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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)

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60 employees of a county, city, or town or local school board that has, by a local ordinance or resolution as
61 provided in § 40.1-57.2, authorized its employees to engage in collective bargaining, from doing so as
62 provided in such *statute*, ordinance, or resolution.

63 *Article 2.2.*

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

65 **§ 40.1-57.4. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

99 **§ 40.1-57.5. Collective bargaining by firefighters and emergency medical services providers;
100 certification of exclusive representatives.**

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

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

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

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

121 E. Nothing in this section shall be construed to supersede an employee organization's selection or

122 certification of an exclusive representative occurring prior to July 1, 2024.

123 **§ 40.1-57.6. Duties; unfair labor practices prohibited.**

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

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

130 2. No employer shall:

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

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

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

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

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

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

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

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

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

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

148 c. Refuse to bargain collectively with the employer; or

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

150 **§ 40.1-57.7. Fire Service Cooperation Board created; powers.**

151 A. The Fire Service Cooperation Board is established as a supervisory board, within the meaning of §
152 2.2-2100, in the executive branch of state government. The Board shall be composed of three members, of
153 which:

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

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

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

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

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

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

170 E. The Board shall:

171 1. Administer the provisions of this article;

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

174 3. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive
175 evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate
176 such power to a member of the Board, or persons appointed or employed by the Board, including hearing
177 officers, for the performances of its functions. In the case of refusal to obey a subpoena issued by the Board,
178 the circuit court of the locality where the person refusing to obey such subpoena may be found, on
179 application by the Board, may issue an order requiring such person to appear before the Board and to testify
180 and produce evidence ordered relating to the matter under investigation, and any failure to obey such order
181 shall be punished by the court as a contempt thereof;

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

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

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

185 F. The Board shall have the power to:

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

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

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

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

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

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

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

205 8. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title
206 2.2;

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

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

212 **§ 40.1-57.8. Proceedings for violations of article; judicial review.**

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

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

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

231 **§ 40.1-57.9. Dispute resolution; board of arbitration; powers.**

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

237 B. Each board of arbitration shall consist of three members, of which one member shall be appointed by
238 the employer, one member shall be appointed by the exclusive representative of the firefighters or emergency
239 medical services providers, and one member shall be selected by the other two members. The two members
240 appointed by the employer and by the exclusive representative shall be appointed within five days after the
241 date of the request to appoint such board of arbitration. If, after at least 10 days have passed since the
242 appointment of such two members, the third member has not been selected by such two members, either of the
243 two members may request a nonprofit organization in the field of alternative dispute resolution that
244 administers arbitration proceedings furnish a list of three members of such organization residing in the

245 Commonwealth or within 250 miles of the employer. The member appointed by the employer shall eliminate
246 one name from such list within five days after such list is furnished, and the member appointed by the
247 exclusive representative shall eliminate another name from such list within five days after such initial
248 elimination. The individual whose name remains on such list shall be appointed as the third member and
249 shall serve as the chairman of the board of arbitration. The board of arbitration shall commence proceedings
250 within 10 days after the chairman is selected and shall make its determination within 30 days after
251 proceedings commence.

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

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

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

260 **§ 40.1-57.10. Determinations of board of arbitration.**

261 The determination of the majority of the members of a board of arbitration established pursuant to § 40.1-
262 57.9 shall be final on the issue or issues in dispute and shall be binding on the parties involved. Such
263 determination shall be made in writing and a copy thereof shall be sent to such parties.

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