

May 19, 2025

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*Via email to: [cristin.bernhardt@doli.virginia.gov](mailto:cristin.bernhardt@doli.virginia.gov)*

**Re: Public Comment in Support of Proposed Regulation Regarding “Local Government Union Requirements and Employee Protections”**

Ms. Bernhardt,

As a longtime advocate for making labor unions representing public employees more accountable to taxpayers and their members, the Freedom Foundation<sup>1</sup> strongly supports the Virginia Department of Labor and Industry’s (“L&I” or “the Department”) proposed regulation regarding “Local Government Union Requirements and Employee Protections.”<sup>2</sup>

L&I explains the purpose of the proposed regulation is to:

1. “[M]ake clear that the statutory requirements that currently apply to any union elections apply to union elections for local government employees”;
2. “[M]ake clear that current proscriptions on private employer methods for collecting union dues apply to local government employers who collect union dues”;
3. “[M]ake 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;” and
4. “[I]dentify statutory provisions for assuring compliance” with existing law and the proposed regulation.<sup>3</sup>

These changes are both legally permissible and justified in light of the proliferation of collective bargaining between local government employers in Virginia and unions representing their employees.

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<sup>1</sup> Founded in 1991, the Freedom Foundation is a 501(c)(3) nonprofit organization with seeks to promote individual liberty, free enterprise, and limited, accountable government.

<sup>2</sup> <https://townhall.virginia.gov/l/ViewStage.cfm?StageID=10604>

<sup>3</sup> Virginia Department of Labor and Industry. “Proposed Agency Background Document” regarding “Proposed Regulation for Local Government Union Requirements and Employee Protections.” December 13, 2024. [https://townhall.virginia.gov/l/GetFile.cfm?File=62\6575\10604\AgencyStatement\\_DOLI\\_10604\\_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=62\6575\10604\AgencyStatement_DOLI_10604_v2.pdf)

## Background

Government employers in Virginia have historically lacked authority to engage in collective bargaining. In 1977, the Virginia Supreme Court invalidated several school board policies providing for collective bargaining, as well as the union contracts negotiated pursuant to those policies, on the grounds that the school districts lacked authority to unilaterally authorize and engage in collective bargaining:

“...[T]he recent Virginia history of public employee collective bargaining is persuasive, if not conclusive, that the General Assembly, the source of legislative intent, has never conferred upon local boards, by implication or otherwise, the power to bargain collectively and that express statutory authority, so far withheld, is necessary to confer the power. And when legislative intent is plain, our duty is to respect it and give it effect... [T]o the extent the boards' policies permit collective bargaining and collective bargaining agreements with recognized labor organizations, the policies are declared invalid. Because the contracts entered into are the products of such collective bargaining, the agreements are declared void.”

*Commonwealth v. Cnty. Bd. of Arlington Cnty.*, 217 Va. 558, 578–79, 581, 232 S.E.2d 30, 43-45 (1977).

Rather than authorizing collective bargaining for public employers, the General Assembly statutorily prohibited public-sector collective bargaining in 1993. However, with passage of House Bill 582 in 2020, the General Assembly lifted the prohibition on collective bargaining for municipal government employers, allowing counties, cities, towns, and school districts—but not the state—to authorize collective bargaining with their employees “by a local ordinance or by a resolution.” Va. Code § 40.1-57.2.

HB 582 contained minimal standards for the content of such ordinances or resolutions, requiring only that they: (1) “provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit”; and (2) not “restrict the governing body's authority to establish the budget or appropriate funds.” *Id.*

Consequently, there is significant variation among the collective bargaining resolutions and ordinances that have been adopted by municipal employers to date.

Our research has identified at least 17 local governments in Virginia that have authorized collective bargaining for their employees since passage of HB 582. Of these, all but two have certified at least one union as the exclusive bargaining representative of some of their employees. So far, these local governments have negotiated at least 33 active collective bargaining agreements with unions representing their employees. *See Appendix.*

Further, our analysis of these local governments’ ordinances, resolutions, and collective bargaining agreements indicates that many are: (1) out of compliance with existing Virginia laws; (2)

authorize practices that undermine employees' ability to freely choose whether to join or refrain from joining a labor union; and/or (3) allow unions to disrupt public employees' workday by soliciting membership at taxpayers' expense. *Id.*

As explained in more detail below, these practices demonstrate and support the need for the Department's proposed regulation.

### **Protecting secret ballot elections for union representation**

As noted in L&I's proposed regulation, Va. Code, § 40.1-54.3 protects employees' right to vote on unionization in a secret-ballot election, providing:

“In any procedure providing for the designation, selection, or authorization of a labor organization to represent employees, the right of an individual employee to vote by secret ballot in such a procedure is a fundamental right that shall be guaranteed from infringement.”

The statute was adopted by the General Assembly in 2013 during the period in which the so-called Employee Free Choice Act (EFCA) was regularly introduced in Congress. Virginia was among a handful of states that adopted measures to guard against infringements of employees' voting rights EFCA sought to authorize.

One particular infringement, known as “card check,” allows a union to be certified as the exclusive representative of a bargaining unit of employees in a workplace by presenting authorization cards it obtained individually, and often in person, from a majority of workers.

Obtaining authorization cards can never be done secretly or confidentially. The process entails a union organizer approaching an employee and requesting his or her signature on a card. The organizer either obtains the employee's signature or walks away empty handed, leaving the worker with whatever unpleasant consequences of refusing there may be.<sup>4</sup> As the U.S. Supreme Court has observed, “The failure to sign a recognition slip may well seem ominous to non-unionists who fear that if they do not sign they will face a wrathful union regime, should the union win.” *Nat'l Labor Relations Bd. v. Savair Mfg. Co.*, 414 U.S. 270, 281 (1973). The social situation itself imposes pressure on the worker to sign the card, either to avoid offending the organizer or simply to get rid of them.<sup>5</sup>

Union tactics that increase the coercive nature of the encounter include sending groups of organizers to make repeated visits to employees' homes in an organizing campaign.<sup>6</sup> Because such

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<sup>4</sup> Allison R. Hayward. “Why Vote in Secret? Balancing Autonomy in Absentee, Card Check, and Corporate Voting Campaigns.” *Engage*, Vol. 11, Issue 1. March 31, 2010. <https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/3cmvMOQTG1kD850qHwaMqasXcht7WhE6Cs1Mu9d9.pdf>

<sup>5</sup> See *Nat'l Labor Relations Bd. v. Village IX, Inc.*, 723 F.2d 1360, 1371 (7th Cir. 1983); see also Hans von Spakovsky. “Cracking the Bedrock of Democracy: Destroying the Secret Ballot in Union Elections.” Heritage Foundation. March 20, 2009. <https://www.heritage.org/jobs-and-labor/report/cracking-the-bedrock-democracy-destroying-the-secret-ballot-union-elections>

<sup>6</sup> James Sherk. “How Union Card Checks Block Workers' Free Choice.” Heritage Foundation. February 21, 2007. <https://www.heritage.org/jobs-and-labor/report/how-union-card-checks-block-workers-free-choice>

campaigns are not publicized and the names of supporters are not required to be released, a worker whose name has been fraudulently signed on a card or added to the list of supporters will be unaware of the fraud.<sup>7</sup>

To protect Virginia workers from such coercive pressure and against the backdrop of the congressional debate over EFCA, the General Assembly in 2013 passed, and then-governor Bob McDonnell signed, H.B. 1385, “an Act . . . relating to the right of individuals to vote by secret ballot for a designation, a selection, or an authorization for employee representation by a labor organization,” now codified as Va. Code, § 40.1-54.3.

In the years since its passage, no regulations have been adopted to implement or enforce the statute, nor has it been cited in any reported cases. An absence of threats to employees’ right to vote on unionization by secret ballot might account for the apparent dormancy of the statute. However, the infringement of that right has gone from hypothetical to real with the General Assembly’s recent authorization of municipal collective bargaining.

While nine of the 17 local collective bargaining ordinances and resolutions adopted so far protect employees’ right to vote on union representation in a secret-ballot election, such requirements are far from universal. For instance:

- The resolution adopted by Richmond Public Schools allows secret-ballot elections as one of two acceptable methods of certifying a union as its employees’ exclusive bargaining representative; the other is the inherently coercive and undemocratic card-check procedure.
- Loudoun County’s collective bargaining ordinance describes a “secret, mail-ballot election” process but notes “[t]he election may take place by an alternate method if agreed by the parties.”
- The resolution adopted by Falls Church City Public Schools references secret ballot elections, but also states that ballots are the “property” of the union.
- Four resolutions/ordinances discuss an election or reference a secret ballot in some context, but do not specifically guarantee that employees will be permitted to vote on union representation in a secret-ballot election.

*See Appendix.*

To increase awareness of and the ability to administer the Commonwealth’s statutory secret-ballot requirement for union representation elections, the Department should proceed with its proposed regulation clarifying the application of Va. Code, § 40.1-54.3 to union elections involving employees of local government public employers and establishing a meaningful enforcement mechanism to ensure compliance and protection of public employees’ fundamental rights.

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<sup>7</sup> Unions are not above forging signatures on authorization cards. In recent years, the Freedom Foundation has provided legal representation to dozens of public employees whose signatures on union membership forms were forged by union organizers. *See* Freedom Foundation. “Federal Lawsuits Against Government Unions for Forging Signatures on Membership Forms.” <https://www.freedomfoundation.com/wp-content/uploads/2022/04/Union-forgery-handout.pdf><https://www.freedomfoundation.com/wp-content/uploads/2022/04/Union-forgery-handout.pdf>

L&I's authority to adopt the proposed regulation is well grounded. Va. Code § 40.1-6, which directs the Commissioner of L&I to (1): "[e]nforce the provisions of [Title 40.1, including the secret-ballot protections in Va. Code, § 40.1-54.3] and... cause to be prosecuted all violations of law relating to employers or business establishments before any court of competent jurisdiction;" and (2) "[m]ake such rules and regulations as may be necessary for the enforcement of this title..." Additionally, Va. Code § 40.1-2.1 authorizes L&I to extend the "provisions of... [Title 40.1] and any rules and regulations promulgated pursuant thereto" to "political subdivisions" of the Commonwealth by "specific regulation."

In fact, we believe L&I has both the authority and justification to go even further than the proposed regulation, which simply extends the application of Va. Code, § 40.1-54.3 to local government public employers, by establishing basic requirements for the conduct of secret ballot union elections, such as:

- requiring that any local government public employer that authorizes collective bargaining by its employees pursuant to Va. Code § 40.1-57.2 establish procedures in its authorizing ordinance or resolution for the certification and decertification of labor organizations representing their employees that specifically provide for employees to choose any bargaining representative pursuant only to secret-ballot elections;
- specifically prohibiting the use of card check or similar methods for recognizing or certifying unions to represent employees of local government public employers; and/or
- creating model procedures for the certification and decertification of exclusive bargaining representatives of the employees of local government public employers that provide for the designation, selection, authorization, recognition, certification, or decertification of a labor organization to represent employees only by a secret ballot election.

These added requirements would increase the visibility and clarity of the statutory secret-ballot obligation to local government public employers, their employees, and labor organizations seeking to represent them.

### **Requiring employees' written authorization for payroll deduction of union dues**

The National Education Association (NEA)—the nation's largest teachers union—advises its state and local affiliates, including the Virginia Education Association, to seek to "require the employer to deduct dues each pay period from members who have signed an authorization form," describing employer-administered payroll deduction of union dues as "essential" to a "strong union contract."<sup>8</sup>

Unions prefer government-administered payroll deduction of union dues because it frees them from bearing the administrative costs associated with collecting members' dues payments—such as credit card processing fees or creating and managing systems to handle electronic payments. Instead, payroll deduction offloads the workload and costs of dues collection to public employees and taxpayer-funded payroll systems.

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<sup>8</sup> National Education Association. "8 essentials to a strong union contract without fair-share fees." <https://www.freedomfoundation.com/wp-content/uploads/2018/03/NEA-8Essentials.pdf>

Government-run dues collection also facilitates coercive union membership solicitations, up to and including outright forgery. With payroll deduction, unions do not need to ask for or obtain employees' bank account or credit card information; to get paid, all a union must do is get an employee to sign a membership form or, in some cases, sign it for them. Freedom Foundation attorneys have represented nearly 20 unionized public employees whose signatures have been forged on membership forms by union organizers in recent years, triggering dues deductions from their paychecks by their government employers.<sup>9</sup>

Payroll deduction of union dues not only facilitates coercive membership solicitations but enables unions to sharply limit an employee's ability to cancel their membership. For example, the terms of SEIU Virginia 512's membership form for Fairfax County employees provide that the authorization for payroll deduction of union dues "will renew automatically from year to year even if I have resigned my membership" unless the signer revokes the authorization "by providing notice to FCGEU/SEIU VA 512 via U.S. mail" during the period "15 days before or after (1) the annual anniversary date of this agreement or (2) the termination of the applicable collective bargaining agreement between my employer and union..."<sup>10</sup> Such arbitrary limitations work only because the union has direct access to the employee's paycheck and the employee does not control the means of payment.

While Virginia law does not specifically require or prohibit payroll deduction of union dues by public employers, each of the 17 public employers that have extended collective bargaining to their employees has also agreed to act as the union's dues collector, either in the resolution/ordinance itself or in subsequently negotiated collective bargaining agreements. Of these, at least 10 require the public employer to initiate payroll deduction of union dues if the union can secure an employee's "voice authorization" for such deductions.

In the Freedom Foundation's decade of experience assisting and representing unionized public employees around the country who wish to refrain from union membership, it has found unions' use of telephonic or other forms of "voice authorization" to initiate payroll deduction of dues to be particularly pernicious. Union membership/dues deduction authorization forms are often treated as legal contracts, with hundreds or even thousands of words of legalese, including the above-mentioned limitations on membership cancellation. Many employees find these documents difficult to fully understand even when presented with a written copy; it is not possible for an employee to truly understand and knowingly agree to the terms of union membership over the phone or via some other oral means when they can't see the contract for themselves.

According to a whistleblower in Washington state, employees of a particular union call center were "[forced] under the threat of being fired, to solicit and lie... to record membership messages and obtain signature over the phone using deceptive way." (Errors in original).<sup>11</sup> In some cases, employees only realized they had been signed up for union membership over the phone when they

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<sup>9</sup> Freedom Foundation. "Federal Lawsuits Against Government Unions for Forging Signatures on Membership Forms." <https://www.freedomfoundation.com/wp-content/uploads/2022/04/Union-forgery-handout.pdf>

<sup>10</sup> <https://www.seiuva.org/fairfax-county-join/>

<sup>11</sup> Maxford Nelsen. "Inside SEIU 775's 'Toxic' Workplace Culture." The Freedom Foundation. November 20, 2017. <https://www.freedomfoundation.com/labor/inside-seiu-775s-toxic-workplace-culture/>

attempted to cancel dues deductions from their wages and were denied by the union on the basis of the irrevocability provision in the membership form they purportedly consented to orally.<sup>12</sup>

While the Department may not be able to prohibit local government employers from collecting union dues via payroll deduction, it can and should adopt the proposed regulation and require that such deductions only be made upon an employee's written authorization.

Va. Code § 40.1-29(C) provides that, "No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee." While this requirement does not currently apply to state or local government employers, L&I's proposed regulation extending coverage of the written authorization requirement to local government public employers is both practically justified and legally authorized by Va. Code §§ 40.1-2.1 and 40.1-6.

However, we would suggest both some minor, non-substantive changes to the proposed regulation and some substantive additions to better protect public employees' ability to control their union membership.

First, the Freedom Foundation proposes (1) removing the term "labor union" from the new 16VAC15-70-20(B) and (C) proposed by the Department, since the term is undefined and "labor organization" should be sufficiently broad, and (2) making some minor improvements to the language such that it would read as follows (additions to L&I proposal underlined, deletions ~~struck~~):

B. Pursuant to § 40.1-29 C of the Code of Virginia, to the extent that ~~an~~ alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind ~~to~~ for any ~~labor union or~~ labor organization, no local government public employer shall withhold any part of the wages or salaries of any employee, except for payroll, wage, or withholding taxes or in accordance with law, without the written and signed authorization of the employee.

C. To the extent that alleged violative conduct concerns improper withholding of any dues, fees, or other charges of any kind to any ~~labor union or~~ labor organization, § 40.1-29 E through H of the Code of Virginia shall apply to local government public employers.

And second, in addition to protecting public employees from predatory dues collection practices by requiring written authorization of union dues payment via payroll deduction, the Department should also consider requiring that any such written authorizations contain a notice of employees' right to join or refrain from joining and financially supporting a union, as protected by both Va. Code § 40.1-62 and the First Amendment to the U.S. Constitution. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 585 U.S. 878 (2018).

Such a notice would help ensure that public employees are properly informed of their legal rights before agreeing to union membership and could read as follows:

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<sup>12</sup> Maxford Nelsen. "Freedom Foundation challenges SEIU 775's telemarketing campaign." The Freedom Foundation. March 12, 2019. <https://www.freedomfoundation.com/labor/freedom-foundation-challenges-seiu-775s-telemarketing-campaign/>

“As a public employee, union membership and dues payment is optional. Your right to join and pay dues to, or to refrain from joining and paying dues to, a labor union is protected both by Virginia law and the First Amendment to the U.S. Constitution. Neither your employer or union may retaliate against you for refusing to join or financially support a labor union. By signing this form, you are authorizing your employer to withhold from your wages or salary union dues in the amount specified by your union. You may revoke this authorization at any time by providing written notice to your employer.”

Lastly, the Department should provide that an employee may cancel such deductions at any time by providing notice to their employer. While a union may argue that an employee who has signed a membership form with an irrevocability provision is obligated to continue paying dues for a specified period, that’s a contractual dispute between the union and the employee to which the local government public employer should not be a party. Ultimate control over the authorization and cancellation of voluntary payroll deductions should lie with the employee, not the labor organization.

### **Prohibit union membership solicitations during public employees’ working hours**

Virginia law prohibits unions from disrupting an employer’s operations by soliciting membership during working hours. Va. Code § 40.1-66 provides,

“Any person, firm, association, corporation, or labor union or organization engaged in lockouts, layoffs, boycotts, picketing, work stoppages or other conduct, a purpose of which is to cause, force, persuade or induce any other person, firm, association, corporation or labor union or organization to violate any provision of this article shall be guilty of illegal conduct contrary to public policy; provided that nothing herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by union members of others to join a union, unaccompanied by any intimidation, use of force, threat of use of force, reprisal or threat of reprisal, and provided that no such solicitation or persuasion shall be conducted so as to interfere with, or interrupt the work of any employee during working hours.”

(Emphasis added).

However, like the requirement that employers obtain employees’ written authorization for payroll deductions, Va. Code § 40.1-66 does not apply to government employers unless the Commissioner adopts specific regulations extending the statute’s application to such employers pursuant to Va. Code § 40.1-2.1, as L&I thankfully now proposes to do.

Like employer-administered payroll deduction of union dues, a top priority of government unions is securing the right to solicit membership during working hours and on work premises, preferably in employer-sanctioned, captive-audience settings. For instance, another “essential” component of a “strong union contract,” according to the NEA, is securing “access to worksites” for union officers and organizers “to meet and communicate on a regular basis with members and potential



members.” (Emphasis added).<sup>13</sup> The NEA further encourages its affiliates to seek the right to “meet new employees to explain the benefits of membership.” (Emphasis added).<sup>14</sup> Ideally, according to the NEA, “all new-hire orientations” will be “conducted in-person during working hours” during which the union will be provided with “no less than 60 minutes” to present to employees.<sup>15</sup>

While unions may sometimes argue that their participation in new employee orientations (NEOs) is simply for the purpose of explaining employees’ workplace rights, there is little doubt that unions’ primary purpose in gaining access to the employer’s NEO is to solicit membership from new employees.

- A 2017 guide released by the union-backed nonprofit Jobs with Justice explained in detail how unions can use new hire orientations to indoctrinate employees into signing up for union membership and becoming union activists. The report encourages unions to think of the orientations as “formal socialization” — a “structured and organized experience, typically occurring in a group setting” — the purpose of which is to “instill in new members... loyalty to the union, willingness to volunteer on behalf of the union, and sense of responsibility to the union.” According to the guide, union presentations during NEOs can be used to: “[e]ncourage new hires to become active union members”; “sign up new members”; and make sure the union “does not lose out on dues money and the potential participation of new active members.”<sup>16</sup>
- In Washington state, where union participation in public employee NEOs is statutorily required, public records obtained by the Freedom Foundation show state officials describing union organizers as, “aggressive,” “forceful,” “rude,” “unprofessional,” “coercive,” “demanding,” and “bullying.” These same staff report employees feeling “pressured,” “misled,” “tricked,” “coerced,” “intimidated” and “forced” into signing union membership forms. In at least one case, state officials reported an employee being reduced to tears by the high-pressure tactics of two union organizers.<sup>17</sup>
- In 2021, an employee of the Washington State Department of Labor and Industries leaked a recording of the union’s presentation during their on-the-clock NEO. The recording shows union organizers slandering ideological opponents by name and deploying fear-mongering and divisive class warfare rhetoric to encourage employees to sign up for union membership. Among other things, union organizers tried to turn employees against the agency, claiming it would attempt to “gaslight” them, and stated, “The unions are the only backstop to preventing, like, total takeover of, you know, our lives, basically. It truly is, like, an us-versus-them situation.”<sup>18</sup>

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<sup>13</sup> National Education Association. “8 essentials to a strong union contract without fair-share fees.”

<https://www.freedomfoundation.com/wp-content/uploads/2018/03/NEA-8Essentials.pdf>

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Maxford Nelsen. “Guide explains how unions indoctrinate employees into joining.” The Freedom Foundation. May 31, 2018. <https://www.freedomfoundation.com/labor/guide-explains-how-unions-indoctrinate-employees-into-joining/>

<sup>17</sup> *Id.*

<sup>18</sup> Maxford Nelsen. “Union reps caught on tape trashing Freedom Foundation at L&I employee orientation.” Freedom Foundation. <https://www.freedomfoundation.com/labor/union-reps-caught-on-tape-trashing-freedom-foundation-at-li-employee-orientation/>

Of the 17 Virginia municipalities that we have identified as extending collective bargaining to their employees, at least 15 allow labor organizations to make presentations at employer-conducted NEOs on paid time. *See Appendix.*

There is no public policy justification for requiring taxpayers to subsidize a private special interest group's ability to solicit membership during public employees' workday. Similarly, there is no reason to subject public employees to coercive union membership pitches, particularly in captive-audience settings like employer sanctioned and mandated NEOs. Accordingly, the Department should adopt its proposed regulation and extend Va. Code § 40.1-66 to public employers in the Commonwealth and prevent unions from soliciting membership from public employees during working hours.

For the sake of clarity, L&I should also consider expanding the proposed rule to specifically state that (1) a labor organization may not interfere with or interrupt the work of an employee by soliciting membership during working hours and (2) local government public employers may not authorize, facilitate, or knowingly permit a labor organization to interfere with or interrupt the work of an employee by soliciting membership during working hours, particularly in group settings like NEOs.

## **Enforcement**

The Department's proposed regulations appropriately deploy a variety of existing enforcement mechanisms to ensure compliance with statutory secret-ballot protections, written authorization requirements, and anti-solicitation provisions.<sup>19</sup> In addition, L&I proposes a new 16VAC15-70-30, which would allow the Commissioner to request Commonwealth attorneys to prosecute violations.

While the Freedom Foundation supports the substance of the proposed regulation, the phrase "violations of law relating to local government union requirements and employee protections" may not be fully aligned with the terms defined elsewhere in the proposed regulations. Accordingly, we suggest that the language be adjusted to read as follows (additions to L&I proposal underlined, deletions ~~struck~~):

The commissioner may request prosecution by the appropriate attorney for the Commonwealth of all violations of law relating to local government union requirements and employee protections, before any court of competent jurisdiction, of all violations of this chapter or those provisions of the Code of Virginia extended to local government public employers by 16VAC15-70-20.

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<sup>19</sup> L&I identifies and/or extends Va. Code § 40.1-6 2, § 40.1-7, §§ 40.1-29.E, F, G and H, § 40.1-49.4 F 2, § 40.1-66, § 40.1-67, and § 40.1-69 as "compliance mechanisms." *See* Virginia Department of Labor and Industry. "Proposed Agency Background Document" regarding "Proposed Regulation for Local Government Union Requirements and Employee Protections." December 13, 2024.  
[https://townhall.virginia.gov/l/GetFile.cfm?File=62\6575\10604\AgencyStatement\\_DOLI\\_10604\\_v2.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=62\6575\10604\AgencyStatement_DOLI_10604_v2.pdf)

## Conclusion

As collective bargaining by municipal governments becomes more common across the Commonwealth, ensuring that public employees' rights and taxpayers' interests are protected is increasingly important. The Department's proposed regulations are a welcome exercise of its clear statutory authority and would provide much-needed standards and safeguards for the collective bargaining process. We appreciate the opportunity to offer public comment and encourage the Department to proceed with the promulgation of final regulations.

Respectfully,

A handwritten signature in black ink, appearing to read 'Maxford Nelsen', with a stylized, sweeping flourish at the end.

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**Appendix:**  
*Summary of Local Government  
Collective Bargaining in Virginia*

| Employer                        | Collective Bargaining Ordinance/Resolution | Certified Union                                 | Collective Bargaining Agreement? | Secret Ballot Election Required?   | Payroll Deduction of Union Dues? | Voice Authorization Permitted for Payroll Deduction? | Union Participation in New Employee Orientation? |
|---------------------------------|--|---|----------------------------------|--|----------------------------------|--|--|
| Albemarle County Public Schools | <a href="#">4/11/2024</a>                  | Albemarle Education Association                 | N/A                              | Yes (Res. Sec. 7)  | Yes (Res. Sec. 3(E))             | Yes (Res. Sec. 3(E))                                 | Yes (Res. Sec. 3(C))                             |
| Arlington County                | <a href="#">July 2021</a>                  | AFSCME Local 3001                               | <a href="#">FY 2024 MOU</a>      | Election process specified, but no specific guarantee of secret ballot (Ord. Subs. I)          | Yes (Ord. Subs. K(5))            | N/A  | Yes (Ord. Subs. K(4))                            |
|                                 |  | IAFF Local 2800                                 | <a href="#">2023-26</a>          |  |                                  |  |  |
|                                 |  | Arlington Coalition of Police                   | <a href="#">2023-26</a>          |  |                                  |  |  |
| Arlington Public Schools        | <a href="#">5/25/2022</a>                  | Arlington School Administrators                 | <a href="#">2023-24</a>          | Unclear. Secret ballot elections are referenced but not specifically required (Res. Sec. 5(A)) | Yes (Res. Sec. 6(C))             | Yes (Res. Sec. 6(C))                                 | Yes (Res. Sec. 6(D)(2))                          |
|                                 |  | Arlington Education Association (Licensed Unit) | <a href="#">2024-27</a>          |  |                                  |  |  |
|                                 |  | Arlington Education Association (Support Unit)  | <a href="#">2024-26</a>          |  |                                  |  |  |
| Charlottesville City Schools    | <a href="#">5/4/2023</a>                   | Charlottesville Education Association           | <a href="#">2025-28</a>          | Yes (Res. Sec(4)(A))   | Yes (Res. Sec 5(A))              | Yes (Res. Sec 5(A))                                  | Yes (Res. Sec 5(C)(3))                           |
| City of Alexandria              | <a href="#">4/17/2021</a>                  | AFSCME Local 3001                               | <a href="#">2024-27</a>          | Election process specified, but no specific guarantee of secret ballot (Ord. Sec. 2-5-75)      | Yes (Ord. Sec. 2-5-77(e))        | Yes (Ord. Sec. 2-5-77(e))                            | Yes (Ord. Sec. 2-5-77(d))                        |
|                                 |  | IAFF Local 2141                                 | <a href="#">2023-26</a>          |  |                                  |  |  |
|                                 |  | Southern States Police Benevolent Association   | <a href="#">2023-26</a>          |  |                                  |  |  |
| City of Charlottesville         | <a href="#">10/3/2022</a>                  | IAFF Local 2363                                 | <a href="#">2024-27</a>          | Yes (Ord. Sec 19-210(a))   | Yes (CBA Art. 9)                 | N/A  | N/A  |
|                                 |  | Southern States Police Benevolent Association   | <a href="#">2024-26</a>          |  | Yes (CBA Art. 9)                 | N/A  | Yes (CBA Sec. 8.11)                              |
|                                 |  | ATU Local 1220                                  | <a href="#">2024-27</a>          |  | Yes (CBA Art. 9)                 | N/A  | Yes (CBA Art. 5(B))                              |
|                                 |  | Teamsters Local 29                              | <a href="#">2025-29</a>          |  | Yes (CBA Art. 9)                 | N/A  | Yes (CBA Art. 11(3))                             |
| City of Portsmouth              | <a href="#">11/14/2023</a>                 | N/A   | N/A                              | N/A  | N/A                              | N/A  | N/A  |
| City of Richmond                | <a href="#">7/25/2022</a>                  | SEIU Virginia 512                               | <a href="#">2024-27</a>          | Election process specified, but no specific guarantee of secret ballot                         | Yes (Ord. Sec. 2-1301.11(b)(5))  | Yes (Ord. Sec. 2-1301.11(b)(5))                      | Yes (Ord. Sec. 2-1301.11(b)(4))                  |
|                                 |  | Richmond Coalition of Police                    | <a href="#">2024-27</a>          |  |                                  |  |  |
|                                 |  | IAFF Local 995                                  | <a href="#">2024-27</a>          |  |                                  |  |  |

|                                      |                            |  |                         |   |                            |                            |   |
|--------------------------------------|----------------------------|--|-------------------------|---|----------------------------|----------------------------|---|
|                                      |                            |  |                         | (Ord. Sec. 2-1301.9)  |                            |                            |   |
| Fairfax County                       | <a href="#">10/19/2021</a> | Southern States Police Benevolent Association                            | <a href="#">2024-27</a> | Yes (Ord. Sec. 3-10-8(A))   | Yes (Ord. Sec. 3-10-11(g)) | Yes (Ord. Sec. 3-10-11(g)) | Yes (Ord. Sec. 3-10-11(f))                                    |
|                                      |                            | IAFF Local 2068  | <a href="#">2024-27</a> |   |                            |                            |   |
| Fairfax County Public Schools        | <a href="#">3/2/2023</a>   | Fairfax Education Unions - Instructional                                 | <a href="#">2025-28</a> | Yes (Res. Sec. 8)   | Yes (Res. Sec. 4(5))       | N/A                        | Yes (CBA Art. IV(7))  |
|                                      |                            | Fairfax Education Unions - Operational                                   | <a href="#">2025-28</a> |   |                            |                            | Yes (CBA Art. IV(7))  |
|                                      |                            | Fairfax County Federation of Principals, Supervisors, and Administrators | N/A                     |   |                            |                            | N/A   |
| Falls Church City Public Schools     | <a href="#">3/28/2023</a>  | Falls Church City Education Association (Certified)                      | <a href="#">2024-27</a> | Unclear. Resolution references secret ballot elections, but says that ballots are the "property" of the union (Res. Sec. 6)   | Yes (Res. Sec. 7(G))       | Yes (Res. Sec. 7(G))       | Yes (Res. Sec. 7(E))  |
|                                      |                            | Falls Church City Education Association (Non-Certified)                  | <a href="#">2024-26</a> |   |                            |                            |   |
| Harrisonburg City Public Schools     | <a href="#">11/14/2024</a> | N/A  | N/A                     | Yes (Res. Sec. 3(C)(2))   | Yes (Res. Sec. 4(C))       | Yes (Res. Sec. 4(C))       | Yes (Res. Sec. 4(E)(3))                                       |
| Loudoun County                       | <a href="#">12/7/2021</a>  | IAFF Local 3756  | <a href="#">2024-27</a> | Unclear. Ordinance describes a "secret, mail-ballot election" but notes "[t]he election may take place by an alternate method if agreed by the parties." (Ord. Sec. 259.09(C)(2)) | Yes (Ord. Sec. 259.06(8))  | N/A                        | Yes (Ord. Sec. 259.06(B)(2))                                  |
|                                      |                            | SEIU Virginia 512  | <a href="#">2025-28</a> |   |                            |                            |   |
| Montgomery County Public Schools     | <a href="#">4/4/2023</a>   | Montgomery County Education Association                                  | <a href="#">2024-25</a> | Yes (Res. Sec. 4)   | Yes (Res. Sec. 5(A))       | Yes (Res. Sec. 5(A))       | Yes (Res. Sec. 5(C)(3))                                       |
| Prince William County                | <a href="#">7/11/2023</a>  | IUPA Local 5010  | <a href="#">2024-28</a> | Yes (Ord. Sec. 2-217(b)(6))   | Yes (Ord. Sec. 2-219(b))   | N/A                        | Yes, but employee attendance is optional (Ord. Sec. 2-211(2)) |
|                                      |                            | IAFF Local 2598  | <a href="#">2024-28</a> |   |                            |                            |   |
| Prince William County Public Schools | <a href="#">12/7/2022</a>  | Prince William Education Association                                     | <a href="#">2024-27</a> | Yes (Res. Sec. 8(B)(6))   | Yes (Res. Sec. 10(B))      | N/A                        | N/A   |

|                         |                           |  |                         |   |                      |                      |                         |
|-------------------------|---------------------------|--|-------------------------|---|----------------------|----------------------|-------------------------|
| Richmond Public Schools | <a href="#">12/3/2021</a> | Richmond Education Association (Licensed)              | <a href="#">2023-26</a> | No. Certification by card check is specifically authorized (Res. Sec. 4(B)) | Yes (Res. Sec. 5(A)) | Yes (Res. Sec. 5(A)) | Yes (Res. Sec. 5(C)(3)) |
|                         |                           | Richmond Education Association (Support professionals) | <a href="#">2023-26</a> |   |                      |                      |                         |
|                         |                           | Richmond Education Association (Office associates)     | <a href="#">2024-27</a> |   |                      |                      |                         |
|                         |                           | Teamsters Local 322                                    | <a href="#">2024-27</a> |   |                      |                      |                         |