

1 HOUSE BILL NO. 336
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee on Commerce and Energy
4 on February 8, 2022)
5 (Patron Prior to Substitute--Delegate Freitas)

6 A BILL to amend and reenact § 40.1-57.2 of the Code of Virginia and to amend the Code of Virginia by
7 adding in Article 2.1 of Chapter 4 of Title 40.1 a section numbered 40.1-57.4, relating to public
8 employees; bargaining representative certification.

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

10 **1. That § 40.1-57.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia**
11 **is amended by adding in Article 2.1 of Chapter 4 of Title 40.1 a section numbered 40.1-57.4 as**
12 **follows:**

13 **§ 40.1-57.2. Collective bargaining.**

14 A. No state, county, city, town, or like governmental officer, agent, or governing body is vested
15 with or possesses any authority to recognize any labor union or other employee association as a bargaining
16 agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining
17 contract with any such union or association or its agents with respect to any matter relating to them or
18 their employment or service unless, in the case of a county, city, or town, such authority is provided for
19 or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for
20 procedures for the selection, certification, and decertification of exclusive bargaining representatives,
21 pursuant to § 40.1-57.4, including reasonable public notice and opportunity for labor organizations to
22 intervene in the process for designating an exclusive representative of a bargaining unit. As used in this
23 section, "county, city, or town" includes any local school board, and "public officers or employees"
24 includes employees of a local school board.

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

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

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

40 **§ 40.1-57.4. Bargaining representative certification.**

41 A. For purposes of this section:

42 "Bargaining representative" means any employee association that has been certified or designated
43 as the representative of the employees in an appropriate collective bargaining unit to represent the
44 employees in their employment relations with employers, if authorized by local ordinance pursuant to §
45 40.1-57.2.

46 "Collective bargaining unit" means a unit consisting of public employees determined by the
47 governing body of any county, city, or town that has adopted an ordinance or resolution providing for
48 collective bargaining pursuant to § 40.1-57.2 to be appropriate for the purposes of collective bargaining.

49 "Election" means a proceeding conducted by the governing body of any county, city, or town that
50 has adopted an ordinance or resolution providing for collective bargaining pursuant to § 40.1-57.2 in
51 which the employees in a collective bargaining unit cast a secret ballot for collective bargaining
52 representatives or for any other purpose specified in this section.

53 "Employee association" means any association or organization of employees and any agency,
54 employee representation committee, or plan in which employees participate that exists, in whole or in part,
55 to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of
56 employment, or conditions of work.

57 B. A bargaining representative chosen for the purposes of collective bargaining by a majority of
58 the public employees in a collective bargaining unit shall be the exclusive representative of all employees
59 in the unit for the purpose of collective bargaining. A bargaining representative shall be chosen by at least
60 51 percent of the public employees in a collective bargaining unit through a secret ballot election
61 conducted by the governing body of any county, city, or town that has adopted an ordinance or resolution
62 providing for collective bargaining pursuant to § 40.1-57.2. No bargaining representative shall continue
63 to represent public employees in a collective bargaining unit without the concurrence of at least 51 percent
64 of all public employees in the unit. A secret ballot election shall be conducted at least every two years to
65 determine majority support of the bargaining representative.

66 C. To select an exclusive bargaining representative for a collective bargaining unit or to certify an
67 existing bargaining representative, the governing body of any county, city, or town that has adopted an
68 ordinance or resolution providing for collective bargaining shall direct a secret ballot election. The
69 governing body directing the secret ballot election shall promulgate rules to conduct the election process
70 and preserve the integrity of the secret ballots and shall determine whether elections shall be conducted in
71 person, by mail, by telephone, by Internet-based systems, or by any other means determined by the
72 governing body to be fair and reliable. The governing body directing the secret ballot election may
73 establish a fee schedule from bargaining representatives participating in elections conducted under this
74 section for the purpose of funding the elections.

75 D. If a preexisting bargaining representative receives votes from at least 51 percent of all public
76 employees in a collective bargaining unit, the preexisting certification shall continue. If an existing
77 collective bargaining representative fails to receive votes from at least 51 percent of all public employees
78 in the collective bargaining unit, the governing body of the locality shall decertify the bargaining

79 representative and the public employees shall be unrepresented until another bargaining representative is
80 properly certified.

81 In the event of certification termination, the terms of any preexisting contract between the
82 bargaining representative and the public employer shall continue and remain in effect for the remaining
83 contract term, except for any provisions involving the collective bargaining representative, including
84 security, dues and fees, and grievance and arbitration.

85 E. Public employees may certify a new bargaining representative in accordance with subsection C
86 so long as the public employees are not represented by the same or a substantially similar or affiliated
87 employee organization as the decertified bargaining representative for 12 months from the date of
88 decertification.

89 F. The provisions of this section shall apply to each collective bargaining agreement or contract
90 that is entered into, modified, extended, affected by a new or changed memorandum of understanding,
91 amended, or otherwise changed or altered in any way on or after July 1, 2022. The requirements of this
92 section shall not affect any collective bargaining agreement or contract that is in effect prior to July 1,
93 2022, the terms of which shall remain valid until the adoption of a new collective bargaining agreement
94 or contract or the modification, extension, or alteration thereof.

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