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HOUSE BILL NO. 1001

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on \_\_\_\_\_)

(Patrons Prior to Substitute--Delegates Tran and Callsen [HB 780])

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.

**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.

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

28 Article 2.2.

29 Collective Bargaining by Public Employees.

30 **§ 40.1-57.4. Definitions.**

31 As used in this article, unless the context requires a different meaning:

32 "Arbitration" means the procedure whereby the parties involved in an impasse or grievance dispute  
33 submit their differences to a third party for a final and binding decision or as otherwise provided in this  
34 article.

35 "Board" means the Public Employee Relations Board established pursuant to § 40.1-57.7.

36 "Collective bargaining" or "negotiate" means to perform the mutual obligation of the public  
37 employer by its representatives and the representatives of its employees to negotiate in good faith at  
38 reasonable times and places with respect to wages, hours, and other terms and conditions of employment  
39 and the continuation, modification, or deletion of an existing provision of a collective bargaining  
40 agreement, with the intention of reaching an agreement, or to resolve questions arising under the  
41 agreement, and includes executing a written contract incorporating the terms of any agreement reached.

42 "Confidential employee" means an employee who acts in a confidential capacity with respect to  
43 an individual who formulates or effectuates management policies in the field of labor-management  
44 relations.

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

49 "Direct support services" means personal care services that assist participants with instrumental  
50 activities of daily living, including grooming, toileting, bathing, eating, dressing, monitoring health status  
51 and physical condition, and assisting with housekeeping activities, and other in-home, long-term services

52 and supports provided to an elderly person or person with a disability to meet such person's daily living  
53 needs and ensure that such person may adequately function at home and have safe access to the  
54 community.

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

58 "Exclusive bargaining representative" or "exclusive representative" means an employee  
59 organization certified as the exclusive bargaining representative of a bargaining unit by the Board pursuant  
60 to the provisions of this article.

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

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

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

71 "Local government" means:

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

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

75 3. Any public transportation provider.

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

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

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

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

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

88 "Public transportation provider" means:

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

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

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

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

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

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

101 "Supervisor" means an employee who devotes a majority of his work time to supervisory duties,  
102 who customarily and regularly directs the work of two or more other employees, and who has the  
103 authority, in the interest of the employer, to hire, promote, or discipline other employees or to recommend  
104 such actions effectively, but does not include individuals who perform merely routine, incidental, or

105 clerical duties or who occasionally assume supervisory or directory roles or whose duties are substantially  
106 similar to those of their subordinates and does not include lead employees and employees who have  
107 authority limited to assigning and directing employees.

108 **§ 40.1-57.5. Collective bargaining by public employees.**

109 Public employees may:

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

115 **§ 40.1-57.6. Exemptions from article.**

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

- 117 1. Elected officials, persons appointed to fill vacancies in elected offices, and members of any  
118 board or commission;
- 119 2. Representatives of a public employer, including the administrative officer, director, or chief  
120 executive officer of a public employer, or major division thereof, as well as his deputy, first assistant, and  
121 any nonbargaining unit supervisory employees, provided, however, that nothing herein shall be construed  
122 to prohibit a public employer from bargaining with, and entering into a contract with, a labor organization  
123 certified to represent a separate unit composed solely of supervisors;
- 124 3. Confidential employees;
- 125 4. Temporary public employees employed for a period of four months or less in any 24-month  
126 period;
- 127 5. Judicial branch employees, including any judge as defined in § 51.1-301, referees, receivers,  
128 arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons  
129 appointed by any court to exercise judicial functions, and jurors and notaries public;
- 130 6. Patients and inmates employed, sentenced, or committed to any state or local institution;
- 131 7. Employees working for the legislature of the Commonwealth;

132 8. Any law-enforcement officer, as defined in § 9.1-101, employed by the Department of State  
133 Police; and

134 9. Any officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia and any  
135 employee of such officer.

136 **§ 40.1-57.7. Public Employee Relations Board created; powers.**

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

140 1. One member shall be a representative of management interests;

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

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

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

146 B. All members shall be appointed by the Governor for a term of three years or until their  
147 successors have been appointed and qualified, provided that the initial appointment of the member  
148 described in subdivision A 1 shall be for a term of one year and the initial appointment of the member  
149 described in subdivision A 2 shall be for a term of two years.

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

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

158 provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the  
159 members shall be provided by the Department.

160 E. The Board shall:

161 1. Administer the provisions of this article;

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

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

172 F. The Board shall have the power to:

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

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

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

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

180 5. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its  
181 business shall be transacted and the manner in which the powers of the Board shall be exercised and its  
182 duties 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 shall  
186 require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve  
187 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  
189 or necessary or convenient to exercise its powers;

190 7. Develop policies and procedures generally applicable to the procurement of goods, services,  
191 and 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  
195 a 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 (§ 2.2-4000  
197 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  
203 public 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  
207 emergencies 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  
210 of 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 grievance  
214 resolution procedure that shall apply to all employees in the bargaining unit and shall provide for final and  
215 binding arbitration of disputes concerning disciplinary and adverse personnel actions and the  
216 administration or interpretation of the agreement including questions of eligibility for arbitration. Such  
217 collective bargaining agreement shall also include a provision for the payroll deduction of fees and dues  
218 to such labor organization. If an employee is in a bargaining unit represented by an exclusive  
219 representative, the public employer of such employee shall honor a payroll deduction authorization only  
220 for dues and fees paid to such exclusive representative. Such public employer shall negotiate only with  
221 such exclusive bargaining representative on matters contained in this article. Such obligation to negotiate  
222 in good faith does not compel either party to agree to a proposal or make a concession.

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

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

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

242 c. Records of public employee contact information specified in this subsection are not public  
243 records under the Virginia Public Records Act (§ 42.1-76 et seq.).

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

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

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

250 c. The right to address newly hired employees on paid time for no less than 30 minutes during new  
251 employee orientations, within 30 days of hire or, if a public employer does not conduct new employee  
252 orientations, at individual or group meetings of new employees within 30 days of hire. Attendance at such  
253 orientation or meeting shall be mandatory for newly hired employees. Managers, supervisors, and other  
254 nonbargaining unit employees shall not attend an exclusive bargaining representative's presentation at  
255 such orientation or meeting. A public employer shall give an exclusive bargaining representative not less  
256 than 10 days' written notice of such orientation or meeting, except that shorter notice may be provided if  
257 there is an urgent need critical to such public employer's operations that was not reasonably foreseeable  
258 by such public employer. The structure and manner of such access to new employee meetings or  
259 orientations shall be determined through negotiation.

260 3. Exclusive bargaining representatives shall have the right to communicate with bargaining unit  
261 members concerning collective bargaining; the administration of collective bargaining agreements,  
262 grievances, and other workplace issues; and internal union matters via the employer's email systems or  
263 other communication systems commonly used at the workplace.

264 **§ 40.1-57.10. Prohibited conduct.**

265 A. No public employer or exclusive bargaining representative shall refuse to negotiate in good  
266 faith with respect to the scope of negotiations as set forth in § 40.1-57.15.

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

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

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

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

273 4. Use any public funds or official position to support or oppose an employee organization, except  
274 that a public employer may provide routine services, facilities, and paid time for union representatives  
275 pursuant to law or to a collective bargaining agreement between such public employer and an exclusive  
276 representative;

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

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

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

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

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

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

289 C. No employee organization or its agents shall:

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

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

294 3. Refuse to negotiate with the public employer as required in this article;

295 4. Refuse to participate in good faith in any agreed-upon impasse procedures or procedures set  
296 forth in this article; or

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

299 **§ 40.1-57.11. Board procedures.**

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

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

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

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

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

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

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

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

- 343 1. If the Board acts without or in excess of its power;
- 344 2. If the order or decision was procured by fraud or is contrary to law;
- 345 3. If the facts found by the Board do not support the order or decision; or

346 4. If the order or decision is not supported by substantial evidence on the record considered as a  
347 whole.

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

353 **§ 40.1-57.12. Determination of appropriate bargaining unit.**

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

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

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

- 370 1. Administrative services;
- 371 2. Education and media services;
- 372 3. Engineering and technology;

- 373 4. Health and human services counseling services and health care compliance;  
374 5. Health and human services direct services;  
375 6. Health and human services health care technology, rehabilitation therapies, pharmaceutical  
376 services, and nurse and physician assistant services;  
377 7. Health and human services physician services, psychological services, and dental services;  
378 8. Natural resources and applied science;  
379 9. Security guards and protective services;  
380 10. Corrections;  
381 11. Juvenile justice;  
382 12. Probation and parole;  
383 13. Law enforcement;  
384 14. Firefighters;  
385 15. Other public safety services not described in another subdivision of this subsection; and  
386 16. Trades and operations.
- 387 D. Each state-controlled enterprise, independent political subdivision, authority, or agency  
388 employing public employees not covered by the Virginia Personnel Act (§ 2.2-2900 et seq.), shall have  
389 separate bargaining units of such employees as determined by the Board.
- 390 E. Each public institution of higher education, the Virginia Community College System, the  
391 University of Virginia Medical Center, and the Virginia Commonwealth University Health Care System  
392 shall have separate bargaining units as determined by the Board, and employees of such bargaining units  
393 shall not be included with employees in any bargaining unit described in subsection C.
- 394 F. Upon request of the exclusive representative involved, there shall be bargaining for state  
395 employees by a coalition of all or some exclusive representatives, irrespective of a bargaining unit of state  
396 employees described in subsection C, concerning wages, fringe benefits, and those matters that have  
397 applicability to more than one bargaining unit of state employees. Upon request of the exclusive  
398 representative, there shall be supplementary bargaining on behalf of public employees in a bargaining unit

399 or part of a bargaining unit concerning matters uniquely affecting those public employees, or consolidated  
400 bargaining between two or more bargaining units concerning matters affecting those public employees.

401 **§ 40.1-57.13. Certification and decertification of exclusive bargaining representatives;**  
402 **representation elections.**

403 A. Board certification of an employee organization as the exclusive bargaining representative of a  
404 bargaining unit shall be upon a petition filed with the Board by a public employee or an employee  
405 organization and an election pursuant to § 40.1-57.14 or upon administratively acceptable evidence that a  
406 majority of bargaining unit employees authorized an employee organization to represent them for the  
407 purposes of collective bargaining. The Board shall deem an employee organization as the certified  
408 exclusive bargaining representative of an established bargaining unit without an election or evidence of  
409 majority support if the governing body of a local government (i) recognized such employee organization  
410 as an exclusive bargaining representative through an ordinance or resolution adopted by such governing  
411 body prior to July 1, 2024, or (ii) is undergoing a separate process to recognize such employee organization  
412 as an exclusive bargaining representative as of July 1, 2024.

413 B. A petition of an employee organization for a representation election shall be accompanied by  
414 administratively acceptable evidence that 30 percent of the public employees in an appropriate bargaining  
415 unit are members of the employee organization or have authorized it to represent them for the purposes of  
416 collective bargaining. A petition by an employee organization for certification without an election shall  
417 be accompanied by administratively acceptable evidence alleging that a majority of the public employees  
418 in an appropriate bargaining unit are members of the employee organization or have authorized it to  
419 represent them for the purposes of collective bargaining. Upon validating the evidence that a majority of  
420 the public employees in a bargaining unit are members of the employee organization or have authorized  
421 it to represent them for the purposes of collective bargaining, the Board shall certify the employee  
422 organization as the exclusive bargaining representative of the bargaining unit.

423 C. For the purpose of decertification, the petition of a public employee or employee organization  
424 shall allege that an employee organization that has been certified or recognized as the exclusive bargaining  
425 representative of an appropriate unit does not represent a majority of such public employees and that the



426 petitioners do not want to be represented by an employee organization or seek certification of a different  
427 employee organization. Such petition shall be accompanied by administratively acceptable evidence that  
428 50 percent of such employees do not want to be represented by the exclusive representative employee  
429 organization or seek certification of a different employee organization. Upon validation of the 50 percent  
430 showing of interest, the Board shall conduct a secret ballot election in accordance with this article.

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

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

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

447 **§ 40.1-57.14. Elections.**

448 A. Whenever a petition for an election is filed by an employee or employee organization containing  
449 the signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or  
450 containing the signatures of at least 50 percent of the public employees in an appropriate unit in the case  
451 of decertification, the public employer shall provide the petitioner with the contact information of and  
452 reasonable access to public employees in such bargaining unit as provided in § 40.1-57.9. The Board shall

453 conduct a secret ballot representation election to determine whether the public employees in the  
454 appropriate bargaining unit wish to be represented by an exclusive bargaining representative. The ballot  
455 shall contain the names of the petitioning employee organization, any employee organization submitting  
456 within 10 days of the initial petition a petition containing signatures of at least 30 percent of the public  
457 employees within the appropriate bargaining unit, and any incumbent labor organization. The ballot shall  
458 also contain a choice of no representation.

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

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

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

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

479 **§ 40.1-57.15. Duties of bargaining representative.**

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

487 B. The employee organization that is an exclusive bargaining representative and the public  
488 employer may designate any individual or individuals as its representatives to engage in collective  
489 bargaining negotiations.

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

497 D. The scope of collective bargaining between a state agency and an exclusive bargaining  
498 representative of state employees shall include wages, hours, and other terms and conditions of  
499 employment and shall specifically include matters within the administrative discretion of the Director of  
500 the Department of Human Resource Management or appointing authorities; however, benefits provided  
501 under Title 51.1 and Title 65.2 shall not be subject to bargaining. A collective bargaining agreement may  
502 not be inconsistent with the provisions of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, provided that all  
503 matters relating to wages, salaries, health benefit plans, and employee and employer contributions to such  
504 plans shall be a mandatory subject of collective bargaining and enforceable in any collective bargaining  
505 agreement notwithstanding any other provision of law. The Governor shall appoint the state agency's  
506 representative in collective bargaining.

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

510 **§ 40.1-57.16. Negotiation and impasse procedures.**

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

513 1. A request for negotiations shall be filed in writing by the exclusive representative to the  
514 Commonwealth no later than June 1 of odd-numbered years for collective bargaining agreements that are  
515 to become effective on July 1 of the following year;

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

517 3. If an impasse occurs during negotiations, or if no agreement is reached by the parties by October  
518 1 in the year the request was filed, either party may submit a request for mediation to the Board. The  
519 parties involved shall mutually agree upon a mediator or request the Board to appoint an impartial  
520 mediator;

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

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

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

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

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

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

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

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

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

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

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

- 561 1. The lawful authority of the public employer;  
562 2. Stipulations of the parties;  
563 3. The interests and welfare of the public;  
564 4. The financial ability of the employer to meet the costs of any items to be included in the contract;  
565 5. Comparison of wages, hours, and terms and conditions of employment of the employees  
566 involved in the arbitration proceedings with the wages, hours, and terms and conditions of employment  
567 of other persons performing similar services in the public and private sectors;  
568 6. The average consumer prices for goods and services, commonly known as the cost of living;  
569 7. The overall compensation presently received by the employees involved in the arbitration,  
570 including wages, insurance benefits, vacations, holidays, and similar benefits;  
571 8. Changes in any of the foregoing circumstances during the pendency of the arbitration  
572 proceedings; and  
573 9. Such other factors that are normally or traditionally taken into consideration in the determination  
574 of wages, hours, and terms and conditions of employment through voluntary collective bargaining,  
575 mediation, fact finding, arbitration, or otherwise between the parties, in public service or in private  
576 employment.
- 577 F. The expenses of arbitration shall be borne equally by the parties.
- 578 **§ 40.1-57.17. Funding for agreement implementation.**
- 579 A. After a negotiated agreement has been agreed to by both parties, or a final and binding  
580 arbitration decision has been rendered in accordance with § 40.1-57.16, the chief executive of the public  
581 employer shall submit to the relevant governing body a request for funds necessary to implement the  
582 agreement and for approval of any other matter requiring the approval of the governing body within five  
583 days after (i) the date on which the parties finalize the agreement or (ii) the date on which the arbitration  
584 decision is issued, unless otherwise specified in this section. If the governing body is not in session at the  
585 time, then the submission shall be within five days after it next convenes.
- 586 B. The governing body shall approve or reject the submission as a whole.

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

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

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

593 **§ 40.1-57.18. Judicial review.**

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

600 **§ 40.1-57.19. Strikes; lock-outs.**

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

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

607 **§ 40.1-57.20. Civil procedures; personal liability.**

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

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

613 **§ 40.1-57.21. Delivery of notices.**

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

620 **§ 40.1-57.22. Employee associations permitted.**

621 Nothing in this article shall be construed to limit any person's right to freedom of speech, to  
622 association, or to petition or seek redress from the government.

623 **§ 40.1-57.23. Individual providers.**

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

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

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

633 **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**  
634 **of Virginia are repealed.**

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