

Capitol Contact

Virginia General Assembly

Virginia Association of Counties • 1207 E. Main Street, Suite 300 • Richmond, VA 23219
www.vaco.org • 804.788.6652

Tuesday, January 26, 2021

Workers' compensation presumption legislation for EMS personnel amended, COVID-19 presumption bills advance

As previously [reported](#), several pieces of legislation that propose changes to the Virginia's Workers' Compensation Act with potentially significant impact to local governments have been filed. On January 25, the Senate Commerce and Labor Committee reviewed bills that would expand the list of illnesses considered conditions currently presumed to be an occupational disease when developed by certain public employees and therefore covered by the Virginia Workers' Compensation Act. VACo staff advocated to retain local authority for one category of presumptions and urged additional state support for another.

[SB 1275 \(Marsden\)](#) adds salaried or volunteer emergency medical services (EMS) personnel to the list of persons to whom, after five years of service, the occupational disease presumption for death caused by hypertension or heart disease applies. As originally written, this would have mandated local governments to cover this presumption. In committee, VACo staff testified that though it was not opposed to the intent of the bill, VACo's position is opposition to adding more workers' compensation presumptions specifically for county employees or county supported employees without additional state funding assistance to local governments to offset additional insurance liabilities. Committee discussion focused on the fiscal impact of adding this presumption and the unique situation of volunteer EMS personnel, whose hours and service may vary between localities. The bill was amended in Committee to add the presumption for both salaried and volunteer EMS personnel operating in a locality that has legally adopted a resolution declaring that it will provide one or more of the presumptions and establishes a minimum hours worked requirement. As amended, this language retains flexibility to local governments to determine whether to add these presumptions, the types of employees covered, and any additional requirements in regard to service hours. VACo thanks the patron and the committee for these changes that makes the bill very similar to [HB 1818 \(Heretick\)](#), which had already been amended

to address these concerns, but does not specifically contain language that requires local resolutions to contain an hours worked requirement.

The committee also heard additional legislation establishing workers' compensation presumptions related to COVID-19. [SB 1342 \(Vogel\)](#) establishes a presumption that COVID-19 causing the death or disability of firefighters, EMS personnel, law-enforcement officers, and correctional officers is an occupational disease compensable under the Workers' Compensation Act. For a presumption to apply, the bill requires a positive diagnostic test for COVID-19 and failure or refusal by a person subject to undergo such immunization shall disqualify the person from any presumption or occupational disease compensable under the Workers' Compensation Act. The bill provides that such presumption applies to any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, 2021. Though the intent of this legislation may be well-meaning, VACo staff expressed concerns that an expansion of workers' compensation presumptions for COVID-19, in addition to other recent changes last year in the benefits program, could result in substantial fiscal impacts to state and local governments at a time in which they are struggling to provide essential and expanded services to respond to the impacts of the pandemic. VACo staff noted that the patron of the bill introduced a budget amendment [placeholder](#), and strongly urged that if the committee voted to advance the bill, that the Senate Finance Committee consider the use of remaining unobligated or authorized but unallocated federal relief funding to ensure that local governments are not hit with this unexpected cost. The Committee reported and referred the bill unanimously, 15-0, to Senate Finance. This bill has a companion in the House – [HB 2207 \(Jones\)](#) – which will be heard by the House Appropriations Committee's Compensation and General Government Subcommittee on January 26.

The committee also considered similar legislation that is narrower in scope. [SB 1375 \(Saslaw\)](#) establishes a retroactive presumption for COVID-19 limited to firefighters and EMS personnel, however, the bill does not specifically require documentation of positive diagnosis. Though the legislation would likely have a smaller fiscal impact, VACo staff have the same concerns regarding the bill, and urge the use of federal relief funding allocated to state should it be enacted. The committee also reported and referred the bill unanimously, 15-0, to Senate Finance.

VACo Contact: [Jeremy R. Bennett](#)

Oppose HB 2045 and SB 1440 - Erosion of Qualified and Sovereign Immunity for Law Enforcement

[HB 2045 \(Bourne\)](#) creates a state civil cause of action for deprivation of any person's constitutional rights, privileges, or immunities by a law enforcement officer,

including failure to intervene. The bill creates liability for the law enforcement officer and any public or private employer that employs or contracts with the law enforcement officer. This proposed legislation provides for compensatory damages, punitive damages, attorney's fees and other types of relief and penalties. The bill also provides for individual liability of up to \$25,000 for the law enforcement officer in certain situations. HB 2045 prohibits the use of both sovereign immunity and qualified immunity defenses and prohibits any limitation of liability or damages. This bill creates liability for hiring, supervision, training, retention and use of police officers. The resulting effect of HB 2045 is that it creates a cause of action for every action or interaction a law enforcement officer has.

[SB 1440 \(Surovell\)](#) creates a civil cause of action for the unlawful use of force or failure to intervene by a correctional officer or law enforcement officer who violates [Chapter 7.1 of Title 19.2](#) (regarding use of force, failure to intervene, prohibited practices etc.) during the performance of duties. An officer's public or private employer is liable if the events occur in the ordinary course of the employer's business. The bill provides for recovery of compensatory damages, punitive damages and attorney's fees and costs, and the language of the bill essentially negates the sovereign immunity defense. The effect of this bill is that a law enforcement officer may be sued for reasonable actions.

Concerns

- Law Enforcement Hiring, Retention, and Training
 - This would have a chilling effect on the hiring and retention of law enforcement/correctional officers.
 - It will be impossible to train for an unspecified standard of care.
- Drastic Increases in Costs
 - Local Government would be vicariously liable for law enforcement and be subject to greater financial risk and increased frivolous litigation.
 - Law enforcement officers would have personal liability.
 - It will be extremely costly if not impossible to insure for this new unlimited liability.
- Rippling Effects in the Community
 - There would be a chilling effect on use of law enforcement for private or community events and businesses.
 - This includes private security at churches, high school sporting events, concerts, raceways, etc.
 - Substantial obstacle to the provision of needed public services.
 - In terms of officers doing their jobs, maintaining staffing #s, etc.
 - Officers will be less likely to initiate an encounter with a citizen because of the potential for personal liability.
 - Officers cannot be expected to be legal scholars or think through legal arguments when attempting to perform their duties

- Dramatic erosion of existing laws, which already provide the protections sought by these bills.
 - Officers do not have absolute immunity, and they can be held liable when they violate a clearly established constitutional right.

VACo Contacts: [Chris McDonald, Esq.](#) and [Phyllis Errico, Esq., CAE](#)

Legislation regarding behavioral health assessments in jails amended

In 2019, the General Assembly required the Board of Corrections (now the State Board of Local and Regional Jails) to establish minimum standards for behavioral health care in local and regional jails. A stakeholder group met during summer 2019 and recommended a set of standards to the Board, which made some revisions to the workgroup's recommendations and is in the process of promulgating the standards through the state's regulatory process. One of the major points of discussion in the stakeholder workgroup was how promptly a mental health assessment should be required for individuals who appear to have a mental illness based on their initial screening at intake. The group wrestled with balancing the need for a swift response to individuals who are at risk of further deterioration against the limited resources of many jails, particularly jails in rural areas in which there is a shortage of behavioral health care providers. Ultimately the stakeholder group settled on a requirement that individuals whose initial screening indicated the possible presence of a mental illness receive a preliminary assessment by a nurse or qualified mental health professional within 14 days, with more rapid intervention required for individuals who are in acute distress or at risk for suicide.

[HB 1874 \(Coyner\)](#) as introduced would require the mental health assessment to be conducted within 72 hours of the initial screening, a standard that would likely be very challenging for smaller and rural jails to meet, particularly in the context of compliance with the overall set of standards. A preliminary estimate of compliance costs done by the Department of Behavioral Health and Developmental Services in the context of the 2019 workgroup indicated that jails would need approximately \$42.6 million to meet the new standards (with the 14-day assessment requirement). After hearing concerns from VACo, VML, and the Virginia Association of Regional Jails, Delegate Carrie Coyner amended the bill to codify a requirement that individuals experiencing acute distress or at risk of suicide would receive immediate interventions and ongoing monitoring to ensure safety, and that a behavioral health assessment would generally be completed within 72 hours. The bill also directs the Board of Local and Regional Jails to review the screening and assessment process to identify barriers to an across-the-board requirement for an assessment within 72 hours of screening and develop recommendations to address those barriers. The amended bill was heard in subcommittee on January 19 and reported by the full House Health, Welfare, and Institutions Committee on January 21.

VACo believes the amended bill ensures that individuals in serious distress receive the care they need while recognizing the need for the state to assist local and regional jails in implementing best practices and improving the timeliness with which assessments are conducted. VACo appreciates Delegate Coyner's work on the bill and willingness to consider local concerns.

VACo Contact: [Katie Boyle](#)

Helpful public notice bill reports to full House

Helpful legislation introduced by Delegate Margaret Ransone that streamlines public notice procedures for localities has passed its first legislative hurdle and has been reported to the full House for consideration.

[HB 2114 \(Ransone\)](#) provides that in an instance in which a locality has submitted a timely notice of public hearing to a newspaper published or having general circulation in the locality and the newspaper fails to publish the notice, such locality shall be deemed to have met certain notice requirements so long as the notice was published in the next available edition. Current law allows this only for localities located in Planning District 23 (Hampton Roads). Delegate Ransone's bill expands this to all localities in the Commonwealth.

VACo is grateful to have worked with Delegate Ransone on this legislation and has spoken in favor of the bill. HB 2114 will be heard this week in the House.

VACo Contact: [Chris McDonald, Esq.](#)

Governor's School guidance legislation graduates from subcommittee

On January 25, legislation that requires the Virginia Board of Education (VBOE) to issue guidance on the governance of academic Governor's Schools was recommended to report with a substitute by the House Education Committee's SOL and SOQ Subcommittee on a vote of 5 to 3. [HB 2305 \(Tyler\)](#) directs VBOE guidance to focus on the importance of increasing access to Governor's Schools for historically underserved students and include best practices on:

- Conducting information sessions about the school and the availability of gifted, advanced, and specialty education program opportunities for feeder public middle schools
- Strengthening the student pipeline in feeder public middle schools, prioritizing the most underserved and underrepresented students and public middle schools

- Conducting programs related to and evaluations of diversity, equity, and inclusion

VBOE is directed to consult with local school boards representing various regions served by the Schools. [Governor's Schools](#) are designed to provide gifted students academic and visual and performing arts opportunities beyond those normally available in the students' home schools and are funded through a combination of state and local funds and includes 40 sites throughout the Commonwealth.

VACo Contact: [Jeremy R. Bennett](#)

Food banks, farmers, and food access bill survives Appropriations, heads to House floor

Legislation improving food access/distribution infrastructure while assisting Virginia farmers and local and regional food banks survived the scrutiny of the House Appropriations Committee and will now be heard on the full House floor.

As previously reported in Capitol Contact, [HB 2203 \(Madame Speaker\)](#) establishes the Virginia Agriculture Food Assistance Program and Fund (VFAP). The VFAP will provide funding for Virginia farmers and food producers to donate, sell, or otherwise provide agriculture products to charitable food assistance organizations. The Program will also provide funding to local and regional food banks to reimburse farmers or food producers for any costs associated with harvesting, processing, packaging, or transporting agriculture products donated to such charitable food assistance organizations. The bill aims to help the over one million Virginians that are at risk of hunger while also directly assisting local farmers and local and regional foodbanks.

The Senate counterpart to this bill, [SB 1188 \(Hashmi\)](#), was heard by the Senate, Conservation and Natural Resources Committee was rereferred to the Senate Finance and Appropriations Committee. It has not yet been docketed.

VACo Contact: [Chris McDonald, Esq.](#)

Bill exempting small locality IDA/EDA from SOEI filings moves forward

[SB 1171 \(Norment\)](#) creates an exemption for smaller localities' EDA and IDA Executive Directors and members from filing Statement of Economic Interest disclosure forms. Legislation passed in the 2020 regular session required the Executive Director and members of each industrial development authority and

economic development authority, as created by the Industrial Development and Revenue Bond Act, to file financial disclosure forms by August 1, 2020. The patron of this bill explained that this caused resignations in smaller localities and was seeking to provide relief. Under SB 1171, localities with a population up to 25,000, or in a region serving more than one locality that, in the aggregate, with a population of up to 25,000, will no longer be required to file a Statement of Economic Interests (SOEI) with the clerk of the local governing body as a condition to assuming office and thereafter annually on or before February 1. The bill passed the Senate on a vote of 24 to 15.

VACo Contact: [Phyllis Errico, Esq., CAE](#)

House Finance Roundup

Several bills of interest to local governments have been referred to the House Finance Committee. Below is an update on the status of several bills considered by the Committee or its subcommittees.

[HB 1774 \(Walker\)](#) adds motor vehicles with a gross weight of 10,000 pounds or more used by a motor carrier engaged in interstate commerce to transport passengers to the list of types of property that may be taxed at rates different than those applied to other tangible personal property. Currently such vehicles are classified as a separate class of property if they are used to transport property. This legislation has passed the House and awaits action in Senate Finance and Appropriations.

[HB 1803 \(Orrock\)](#) would authorize localities to offer credits against local taxes and fees (with the exception of property taxes) for individuals who provide certain volunteer services in the locality, which the locality would be able to define, within certain parameters set by the bill. House Finance Committee's Subcommittee #1 heard this bill on January 25 and tabled it due to concerns about the breadth of the bill.

[HB 1939 \(Wyatt\)](#) deals with the applicability of the meals tax on prepackaged single-serving salads. The bill responded to a situation in one locality over whether prepared salads grown and delivered to consumers should be subject to the meals tax or should instead be considered akin to groceries. Current Code provides that "sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages" are subject to the meals tax; the bill would insert a definition of "single-serving" from federal nutrition guidelines. Although the bill is intended to respond to a specific situation, concerns were raised by the restaurant industry, VACo, Commissioners of the Revenue, and others about the potential enforcement challenges for prepackaged salads sold by restaurants that may be an unintended consequence of importing the federal standard into Virginia Code. Members of House Finance Committee's Subcommittee #1 expressed a desire to clarify the current Code language but were

concerned about whether the federal standard might make Virginia Code less clear, so the bill was recommended to be tabled. It is expected that further discussions on this issue will take place in the “offseason.”

[HB 2165 \(Hope\)](#) is intended to address situations in which formal documentation of inheritance for a property may be limited and taxes become delinquent on the property. The bill would extend to 60 months (from 36 months, as in current Code) the time period for which a local tax official may suspend an action for the sale of tax delinquent property upon entering into an agreement with the owner for payment of the delinquent taxes. The bill would also authorize the local tax official to suspend such an action upon written notice by an individual asserting ownership rights in the property, in which case the tax official would notify the court of the claim; if the court determined that the person did have ownership rights in the property, the person would be able to enter into an installment plan of up to 60 months. The bill also provides that a final court order confirming sale of tax delinquent property may not be entered sooner than 90 days after the tax official gives notice of the action or 90 days after the official receives notice from a person asserting ownership rights. The bill was unanimously recommended for reporting by Subcommittee #1.

[HB 2293 \(Morefield\)](#) extends the sunset date on the local gas severance tax that is dedicated to each locality’s Coal and Gas Road Improvement Fund, the Virginia Coalfield Economic Development Fund, and construction or maintenance of water, sewer, and natural gas lines. The legislation extends the sunset date from January 1, 2022, to January 1, 2024. VACo registered its support for the legislation, which was recommended for reporting by Subcommittee #1.

VACo Contact: [Katie Boyle](#)

Commonwealth’s Attorneys staffing and funding bill sent to Senate Finance

A bill seeking to study and rework staffing and funding levels for Commonwealth’s Attorneys’ offices has been sent to the Senate Finance Committee for further review.

[SB 1226 \(Boysko\)](#) requires that the Compensation Board shall consider workload totals comprehensively, including the use of diversion programs and specialty dockets, when determining staffing and funding levels. Currently, diversion programs and specialty dockets, which include things like mental health dockets and drug courts, are not considered by the Comp Board in their staffing and funding formulas.

Senator Boysko and proponents of the bill argue that this current practice disincentivizes localities from using such programs. While many stakeholders have spoken in favor of this legislation, there has been caution urged by a number of

parties about the rippling effects that changing and codifying the Comp Board's staffing and funding formulas will have.

SB 1226 was initially referred to the Senate Local Government Committee and was subsequently rereferred to the Senate Judiciary Committee, which heard the bill early on January 25 and rereferred it to the Senate Finance Committee for consideration.

VACo Contact: [Chris McDonald, Esq.](#)

U.S. Route 1 renaming bill keeps moving

On January 26, legislation that proposes renaming sections of U.S. Route 1 in Virginia from the currently designated "Jefferson Davis Highway" to the "Emancipation Highway" advanced out of the House Transportation Committee on a vote of 13 to 5. [HB 2075 \(Cole, J.G.\)](#), which has a delayed enactment date of January 1, 2022, only applies to sections of the highway with the current designation of "Jefferson Davis Highway" and does not affect any other memorial designation applied to the highway. Localities, which have already changed the name of the highway or will do so before the enactment date either through local action, through successful petition to the Commonwealth Transportation Board, or through act of the General Assembly, will not be impacted.

VACo Contact: [Jeremy R. Bennett](#)

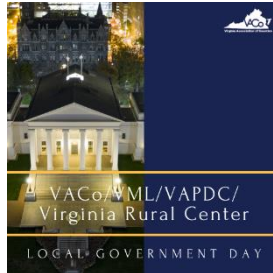
Opioid authority bills introduced

[HB 2322 \(Herring\)](#) and [SB 1469 \(Barker\)](#) establish the Opioid Abatement Authority. The Authority, with the assistance of the Office of the Attorney General, would administer the Opioid Abatement Fund, which would receive funds from settlements, judgments, verdicts, and other court orders, or related agreements, concerning claims regarding the manufacturing, marketing, distribution, or sale of opioids that would be used to provide grants and loans to Virginia agencies and certain localities for the purpose of treating, preventing, and reducing opioid use disorder and the misuse of opioids in the Commonwealth. This bill sets forth the method of disbursement of funds received from potential settlement of the ongoing Opioid litigation. It includes designation of representatives to a new Opioid Authority.

VACo Contact: [Phyllis Errico, Esq., CAE](#)

Advocate for your locality at the VACo Local Government Day

In Partnership with VML, VAPDC and the Virginia Rural Center



Thursday, January 28, 2021 | Webex
[Registration Form](#) | [Register Online](#)

Join us at the VACo/VML/VAPDC/Virginia Rural Center Local Government Day on Thursday, January 28! This is our day to advocate for localities at the 2021 General Assembly Session.

The event kicks off at 9am. Governor Ralph Northam is confirmed to speak. In addition, state legislators have been invited to participate and share their thoughts on the 2021 General Assembly Session. Also, VACo Economist Jim Regimbal will give a report on the state budget. And there will be a presentation on the state COVID-19 vaccine distribution efforts.

- Welcome and Introductions
- Governor Ralph Northam
- Jim Regimbal | Fiscal Analytics
- State Legislators Roundtable
- COVID-19 Vaccine Briefing

For information on how to reach your representatives, see the [Virginia House of Delegates](#) and the [Senate of Virginia](#) member websites. Find information about VACo's positions in the [2021 Legislative Program](#). We will distribute the Local Government Day Bulletin before the event.

Be a part of the legislative process at the 2021 General Assembly Session.

Register for the event at [VACo Local Government Day Online](#) (you must already have a VACo online registration account to use our online registration system). Or fax the [Registration Form](#) to 804.788.0083 or email the form to Valerie Russell at vrussell@vaco.org. The cost is \$30.

VACo Contact: [Valerie Russell](#)