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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

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

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

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

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

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

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

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

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

§ 40.1-57.5. Collective bargaining by public employees.

Public employees may:

1. Organize, or form, join, or assist, any employee organization or refrain from any such activity;

2. Negotiate collectively through representatives of their own choosing; and

3. Engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this article or any other law of the Commonwealth.

§ 40.1-57.6. Exemptions from article.

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

1. Elected officials, persons appointed to fill vacancies in elected offices, [~~*and*~~] *members of any board or commission* [*, and employees of officers elected pursuant to Article VII, Section 4 of the Constitution of Virginia*] *;*

2. Representatives of a public employer, including the administrative officer, director, or chief executive officer of a public employer, or major division thereof, as well as his deputy, first assistant, and any nonbargaining unit supervisory employees, provided, however, that nothing herein shall be construed to prohibit a public employer from bargaining with, and entering into a contract with, a labor organization certified to represent a separate unit composed solely of supervisors;

3. Confidential employees;

4. Temporary public employees employed for a period of four months or less in any 24-month period;

5. Judicial branch employees, including any judge as defined in § 51.1-301, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

6. Patients and inmates employed, sentenced, or committed to any state or local institution; and

7. Employees working for the legislature of the Commonwealth.

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

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

1. One member shall be representative of management;

2. One member shall be representative of labor, who shall be selected from a list of names submitted by the Virginia AFL-CIO; and

3. One member shall be representative of the public.

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

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

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

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

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

E. The Board shall:

1. Administer the provisions of this article;

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

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

F. The Board shall have the power to:

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

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

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

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

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

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

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

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

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

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

§ 40.1-57.8. Powers of public employers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 40.1-57.10. Prohibited conduct.

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

B. No public employer or its designated representative shall:

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

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

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

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

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

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

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

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

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

C. No employee organization or its agents shall:

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

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

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

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, [*except local school boards or other local educational agencies;*] *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 and the production of records 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 in accordance with this section. Any disputes about the placement of employees in bargaining units established in subsection C shall be resolved by the Board.

B. When a determination of an appropriate unit is necessary, within 30 days of receipt of a petition, 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 such factors as the similarity of duties, skills, and working conditions of the employees involved; 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. Nothing herein shall prohibit the petitioning employee organization and the public employer from entering into a consent agreement on the appropriate unit in lieu of a hearing.

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 counseling services and health care compliance;

5. Health and human services direct services;

6. Health and human services health care technology, rehabilitation therapies, pharmaceutical service, and nurse/physician assistant service;

7. Health and human services physician service, psychological service, and dental service;

8. Natural resources and applied science;

9. Security guards and protective services;

10. Corrections;

11. Juvenile justice;

12. Probation and parole;

13. Law enforcement;

14. Firefighters; and

15. Other public safety services not described in another subdivision of this subsection; and

16. Trades and operations.

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

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

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

F. Upon request of the exclusive representative involved, there shall 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. Upon request of the exclusive representative, there shall be 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 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 administratively acceptable 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 administratively acceptable 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 [*provided no other employee organization submits evidence that at least 30 percent of employees in the appropriate unit support representation for purposes of collective bargaining by that employee organization within 21 days of notification by the Board that it has received the petition as provided in subsection D, in which case the Board shall order an election among employee organizations providing evidence that at least 30 percent of employees in the appropriate bargaining unit support the employee organization*] .

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

public employer.

F. 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*~~ *21 days of notification by the Board that it has received the*] *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.

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 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 and shall specifically include matters within the administrative discretion of the Director of Human Resource Management or appointing authorities; however, benefits provided under Title 51.1 and Title 65.2 shall not be subject to bargaining. A collective bargaining agreement may not be inconsistent with the provisions of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, provided that all matters relating to wages, salaries, health benefit plans, and employee and employer contributions to such plans shall be a mandatory subject of collective bargaining and enforceable in any collective bargaining agreement notwithstanding any other provision of law. 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 Commonwealth no later than June 1 of odd-numbered years for collective bargaining agreements that are to become effective on July 1 of the following year;

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The lawful authority of the public employer;

2. Stipulations of the parties;

3. The interests and welfare of the public;

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

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

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

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

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

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

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

§ 40.1-57.17. Funding for implementation of agreements.

A. After a negotiated agreement has been agreed to by both parties, or a final and binding arbitration decision has been rendered in accordance with § 40.1-57.16, the chief executive of the public employer shall submit a request for funds necessary to implement the agreement and for approval of any other matter requiring the approval of the governing body within five days after (i) the date on 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 limit any person's right to freedom of speech, to association, or to petition or seek redress from the government.

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.