

SENATE BILL NO. 623

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

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

(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

27 to § 40.1-57.2 by such county, city, or town or school board that authorizes its employees to engage in  
28 collective bargaining.

29 **§ 40.1-57.2. Collective bargaining.**

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

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

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

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

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

51 D. Notwithstanding the provisions of subsection A regarding a statute, local ordinance, or  
52 resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section  
53 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority

54 to recognize any labor union or other employee association as a bargaining agent of any public officers or  
55 employees, or to collectively bargain or enter into any collective bargaining contract with any such union  
56 or association or its agents, with respect to any matter relating to them or their employment or service.

57 **§ 40.1-57.3. Certain activities permitted.**

58 Nothing in this article shall be construed to prevent employees of the Commonwealth, of its  
59 political subdivisions, or of any governmental agency of any of them from forming associations for the  
60 purpose of promoting their interests before the employing agency and, if they are (i) firefighters or  
61 emergency medical services providers authorized to engage in collective bargaining by Article 2.2 (§ 40.1-  
62 57.4 et seq.) or (ii) employees of a county, city, or town or local school board that has, by a local ordinance  
63 or resolution as provided in § 40.1-57.2, authorized its employees to engage in collective bargaining, from  
64 doing so as provided in such statute, ordinance, or resolution.

65 Article 2.2.

66 Collective Bargaining by Firefighters and Emergency Medical Services Providers.

67 **§ 40.1-57.4. Definitions.**

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

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

72 "Board" means the Fire Service Cooperation Board established pursuant to § 40.1-57.7.

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

79 "Emergency medical services provider" has the same meaning as provided for the term  
80 "emergency medical services personnel" in § 9.1-300, except that for the purposes of this article.

81 "emergency medical services provider" does not include the highest-ranking official of a department or  
82 agency providing emergency medical services.

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

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

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

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

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

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

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

102 **§ 40.1-57.5. Collective bargaining by firefighters and emergency medical services providers;**  
103 **certification of exclusive representatives.**

104 A. Firefighters and emergency medical services providers employed by a political subdivision of  
105 the Commonwealth, through labor organizations or other exclusive representatives, shall have the right to  
106 (i) collectively bargain with their employers regarding the terms and conditions of employment, including

107 compensation, hours, working conditions, retirement, pensions, and other benefits, and (ii) adjust or settle  
108 their grievances or disputes in accordance with the terms of this article.

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

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

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

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

126 **§ 40.1-57.6. Duties; unfair labor practices prohibited.**

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

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

133 2. No employer shall:

- 134 a. Interfere with, restrain, or coerce employees in the exercise of rights granted by this article;
- 135 b. Dominate or interfere in the administration of any employee organization;
- 136 c. Encourage or discourage membership in any labor organization or employee organization,
- 137 including by discrimination in hiring, tenure, or other terms and conditions of employment;
- 138 d. Discharge or discriminate against any employee for such employee's filing of an affidavit,
- 139 petition, or complaint or provision of information or testimony pursuant to this article or for such
- 140 employee's decision to form, join, or be represented by an exclusive representative;
- 141 e. Deny the rights or recognition resulting from certification as an exclusive representative
- 142 pursuant to this article;
- 143 f. Refuse to follow the collective bargaining and dispute resolution procedures provided in this
- 144 article; or
- 145 g. Refuse to record a collective bargaining agreement in writing and sign such agreement, provided
- 146 that all conditions for a lawful and enforceable agreement are met.
- 147 3. No exclusive representative or person or entity seeking certification as such shall:
- 148 a. Interfere with, restrain, or coerce any employee with respect to rights granted by this article or
- 149 with regard to the selection of an exclusive representative;
- 150 b. Willfully or deliberately fail to represent an employee organization represented by such
- 151 exclusive representative fairly with regard to the negotiation or administration of a collective bargaining
- 152 agreement;
- 153 c. Refuse to bargain collectively with the employer; or
- 154 d. Refuse to follow the collective bargaining and dispute resolution procedures provided in this
- 155 article.
- 156 **§ 40.1-57.7. Fire Service Cooperation Board created; powers.**
- 157 A. The Fire Service Cooperation Board is established as a supervisory board, within the meaning
- 158 of § 2.2-2100, in the executive branch of state government. The Board shall be composed of three
- 159 members, of which:

160 1. One member shall be a labor arbitrator selected by a majority of the exclusive representatives  
161 of each employee organization in the Commonwealth;

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

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

164 B. Initial appointments to the Board shall be made by October 1, 2024. All members shall be  
165 appointed for a term of three years or until their successors have been appointed and qualified, provided  
166 that the initial appointment of the member described in subdivision A 1 shall be for a term of one year and  
167 the initial appointment of the member described in subdivision A 2 shall be for a term of two years.

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

172 D. Members of the Board shall receive such compensation for the performance of their duties as  
173 provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses  
174 incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs  
175 of compensation and expenses of the members shall be provided by the Department.

176 E. The Board shall:

177 1. Administer the provisions of this article;

178 2. Hold and conduct elections for the certification or decertification of an exclusive representative  
179 pursuant to the provisions of subsections B and C of § 40.1-57.5;

180 3. Hold hearings and administer oaths, examine witnesses and documents, take testimony and  
181 receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records,  
182 and delegate such power to a member of the Board, or persons appointed or employed by the Board,  
183 including hearing officers, for the performances of its functions. In the case of refusal to obey a subpoena  
184 issued by the Board, the circuit court of the locality where the person refusing to obey such subpoena may  
185 be found, on application by the Board, may issue an order requiring such person to appear before the

186 Board and to testify and produce evidence ordered relating to the matter under investigation, and any  
187 failure to obey such order shall be punished by the court as a contempt thereof;

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

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

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

192 F. The Board shall have the power to:

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

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

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

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

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

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

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



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

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

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

219 **§ 40.1-57.8. Proceedings for violations of article; judicial review.**

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

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

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

238 **§ 40.1-57.9. Dispute resolution; board of arbitration; powers.**

239 A. If a dispute arises between an employer and firefighters or emergency medical services  
240 providers working for such employer in which the collective bargaining process reaches an impasse, or if  
241 the relevant governing body does not approve an agreement reached between such parties within 30 days  
242 after such agreement is reached, then either party to such dispute, after written notice to the opposing party  
243 specifying the issue or issues in dispute, may request the appointment of a board of arbitration.

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

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

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

263 E. The compensation for the member of a board of arbitration appointed by an exclusive  
264 representative, if any, shall be paid by the firefighters or emergency medical services providers represented

265 by such exclusive representative. The compensation for the remaining members of such board of  
266 arbitration shall be paid by the relevant political subdivision.

267 **§ 40.1-57.10. Determinations of board of arbitration.**

268 The determination of the majority of the members of a board of arbitration established pursuant to  
269 § 40.1-57.9 shall be final on the issue or issues in dispute and shall be binding on the parties involved.  
270 Such determination shall be made in writing and a copy thereof shall be sent to such parties.

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

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