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## SENATE BILL NO. 623

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on January 22, 2024)

(Patron Prior to Substitute—Senator Lucas)

A *BILL to amend and reenact §§ 40.1-55, 40.1-57.2, and 40.1-57.3 of the Code of Virginia and 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 40.1-57.10, relating to collective bargaining by firefighters and emergency medical services providers.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-55, 40.1-57.2, and 40.1-57.3 of the Code of Virginia are 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 40.1-57.10, 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 (i) any employee authorized to engage in collective bargaining pursuant to Article 2.2 (§ 40.1-57.4 et seq.) and (ii) 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.

§ 40.1-57.2. Collective bargaining.

A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in:

1. Such authority is provided for by Article 2.2 (§ 40.1-57.4 et seq.); or

2. In the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.

B. No ordinance or resolution adopted pursuant to ~~subsection~~ subdivision A 2 shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.

C. For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.

D. Notwithstanding the provisions of subsection A regarding a *statute*, local ordinance, or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

§ 40.1-57.3. Certain activities permitted.

Nothing in this article shall be construed to prevent employees of the Commonwealth, of its political

subdivisions, or of any governmental agency of any of them from forming associations for the purpose of promoting their interests before the employing agency and, if they are (i) *firefighters or emergency medical services providers authorized to engage in collective bargaining by Article 2.2 (§ 40.1-57.4 et seq.)* or (ii) employees of a county, city, or town or local school board that has, by a local ordinance or resolution as provided in § 40.1-57.2, authorized its employees to engage in collective bargaining, from doing so as provided in such *statute, ordinance, or resolution.*

*Article 2.2.*

*Collective Bargaining by Firefighters and Emergency Medical Services Providers.*

**§ 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 Fire Service Cooperation Board established pursuant to § 40.1-57.7.

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

"Emergency medical services provider" has the same meaning as provided for the term "emergency medical services personnel" in § 9.1-300, except that for the purposes of this article, "emergency medical services provider" does not include the highest-ranking official of a department or agency providing emergency medical services.

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

"Employer" means a political subdivision of the Commonwealth that employs firefighters or emergency medical services providers and includes any agent or similar entity acting directly or indirectly in the interest of such employer in relation to an employee.

"Exclusive representative" means a person or entity certified to represent an employee organization by the majority of firefighters or emergency medical services providers within such organization voting on such certification pursuant to § 40.1-57.5.

"Firefighter" has the same meaning as provided in § 9.1-300, except that for the purposes of this article, "firefighter" does not include the highest-ranking official of a fire department or agency.

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

"Impasse" means a point in time at which the parties involved in collective bargaining do not settle an issue in dispute by way of a written agreement within nine months after collective bargaining proceedings have been initiated.

"Labor organization" has the same meaning as provided in § 40.1-54.3.

**§ 40.1-57.5. Collective bargaining by firefighters and emergency medical services providers; certification of exclusive representatives.**

A. Firefighters and emergency medical services providers employed by a political subdivision of the Commonwealth, through labor organizations or other exclusive representatives, shall have the right to (i) collectively bargain with their employers regarding the terms and conditions of employment, including compensation, hours, working conditions, retirement, pensions, and other benefits, and (ii) adjust or settle their grievances or disputes in accordance with the terms of this article.

B. An election to select the exclusive representative of an employee organization consisting of firefighters or emergency medical services providers shall be conducted fairly according to procedures agreed upon by such employee organization and the employer of such employees. If such parties are unable to agree on election procedures pursuant to this subsection, any party may request the Board to conduct such election and certify the results. The employer shall pay the expenses of such election unless two or more persons or entities seek recognition as an exclusive representative, in which case such persons or entities shall pay such expenses equally.

C. Once an exclusive representative has been certified, a petition for decertification or for change of an exclusive representative may be filed by at least 30 percent of the employees within the represented employee organization (i) during a 30-day period between 180 and 150 days prior to the expiration of any existing collective bargaining agreement of such employee organization or (ii) after such collective bargaining agreement has expired.

D. Collective bargaining shall begin at least nine months before the start of the fiscal year of a political subdivision, and any request for arbitration, as provided in § 40.1-57.9, shall be made at least six months before the start of such fiscal year.

E. Nothing in this section shall be construed to supersede an employee organization's selection or certification of an exclusive representative occurring prior to July 1, 2024.

**§ 40.1-57.6. Duties; unfair labor practices prohibited.**

Employers, firefighters, and emergency medical services providers shall exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith and entering into settlements by way of written agreements and maintaining such agreements. No party to such collective bargaining shall engage in the following unfair labor practices:

1. No party shall refuse to negotiate in good faith with respect to matters within the scope of collective bargaining.

2. No employer shall:

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

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

c. Encourage or discourage membership in any labor organization or employee organization, including by discrimination in hiring, tenure, or other terms and conditions of employment;

d. Discharge or discriminate against any employee for such employee's filing of an affidavit, petition, or complaint or provision of information or testimony pursuant to this article or for such employee's decision to form, join, or be represented by an exclusive representative;

e. Deny the rights or recognition resulting from certification as an exclusive representative pursuant to this article;

f. Refuse to follow the collective bargaining and dispute resolution procedures provided in this article; or

g. Refuse to record a collective bargaining agreement in writing and sign such agreement, provided that all conditions for a lawful and enforceable agreement are met.

3. No exclusive representative or person or entity seeking certification as such shall:

a. Interfere with, restrain, or coerce any employee with respect to rights granted by this article or with regard to the selection of an exclusive representative;

b. Willfully or deliberately fail to represent an employee organization represented by such exclusive representative fairly with regard to the negotiation or administration of a collective bargaining agreement;

c. Refuse to bargain collectively with the employer; or

d. Refuse to follow the collective bargaining and dispute resolution procedures provided in this article.

**§ 40.1-57.7. Fire Service Cooperation Board created; powers.**

A. The Fire Service Cooperation 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 labor arbitrator selected by a majority of the exclusive representatives of each employee organization in the Commonwealth;

2. One member shall be a labor arbitrator selected by the Secretary of Labor; and

3. One member shall be a labor arbitrator selected by the other two members.

B. Initial appointments to the Board shall be made by October 1, 2024. All members shall be appointed 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. 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 and conduct elections for the certification or decertification of an exclusive representative pursuant to the provisions of subsections B and C of § 40.1-57.5;

3. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive

183 evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and  
184 delegate such power to a member of the Board, or persons appointed or employed by the Board,  
185 including hearing officers, for the performances of its functions. In the case of refusal to obey a  
186 subpoena issued by the Board, the circuit court of the locality where the person refusing to obey such  
187 subpoena may be found, on application by the Board, may issue an order requiring such person to  
188 appear before the Board and to testify and produce evidence ordered relating to the matter under  
189 investigation, and any failure to obey such order shall be punished by the court as a contempt thereof;

190 4. Investigate and adjudicate charges of violations of the provisions of this article;

191 5. Make determinations about the applicability of this article; and

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

194 F. The Board shall have the power to:

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

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

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

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

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

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

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

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

216 9. Enter into consent agreements that include findings of fact and that may include an admission or  
217 a finding of a violation. A consent agreement shall not be considered a case decision of the Board and  
218 shall not be subject to judicial review under the provisions of the Administrative Process Act  
219 (§ 2.2-4000 et seq.), but may be considered by the Board in future proceedings; and

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

221 **§ 40.1-57.8. Proceedings for violations of article; judicial review.**

222 A. A party alleging a violation of any provision of this article may commence proceedings by filing a  
223 charge with the Board within 90 days of the latter of (i) the occurrence of such alleged violation or (ii)  
224 such party learning of such alleged violation. Such party shall serve upon the accused party a copy of  
225 the charge at the time of filing in a manner determined by the Board. The accused party shall file a  
226 written answer to the charge within 10 days of receipt. The Board may conduct a preliminary  
227 investigation of the alleged violation, and if the charge is not dismissed, the Board shall promptly  
228 thereafter set a time and place for a hearing. The parties to such hearing may be represented by  
229 counsel or another designated representative, present witnesses and evidence, and request the Board to  
230 subpoena witnesses and records.

231 B. The Board may designate one or more hearing officers to conduct and adjudicate hearings. The  
232 decision of such hearing officer may be appealed to the Board, and the Board may hear such case de  
233 novo or upon the record of the case before the hearing officer.

234 C. Upon adjudicating a case, the Board or its hearing officer shall report its findings of fact and  
235 conclusions to the parties involved. If the Board finds that a party has violated any provision of this  
236 article, the Board may issue an order directing the party to cease and desist such violation and may  
237 order such other reasonable relief as is necessary to remedy such violation. A decision of the Board  
238 shall be subject to judicial review within 21 days after the date on which such decision is reported  
239 pursuant to the provisions of the Uniform Arbitration Act (§ 8.01-581.01 et seq.), and a party may seek  
240 enforcement of a decision or order of the Board in accordance with the provisions of the Uniform  
241 Arbitration Act.

242 **§ 40.1-57.9. Dispute resolution; board of arbitration; powers.**

243 A. If a dispute arises between an employer and firefighters or emergency medical services providers  
244 working for such employer in which the collective bargaining process reaches an impasse, or if the

relevant governing body does not approve an agreement reached between such parties within 30 days after such agreement is reached, then either party to such dispute, after written notice to the opposing party specifying the issue or issues in dispute, may request the appointment of a board of arbitration.

B. Each board of arbitration shall consist of three members, of which one member shall be appointed by the employer, one member shall be appointed by the exclusive representative of the firefighters or emergency medical services providers, and one member shall be selected by the other two members. The two members appointed by the employer and by the exclusive representative shall be appointed within five days after the date of the request to appoint such board of arbitration. If, after at least 10 days have passed since the appointment of such two members, the third member has not been selected by such two members, either of the two members may request a nonprofit organization in the field of alternative dispute resolution that administers arbitration proceedings furnish a list of three members of such organization residing in the Commonwealth or within 250 miles of the employer. The member appointed by the employer shall eliminate one name from such list within five days after such list is furnished, and the member appointed by the exclusive representative shall eliminate another name from such list within five days after such initial elimination. The individual whose name remains on such list shall be appointed as the third member and shall serve as the chairman of the board of arbitration. The board of arbitration shall commence proceedings within 10 days after the chairman is selected and shall make its determination within 30 days after proceedings commence.

C. Notice by firefighters or emergency medical services providers of a dispute proceeding to a board of arbitration pursuant to this section shall be served upon the head of the relevant governing body.

D. Each board of arbitration shall be authorized to administer oaths and compel the attendance of witnesses and physical evidence by subpoena.

E. The compensation for the member of a board of arbitration appointed by an exclusive representative, if any, shall be paid by the firefighters or emergency medical services providers represented by such exclusive representative. The compensation for the remaining members of such board of arbitration shall be paid by the relevant political subdivision.

**§ 40.1-57.10. Determinations of board of arbitration.**

The determination of the majority of the members of a board of arbitration established pursuant to § 40.1-57.9 shall be final on the issue or issues in dispute and shall be binding on the parties involved. Such determination shall be made in writing and a copy thereof shall be sent to such parties.

**2. That nothing in this act shall be construed to supersede any active negotiation or agreement between an employer and employees engaged in a collective bargaining process prior to the effective date of this act.**