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HOUSE BILL NO. 2764

Offered January 17, 2025

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 Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1 of the Code of Virginia, relating to collective bargaining by public employees; exclusive bargaining representatives.

Patrons—Tran, Cole, Krizek, LeVere Bolling, Ward, Anthony, Askew, Bennett-Parker, Bulova, Callsen, Carr, Clark, Cohen, Convirs-Fowler, Cousins, Delaney, Feggans, Gardner, Glass, Hayes, Helmer, Henson, Hernandez, Herring, Hope, Jones, Keys-Gamarra, Laufer, Lopez, Maldonado, Martinez, McClure, McQuinn, Mundon King, Rasoul, Reaser, Reid, Seibold, Sewell, Shin, Sickles, Simon, Simonds, Singh, Sullivan, Thomas, Torian, Watts and Willett; Senators: Salim and Srinivasan

Referred to Committee on Labor and Commerce

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.

B. ~~The provisions of subsection A shall apply to 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.~~

Article 2.2.

Collective Bargaining by Public Employees.

§ 40.1-57.4. Definitions.

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

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

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

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

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

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

"Department" means the Department of Medical Assistance Services.

"Direct support services" means personal care services that assist participants with instrumental activities of daily living, including grooming, toileting, bathing, eating, dressing, monitoring health status and physical condition, and assisting with housekeeping activities, and other in-home, long-term services and supports provided to an elderly person or person with a disability to meet such person's daily living needs and ensure that such person may adequately function at home and have safe access to the community.

"Employee organization" means an organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes,

55 wages, hours, and other terms and conditions of employment.

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

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

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

65 "Individual provider" means an individual employed by a participant or the representative of such  
66 participant in a covered program to provide direct support services to such participant.

67 "Local government" means:

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

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

71 3. Any public transportation provider.

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

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

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

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

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

84 "Public transportation provider" means:

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

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

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

90 "State agency" means the Commonwealth or any agency, department, or institution thereof, including any  
91 public institution of higher education and any independent political subdivision.

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

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

97 "Supervisor" means an employee who devotes a majority of his work time to supervisory duties, who  
98 customarily and regularly directs the work of two or more other employees, and who has the authority, in the  
99 interest of the employer, to hire, promote, or discipline other employees or to recommend such actions  
100 effectively, but does not include individuals who perform merely routine, incidental, or clerical duties who  
101 occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their  
102 subordinates. "Supervisor" does not include lead employees and employees who have authority limited to  
103 assigning and directing employees.

104 **§ 40.1-57.5. Collective bargaining by public employees.**

105 Public employees may:

106 1. Organize, form, join, or assist any employee organization or refrain from any such activity;

107 2. Negotiate collectively through representatives of their own choosing; and

108 3. Engage in other concerted activities for the purposes of collective bargaining or other mutual aid or  
109 protection insofar as any such activity is not prohibited by this article or any other law of the  
110 Commonwealth.

111 **§ 40.1-57.6. Exemptions from article.**

112 A. The following public employees shall be excluded from the provisions of this article:

113 1. Elected officials, persons appointed to fill vacancies in elected offices, and members of any board or  
114 commission;

115 2. Representatives of a public employer, including the administrative officer, director, or chief executive  
116 officer of a public employer, or major division thereof, as well as his deputy, first assistant, and any

117 *nonbargaining unit supervisory employees, provided, however, that nothing herein shall be construed to*  
 118 *prohibit a public employer from bargaining with, and entering into a contract with, a labor organization*  
 119 *certified to represent a separate unit composed solely of supervisors;*

120 *3. Confidential employees;*

121 *4. Temporary public employees employed for a period of four months or less in any 24-month period;*

122 *5. Judicial branch employees, including any judge as defined in § 51.1-301, referees, receivers, arbiters,*  
 123 *masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any*  
 124 *court to exercise judicial functions, and jurors and notaries public;*

125 *6. Patients and inmates employed, sentenced, or committed to any state or local institution;*

126 *7. Employees working for the legislature of the Commonwealth; and*

127 *8. Any officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia and any employee*  
 128 *of such officer.*

129 *B. The provisions of this article shall apply to law-enforcement officers, as defined in § 9.1-101. However,*  
 130 *no collective bargaining representative shall represent a law-enforcement officer in regard to such law-*  
 131 *enforcement officer's conduct or any disciplinary proceeding, and nothing in this article shall be construed as*  
 132 *limiting, altering, or otherwise impacting the procedures required by the Law-Enforcement Officer*  
 133 *Procedural Guarantee Act (§ 9.1-500 et seq.).*

134 **§ 40.1-57.7. Public Employee Relations Board created; powers.**

135 *A. Notwithstanding the provisions of § 40.1-1, the Public Employee Relations Board is established as an*  
 136 *agency, as defined in § 2.2-4001, in the executive branch of state government. The Board shall be composed*  
 137 *of five members, of which:*

138 *1. Two members shall be representatives of management interests;*

139 *2. One member shall be a representative of employee organizations representing state employees or local*  
 140 *government employees and shall be selected from a list of names submitted by a statewide labor federation*  
 141 *with employee organization affiliates that are certified as exclusive bargaining representatives for such*  
 142 *employees;*

143 *3. One member shall be a representative of employee organizations representing local government*  
 144 *employees employed by a public school division or other public local educational agency and shall be*  
 145 *selected from a list of names submitted by a statewide education employee organization with employee*  
 146 *organization affiliates that are certified as exclusive bargaining representatives for such employees; and*

147 *4. One member shall be a representative of the public and shall serve as chair of the Board.*

148 *The Governor shall make initial appointments to the Board by October 1, 2025. Such appointments shall*  
 149 *be subject to confirmation by the General Assembly.*

150 *B. All members shall be appointed by the Governor for a term of three years or until their successors have*  
 151 *been appointed and qualified, except that the initial appointment of one of the members described in*  
 152 *subdivision A 1 shall be for a term of one year, the initial appointment of the member described in*  
 153 *subdivision A 2 shall be for a term of two years, and the initial appointment of the member described in*  
 154 *subdivision A 3 shall be for a term of two years.*

155 *C. A minimum of three members shall be required to constitute a quorum to conduct official business of*  
 156 *the Board in a contested case. In the event that there are three or more vacancies on the Board for a period*  
 157 *of 120 days or more, a party to a contested case may remove the case to the circuit court for the locality*  
 158 *where the case arose.*

159 *D. Members of the Board shall receive such compensation for the performance of their duties as provided*  
 160 *in § 2.2-2813. However, the chair of the Board shall be entitled to such compensation for the performance of*  
 161 *his duties as may be provided therefor in the appropriation act. All members shall be reimbursed for all*  
 162 *reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813*  
 163 *and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the*  
 164 *Department.*

165 *E. The Board shall:*

166 *1. Administer the provisions of this article;*

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

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

176 *F. The Board shall have the power to:*

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

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

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

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

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

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

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

196 8. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title  
 197 2.2;

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

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

203 **§ 40.1-57.8. Powers of public employers.**

204 Unless limited by the provisions of a collective bargaining agreement or by other statutory provisions, a  
 205 public employer may:

206 1. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public  
 207 employees;

208 2. Determine qualifications for employment and the nature and content of personnel examinations; and

209 3. Take actions as may be necessary to carry out the mission of such public employer in emergencies as  
 210 defined in § 44-146.16.

211 **§ 40.1-57.9. Duty to negotiate in good faith.**

212 A. A public employer and an employee organization that is the exclusive bargaining representative of  
 213 such public employer's employees shall meet at reasonable times, including meetings reasonably in advance  
 214 of such public employer's budget-making process, to negotiate in good faith with respect to wages, hours, and  
 215 other terms and conditions of employment. A collective bargaining agreement negotiated between such  
 216 employer and such exclusive bargaining representative shall contain a grievance resolution procedure that  
 217 shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of  
 218 disputes concerning disciplinary and adverse personnel actions and the administration or interpretation of  
 219 the agreement including questions of eligibility for arbitration. Such collective bargaining agreement shall  
 220 also include a provision for the payroll deduction of fees and dues to such labor organization. If an employee  
 221 is in a bargaining unit represented by an exclusive representative, the public employer of such employee shall  
 222 honor a payroll deduction authorization only for dues and fees paid to such exclusive representative. Such  
 223 public employer shall negotiate only with such exclusive bargaining representative on matters contained in  
 224 this article. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or  
 225 make a concession.

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

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

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

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

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

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

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

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

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

266 **§ 40.1-57.10. Prohibited conduct.**

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

269 *B. No public employer or its designated representative shall:*

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

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

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

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

277 *5. Discharge or discriminate against any public employee because such public employee has filed an*  
 278 *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 bargaining*  
 281 *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 this*  
 284 *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 or*  
 291 *with respect to selecting an exclusive representative;*

292 *2. Fail to represent an employee who is in a bargaining unit exclusively represented by the employee*  
 293 *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 forth in*  
 296 *this article; or*

297 *5. Violate the impasse provisions of this article, which are hereby made applicable to public employers,*  
 298 *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 a charge*  
 301 *with the Board within six months of the alleged violation, or acquiring knowledge thereof, and causing a*  
 302 *copy of the charge to be served upon the accused party in the manner of an original notice as provided in §*

303 40.1-57.21. The accused party shall have 10 days within which to file a written answer to the charge. The  
 304 Board may conduct a preliminary investigation of the alleged violation, and if the Board determines that the  
 305 charge has no legal or factual basis, it may dismiss the charge. If it does not dismiss the charge, the Board  
 306 shall promptly thereafter set a time and place for a hearing in the locality where the alleged violation  
 307 occurred or in the locality where the Board maintains its principal office. The parties shall be permitted to be  
 308 represented by counsel or other designated representative, summon witnesses, and request the Board to  
 309 subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical  
 310 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 have such  
 312 powers as may be exercised by the Board for conducting the hearing and shall follow the procedures adopted  
 313 by the Board for conducting the hearing. The decision of the hearing officer may be appealed to the Board  
 314 and the Board may hear the case de novo or upon the record as submitted before the hearing officer.

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

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

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

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

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

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

- 340 1. If the Board acts without or in excess of its power;
- 341 2. If the order or decision was procured by fraud or is contrary to law;
- 342 3. If the facts found by the Board do not support the order or decision; or
- 343 4. If the order or decision is not supported by substantial evidence on the record considered as a whole.

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

349 **§ 40.1-57.12. Determination of appropriate bargaining unit.**

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

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

363 C. Bargaining units of state employees shall include employees in broad classification categories across  
 364 the various agencies and departments of the executive branch. There shall be bargaining units for each of the

365 following:

- 366 1. Administrative services;
- 367 2. Education and media services;
- 368 3. Engineering and technology;
- 369 4. Health and human services counseling services and health care compliance;
- 370 5. Health and human services direct services;
- 371 6. Health and human services health care technology, rehabilitation therapies, pharmaceutical services,
- 372 and nurse and physician assistant services;
- 373 7. Health and human services physician services, psychological services, and dental services;
- 374 8. Natural resources and applied science;
- 375 9. Security guards and protective services;
- 376 10. Corrections;
- 377 11. Juvenile justice;
- 378 12. Probation and parole;
- 379 13. Law enforcement;
- 380 14. Firefighters;
- 381 15. Other public safety services not described in another subdivision of this subsection;
- 382 16. Trades and operations; and
- 383 17. Individual providers.

384 D. Each state-controlled enterprise, independent political subdivision, authority, or agency employing  
 385 public employees not covered by the Virginia Personnel Act (§ 2.2-2900 et seq.) shall have separate  
 386 bargaining units of such employees as determined by the Board.

387 E. Each public institution of higher education, the Virginia Community College System, the University of  
 388 Virginia Medical Center, and the Virginia Commonwealth University Health System Authority shall have  
 389 separate bargaining units as determined by the Board, and employees of such bargaining units shall not be  
 390 included with employees in any bargaining unit described in subsection C.

391 F. Upon request of the exclusive representative involved, there shall be bargaining for state employees by  
 392 a coalition of all or some exclusive representatives, irrespective of a bargaining unit of state employees  
 393 described in subsection C, concerning wages, fringe benefits, and those matters that have applicability to  
 394 more than one bargaining unit of state employees. Upon request of the exclusive representative, there shall  
 395 be supplementary bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit  
 396 concerning matters uniquely affecting those public employees, or consolidated bargaining between two or  
 397 more bargaining units concerning matters affecting those public employees.

398 **§ 40.1-57.13. Certification and decertification of exclusive bargaining representatives; representation**  
 399 **elections.**

400 A. Board certification of an employee organization as the exclusive bargaining representative of a  
 401 bargaining unit shall be upon a petition filed with the Board by a public employee or an employee  
 402 organization and an election pursuant to § 40.1-57.14 or upon administratively acceptable evidence that a  
 403 majority of bargaining unit employees authorized an employee organization to represent them for the  
 404 purposes of collective bargaining. The Board shall deem an employee organization as the certified exclusive  
 405 bargaining representative of an established bargaining unit without an election or evidence of majority  
 406 support if the governing body of a local government (i) recognized such employee organization as an  
 407 exclusive bargaining representative through an ordinance or resolution adopted by such governing body  
 408 prior to July 1, 2025, or (ii) is undergoing a separate process to recognize such employee organization as an  
 409 exclusive bargaining representative as of July 1, 2025.

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

420 C. For the purpose of decertification, the petition of a public employee or employee organization shall  
 421 allege that an employee organization that has been certified or recognized as the exclusive bargaining  
 422 representative of an appropriate unit does not represent a majority of such public employees and that the  
 423 petitioners do not want to be represented by an employee organization or seek certification of a different  
 424 employee organization. Such petition shall be accompanied by administratively acceptable evidence that 50  
 425 percent of such employees do not want to be represented by the exclusive representative employee  
 426 organization or seek certification of a different employee organization. Upon validation of the 50 percent

427 *showing of interest, the Board shall conduct a secret ballot election in accordance with this article.*

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

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

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

444 **§ 40.1-57.14. Elections.**

445 *A. Whenever a petition for an election is filed by an employee or employee organization containing the*  
 446 *signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or containing the*  
 447 *signatures of at least 50 percent of the public employees in an appropriate unit in the case of decertification,*  
 448 *the public employer shall provide the petitioner with the contact information of and reasonable access to*  
 449 *public employees in such bargaining unit as provided in § 40.1-57.9. The Board shall conduct a secret ballot*  
 450 *representation election to determine whether the public employees in the appropriate bargaining unit wish to*  
 451 *be represented by an exclusive bargaining representative. The ballot shall contain the names of the*  
 452 *petitioning employee organization, any employee organization submitting within 10 days of the initial*  
 453 *petition a petition containing signatures of at least 30 percent of the public employees within the appropriate*  
 454 *bargaining unit, and any incumbent labor organization. The ballot shall also contain a choice of no*  
 455 *representation.*

456 *B. If none of the choices on the ballot receives the vote of a majority of the public employees voting, the*  
 457 *Board shall, within 30 days, conduct a runoff election between the two choices receiving the greatest number*  
 458 *of votes.*

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

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

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

476 **§ 40.1-57.15. Duties of exclusive bargaining representative.**

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

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

486 *C. The scope of collective bargaining between a local government and an exclusive bargaining*  
 487 *representative of local employees shall include wages, hours, and other terms and conditions of employment,*  
 488 *and the duty to bargain includes matters described in Chapter 15 (§ 15.2-1500 et seq.) of Title 15.2;*



489 however, benefits provided under Title 51.1 and Title 65.2 shall not be subject to bargaining. To the extent  
490 that an agreement is inconsistent with the terms of Chapter 15 of Title 15.2, the terms of the agreement shall  
491 prevail. The chief executive officer of a local government shall appoint its representative in collective  
492 bargaining.

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

502 E. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining  
503 representatives, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of  
504 § 2.2-3707.

505 **§ 40.1-57.16. Negotiation and impasse procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

547 2. At the request of either party, all impasses not resolved through mediation, or if the parties do not  
548 agree to mediation, the issues subject to impasse, shall be submitted to final and binding arbitration. The  
549 parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a  
550 list of seven arbitrators from the Federal Mediation and Conciliation Service or American Arbitration

551 Association. Each party in turn shall strike a name from the list until only one name remains. Negotiations  
 552 may continue throughout the impasse procedures.

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

555 1. The lawful authority of the public employer;

556 2. Stipulations of the parties;

557 3. The interests and welfare of the public;

558 4. The financial ability of the employer to meet the costs of any items to be included in the contract;

559 5. Comparison of wages, hours, and terms and conditions of employment of the employees involved in the  
 560 arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons  
 561 performing similar services in the public and private sectors;

562 6. The average consumer prices for goods and services, commonly known as the cost of living;

563 7. The overall compensation presently received by the employees involved in the arbitration, including  
 564 wages, insurance benefits, vacations, holidays, and similar benefits;

565 8. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and

566 9. Such other factors that are normally or traditionally taken into consideration in the determination of  
 567 wages, hours, and terms and conditions of employment through voluntary collective bargaining, mediation,  
 568 fact finding, arbitration, or otherwise between the parties, in public service or in private employment.

569 F. The expenses of arbitration shall be borne equally by the parties.

570 **§ 40.1-57.17. Funding for agreement implementation.**

571 A. After a negotiated agreement has been agreed to by both parties, or a final and binding arbitration  
 572 decision has been rendered in accordance with § 40.1-57.16, the chief executive of the public employer shall  
 573 submit to the relevant governing body a request for funds necessary to implement the agreement and for  
 574 approval of any other matter requiring the approval of the governing body within five days after (i) the date  
 575 on which the parties finalize the agreement or (ii) the date on which the arbitration decision is issued, unless  
 576 otherwise specified in this section. If the governing body is not in session at the time, then the submission  
 577 shall be within five days after it next convenes.

578 B. The governing body shall approve or reject the submission as a whole.

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

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

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

585 **§ 40.1-57.18. Judicial review.**

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

592 **§ 40.1-57.19. Strikes; lock-outs.**

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

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

598 **§ 40.1-57.20. Civil procedures; personal liability.**

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

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

604 **§ 40.1-57.21. Delivery of notices.**

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

611 **§ 40.1-57.22. Employee associations permitted.**

612 Nothing in this article shall be construed to limit any person's right to freedom of speech, to association,

613 or to petition or seek redress from the government.

614 **§ 40.1-57.23. Individual providers.**

615 A. For the purposes of this article, an individual provider shall be considered a public employee, and the  
616 Department of Medical Assistance Services shall be considered the public employer of individual providers,  
617 except as otherwise provided in this section. The scope of collective bargaining between individual providers  
618 and the Department shall include wages, benefits, and all terms and conditions of employment that are within  
619 the Department's control, including any adverse action impacting such terms and conditions of employment,  
620 but shall not extend to those rights reserved to participants and participants' representatives pursuant to  
621 subsection C.

622 B. Any exclusive bargaining representative of individual providers shall be selected by and shall  
623 represent all individual providers in the Commonwealth, including individual providers who are related to a  
624 participant or participant's representative.

625 C. Participants or participants' representatives retain the rights to select, hire, direct, supervise, and  
626 terminate the services of any individual provider providing direct support services for the participant.  
627 Nothing in this article shall be construed to alter such rights. No provision of any agreement reached  
628 between any exclusive bargaining representative of individual providers and the Department shall interfere  
629 with such rights.

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

633 **2. That Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1 of the Code of Virginia is**  
634 **repealed.**

635 **3. That the provisions of this act shall become effective on July 1, 2026.**

INTRODUCED

HB2764