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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Labor and Industry
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	16VAC15-70
<b>VAC Chapter title(s)</b>	Local Government Union Requirements and Employee Protections
<b>Action title</b>	NOIRA on Local Government Union Requirements and Employee Protections
<b>Date this document prepared</b>	September 3, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory action (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The 2020 Session of the Virginia General Assembly passed [House Bill 582](#) which “permits counties, cities, and towns [“local government”] to adopt local ordinances authorizing them to (i) recognize any labor union or other employee association as a bargaining agent of any public officers or employees, except for Constitutional officers and their employees, and including public school employees and (ii) collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment....”

The bill, now [Va. Code § 40.1-57.2](#), was passed with no comment upon the following current statutes:

1. the Virginia Code’s longstanding requirement in Virginia that in any election for the choosing of a labor organization to represent employees, the right of an individual employee to vote by secret ballot

- in such election is a fundamental right that shall be guaranteed from infringement (see [Va. Code § 40.1-54.3](#))
- 2. current proscriptions on private employer methods for collecting union dues (see [Va. Code § 40.1-62](#) and [Va. Code § 40.1-29.C](#))
- 3. the Virginia Code’s longstanding prohibition of solicitation of union membership during work hours (see [Va. Code § 40.1-66](#)).

Virginia Code § 40.1-2.1 states that Title 40.1 and the regulations issued pursuant thereto shall not extend to the Commonwealth and local government employers unless the Commissioner extends that coverage by specific regulation. Thus, the only way to make certain Code of Virginia Sections and regulations extend to the Commonwealth and local government employers – for example, current proscriptions on private employer methods for collecting union dues (e.g., [Va. Code § 40.1-62](#), [Va. Code § 40.1-29.C](#)), [Va. Code § 40.1-49.4](#), and [§ 40.1-67](#)) – is to comply with [Va. Code § 40.1-2.1](#), which provides:

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Board....

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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Local Government - counties, cities, towns, and school boards

## Mandate and Impetus

*Identify the mandate for this regulatory action and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The 2020 Session of the Virginia General Assembly passed [House Bill 582](#) which “permits counties, cities, and towns [“local government”] to adopt local ordinances authorizing them to (i) recognize any labor union or other employee association as a bargaining agent of any public officers or employees, except for Constitutional officers and their employees, and including public school employees and (ii) collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment. The bill provides that for any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body is required, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, to take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. The bill provides that the prohibition against striking for public employees applies, irrespective of any such local ordinance.” The statute became effective date on May 1, 2021.

The bill, now [Va. Code § 40.1-57.2](#), was passed with no comment upon the following current statutes:

- 1. the Virginia Code’s longstanding requirement in Virginia that in any election for the choosing of a labor organization to represent employees, the right of an individual employee to vote by secret ballot

in such election is a fundamental right that shall be guaranteed from infringement (see [Va. Code § 40.1-54.3](#))

2. proscriptions on how private employers collect union dues

3. the Virginia Code's longstanding prohibition of solicitation of union membership during work hours (see [Va. Code § 40.1-66](#)).

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory action, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The Department of Labor and Industry is the promulgating agency.

Legal authority citations:

[Va. Code § 40.1-6](#). Powers and duties of Commissioner.

[Va. Code § 40.1-2.1](#). Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

[Va. Code § 40.1-54.3](#). Right to vote by secret ballot on labor organization representation.

[Va. Code § 40.1-57.2](#). Collective bargaining.

[Va. Code § 40.1-29](#). Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties.

[Va. Code § 40.1-62](#). Employer not to require payment of union dues, etc.

[Va. Code § 40.1-66](#). Conduct causing violation of article illegal; peaceful solicitation to join union.

[Va. Code § 40.1-67](#). Injunctive relief against violation; recovery of damages.

[Va. Code § 40.1-69](#). Violation a misdemeanor.

[Va. Code § 40.1-49.4](#). Enforcement of this title and standards, rules or regulations for safety and health; orders of Commissioner; proceedings in circuit court; injunctions; penalties.

[Va. Code § 40.1-7](#). Attorney for the Commonwealth to prosecute on request of Commissioner.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The regulatory action is intended to: 1) make clear that the statutory requirements that currently apply to any union elections will still apply to union elections for local government employees; 2) the action will extend current proscriptions on private employer methods for collecting union dues to local government

employers who collect union dues; and 3) the action will make clear that the statutory requirements that currently apply to solicitation of union membership during work hours will still apply to solicitation of local government employees:

1. the Virginia Code's longstanding requirement in Virginia that in any election for the choosing of a labor organization to represent employees, the right of an individual employee to vote by secret ballot in such election is a fundamental right that shall be guaranteed from infringement (see [Va. Code § 40.1-54.3](#))
2. proscriptions on how employers collect union dues. Current proscriptions that prohibit private sector employers from requiring employees to pay union dues (see [Va. Code § 40.1-62](#)), and further prohibit private sector employers from withholding union dues from an employee's pay "without the written and signed authorization of the employee" (see [Va. Code § 40.1-29.C](#)), will extend to local governments.
3. the solicitation of union membership during work hours. Current law prohibits union members from attempts at solicitation or persuasion to join a union in such a manner that would "interfere with, or interrupt the work of any employee during working hours". (see [Va. Code § 40.1-66](#)).

## Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The regulatory action will address the following requirements and employee protections for local government employees and unions:

Current statutes require secret ballot elections for employee labor organizations (see [Va. Code § 40.1-54.3](#)).

Current statutes prohibit private sector employers from requiring employees to pay union dues (see [Va. Code § 40.1-62](#)) and further prohibit private sector employers from withholding union dues from an employee's pay "without the written and signed authorization of the employee" (see [Va. Code § 40.1-29.C](#)).

Current law prohibits any person from attempts at solicitation or persuasion to join a union in such a manner that would "interfere with, or interrupt the work of any employee during working hours". (see [Va. Code § 40.1-66](#)).

Enforcement mechanisms are also provided.

It is anticipated that definitions for the following terms will be included in the new regulation: Commissioner, Employee, Labor Organization, Local Government Employer, and Secret Ballot.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory action that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory action.*

There are no viable alternatives as the only way to make the referenced Code of Virginia sections applicable to public employers is to comply with [Va. Code § 40.1-2.1](#), which provides:

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Board.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Commissioner of Labor and Industry is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to

Cristin Bernhardt  
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Virginia Department of Labor and Industry  
6606 W. Broad Street, Suite 500  
Richmond, VA 23230  
804-786-2392  
[cristin.bernhardt@doli.virginia.gov](mailto:cristin.bernhardt@doli.virginia.gov)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.