AGENDA ITEM #13

AGENDA ITEM ACTION REQUEST

	Meeting Date: July 12, 2011 **Meeting Type**: Regular _×_ Special ___
Requestor: ___ Manager ___ City Attorney _×_ Department ___ Other *Finance & Human Resources*	**Item**: Report on Virginia Line of Duty Act (LODA) and request for Council action.
Reviewed: _×_ Manager ___ City Attorney _×_ Department ___ Other	**Review:** Among the legislative actions taken during the 2010 session of the General Assembly was a change in how benefits under the Virginia Line of Duty Act (LODA) will be funded. The 2010 Appropriations Act established a new Line of Duty Act (LODA) Fund with VRS as the investment manager. The Commonwealth of Virginia and localities that employ eligible hazardous duty professionals on a paid or voluntary basis must contribute to the LODA Fund for their respective covered individuals. Localities have the option to establish their own fund rather than participate in the LODA Fund. These changes go into effect July 1, 2011. A Staff report is attached which recommends that the city continue with VRS for this fiscal year and re-examine staying with VRS or switching to a VML plan or self-funding during the next budget cycle.
Recommend: _×_ Yes ___ No ___ Manager ___ City Attorney _×_ Department ___ Other *Finance & Human Resources*	
	Attachments: 1. Virginia LODA report to council.

Virginia Line of Duty Act

Among the legislative actions taken during the 2010 session of the General Assembly was a change in how benefits under the Virginia Line of Duty Act (LODA) will be funded. The 2010 Appropriations Act established a new Line of Duty Act (LODA) Fund with VRS as the investment manager. The Commonwealth of Virginia and localities that employ eligible hazardous duty professionals on a paid or voluntary basis will contribute to the LODA Fund for their respective covered individuals. Localities have the option to establish their own fund rather than participate in the LODA Fund. These changes go into effect July 1, 2011.

The Line of Duty Act is an insurance program to help first responders and their families, in case they are injured or killed while working. As defined by the Code of Virginia, those eligible for LODA benefit coverage include hazardous duty state and local employees and fire department and rescue squad volunteers. These covered individuals may be full time or part time. VRS-participating employers that hire hazardous duty employees are not required to have elected enhanced hazardous duty coverage for these employees to be covered under LODA.

The Line of Duty Act provides state-funded death and disability benefits for state and local public safety officers or their beneficiaries due to death or disability resulting from the performance of duties. Benefits include:

Death Benefits:

One time death benefit payment to beneficiary:

- $100,000 death due to unnatural cause
- $25,000 death due to specified work related illnesses

Disability Benefits:

Health insurance coverage for permanently disabled officer, spouse and dependent children (disabilities occurring after July 1, 2000 for localities) and widows (for deaths occurring after April 8, 1972). Must provide the same health insurance benefits in place (or was eligible for) on the last day of active duty or comparable benefits through an alternative plan. Eligibility for LODA benefits due to disability requires that the employee/volunteer can no longer serve in their prior position or another LODA eligible position. The employee/volunteer does not have to be totally disabled.

The General Assembly has decided that the state cannot afford to provide these benefits and instead of repealing or scaling them back, they have decided to shift responsibility for these costs to local government. The only budget amendment to survive the 2011 General Assembly was the House Amendment extending the opt-out deadline from July 1, 2011 to July 1, 2012. The 2010 Appropriations Act did not change the LODA benefit provisions, only how they will be funded.

We have three (3) options:

1. Participate in the state administered program;
2. Participate with Virginia Municipal League Insurance program; or
3. Self fund our program.

OPTION 1: State Administered Program

Localities have the option to participate in the state administered program with a one-time irrevocable opt-in/out with the price starting at $233.89 per eligible employee/volunteer in 2011-12. The cost is expected to escalate rapidly to $642.47 per eligible employee/volunteer in 2014-15. The rates beyond 2012 are not set; however, and will likely change depending on the number of participants and the experience of the program. Volunteer firefighters and rescue squad personnel are charged at 25% of the per person rate in the state fund. Localities may opt-out of the state program and self fund, but must do so by July 1, 2012 and that *decision is irrevocable*. The Department of Accounts (DOA) will continue to make all claims determinations and payments irrespective of whether or not a locality participates in the state fund. For those not in the state fund, the DOA would pay the cost and then bill the locality for actual payments plus any and all "direct" and "indirect" costs associated with their administration.

The Virginia Retirement System (VRS) will invest the funds. The Department of Accounts will continue to administer LODA benefits. VRS will be responsible only for collecting contributions as well as managing and investing the LODA fund. The rates appear on the following chart:

Costs/Contributions Per Active Full-time Employee ($)*					
	Fiscal Year				
	2011	2012	2013	2014	2015
Prefunding Contribution	n/a	n/a	97.19	198.05	297.61
Expected Benefit Payments	150.95	182.88	216.76	252.78	291.63
Loan Repayment	n/a	38.39	38.39	38.39	38.39
Administrative Expenses	6.67	6.87	7.07	7.28	7.50
IBNR/Margin	5.20	5.75	6.29	6.83	7.34
Total	162.82	233.89	365.70	503.33	642.47
*Based upon 75,000 covered full-time equivalent positions					
Pay-as-you-go Rate	162.82	**233.89**	268.51	305.28	344.86

- If a local government does not opt out by June 30, 2012, it will participate permanently
- Only those participating in the state fund are required to pay back loan to VRS group life fund

- Rates are subject to number of fund participants and fund claims experience
- No short term risk of any claim occurring prior to July 1, 2011 not being covered
- VRS says localities in fund have OPEB liability (GASB 43/45)
- Locality must provide required training concerning the benefits available in case of disability or death in the line of duty (§ 9.1-407). The Secretary of Public Safety shall develop training information to be distributed to agencies and localities.

OPTION 2: Virginia Municipal League Insurance Program

2011-12 rates (available to members that purchase property & liability coverage through the pool):

- $200 per FTE for all but volunteer fire and rescue; $75 per eligible volunteer fire and rescue
- Pay $160 per year for administration for participants
- Pay $1575 to process each claim

Rates cover claims occurring on or after July 1, 2011. In addition, provides "prior acts" coverage for "unknown" claims occurring on or after July 1, 2006. If a locality knew about or should have known about a claim, no prior acts coverage is afforded.

Members electing coverage will have to report claims to VMLIP so an appropriate claim reserve can be established (the Line of Duty Act prohibits the state from releasing evidence and documents obtained or created during the LODA claims investigation). This information will also allow the actuary to better estimate ultimate costs for the pool as well as help move to an experienced rated plan.

VMLIP will cover cost of benefits and reasonable expenses billed by DOA. If possible, VMLIP will move to an experience rated model for July 1, 2012. Members will need to provide additional information as determined by the actuary including, but not limited to: (a) Age of each employee/volunteer; (b) Number and ages of dependents; and (c) Health plans information (members with comparatively rich health plans should expect to pay more).

OPTION 3: Self-fund Program

If we choose to self fund the LODA benefit, we will pay out-of-pocket instead of paying monthly premiums to an insurance carrier. Self funding will be cheaper but we are accepting greater risk.

How Self Funding Works

The city would operate the plan, including:

- set up a LODA self insurance reserve in the general fund (reserve would be categorized as a commitment of fund balance)
- charge current expenditures for health insurance, etc. to the department's budget for which the former employee worked

- possibly obtain stop loss or additional insurance
- claim review would be responsibility of an agency of the commonwealth (city would receive/pay bill)
- Finance department would handle LODA self insurance reporting requirements

Advantages of Self-Funding

The city's cash flow is improved when money formerly held by the insurance carrier in the form of various reserves is now available for use by the city.

Disadvantages of Self-Funding

In theory, a self-funded plan should be more cost-effective than a fully-insured plan due to the elimination of many expenses associated with a fully-insured plan and the potential of direct savings to the city from better than expected claims experience. However, it is possible self-funding may not reduce costs at all. Potential disadvantages include:

1. **Risk assumption.** The city assumes the risk between the expected claim level and the Stop Loss coverage level.
2. **Provision of services.** The city must provide for the services an insurance carrier would normally provide.
3. **Asset exposure.** The city's assets are exposed to any liability as a result of legal action against the self-funded plan.
4. The city must be willing to **trade the complete security of a fully insured plan** for the possibility that actual cost may exceed what the fully insured plans would have cost.
5. The city becomes the plan fiduciary under ERISA, and is ultimately **responsible for any compliance issues.**

FINANCIAL COMPARISON OF OPTIONS:

PRIMARY AGENCY NAME	PERSONNEL TYPE	VRS Estimate	VRS Extended	VML Estimate	VML Extended	SELF FUND Estimate	SELF FUND Extended
Harrisonburg Fire	Full-time Employee	$233.89	**$16,372.30**	$200.00	**$14,000.00**		
Harrisonburg Fire	Part-time Employee	$233.89	**$1,169.45**	$200.00	**$1,000.00**		
Volunteer	Rescue Squad	$58.47	**$6,022.41**	$75.00	**$7,725.00**		
Harrisonburg Police	Full-Time Employee	$233.89	**$18,477.31**	$200.00	**$15,800.00**		
Volunteer	Aux. Police Officer	$58.47	**$1,110.94**	$75.00	**$1,200.00**		**$**
	TOTAL		**$43,152.41**		**$39,725.00**		**$**
Radio Cache Unit	Coverage with VML only				**$1,125.00**		**$**
Prior Acts Coverage			*Yes*		*No****		
H'burg/R'ham Sheriff	Full/Part Time Employees	Funded by County with VACO ($210/$52)		50% City Share Approx. $15,000			

** VML cannot take on existing claims. Only covers claims occurring on or after 7/1/06. Offering some prior acts coverage for injuries or deaths occurring after July 1, 2006. The trigger for that coverage is whether or not the member knew or should have known that LODA benefits were owed.*

Summary

LODA Challenges

- Lack of clarity in statute regarding apportionment
- Lack of certainty with respect to appeal rights
- Inadequate data to develop credible rates
- Future claims experience likely worse than past
- Statute of limitations for filing a claim can be waived if claimant did not know about benefit
- State barred from providing any claim information to set appropriate reserves

SHOULD WE OPT OUT?
Various factors to consider:

- Are there existing claims that we'll have to pay out of pocket?
- Do we like the idea of an irrevocable agreement with the state?
- Do we want to fund on a pay-as-you-go basis (state fund), a prefunded basis (VMLIP), or self fund?
- Who do we trust to look out for our interests?

If we choose to make an irrevocable election to opt out of the LODA Fund prior to the start of fiscal year 2012 (July 1, 2011 to June 30, 2012), a resolution must be passed with an effective date of July 1, 2011 and sent to VRS no later than July 31, 2011. All others who choose to opt out of the LODA Fund must make an irrevocable election and pass a resolution on or before July 1, 2012. Non-participating localities will be billed by the State Comptroller for actual claims in FY 2011 as well as an administrative fee. See Attachment A for the official required resolution.

Initial VML Insurance Programs (VMLIP) LODA Concerns

Volunteer fire and rescue uncertainty

Members will need to determine whether a county or one of its incorporated towns is responsible for a particular volunteer fire and rescue company. The LODA says "members of volunteer fire departments or rescue squads that have been recognized by an ordinance or resolution of the governing body as an integral part of the official safety program of the locality" (Per Harrisonburg City Code Sec. 5-2-38, "Harrisonburg Rescue Squad Inc., is recognized as an integral part of the official safety program of the city for the purposes of saving lives, administering first aid and teaching safety.") What if both the County and City pass a resolution for a particular volunteer department? Does the resolution wording have to track the statute? What constitutes a volunteer with respect to LODA (active vs. inactive)? Can localities repeal their ordinances/resolutions and not be responsible for volunteers LODA costs?

Unknown exposure

"Employees performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management" are eligible under the LODA. According to the Virginia Department of Emergency Management, they do not believe this section refers to them, but rather to local emergency management departments. One area of persons that may come under this category is social services works that are mandated to run shelters in the event of a disaster. VML is unsure if these persons would be considered employees of local government

or not for purposes of LODA but suspect the answer is yes. There may be other persons that fall into this category as well.

Disability claims

The LODA definition of disability appears to be broad. It appears that the claimant may be disabled from his or her public safety job and fully employed elsewhere with health insurance and still qualifies for LODA benefits. This has important ramifications with respect to volunteer fire and rescue. As an example, let's say a volunteer firefighter is employed full time in the private sector and has health insurance through his employer. He sustains a significant knee injury that does not impact his full time job at all, but renders him unable to be a volunteer firefighter. VML believes that he, his spouse and dependents qualify for LODA benefits. Those benefits amount to lifetime health insurance for the claimant and spouse. For children, LODA provides health insurance until age 21 (26 if a full-time student) or duration of disability if a child is physically or mentally disabled.

Limited understanding of program/benefit parameters

There are many questions on how benefits are provided: Who pays defense costs if a claimant sues (AGs office defends)? Which member is responsible when a claimant has heart attack and the claimant is a paid fire fighter for one entity and a volunteer for another?

Statute of Limitations

The statute of limitations is five (5) years under §8.01-255. The State Comptroller can waive in instances where there are concerns about claimants tolling statute claiming they did not know about benefit. How far back are members exposed?

Highly charged political issue

The General Assembly can expand the benefit. Given VML's track record with the presumption, they believe we should count on future expansion of LODA benefits.

Staff Recommendation

Staff recommends the city continue with VRS for this fiscal year and re-examine during the next budget cycle. At the time a decision is made, staff also recommends that the Harrisonburg Rescue Squad, Inc. pay their costs from the revenue recovery program. The total program cost estimate was not available at the time of budget adoption. Therefore, funding will come from reserve for contingencies and/or departmental budgets. Finally, staff recommends that language be included Virginia First Cities and Virginia Municipal League lobbying efforts to address the many concerns with this unfunded mandate placed on localities. Staff will update council as information becomes available.

Resources:

Legislative Information System (Code of Virginia, legislation) http://leg1.state.va.us
Line of Duty Act website (info about state fund) www.valoda.org
Dept. of Accounts website (claim forms, training materials) www.doa.virginia.gov

Attachment A:

RESOLUTION

Irrevocable Election Not to Participate in Line of Duty Act Fund

WHEREAS, pursuant to Item 258 of the Appropriations Act, paragraph B, the Virginia General Assembly has established the Line of Duty Act Fund (the "Fund") for the payment of benefits prescribed by and administered under the Line of Duty Act (Va. Code § 9.1-400 et seq.); and

WHEREAS, for purposes of administration of the Fund, a political subdivision with covered employees (including volunteers pursuant to paragraph B2 of Item 258 of the Appropriations Act) may make an irrevocable election on or before July 1, 2012, to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and

WHEREAS, it is the intent of _____ to make this irrevocable election to be a non-participating employer with respect to the Fund;

NOW, THEREFORE, IT IS HEREBY RESOLVED that _____ hereby elects to be deemed a non-participating employer fully responsible for self-funding all benefits relating to its past and present covered employees under the Line of Duty Act from its own funds; and it is further

RESOLVED that the following entities,

[List of covered entities, including volunteer entities, regional jails, etc., whatever is applicable,

whether inside or outside the locality, or attach a list of entities]

to the best of the knowledge of _____, constitute the population of its past and present covered employees under the Line of Duty Act; and it is further

RESOLVED that, as a non-participating employer, _____ agrees that it will be responsible for, and reimburse the State Comptroller for, all Line of Duty Act benefit payments (relating to existing, pending or prospective claims) approved and made by the State Comptroller on behalf of _____on or after July 1, 2010; and it is further

RESOLVED that, as a non-participating employer, _____ agrees that it will reimburse the State Comptroller an amount representing reasonable costs incurred and associated, directly and indirectly, with the administration, management and investment of the Fund; and it is further

RESOLVED that _____ shall reimburse the State Comptroller on no more than a monthly basis from documentation provided to it from the State Comptroller.

Adopted in _____, Virginia this _____ day of _____, _____.

_____

Authorized Signature- Title