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HOUSE BILL NO. 582**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Labor and Commerce)

(Patrons Prior to Substitute—Delegates Guzman and Levine [HB 327])

House Amendments in [] - February 5, 2020

A BILL to amend the Code of Virginia by adding in Chapter 4 of Title 40.1 an article numbered 2.2, consisting of sections numbered 40.1-57.4 through 40.1-57.22, and to repeal § 40.1-54.3 and Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1, relating to collective bargaining by public employees; labor organization representation.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 4 of Title 40.1 an article numbered 2.2, consisting of sections numbered 40.1-57.4 through 40.1-57.22, as follows:

Article 2.2.

*Collective Bargaining by Public Employees.***§ 40.1-57.4. Definitions.**

As used in this article, unless the context requires a different meaning:

"Arbitration" means the procedure whereby the parties [, other than any local school board or other public local educational agency,] involved in an impasse or grievance dispute submit their differences to a third party for a final and binding decision or as otherwise provided in this article. [For any local school board or other public local educational agency, "arbitration" means the procedure whereby a third party provides advisory recommendations to the school board.]

"Board" means the Public Employee Relations Board established pursuant to § 40.1-57.7.

"Collective bargaining," "bargain collectively," or "negotiate" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, and other terms and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement, and includes executing a written contract incorporating the terms of any agreement reached.

"Confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

"Employee organization" means an organization in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment.

"Exclusive bargaining representative" or "exclusive representative" means an employee organization certified as the exclusive bargaining representative of a bargaining unit by the Board pursuant to the provisions of this article.

"Governing body" means the General Assembly; the Board; any council or commission, whether elected or appointed, of the Commonwealth; any local government; or any other public body that determines the policies for operation of a political subdivision or public institution of higher education of the Commonwealth.

"Impasse" means the failure of a public employer and an exclusive bargaining representative to reach agreement in the course of negotiations.

"Local government" means:

1. Any county, city, or town, as defined in § 15.2-102, or other local or regional political subdivision or body politic and corporate, designated as such by the General Assembly; or

2. Any [~~public~~ local] school [~~division~~ board] or other [~~public~~] local educational agency.

"Local government employee" means any individual who is employed by a local government, except individuals exempted from the provisions of this article by § 40.1-57.6.

"Mediation" means assistance by an impartial third party to reconcile an impasse between a public employer and the exclusive bargaining representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice.

"Professional employee" means any (i) employee engaged in work (a) predominantly intellectual and varied in character rather than routine mental, manual, mechanical, or physical work; (b) involving the consistent exercise of discretion and judgment in its performance; (c) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (d) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or

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60 a hospital, as distinguished from a general academic education or from an apprenticeship or from
61 training in the performance of routine mental, manual, or physical processes, or (ii) any employee who
62 has completed the courses of specialized intellectual instruction and study described in clause (d) and is
63 performing related work under the supervision of a professional person in order to meet the
64 qualifications described in clause (i).

65 "Public educational employer" means a school board or the governing body under any joint
66 agreement of any type formed by two or more school districts.

67 "Public employee" means any state employee or local government employee, except individuals
68 exempted from the provisions of this article by § 40.1-57.6.

69 "Public employer" means the any state agency or local government.

70 "State agency" means the Commonwealth or any agency, department, or institution thereof, including
71 any public institution of higher education and any independent political subdivisions.

72 "State employee" means any individual who is employed by a state agency, except individuals
73 exempted from the provisions of this article by § 40.1-57.6.

74 "Strike" means, in concerted action with others, a public employee's refusal to report to duty, or
75 willful absence from his position, or stoppage of work, for the purpose of inducing, influencing, or
76 coercing a change in the conditions, compensation, rights, privileges, or obligations of public
77 employment.

78 "Supervisor" means an employee who devotes a majority of work time to supervisory duties, who
79 customarily and regularly directs the work of two or more other employees, and who has the authority,
80 in the interest of the employer, to hire, promote, or discipline other employees or to recommend such
81 actions effectively, but does not include individuals who perform merely routine, incidental, or clerical
82 duties or who occasionally assume supervisory or directory roles or whose duties are substantially
83 similar to those of their subordinates and does not include lead employees and employees who have
84 authority limited to assigning and directing employees.

85 **§ 40.1-57.5. Collective bargaining by public employees.**

86 Public employees may:

- 87 1. Organize, or form, join, or assist, any employee organization or refrain from any such activity;
- 88 2. Negotiate collectively through representatives of their own choosing; and
- 89 3. Engage in other concerted activities for the purposes of collective bargaining or other mutual aid
90 or protection insofar as any such activity is not prohibited by this article or any other law of the
91 Commonwealth.

92 **§ 40.1-57.6. Exemptions from article.**

93 The following public employees shall be excluded from the provisions of this article:

- 94 1. Elected officials, persons appointed to fill vacancies in elected offices, [~~and~~] members of any
95 board or commission [, and employees of officers elected pursuant to Article VII, Section 4 of the
96 Constitution of Virginia] ;
- 97 2. Representatives of a public employer, including the administrative officer, director, or chief
98 executive officer of a public employer, or major division thereof, as well as his deputy, first assistant,
99 and any nonbargaining unit supervisory employees, provided, however, that nothing herein shall be
100 construed to prohibit a public employer from bargaining with, and entering into a contract with, a labor
101 organization certified to represent a separate unit composed solely of supervisors;
- 102 3. Confidential employees;
- 103 4. Temporary public employees employed for a period of four months or less in any 24-month
104 period;
- 105 5. Judicial branch employees, including any judge as defined in § 51.1-301, referees, receivers,
106 arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons
107 appointed by any court to exercise judicial functions, and jurors and notaries public;
- 108 6. Patients and inmates employed, sentenced, or committed to any state or local institution; and
- 109 7. Employees working for the legislature of the Commonwealth.

110 **§ 40.1-57.7. Public Employee Relations Board created; powers.**

111 A. The Public Employee Relations Board is established as a supervisory board, within the meaning
112 of § 2.2-2100, in the executive branch of state government. The Board shall be composed of three
113 members, of which:

- 114 1. One member shall be representative of management;
- 115 2. One member shall be representative of labor, who shall be selected from a list of names submitted
116 by the Virginia AFL-CIO; and
- 117 3. One member shall be representative of the public.

118 The Governor shall make initial appointments to the Board by October 1, 2020. The appointments
119 shall be subject to confirmation by the General Assembly. The member described in subdivision 3 shall
120 serve as chair of the Board. The Governor shall make initial appointments by October 1, 2020.

121 B. All members shall be appointed by the Governor for a term of three years or until their

122 successors have been appointed and qualified, provided that the initial appointment of the member
 123 described in subdivision 1 shall be for a term of one year and the initial appointment of the member
 124 described in subdivision 2 shall be for a term of two years.

125 C. A minimum of two members shall be required to constitute a quorum to conduct official business
 126 of the Board in a contested case. In the event there are two or more vacancies on the Board for a
 127 period of 120 days or more, a party to a contested case may seek to remove the case to the circuit
 128 court for the locality where the case arose.

129 D. Members of the Board shall receive such compensation for the performance of their duties as
 130 provided in § 2.2-2813. However, the chair of the Board shall be entitled to such compensation for the
 131 performance of his duties as may be provided therefor in the appropriation act. All members shall be
 132 reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as
 133 provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the
 134 members shall be provided by the Department.

135 E. The Board shall:

136 1. Administer the provisions of this article;

137 2. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive
 138 evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and
 139 delegate such power to a member of the Board, or persons appointed or employed by the Board,
 140 including hearing officers for the performances of its functions. In cases of refusal to obey a subpoena
 141 issued by the Board, the circuit court of the locality where the person refusing to obey such subpoena
 142 may be found, on application by the Board, may issue an order requiring such person to appear before
 143 the Board and to testify and produce evidence ordered relating to the matter under investigation, and
 144 any failure to obey such order shall be punished by the court as a contempt thereof; and

145 3. Adopt such regulations and rules as it may deem necessary to carry out the purposes of this
 146 article.

147 F. The Board shall have the power to:

148 1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;

149 2. Adopt, use, and alter at will a common seal;

150 3. Make and enter into all contracts and agreements necessary or incidental to the performance of
 151 its duties, the furtherance of its purposes, and the execution of its powers under this article;

152 4. Employ, at its discretion, such employees as may be necessary and fix their compensation to be
 153 payable from funds made available to the Board. Legal services for the Board shall be provided by the
 154 Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of Title 2.2;

155 5. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business
 156 shall be transacted and the manner in which the powers of the Board shall be exercised and its duties
 157 performed. The Board may delegate or assign any duty or task to be performed by the Board to any
 158 officer or employee of the Board. The Board shall remain responsible for the performance of any such
 159 duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by
 160 written guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines
 161 shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not
 162 relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;

163 6. Conduct or engage in any lawful activity, effort, or project consistent with the Board's purposes or
 164 necessary or convenient to exercise its powers;

165 7. Develop policies and procedures generally applicable to the procurement of goods, services, and
 166 construction, based upon competitive principles;

167 8. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of
 168 Title 2.2;

169 9. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the
 170 production of records, memoranda, papers, and other documents before the Board or any agent of the
 171 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board
 172 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take
 173 testimony thereunder, and decide cases, subject to final decision by the Board, on application of any
 174 party aggrieved. The Board may enter into consent agreements. Any such consent agreement shall
 175 include findings of fact and may include an admission or a finding of a violation. A consent agreement
 176 shall not be considered a case decision of the Board and shall not be subject to judicial review under
 177 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), but may be considered by the
 178 Board in future proceedings; and

179 10. Do all acts necessary or advisable to carry out the purposes of this article.

180 **§ 40.1-57.8. Powers of public employers.**

181 Unless limited by the provisions of a collective bargaining agreement or by other statutory
 182 provisions, a public employer may:

183 1. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public
184 employees;

185 2. Determine qualifications for employment and the nature and content of personnel examinations;
186 and

187 3. Take actions as may be necessary to carry out the mission of the public employer in emergencies
188 as defined in § 44-146.16.

189 **§ 40.1-57.9. Duty to negotiate in good faith.**

190 A. The public employer and an employee organization that is the exclusive bargaining representative
191 shall meet at reasonable times, including meetings reasonably in advance of the public employer's
192 budget-making process, to negotiate in good faith with respect to wages, hours, and other terms and
193 conditions of employment. [~~The~~ Except when the employer is a local school board or other local
194 education agency, the] collective bargaining agreement negotiated between the employer and the
195 exclusive bargaining representative shall contain a grievance resolution procedure that shall apply to all
196 employees in the bargaining unit and shall provide for final and binding arbitration of disputes
197 concerning disciplinary and adverse personnel actions and the administration or interpretation of the
198 agreement including questions of eligibility for arbitration. The collective bargaining agreement
199 negotiated between the employer and the exclusive bargaining representative shall also include a
200 provision for the payroll deduction of fees and dues to such labor organization. Where an employee is
201 in a bargaining unit represented by an exclusive representative, the public employer shall honor a
202 payroll deduction authorization only for dues and fees paid to the exclusive representative. The public
203 employer shall negotiate only with the exclusive bargaining representative on matters contained in this
204 article. Such obligation to negotiate in good faith does not compel either party to agree to a proposal
205 or make a concession.

206 B. The public employer shall honor the terms of employees' authorizations for payroll deductions to
207 an exclusive representative made in any form including those that satisfy the Uniform Electronic
208 Transactions Act (§ 59.1-479 et seq.), including without limitation electronic authorizations and voice
209 authorizations. Unless the exclusive representative otherwise directs, the public employees' requests to
210 cancel or change authorizations for payroll deductions shall be directed to the exclusive representative
211 and not to the public employer. The exclusive bargaining representative shall be responsible for
212 processing these requests in accordance with the terms of the authorization. An exclusive representative
213 that certifies that it has and will maintain individual public employees' authorizations shall not be
214 required to provide a copy to the public employer unless a dispute arises about the existence or terms
215 of that authorization. The exclusive bargaining representative shall indemnify the public employer for
216 any disputed deductions made by a public employee for deductions in reliance on that authorization.

217 C. 1. a. Not later than 10 calendar days after the hire of a public employee, a public employer shall
218 provide the following contact information to such employee's exclusive bargaining representative, in an
219 editable electronic format agreed to by the exclusive bargaining representative: name, job title, worksite
220 location, home address, work telephone number, and any home telephone number, personal cell phone
221 number, and personal email address on file with the public employer.

222 b. A public employer shall provide the exclusive bargaining representatives with a list of all contact
223 information specified in subdivision a in an editable electronic format agreed to by the exclusive
224 bargaining representative, for all employees in a bargaining unit, not less than once a month.

225 c. Records of public employee contact information specified in subdivisions a and b are not public
226 records under the Virginia Public Records Act (§ 42.1-76 et seq.).

227 2. A public employer shall provide an exclusive bargaining representative reasonable access to the
228 public employees that the exclusive bargaining representative represents. Such access includes:

229 a. The right to meet with employees during the work day to discuss and investigate grievances and
230 other workplace issues;

231 b. The right to conduct worksite meetings during meal periods and other breaks, and before and
232 after the workday; and

233 c. The right to address newly hired employees on paid time for no less than 30 minutes during new
234 employee orientations, within 30 days of hire or, if the public employer does not conduct new employee
235 orientations, at individual or group meetings of new employees within 30 days of hire. Attendance at
236 such orientations or meetings shall be mandatory for newly hired employees. Managers, supervisors,
237 and other non-bargaining unit employees shall not attend the exclusive bargaining representative's
238 presentation. The public employer shall give the exclusive bargaining representative not less than 10
239 days' written notice of such an orientation, except shorter notice may be provided where there is an
240 urgent need critical to the public employer's operations that was not reasonably foreseeable by the
241 public employer. The structure and manner of such access to new employee orientations shall be
242 determined through mutual agreement.

243 3. Exclusive bargaining representatives shall have the right communicate with bargaining unit
244 members concerning collective bargaining; the administration of collective bargaining agreements,

245 grievances, and other workplace issues; and internal union matters via the employer's email systems or
 246 other communication systems commonly used at the workplace.

247 **§ 40.1-57.10. Prohibited conduct.**

248 A. No public employer or exclusive bargaining representative shall refuse to negotiate in good faith
 249 with respect to the scope of negotiations as defined in § 40.1-57.11.

250 B. No public employer or its designated representative shall:

251 1. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this
 252 article;

253 2. Dominate or interfere in the administration of any employee organization;

254 3. Encourage or discourage membership in any employee organization, committee, or association
 255 including by discrimination in hiring, tenure, or other terms or conditions of employment;

256 4. Discharge or discriminate against any public employee because he has filed an affidavit, petition,
 257 or complaint or given any information or testimony under this article, or because he has formed, joined,
 258 or chosen to be represented by any exclusive bargaining representative;

259 5. Refuse to negotiate collectively with representatives of any employee organization that is an
 260 exclusive bargaining representative as required in this article;

261 6. Deny the rights accompanying certification as the exclusive representative granted in this article;

262 7. Refuse to participate in good faith in any agreed-upon impasse procedures or those set forth in
 263 this article;

264 8. Refuse to reduce a collective bargaining agreement to writing and sign such agreement; or

265 9. Disclose to any private entity, other than the exclusive representative, personally identifiable
 266 information about public employees within a bargaining unit that is exempt from disclosure, including
 267 the contact information specified in § 40.1-57.9.

268 C. No employee organization or its agents shall:

269 1. Interfere with, restrain, or coerce a public employee with respect to rights granted in this article
 270 or with respect to selecting an exclusive representative;

271 2. Fail to represent an employee who is in a bargaining unit exclusively represented by the employee
 272 organization fairly and without discrimination provided such failure is willful or deliberate;

273 3. Refuse to bargain collectively with the public employer as required in this article;

274 4. Refuse to participate in good faith in any agreed-upon impasse procedures or procedures set forth
 275 in this article; or

276 5. Violate the impasse provisions of this article, which hereby are made applicable to public
 277 employers, [except local school boards or other local educational agencies;] public employees [; ;]
 278 and exclusive representatives.

279 **§ 40.1-57.11. Board procedures.**

280 A. Proceedings against a party alleging a violation of § 40.1-57.10 shall be commenced by filing a
 281 charge with the Board within six months of the alleged violation, or acquiring knowledge thereof, and
 282 causing a copy of the charge to be served upon the accused party in the manner of an original notice
 283 as provided in § 40.1-57.21. The accused party shall have 10 days within which to file a written answer
 284 to the charge. The Board may conduct a preliminary investigation of the alleged violation, and if the
 285 Board determines that the charge has no legal or factual basis, it may dismiss the charge. If it does not
 286 dismiss the charge, the Board shall promptly thereafter set a time and place for a hearing in the locality
 287 where the alleged violation occurred or in the locality where the Board maintains its principal office.
 288 The parties shall be permitted to be represented by counsel or other designated representative, summon
 289 witnesses, and request the Board to subpoena witnesses and the production of records on the requester's
 290 behalf. Compliance with the technical rules of pleading and evidence shall not be required.

291 B. The Board may designate a hearing officer to conduct any hearing. The hearing officer shall have
 292 such powers as may be exercised by the Board for conducting the hearing and shall follow the
 293 procedures adopted by the Board for conducting the hearing. The decision of the hearing officer may be
 294 appealed to the Board and the Board may hear the case de novo or upon the record as submitted
 295 before the hearing officer.

296 C. The Board shall provide for an official written transcript to report the proceedings and the Board
 297 shall affix the reasonable amount of compensation for such service, which amount shall be taxed as
 298 other costs.

299 D. The Board shall file its findings of fact and conclusions of law. If the Board finds that the party
 300 accused has violated any provision of this article, the Board may issue an order directing the party to
 301 cease and desist engaging in violation and may order such other affirmative relief as is necessary to
 302 remedy the violation. The Board may petition the circuit court for the locality in which the Board
 303 maintains its principal office, the locality in which the public employer maintains its principal office, or
 304 the locality in which the charge arose for enforcement of its orders.

305 E. Any party aggrieved by any decision or order of the Board may, within 21 days from the date

306 such decision or order is filed, appeal to the circuit court for the locality in which the Board maintains
 307 its principal office, the locality in which the public employer maintains its principal office, or the
 308 locality in which the charge arose to obtain judicial review of an order of the Board entered under this
 309 article. The Board and all parties of record in the proceedings before the Board shall be named as
 310 parties to the appeal. In any judicial review proceeding, the employee organization may sue or be sued
 311 as an entity and on behalf of the employees whom it represents. The service of legal process, summons,
 312 or subpoena upon an officer or agent of the employee organization in his capacity as such shall
 313 constitute service upon such employee organization.

314 F. Within 30 days after a notice of appeal is filed with the Board, it shall make, certify, and file with
 315 the clerk of the court to which the appeal is taken a full and complete transcript of all documents in the
 316 case, including any depositions and a transcript or certificate of the evidence together with the notice of
 317 appeal.

318 G. The transcript as certified and filed by the Board shall be the record on which the appeal shall
 319 be heard, and no additional evidence shall be heard. In the absence of fraud, the findings of fact made
 320 by the Board shall be conclusive if supported by substantial evidence on the record considered as a
 321 whole.

322 H. Any order or decision of the Board may be modified, reversed, or set aside on one or more of the
 323 following grounds and on no other:

- 324 1. If the Board acts without or in excess of its power;
- 325 2. If the order was procured by fraud or is contrary to law;
- 326 3. If the facts found by the Board do not support the order; or
- 327 4. If the order is not supported by substantial evidence on the record considered as a whole.

328 I. When the circuit court, on appeal, reverses or sets aside an order or decision of the Board, it may
 329 remand the case to the Board for further proceedings in harmony with the holdings of the court, or it
 330 may enter the proper judgment, as the case may be. Such judgment or decree shall have the same force
 331 and effect as if action had been originally brought and tried in such court. The assessment of costs in
 332 such appeals shall be at the discretion of the court.

333 **§ 40.1-57.12. Determination of appropriate bargaining unit.**

334 A. Any determination by the Board of an appropriate bargaining unit shall be made upon a petition
 335 being filed by an employee organization or in accordance with this section. Any disputes about the
 336 placement of employees in bargaining units established in subsection C shall be resolved by the Board.

337 B. When a determination of an appropriate unit is necessary, within 30 days of receipt of a petition,
 338 the Board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file
 339 an order defining the appropriate bargaining unit. In defining the unit, the Board shall take into
 340 consideration, along with other relevant factors, the desires of the employees; the community of interest
 341 including such factors as the similarity of duties, skills, and working conditions of the employees
 342 involved; wages, hours, and other working conditions of the public employees; the efficiency of
 343 operations of the public employer; the administrative structure of the public employer; the
 344 recommendation of the parties; and the history of collective bargaining in other public sector
 345 jurisdictions. Nothing herein shall prohibit the petitioning employee organization and the public
 346 employer from entering into a consent agreement on the appropriate unit in lieu of a hearing.

347 C. Bargaining units of state employees shall include employees in broad classification categories
 348 across the various agencies and departments of the executive branch. There shall be bargaining units
 349 for each of the following:

- 350 1. Administrative services;
- 351 2. Education and media services;
- 352 3. Engineering and technology;
- 353 4. Health and human services counseling services and health care compliance;
- 354 5. Health and human services direct services;
- 355 6. Health and human services health care technology, rehabilitation therapies, pharmaceutical
 356 service, and nurse/physician assistant service;
- 357 7. Health and human services physician service, psychological service, and dental service;
- 358 8. Natural resources and applied science;
- 359 9. Security guards and protective services;
- 360 10. Corrections;
- 361 11. Juvenile justice;
- 362 12. Probation and parole;
- 363 13. Law enforcement;
- 364 14. Firefighters; and
- 365 15. Other public safety services not described in another subdivision of this subsection; and
- 366 16. Trades and operations.

367 D. Each state-controlled enterprise, independent political subdivision, authority, or agency employing

368 public employees not covered by the Virginia Personnel Act (§ 2.2-2900 et seq.), shall have separate
369 bargaining units of such employees as determined by the Board.

370 E. Each public institution of higher education, the Virginia Community College System, the
371 University of Virginia Medical Center, and the Virginia Commonwealth University Health Care System
372 shall have separate bargaining units as determined by the Board, and employees of such bargaining
373 units shall not be included with employees in any bargaining unit described in subsection C.

374 F. Upon request of the exclusive representative involved, there shall be bargaining for state
375 employees by a coalition of all or some exclusive representatives, irrespective of a bargaining unit of
376 state employees described in subsection C, concerning wages, fringe benefits, and those matters that
377 have applicability to more than one bargaining unit of state employees. Upon request of the exclusive
378 representative, there shall be supplementary bargaining on behalf of public employees in a bargaining
379 unit or part of a bargaining unit concerning matters uniquely affecting those public employees, or
380 consolidated bargaining between two or more bargaining units concerning matters affecting those public
381 employees.

382 **§ 40.1-57.13. Certification and decertification of exclusive bargaining representative; representation**
383 **elections.**

384 A. Board certification of an employee organization as the exclusive bargaining representative of a
385 bargaining unit shall be upon a petition filed with the Board by a public employee or an employee
386 organization and an election pursuant to § 40.1-57.14 or upon administratively acceptable evidence that
387 a majority of bargaining unit employees authorized an employee organization to represent them for the
388 purposes of collective bargaining.

389 B. A petition of an employee organization for a representation election shall be accompanied by
390 administratively acceptable evidence that 30 percent of the public employees in an appropriate
391 bargaining unit are members of the employee organization or have authorized it to represent them for
392 the purposes of collective bargaining. A petition by an employee organization for certification without
393 an election shall be accompanied by administratively acceptable evidence alleging that a majority of the
394 public employees in an appropriate bargaining unit are members of the employee organization or have
395 authorized it to represent them for the purposes of collective bargaining. Upon validating the evidence
396 that a majority of the public employees in a bargaining unit are members of the employee organization
397 or have authorized it to represent them for the purposes of collective bargaining, the Board shall certify
398 the employee organization as the exclusive bargaining representative of the bargaining unit [provided
399 no other employee organization submits evidence that at least 30 percent of employees in the
400 appropriate unit support representation for purposes of collective bargaining by that employee
401 organization within 21 days of notification by the Board that it has received the petition as provided in
402 subsection D, in which case the Board shall order an election among employee organizations providing
403 evidence that at least 30 percent of employees in the appropriate bargaining unit support the employee
404 organization] .

405 C. For the purpose of decertification, the petition of a public employee or employee organization
406 shall allege that an employee organization that has been certified or recognized as the exclusive
407 bargaining representative of an appropriate unit does not represent a majority of such public employees
408 and that the petitioners do not want to be represented by an employee organization or seek certification
409 of a different employee organization. Such petition shall be accompanied by administratively acceptable
410 evidence that 50 percent of such employees do not want to be represented by the exclusive
411 representative employee organization or seek certification of a different employee organization. Upon
412 validation of the 50 percent showing of interest, the Board shall conduct a secret ballot election in
413 accordance with this article.

414 D. The Board shall investigate the allegations of any petition and shall give reasonable notice of the
415 receipt of such petition to all public employees, employee organizations, and public employers named or
416 described in such petitions or interested in the representation question. When necessary, the Board shall
417 call an election under § 40.1-57.14 within 30 days of receipt of a petition unless it finds that less than
418 30 percent of the public employees in the unit appropriate for collective bargaining support the petition
419 for certification, or it finds that less than 50 percent of employees in the unit appropriate for collective
420 bargaining support the petition for decertification, or the appropriate bargaining unit has not been
421 determined pursuant to § 40.1-57.12.

422 E. For purposes of this article, administratively acceptable evidence to support a petition for
423 certification without election, for a certification through a representation election, or for a
424 decertification election may consist of a combination of membership cards, evidence of dues payment,
425 petitions to be represented by a bargaining representative, or other evidence of a public employee's
426 desire to be represented by an employee organization for the purposes of collective bargaining. The
427 determination by the Board of the sufficiency of a showing of majority support or sufficiency of support
428 for a representation election shall not be subject to challenge by any person, employee organization, or

429 public employer.

430 F. The hearing and appeal procedures shall be the same as provided for in § 40.1-57.11.

431 **§ 40.1-57.14. Elections.**

432 A. Whenever a petition for an election is filed by an employee or employee organization containing
433 the signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or
434 containing the signatures of at least 50 percent of the public employees in an appropriate unit in the
435 case of decertification, the Board shall conduct a secret ballot representation election to determine
436 whether the public employees in the appropriate bargaining unit wish to be represented by an exclusive
437 bargaining representative. The ballot shall contain the names of the petitioning employee organization,
438 any employee organization submitting within [~~10 days of the initial~~ 21 days of notification by the Board
439 that it has received the] petition containing signatures of at least 30 percent of the public
440 employees within the appropriate bargaining unit, and any incumbent labor organization. The ballot
441 shall also contain a choice of no representation.

442 B. If none of the choices on the ballot receives the vote of a majority of the public employees voting,
443 the Board shall, within 30 days, conduct a run-off election among the two choices receiving the greatest
444 number of votes.

445 C. Upon written objections filed by any party to the election within 10 days after notice of the
446 results of the election, if the Board finds that misconduct or other circumstances prevented the public
447 employees eligible to vote from freely expressing their preferences, the Board may invalidate the election
448 and hold a second or subsequent election for the public employees.

449 D. Upon completion of a valid election in which the majority choice of the bargaining unit
450 employees voting is determined, the Board shall certify the results of the election and shall give
451 reasonable notice to all employee organizations listed on the ballot, the public employers, and the
452 public employees in the appropriate bargaining unit. An employee organization that is the majority
453 choice of the bargaining unit employees voting in a valid election under this section shall be certified by
454 the Board as the exclusive bargaining representative for the bargaining unit employees.

455 E. A petition for decertification or certification of an exclusive bargaining representative shall not be
456 considered by the Board for a period of one year from the date of the certification or noncertification of
457 an exclusive bargaining representative or during the duration of a collective bargaining agreement not
458 to exceed three years. A petition for decertification shall not be considered during the duration of a
459 collective bargaining agreement unless the collective bargaining agreement has been in effect for more
460 than three years or the petition for decertification is filed not more than 210 days and not less than 180
461 days prior to the expiration of the collective bargaining agreement.

462 **§ 40.1-57.15. Duties of bargaining representative.**

463 A. The employee organization certified as the bargaining representative shall be the exclusive
464 representative of all public employees in the bargaining unit and shall represent all public employees
465 fairly, except that any individual employee shall have the right at any time to present a grievance
466 specific to that employee to their public employer and to have such grievances adjusted, without the
467 intervention of the bargaining representative, as long as the adjustment is not inconsistent with the
468 terms of a collective bargaining agreement then in effect and the exclusive bargaining representative has
469 been given the opportunity to be present during the grievance process and at such adjustment.

470 B. The employee organization that is an exclusive bargaining representative and the public employer
471 may designate any individual or individuals as its representatives to engage in collective bargaining
472 negotiations.

473 C. The scope of collective bargaining between a local government and an exclusive bargaining
474 representative of local employees shall include wages, hours, and other terms and conditions of
475 employment, and the duty to bargain includes matters described in Chapter 15 (§ 15.2-1500 et seq.) of
476 Title 15.2; however, benefits provided under Title 51.1 and Title 65.2 shall not be subject to bargaining.
477 To the extent that an agreement is inconsistent with the terms of Chapter 15 of Title 15.2, the terms of
478 the agreement shall prevail. The chief executive officer of a local government shall appoint its
479 representative in collective bargaining.

480 D. The scope of collective bargaining between a state agency and an exclusive representative of state
481 employees shall include wages, hours, and other terms and conditions of employment and shall
482 specifically include matters within the administrative discretion of the Director of Human Resource
483 Management or appointing authorities; however, benefits provided under Title 51.1 and Title 65.2 shall
484 not be subject to bargaining. A collective bargaining agreement may not be inconsistent with the
485 provisions of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, provided that all matters relating to wages,
486 salaries, health benefit plans, and employee and employer contributions to such plans shall be a
487 mandatory subject of collective bargaining and enforceable in any collective bargaining agreement
488 notwithstanding any other provision of law. The Governor shall appoint the state agency's representative
489 in collective bargaining.

490 E. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining

491 representatives, mediation, and the deliberative process of arbitrators shall be exempt from the
492 provisions of § 2.2-3707.

493 **§ 40.1-57.16. Negotiation and impasse procedures.**

494 A. Each state agency and exclusive representative of state employees shall comply with the following
495 negotiation and impasse procedures unless otherwise agreed by the parties to the negotiations:

496 1. A request for negotiations shall be filed in writing by the exclusive representative to the
497 Commonwealth no later than June 1 of odd-numbered years for collective bargaining agreements that
498 are to become effective on July 1 of the following year;

499 2. Negotiations shall begin no later than July 1 in the year the request was filed;

500 3. If an impasse occurs during negotiations, or if no agreement is reached by the parties by October
501 1 in the year the request was filed, either party may submit a request for mediation to the Board. The
502 parties involved shall mutually agree upon a mediator or request the Board to appoint an impartial
503 mediator;

504 4. The mediator shall provide services to the parties until the parties reach agreement, the mediator
505 believes that mediation services are no longer helpful, or October 10, whichever occurs first. If the
506 mediator determines that mediation services are no longer helpful or if the October 10 deadline occurs,
507 the parties shall jointly submit the unresolved issues to final and binding arbitration. The parties shall
508 jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of
509 seven arbitrators from the Federal Mediation and Conciliation Service or the American Arbitration
510 Association. Each party in turn shall strike a name from the list until only one name remains.
511 Negotiations may continue throughout the impasse procedures;

512 5. Each party shall submit a final offer on each separate item remaining at impasse to the arbitrator
513 and the other party within 10 days of selection of the arbitrator. The arbitrator shall determine that
514 either the final offer of the employer or the final offer of the employee organization on each separate
515 issue shall be incorporated into the final collective bargaining agreement; however, the arbitrator shall
516 not amend the offer of either party on any issue;

517 6. The arbitrator shall (i) begin hearings no later than November 20 in accordance with procedures
518 prescribed by the Board and (ii) render a decision in writing no later than December 15;

519 7. Negotiations following the initial certification of an employee organization as an exclusive
520 representative of state employees shall convene within 30 days of the request of either party. Either
521 party may invoke arbitration in accordance with the provisions of subdivisions 4, 5, and 6 any time
522 after 90 days of the first negotiation session. Matters not requiring the approval of the General
523 Assembly shall take effect in accordance with the terms of the agreement or award of an arbitrator.
524 Matters requiring the approval of the General Assembly shall take effect in accordance with
525 § 40.1-57.17. Initial agreements shall expire on June 30 of the next even-numbered year; and

526 8. All time limits in this subsection may be extended by mutual agreement of the parties.

527 B. A request for negotiations shall be filed in writing by an exclusive representative of employees of
528 a local government in a timely fashion reasonably in advance of the local government's budget-making
529 process or in accordance with any collective bargaining agreement in effect.

530 C. A local government and the exclusive representative may enter into a written agreement setting
531 forth an impasse resolution procedure. The procedure shall culminate with binding arbitration.

532 D. If local government and the exclusive representative have not agreed to an impasse resolution
533 procedure, negotiation impasses shall be subject to the following procedures:

534 1. At the request of either party, the parties shall enter into mediation. The parties involved shall
535 mutually agree upon a mediator or request the Board to appoint an impartial mediator.

536 2. At the request of either party, all impasses not resolved through mediation, or if the parties do not
537 agree to mediation, the issues subject to impasse, shall be submitted to final and binding arbitration.
538 The parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall
539 request a list of seven arbitrators from the Federal Mediation and Conciliation Service or American
540 Arbitration Association. Each party in turn shall strike a name from the list until only one name
541 remains. Negotiations may continue throughout the impasse procedures.

542 E. In making any decision under the impasse procedures authorized of this article for any public
543 employer, the panel shall give weight to the following factors:

544 1. The lawful authority of the public employer;

545 2. Stipulations of the parties;

546 3. The interests and welfare of the public;

547 4. The financial ability of the employer to meet the costs of any items to be included in the contract;

548 5. Comparison of wages, hours, and terms and conditions of employment of the employees involved
549 in the arbitration proceedings with the wages, hours, and terms and conditions of employment of other
550 persons performing similar services in the public and private sectors;

551 6. The average consumer prices for goods and services, commonly known as the cost of living;

552 7. The overall compensation presently received by the employees involved in the arbitration including
553 wages, insurance benefits, vacations, holidays, and similar benefits;

554 8. Changes in any of the foregoing circumstances during the pendency of the arbitration
555 proceedings; and

556 9. Such other factors that are normally or traditionally taken into consideration in the determination
557 of wages, hours, and terms and conditions of employment through voluntary collective bargaining,
558 mediation, fact finding, arbitration, or otherwise between the parties, in public service or in private
559 employment.

560 F. The expenses of the arbitrator shall be borne equally by the parties.

561 **§ 40.1-57.17. Funding for implementation of agreements.**

562 A. After a negotiated agreement has been agreed to by both parties, or a final and binding
563 arbitration decision has been rendered in accordance with § 40.1-57.16, the chief executive of the public
564 employer shall submit a request for funds necessary to implement the agreement and for approval of
565 any other matter requiring the approval of the governing body within five days after (i) the date on
566 which the parties finalize the agreement or (ii) the date on which the arbitration decision is issued,
567 unless otherwise specified in this section. If the governing body is not in session at the time, then the
568 submission shall be within five days after it next convenes.

569 B. The governing body shall approve or reject the submission as a whole.

570 C. If the governing body rejects the submission of the public employer, either party may reopen
571 negotiations.

572 D. The parties shall specify that those provisions of the agreement not requiring action by a
573 governing body shall be effective and operative in accordance with the terms of the agreement.

574 E. Upon the expiration of an agreement, the terms of such agreement shall remain in effect until
575 superseded by a new agreement.

576 **§ 40.1-57.18. Judicial review.**

577 The circuit court for the locality in which a dispute arose or in which a majority of the affected
578 employees reside may review an award of the arbitrator or an award of an arbitrator in a grievance
579 arbitration, when the arbitrator was without or exceeded his jurisdiction; the order is not supported by
580 competent, material, and substantial evidence on the whole record; or the order was procured by fraud,
581 collusion or other similar and unlawful means. The pendency of a proceeding for review shall not
582 automatically stay the order of the arbitrator.

583 **§ 40.1-57.19. Strikes; lockouts.**

584 A. In accordance with § 40.1-55, any public employee who, in concert with two or more other such
585 employees, for the purpose of obstructing, impeding, or suspending any activity or operation of his
586 employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of
587 his employment shall, by such action, be deemed to have terminated his employment.

588 B. A public employer shall not lock out employees in the event of a dispute with an employee
589 organization.

590 **§ 40.1-57.20. Civil procedures; personal liability.**

591 A. Any employee organization and public employer may sue or be sued as an entity under the
592 provisions of this article. Service upon the public employer or upon the exclusive bargaining
593 representative shall be made pursuant to Title 8.01.

594 B. Nothing in this article shall be construed to make any individual or his assets liable for any
595 judgment against a public employer or an exclusive bargaining representative.

596 **§ 40.1-57.21. Delivery of notices.**

597 Any notice required under the provisions of this article shall be in writing, but service thereof shall
598 be sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last-known
599 address of the parties, unless otherwise provided in this article or by the rules of the Board, which rules
600 shall provide for the electronic service of documents. Refusal of restricted certified mail by any party
601 shall be considered service. Prescribed time periods shall commence from the date of the receipt of the
602 notice. Any party may at any time execute and deliver an acceptance of service in lieu of a mailed
603 notice.

604 **§ 40.1-57.22. Employee associations permitted.**

605 Nothing in this article shall be construed to limit any person's right to freedom of speech, to
606 association, or to petition or seek redress from the government.

607 2. That § 40.1-54.3 and Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1 of the
608 Code of Virginia are repealed.