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VIA ELECTRONIC MAIL

January 29, 2021

The Honorable Janet D. Howell, Chair  
Senate Finance and Appropriations Committee  
P.O. Box 396  
Richmond, VA 23218

Dear Chair Howell:

I write to you on behalf of the Virginia Association of Counties (VACo) to express our concerns and opposition to Senate Bill 1342 (Vogel) and Senate Bill 1375 (Saslaw). The proposals would add COVID-19 to the list of presumptive illnesses eligible for compensation under workers' compensation for certain first responders, and firefighters and EMS personnel, respectively.

As indicated in our correspondence on similar proposals during the 2020 General Assembly Special Session, though the intent of this legislation may be well-meaning, we must share our concerns that an 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 state and local governments at a time in which we are struggling to provide essential and expanded services in the midst of declining revenues and increased constituent needs. According to actuarial analysis from VACORP, this includes an approximately \$15 million fiscal impact for expanding presumptions for first responders as would be required by enactment of SB 1342 and nearly a \$4 million fiscal impact for expanding presumptions to firefighters and EMS personnel as would be required by SB 1375.

Furthermore, creating a presumptive workers' compensation standard for a community-spread disease introduces a level of liability unprecedented for the infectious disease presumption section of the Virginia Workers' Compensation Act. Whereas existing presumptive infectious diseases such as hepatitis or HIV are linked to a documented exposure to blood or bodily fluids, documenting exposure to COVID-19 poses its own challenges. Generally, workers' compensation does not cover community-spread illnesses like a cold or the flu because they usually cannot be directly tied to the workplace. Though COVID-19 can impact the health of individuals more drastically than either of these illnesses, the same principle applies. It is difficult to determine exactly when and where an individual may have contracted COVID-19, and whether that was in the course of normal employment or through individual actions of the employee outside of the workplace and the control of the employer.

Local governments and risk insurance providers have not budgeted for an expansion of liability to cover additional presumptions related to COVID-19. We do not yet know if the number of infections will increase again or when a vaccine for the virus will become fully

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distributed. Furthermore, the potentially unknown latent effects of COVID-19, may include lifetime side effects that would need to be treated under a lifetime workers' compensation medical award. All of these unknowns create additional liabilities with significant fiscal impact to local governments. This is especially true for any legislation that would retroactively expand presumptions, which has been identified as containing the most liability costs to local governments and well as posing complications to existing risk insurance reinsurance contracts and the likely delay in adjudication of workers' compensation claims by impacted employees should the legislation be enacted.

For these reasons, we reiterate that passage of any legislation that expands presumptions to include COVID-19 be done only if in concert with additional state funding assistance to local governments to offset additional costs through risk insurance. In particular, we encourage the General Assembly to 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. According to U.S. Department of the Treasury Coronavirus Relief Fund (CRF) guidance published in the Federal Register, Vol. 86, No. 10 on January 15, 2021, "Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 31, 2021, is an eligible [use of CRF funds]." Encumbered funding provided by the General Assembly will likely address the complications of retroactive liability, address the majority of fiscal impact to local governments, and lead to the timely processing of employee workers' compensation claims. Without this support, we must continue to oppose this legislation and respectfully urge the Committee to vote accordingly.

Thank you for your attention to this matter and continued efforts on behalf of local governments.

Respectfully,

A handwritten signature in black ink, appearing to read "Dean A. Lynch".

Dean A. Lynch, CAE  
Executive Director  
Virginia Association of Counties

cc: Members, VACo Board of Directors