of Assembly, Chapter 665, Item 264(C).

Note: This reflects current statutory language without changes proposed in HB 2204.

^a 2015 Virginia Acts of Assembly, Chapter 665, Item 264(C).

A \$25,000 payment is provided for deaths occurring from presumptive causes related to certain occupational diseases, as well as deaths that occur within five years of retirement as a result of these occupational diseases.²

In addition to the death benefit, the Act also provides for payment of health insurance premiums. Beneficiaries are entitled to health benefits that are the same as or comparable to those for which the LODA-covered individual was eligible on his or her last day of active duty. Table 1 also shows the circumstances under which coverage is terminated. For example, coverage is terminated for a disabled officer upon his or her death, recovery, or employment in a LODA-covered position. HB 2204 makes two substantial changes to the length of time health insurance benefits are available. First, a spouse will maintain his or her health insurance benefits even after obtaining coverage by alternate health insurance. Second, dependents maintain benefits “subject to the same continued eligibility and termination rules applicable to dependents for the plan in which they are enrolled.”

In addition to LODA, JLARC staff identified other programs that LODA-eligible individuals may be eligible for during FY 2013 (Table 2). These programs offer death benefits, health insurance benefits, as well as tuition assistance. According to JLARC, as of FY 2013, most

Table 2: Most LODA Beneficiaries Receive Complementary Benefits from Other Programs, FY 2013

Program	Source	Benefit Provided
Death Benefits		
VRS Life Insurance ^a	Employer	2X – 4X Salary
Public Safety Officers’ Benefits Program ^b	Federal	\$330,000
Health Care Benefits		
Workers’ Compensation	Employer	Health care for injury/income replacement (offsets VRS retirement benefits, as applicable)
Work-Related and Other Disability Benefits		
SSDI	Federal	Income assistance for eligible disabled persons
VRS disability retirement or VRS short-term and/or long-term disability, as applicable ^c	Employer	Income protection
Tuition Assistance		
Tuition assistance ^d	State Institutions	Undergraduate tuition and payment of required fees for eligible spouses and children

SOURCE: JLARC, Virginia’s Line of Duty Act, Commission Draft, 2014, p. 9 and VRS staff analysis of the *Code of Virginia*.

^a Only for VRS members whose employers have elected VRS Life Insurance.

^b U.S. Department of Justice, Office of Justice Programs.

^c VRS-covered employees only.

^d § 23-7.4:1(B) of the *Code of Virginia*.

² Presumptive causes are defined in §§ 27-40.1, 27-40.2, 51.1-813 and 65.2-402 of the *Code of Virginia* and consist of respiratory disease, hypertension or heart disease, and the following cancers: leukemia or pancreatic, prostate, rectal, throat, ovarian, or breast. Any individual covered by the Act who dies or becomes totally or partially disabled as the result of the aforementioned diseases is presumed to have died or become disabled in the line of duty.

LODA beneficiaries were eligible for benefits from other programs. In fact, almost all received a workers' compensation award and the beneficiaries of more than half of those who were deceased received a life insurance payment.

Program Responsibilities Are Divided Among DOA, VRS, and Employers

Currently, two state agencies and local employers are involved with administration of the Act. As the administrator of LODA eligibility determinations, DOA is responsible for receiving LODA claims, ensuring that all necessary information is collected, and making eligibility determinations.

The Virginia General Assembly created the Line of Duty Act Fund (Fund) effective July 1, 2010 to pay for the benefits prescribed in the Act.³ Prior to this, LODA benefits were paid from the General Fund. The Fund was created as a separate and independent trust fund and is segregated from the Commonwealth's other funds. The *Code of Virginia* authorizes the VRS Board to invest and manage the Fund's assets, which are comprised of employer contributions and interest earnings on those contributions. VRS collects the contributions in the form of premiums from employers who participate in the Fund (participating employers). As its administrator, VRS is also responsible for reporting on the actuarial and financial health of the Fund.

For participating employers, DOA administers the benefits and VRS makes periodic distributions to DOA from the Fund to cover the cost of benefits. Employers who do not participate in the Fund (nonparticipating employers) are independently responsible for funding and administering benefits for their covered employees and volunteers once DOA has determined eligibility.

The 2015 General Assembly amended the Act to transfer administration of the overall program from DOA to VRS and to transfer administrative responsibility for health insurance to DHRM as of July 1, 2016, upon reenactment by the 2016 General Assembly.

Occupations Covered by the Line of Duty Act Have Increased Over Time

Originally designed to assist the families of law-enforcement officers, members of fire companies and rescue squads killed in the line of duty, the Act has been expanded to cover the additional types of positions shown in Table 3 on the following page. At the end of FY 2011 and FY 2012, respectively, localities were given the opportunity to opt out of the Fund and fund benefits on their own. Localities that chose to continue participating in the Fund still annually report the number of employees they cover. As the table also shows, participating employers covered almost 28,000 employees as of June 30, 2015. By comparison, JLARC reported that participating employers covered slightly more than 29,000 employees in FY 2013, while non-participating employers covered almost 53,000.⁴

³ HB 2204 renames the fund the Line of Duty Death and Health Benefits Trust Fund.

⁴ JLARC, Virginia's Line of Duty Act, 2014, Commission Draft, p. 11.

Table 3: Participating Employers Covered Almost 28,000 Individuals Under Virginia’s Line of Duty Act in FY 2015

Year Added	Covered Position	Covered Employees by Participating Employers
1972	Law-enforcement officers	7,184
	Members of recognized fire companies and rescue squads	4,866
1974	Virginia National Guard	8,447
1976	Correctional officers	6,294
	Department of Alcoholic Beverage Control special agents	118
1977	Game wardens	151
1986	Commissioned forest wardens	150
1995	Virginia Marine Resources Commission employees with powers to arrest	72
	Department of Conservation and Recreation conservation officers	102
	Regional jail officers and jail farm superintendents	408
1996	Department of Emergency Services hazardous materials officers	9
2003	Police chaplains	Unknown*
	Local employees performing emergency management duties for a declared state of emergency	Unknown*
2012	Department of Motor Vehicles enforcement division sworn employees	72
Total		27,873

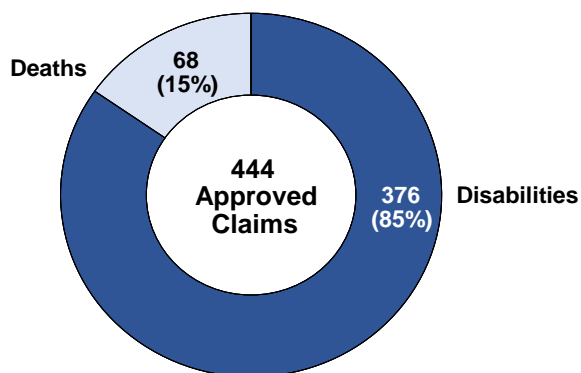
SOURCE: VRS staff analysis of employer information.

*Individual employee counts unavailable.

Number Receiving Benefits Has Grown Since FY 2010

According to DOA, there were approximately 1,120 active LODA claims as of September 2015. Of that amount, about 87 percent were the result of a disability. As Figure 1 shows, disabilities accounted for 85 percent of the 444 DOA-approved claims from FY 2010 through FY 2015. On an annual basis, the number of approved disability claims ranged from a high of 89 in FY 2014

Figure 1: Disabilities Account for Most Line of Duty Act Benefits (FY 2010 – FY 2015)



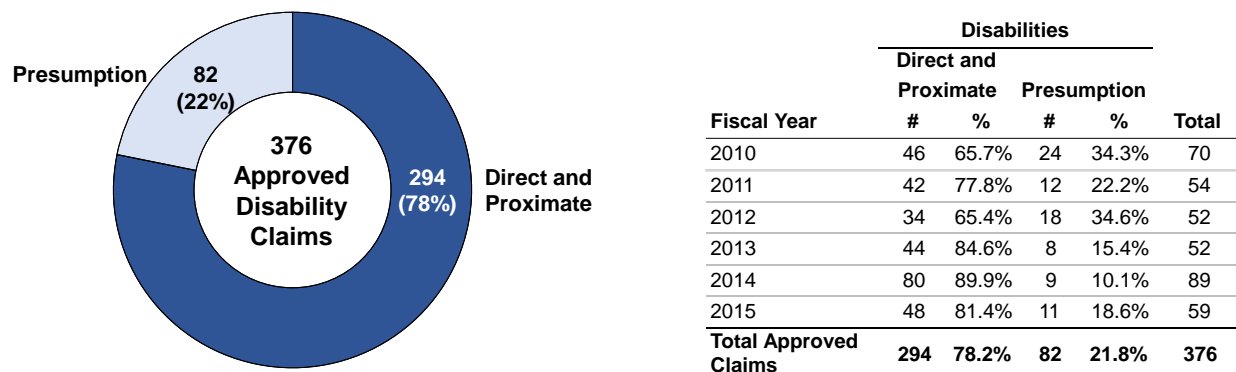
Fiscal Year	Disabilities		Deaths		Total
	#	%	#	%	
2010	70	94.6%	4	5.4%	74
2011	54	76.1%	17	23.9%	71
2012	52	82.5%	11	17.5%	63
2013	52	72.2%	20	27.8%	72
2014	89	92.7%	7	7.3%	96
2015	59	86.8%	9	13.2%	68
Total Approved Claims	376	84.7%	68	15.3%	444

SOURCE: VRS staff analysis of DOA data.

to a low of 52 in both FY 2012 and FY 2013. The number of approved death benefits ranged from a high of 20 in FY 2013 to a low of four in 2010. Since FY 2010, the number of approved disability claims has never accounted for less than seven in ten approved claims.

Of the 376 disability claims approved from FY 2010 through FY 2015, more than three-quarters were the result of direct and proximate causes (Figure 2). Direct and proximate injuries would include events such as a vehicle crash during a pursuit, being trapped in a burning building, or a firing range accident. Presumptive causes, which are diseases associated with the occupations such as hypertension, respiratory diseases, and certain cancers, accounted for 22 percent of approved LODA disability claims from FY 2010 through FY 2015. Of the 68 approved death benefits during FY 2010 through FY 2015, 60 percent were the result of presumptive causes.

Figure 2: Direct and Proximate Causes Account for Three-Quarters of Disability Benefits Provided Under the Line of Duty Act (FY 2010 – FY 2015)



SOURCE: VRS staff analysis of DOA data.

Program Costs Are Growing, Driven Primarily by Health Insurance Costs

For participating employers, the total FY 2015 cost of the LODA program was approximately \$8.4 million (Table 4). Program costs consist of the amounts paid for death and health insurance benefits, as well as the administrative costs incurred by VRS and DOA in carrying out their responsibilities. (It should be noted that the health insurance costs shown in the table represent payments made on behalf of participating employers only.) Health insurance costs increased by more than \$2 million from FY 2013 to FY 2015, a growth of almost 34 percent. The increased cost was due, in part, to additional covered lives.

Table 4: Health Insurance Accounts for Most of Participating Employers’ Program Costs

Fiscal Year	Benefits Paid		Administrative Costs		Total
	Health Insurance	Death	VRS	DOA	
2013	\$5,965,537	\$525,000	\$164,000	\$175,185	\$6,829,722
2014	7,288,500	350,000	129,970	182,623	7,951,092
2015	7,979,002	75,000	172,001	189,391	8,415,394
Total	\$21,233,039	\$950,000	\$465,971	\$547,199	\$23,196,208

SOURCE: VRS staff analysis of VRS and DOA data.

NOTE: Table excludes cost associated with repayment of loan related to the establishment of the fund.

Benefits Are Funded Through Annual Contributions or Self-Insuring Mechanisms

Assets of the Line of Duty Act Fund are comprised of participating employer contributions and interest earnings on those contributions. More than 350 employers were covered by LODA in FY 2015, of which 127 (36 percent) participated in the Fund (Table 5). Prior to FY 2012, state agencies and non-state entities were required to participate in the Fund. Non-state entities were given the option to opt out of participation in the Fund at the end of FY 2011 and FY 2012 and pay for benefits on their own. Entities that chose not to participate account for almost two-thirds of the employers.

Table 5: FY 2015 – Line of Duty Act Fund: Participating and Nonparticipating Employers

Employer Type	Participating Employers	Nonparticipating Employers		Total
		Group Self-Insurance	Individual Self-Insurance	
State	69	NA	NA	69
Cities	14	16	9	39
Counties	8	81	6	95
Towns	30	93	0	123
Other	6	24	1	31
Total	127	214	16	357

SOURCE: VRS staff analysis.

NOTE: State agencies were not allowed to opt out of the Fund.

Participating employers make annual contributions to the Fund for the purpose of funding benefits and administrative expenses under the Act. The Fund receives an annual actuarial valuation that is used to set premium contribution rates for participating employers based on the number of covered employees and the anticipated program costs. Item 264(B)(3)(a) of the Appropriation Act currently requires the funding rate to be based on a “current disbursement” basis. The “current disbursement” or “pay-as-you-go” basis means that premium rates are set to collect only enough funds to cover anticipated costs for the upcoming year. This methodology differs from the “prefunding” method used in all the other post-employment benefit plans (OPEB) administered by VRS. While moving to a prefunding basis would increase required contribution rates in the short term to cover unfunded liabilities of the plan, prefunding is considered a Government Finance Officers’ Association (GFOA) best practice and offers long-term leveling of plan costs as fund asset returns can be used to offset future costs. While the same language found in the Appropriation Act on “current disbursement” funding is also included in HB 2204, consideration of prefunding may warrant discussion as new proposed Governmental Accounting Standards Board (GASB) standards for OPEB plans parallel the pension standards issued in 2012, which will require recognition of unfunded liabilities on employers’ balance sheets beginning in FY 2018.

Participating employers are required to update their LODA rosters annually. State entities pay their premiums through a combination of general fund and non-general fund appropriations. Non-state entities that chose to remain in the Fund are responsible for paying the premiums on their own; no state funding is provided.

The premium charge is different for full-time employees, volunteers, and National Guard members who train once a month. Employers pay 100 percent of the premium for full-time employees and 25 percent for volunteers. The Department of Military Affairs is billed for National Guard members who train once a month at a rate of one-tenth of the premium amount for full-time employees. Participating employers are billed annually by VRS. For FY 2015, the premium was approximately \$519 for full-time employees, \$130 for volunteers, and \$52 for National Guard members who train once a month. For FY 2015, participating employers paid almost \$10 million in premiums (Table 6). A new rate will be calculated for FY 2017 and FY 2018 after the next actuarial valuation.

Table 6: Participating Employers, Covered Individuals, and Premiums Paid by Employer Type

Employer Type	Participating Employers	Covered Individuals	Premiums Paid
State	69	18,252	\$5,838,164
City	14	6,245	2,755,300
County	8	2,405	742,820
Town	30	615	261,106
Other	6	356	184,707
Total	127	27,873	\$9,764,097

Source: VRS staff analysis.

As of June 30, 2015, 230 entities did not participate in the Fund. Of these, 214 used a group self-insurance product, while the remaining 16 each used an individual self-insurance plan. Because they do not pay premiums to the Fund, nonparticipating entities do not report to DOA the number of individuals they cover, nor do they report their costs. However, a comparison between participating and nonparticipating employers can be made using the FY 2013 information reported by JLARC. Based on that information, participating employers covered more than 29,000 employees and volunteers, while nonparticipating employers covered almost 53,000. JLARC also estimated that the 2013 budget impact was \$9.5 million for participating employers and \$6.2 million for nonparticipating employers. (For the nonparticipating employers, JLARC used the amount of benefits payments.)

JLARC Report Identified Eligibility and Benefits Changes That Could Improve Sustainability

According to the JLARC report, the employers' cost of providing LODA benefits doubled from FY 2006 to FY 2014 as more beneficiaries were added and the costs of health insurance increased. Costs are expected to double again from \$16 million in FY 2015 to \$34 million in FY 2025. Such increases will continue to pressure employers' finances and may potentially jeopardize future benefits.

The JLARC report provided several options aimed at reducing costs, including changes to eligibility criteria and benefits, and the potential effect of such changes on each stakeholder

group. Potential 10-year cost savings associated with JLARC's options range from a low of \$5.4 million for discontinuing benefits for disabled LODA-covered personnel who are earning at least as much as their pre-disability salary and have access to comparable, affordable health insurance to a high of \$33.8 million for creating a separate Line of Duty Act health insurance plan and requiring all beneficiaries to enroll in it. Ultimately, balancing the Commonwealth's recognition of the sacrifices made by public safety officers and their families against the program's long-term viability is a policy decision for the General Assembly. The following section summarizes the JLARC options.

Options Addressing Eligibility Criteria

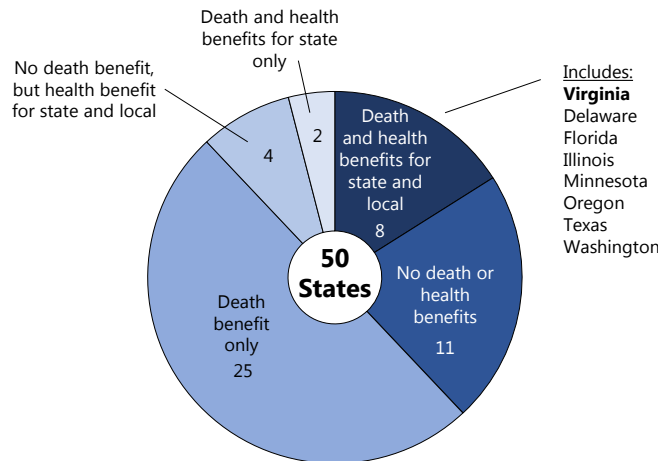
Redefining the circumstances under which an individual or his or her family is eligible for Line of Duty Act benefits is one mechanism for ensuring the program's long-term fiscal viability. Currently, some of the factors that are used to qualify an individual for benefits are broadly written and broadly interpreted. For example, individuals have consistently been determined to be eligible regardless of whether the injury or death occurred as the result of the inherent dangers associated with a public safety position.

The JLARC report found that a lack of clear criteria for determining eligibility has led to confusion within the participating community. JLARC staff recommended more clearly defining the criteria for "line of duty" and "disabled person" to help resolve the confusion. JLARC staff also recommended clearly defining "coverage by alternative health insurance" as it applies to the circumstances under which insurance coverage should be terminated. More clarity around these terms could increase the consistency of benefits administration across LODA employers, resulting in more predictable benefits decisions and costs while also producing employer cost savings, according to the JLARC report.

At the same time, eliminating or reducing the ambiguity surrounding the terms could reduce the circumstances under which individuals are eligible for the benefits. While such changes could be implemented administratively, the effect of such changes on beneficiaries could be substantial. Therefore, a change in the *Code of Virginia* may be advisable as part of such an effort.

Other states reduce eligibility by only covering state employees, covering fewer occupations and fewer types of disabilities, or by more narrowly defining "line of duty," among other qualifying requirements. For instance, Virginia is one of only eight states that provide both a death benefit and a health insurance benefit to state and local hazardous duty employees (Figure 3 on the following page).

Figure 3: Virginia Is Among Only Eight States That Provide Death and Health Insurance Benefits to State and Local Employees



SOURCE: VRS staff analysis of JLARC, Virginia’s Line of Duty Act, Commission Draft, 2014, pp. 93-94.

Among the eight states providing death and health benefits to both state and local employees, Virginia is one of only three that provide benefits as a result of death, disability, and presumptive causes (Table 7). Appendix D provides the statutory language regarding line of duty act eligibility used in Virginia and the other seven states in this category.

Table 7: Virginia’s Eligibility Criteria Compared to Similar States

State	Death	Disability	Presumptive Cause
Virginia	✓	✓	✓
Delaware	✓		
Florida	✓	✓	✓
Illinois	✓	✓	
Minnesota	✓	✓	
Oregon	✓	✓	
Texas	✓		
Washington	✓	✓	✓

SOURCE: JLARC, Virginia’s Line of Duty Act, Commission Draft, 2014, p. 53.

In addition to affirmatively defining “line of duty,” some states also attempt to clarify eligibility ambiguities by defining when an employee and/or beneficiary is not eligible for benefits. For example, Delaware specifically excludes death from natural causes, accidental death during travel to and from work, and death resulting from disobeying or exceeding orders from superiors. Oregon expressly prohibits eligibility when the death or disability was a result of the public safety officer’s intentional misconduct, voluntary intoxication, or grossly negligent performance of duties.

As previously discussed, Virginia’s LODA medical eligibility criteria requires an individual’s injury to permanently incapacitate him or her from further performance of duty. Under the current process, permanency is determined at the time of application. However, Virginia does not perform any reassessment or ongoing assessment of the permanency of LODA disabilities. This is inconsistent with how some of the Commonwealth’s other disability programs operate. For

example, under the state’s workers compensation program the claimant must receive benefits for 500 weeks before the injury is classified as permanent.

The JLARC report included options for providing Line of Duty Act benefits under more narrow circumstances than are currently in place (Table 8). Specifically, the JLARC options seek to limit eligibility to traditional ideas of “line of duty” activities, such as those most associated with the inherent danger of hazardous duty positions. For instance, JLARC estimated that eliminating eligibility based on presumptive causes could save approximately \$29.8 million over ten years. JLARC also estimated that for every ten percent reduction in the number of potential beneficiaries, the program could expect a \$10.4 million cost savings over ten years. While implementation of any of these options could substantially reduce future program costs and help preserve the program’s long-term fiscal viability, the changes may also negatively impact future LODA beneficiaries.

Table 8: Line of Duty Act Eligibility Options Identified in the JLARC Report

Option	Identified Impacts	JLARC Projected 10-Year Cost Savings (\$Million)	Code Impact
Redefine “disabled person” more narrowly in the Line of Duty Act to reduce the circumstances under which public safety officers are eligible for benefits (Option 6)	<ul style="list-style-type: none"> • Lower costs to LODA employers • Maintain benefits for death beneficiaries and the most severely disabled • Fewer administrative resources necessary to determine eligibility if a new definition results in a reduction in claims • Loss of benefits for some public safety officers and their spouses and dependents • Disproportionate impact on younger beneficiaries with lower pre-disability salaries • Increase in complexity to determine the severity of disabilities 	\$10.4 per 10% fewer beneficiaries	Code Change Required
Eliminate from the eligibility criteria of the Line of Duty Act the presumptive causes listed in the definitions of “deceased person” and “disabled person” (Option 7)	<ul style="list-style-type: none"> • Lower costs to LODA employers by approximately \$29.8 million over the next ten years • Maintain benefits for public safety officers killed or disabled by direct and proximate causes • Decrease in complexity of eligibility determinations • Loss of benefits for approximately 30% of beneficiaries annually • Loss of medical benefits for some disabled public safety officers with significant health care needs • Eligibility not related to severity of disability because some direct and proximate disabilities are less severe 	\$29.8	Code Change Required
Redefine “line of duty” to include only deaths and disabilities occurring as a direct and proximate result of public safety responsibilities (Option 8)	<ul style="list-style-type: none"> • Lower costs to LODA employers • Maintain benefits for deaths and disabilities related to public safety duties • Fewer administrative resources necessary to investigate and determine eligibility due to fewer claims • Loss of death and medical benefits for some disabled 	\$10.4 per 10% fewer beneficiaries	Code Change Required

- public safety officers and their families
- Eligibility not related to severity of disability because some ineligible disabilities could be more severe than those occurring during public safety activities
- Would remove presumptions, prospectively reduce benefits

SOURCE: JLARC, Virginia’s Line of Duty Act, Commission Draft, 2014.

Options Addressing Death Benefits and Health Insurance Benefits

In addition to broader eligibility criteria, Virginia also provides benefits under more circumstances than the other seven states that provide both a death benefit and a health insurance benefit for eligible state and local personnel killed or disabled in the line of duty. JLARC reported that among the eight states, only Virginia continues providing benefits to claimants who recover from the disability, have access to other insurance, or are Medicare eligible (Table 9).

Table 9: Virginia Provides Ongoing Benefits Under More Circumstances Than Similar States

State	Claimant Recovers From Disability	Claimant Has Access to Other Insurance	Reach Age 65 (Medicare)	Spouse Remarries
Virginia	✓	✓	✓	✓
Delaware	N/A	✓	N/A	N/A
Florida	✓	✓	✓	
Illinois		✓	✓	
Minnesota				✓
Oregon	✓			
Texas	N/A	✓		
Washington		✓		✓

SOURCE: JLARC, Virginia’s Line of Duty Act, Commission Draft, 2014, p. 53.

Virginia also continues providing benefits to spouses of deceased LODA-covered personnel after the spouse remarries.

JLARC also reported that as of the Summer of 2014, 35 states and the District of Columbia provided a death benefit. Virginia provides a lump sum payment of \$100,000 for deaths resulting from direct and proximate causes, and \$25,000 for deaths resulting from presumptive causes. Arkansas and Florida also provided different amounts depending on the circumstances of the death. According to the JLARC report, the average benefit across the 35 states was about \$115,000. The value of the death benefit ranged from a low of \$1,000 in Utah to a high of \$342,088 in Illinois. Virginia’s benefit was more than 12 other states, but less than 15 others.

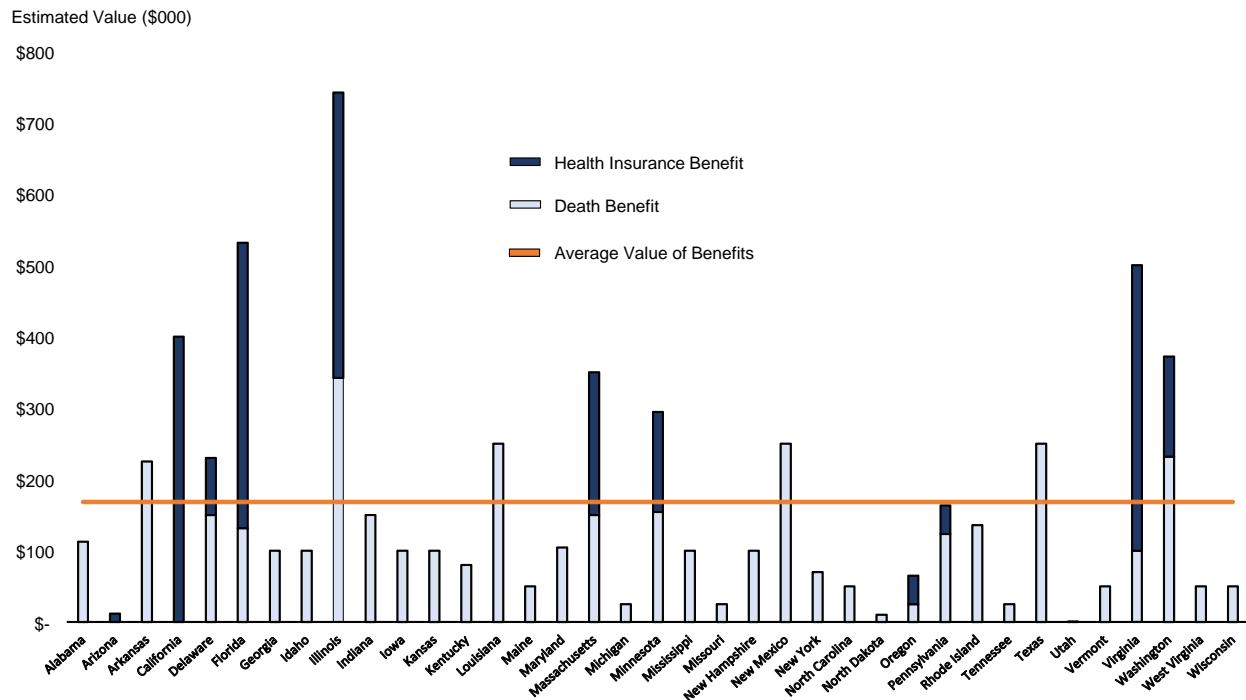
Figure 4 on the following page further illustrates how Virginia differs from other states with regard to benefits. The figure shows the estimated value of the death benefit and health insurance benefit for law-enforcement officers by state. The health care benefits are estimates based on the

presumed length of coverage. Based on the analysis, 35 states provided a death benefit and 11 provided a health insurance benefit. Nine states, including Virginia, provided both benefits.

As shown in the figure, of the nine states providing both, only the estimated value of the benefits provided by Illinois (\$742,088) and Florida (\$531,547) were greater than Virginia’s (\$500,000). The average estimated value of the benefits was approximately \$361,000. The values ranged from a low of \$65,000 in Oregon to the high of \$742,088 in Illinois.

Virginia is also one of 11 states providing a health benefit to law-enforcement officers. The estimated value of Virginia’s health insurance benefit is nearly double the value of the average benefit provided for all 11 states due in part to providing a lifetime healthcare benefit. Three other states--California, Florida, and Illinois-- also provided a lifetime healthcare benefit. Of the 11 states providing a healthcare benefit, Arizona provided the lowest valued benefit, as coverage was assumed to last only one year.

Figure 4: Estimated Value of Death and Health Insurance Benefits by State, 2014



SOURCE: VRS staff analysis of JLARC, Virginia’s Line of Duty Act, Commission Draft, 2014.

NOTE: Health care present values are estimates based on presumed length of benefit coverage. As of Summer 2014, the following states did not provide line of duty benefits: Alaska, Colorado, Connecticut, Hawaii, Montana, Nebraska, Nevada, New Jersey, Ohio, Oklahoma, South Carolina, South Dakota, and Wyoming.

JLARC also reported that the lack of criteria for evaluating health insurance plans has resulted in the inconsistent provision of health benefits by DOA and the nonparticipating employers. DOA evaluates comparability by comparing the benefits available under an individual’s plan at the time of his or her injury against the benefits available in the plans submitted by the claimant. Comparability determinations also vary among nonparticipating localities, according to the JLARC report. Some employers focus on the benefits while others on whether the plan is a

Health Maintenance Organization, Preferred Provider Organization, or a Point of Service Plan. As a result, JLARC recommended development of a standard criteria for evaluating the comparability of health benefits. Such a standard, the report stated, would increase the consistency of benefits administration across Line of Duty Act employers, resulting in more predictable benefit decisions and program costs. DHRM added that a standard would address challenges in maintaining comparable coverage in an environment where there are continuous industry-wide changes to health plan designs.

The previous examples illustrate where Virginia is providing more benefits than other states. The examples also show that even within Virginia, there are differences in the value of the health insurance plans being provided, differences that can impact program costs. JLARC also identified potential cost savings through changes to how health insurance benefits are provided, reducing benefits based on income criteria, and discontinuing LODA benefits when an individual is Medicare eligible (Table 10). The potential ten-year cost savings associated with these options ranges from \$5.4 million to \$33.8 million.

Table 10: Line of Duty Act Health Insurance Options Identified in the JLARC Report

Option	Identified Impacts	JLARC Projected 10- Year Savings (\$Million)	Code Impact
Direct the Department of Human Resource Management to establish a separate Line of Duty Act health insurance plan and require all Line of Duty Act beneficiaries to enroll in that plan (Option 2)	<ul style="list-style-type: none"> • Lower costs to LODA employers by \$33.8 million over the next 10 years • Elimination of comparability requirement • More consistent health insurance coverage across beneficiaries • Increased costs for certain LODA employers depending on the cost of current health insurance plans • Increased administrative expenses for DHRM to develop and manage a separate plan for LODA beneficiaries • Continuity of health care disrupted for some LODA beneficiaries who may be required to change medical providers • Continue to provide health insurance to all beneficiaries at no cost to them 	\$33.8	Code change required
Require Line of Duty Act beneficiaries to pay the active employee share of health insurance premiums or 20 percent, whichever is lower, if their household income exceeds 250 percent of the federal poverty level (Option 4)	<ul style="list-style-type: none"> • Lower employer costs to LODA employers by approximately \$10.9 million over the next ten years • Maintain affordable health insurance for all LODA beneficiaries • Reserve full benefits for those with lower household incomes • Increased premium costs for 22% of beneficiaries with household incomes exceeding 250% of the federal poverty level • Disproportionate impact on beneficiaries in higher cost of living areas • Increased administrative resources required to track income and collect premiums • DHRM has identified the following: Consistent benefit provision. Challenges: tracking income, collecting payments, terminating coverage due to failure to pay, adjusting income corridors to reflect definition of "higher-income," for possibly minimal savings^a 	\$10.9	Code change required

Table 10: Line of Duty Act Health Insurance Options Identified in the JLARC Report (Continued)

Option	Identified Impacts	JLARC Projected 10-Year Savings (\$Million)	Code Impact
Discontinue benefits for disabled public safety officers earning at least as much as their pre-disability salary and have access to comparable, affordable health insurance (Option 5)	<ul style="list-style-type: none"> • Lower costs to LODA employers by approximately \$5.4 million over the next ten years • Maintain free health insurance premiums for 98% of LODA beneficiaries • Elimination of benefits for 2% of beneficiaries with incomes greater than their pre-disability salary • Disproportionate impact on younger beneficiaries with lower pre-disability salaries • Increased administrative resources required to track income and assess comparability and affordability • DHRM has identified the following: Consistent benefit provision. Challenges: tracking income, determining if coverage can be reinstated if income drops below pre-disability salary^a • Availability of coverage is not resolved • Defining availability remains an issue 	\$5.4	Code change required
Discontinue Line of Duty Act health insurance benefits when beneficiaries become eligible for Medicare at age 65 (Option 9)	<ul style="list-style-type: none"> • Lower costs to LODA employers by approximately \$26.9 million over the next 10 years • Maintain free health insurance for all beneficiaries without Medicare access • Loss of medical benefits for at least 6% of beneficiaries with lower incomes • Increased premium costs for older beneficiaries with lower incomes • Prospectively reduce benefits 	\$26.9	Code change required
Require the state and localities to include (i) being found eligible for benefits under the Line of Duty Act and (ii) losing alternative health insurance coverage after being found eligible for Line of Duty Act benefits as qualifying events for purposes of enrolling in state and local group health insurance plans (Option 1)	<ul style="list-style-type: none"> • Lower costs to LODA employers by approximately \$6.7 million over the next 10 years • Fewer administrative resources to evaluate the comparability of replacement plans • More consistent health insurance coverage across beneficiaries • Changes required to state and local health insurance rules • Increased subsidization of health insurance premiums for some LODA beneficiaries by other members of state and local plans • Administrative complexity • Continue to provide health insurance to all beneficiaries at no cost to them 	\$6.7	Code change required

Table 10: Line of Duty Act Health Insurance Options Identified in the JLARC Report (Continued)

Option	Identified Impacts	JLARC Projected 10-Year Savings (\$Million)	Code Impact
Require Line of Duty Act beneficiaries to use employer-subsidized health insurance plans if available and comparable to the health insurance coverage currently offered by their former employer (Option 3)	<ul style="list-style-type: none"> • Lower costs to LODA employers • Reduced subsidization of LODA beneficiaries by members of state and local health insurance plans • Additional administrative complexity to track beneficiary employment status and assess comparability • Continuity of health care disrupted for some LODA beneficiaries who may be required to enroll in a different plan and change medical providers 	\$13.3 – \$26.6	Code change required
Establish a policy to prefund benefits for employers that participate in the LODA Fund (Option 11)	<ul style="list-style-type: none"> • Lower annual contributions required from participating employers • Method is similar to how workers' compensation benefits are projected • Does not eliminate unfunded liability for current beneficiaries • Potentially large premium increases that localities did not anticipate when joining the Fund • An additional opt out period may need to be considered 	N/A	Code change required

SOURCE: JLARC, Virginia's Line of Duty Act, Commission Draft, 2014.

^a Identified by the Department of Human Resource Management as of September 2015.

VRS' Proposed Process for Administering the Line of Duty Act Upon Enactment of HB 2204

Under HB 2204, VRS will become responsible for administering the Line of Duty Act program. To ensure a seamless transition, the agency's proposed eligibility determination and appeals process is patterned after VRS' disability retirement program, and includes employer involvement, an agency-level appeal process, and the use of Virginia's Administrative Process Act for judicial appeals. The provision currently in HB 2204 requiring collection of beneficiary information was identified by the working group as being potentially administratively burdensome for employers. Changes to HB 2204 related to informing LODA-covered personnel of their benefits may be needed. Management of the Line of Duty Act Fund may benefit from clarifying VRS' statutory responsibilities. VRS' effectiveness at managing the program could also benefit from additional statutory changes.

VRS' Proposed Eligibility Determination and Appeals Process Seeks to Take Advantage of Strengths Associated With Existing Disability Retirement Program

In making VRS disability retirement eligibility decisions, two primary questions are considered. First, whether the claimant meets the medical eligibility criteria of being mentally or physically incapacitated for the further performance of duty, and that the incapacity is likely to be permanent. And second, whether the claim is non-work-related or whether it meets the established work-related disability retirement criteria where the injury occurred by accident in the course of work. A claimant who disagrees with the determination outcome is provided the opportunity to appeal the decision at least twice through an agency-level appeal process. A claimant may also appeal VRS' final case decision under the Administrative Process Act (APA), § 2.2-4000 et seq. of the *Code of Virginia*.

To take advantage of the structure and consistency of its disability retirement program process, VRS proposes administering LODA eligibility determinations and appeals in essentially the same way. In making a LODA eligibility determination, the medical eligibility questions are the same, namely, as a result of the injury, is the individual mentally or physically incapacitated so as to prevent further performance of duty and is the injury likely to be permanent? In determining whether the injury occurred in the "line of duty," the Act states that the injury must have occurred as the result of any action the individual was "obligated or authorized to perform by rule, regulation, condition of employment or service, or law." Under the proposed process, a claimant who disagrees with the determination outcome is provided the opportunity to appeal the decision using an agency-level process, and may appeal the final case decision under the APA.

Permitting VRS to Establish Policies and Procedures Will Be Useful in Administering LODA

VRS recommends giving it express authority to resolve circumstances that LODA provisions might not contemplate. In VRS' experience of administering retirement benefits and

Recommendation (1): The General Assembly may wish to consider amending the *Code of Virginia* to permit the Virginia Retirement System to develop policies and procedures for administering Chapter 4 of Title 9.1 of the *Code of Virginia*.

implementing related legislation, even the most well-constructed statutes cannot contemplate every ambiguity or unforeseen scenario. As with any agency administering a program, it is important for VRS to have the authority to not only administer LODA provisions in accordance with the *Code of Virginia*, but also to resolve the ambiguities and unexpected circumstances. This recommendation is technical in nature. Nonetheless, VRS has found similar authority useful in its administration of

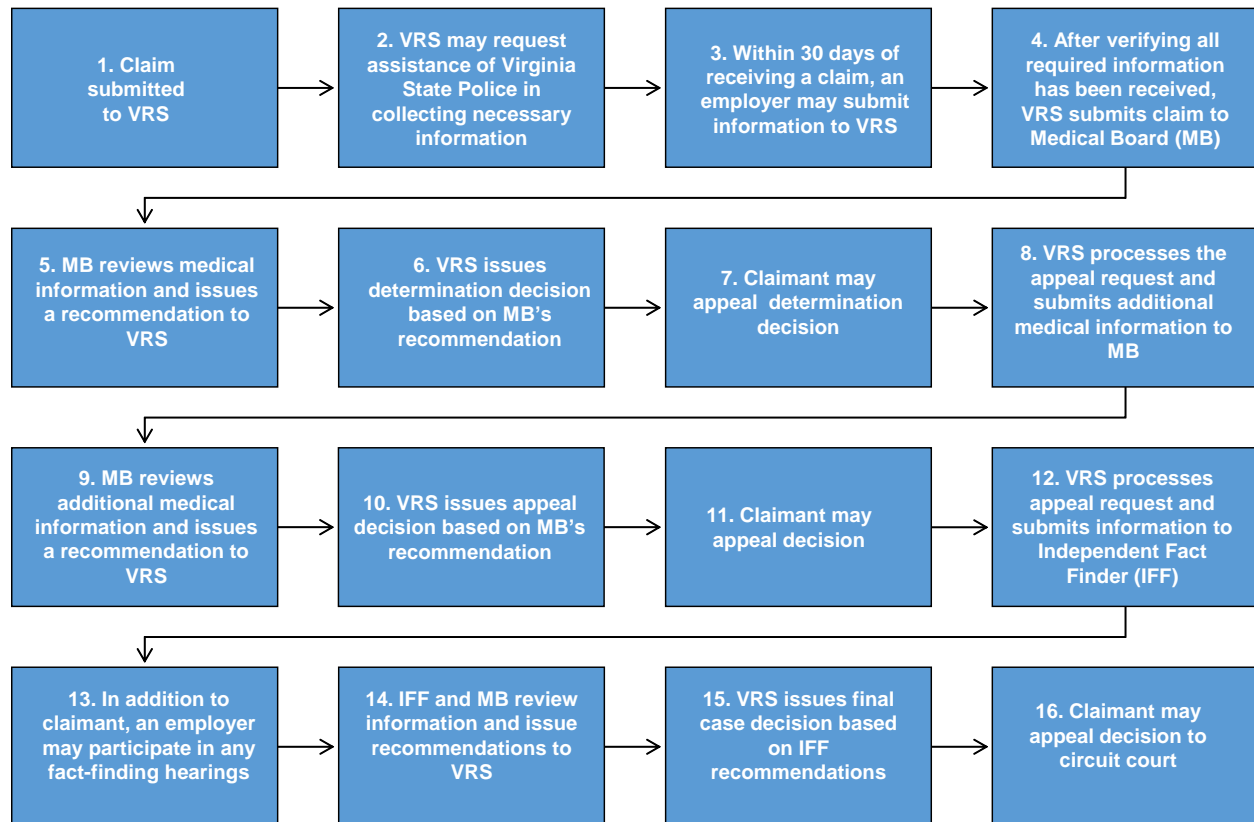
retirement benefits.

VRS' Proposed Process Allows Employers to Participate in Eligibility Determinations, But Not Judicial Appeals

VRS' proposed process is illustrated in Figure 5 on the next page. The process begins when a claim is submitted to the agency (step 1). HB 2204 authorizes VRS to determine all the necessary information for making an accurate and timely eligibility determination. To help

collect such information, the agency is also authorized to request assistance from the Virginia State Police (step 2).

Figure 5: Proposal for Eligibility Determination and Administrative Process Act Appeals



SOURCE: VRS staff analysis.

Currently, the Line of Duty Act does not provide a means for employers to submit information relevant to the claim during either the eligibility determination process or any appeal. This makes LODA different from some of the Commonwealth’s other disability programs, such as workers’ compensation. Seeking to enhance their participation, HB 2204 provides employers with a right to participate in a VRS-established appeals process.

Recommendation (2): The General Assembly may wish to consider amending the *Code of Virginia* to allow employers to submit information that may assist the Virginia Retirement System in making an eligibility determination decision and to delete language specifically allowing an employer appeal.

While employer participation is important, VRS believes an employer right of appeal could result in a lengthy cycle of appeals and counter appeals, adding both time and complexity to the process. Instead, VRS recommends allowing employers to submit any evidence that could assist in determining the eligibility of a claim within 30 days of receiving a LODA claim (step 3 of Figure 5) (see Appendix E, § 9.1-403(C)). This would result in VRS having more comprehensive information from which to make a determination. Because the

circumstances vary from claim-to-claim, employers may be able to provide critical information allowing VRS to make a more accurate and timely determination than it otherwise might have. Furthermore, the 30 days would coincide with the timeframe during which a LODA claimant is gathering all of his or her necessary information to apply for benefits and, therefore, should not add additional time to the process.

Upon Passage of HB 2204, VRS Anticipates Medical Board Review of Disability Claims

The initial eligibility determination is illustrated in steps four through six of Figure 5. Based on all the necessary information it obtains, VRS will make a determination as to whether the claim meets the line of duty criteria. If it does, VRS will submit the medical information for a disability claim to the Medical Board (MB), which consists of physicians and other health care professionals. (The Appropriation Act already recognizes the Medical Board's potential usefulness in processing LODA claims by permitting DOA to request its assistance.)

Whether a claimant is eligible for LODA disability benefits often turns on an individual's specific medical situation. The Medical Board is an existing resource that can accommodate LODA determinations. The MB will review the medical information to determine if the claimant is mentally or physically incapacitated so as to prevent the further performance of duty and whether the injury is likely to be permanent. Based on its findings, the MB will provide a recommendation to VRS regarding the claimant's medical eligibility. VRS will then issue the eligibility determination. According to VRS staff, the agency strongly considers the MB's recommendation when issuing its disability retirement decisions.

Recommendation (3): The General Assembly may wish to consider amending the *Code of Virginia* to permit the Virginia Retirement System's use of its Medical Board on matters regarding eligibility for benefits under the Line of Duty Act.

The Medical Board's expertise could be used to provide greater confidence in answering the medical questions associated with LODA eligibility, especially as the medical questions become increasingly more complex, as pointed out in the JLARC report. As a result, VRS intends to use the Medical Board's expertise in its determination of medical eligibility.

It should be noted that the Medical Board may review LODA claims from a different perspective than DOA, and as a result, different outcomes are possible. For example, the medical eligibility criteria are very similar for the work-related disability claims considered by the Medical Board and the LODA claims considered by DOA. Despite applying generally the same criteria, the MB denies work-related disability claims at a higher proportion than DOA denies LODA claims. Therefore, the potential exists for the Medical Board to deny more LODA claims than DOA has done in the past. Such an outcome could potentially lead to more appeals, lengthening the time needed to complete the eligibility determination while also increasing associated costs. Nonetheless, the injuries, medical conditions and job classifications associated with work-related disability retirement claims cover a larger spectrum than injuries, medical conditions and positions associated with the Line of Duty Act. As a result, the MB's higher denial rate may be

attributable to injuries, medical conditions and job duties that are quite different than LODA-related injuries, medical conditions and job duties.

Appeals of Determinations Can Include Medical Board and Independent Fact Finder

In cases where the claimant disagrees with VRS' determination, he or she may appeal the decision. The first appeal process is illustrated in steps eight through ten of Figure 5. As part of his or her appeal, the claimant may submit additional information to VRS. VRS will process the appeal and collect any additional information. The agency will then provide the information to the Medical Board. The MB will consider the previous record as well as the additional material and provide VRS with another eligibility recommendation. VRS will then issue a decision on the appeal.

If the claimant again disagrees with the VRS decision, he or she may appeal the decision to an Independent Fact Finder (IFF). Steps 12 through 15 in Figure 5 document the second appeal process. The IFF will interview the claimant, the employer, and others. The IFF may also request another review by the MB. At this stage in the proposed appeal process, employers will be able to provide additional information. Based on his or her findings, the IFF will issue a recommendation to VRS and the agency will issue a final case decision.

Recommendation (4): The General Assembly may wish to consider amending the *Code of Virginia* to subject appeals of the Virginia Retirement System's eligibility determinations to the agency-level and judicial appeal provisions of the Administrative Process Act, § 2.2-4000 et seq. of the *Code of Virginia*.

Using Administrative Process Act Will Make Circuit Court Appeals More Efficient

After the final case decision has been issued, VRS is proposing that any additional appeals by the claimant be handled by the circuit court under the Administrative Process Act, represented by step 16 in Figure 5. The current statutory framework treats LODA appeals as a general civil matter in court. As such, LODA appeals are subject to the same expensive discovery requirements as general lawsuits. Likewise, the standard of review is *de*

novus. The judge hears the case anew without regard for the agency-level determination and process. This approach is expensive and time-consuming for all parties involved.

VRS recommends that appeals of LODA decisions fall under the jurisdiction of Virginia's Administrative Process Act (see Appendix E, § 9.1-405). Using the APA would provide a more streamlined and efficient approach for resolving appeals of final eligibility determinations. In addition, this change will make administration of such appeals more consistent with how most other state agencies make such determinations.

The APA is similar to general litigation in that an appeal is heard in court before a judge. However, the APA is unlike general litigation in a few ways. For example, an APA appeal does not require a time-consuming and expensive discovery process. Instead, the agency record is used as evidence in the case. For LODA claims, the agency record would include the information

submitted by the claimant and the employer, as well as the findings and recommendations of VRS, the Medical Board, and the Independent Fact Finder. There is an opportunity for additional evidence to be incorporated, but the agency record represents the bulk of the facts presented to the court. Because the discovery process is shortened, the average timeline of an APA appeal is usually shorter than that of a general civil matter. Also unlike general litigation, there is normally only one primary question of law to consider in an APA case – whether substantial evidence exists to support the agency’s decision. Finally, the APA caps the amount of legal fees that can be awarded, unlike in most civil cases.

As discussed in the previous section, appeals of DOA claim denials go directly to circuit court. There is no agency-level appeals process and, therefore, no costs to DOA associated with an appeal or delays in completing the determination. On the other hand, VRS’ proposed process includes two agency-level appeals stages. If these appeals are frequently used, costs to administer the program would likely increase, as may the amount of time required to produce a final eligibility determination.

Employers Should Regularly Provide Benefits Information to Line of Duty Act-Covered Personnel

The Line of Duty Act requires that LODA-covered personnel be trained about the benefits available to them and their families. The Secretary of Public Safety and Homeland Security, or his or her designee, is responsible for developing the training and distributing it to the state agencies and localities with LODA-eligible employees. The agencies and localities are responsible for providing the training. Despite these requirements, some LODA-eligible employees and volunteers and their beneficiaries are still unaware of the benefits, according to DOA staff.

Recommendation (5): The General Assembly may wish to consider amending the language in HB 2204 as passed by the 2015 General Assembly to 1) remove language requiring employers to collect beneficiary information, since the Line of Duty Act already includes default beneficiary provisions, and 2) add related information to the existing Line of Duty Act training requirements.

In an effort to improve awareness of the program, HB 2204 requires that LODA employers collect beneficiary designations from each individual employee and volunteer and recertify the designations every three years. The JLARC report states that the designation would increase the consistency of awareness of the benefits and give employers a standard mechanism for implementing the training. The report also concludes that increasing awareness would reduce the need to extend the five-year statute of limitations for the submission of claims, as DOA did in order to address a situation where the beneficiary was never informed about the Act. However, stakeholders raised concerns about the additional workload and documentation requirements, the lack of uniformity among volunteer organizations, agencies and localities, as well as the lack of a centralized database to store the information.

Due to the concerns noted above, VRS recommends eliminating the beneficiary recertification requirement. Instead, employers should be required to provide personnel with information

concerning LODA benefits as part of the currently required training (see Appendix E, § 9.1-407). The information should include, but not be limited to, the current default beneficiary provisions in LODA so that employees understand the distribution of their benefits.

Complying With the Constitution of Virginia and the Exclusive Benefit Rule While Administering the Line of Duty Act Program

The proposed VRS administration of the Line of Duty Act differs from DOA administration, in part, due to VRS' unique governance framework. As the Commonwealth's public retirement system, some unique statutory and constitutional provisions apply to VRS that do not apply to other agencies. VRS is governed, in part, by a Virginia constitutional provision and the IRS exclusive benefit rule, both of which require the VRS Trust Fund to be administered solely for the exclusive benefit of VRS members and beneficiaries. Because LODA does not exclusively benefit VRS members and beneficiaries, and LODA is not a retirement benefit, VRS is prohibited from using retirement trust fund assets for LODA administration purposes.

Recommendation (6): The General Assembly may wish to consider amending the *Code of Virginia* to clarify that the Virginia Retirement System will manage the investments of the Line of Duty Act Fund in the same manner as the investments of the VRS Trust Fund.

These provisions prohibit VRS from absorbing any costs related to LODA. VRS has a fiduciary duty to its members and beneficiaries to seek full reimbursement for any VRS resources that are used for LODA purposes. Generally, the Line of Duty Act Fund will provide this reimbursement in the case of participating employers. In the case of a claim that stems from a nonparticipating employer, however, the nonparticipating employer must provide the reimbursement. Any additional positions that VRS creates to administer LODA must also be reimbursed from the Fund.

In practice, VRS' administration of LODA complies with these governing provisions. However, language in the *Code of Virginia* could be amended to clarify such. The specific language to be changed concerns VRS' management of the Fund or, in the future, the Line of Duty Death and Health Benefits Trust Fund. The Fund is invested alongside the VRS Trust Fund, which has an asset allocation structured solely for the purpose of sustaining the VRS Trust Fund. Existing language in the *Code of Virginia*, however, states that the Fund shall be invested in the sole interests of individuals eligible for LODA benefits. As doing so would create compliance issues and would be a departure from the existing practice of investing the Fund alongside the VRS Trust Fund, VRS recommends technical amendments to the language (see Appendix E, § 9.1-400.1). These technical amendments will align VRS' management of LODA assets with its management of other non-VRS assets, such as the Commonwealth Health Research Fund (§ 51.1-124.36) and the Commonwealth's Attorneys Training Fund (§ 51.1-124.37).

Adding Certain Administrative Functions

HB 2204 contains a number of organizational changes impacting the administration of the Line of Duty Act. Included in the changes are transfers of responsibilities from agency to agency. To ensure an effective and efficient transfer of responsibilities, VRS is asking the General Assembly to consider several amendments to the *Code of Virginia*. For example, codifying certain provisions that have been in the Appropriation Act could prevent LODA Fund premiums and reimbursements from going uncollected. Furthermore, actuarial valuations of the Fund and program reporting could benefit from all employers providing LODA-specific information.

HB 2204 requires participating employers to make annual contributions to the Line of Duty Act Fund. It also requires nonparticipating employers to reimburse VRS for eligibility determinations. If a participating employer fails to make the annual contribution, Item 264(B)(3)(e) of the Appropriation Act provides the State Comptroller with authority to transfer an amount equal to the delinquent contribution to the Fund from other funds that would be provided to the participating employer. Item 264(B)(4)(c) requires the State Comptroller to collect reimbursement from nonparticipating employers, and Item 264(B)(4)(d) provides the State Comptroller with authority to transfer an amount equal to the delinquent contribution to the Fund from other funds that would be provided to the participating employer. The sustainability of the Fund is dependent upon the timely collection of such premiums and reimbursements from nonparticipating employers and, therefore, VRS recommends that additional language be added to LODA to ensure that VRS can enforce the financial obligations of participating and nonparticipating employers (see Appendix E, § 9.1-400.1(D) and § 9.1-403(A)).

Recommendation (7): The General Assembly may wish to consider amending the *Code of Virginia* to clarify the Virginia Retirement System's authority to enforce collection of the Line of Duty Act Fund premiums and reimbursement from participating and nonparticipating employers.

The Appropriation Act authorizes VRS to collect data necessary to help it administer the Fund. However, this authority limits VRS' data collection to employers that participate in the Fund. Data currently requested from participating employers is valuable to VRS in several ways. For

Recommendation (8): The General Assembly may wish to consider amending the *Code of Virginia* to require participating and nonparticipating employers to provide the Virginia Retirement System with demographic and claim experience data for actuarial determination purposes.

example, participating employers have to update their LODA rosters on a regular basis for purposes of calculating contributions to the Fund. The roster update includes basic information such as date of birth, gender, and job type. Nonparticipating employers do not provide roster updates to VRS.

In addition to helping calculate accurate contributions, the aforementioned data is highly valuable in the Fund's actuarial valuations. In order to determine the annual per capita cost of the Fund, the VRS actuary must make a number of assumptions, many of which are based on knowing the population of LODA-

covered individuals. From an actuarial standpoint, basing assumptions on larger groups tends to make the experience more credible and therefore leads to better assumptions for the population. In order to make its actuarial assumptions using more comprehensive information, VRS recommends requiring participating and nonparticipating employers to provide LODA-specific information related to demographic and claim experience data, as requested (see Appendix E, § 9.1-404(C)).

Appendices

Appendix A: Study Mandate.....	32
Appendix B: Recommendations Provided in JLARC’s “Virginia’s Line of Duty Act” Report (Commission Draft, December 2014).....	33
Appendix C: Stakeholder Feedback Request.....	35
Appendix D: Line of Duty Coverage in Other States.....	36
Appendix E: VRS’ Proposed Amendments to HB 2204.....	43

Appendix A: Study Mandate

Chapter 647, Virginia Acts of Assembly – 2015 Session.

That the Virginia Retirement System and the Department of Human Resource Management shall examine the recommendations in the report of the Joint Legislative Audit and Review Commission regarding the Line of Duty Act mandated by House Joint Resolution 103 (2014), and any other issues that may be of concern, and, with the input of all stakeholders, develop proposals, and where warranted alternative proposals, to clarify all ambiguous provisions of the Act and to make the Act administratively more simple, ensure its long-term fiscal viability, and to improve the way in which it serves line of duty personnel while also considering the interests of the Commonwealth's taxpayers. The proposals shall be provided to the Chairmen of the House Appropriations Committee and the Senate Finance Committee no later than October 1, 2015.

Appendix B: Recommendations Provided in JLARC’s “Virginia’s Line of Duty Act” Report (Commission Draft, December 2014)

RECOMMENDATION 1

The General Assembly may wish to consider amending the *Code of Virginia* to eliminate mandatory investigations for Line of Duty Act claims and require claimants to submit documents directly to the agency responsible for determining eligibility for the program. The agency could be permitted to request the assistance of the Virginia State Police with obtaining documents when necessary (JLARC Commission Draft Report, page 27).

RECOMMENDATION 2

The Department of Accounts should (i) review case documentation for completeness and request missing information immediately upon receipt, and (ii) notify claimants of the approval or denial as soon as that information is available, rather than waiting until all of the eligible beneficiaries have been validated (JLARC Commission Draft Report, page 28).

RECOMMENDATION 3

The General Assembly may wish to consider amending the *Code of Virginia* to provide employers with standing to appeal eligibility determinations for the Line of Duty Act program (JLARC Commission Draft Report, page 29).

RECOMMENDATION 4

The General Assembly may wish to consider amending the *Code of Virginia* to repeal §9.1-406, which provides for LODA appeals to be handled “as in civil actions generally” (JLARC Commission Draft Report, page 30).

RECOMMENDATION 5

The General Assembly may wish to consider amending the *Code of Virginia* to (i) more clearly define the criteria for “line of duty,” “disabled person,” and termination of health insurance upon “coverage by alternative health insurance,” and (ii) require the agency responsible for making eligibility determinations to develop regulations, or formal, published policies to implement these statutory changes (JLARC Commission Draft Report, page 31.)

RECOMMENDATION 6

The General Assembly may wish to consider amending the *Code of Virginia* to direct the Department of Human Resource Management to develop standard criteria for assessing comparability across health insurance plans, for use by all entities that administer the Line of Duty Act benefits (JLARC Commission Draft Report, page 32).

RECOMMENDATION 7

The General Assembly may wish to consider amending the *Code of Virginia* to specify that continued health insurance coverage provided through the Line of Duty Act should be the same or comparable to what the public safety officer’s former state or local employer is currently making available to active employees (JLARC Commission Draft Report, page 33).

RECOMMENDATION 8

The General Assembly may wish to consider amending the *Code of Virginia* to require all agencies with employees covered by the Line of Duty Act to obtain a signed designation of beneficiary form every three years for each covered employee and volunteer (JLARC Commission Draft Report, page 34).

RECOMMENDATION 9

The General Assembly may wish to consider amending the *Code of Virginia* to transfer responsibility for making Line of Duty eligibility decisions from the State Comptroller to the Virginia Retirement System (JLARC Commission Draft Report, page 37).

RECOMMENDATION 10

The General Assembly may wish to consider amending the *Code of Virginia* to transfer responsibility for administering Line of Duty Act health insurance benefits from the Department of Accounts to the Department of Human Resource Management (JLARC Commission Draft Report, page 37).

Appendix C: Stakeholder Feedback Request

VRS staff reached out to the following stakeholders for additional feedback regarding the Line of Duty Act:

- International Association of Arson Investigators
- Virginia Association of Chiefs of Police
- Virginia Association of Counties
- Virginia Association of Governmental EMS Administrators
- Virginia Association of Volunteer Rescue Squads
- Virginia Fire Chiefs Association
- Virginia Fire Prevention Association
- Virginia Fraternal Order of Police
- Virginia Municipal League
- Virginia Professional Fire Fighters
- Virginia Sheriff's Association
- Virginia State Police Association

Questions asked were as follows:

1. From your organization's perspective, please identify the Line of Duty Act provisions/functions that have been the most effective.
2. From your organization's perspective, please provide any suggestions for improving the Line of Duty Act, especially as they relate to the application, eligibility determination, and appeal processes.
3. Provide any additional comments or suggestions concerning the Line of Duty Act.

Appendix D: Line of Duty Coverage in Other States

The following statutes outline the eligibility requirements for death benefits and health insurance benefits in the eight states, including Virginia, providing both benefits to state and local employees. Statutory language defining eligibility under presumptive causes is also provided for Virginia, Florida, and Washington.

State	Statutory Line of Duty Language – Death Benefits
Virginia § 9.1-400 et seq.	A death that occurs in the line of duty as the direct or proximate result of the performance of one’s duty. "Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.
Delaware § 6601 of Title 18	<p>"Death in the line of duty" shall mean any death ... arising out of and in the course of that person's assigned duty, including all normal and special assignments as ordered by his or her superiors or assignments undertaken while acting as a law-enforcement officer under rules, directions or regulations promulgated by the appropriate employing authority, within or outside of normal duty hours.</p> <p>"Death in the line of duty" with respect to enrolled firefighters, auxiliary members and volunteer ambulance and rescue company members as referred to [above] shall include in addition to other provisions of this section any death occurring while performing assigned duties, or while traveling to or returning from a fire alarm, rescue operation or any other emergency volunteer fire company action.</p> <p>“Death in the line of duty” shall not include: (a.) Death from natural causes, except that death in the line of duty shall include death proximately resulting from a heart attack, stroke, or vascular rupture if the public safety officer, while on duty, engages in a situation involving nonroutine stressful or strenuous physical activity no more than 24 hours before said heart attack, stroke, or vascular rupture; or (b.) Accidental death during travel to and from work, except in emergencies and in cases where a covered person is called upon to perform a duty in the course of such travel; or (c.) Death as a result of disobedience to or exceeding of orders or instructions from superiors; or (d.) Suicide.</p>
Florida § 112.19 of Title X	<p>(Paraphrased due to length and detail of applicable statutes)</p> <p>Claims for death benefits are classified under three tiers:</p> <ol style="list-style-type: none"> (1) Accidental deaths while engaged in the performance of duties (2) Accidental deaths during “fresh pursuit” or that which is reasonably believed to be an emergency (3) Deaths caused by unlawful and intentional acts by another person
Illinois § 820 ILCS 315/2	"Killed in the line of duty" means losing one's life as a result of injury received in the active performance of duties as a [covered employee] if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause.... The term excludes death resulting from the willful misconduct or intoxication of the [covered employee].

State	Statutory Line of Duty Language – Death Benefits
Minnesota § 353.01	<p>"Line of duty death" means a death that occurs while performing or as a direct result of performing normal or less frequent duties which are specific to protecting the property and personal safety of others and that present inherent dangers that are specific to the positions covered by the public employees police and fire plan.</p> <p>"Normal duties" means specific tasks which are designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties that may be requested ... by the employer from time to time.</p> <p>"Less frequent duties" means tasks which are designated in the applicant's job description as either required from time to time or as assigned, but which are not carried out as part of the normal routine of the applicant's job.</p>
Oregon § 243.954	<p>Qualifying death ... means death ... suffered by a public safety officer while on or off duty that is the direct or proximate result of: (a) An enforcement action, an emergency response or public safety training for an enforcement action or emergency response that the public safety officer is authorized or obligated to perform by law, rule, regulation or condition of employment or service; or (b) An act committed against the public safety officer because of the public safety officer's position as a public safety officer.</p>
Texas § 615.021	<p>Death as a result of a personal injury sustained in the line of duty in the individual's position.</p> <p>"Personal injury" means an injury resulting from an external force, an activity, or a disease caused by or resulting from: (A) a line-of-duty accident; or (B) an illness caused by line-of-duty work under hazardous conditions.</p> <p>"Line of duty" means an action ... required or authorized by rule, condition of employment, or law to perform. The term includes: (A) an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer; and (B) an action performed as part of a training program the individual is required or authorized by rule, condition of employment, or law to undertake.</p>

State	Statutory Line of Duty Language – Death Benefits
Washington § 41.26.048	<p>Death occurred (a) as a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter.</p> <p>“Acting in the course of employment” means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite ... insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid. "Acting in the course of employment" does not include: (a) Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative commute modes; or (iii) otherwise participated in the provision of the alternative commute mode, or (b) An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.</p>

State	Statutory Line of Duty Language – Disability Benefits
Virginia § 9.1-400 et seq.	Any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. "Line of duty" means any action the ... disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.
Florida § 440.04 of Title X	A catastrophic injury suffered in the line of duty. "Injury" means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. Damage to dentures, eyeglasses, prosthetic devices, and artificial limbs may be included in this definition only when the damage is shown to be part of, or in conjunction with, an accident. This damage must specifically occur as the result of an accident in the normal course of employment.
Illinois § 820 ILCS 320/10	A catastrophic injury suffered in the line of duty. The injury ... must have occurred as the result of the officer's response to fresh pursuit, the officer or firefighter's response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act.
Minnesota § 353.01	"Duty disability," physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire retirement plan, and that is the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties that are specific to the positions covered by the public employees police and fire retirement plan. "Normal duties" means specific tasks which are designated in the applicant's job description and which the applicant performs on a day-to-day basis, but do not include less frequent duties which may be requested to be done by the employer from time to time.
Oregon § 243.954	Qualifying ... disability means death or permanent total disability suffered by a public safety officer while on or off duty that is the direct or proximate result of: (a) An enforcement action, an emergency response or public safety training for an enforcement action or emergency response that the public safety officer is authorized or obligated to perform by law, rule, regulation or condition of employment or service; or (b) An act committed against the public safety officer because of the public safety officer's position as a public safety officer. Permanent total disability means ... the loss, including preexisting disability, of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation.

State	Statutory Line of Duty Language – Disability Benefits
Washington §§ 41.26.120 and 41.24.150	<p>Any member, regardless of age or years of service may be retired by the disability board ... for any disability incurred in the line of duty which has been continuous since his or her discontinuance of service and which renders the member unable to continue service. No disability retirement allowance shall be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his or her application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the full monthly salary and shall continue to receive all other benefits provided to active employees from the employer for such period. (applicable to full time firefighters and law enforcement officers)</p> <p>Whenever a participant becomes physically or mentally disabled, injured, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the principal fund monthly, an amount (i) equal to his or her monthly wage as certified by the local board or (ii) two thousand five hundred fifty dollars, whichever is less, for a period not to exceed six months, or an amount equal to his or her daily wage as certified by the local board or eighty-five dollars, whichever is less, per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1, 1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of one thousand two hundred seventy-five dollars so long as the disability continues. (applicable to volunteer firefighters and law enforcement officers)</p>

State	Statutory Line of Duty Language – Presumptive Causes
Virginia §§ 27-40.1, 27-40.2, 51.1-813, and 65.2- 402	<p>The death of, or any condition or impairment of health of salaried or volunteer fire fighters caused by respiratory diseases, hypertension or heart disease resulting in total or partial disability shall be presumed to have been suffered in the line of duty unless the contrary be shown by a preponderance of competent evidence.</p> <p>Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.</p> <p>Any member of a county, city, or town police department or any sheriff or deputy sheriff who dies or is totally or partially disabled as a result of hypertension or heart disease shall be presumed to have died or become disabled in the line of duty, unless the contrary is shown by a preponderance of competent evidence.</p>
Florida § 112.18	Any condition or impairment of health of any [covered employee] caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence.
Washington § 51.08.140	"Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title.

Appendix E: VRS' Proposed Amendments to HB 2204

The following proposed amendments (in red) reflect both 1) recommendations previously mentioned in this report, and 2) technical amendments that VRS believes may assist the administration of the Line of Duty Act.

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, *in the line of duty* as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), and [65.2-402](#), as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#) or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

"Disabled person" means any individual who, *becomes mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent, and whose incapacity occurs in the line of duty as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, in any position listed in the definition of deceased person in this section,* ~~has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent.~~ The term shall also include "Disabled person includes any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Employee" means any person who would be covered or whose spouse, dependents, or beneficiaries would be covered under the benefits of this chapter if the person became a disabled person or a deceased person.

"Employer" means (i) the employer of a person who is a covered employee or (ii) in the case of a volunteer who is a member of any fire company or department or rescue squad described in the definition of "deceased person," the county, city, or town that by ordinance or resolution recognized such fire company or department or rescue squad as an integral part of the official safety program of such locality.

"Fund" means the Line of Duty Death and Health Benefits Trust Fund established pursuant to § 9.1-400.1.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

"Participating employer" means any employer that is a state agency or is a political subdivision of the Commonwealth that did not make an election to become a nonparticipating employer.

"Nonparticipating employer" means any employer that is a political subdivision of the Commonwealth that elected on or before July 1, 2012, to directly fund the cost of benefits provided under this chapter and not participate in the Fund.

"VRS" means the Virginia Retirement System.

§ 9.1-400.1. Line of Duty Death and Health Benefits Trust Fund.

A. There is hereby established a permanent and perpetual fund to be known as the Line of Duty Death and Health Benefits Trust Fund, consisting of such moneys as may be appropriated by the General Assembly, *contributions or reimbursements from ~~or by~~ participating and non-participating employers, gifts, bequests, endowments or grants from the United States government, its agencies and instrumentalities, ~~at~~ net income from the investment of moneys held in the Fund, and any other available sources of funds, public and private. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it. The moneys in the Fund shall be (i) deemed separate and*

independent trust funds, (ii) segregated and accounted for separately from all other funds of the Commonwealth, and (iii) ~~invested and~~ administered solely in the interests of the persons who are covered under the benefits provided pursuant to this chapter. Deposits to ~~and assets of the fund are irrevocable and are~~ shall not be subject to the claims of creditors.

B. The Virginia Retirement System shall ~~administer, manage, and handle investments~~ invest, reinvest, and manage the assets of the Fund as provided in § 51.1-124.378.

C. The Fund shall be used to provide the benefits under this chapter; to reimburse VRS for all reasonable costs incurred and associated, directly and indirectly, with the administration, management, and investment of the Fund; and to reimburse the Department of Human Resource Management for all reasonable costs incurred and associated, directly and indirectly, in performing the duties pursuant to § 9.1-401 for participating employers.

D. Each participating employer shall make annual contributions to the Fund and provide information as determined by VRS. The amount of the contribution for each participating employer shall be determined on a current disbursement basis in accordance with the provisions of this section. ~~If any participating employer fails to remit contributions or other fees or costs associated with the Fund, VRS shall inform the State Comptroller and the affected participating employer of the delinquent amount. In calculating the delinquent amount, VRS may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such participating employer.~~

§ 9.1-401. Continued health insurance coverage for disabled persons, their spouses and dependents, and for the surviving spouse and dependents of certain deceased law-enforcement officers, firefighters, etc.

A. 1. The surviving spouse and any dependents of a deceased person ~~and any disabled person and his spouse and dependents~~ shall be afforded continued health insurance coverage as provided in this section, the cost of which shall be paid ~~in full out of the general fund of the state treasury~~ by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable. For any disabled person and any surviving spouse or dependent of a deceased person or disabled person who is receiving the benefits described in this section and who would otherwise qualify for the health insurance credit described in Chapter 14 (§ 51.1-1400 et seq.) of Title 51.1, the amount of such credit shall be deposited into the Line of Duty Death and Health Benefits Trust Fund or paid to the nonparticipating employer, as applicable, from the health insurance credit trust fund, in a manner prescribed by the Virginia Retirement System.

B. ~~If the disabled person's disability (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, the disabled person, his surviving spouse and any dependents shall be afforded continued health~~

~~insurance coverage. The cost of such health insurance coverage shall be paid in full out of the general fund of the state treasury.~~

~~€. The continued health insurance coverage provided by this section shall be the same plan of benefits which the deceased or disabled person was entitled to on the last day of his active duty or comparable benefits established as a result of a replacement plan.~~

~~D. For any spouse, continued~~ *Continued health insurance provided by under this section for a spouse shall terminate upon such spouse's death or coverage by alternate health insurance.*

~~E. For dependents, C. Unless otherwise provided by law, continued health insurance provided by under this section for dependents shall terminate upon such dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday be subject to the same continued eligibility and termination rules applicable to dependents for the plan in which they are enrolled. Continued health care insurance shall be provided beyond the dependent's twenty-first birthday if the dependent is a full-time college student and shall continue until such time as the dependent ceases to be a full-time student or reaches his twenty-fifth birthday, whichever occurs first. Continued health care insurance shall also be provided beyond the dependent's twenty-first birthday if the dependent is mentally or physically disabled, and such coverage shall continue until three months following the cessation of the disability.~~

~~F. For D. Unless otherwise provided by law, continued health insurance provided under this section for any disabled person, continued health insurance provided by this section shall automatically terminate upon the disabled person's death, recovery or return. Continued health insurance for any disabled person, his spouse, and dependents shall terminate when he returns to full duty in any position listed in the definition of deceased person in § [9.1-400](#).~~

E. The Department of Human Resource Management shall administer the provisions of this section, including making determinations of comparability under subsection B, and be reimbursed for all reasonable costs incurred and associated, directly and indirectly, in performing the duties by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable.

§ 9.1-401.1. Supplemental short-term disability benefit for state police officers.

A state police officer who is a participating employee, as defined in § [51.1-1100](#), and who incurs a work-related injury in the line of duty, shall receive supplemental short-term disability coverage, pursuant to § [51.1-1121](#), that provides income replacement for 100 percent of the officer's creditable compensation for the first six months and, pursuant to a certification by the Superintendent of State Police, based on a medical evaluation, that the officer is likely to return to service within another six months, up to one calendar year, that the officer is disabled, without regard to the officer's number of months of state service. Except as provided in this section with regard to the rate of income replacement and the duration of supplemental short-term disability coverage, such state police officers shall be eligible for work-related, supplemental short-term disability benefits upon the same terms and conditions that apply to other participating

employees pursuant to Article 4 (§ [51.1-1119](#) et seq.) of Chapter 11 of Title 51.1. Upon the expiration of the one-calendar-year period, such state police officers shall be eligible for supplemental long-term disability benefits as provided in § [51.1-1123](#).

§ 9.1-402. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc., and retirees.

A. The beneficiary of a deceased person whose death occurred on or before December 31, 2005, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$75,000, which shall be ~~payable out of the general fund of the state treasury~~ *paid by the nonparticipating employer or from the Fund on behalf of a participating employer, as applicable*, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

B. The beneficiary of a deceased person whose death occurred on or after January 1, 2006, while in the line of duty as the direct or proximate result of the performance of his duty shall be entitled to receive the sum of \$100,000, which shall be ~~payable out of the general fund of the state treasury~~ *paid by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable*, in gratitude for and in recognition of his sacrifice on behalf of the people of the Commonwealth.

C. Subject to the provisions of §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), or § [65.2-402](#), if the deceased person's death (i) arose out of and in the course of his employment or (ii) was within five years from his date of retirement, his beneficiary shall be entitled to receive the sum of \$25,000, which shall be ~~payable out of the general fund of the state treasury~~ *paid by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable*.

§ 9.1-402.1. Payments for burial expenses.

It is the intent of the General Assembly that expeditious payments for burial expenses be made for persons whose death is determined to be a direct and proximate result of their performance in the line of duty as defined by the Line of Duty Act. ~~The State Comptroller is hereby authorized to release~~ *Upon the approval of VRS*, at the request of the family of a person who may be subject to the line of duty death benefits, payments *shall be made* to a funeral service provider for burial and transportation costs *by the nonparticipating employer or from the Fund on behalf of participating employers, as applicable*. These payments would be advanced from the death benefit that would be due to the beneficiary of the deceased person if it is determined that the person qualifies for line of duty coverage. Expenses advanced under this provision shall not exceed the coverage amounts outlined in § [65.2-512](#). In the event a determination is made that the death is not subject to the line of duty benefits, ~~the Virginia Retirement System VRS~~ or other retirement fund ~~to~~ *of which the deceased is a member will deduct from benefit payments otherwise due to be paid to the beneficiaries of the deceased payments previously paid by the State Comptroller for burial and related transportation expenses and return such funds to the State Comptroller nonparticipating employer or to the Fund on behalf of participating employers,*

as applicable. The ~~State Comptroller~~ Virginia Retirement System shall have the right to file a claim with the Virginia Workers' Compensation Commission against any employer to recover burial and related transportation expenses advanced under this provision.

§ 9.1-403. Claim for payment; costs.

A. Every beneficiary, disabled person or his spouse, or dependent of a deceased or disabled person shall present his claim to the chief officer, or his designee, of the ~~appropriate division or department that last employed the deceased or disabled person~~ employer for which the disabled or deceased person last worked on forms to be provided by the ~~State Comptroller's office~~ VRS. Upon receipt of a claim, the chief officer or his designee shall forward the claim to VRS within seven days. The Virginia Retirement System shall determine eligibility for benefits under this chapter. The Virginia Retirement System may request assistance in obtaining information necessary to make an eligibility determination from the Department of State Police. The Department of State Police shall be reimbursed from the Fund or the nonparticipating employer, as applicable, for the cost of searching for and obtaining information requested by VRS. The Virginia Retirement System shall be reimbursed for the reasonable costs incurred for making eligibility determinations by nonparticipating employers or from the Fund on behalf of participating employers, as applicable. *If any nonparticipating employer fails to reimburse VRS for reasonable costs incurred in making an eligibility determination, VRS shall inform the State Comptroller and the affected nonparticipating employer of the delinquent amount. In calculating the delinquent amount, VRS may impose an interest rate of one percent per month of delinquency. The State Comptroller shall forthwith transfer such delinquent amount, plus interest, from any moneys otherwise distributable to such nonparticipating employer.*

~~B. In the case of a police department or a sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof, the chief officer, or his designee, of such department or office shall investigate and report upon the circumstances surrounding the deceased or disabled person and report his findings to the Comptroller within 10 business days after completion of the investigation. The Comptroller, the Attorney General, or any such chief officer, in his discretion, may submit a request to the Superintendent of the Department of State Police to perform the investigation pursuant to subsection C.~~

C. In all other cases, upon receipt of the claim the chief officer, or his designee, of the ~~appropriate division or department~~ shall submit a request to the Superintendent of the Department of the State Police, who shall investigate and report upon the circumstances surrounding the deceased or disabled person, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The Superintendent, or his designee, shall report his findings to the ~~Comptroller~~ within 10 business days after completion of the investigation. The Department of State Police shall take action to conduct the investigation as expeditiously as possible. The Department shall be reimbursed for the cost of ~~investigations conducted pursuant to this section from the appropriate employer that last employed the deceased or disabled employee.~~

~~D. B.1.~~ Within 10 business days of being notified by an employee, or an employee's representative, that such employee is permanently and totally disabled due to a work-related injury suffered in the line of duty, the agency or department employing the disabled person shall provide him with information about the continued health insurance coverage provided under this ~~act~~ *chapter* and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the employee or the employee's representative.

2. *Within 10 business days of having knowledge that a deceased person's surviving spouse, dependents, or beneficiaries may be entitled to benefits under this chapter, the ~~agency~~ employer or department for which the deceased person last worked shall provide the surviving spouse, dependents, or beneficiaries, as applicable, with information about the benefits provided under this chapter and the process for initiating a claim. The employer shall assist in filing a claim, unless such assistance is waived by the surviving spouse, dependents, or beneficiaries.*

C. Within 30 days of receiving a claim pursuant to subsection A, an employer may submit to VRS any evidence that could assist in determining the eligibility of a claim. VRS shall include any such evidence in the agency record for the claim.

§ 9.1-404. Order of ~~Comptroller~~ the Virginia Retirement System.

A. ~~VRS shall make an eligibility determination within 45 days of receiving all necessary information for determining eligibility for a claim filed under § 9.1-403. If it appears to the Comptroller VRS determines that the requirements of either subsection A or B of § 9.1-402 have been satisfied, he shall issue his warrant in the appropriate amount for payment out of the general fund of the state treasury to the surviving spouse or to such persons and subject to such conditions as may be proper in his administrative discretion, and in the event there is no beneficiary, the Comptroller shall issue the payment to the estate of the deceased person. The Comptroller shall issue a decision, and payment, if appropriate, shall be made no later than forty-five days following receipt of the report required under § 9.1-403 benefits under this chapter are due, it shall notify the nonparticipating employer, which shall provide the benefits within 15 days of such notice, or pay the benefits from the Fund on behalf of the participating employer within 15 days of the determination, as applicable.~~

B. VRS may develop policies and procedures necessary to carry out the provisions of this chapter. ~~If it appears to the Comptroller that the requirements of either subsection A or B of § 9.1-401 have been satisfied, he shall issue his warrants in the appropriate amounts for payment from the general fund of the state treasury to ensure continued health care coverage for the persons designated under § 9.1-401. The Comptroller shall issue a decision, and payments, if appropriate, shall commence no later than forty-five days following receipt of the report required under § 9.1-403. The payments shall be retroactive to the first date that the disability existed.~~

C. Upon the request of VRS, participating and nonparticipating employers shall submit demographic and claim experience data related to the administration of benefits under this chapter, and employers shall provide such requested information within 60 days of receiving the request.

§ 9.1-405. Appeal from decision of ~~Comptroller~~ *the Virginia Retirement System.*

Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person aggrieved by the decision of the ~~Comptroller~~ shall present a petition to the court in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled person resides *VRS may appeal the decision through a process established by VRS. Any such process may utilize the Medical Board described in § 51.1-124.23. An employer may submit information related to the claim and may participate in any fact finding hearing that is included in such process established by VRS. Upon completion of the appeal process, the final determination issued by VRS shall constitute a case decision as defined in § 2.2-4001. Any beneficiary, disabled person or his spouse or dependent of a deceased or disabled person aggrieved by, and claiming the unlawfulness of, such case decision shall have a right to seek judicial review thereof in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.*

~~The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct the Comptroller to issue his warrant in the appropriate amount for the payment out of the general fund of the state treasury to such persons and subject to such conditions as may be proper. If, in the case of a deceased person, there is no beneficiary, the judge shall direct such payment as is due under § 9.1-402 to the estate of the deceased person.~~

§ 9.1-406. Appeals.

~~Appeals from judgments entered pursuant to this chapter shall be allowed as in civil actions generally.~~

§ 9.1-407. Training.

Any law-enforcement or public safety officer entitled to benefits under this ~~Chapter~~ *chapter* shall receive training concerning the benefits available to himself or his beneficiary in case of disability or death in the line of duty. The Secretary of Public Safety and Homeland Security shall develop training information to be distributed to agencies and localities with employees subject to this chapter. The agency or locality shall be responsible for providing the training. Such training shall not count towards in-service training requirements for law-enforcement officers pursuant to § 9.1-102 *and shall include, but not be limited to, the general rules for intestate succession described in § 64.2-200 that may be applicable to the distribution of benefits provided under § 9.1-402.*

§ 9.1-408. Records of investigation confidential.

Evidence and documents obtained by or created by, and the report of investigation prepared by, the Department of State Police in carrying out the provisions of this chapter shall (i) be deemed confidential, (ii) be exempt from disclosure under the Freedom of Information Act (§ [2.2-3700](#) et seq.), and (iii) not be released in whole or in part by any person to any person except as provided in this chapter.

§ 51.1-124.378. Investment of assets of the Line of Duty Death and Health Benefits Trust Fund.

A. In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage the assets of the Line of Duty Death and Health Benefits Trust Fund (the Fund) established pursuant to § 9.1-400.1. The Board shall maintain a separate accounting for the assets of the Fund.

B. The Board shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

C. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax-exempt subsidiary corporations whose actions are within the standard of care in subsection B shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this section.

D. The provisions of §§ 51.1-124.32 through 51.1-124.35 shall apply to the Board's activities with respect to funds in the Fund.

E. The Board may assess the Fund a reasonable administrative fee for its services.