

Capitol Contact

Virginia General Assembly

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Thursday, February 25, 2021

Capitol Contact ALERT!

COVID-19 Workers' Compensation Presumption Bills in Conference – Call Conferees to Support Prospective Version of the Bill

[SB 1375 \(Saslaw\)](#) as passed by the Senate, 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. The Senate language stipulates a prospective presumption effective July 1, 2021. The House passed substitute language for the bill that was rejected by the Senate to conform SB 1375 to [HB 2207 \(Jones\)](#), which as passed by the House, establishes a retroactive presumption eligibility to March 2020.

In order to reconcile the differences between the chambers, SB 1375 was sent to a committee of conference consisting of Senators Saslaw, Norment, and Petersen and Delegates Jones, Hurst, and Kilgore. HB 2207 was also sent to a committee of conference consisting of Senators Saslaw, Newman, and Barker and Delegates Jones, Hurst, and Kilgore.

SB 1375 in the form that passed the Senate maintains a prospective presumption. We have concerns that a retroactive expansion of workers' compensation presumptions for COVID-19 in addition to other recent changes in the benefits program could result in substantial fiscal impacts to the state and local governments at a time in which they are struggling to provide essential and expanded services in the midst of declining revenues and increased constituent needs.

Please contact the conferees to urge them to **support** the version of SB 1375 that passed the Senate unanimously on February 4.

KEY POINTS

- According to actuarial analysis from the Virginia Association of Counties Group Insurance Self-Insurance Risk Pool (VACoRP), a retroactive presumption (as proposed by the House) would result in a fiscal impact of approximately \$15 million for the period of March 2020 to June 30, 2021.
- SB 1375, in the form that passed the Senate would still likely impose some fiscal impact to local governments, but it would be a fraction of the cost of including the retroactivity component that is proposed by the House.
- Local governments and risk insurance providers have not budgeted for an expansion of liability to cover additional presumptions related to COVID-19, especially not for a retroactive expansion of eligibility.
- A retroactive application of liability contains the most liability costs to local governments and well as posing potential constitutional complications to existing risk insurance reinsurance contracts. This will delay adjudication of workers' compensation claims by impacted employees should the legislation be enacted.
- While CARES Act funds are eligible to be used by local governments to offset increased costs to workers' compensation insurance from COVID-19, many localities have spent all or most of their federal coronavirus relief act funding to address the myriad other responsibilities and challenges of facing the pandemic.
- As additional state or federal funding has not been provided to offset the fiscal impact of the bill, VACo is grateful for language passed by the Senate that is prospective in nature and does not have a retroactive coverage dating back to March 2020.

KEY CONTACTS

[Senator Saslaw](#), [Senator Norment](#), [Senator Petersen](#), [Senator Newman](#), [Senator Barker](#)

[Delegate Jones](#), [Delegate Hurst](#), [Delegate Kilgore](#)

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

Children's Services Act legislation heads to the Governor

Several bills were introduced during the 2021 session to implement recommendations from the Joint Legislative Audit and Review Commission (JLARC) report on the Children's Services Act (CSA), which was released in November 2020. The successful legislation this session addressed private day placements and the relationship between the Office of Children's Services (OCS) and local CSA programs. Other aspects of the JLARC report were introduced as budget amendments; VACo will report on the inclusion of budget language regarding CSA in its analysis of the budget conference report once that document is released.

[HB 2117 \(VanValkenburg\)](#) and [SB 1313 \(Mason\)](#) are the vehicles for legislation dealing with private day placements, and as passed stipulate that private special education day programs must be licensed by the Board of Education or an equivalent out-of-state licensing agency in order to receive CSA funding; by July 1, 2022, such programs may only receive CSA funding if they have reported their tuition rates to OCS. The bills also allow CSA funding to support transitional services provided in public schools for up to 12 months for children who were previously placed in private day placements for at least six months. Transitional services are intended to support children with significant disabilities or intensive support needs in succeeding in the public school environment and may include behavioral health services, occupational therapy, especially designed instruction, or other services needed to facilitate a child's transition back to public school.

The bills also include an extensive enactment clause directing the convening of a stakeholder group to develop a detailed plan to direct the transfer of CSA private day placement funds to the Department of Education, which would include recommendations on the use of CSA funds to support children with disabilities so that they may remain in the public school setting. The workgroup is directed to include in its plan recommendations for how the Department of Education should administer funding so that it prioritizes children with the most severe disabilities who are at risk of (or currently in) an out-of-school placement and it is accessible to all school divisions. The plan is also directed to minimize the fiscal impact on localities of transferring the funding and to include a review and analysis of different models of delivering special education. The workgroup is authorized to solicit proposals from local school divisions for programs that would support children currently being served in private placements, to include details on how redirecting certain funding streams could allow some students to transition from private placements to public school, and may recommend proposals deemed to be feasible to the General Assembly. A preliminary report is due to the "money committee" chairs by November 1, 2021, with a final plan and recommendations due November 1, 2022. VACo has historically supported some flexibility in the use of CSA funds in order to bolster school divisions' ability to serve children with high-level needs within the public school environment, and worked with the patrons on refinements to these bills to

ensure clarity in drafting and a comprehensive approach to the study group's scope of work.

[HB 2212 \(Plum\)](#) implements another JLARC recommendation and incorporates several concepts into the statutory responsibilities of the Director of the Office of Children's Services. The OCS director would be responsible for providing for the effective implementation of the Children's Services Act in local programs by monitoring local performance measures and outcomes for children and families, using this data to identify local programs that need technical assistance, and working with struggling local programs to develop a corrective action plan.

VACo Contact: [Katie Boyle](#)

License plate reader study bill sent back to committee, effectively dead for the year

[SB 1198 \(Petersen\)](#), a bill creating a workgroup to study the use of license plate readers by law enforcement agencies, has been sent back to committee after several days of waiting for a vote on the full House floor.

As [reported](#) in the [previous edition of Capitol Contact](#), this legislation originally sought to prohibit law-enforcement and regulatory agencies from using license plate readers to collect and maintain personal information on individuals without a warrant. Due to substantial concerns raised about the impact and practicality of this bill, the initial proposal was ultimately scrapped in favor of a substitute bill that simply created a workgroup to further study this topic.

As a study bill, SB 1198 reported out of the Senate General Laws and Technology Committee by a vote of 8-4-3 before passing the full Senate by a vote of 28-11. The bill was first heard in the House Public Safety Committee, where it was reported to the full House of Delegates by a vote of 18-4. For nearly two weeks, SB 1198 languished on the House floor, as Delegates opted to pass the bill by for the day numerous times in lieu taking a vote on it.

On Tuesday afternoon (February 23), the House opted to refer the bill to the House Communications, Technology, and Innovation Committee. As that committee will not meet again before the 2021 session is adjourned, this means that SB 1198 is effectively dead.

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

Outdoor refreshment area bills sent to conference

Two bills authorizing localities to create outdoor refreshment areas have been sent to conference after the House and Senate failed to reach a consensus on the measures.

[HB 2266 \(Ayala\)](#) and [SB 1472 \(Dunnavant\)](#) would form a framework that would allow localities to establish up to three outdoor refreshment areas, or areas where people can purchase, drink, and openly carry alcohol that they buy within the area (including on sidewalks and on the premises of businesses who themselves do not have a license to sell alcohol). In simpler terms, these bills authorize local governments to create up to three “open-container” districts in their localities.

Disagreements remain between the House and Senate over the licensing requirements for these areas. As such, the bills have now been sent to conference, where the patrons, joined by Delegates Bulova and Brewer and Senators McPike and Mason, will continue to work on the legislation in hopes of developing a compromise bill.

HB 2266 and SB 1472 were just two of many bills introduced this session proposing long-term changes to Virginia Alcoholic Beverage Control (ABC) laws and regulations. In fact, there were two other bills proposed in the House specifically dealing with this same topic – [HB 2051 \(Bourne\)](#) was incorporated into HB 2266, while [HB 1838 \(Wampler\)](#) was left in committee. These bills, like many of the alcohol-related bills, were born out of the changes that ABC has already enacted to assist businesses trying to survive the ongoing economic impacts of the COVID-19 pandemic.

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