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## SENATE BILL NO. 1450

Offered January 19, 2021

A *BILL to amend and reenact §§ 2.2-2203.3, 2.2-2901.1, 2.2-3004, 15.2-1500.1, 15.2-1507, as it is currently effective and as it shall become effective, 15.2-1604, 22.1-295.2, 22.1-306, 23.1-2415, and 33.2-290 of the Code of Virginia, relating to COVID-19 vaccination; discrimination in employment prohibited.*

Patron—Chase

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 2.2-2203.3, 2.2-2901.1, 2.2-3004, 15.2-1500.1, 15.2-1507, as it is currently effective and as it shall become effective, 15.2-1604, 22.1-295.2, 22.1-306, 23.1-2415, and 33.2-290 of the Code of Virginia are amended and reenacted as follows:

**§ 2.2-2203.3. Employees; employment; personnel rules.**

A. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination on the basis of race, religion, color, sex, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or national origin.

B. Any employee of the Virginia Commercial Space Flight Authority who is a member of any plan providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) shall continue to be a member of such health insurance plan under the same terms and conditions. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to (i) establish a health insurance plan for the benefit of its employees and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees under the state employees' health insurance plan, provided that such agreements require the Authority to pay the costs of providing health insurance coverage under such plan.

C. Any retired employee of the Virginia Commercial Space Flight Authority shall be eligible to receive the health insurance credit set forth in § 51.1-1400, provided the retired employee meets the eligibility criteria set forth in that section.

D. The Authority is hereby authorized to establish one or more retirement plans for the benefit of its employees (the Authority retirement plan). For purposes of such plans, the provisions of § 51.1-126.4 shall apply, *mutatis mutandis*. Any Authority employee who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 (the statutory optional retirement plan) at the time the Authority retirement plan becomes effective shall continue to be a member of the Virginia Retirement System or the statutory optional retirement plan under the same terms and conditions, unless such employee elects to become a member of the Authority retirement plan. For purposes of this subsection, the "Virginia Retirement System" shall include any hybrid retirement program established under Title 51.1.

The following rules shall apply:

1. The Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or the statutory optional retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for any employee who elects to remain a member of the Virginia Retirement System or a statutory optional retirement plan.

2. Employees who elect to become members of the Authority retirement plan shall be given full credit for their creditable service as defined in § 51.1-124.3 and vesting and benefit accrual under the Authority retirement plan. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or any statutory optional retirement plan.

3. For employees who elect to become members of the Authority retirement plan, the Virginia Retirement System or the statutory optional retirement plan, as applicable, shall transfer to the Authority retirement plan assets equal to the actuarially determined present value of the accrued basic benefits for such employees as of the transfer date. For purposes hereof, "basic benefits" means the benefits accrued under the Virginia Retirement System or under the statutory optional retirement plan based on creditable

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59 service and average final compensation as defined in § 51.1-124.3. The actuarial present value shall be  
60 determined by using the same actuarial factors and assumptions used in determining the funding needs  
61 of the Virginia Retirement System or the statutory optional retirement plan so that the transfer of assets  
62 to the Authority retirement plan will have no effect on the funded status and financial stability of the  
63 Virginia Retirement System or the statutory optional retirement plan. The Authority shall reimburse the  
64 Virginia Retirement System for the cost of actuarial services necessary to determine the present value of  
65 the accrued basic benefit of employees who transfer to an Authority retirement plan.

66 4. The Authority may provide that employees of the Authority who are eligible to participate in any  
67 deferred compensation plan sponsored by the Authority shall be enrolled automatically in such plan,  
68 unless such employee elects, in a manner prescribed by the Board of the Authority, not to participate.  
69 The amount of the deferral under the automatic enrollment and the group of employees to which the  
70 automatic enrollment shall apply shall be set by the Board, provided, however, that such employees are  
71 provided the opportunity to increase or decrease the amount of the deferral in accordance with the  
72 Internal Revenue Code of 1986, as amended.

73 E. The Authority is hereby authorized to establish a plan providing short-term disability and  
74 long-term disability benefits for its employees.

75 **§ 2.2-2901.1. Employment discrimination prohibited.**

76 A. For the purposes of this section, "age" means being an individual who is at least 40 years of age.

77 B. No state agency, institution, board, bureau, commission, council, or instrumentality of the  
78 Commonwealth shall discriminate in employment on the basis of race, color, religion, national origin,  
79 sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation,  
80 gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

81 C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of  
82 sex or age in those instances when sex or age is a bona fide occupational qualification for employment  
83 or (ii) providing preference in employment to veterans.

84 **§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally.**

85 A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating  
86 to the following adverse employment actions in which the employee is personally involved, including (i)  
87 formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals  
88 resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written  
89 personnel policies, procedures, rules, and regulations where it can be shown that policy was misapplied  
90 or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age,  
91 disability, national origin, sex, pregnancy, childbirth or related medical conditions, marital status, sexual  
92 orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a  
93 veteran; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the  
94 use of or participation in the grievance procedure or because the employee has complied with any law  
95 of the United States or of the Commonwealth, has reported any violation of such law to a governmental  
96 authority, has sought any change in law before the Congress of the United States or the General  
97 Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for  
98 exercising any right otherwise protected by law.

99 B. Management reserves the exclusive right to manage the affairs and operations of state government.  
100 Management shall exercise its powers with the highest degree of trust. In any employment matter that  
101 management precludes from proceeding to a grievance hearing, management's response, including any  
102 appropriate remedial actions, shall be prompt, complete, and fair.

103 C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment  
104 and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by  
105 the employee as a condition of employment or which may reasonably be expected to be a part of the  
106 job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules  
107 and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v)  
108 termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work  
109 force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within  
110 the agency; and (vii) relief of employees from duties of the agency in emergencies.

111 D. Except as provided in subsection A of § 2.2-3003, decisions regarding whether a grievance  
112 qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays  
113 of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The  
114 employee may appeal the denial of a hearing by the agency head to the Director of the Department of  
115 Human Resource Management (the Director). Upon receipt of an appeal, the agency shall transmit the  
116 entire grievance record to the Department of Human Resource Management within five workdays. The  
117 Director shall render a decision on whether the employee is entitled to a hearing upon the grievance  
118 record and other probative evidence.

119 E. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is  
120 employed or in any other locality agreed to by the employee, employer, and hearing officer. The

employee and the agency may be represented by legal counsel or a lay advocate, the provisions of § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and be cross-examined.

**§ 15.2-1500.1. Employment discrimination prohibited; sexual orientation or gender identity.**

A. As used in this section, "age" means being an individual who is at least 40 years of age.

B. No department, office, board, commission, agency, or instrumentality of local government shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

**§ 15.2-1507. (Effective until July 1, 2021) Provision of grievance procedure; training programs.**

A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to certify it as provided in this section, the local governing body shall be deemed to have adopted a grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The locality shall provide its employees with copies of the applicable grievance procedure upon request. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

Each grievance procedure, and each amendment thereto, in order to comply with this section, shall be certified in writing to be in compliance by the city, town, or county attorney, and the chief administrative officer of the locality, and such certification filed with the clerk of the circuit court having jurisdiction in the locality in which the procedure is to apply. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter, unless certified and filed as provided above within a shorter time period.

Each grievance procedure shall include the following components and features:

1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in clause (iii) of subdivision 2; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (iv), there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification, or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity that may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means, and personnel by which work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment, and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi), the action shall be upheld upon a showing by the local government that (a) there was a valid business reason for the action and (b) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

182 (1) Appointees of elected groups or individuals;  
183 (2) Officials and employees who by charter or other law serve at the will or pleasure of an  
184 appointing authority;  
185 (3) Deputies and executive assistants to the chief administrative officer of a locality;  
186 (4) Agency heads or chief executive officers of government operations;  
187 (5) Employees whose terms of employment are limited by law;  
188 (6) Temporary, limited term, and seasonal employees;  
189 (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose  
190 grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected  
191 to proceed pursuant to those provisions in the resolution of their grievance, or any other employee  
192 electing to proceed pursuant to any other existing procedure in the resolution of his grievance.  
193 b. Notwithstanding the exceptions set forth in subdivision a, local governments, at their sole  
194 discretion, may voluntarily include employees in any of the excepted categories within the coverage of  
195 their grievance procedures.  
196 c. The chief administrative officer of each local government, or his designee, shall determine the  
197 officers and employees excluded from the grievance procedure, and shall be responsible for maintaining  
198 an up-to-date list of the affected positions.  
199 4. Grievance procedure availability and coverage for employees of community services boards,  
200 redevelopment and housing authorities, and regional housing authorities. Employees of community  
201 services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing  
202 authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance  
203 procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii)  
204 a grievance procedure established and administered by the department, board, or authority that is  
205 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations  
206 promulgated pursuant thereto. If a department, board, or authority fails to establish a grievance  
207 procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure that is  
208 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations  
209 adopted pursuant thereto for so long as it remains in noncompliance.  
210 5. General requirements for procedures.  
211 a. Each grievance procedure shall include not more than four steps for airing complaints at  
212 successively higher levels of local government management and a final step providing for a panel  
213 hearing or a hearing before an administrative hearing officer upon the agreement of both parties.  
214 b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to  
215 submit an initial complaint and to appeal each decision through the steps of the grievance procedure.  
216 c. Nothing contained in this section shall prohibit a local government from granting its employees  
217 rights greater than those contained herein, provided that such grant does not exceed or violate the  
218 general law or public policy of the Commonwealth.  
219 6. Time periods.  
220 a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability  
221 of the parties to prepare for a fair consideration of the issues of concern.  
222 b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event  
223 giving rise to the grievance, but local governments may, at their option, allow a longer time period.  
224 c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant  
225 than the time that is allowed for local government response in each comparable situation.  
226 d. Time frames may be extended by mutual agreement of the local government and the grievant.  
227 7. Compliance.  
228 a. After the initial filing of a written grievance, failure of either party to comply with all substantial  
229 procedural requirements of the grievance procedure, including the panel or administrative hearing,  
230 without just cause shall result in a decision in favor of the other party on any grievable issue, provided  
231 the party not in compliance fails to correct the noncompliance within five workdays of receipt of written  
232 notification by the other party of the compliance violation. Such written notification by the grievant shall  
233 be made to the chief administrative officer, or his designee.  
234 b. The chief administrative officer, or his designee, at his option, may require a clear written  
235 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his  
236 designee, shall determine compliance issues. Compliance determinations made by the chief  
237 administrative officer shall be subject to judicial review by filing petition with the circuit court within  
238 30 days of the compliance determination.  
239 8. Management steps.  
240 a. The first step shall provide for an informal, initial processing of employee complaints by the  
241 immediate supervisor through a nonwritten, discussion format.  
242 b. Management steps shall provide for a review with higher levels of local government authority  
243 following the employee's reduction to writing of the grievance and the relief requested on forms

supplied by the local government. Personal face-to-face meetings are required at all of these steps.

c. With the exception of the final management step, the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

9. Qualification for panel or administrative hearing.

a. Decisions regarding grievability and access to the procedure shall be made by the chief administrative officer of the local government, or his designee, at any time prior to the panel hearing, at the request of the local government or grievant, within 10 calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on or before a certain date.

b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the chief administrative officer or his designee and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

10. Final hearings.

a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative hearing officer, as set forth in the locality's grievance procedure, as described below:

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2), consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) If the grievance procedure adopted by the local governing body provides for the final step to be an impartial panel hearing, local governments may retain the panel composition method previously approved by the Department of Human Resource Management and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from

305 the Department of Human Resource Management. If a local government elects to use an administrative  
306 hearing officer, it shall bear the expense of such officer's services.

307 (4) When the local government uses a panel in the final step of the procedure, there shall be a  
308 chairperson of the panel and, when panels are composed of three persons (one each selected by the  
309 respective parties and the third from an impartial source), the third member shall be the chairperson.

310 (5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by  
311 legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine,  
312 question and present evidence on behalf of the grievant or respondent before the panel or hearing officer  
313 without being in violation of the provisions of § 54.1-3904.

314 (6) The decision of the panel or hearing officer shall be final and binding and shall be consistent  
315 with provisions of law and written policy.

316 (7) The question of whether the relief granted by a panel or hearing officer is consistent with written  
317 policy shall be determined by the chief administrative officer of the local government, or his designee,  
318 unless such person has a direct personal involvement with the event or events giving rise to the  
319 grievance, in which case the decision shall be made by the attorney for the Commonwealth of the  
320 jurisdiction in which the grievance is pending.

321 b. Rules for panel and administrative hearings.

322 Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or  
323 administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such  
324 hearings. Rules that are promulgated shall include the following provisions:

325 (1) That neither the panels nor the hearing officer have authority to formulate policies or procedures  
326 or to alter existing policies or procedures;

327 (2) That panels and the hearing officer have the discretion to determine the propriety of attendance at  
328 the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the  
329 hearing shall be private;

330 (3) That the local government provide the panel or hearing officer with copies of the grievance  
331 record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel  
332 or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing,  
333 shall be allowed access to and copies of all relevant files intended to be used in the grievance  
334 proceeding;

335 (4) That panels and hearing officers have the authority to determine the admissibility of evidence  
336 without regard to the burden of proof, or the order of presentation of evidence, so long as a full and  
337 equal opportunity is afforded to all parties for the presentation of their evidence;

338 (5) That all evidence be presented in the presence of the panel or hearing officer and the parties,  
339 except by mutual consent of the parties;

340 (6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing  
341 officer in advance of the hearing;

342 (7) That the majority decision of the panel or the decision of the hearing officer, acting within the  
343 scope of its or his authority, be final, subject to existing policies, procedures and law;

344 (8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

345 (9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that  
346 the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do  
347 not necessarily apply.

348 11. Implementation of final hearing decisions.

349 Either party may petition the circuit court having jurisdiction in the locality in which the grievant is  
350 employed for an order requiring implementation of the hearing decision.

351 B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under  
352 the provisions of this section that would result in the reinstatement of any employee of a sheriff's office  
353 who has been terminated for cause may be reviewed by the circuit court for the locality upon the  
354 petition of the locality. The review of the circuit court shall be limited to the question of whether the  
355 decision of the panel or hearing officer was consistent with provisions of law and written policy.

356 **§ 15.2-1507. (Effective July 1, 2021) Provision of grievance procedure; training programs.**

357 A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to  
358 certify it as provided in this section, the local governing body shall be deemed to have adopted a  
359 grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2  
360 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The  
361 locality shall provide its employees with copies of the applicable grievance procedure upon request. The  
362 term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or  
363 fringe benefits.

364 Each grievance procedure, and each amendment thereto, in order to comply with this section, shall  
365 be certified in writing to be in compliance by the city, town, or county attorney, and the chief  
366 administrative officer of the locality, and such certification filed with the clerk of the circuit court

having jurisdiction in the locality in which the procedure is to apply. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter, unless certified and filed as provided above within a shorter time period.

Each grievance procedure shall include the following components and features:

1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in clause (iii) of subdivision 2; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (iv), there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification, or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity that may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means, and personnel by which work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment, and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi), the action shall be upheld upon a showing by the local government that (a) there was a valid business reason for the action and (b) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

(1) Appointees of elected groups or individuals;

(2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;

(3) Deputies and executive assistants to the chief administrative officer of a locality;

(4) Agency heads or chief executive officers of government operations;

(5) Employees whose terms of employment are limited by law;

(6) Temporary, limited term, and seasonal employees;

(7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance; and

(8) Law-enforcement officers as defined in § 9.1-601 whose grievance is subject to the provisions of § 9.1-601 and relates to a binding disciplinary determination made by a law-enforcement civilian oversight body, except as permitted by subsection F of § 9.1-601.

b. Notwithstanding the exceptions set forth in subdivision a, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing

authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board, or authority that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board, or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as it remains in noncompliance.

5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management, and a final step providing for a panel hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

c. Nothing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided that such grant does not exceed or violate the general law or public policy of the Commonwealth.

6. Time periods.

a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event giving rise to the grievance, but local governments may, at their option, allow a longer time period.

c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant than the time that is allowed for local government response in each comparable situation.

d. Time frames may be extended by mutual agreement of the local government and the grievant.

7. Compliance.

a. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel or administrative hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the chief administrative officer, or his designee.

b. The chief administrative officer, or his designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his designee, shall determine compliance issues. Compliance determinations made by the chief administrative officer shall be subject to judicial review by filing petition with the circuit court within 30 days of the compliance determination.

8. Management steps.

a. The first step shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a nonwritten, discussion format.

b. Management steps shall provide for a review with higher levels of local government authority following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the local government. Personal face-to-face meetings are required at all of these steps.

c. With the exception of the final management step, the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

9. Qualification for panel or administrative hearing.

a. Decisions regarding grievability and access to the procedure shall be made by the chief administrative officer of the local government, or his designee, at any time prior to the panel hearing, at the request of the local government or grievant, within 10 calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief



administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on or before a certain date.

b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the chief administrative officer or his designee and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

#### 10. Final hearings.

a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative hearing officer, as set forth in the locality's grievance procedure, as described below:

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2), consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) If the grievance procedure adopted by the local governing body provides for the final step to be an impartial panel hearing, local governments may retain the panel composition method previously approved by the Department of Human Resource Management and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from the Department of Human Resource Management. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel or hearing officer is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

#### b. Rules for panel and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules that are promulgated shall include the following provisions:

(1) That neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels and the hearing officer have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;

(3) That the local government provide the panel or hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding;

(4) That panels and hearing officers have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;

(5) That all evidence be presented in the presence of the panel or hearing officer and the parties, except by mutual consent of the parties;

(6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing officer in advance of the hearing;

(7) That the majority decision of the panel or the decision of the hearing officer, acting within the scope of its or his authority, be final, subject to existing policies, procedures and law;

(8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

#### 11. Implementation of final hearing decisions.

Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the hearing decision.

B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under the provisions of this section that would result in the reinstatement of any employee of a sheriff's office who has been terminated for cause may be reviewed by the circuit court for the locality upon the petition of the locality. The review of the circuit court shall be limited to the question of whether the decision of the panel or hearing officer was consistent with provisions of law and written policy.

#### **§ 15.2-1604. Appointment of deputies and employment of employees; discriminatory practices by certain officers; civil penalty.**

A. It shall be an unlawful employment practice for a constitutional officer:

1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of appointment or employment, because of such individual's race, color, religion, sex, age, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, national origin, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran; or

2. To limit, segregate, or classify his appointees, employees, or applicants for appointment or employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of the individual's race, color, religion, sex, age, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, national origin, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

B. Nothing in this section shall be construed to make it an unlawful employment practice for a constitutional officer to hire or appoint an individual on the basis of his sex or age in those instances where sex or age is a bona fide occupational qualification reasonably necessary to the normal operation of that particular office. The provisions of this section shall not apply to policy-making positions, confidential or personal staff positions, or undercover positions.

C. With regard to notices and advertisements:

1. Every constitutional officer shall, prior to hiring any employee, advertise such employment position in a newspaper having general circulation or a state or local government job placement service in such constitutional officer's locality except where the vacancy is to be used (i) as a placement opportunity for appointees or employees affected by layoff, (ii) as a transfer opportunity or demotion for an incumbent, (iii) to fill positions that have been advertised within the past 120 days, (iv) to fill positions to be filled by appointees or employees returning from leave with or without pay, (v) to fill temporary positions, temporary employees being those employees hired to work on special projects that have durations of three months or less, or (vi) to fill policy-making positions, confidential or personal staff positions, or special, sensitive law-enforcement positions normally regarded as undercover work.

2. No constitutional officer shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such constitutional officer indicating any preference, limitation,

specification, or discrimination, based on sex or national origin, except that such notice or advertisement may indicate a preference, limitation, specification, or discrimination based on sex or age when sex or age is a bona fide occupational qualification for employment.

D. Complaints regarding violations of subsection A may be made to the Division of Human Rights of the Department of Law. The Division shall have the authority to exercise its powers as provided in Article 4 (§ 2.2-520 et seq.) of Chapter 5 of Title 2.2.

E. Any constitutional officer who willfully violates the provisions of subsection C shall be subject to a civil penalty not to exceed \$2,000.

**§ 22.1-295.2. Employment discrimination prohibited.**

A. For the purposes of this section, "age" means being an individual who is at least 40 years of age.

B. No school board or any agent or employee thereof shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

**§ 22.1-306. Definitions.**

As used in this article:

"Business day" means any day that the relevant school board office is open.

"Day" means calendar days unless a different meaning is clearly expressed in this article. Whenever the last day for performing an act required by this article falls on a Saturday, Sunday, or legal holiday, the act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the dismissal of any teacher during the term of such teacher's contract.

"Grievance" means a complaint or dispute by a teacher relating to his employment, including (i) disciplinary action including dismissal; (ii) the application or interpretation of (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances, and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step, meeting, or hearing relating to a grievance, or serving as a member of a fact-finding panel; and (iv) complaints of discrimination on the basis of race, color, creed, religion, political affiliation, disability, age, national origin, sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or status as a veteran. Each school board shall have the exclusive right to manage the affairs and operations of the school division. Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (1) establishment and revision of wages or salaries, position classifications, or general benefits; (2) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; (3) the establishment or contents of ordinances, statutes, or personnel policies, procedures, rules, and regulations; (4) failure to promote; (5) discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject, or insufficient funding; (6) hiring, transfer, assignment, and retention of teachers within the school division; (7) suspension from duties in emergencies; (8) the methods, means, and personnel by which the school division's operations are to be carried on; or (9) coaching or extracurricular activity sponsorship.

While these management rights are reserved to the school board, failure to apply, where applicable, the rules, regulations, policies, or procedures as written or established by the school board is grievable.

**§ 23.1-2415. Employees of the Authority.**

A. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions are based upon the merit and fitness of applicants, and prohibit discrimination on the basis of race, religion, color, sex, sexual orientation, gender identity, *vaccination status with respect to any COVID-19 vaccine*, or national origin.

B. The Authority shall issue a written notice to all individuals whose employment is transferred to the Authority. The date upon which such written notice is issued is referred to in this section as the "Option Date." Each individual whose employment is transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of MCV Hospitals who (i) elects not to become employed by the Authority; (ii) is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (iii) is not offered alternative employment by the Authority; (iv) is not offered a position with the Authority for which the employee is qualified; or (v) is offered a position by the Authority that requires relocation or a reduction in salary is eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority has voluntarily separated from state employment and is not eligible for the severance benefits conferred by

674 the provisions of the Workforce Transition Act.

675 C. Without limiting its power generally with respect to employees, the Authority may employ any  
676 University employee utilized in the operation of the hospital facilities and assume obligations under any  
677 employment agreement for such employee, and the University may assign any such contract to the  
678 Authority.

679 D. The Authority and the University may enter into agreements providing for the purchase of  
680 services of University employees utilized in the operation of the hospital facilities by paying  
681 agreed-upon amounts to cover all or part of the salaries and other costs of such employees.

682 E. Notwithstanding any other provision of law to the contrary, any employee whose employment is  
683 transferred to the Authority as a result of this chapter and who is a member of any plan for providing  
684 health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a  
685 member of such health insurance plan under the same terms and conditions of such plan.

686 F. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to  
687 employees who elect to continue to be members of the state employees' health insurance plan shall be  
688 paid by the Authority.

689 G. Any employee of the Authority may elect to become a member of any health insurance plan  
690 established by the Authority. The Authority may (i) establish a health insurance plan for the benefit of  
691 its employees, residents, and interns and (ii) enter into an agreement with the Department of Human  
692 Resource Management providing for the coverage of its employees, interns, and residents under the state  
693 employees' health insurance plan, provided that such agreement requires the Authority to pay the costs  
694 of providing health insurance coverage under such plan.

695 H. Notwithstanding any other provision of law to the contrary, any employee whose employment is  
696 transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement  
697 System or another retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title  
698 51.1 shall continue to be a member of the Virginia Retirement System or such other authorized  
699 retirement plan under the same terms and conditions of such plan. Any such employee and any  
700 employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be  
701 covered by the Virginia Retirement System may elect, during an open enrollment period from April 1,  
702 2001, through April 30, 2001, to become a member of the retirement plan established by the Authority  
703 for the benefit of its employees pursuant to § 23.1-2416 by transferring assets equal to the actuarially  
704 determined present value of the accrued basic benefit as of the transfer date. The Authority shall  
705 reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine  
706 the present value of the accrued basic benefit of employees who elect to transfer to the Authority's  
707 retirement plan. The following rules shall apply to such transfers:

708 1. With respect to any transferred employee who elects to remain a member of the Virginia  
709 Retirement System or another authorized retirement plan, the Authority shall collect and pay all  
710 employee and employer contributions to the Virginia Retirement System or such other authorized  
711 retirement plan for retirement in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of  
712 Title 51.1 for such transferred employees.

713 2. Transferred employees who elect to become members of the retirement plan established by the  
714 Authority for the benefit of its employees shall be given full credit for their creditable service as defined  
715 in § 51.1-124.3, vesting and benefit accrual under the retirement plan established by the Authority. For  
716 any such employee, employment with the Authority shall be treated as employment with any  
717 nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan as  
718 authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

719 3. For transferred employees who elect to become members of the retirement plan established by the  
720 Authority, the Virginia Retirement System or other such authorized plan shall transfer to the retirement  
721 plan established by the Authority assets equal to the actuarially determined present value of the accrued  
722 basic benefit as of the transfer date. For the purposes of such calculation, the basic benefit is the benefit  
723 accrued under the Virginia Retirement System or another authorized retirement plan based on creditable  
724 service and average final compensation as defined in § 51.1-124.3 and determined as of the transfer date.  
725 The actuarial present value shall be determined on the same basis, using the same actuarial factors and  
726 assumptions used in determining the funding needs of the Virginia Retirement System or such other  
727 authorized retirement plan so that the transfer of assets to the retirement plan established by the  
728 Authority has no effect on the funded status and financial stability of the Virginia Retirement System or  
729 other such authorized retirement plan.

730 **§ 33.2-290. Executive Director; agents and employees.**

731 A. The Board shall employ an Executive Director of the Authority, who shall not be a member of  
732 the Board and who shall serve at the pleasure of the Board, to direct the day-to-day operations and  
733 activities of the Authority and carry out the powers and duties conferred upon him as may be delegated  
734 to him by the Board. The Executive Director's compensation from the Commonwealth shall be fixed by  
735 the Board in accordance with law. This compensation shall be established at a level that will enable the

736 Authority to attract and retain a capable Executive Director.

737 B. The Executive Director shall employ or retain such other agents or employees subordinate to the  
738 Executive Director as may be necessary, subject to the Board's approval.

739 C. Employees of the Authority shall be employed on such terms and conditions as established by the  
740 Authority and shall be considered employees of the Commonwealth. Employees of the Authority shall  
741 be eligible for membership in the Virginia Retirement System or other retirement plans authorized by  
742 Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 and participation in all health and related  
743 insurance and other benefits, including premium coverage and flexible benefits, available to state  
744 employees and provided by law. The Board shall develop and adopt personnel rules, policies, and  
745 procedures to give its employees grievance rights, ensure that employment decisions shall be based upon  
746 merit and fitness of applicants, and prohibit discrimination on the basis of race, religion, color, national  
747 origin, sex, pregnancy, childbirth or related medical conditions, age, sexual orientation, marital status,  
748 *vaccination status with respect to any COVID-19 vaccine*, or disability. Notwithstanding any other  
749 provision of law, the Board shall develop, implement, and administer a paid leave program, which may  
750 include annual, personal, and sick leave or any combination thereof. All other leave benefits shall be  
751 administered in accordance with Chapter 11 (§ 51.1-1100 et seq.) or Chapter 11.1 (§ 51.1-1150 et seq.)  
752 of Title 51.1, except as otherwise provided in this section.