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HOUSE BILL NO. 2764
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Joint Conference Committee
on February 22, 2025)
(Patron Prior to Substitute—Delegate Tran)

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 40.1-57.24; and to repeal § 40.1-54.3 and Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1 of the Code of Virginia, relating to collective bargaining by public employees; exclusive bargaining representatives.*

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 40.1-57.24, 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 public 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.

"Emergency medical services provider" means an individual who is employed by or a member of an emergency medical services agency that is licensed pursuant to § 32.1-111.6. "Emergency medical services provider" does not include (i) the highest-ranking official of a department or agency providing emergency medical services or (ii) an employee one rank below such highest-ranking official.

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

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60 *"Exclusive bargaining representative" or "exclusive representative" means an employee organization (i)*
 61 *certified as the exclusive bargaining representative of a bargaining unit by the Board pursuant to the*
 62 *provisions of this article or (ii) recognized as an exclusive representative by any county, city, town, local*
 63 *school board, or other public employer as of July 1, 2026.*

64 *"Firefighter" means the same as that term is defined in § 9.1-300, except that for the purposes of this*
 65 *article, "firefighter" does not include (i) the chief or highest-ranking official of a fire department or agency*
 66 *or (ii) an employee one rank below such chief or highest-ranking official.*

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

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

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

75 *"Local government" means:*

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

78 *2. Any local public school board or other local education agency or the governing body under any joint*
 79 *agreement of any type formed by two or more school divisions; and*

80 *3. Any public transportation provider.*

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

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

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

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

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

93 *"Public transportation provider" means:*

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

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

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

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

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

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

106 *"Supervisor" means an employee who devotes a majority of his work time to supervisory duties, who*
 107 *customarily and regularly directs the work of two or more other employees, and who has the authority, in the*
 108 *interest of the employer, to hire, promote, or discipline other employees or to recommend such actions*
 109 *effectively, but does not include individuals who perform merely routine, incidental, or clerical duties who*
 110 *occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their*
 111 *subordinates. "Supervisor" does not include (i) lead employees and employees who have authority limited to*
 112 *assigning and directing employees or (ii) in reference to a firefighter, a lieutenant or captain.*

113 **§ 40.1-57.5. Collective bargaining by public employees.**

114 *Public employees may:*

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

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

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

120 **§ 40.1-57.6. Exemptions from article.**

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

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

124 2. Representatives of a public employer, including the administrative officer, director, or chief executive
125 officer of a public employer, or major division thereof, as well as his deputy, first assistant, and any
126 nonbargaining unit supervisory employees, provided, however, that nothing herein shall be construed to
127 prohibit a public employer from bargaining with, and entering into a contract with, a labor organization
128 certified to represent a separate unit composed solely of supervisors;

129 3. Confidential employees;

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

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

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

135 7. Employees working for the legislature of the Commonwealth.

136 B. The provisions of this article shall apply to law-enforcement officers, as defined in § 9.1-101 as well as
137 any officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia. However, (i) no
138 collective bargaining representative shall represent a law-enforcement officer or constitutional officer in a
139 pending internal investigation involving serious misconduct as defined in statewide professional standards of
140 conduct adopted by the Criminal Justice Services Board, and (ii) no collective bargaining agreement shall
141 limit, alter, or otherwise impact the procedures required by the Law-Enforcement Officers Procedural
142 Guarantee Act (§ 9.1-500 et seq.), decertification pursuant to § 15.2-1707, or any regulations adopted
143 pursuant to § 9.1-102 relating to the statewide professional standards of conduct applicable to certified law-
144 enforcement officers and certified jail officers and procedures for decertification based on serious
145 misconduct in violation of such standards. Additionally, to the extent that any collective bargaining
146 agreement conflicts with any provision of a state or federal law, regulation, or local ordinance, such law,
147 regulation, or ordinance shall control.

148 **§ 40.1-57.7. Public Employee Relations Board created; powers.**

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

152 1. Two members shall be representatives of management interests;

153 2. One member shall be a representative of employee organizations representing state employees or local
154 government employees employed by a county, city, town, or public transportation provider and shall be
155 selected from a list of names submitted by the state labor federation with employee organization affiliates
156 that have been certified as exclusive bargaining representatives for state, county, city, town, or public
157 transportation provider employees;

158 3. One member shall be a representative of employee organizations representing local government
159 employees employed by a local public school board and shall be selected from a list of names submitted by
160 the state education employee organization with local employee organization affiliates that have been certified
161 as exclusive bargaining representatives of public school board employees; and

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

163 The Governor shall make initial appointments to the Board by October 1, 2026. Such appointments shall
164 be subject to confirmation by the General Assembly.

165 B. All members shall be appointed by the Governor for a term of three years or until their successors have
166 been appointed and qualified, except that the initial appointment of one of the members described in
167 subdivision A 1 shall be for a term of one year, the initial appointment of the member described in
168 subdivision A 2 shall be for a term of two years, and the initial appointment of the member described in
169 subdivision A 3 shall be for a term of two years.

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

174 D. Members of the Board shall receive such compensation for the performance of their duties as provided
175 in § 2.2-2813. However, the chair of the Board shall be entitled to such compensation for the performance of
176 his duties as may be provided therefor in the appropriation act. All members shall be reimbursed for all
177 reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813
178 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the
179 Department.

180 E. The Board shall:

181 1. Administer the provisions of this article;

182 2. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive
183 evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate

184 *such power to a member of the Board, or persons appointed or employed by the Board, including hearing*
 185 *officers, for the performances of its functions. In cases of refusal to obey a subpoena issued by the Board, the*
 186 *circuit court of the locality where the person refusing to obey such subpoena may be found, on application by*
 187 *the Board, may issue an order requiring such person to appear before the Board and to testify and produce*
 188 *evidence ordered relating to the matter under investigation, and any failure to obey such order shall be*
 189 *punished by the court as a contempt thereof; and*

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

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

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

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

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

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

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

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

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

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

213 *9. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production*
 214 *of records, memoranda, papers, and other documents before the Board or any agent of the Board; and*
 215 *administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the*
 216 *Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and*
 217 *issue case decisions, subject to final decision by the Board, on application of any party aggrieved;*

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

222 *11. Do all acts necessary or advisable to carry out the purposes of this article.*

223 **§ 40.1-57.8. Powers of public employers.**

224 *Unless limited by the provisions of a collective bargaining agreement or by other statutory provisions, a*
 225 *public employer may:*

226 *1. Direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public*
 227 *employees;*

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

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

231 **§ 40.1-57.9. Duty to negotiate in good faith.**

232 *A. A public employer and an employee organization that is the exclusive bargaining representative of*
 233 *such public employer's employees shall meet at reasonable times, including meetings reasonably in advance*
 234 *of such public employer's budget-making process, to negotiate in good faith with respect to wages, hours, and*
 235 *other terms and conditions of employment. A collective bargaining agreement negotiated between such*
 236 *employer and such exclusive bargaining representative shall contain a grievance resolution procedure that*
 237 *shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of*
 238 *disputes concerning disciplinary and adverse personnel actions and the administration or interpretation of*
 239 *the agreement including questions of eligibility for arbitration. The collective bargaining agreement*
 240 *negotiated between the public employer and the exclusive bargaining representative shall also include a*
 241 *provision for the voluntary payroll deduction of fees and dues to such labor organization with authorization*
 242 *for the payroll deduction of such fees and dues revocable at the option of the public employee in accordance*
 243 *with the terms of the payroll deduction authorization which shall, at a minimum, provide for one opportunity*
 244 *each year to revoke such authorization. Where a public employee is in a bargaining unit represented by an*
 245 *exclusive representative, the public employer of such employee shall honor a payroll deduction authorization*

246 *for dues and fees paid to such exclusive representative only. Such public employer shall negotiate only with*
 247 *such exclusive bargaining representative on matters contained in this article. Such obligation to negotiate in*
 248 *good faith does not compel either party to agree to a proposal or make a concession.*

249 *B. A public employer shall honor the terms of employees' authorizations for payroll deductions to an*
 250 *exclusive representative made in any form including those that satisfy the Uniform Electronic Transactions*
 251 *Act (§ 59.1-479 et seq.), including electronic authorizations and voice authorizations. Unless an exclusive*
 252 *representative otherwise directs, a public employee's request to cancel or change authorization for payroll*
 253 *deductions shall be directed to such exclusive representative and not to a public employer. An exclusive*
 254 *bargaining representative shall be responsible for processing such requests in accordance with the terms of*
 255 *such authorization. An exclusive representative that certifies that it has and will maintain individual public*
 256 *employees' authorizations shall not be required to provide a copy to a public employer unless a dispute arises*
 257 *about the existence or terms of such authorization. An exclusive representative that is at fault shall indemnify*
 258 *a public employer for any disputed deductions made on behalf of a public employee in reliance on such*
 259 *authorization.*

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

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

269 *c. Records of public employee contact information specified in this subsection are not public records*
 270 *under the Virginia Public Records Act (§ 42.1-76 et seq.) and shall be exempt from disclosure under the*
 271 *Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

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

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

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

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

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

292 *4. The duty to bargain in good faith includes, in the case of a public employer, a duty to furnish data to*
 293 *the exclusive representative that:*

294 *a. Is normally maintained by the public employer in the regular course of business;*

295 *b. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of*
 296 *subjects within the scope of collective bargaining or subject to a grievance under a collective bargaining*
 297 *agreement; and*

298 *c. Does not include an obligation to furnish information that constitutes guidance, advice, counsel, or*
 299 *training provided for nonbargaining unit employees relating to collective bargaining.*

300 **§ 40.1-57.10. Prohibited conduct.**

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

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

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

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

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

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

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

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

316 7. Deny the rights accompanying certification as the exclusive representative granted in this article,
317 including by denying a public employee the right to a representative designated by the exclusive
318 representative at any examination of the public employee in connection with an investigation if:

319 a. The public employee reasonably believes that the examination may result in disciplinary action against
320 him; and

321 b. The public employee requests representation;

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

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

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

328 C. No employee organization or its agents shall:

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

331 2. Fail to represent an employee who is in a bargaining unit exclusively represented by the employee
332 organization fairly and without discrimination, provided that (i) such failure is willful or deliberate and (ii)
333 an exclusive representative may require a public employee who is not a dues-paying member to pay for the
334 reasonable costs and fees of handling a grievance. Failure to pay costs and fees shall relieve the exclusive
335 representative of further responsibility to the non-member regarding the grievance;

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

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

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

341 **§ 40.1-57.11. Board procedures.**

342 A. Proceedings against a party alleging a violation of § 40.1-57.10 shall be commenced by filing a charge
343 with the Board within six months of the alleged violation, or acquiring knowledge thereof, and causing a
344 copy of the charge to be served upon the accused party in the manner of an original notice as provided in §
345 40.1-57.21. The accused party shall have 10 days within which to file a written answer to the charge. The
346 Board may conduct a preliminary investigation of the alleged violation, and if the Board determines that the
347 charge has no legal or factual basis, it may dismiss the charge. If it does not dismiss the charge, the Board
348 shall promptly thereafter set a time and place for a hearing in the locality where the alleged violation
349 occurred or in the locality where the Board maintains its principal office. The parties shall be permitted to be
350 represented by counsel or other designated representative, summon witnesses, and request the Board to
351 subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical
352 rules of pleading and evidence shall not be required.

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

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

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

365 E. Any party aggrieved by any decision or order of the Board may, within 21 days from the date such
366 decision or order is filed, appeal to the circuit court for the locality in which the Board maintains its
367 principal office, the locality in which the public employer maintains its principal office, or the locality in
368 which the charge arose to obtain judicial review of an order of the Board entered under this article. The
369 Board and all parties of record in the proceedings before the Board shall be named as parties to the appeal.

370 In any judicial review proceeding, the employee organization may sue or be sued as an entity and on behalf
 371 of the employees whom it represents. The service of legal process, summons, or subpoena upon an officer or
 372 agent of the employee organization in his capacity as such shall constitute service upon such employee
 373 organization.

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

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

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

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

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

391 **§ 40.1-57.12. Determination of appropriate bargaining unit.**

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

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

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

- 408 1. Administrative services;
- 409 2. Education and media services;
- 410 3. Engineering and technology;
- 411 4. Health and human services counseling services and health care compliance;
- 412 5. Health and human services direct services;
- 413 6. Health and human services health care technology, rehabilitation therapies, pharmaceutical services,
 414 and nurse and physician assistant services;
- 415 7. Health and human services physician services, psychological services, and dental services;
- 416 8. Natural resources and applied science;
- 417 9. Security guards and protective services;
- 418 10. Corrections;
- 419 11. Juvenile justice;
- 420 12. Probation and parole;
- 421 13. Law enforcement;
- 422 14. Firefighters;
- 423 15. Other public safety services not described in another subdivision of this subsection;
- 424 16. Trades and operations; and
- 425 17. Individual providers.

426 D. For public school board employees, there shall be the following bargaining units:

427 1. Administrative personnel, including principals, assistant principals, and school board employees
 428 required by the Virginia Department of Education or school board job description to have an endorsement
 429 pursuant to 8VAC20-23-620;

430 2. Licensed personnel, including administrative school board employees whose position requires a license
 431 from the Virginia Board of Education or Virginia Department of Health Professions and all school board

432 employees who as a core job function provide instructional support to students and are required by their job
433 description to have a postsecondary degree and state or national-level certification;

434 3. Supervisors, as defined in § 40.1-57.4 and excluding school board employees included in the
435 bargaining unit for administrative personnel; and

436 4. Education support personnel, including all other school board employees who support division
437 operations, administration, or education programs.

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

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

445 G. Upon request of the exclusive representative involved, there shall be bargaining for state employees by
446 a coalition of all or some exclusive representatives, irrespective of a bargaining unit of state employees
447 described in subsection C, concerning wages, fringe benefits, and those matters that have applicability to
448 more than one bargaining unit of state employees. Upon request of the exclusive representative, there shall
449 be supplementary bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit
450 concerning matters uniquely affecting those public employees, or consolidated bargaining between two or
451 more bargaining units concerning matters affecting those public employees.

452 **§ 40.1-57.13. Certification and decertification of exclusive bargaining representatives; representation**
453 **elections.**

454 A. Board certification of an employee organization as the exclusive bargaining representative of a
455 bargaining unit shall be upon a petition filed with the Board by a public employee or an employee
456 organization and an election pursuant to § 40.1-57.14 or upon administratively acceptable evidence that a
457 majority of bargaining unit employees authorized an employee organization to represent them for the
458 purposes of collective bargaining.

459 B. A petition of an employee organization for a representation election shall be accompanied by
460 administratively acceptable evidence that 30 percent of the public employees in an appropriate bargaining
461 unit are members of the employee organization or have authorized it to represent them for the purposes of
462 collective bargaining. A petition by an employee organization for certification without an election shall be
463 accompanied by administratively acceptable evidence alleging that a majority of the public employees in an
464 appropriate bargaining unit are members of the employee organization or have authorized it to represent
465 them for the purposes of collective bargaining. Upon validating the evidence that a majority of the public
466 employees in a bargaining unit are members of the employee organization or have authorized it to represent
467 them for the purposes of collective bargaining, the Board shall certify the employee organization as the
468 exclusive bargaining representative of the bargaining unit, provided that no other employee organization
469 submits evidence that at least 30 percent of the public employees in the appropriate unit support
470 representation for purposes of collective bargaining by such other employee organization within 21 days of
471 notification by the Board that it has received the petition as provided in subsection D. In such a case, the
472 Board shall conduct a secret ballot election between such employee organizations to determine whether a
473 majority of the public employees in the appropriate bargaining unit wish to be represented by any such
474 employee organization.

475 C. For the purpose of decertification, the petition of a public employee or employee organization shall
476 allege that an employee organization that has been certified or recognized as the exclusive bargaining
477 representative of an appropriate unit does not represent a majority of such public employees and that the
478 petitioners do not want to be represented by an employee organization or seek certification of a different
479 employee organization. Such petition shall be accompanied by administratively acceptable evidence that 50
480 percent of such employees do not want to be represented by the exclusive representative employee
481 organization or seek certification of a different employee organization. Upon validation of the 50 percent
482 showing of interest, the Board shall conduct a secret ballot election in accordance with this article.

483 D. The Board shall investigate the allegations of any petition and shall give reasonable notice of the
484 receipt of such petition to all public employees, employee organizations, and public employers named or
485 described in such petitions or interested in the representation question. When necessary, the Board shall call
486 an election under § 40.1-57.14 within 30 days of receipt of a petition unless it finds that less than 30 percent
487 of the public employees in the unit appropriate for collective bargaining support the petition for certification,
488 or it finds that less than 50 percent of employees in the unit appropriate for collective bargaining support the
489 petition for decertification, or the appropriate bargaining unit has not been determined pursuant to §
490 40.1-57.12.

491 E. For purposes of this article, administratively acceptable evidence to support a petition for certification
492 without election, for a certification through a representation election, or for a decertification election may
493 consist of a combination of membership cards, evidence of dues payment, petitions to be represented by a

494 bargaining representative, or other evidence of a public employee's desire to be represented by an employee
 495 organization for the purposes of collective bargaining, including evidence that satisfies the Uniform
 496 Electronic Transactions Act (§ 59.1-479 et seq.), electronic authorizations, and voice authorizations. The
 497 determination by the Board of the sufficiency of a showing of majority support or sufficiency of support for a
 498 representation election shall not be subject to challenge by any person, employee organization, or public
 499 employer.

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

501 **§ 40.1-57.14. Elections.**

502 A. Whenever a petition for an election is filed by an employee or employee organization containing the
 503 signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or in the case of
 504 decertification, the signatures of at least 50 percent of such public employees, the Board shall conduct a
 505 secret ballot representation election to determine whether the public employees in the appropriate
 506 bargaining unit wish to be represented by an exclusive bargaining representative. The ballot shall contain
 507 the names of the petitioning employee organization, any employee organization submitting within 21 days of
 508 the initial petition evidence that at least 30 percent of the public employees in the appropriate bargaining
 509 unit support representation for purposes of collective bargaining by that employee organization, and any
 510 incumbent labor organization. The ballot shall also contain an option of no representation.

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

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

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

524 E. A petition for decertification or certification of an exclusive bargaining representative shall not be
 525 considered by the Board for a period of one year from the date of the certification or noncertification of an
 526 exclusive bargaining representative or during the duration of a collective bargaining agreement not to
 527 exceed three years. A petition for decertification shall not be considered during the duration of a collective
 528 bargaining agreement unless the collective bargaining agreement has been in effect for more than three
 529 years or the petition for decertification is filed not more than 210 days and not less than 180 days prior to the
 530 expiration of the collective bargaining agreement.

531 F. An exclusive representative recognized or certified in accordance with an ordinance or resolution
 532 adopted by any county, city, town, local school board, or other unit of government shall be deemed certified
 533 by the Board and subject to the terms of this article.

534 **§ 40.1-57.15. Duties of exclusive bargaining representative.**

535 A. An employee organization certified as a bargaining representative shall be the exclusive representative
 536 of all public employees in the bargaining unit and shall represent all public employees fairly, provided that
 537 an exclusive representative may require a public employee who is not a dues-paying member to pay for the
 538 reasonable costs and fees of handling a grievance. The exclusive representative may require a non-member
 539 to pay any anticipated proportional costs and fees prior to a grievance or arbitration hearing. Failure to pay
 540 costs and fees shall relieve the exclusive representative of further responsibility to the non-member regarding
 541 the matter. Any individual public employee shall have the right at any time to present a grievance specific to
 542 that employee to their public employer and to have such grievance adjusted without the intervention of the
 543 exclusive bargaining representative so long as (i) the adjustment is not inconsistent with the terms of a
 544 collective bargaining agreement then in effect and (ii) the exclusive bargaining representative has been given
 545 the opportunity to be present and participate during the grievance process and at such adjustment. The right
 546 to self-representation does not include the right to present a grievance to arbitration.

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

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

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

565 *E. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining*
 566 *representatives, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of*
 567 *§ 2.2-3707.*

568 **§ 40.1-57.16. Negotiation and impasse procedures.**

569 *A. Except (i) as otherwise agreed by the parties to the negotiations or (ii) in the case of a dispute between*
 570 *an exclusive representative of employees that are firefighters or emergency medical services providers and*
 571 *the public employers of such employees, which dispute shall be resolved according to the provisions of §*
 572 *40.1-57.24, each state agency and exclusive representative of state employees shall comply with the following*
 573 *negotiation and impasse procedures:*

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

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

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

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

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

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

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

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

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

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

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

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

613 *2. At the request of either party, all impasses not resolved through mediation, or if the parties do not*
 614 *agree to mediation, the issues subject to impasse, shall be submitted to final and binding arbitration. The*
 615 *parties shall jointly select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a*
 616 *list of seven arbitrators from the Federal Mediation and Conciliation Service or American Arbitration*
 617 *Association. Each party in turn shall strike a name from the list until only one name remains. Negotiations*

618 *may continue throughout the impasse procedures.*

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

621 *1. The lawful authority of the public employer;*

622 *2. Stipulations of the parties;*

623 *3. The interests and welfare of the public;*

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

625 *5. Comparison of wages, hours, and terms and conditions of employment of the employees involved in the*
626 *arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons*
627 *performing similar services in the public and private sectors;*

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

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

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

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

635 *F. The expenses of the mediation and arbitration shall be borne equally by the parties.*

636 **§ 40.1-57.17. Funding for agreement implementation.**

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

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

645 *C. If the governing body rejects the submission of the public employer, either party may reopen*
646 *negotiations.*

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

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

651 **§ 40.1-57.18. Judicial review.**

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

658 **§ 40.1-57.19. Strikes; lock-outs.**

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

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

664 **§ 40.1-57.20. Civil procedures; personal liability.**

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

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

670 **§ 40.1-57.21. Delivery of notices.**

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

677 **§ 40.1-57.22. Employee associations permitted.**

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

680 **§ 40.1-57.23. Individual providers.**

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

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

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

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

699 **§ 40.1-57.24. Firefighters and emergency medical services providers; arbitration process.**

700 A. Notwithstanding the provisions of § 40.1-57.16, if a dispute arises between an exclusive representative
701 of employees that are firefighters or emergency medical services providers and the public employer of such
702 employees in which the collective bargaining process reaches an impasse, or if the relevant governing body
703 does not approve an agreement reached between such parties within 30 days after such agreement is
704 reached, then either party to such dispute, after written notice to the opposing party specifying the issue or
705 issues in dispute, may request the appointment of a board of arbitration.

706 B. Each board of arbitration shall consist of three members, of which one member shall be appointed by
707 the public employer, one member shall be appointed by the exclusive representative of such public employer's
708 employees, and one member shall be selected by the other two members. The two members appointed by the
709 public employer and by the exclusive representative shall be appointed within five days after the date of the
710 request to appoint such board of arbitration. If, after at least 10 days have passed since the appointment of
711 such two members, the third member has not been selected by such two members, either of the two members
712 may request a nonprofit organization in the field of alternative dispute resolution that administers arbitration
713 proceedings to furnish a list of three members of such organization residing in the Commonwealth or within
714 250 miles of the public employer. The member appointed by the public employer shall eliminate one name
715 from such list within five days after such list is furnished, and the member appointed by the exclusive
716 representative shall eliminate another name from such list within five days after such initial elimination. The
717 individual whose name remains on such list shall be appointed as the third member and shall serve as the
718 chairman of the board of arbitration. The board of arbitration shall commence proceedings within 10 days
719 after the chairman is selected and shall make its determination within 30 days after proceedings commence.

720 C. Notice by an exclusive representative of a dispute proceeding to a board of arbitration pursuant to this
721 section shall be served upon the head of the relevant governing body.

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

724 E. The compensation for the member of a board of arbitration appointed by an exclusive representative or
725 a public employer shall be paid by the party that appointed such member. The compensation for the
726 remaining member of such board of arbitration, as well as all stenographic and other expenses incurred by
727 such board of arbitration in connection with arbitration proceedings, shall be paid equally by the two parties
728 to the dispute.

729 F. The determination of the majority of the members of a board of arbitration established pursuant to this
730 section shall be final on the issue or issues in dispute and shall be binding on the parties involved. Such
731 determination shall be made in writing, and a copy thereof shall be sent to such parties.

732 G. No provision of this section shall be construed to prohibit a governing body from granting its
733 employees rights greater than those contained in a board of arbitration's determination.

734 **2. That § 40.1-54.3 and Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1 of the Code of**
735 **Virginia are repealed.**

736 **3. That nothing in this act shall be construed to supersede the existing certification of any exclusive**
737 **bargaining representative, as defined in § 40.1-57.4 of the Code of Virginia, as created by this act, or**
738 **any active negotiation or collective bargaining agreement between an employer and employees engaged**
739 **in a collective bargaining process prior to July 1, 2026.**

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