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## SENATE BILL NO. 374

Offered January 10, 2024

Prefiled January 9, 2024

A *BILL to amend and reenact § 40.1-55 of the Code of Virginia; 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 40.1-57.23; 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—Boysko, Hashmi, Salim, Deeds, Locke and Subramanyam; Delegate: Shin

Referred to Committee on Commerce and Labor

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

**1. That § 40.1-55 of the Code of Virginia is amended and reenacted and 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 40.1-57.23, as follows:**

**§ 40.1-55. Employee striking terminates, and becomes temporarily ineligible for, public employment.**

A. Any employee of the Commonwealth, or of any county, city, town, or other political subdivision thereof, or of any agency of any one of them, 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 and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by the Commonwealth, or any county, city, town or other political subdivision of the Commonwealth, or by any department or agency of any of them.

B. The provisions of subsection A shall apply to any employee of any county, city, or town or local school board without regard to any local ordinance or resolution adopted pursuant to § 40.1-57.2 by such county, city, or town or school board that authorizes its employees to engage in collective bargaining.

*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" 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.*

*"Covered program" means a program to provide direct support services funded in whole or in part by the Commonwealth, including consumer-directed care services under the Commonwealth Coordinated Care program and state plan programs or waiver programs established pursuant to home and community-based service waivers authorized under § 1115 or 1915(c) the federal Social Security Act.*

*"Direct support services" means personal care services that assist participants with instrumental activities of daily living, including grooming, toileting, bathing, eating, dressing, monitoring health status and physical condition, and assisting with housekeeping activities, and other in-home, long-term services and supports provided to an elderly person or person with a disability to meet such person's daily living needs and ensure that such person may adequately function at home and have safe access to the community.*

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

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

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

69 *"Individual provider" means an individual employed by a participant or the representative of such*  
70 *participant in a covered program to provide direct support services to such participant. "Individual*  
71 *provider" does not include an employee of a provider agency who is subject to such agency's direction*  
72 *and control commensurate with agency employee status.*

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

75 *"Local government" means:*

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

78 *2. Any public school division or other public local educational agency; and*

79 *3. Any public transportation provider.*

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

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

85 *"Participant" means a person who receives direct support services from an individual provider.*

86 *"Public employee" means any state employee or local government employee, except individuals*  
87 *exempted from the provisions of this article by § 40.1-57.6. "Public employee" includes employees of any*  
88 *public institution of higher education, as that term is defined in § 23.1-100, including students employed*  
89 *in any capacity, and employees of a public transportation provider.*

90 *"Public employer" means any state agency, local government, public institution of higher education,*  
91 *as that term is defined in § 23.1-100, or public transportation provider.*

92 *"Public transportation provider" means:*

93 *1. A transportation district established pursuant to § 33.2-1903;*

94 *2. A public service corporation as defined in § 56-1 that is wholly owned by any county, city, or*  
95 *town or any combination thereof and provides public transportation services; and*

96 *3. Any other political subdivision comprising any county, city, or town or any combination thereof*  
97 *that provides public transportation services.*

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

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

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

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

112 **§ 40.1-57.5. Collective bargaining by public employees.**

113 *Public employees may:*

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

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

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

119 **§ 40.1-57.6. Exemptions from article.**

120 *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;

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 a representative of management interests;

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

3. One member shall be a representative of the public and shall serve as chair of the Board.

The Governor shall make initial appointments to the Board by October 1, 2024. Such appointments shall be subject to confirmation by the General Assembly.

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 A 1 shall be for a term of one year and the initial appointment of the member described in subdivision A 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 that there are two or more vacancies on the Board for a period of 120 days or more, a party to a contested case may 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

182 performed. The Board may delegate or assign any duty or task to be performed by the Board to any  
183 officer or employee of the Board. The Board shall remain responsible for the performance of any such  
184 duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by  
185 written guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines  
186 shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not  
187 relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;

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

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

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

194 9. Enter into consent agreements including findings of fact and that may include an admission or a  
195 finding of a violation. A consent agreement shall not be considered a case decision of the Board and  
196 shall not be subject to judicial review under the provisions of the Administrative Process Act  
197 (§ 2.2-4000 et seq.), but may be considered by the Board in future proceedings; and

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

199 **§ 40.1-57.8. Powers of public employers.**

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

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

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

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

208 **§ 40.1-57.9. Duty to negotiate in good faith.**

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

224 B. A public employer shall honor the terms of employees' authorizations for payroll deductions to an  
225 exclusive representative made in any form including those that satisfy the Uniform Electronic  
226 Transactions Act (§ 59.1-479 et seq.), including electronic authorizations and voice authorizations.  
227 Unless an exclusive representative otherwise directs, a public employee's request to cancel or change  
228 authorization for payroll deductions shall be directed to such exclusive representative and not to a  
229 public employer. An exclusive bargaining representative shall be responsible for processing such  
230 requests in accordance with the terms of such authorization. An exclusive representative that certifies  
231 that it has and will maintain individual public employees' authorizations shall not be required to provide  
232 a copy to a public employer unless a dispute arises about the existence or terms of such authorization.  
233 An exclusive bargaining representative shall indemnify a public employer for any disputed deductions  
234 made on behalf of a public employee in reliance on such authorization.

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

240 b. A public employer shall provide an exclusive bargaining representative with a list of all contact  
241 information specified in this subsection in an editable electronic format agreed to by such exclusive  
242 bargaining representative, for all employees in a bargaining unit, not less than once a month.

243 c. Records of public employee contact information specified in this subsection 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 a public employer does not conduct new employee orientations, at individual or group meetings of new employees within 30 days of hire. Attendance at such orientation or meeting shall be mandatory for newly hired employees. Managers, supervisors, and other nonbargaining unit employees shall not attend an exclusive bargaining representative's presentation at such orientation or meeting. A public employer shall give an exclusive bargaining representative not less than 10 days' written notice of such orientation or meeting, except that shorter notice may be provided if there is an urgent need critical to such public employer's operations that was not reasonably foreseeable by such public employer. The structure and manner of such access to new employee meetings or orientations shall be determined through negotiation.

3. Exclusive bargaining representatives shall have the right to 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 set forth in § 40.1-57.15.

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 such public employee has filed an affidavit, petition, or complaint or given any information or testimony under this article or has formed, joined, or chosen to be represented by any exclusive bargaining representative;

5. Refuse to negotiate 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 negotiate 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 are hereby 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.

305 *The parties shall be permitted to be represented by counsel or other designated representative, summon*  
306 *witnesses, and request the Board to subpoena witnesses and the production of records on the requester's*  
307 *behalf. Compliance with the technical rules of pleading and evidence shall not be required.*

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

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

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

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

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

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

339 *H. Any order or decision of the Board may be modified, reversed, or set aside on one or more of the*  
340 *following grounds:*

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

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

351 **§ 40.1-57.12. Determination of appropriate bargaining unit.**

352 *A. Any determination by the Board of an appropriate bargaining unit shall be made upon the filing*  
353 *of a petition by an employee organization or in accordance with this section. Any disputes about the*  
354 *placement of employees in bargaining units established in subsection C shall be resolved by the Board.*

355 *B. When a determination of an appropriate unit is necessary, within 30 days of receipt of a petition,*  
356 *the Board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file*  
357 *an order defining the appropriate bargaining unit. In defining such unit, the Board shall take into*  
358 *consideration, along with other relevant factors, (i) the desires of the employees involved; (ii) the*  
359 *community of interest, including such factors as the similarity of duties, skills, and working conditions of*  
360 *the employees involved; (iii) wages, hours, and other working conditions of the employees involved; (iv)*  
361 *the efficiency of operations of the public employer; (v) the administrative structure of the public*  
362 *employer; (vi) the recommendation of the parties; and (vii) the history of collective bargaining in other*  
363 *public sector jurisdictions. Nothing herein shall prohibit the petitioning employee organization and the*  
364 *public employer from entering into a consent agreement on the appropriate unit in lieu of a hearing.*

365 *C. Bargaining units of state employees shall include employees in broad classification categories*  
366 *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 services, and nurse and physician assistant services;
7. Health and human services physician services, psychological services, and dental services;
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;
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 representatives; 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.

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 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 between 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. An employee organization certified as a 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 such 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 any 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 bargaining 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 after 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 at least 90 days after 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

551 Arbitration Association. Each party in turn shall strike a name from the list until only one name  
552 remains. Negotiations may continue throughout the impasse procedures.

553 E. In making any decision under the impasse procedures authorized of this article for any public  
554 employer, a mediator or arbitrator shall give weight to the following factors:

555 1. The lawful authority of the public employer;

556 2. Stipulations of the parties;

557 3. The interests and welfare of the public;

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

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

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

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

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

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

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

572 **§ 40.1-57.17. Funding for agreement implementation.**

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

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

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

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

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

587 **§ 40.1-57.18. Judicial review.**

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

594 **§ 40.1-57.19. Strikes; lock-outs.**

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

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

602 **§ 40.1-57.20. Civil procedures; personal liability.**

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

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

608 **§ 40.1-57.21. Delivery of notices.**

609 Any notice required under the provisions of this article shall be in writing, but service thereof shall  
610 be sufficient if mailed by restricted certified mail, return receipt requested, addressed to the last-known  
611 address of the parties, unless otherwise provided in this article or by the rules of the Board, which shall  
612 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.

**§ 40.1-57.23. Individual providers.**

A. For the purposes of this article, an individual provider shall be considered a public employee employed by the Commonwealth, except as otherwise provided in this section.

B. Nothing in this article shall be construed to classify individual providers as employees of the Commonwealth for purposes of eligibility for state retirement programs or health care benefits. The Commonwealth shall not be liable for any act or omission by an individual provider.

C. Nothing in this article shall be construed to limit the rights of a participant or their representative to select, hire, direct, supervise, and terminate the services of any individual provider providing services for such participant. No provision of any agreement reached between the Commonwealth and a bargaining representative of an individual provider shall interfere with such rights.

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.