

HB 582 (Guzman) Additional Policy Analysis

Collective bargaining is the negotiation process between an employer and a union or association comprised of workers to govern the terms and conditions of the workers' employment. Public employees and their would-be-representatives are excluded from the [National Labor Relations Act](#) and are instead subject to state and local laws governing collective bargaining. The [Code of Virginia](#) currently prohibits collective bargaining for public employees in Virginia but does allow them to form associations to promote their interests.

Local governments are not private businesses. Elected officials are responsible for making budgetary decisions in public and are accountable to taxpayers. Employee associations are currently permitted by [law](#) to advocate for their interests (including for increased benefits and compensation) at both the state and local level. Under collective bargaining, demands on employee salary and benefit increases can exceed the available resources of local governments, forcing local governments to either raise taxes and/or a reduce existing benefits and services.

Local governments already provide local resources for core services well beyond the minimums required by state law. For example, in FY2019, local governments invested more than \$4 billion above what is required for K-12 education. This includes significant contributions to teacher salaries and other employee benefits.

HB 582 takes a "one size fits all" approach to units of local government and does not account for differences in population, resources, and units of government. For instance, a local public employer with a small population such as a rural county will be challenged to administer multiple collective bargaining agreements affecting different groups of employees. There may be large and well-resourced local public employers with the resources and desire to engage in collective bargaining, but unlike the permissive language in SB 939, HB 582 provides no such option to local governing bodies who do not wish to engage in collective bargaining.

HB 582 fails to adequately account for the unique relationship in Virginia between local governing bodies and public employers (such as school boards) which do not have taxing authority or control over revenues. Local school boards rely on a combination of federal, state, and local funding. Local school boards are [prohibited](#) from entering into any contract to expend funds beyond what has been appropriated for the current fiscal year.

HB 582 has no delayed implementation date. The law will take effect on July 1, 2020 and employees may begin petitioning to form collective bargaining units and electing exclusive representatives at that time. This is an aggressive implementation date as collective bargaining for public employees has never occurred before in Virginia and it is uncertain if the PERB will be appointed and adequately staffed at that time. The Governor has until October 1, 2020 to make appointments to the PERB. Furthermore, the PERB is not required to have any local public employer representation or expertise.

HB 582 allows for a minority of employees in a collective bargaining unit to elect an exclusive representative for the entire unit. Only 30 percent of employees in a unit are required to petition to receive designation as a collective bargaining unit from the PERB. In electing an exclusive representative, the majority choice of *votes cast* is the determinate factor, not the majority of the employees. There is no minimum threshold for employee participation in the election.

Furthermore, the determination made by the PERB shall not be subject to challenge by any person, employee, organization, or public employer. This leaves no recourse or right of judicial review. While the bill outlines 16 specific categories of bargaining units for state employees, it includes no such information for local governments and leaves the determination of bargaining units to the PERB.

HB 582 undermines existing grievance personnel management procedures. In the section of the legislation detailing the powers of public employers, there is no mention of authority to manage operations, make business related decisions, issue minor discipline (exclusive from the grievance process) implement and update work rules, policies, and/or procedures. This will force many minor workplace issues to the grievance process. Additionally, any employee shall have the right at any time to present a grievance as long as the exclusive bargaining representative has been given the opportunity to be present during the grievance process. Lastly, though the legislation uses the word “grievance,” it does not provide a definition of the term nor distinguishes between formal and informal grievances.

HB 582 requires collective bargaining agreements to provide for final and binding arbitration of disputes. This removes the final decision from employers and allows representatives of the PERB to impose terms and conditions upon local governments, preempting local authority. The standards in the bill for judicial review of arbitration are high and difficult for an employer to meet.

HB 582 does not provide for a specific process to finalize a collective bargaining agreement. The bill requires that the chief executive of a public employer submit a request for funds necessary to implement the agreement and for any other matter requiring the approval of the governing body. If a governing body rejects the submission, either party may reopen negotiations.

Besides the removal of local option and authority, the most troubling aspect of HB 582 is the fiscal impact to local governments. As previously reported, VACo requested a local [Fiscal Impact Statement](#) from the Commission on Local Government. Read the full [statement](#) here.

According to the executive summary in the statement:

“A majority of localities noted that the bill would require (i) additional staff for collective bargaining contracts including ensuring compliance, (ii) additional attorneys/legal team

that specialize in labor relations, (iii) and upgrading financial/payroll system to allow management and collection of dues. They also noted that their estimated cost does not include the possible increases in benefits due to collective bargaining, but the locality that provided the highest estimate is based on difference between union and nonunion compensation, which does not take into account any benefits which could be expected to greater. Some localities noted that the bill would require increase in real estate tax rate to comply with the provisions of the bill. Of those who responded with no cost, [they] noted that [the] cost of the bill indeterminate but would be significant.”

If enacted, local governments should expect general increases in wages and benefits costs through collective bargaining. Local governments will be forced to either raise taxes and/or a reduce existing benefits and services to their communities.

HB 582 is a preemption of local option and an unfunded mandate to local governments. For those reasons and the points articulated in this alert, VACo continues to oppose this legislation and urges you to contact your legislators with your concerns.

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