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HOUSE BILL NO. 338**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Labor and Commerce
on _____)

(Patron Prior to Substitute—Delegate Lopez)

A *BILL* to amend the Code of Virginia by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-988, relating to authority of local governments; service employees.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-988 as follows:

§ 15.2-988. Service employees; transition period.

A. For the purposes of this section:

"Awarding authority" means any person that awards a service contract or subcontract to a service employer. "Awarding authority" does not include the United States or the Commonwealth but may, at the election of the governing body of a locality, include such locality.

"Covered location" means, at the election of the governing body of a locality, any one of the following, whether publicly or privately owned: (i) a multifamily residential building with more than 50 units; (ii) a commercial center, office building, or complex of contiguous commercial or office buildings occupying more than 75,000 square feet; (iii) an elementary or secondary school or institution of higher education; (iv) a cultural center or complex, such as a museum, convention center, arena, or performance hall; (v) an industrial site or pharmaceutical lab; (vi) an airport or train station; or (vii) a warehouse or distribution center.

"Employer" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity that employs service employees. "Employer" may, at the election of the governing body of a locality, include such locality. "Employer" does not include the United States or the Commonwealth.

"Service employee" means an employee employed at least 16 hours per week at a covered location performing (i) work in connection with the care or maintenance of property, including a janitor, security officer, groundskeeper, concierge, door staff, maintenance technician, handyman, superintendent, elevator operator, window cleaner, or building engineer; (ii) passenger-related security services, cargo-related and ramp services, and in-terminal, passenger handling, and cleaning services at an airport; or (iii) food preparation services at a an elementary or secondary school or institution of higher education.

"Successor service employer" means an employer that (i) is awarded a contract for service employees to provide, in whole or in part, services that are substantially similar to those provided by an incumbent service employer at any time during the previous 90 days; (ii) has purchased or acquired control of a property located in a certain locality where an incumbent service employer directly employed service employees at any time during the previous 90 days; or (iii) terminates a contract for service employees and hires service employees as its direct employees to perform services that are substantially similar to those provided during the previous 90 days within 90 days after a contract for service employees is terminated or canceled.

"Transition period" means the 90-day time period from the date the successor service employer begins work at a covered location.

B. A locality may, by ordinance or resolution, require compliance with one or more of the following provisions:

1. That successor service employers shall retain incumbent service employees during the transition period.

2. That successor service employers may dismiss retained service employees during the transition period only (i) for just cause or (ii) as a part of a reduction in its workforce if the successor service employer (a) finds that fewer service employees are required to perform the work than the incumbent service employer had employed; (b) retains service employees by seniority within each job classification; (c) maintains a preferential hiring list of those service employees not retained; and (d) hires any additional service employees from such list, in order of seniority, until all affected service employees have been offered employment.

3. That, as soon as practicable, but no later than 30 days before a successor service employer begins work at a work site, the awarding authority or incumbent service employer shall provide written notice to the incumbent service employees and their collective bargaining representative, if applicable, that a successor service employer will become the new service employer at the work site.

4. That the awarding authority or incumbent service employer shall provide a list of relevant information, including the names, positions, and contact information of any incumbent service employees, to the successor service employer. Such notice shall be given no later than 30 days prior to the start of the transition period.

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60 5. That the successor service employer shall perform a written performance evaluation for each retained
61 service employee at the end of the 90-day transition employment period.

62 6. That any service employee who suffers loss by reason of a violation of any provision of a local
63 ordinance or resolution enacted pursuant to this section may bring a civil action against his employer to
64 enforce such local ordinance or resolution by judicial order and to obtain back pay for each day during
65 which the violation continues, inclusive of any benefits the service employee would have received. Any person
66 who is successful in such action shall recover reasonable attorney fees, witness fees, and court costs incurred
67 in bringing such action. A finding of a willful violation of the provisions of this section may increase damages
68 by three times the actual damages sustained or \$1,000, whichever is greater.

69 C. Notwithstanding any provision of law to the contrary, a successor service employer may retain fewer
70 than all incumbent service employees during the transition period if it finds that fewer service employees are
71 necessary to perform the work.