



Virginia Department of Planning and Budget **Economic Impact Analysis**

16 VAC 15-70 Local Government Union Requirements and Employee Protections
Department of Labor and Industry
Town Hall Action/Stage: 6575 / 10604
January 14, 2025

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Department of Labor and Industry (DOLI) proposes to promulgate a new regulation concerning local government entities in the Commonwealth and collective bargaining.

Background

Identical Chapters 1209 and 1276 of the 2020 *Acts of Assembly*² amended Code § 40.1-57.2, *Collective bargaining*, to permit counties, cities, and towns (local government public employers) 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.

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://legacylis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1209>

Further, the legislation stated 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 legislation also provides that the prohibition against striking for public employees applies, irrespective of any such local ordinance.

Estimated Benefits and Costs

In addition to the section noted above, Code § 40.1-2.1 states that the provisions within Title 40.1 and the regulations issued 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.” Thus, according to DOLI, the following provisions of Title 40.1 do not apply to local government employers until the proposed 16 VAC 15-70 *Local Government Union Requirements and Employee Protections* becomes effective:³

Code § 40.1-6 2. *Powers and duties of Commissioner.*

Code § 40.1-7. *Attorney for the Commonwealth to prosecute on request of Commissioner.*

Code §§ 40.1-29.C, E, F, G and H. *Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties.*

Code § 40.1-49.4 F 2. *Enforcement of this title and standards, rules or regulations for safety and health; orders of Commissioner; proceedings in circuit court; injunctions; penalties.*

For example, the proposed regulation would apply Code § 40.1-29.C to local government public employers and thereby prohibit them from withholding union dues from an employee’s pay

³ Code § 40.1-54.3. *Right to vote by secret ballot on labor organization representation* already applies to local governments per the Office of the Attorney General. Code § 40.1-62. *Employer not to require payment of union dues, etc.*, Code § 40.1-66. *Conduct causing violation of article illegal; peaceful solicitation to join union*, Code § 40.1-67. *Injunctive relief against violation; recovery of damages*, and Code § 40.1-69. *Violation a misdemeanor* already apply to local government by virtue of Code § 40.1-58.1, *Application of article to public employers and employees.*

“without the written and signed authorization of the employee,” as is already the case for private sector employees. Several localities have initiated collective bargaining,⁴ but no information is available on the provisions or mechanisms used in those agreements..⁵

Businesses and Other Entities Affected

The proposed regulation potentially affects local governments in the Commonwealth and their employees.

The Code requires DPB to assess whether an adverse impact may result from the proposed regulation.⁶ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁷ By applying existing statutory requirements to local government public employers, the proposed regulation would affect net costs or net benefits to the degree that collective bargaining agreements do not incorporate the statutory requirements. However, such information is not currently available. Thus, an adverse impact is not indicated.

Small Businesses⁸ Affected:⁹

The proposed regulation does not appear to adversely affect small businesses.

⁴ See <https://www.nea.org/nea-today/all-news-articles/pay-planning-time-more-what-collective-bargaining-means-virginia>.

⁵ Source: DOLI

⁶ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

⁷ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁹ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Localities¹⁰ Affected¹¹

Localities where both the local government and a majority of the public employees wish to have collective bargaining would be particularly affected. As choosing to have collective bargaining would not be required by this regulation, no substantive costs would be imposed on local governments.

Projected Impact on Employment

The proposed regulation does not appear to substantively affect total employment.

Effects on the Use and Value of Private Property

The proposed regulation does not substantively affect the use and value of private property or real estate development costs.

¹⁰ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.