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HOUSE BILL NO. 582

Offered January 8, 2020

Prefiled January 6, 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.*

Patrons—Guzman, Bagby, Levine, Mullin, Ward, Aird, Askew, Ayala, Bourne, Carroll Foy, Carter, Cole, J.G., Convirs-Fowler, Delaney, Filler-Corn, Gooditis, Guy, Hayes, Helmer, Heretick, Herring, Hope, Hudson, Hurst, Jenkins, Jones, Keam, Kory, Krizek, Lindsey, Lopez, McQuinn, Plum, Rasoul, Reid, Roem, Samirah, Scott, Sickles, Simon, Simonds, Subramanyam, Tran, VanValkenburg and Willett

Referred to Committee on Labor and Commerce

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 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.

"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 any public employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining or any employee who works in a close, continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the public employer.

"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 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, designated as such by the General Assembly; or

2. Any public school division 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

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

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, or abstinence in whole or in part from the full,
76 faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing,
77 or coercing a change in the conditions, compensation, rights, privileges, or obligations of public
78 employment.

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

86 "Temporary" means foreseeable for a short period of time or for a fixed duration, rather than
87 indefinite or indeterminate.

88 **§ 40.1-57.5. Collective bargaining by public employees.**

89 Public employees may:

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

95 **§ 40.1-57.6. Exemptions from article.**

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

- 97 1. Elected officials, persons appointed to fill vacancies in elected offices, and members of any board
98 or commission;
99 2. Representatives of a public employer, including the administrative officer, director, or chief
100 executive officer of a public employer, or major division thereof, as well as his deputy, first assistant,
101 and any nonbargaining unit supervisory employees, provided, however, that nothing herein shall be
102 construed to prohibit a public employer from bargaining with, and entering into a contract with, a labor
103 organization certified to represent a separate unit composed solely of supervisors;
104 3. Confidential employees;
105 4. Temporary public employees employed for a period of four months or less;
106 5. Any judge as defined in § 51.1-301;
107 6. Patients and inmates employed, sentenced, or committed to any state or local institution; and
108 7. Employees of the General Assembly.

109 **§ 40.1-57.7. Public Employee Relations Board created; powers.**

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

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

117 All members shall be appointed by the Governor, subject to confirmation by the General Assembly.
118 The member described in subdivision 3 shall serve as chair of the Board.

119 B. Two members shall constitute a quorum to conduct official business of the Board in a contested
120 case. In the event that there are two or more vacancies on the Board for a period of 120 days or more,
121 a party to a contested case may seek to remove the case to the circuit court for the locality where the
122 case arose.

123 C. Members of the Board shall receive such compensation for the performance of their duties as
124 provided in § 2.2-2813. However, the chair of the Board shall be entitled to such compensation for the
125 performance of his duties as may be provided therefor in the appropriation act. All members shall be
126 reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as
127 provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the
128 members shall be provided by the Department.

129 D. The Board shall:

130 1. Administer the provisions of this article;

131 2. Maintain, after consulting with exclusive bargaining representatives and public employers, a list of
132 qualified persons representative of the public to be available to serve as mediators and arbitrators;

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

141 4. Adopt such regulations and rules as it may deem necessary to carry out the purposes of this
142 article.

143 E. The Board shall have the power to:

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

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

146 3. Fix, alter, charge, and collect fees and other charges for services rendered by the Board at rates
147 to be determined by the Board for the purpose of providing for the payment of the expenses of the
148 Board;

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

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

154 6. Receive and accept from any federal, state, or private agency, foundation, corporation,
155 association, or person grants or other aid to be expended in accomplishing the objectives of the Board.
156 All federal moneys accepted under this section shall be accepted and expended by the Board upon such
157 terms and conditions as are prescribed by the United States and as are consistent with state law, and
158 all state moneys accepted under this section shall be expended by the Board upon such terms and
159 conditions as are prescribed by the Commonwealth;

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

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

170 9. Develop policies and procedures generally applicable to the procurement of goods, services, and
171 construction, based upon competitive principles;

172 10. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of
173 Title 2.2;

174 11. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the
175 production of records, memoranda, papers, and other documents before the Board or any agent of the
176 Board; and administer oaths and take testimony thereunder. The Board may authorize any Board
177 member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take

178 testimony thereunder, and decide cases, subject to final decision by the Board, on application of any
179 party aggrieved. The Board may enter into consent agreements and may request and accept from any
180 applicant or licensee a consent agreement in lieu of proceedings on disciplinary action. Any such
181 consent agreement shall include findings of fact and may include an admission or a finding of a
182 violation. A consent agreement shall not be considered a case decision of the Board and shall not be
183 subject to judicial review under the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), but
184 may be considered by the Board in future disciplinary proceedings;

185 12. Make a reasonable charge for preparing and furnishing statistical information and compilations
186 to persons other than (i) officials, including court and police officials, of the Commonwealth and of its
187 subdivisions if the information requested is for official use and (ii) persons who have a personal or
188 legal interest in obtaining the information requested if such information is not to be used for
189 commercial or trade purposes; and

190 13. Do all acts necessary or advisable to carry out the purposes of this article.

191 **§ 40.1-57.8. Powers of public employers.**

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

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

196 2. Determine qualifications for employment and the nature and content of personnel examinations;
197 and

198 3. Take actions as may be necessary to carry out the mission of the public employer in emergencies.

199 **§ 40.1-57.9. Duty to negotiate in good faith.**

200 The public employer and an employee organization that is the exclusive bargaining representative
201 shall meet at reasonable times, including meetings reasonably in advance of the public employer's
202 budget-making process, to negotiate in good faith with respect to wages, hours, and other terms and
203 conditions of employment. The collective bargaining agreement negotiated between the employer and the
204 exclusive bargaining representative shall contain a grievance resolution procedure that shall apply to all
205 employees in the bargaining unit and shall provide for final and binding arbitration of disputes
206 concerning disciplinary and adverse personnel actions and the administration or interpretation of the
207 agreement including questions of eligibility for arbitration. The collective bargaining agreement
208 negotiated between the employer and the exclusive bargaining representative shall also include a
209 provision for the payroll deduction of fees and dues to such labor organization. Where an employee is
210 in a bargaining unit represented by an exclusive representative, the public employer shall honor a
211 payroll deduction authorization only for dues and fees paid to the exclusive representative. The public
212 employer shall negotiate only with the exclusive bargaining representative on matters contained in this
213 article. Such obligation to negotiate in good faith does not compel either party to agree to a proposal
214 or make a concession.

215 **§ 40.1-57.10. Prohibited conduct.**

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

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

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

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

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

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

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

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

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

232 8. Refuse to reduce a collective bargaining agreement to writing and sign such agreement.

233 C. No employee organization or its agents shall:

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

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

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

239 4. Refuse to participate in good faith in any agreed-upon impasse procedures or procedures set forth

in this article; or

5. Violate the impasse provisions of this article, which hereby are made applicable to public employers, public employees, and exclusive representatives.

§ 40.1-57.11. Board procedures.

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

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

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

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

E. Any party aggrieved by any decision or order of the Board may, within 21 days from the date such decision or order is filed, appeal to the circuit court for the locality in which the Board maintains its principal office, the locality in which the public employer maintains its principal office, or the locality in which the charge arose to obtain judicial review of an order of the Board entered under this article. The Board and all parties of record in the proceedings before the Board shall be named as parties to the appeal. In any judicial review proceeding, the employee organization may sue or be sued as an entity and on behalf of the employees whom it represents. The service of legal process, summons, or subpoena upon an officer or agent of the employee organization in his capacity as such shall constitute service upon such employee organization.

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

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

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

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

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

§ 40.1-57.12. Determination of appropriate bargaining unit.

A. Any determination by the Board of an appropriate bargaining unit shall be made upon a petition being filed by an employee organization or upon its own initiative.

B. Within 30 days of receipt of a petition or notice to all interested parties if on its own initiative,

the Board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the Board shall take into consideration, along with other relevant factors: the desires of the employees; the community of interest including the existence of clearly identifiable crafts among employees; wages, hours, and other working conditions of the public employees; the efficiency of operations of the public employer; the administrative structure of the public employer; the recommendation of the parties; and the history of collective bargaining in other public sector jurisdictions.

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

1. Administrative services;
2. Education and media services;
3. Engineering and technology;
4. Health and human services;
5. Natural resources and applied science;
6. Public safety, other than sworn officers in highway patrol and firefighters;
7. Sworn officers in highway patrol;
8. Firefighters; and
9. Trades and operations.

D. There may be bargaining for state employees by a coalition of all or some exclusive representatives, irrespective of a bargaining unit of state employees described in subsection C, concerning wages, fringe benefits, and those matters that have applicability to more than one bargaining unit of state employees. Nothing in this article shall be construed to prohibit supplementary bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit concerning matters uniquely affecting those public employees, or coordinated or consolidated bargaining between two or more bargaining units concerning matters affecting those public employees.

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

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

B. A petition of an employee organization for a representation election shall be accompanied by written evidence that 30 percent of the public employees in an appropriate bargaining unit are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining. A petition by an employee organization for certification without an election shall be accompanied by written evidence alleging that a majority of the public employees in an appropriate bargaining unit are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining. Upon validating the evidence that a majority of the public employees in a bargaining unit are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining, the Board shall certify the employee organization as the exclusive bargaining representative of the bargaining unit.

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

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

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

§ 40.1-57.14. Elections.

A. Whenever a petition for an election is filed by an employee or employee organization containing the signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or containing the signatures of at least 50 percent of the public employees in an appropriate unit in the case of decertification, the Board shall conduct a secret ballot representation election to determine whether the public employees in the appropriate bargaining unit wish to be represented by an exclusive bargaining representative. The ballot shall contain the names of the petitioning employee organization, any employee organization submitting within 10 days of the initial petition a petition containing signatures of at least 30 percent of the public employees within the appropriate bargaining unit, and any incumbent labor organization. The ballot shall also contain a choice of no representation.

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

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

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

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

§ 40.1-57.15. Duties of bargaining representative.

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

B. The employee organization that is an exclusive bargaining representative and the public employer may designate any individual or individuals as its representatives to engage in collective bargaining negotiations. Upon demand of either party, collective bargaining between the employer and an exclusive bargaining representative must begin within 60 days of the date of certification of the representative by the Board or in accordance with the terms a collective bargaining agreement then in effect.

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

D. The scope of collective bargaining between a state agency and an exclusive representative of state employees shall include wages, hours, and other terms and conditions of employment within the administrative discretion of the Director of Human Resource Management; however, benefits provided under Title 51.1 and Title 65.2 shall not be subject to bargaining. The Governor shall appoint the state agency's representative in collective bargaining.

E. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining representatives, mediation, and the deliberative process of arbitrators, shall be exempt from the provisions of § 2.2-3707.

§ 40.1-57.16. Negotiation and impasse procedures.

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

1. A request for negotiations shall be filed in writing by the exclusive representative to the

424 *Commonwealth no later than August 1 for collective bargaining agreements that are to become effective*
425 *on July 1 of the following year;*

426 *2. Negotiations shall begin no later than September 10 in the year the request was filed;*

427 *3. If an impasse occurs during negotiations, or if no agreement is reached by the parties by*
428 *December 1 in the year the request was filed, either party may submit a request for mediation to the*
429 *Board. The parties involved shall mutually agree upon a mediator or request the Board to appoint an*
430 *impartial mediator;*

431 *4. The mediator shall provide services to the parties until the parties reach agreement, the mediator*
432 *believes that mediation services are no longer helpful, or December 10, whichever occurs first. If the*
433 *mediator determines that mediation services are no longer helpful or if the December 10 deadline*
434 *occurs, the parties shall jointly submit the unresolved issues to final and binding arbitration. The parties*
435 *shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list*
436 *of seven arbitrators from the Federal Mediation and Conciliation Service or the Board. Each party in*
437 *turn shall strike a name from the list until only one name remains. Negotiations may continue*
438 *throughout the impasse procedures;*

439 *5. Each party shall submit a final offer on each separate item remaining at impasse to the arbitrator*
440 *and the other party within 10 days of selection of the arbitrator. The arbitrator shall determine that*
441 *either the final offer of the employer or the final offer of the employee representative on each separate*
442 *issue shall be incorporated into the final collective bargaining agreement; however, the arbitrator shall*
443 *not amend the offer of either party on any issue;*

444 *6. The arbitrator shall (i) begin hearings no later than January 20 in accordance with procedures*
445 *prescribed by the Board and (ii) render a decision in writing no later than February 10; and*

446 *7. All time limits in this subsection may be extended by mutual agreement of the parties.*

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

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

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

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

456 *2. At the request of either party, all impasses not resolved through mediation, or if the parties do not*
457 *agree to mediation, the issues subject to impasse, shall be submitted to final and binding arbitration.*
458 *The parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall*
459 *request a list of seven arbitrators from the Board. Each party in turn shall strike a name from the list*
460 *until only one name remains. Negotiations may continue throughout the impasse procedures.*

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

463 *1. The lawful authority of the public employer;*

464 *2. Stipulations of the parties;*

465 *3. The interests and welfare of the public;*

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

467 *5. Comparison of wages, hours, and terms and conditions of employment of the employees involved*
468 *in the arbitration proceedings with the wages, hours, and terms and conditions of employment of other*
469 *persons performing similar services in the public and private sectors;*

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

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

473 *8. Changes in any of the foregoing circumstances during the pendency of the arbitration*
474 *proceedings; and*

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

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

480 **§ 40.1-57.17. Funding for implementation of agreements.**

481 *A. After a negotiated agreement has been agreed to by both parties, or a final and binding*
482 *arbitration decision has been rendered in accordance with § 40.1-57.16, the chief executive of the public*
483 *employer shall submit a request for funds necessary to implement the agreement and for approval of*
484 *any other matter requiring the approval of the governing body within five days after (i) the date on*
485 *which the parties finalize the agreement or (ii) the date on which the arbitration decision is issued,*

unless otherwise specified in this section. If the governing body is not in session at the time, then the submission shall be within five days after it next convenes.

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

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

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

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

§ 40.1-57.18. Judicial review.

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

§ 40.1-57.19. Strikes; lockouts.

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

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

§ 40.1-57.20. Civil procedures; personal liability.

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

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

§ 40.1-57.21. Delivery of notices.

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

§ 40.1-57.22. Employee associations permitted.

Nothing in this article shall be construed to prevent public employees from forming associations for the purpose of promoting their interests before the employing agency.

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 Code of Virginia are repealed.