

1 SENATE BILL NO. 378  
23 AMENDMENT IN THE NATURE OF A SUBSTITUTE  
45 (Proposed by the Senate Committee on Commerce and Labor  
6

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

8 (Patron Prior to Substitute—Senator Surovell)  
910 *A BILL to amend and reenact § 40.1-55 of the Code of Virginia; to amend the Code of Virginia by adding in  
11 Chapter 10 of Title 32.1 an article numbered 5, consisting of sections numbered 32.1-331.18 through  
12 32.1-331.21, and by adding in Chapter 4 of Title 40.1 an article numbered 2.2, consisting of sections  
13 numbered 40.1-57.4 through 40.1-57.24; and to repeal §§ 32.1-331.04 and 40.1-54.3 and Article 2.1 (§§  
14 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title 40.1 of the Code of Virginia, relating to collective  
15 bargaining by public employees; individual home care providers; Virginia Home Care Authority  
16 established; Public Employee Relations Board established; exclusive bargaining representatives.*17 **Be it enacted by the General Assembly of Virginia:**18 **1. That § 40.1-55 of the Code of Virginia is amended and reenacted and that the Code of Virginia is  
19 amended by adding in Chapter 10 of Title 32.1 an article numbered 5, consisting of sections numbered  
20 32.1-331.18 through 32.1-331.21, and by adding in Chapter 4 of Title 40.1 an article numbered 2.2,  
21 consisting of sections numbered 40.1-57.4 through 40.1-57.24, as follows:**22 *Article 5.*23 *Virginia Home Care Authority.*24 **§ 32.1-331.18. Virginia Home Care Authority; creation.**25 *There is hereby created within the Department of Medical Assistance Services the Virginia Home Care  
26 Authority to ensure the effectiveness and quality of the services of home care programs in the  
27 Commonwealth.*28 **§ 32.1-331.19. Definitions.**29 *As used in this article, unless the context requires a different meaning:*30 *"Authority" means the Virginia Home Care Authority established pursuant to this article.*31 *"Collective bargaining" means the same as that term is defined in § 40.1-57.4.*32 *"Covered program" means a program to provide direct support services funded in whole or in part by the  
33 Commonwealth, including consumer-directed care services under the Commonwealth Coordinated Care Plus  
34 program and state plan programs or waiver programs established pursuant to home and community-based  
35 service waivers authorized under § 1115 or 1915(c) of the Social Security Act.*36 *"Direct support services" means personal care services that assist participants with instrumental*

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

37     "Exclusive bargaining representative" means the same as that term is defined in § 40.1-57.4.

38     "Individual provider" means an individual employed by a participant or participant representative to  
39     provide direct support services to such participant.

40     "Participant" means an individual who receives direct support services from an individual provider  
41     through a covered program.

42     "Participant representative" means a participant's legal guardian or an individual having the authority  
43     and responsibility to act on behalf of a participant with respect to the provision of direct support services  
44     through a covered program.

45     **§ 32.1-331.20. Authority composition; membership; quorum.**

46     A. The Authority shall consist of five members to be appointed in accordance with the provisions of this  
47     section. The Director of the Department of Medical Assistance Services, or his designee, shall be a  
48     permanent member of the Authority and shall serve as chair. The Secretary of Health and Human Resources  
49     shall appoint two members representing the interests of participants and participant representatives and two  
50     members representing nonprofit organizations that advocate on behalf of elderly adults or people with  
51     disabilities.

52     B. Except for the initial appointments, appointees to the Authority by the Secretary of Health and Human  
53     Resources shall serve four-year terms.

54     C. If a vacancy occurs, a new Authority member shall be appointed or designated to serve the remainder  
55     of the unexpired term or, if the vacancy occurs as the result of the completion of a term, to serve a full term.

56     D. Members of the Authority may serve successive terms.

57     E. A majority of the members of the Authority shall constitute a quorum for the transaction of any  
58     business. The Authority shall make its own policies and procedures and shall adopt bylaws not inconsistent  
59     with this article governing its operations. The Authority shall adopt bylaws consistent with the Virginia  
60     Freedom of Information Act (§ 2.2-3700 et seq.) governing its procedures and the holding of meetings. The  
61     Authority shall meet at the call of the chair and as may be provided in the bylaws.

62     **§ 32.1-331.21. Powers and duties of Authority.**

63     The Authority shall have the following powers and duties:

- 64        1. *To establish and maintain a central registry of individual providers;*
- 65        2. *To create a system to match participants who need direct support services with individual providers;*
- 66        3. *To arrange for the provision of a paid training program to be available to all individual providers.*  
67        *Such training program shall be developed in consultation with participants and participant representatives,*  
68        *individual providers, and any exclusive bargaining representative of individual providers. The Authority*  
69        *shall establish requirements for the provision of such training;*
- 70        4. *To act as joint employer for individual providers by:*
  - 71            a. *Serving as the public employer of individual providers for purposes of collective bargaining pursuant*  
72            *to Article 2.2 (§ 40.1-57.4 et seq.) of Chapter 4 of Title 40.1;*
  - 73            b. *Ensuring that individual providers' payments, wages, and benefits are timely and accurately processed*  
74            *and that appropriate withholdings and tax deductions are made; and*
  - 75            c. *Maintaining personnel records for individual providers, including tracking their participation in*  
76            *orientations and trainings;*
- 77        5. *If there is no current exclusive bargaining representative for individual providers, to provide an*  
78        *employee organization, as defined in § 40.1-57.4, seeking certification as an exclusive bargaining*  
79        *representative of individual providers the following contact information within 10 days after a request for*  
80        *such information and in an editable electronic format: the name, work address, home address, work*  
81        *telephone number, home telephone number, personal cell phone number, work email address, and personal*  
82        *email address of each individual provider on file with the Authority. Records of personal and home contact*  
83        *information described in this subdivision are not public records under the Virginia Public Records Act*  
84        *(§ 42.1-76 et seq.) and shall be exempt from public disclosure under the Virginia Freedom of Information Act*  
85        *(§ 2.2-3700 et seq.).*
- 86        6. *To provide for a paid mandatory orientation program for individual providers related to employment in*  
87        *providing direct support services, which orientation program shall meet the following requirements:*
  - 88            a. *Attendance shall be limited to individual providers, participants, the individual providers' employer of*  
89            *record, and an exclusive bargaining representative of individual providers; and*
  - 90            b. *The Authority shall provide an attending exclusive bargaining representative a list of each individual*  
91            *provider registered for an orientation at least 24 hours before the orientation begins;*
- 92        7. *To espouse, support, and work to preserve participant selection and self-direction of individual*  
93        *providers;*
- 94        8. *To serve as a communications hub for the individual provider workforce to share information relevant*

95 to individual providers;

96 9. To provide home care assistance to participants to ensure a continuation of direct support services in  
97 the event their individual provider is absent or no longer able to perform his responsibilities;

98 10. To oversee the quality of direct support services and ensure direct support services are provided in  
99 conformance with all applicable requirements;

100 11. To actively pursue and implement all available strategies to maximize federal Medicaid  
101 reimbursement for individual provider programs;

102 12. To collect statewide information and data related to the individual provider workforce, including  
103 individual provider pay, retention and turnover rates, individual provider job satisfaction, service gaps  
104 caused by individual provider shortages, and other relevant information;

105 13. To enter into contracts and agreements, and contract for services of persons or entities, as  
106 appropriate to accomplish the purposes and provisions of this article;

107 14. To employ, appoint, engage, and compensate employees to accomplish the purposes and provisions of  
108 this article; and

109 15. Except as otherwise provided by law, to perform all other acts necessary or convenient to implement  
110 the purposes and provisions of this article.

111 **§ 40.1-55. Employee striking terminates, and becomes temporarily ineligible for, public  
112 employment.**

113 A. Any employee of the Commonwealth, or of any county, city, town, or other political subdivision  
114 thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the  
115 purpose of obstructing, impeding, or suspending any activity or operation of his employing agency or any  
116 other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such  
117 action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in  
118 any position or capacity during the next 12 months by the Commonwealth, or any county, city, town, or other  
119 political subdivision of the Commonwealth, or by any department or agency of any of them.

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

123 *Article 2.2.*

124 *Collective Bargaining by Public Employees.*

125 **§ 40.1-57.4. Definitions.**

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

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

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

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

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

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

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

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

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

155     *"Exclusive bargaining representative" or "exclusive representative" means an employee organization (i)*  
156     *certified as the exclusive bargaining representative of a bargaining unit by the Board pursuant to the*

157 provisions of this article or (ii) recognized as an exclusive representative by any county, city, town, local  
158 school board, or other public employer as of July 1, 2026.

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

162 "Governing body" means the General Assembly; any board, council, authority, or commission, whether  
163 elected or appointed, of the Commonwealth; any local government; or any other public body that determines  
164 the fiscal appropriations or policies for operation of a political subdivision, public transportation provider,  
165 or public institution of higher education of the Commonwealth.

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

168 "Individual provider" means the same as that term is defined in § 32.1-331.19.

169 "Local government" means:

170 1. Any county, city, or town, as defined in § 15.2-102, or other local or regional political subdivision or  
171 body politic and corporate designated as such by the General Assembly;  
172 2. Any local public school board or other local education agency or the governing body under any joint  
173 agreement of any type formed by two or more school divisions; and  
174 3. Any public transportation provider.

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

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

180 "Public employee" means any state employee or local government employee except an individual  
181 exempted from the provisions of this article by § 40.1-57.6. "Public employee" includes an employee of a  
182 local school board, an employee of a public transportation provider, and an employee of any public  
183 institution of higher education, as that term is defined in § 23.1-100, including a student employed in any  
184 capacity.

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

187 "Public transportation provider" means:

188     1. A transportation district, including a transportation district established pursuant to § 33.2-1903;  
189     2. A corporation, including a public service corporation as defined in § 56-1, that is wholly owned by any  
190     county, city, or town or any combination thereof and provides public transportation services; and  
191     3. Any other political subdivision that provides public transportation services.

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

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

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

199     "Supervisor" means an employee who devotes a majority of his work time to supervisory duties, who  
200     customarily and regularly directs the work of two or more other employees, and who has the authority, in the  
201     interest of the employer, to hire, promote, or discipline other employees or to recommend such actions  
202     effectively, but does not include individuals who perform merely routine, incidental, or clerical duties who  
203     occasionally assume supervisory or directory roles or whose duties are substantially similar to those of their  
204     subordinates. "Supervisor" does not include (i) lead employees and employees who have authority limited to  
205     assigning and directing employees or (ii) a firefighter.

206     "Temporary public employee" means an employee hired by a public employer other than a public  
207     institution of higher learning to fill a seasonal or other temporary position intended to last three months or  
208     less in any 24-month period.

209     "Virginia Home Care Authority" or "the Authority" means the Virginia Home Care Authority established  
210     pursuant to § 32.1-331.18.

211     **§ 40.1-57.5. Collective bargaining by public employees.**

212     Public employees may:

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

218     **§ 40.1-57.6. Exemptions from article.**

219       A. *The following individuals shall be excluded from the provisions of this article:*

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

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

227       3. *Confidential employees;*

228       4. *Temporary public employees;*

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

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

233       7. *Employees working for the General Assembly.*

234       B. *The provisions of this article shall apply to law-enforcement officers, as defined in § 9.1-101. Any*  
235 *officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia may elect to be subject to the*  
236 *provisions of this article and to authorize his public employees to collectively bargain pursuant thereto. For a*  
237 *public employee of a constitutional officer that makes such election, the governing body of the locality in*  
238 *which such constitutional officer is elected shall be considered the public employer with respect to issues of*  
239 *wages or benefits, and the constitutional officer shall be considered the public employer with respect to all*  
240 *other matters relating to employment. However, (i) no collective bargaining representative shall represent a*  
241 *law-enforcement officer or constitutional officer in a pending internal investigation involving serious*  
242 *misconduct as defined in statewide professional standards of conduct adopted by the Criminal Justice*  
243 *Services Board and (ii) no collective bargaining agreement shall limit, alter, or otherwise impact the*  
244 *procedures required by the Law-Enforcement Officers Procedural Guarantee Act (§ 9.1-500 et seq.),*  
245 *decertification pursuant to § 15.2-1707, or any regulations adopted pursuant to § 9.1-102 relating to the*  
246 *statewide professional standards of conduct applicable to certified law-enforcement officers and certified jail*  
247 *officers and procedures for decertification based on serious misconduct in violation of such standards.*

248       *Additionally, to the extent that any collective bargaining agreement conflicts with any provision of a state or*  
249 *federal law, regulation, or local ordinance, such law, regulation, or ordinance shall control.*

250        **§ 40.1-57.7. Public Employee Relations Board created; powers.**

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

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

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

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

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

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

267        B. All members shall be appointed by the Governor for a term of three years or until their successors have  
268 been appointed, except that the initial appointment of one of the members described in subdivision A 1 shall  
269 be for a term of one year, the initial appointment of the member described in subdivision A 2 shall be for a  
270 term of two years, and the initial appointment of the member described in subdivision A 3 shall be for a term  
271 of two years.

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

276        D. Members of the Board shall receive such compensation for the performance of their duties as may be  
277 provided therefor in a general appropriation act.

278        E. The Board shall:

279        1. Administer the provisions of this article;

280        2. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive

281 evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate  
282 such power to a member of the Board or persons appointed or employed by the Board, including hearing  
283 officers, for the performances of its functions. In cases of refusal to obey a subpoena issued by the Board, the  
284 circuit court of the locality where the person refusing to obey such subpoena may be found, on application by  
285 the Board, may issue an order requiring such person to appear before the Board and to testify and produce  
286 evidence ordered relating to the matter under investigation, and any failure to obey such order shall be  
287 punished by the court as a contempt thereof; and

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

289 F. The Board shall have the power to:

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

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

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

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

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

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

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

309 8. Develop policies and procedures consistent with Article 4 (§ 2.2-4347 et seq.) of Chapter 43 of Title  
310 2.2;

311 9. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production

312 *of records, memoranda, papers, and other documents before the Board or any agent of the Board; and*  
313 *administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the*  
314 *Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and*  
315 *issue case decisions, subject to final decision by the Board, on application of any party aggrieved;*

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

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

321 **§ 40.1-57.8. Powers of public employers.**

322 *Except as limited by the provisions of a collective bargaining agreement, the provisions of this title, or by*  
323 *any other statutory provision, a public employer may:*

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

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

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

329 **§ 40.1-57.9. Duty to negotiate in good faith.**

330 *A public employer and an employee organization that is the exclusive bargaining representative of*  
331 *such public employer's employees shall meet at reasonable times, including meetings reasonably in advance*  
332 *of such public employer's budget-making process, to negotiate in good faith with respect to wages, hours, and*  
333 *other terms and conditions of employment. A collective bargaining agreement negotiated between such*  
334 *employer and such exclusive bargaining representative shall contain a grievance resolution procedure that*  
335 *shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of*  
336 *disputes concerning disciplinary and adverse personnel actions and the administration or interpretation of*  
337 *the agreement, including questions of eligibility for arbitration. The collective bargaining agreement*  
338 *negotiated between the public employer and the exclusive bargaining representative shall also include a*  
339 *provision for the voluntary payroll deduction of fees and dues to such labor organization with authorization*  
340 *for the payroll deduction of such fees and dues revocable at the option of the public employee in accordance*  
341 *with the terms of the payroll deduction authorization, which shall, at a minimum, provide for one opportunity*  
342 *each year to revoke such authorization. Where a public employee is in a bargaining unit represented by an*

343     *exclusive representative, the public employer of such employee shall honor a payroll deduction authorization*  
344     *for dues and fees paid to such exclusive representative only. Such public employer shall negotiate only with*  
345     *such exclusive bargaining representative on matters contained in this article. Such obligation to negotiate in*  
346     *good faith does not compel either party to agree to a proposal or make a concession.*

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

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

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

366     *c. Records of a public employee's personal and home contact information described in this subsection are*  
367     *not public records under the Virginia Public Records Act (§ 42.1-76 et seq.) and shall be exempt from*  
368     *disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

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

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

373         *b. The right to conduct worksite meetings during meal periods and other breaks, and before and after the*

374 workday; and

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

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

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

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

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

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

397     **§ 40.1-57.10. Prohibited conduct.**

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

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

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

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

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

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

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

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

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

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

418            b. The public employee requests representation;

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

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

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

425        C. No employee organization or its agents shall:

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

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

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

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

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

438        **§ 40.1-57.11. Board procedures.**

439        A. Proceedings against a party alleging a violation of § 40.1-57.10 shall be commenced by filing a charge  
440        with the Board within six months of the alleged violation, or acquiring knowledge thereof, and causing a  
441        copy of the charge to be served upon the accused party in the manner of an original notice as provided in  
442        § 40.1-57.21. The accused party shall have 10 business days within which to file a written answer to the  
443        charge. The Board may conduct a preliminary investigation of the alleged violation, and if the Board  
444        determines that the charge has no legal or factual basis, it may dismiss the charge. If it does not dismiss the  
445        charge, the Board shall promptly thereafter set a time and place for a hearing in the locality where the  
446        alleged violation occurred or in the locality where the Board maintains its principal office. The parties shall  
447        be permitted to be represented by counsel or other designated representative, summon witnesses, and request  
448        the Board to subpoena witnesses and the production of records on the requester's behalf. Compliance with  
449        the technical rules of pleading and evidence shall not be required.

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

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

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

462        E. Any party aggrieved by any decision or order of the Board may appeal to the circuit court for the  
463        locality in which the Board maintains its principal office, the locality in which the public employer maintains  
464        its principal office, or the locality in which the charge arose to obtain judicial review of an order of the  
465        Board entered under this article. The Board and all parties of record in the proceedings before the Board  
466        shall be named as parties to the appeal. In any judicial review proceeding, the employee organization may

467 sue or be sued as an entity and on behalf of the employees whom it represents. The service of legal process,  
468 summons, or subpoena upon an officer or agent of the employee organization in his capacity as such shall  
469 constitute service upon such employee organization.

470 F. Any appeal of a decision made by the Board shall proceed in accordance with the provisions of the  
471 Administrative Process Act (§ 2.2-4000 et seq.) and corresponding Rules of the Supreme Court of Virginia.

472 G. In the absence of fraud, the findings of fact made by the Board shall be conclusive if supported by  
473 substantial evidence on the record considered as a whole.

474 H. Any order or decision of the Board may be modified, reversed, or set aside on one or more of the  
475 grounds set forth in § 8.01-581.010 or 8.01-581.011.

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

481 **§ 40.1-57.12. Determination of appropriate bargaining unit.**

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

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

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

498     1. *Administrative services;*

499     2. *Education and media services;*

500     3. *Engineering and technology;*

501     4. *Health and human services counseling services and health care compliance;*

502     5. *Health and human services direct services;*

503     6. *Health and human services health care technology, rehabilitation therapies, pharmaceutical services,*

504     *and nurse and physician assistant services;*

505     7. *Health and human services physician services, psychological services, and dental services;*

506     8. *Natural resources and applied science;*

507     9. *Security guards and protective services;*

508     10. *Corrections;*

509     11. *Juvenile justice;*

510     12. *Probation and parole;*

511     13. *Law enforcement, except for sworn officers in highway patrol;*

512     14. *Sworn officers in highway patrol;*

513     15. *Firefighters;*

514     16. *Other public safety services not described in another subdivision of this subsection;*

515     17. *Trades and operations; and*

516     18. *Individual providers.*

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

518         1. *Administrative personnel, including principals, assistant principals, and school board employees*

519     *required by the Department of Education or school board job description to have an endorsement pursuant*

520     *to 8VAC20-23-620 of the Virginia Administrative Code;*

521         2. *Licensed personnel, including non-administrative school board employees whose position requires a*

522     *license from the Board of Education or Department of Health Professions and all school board employees*

523     *who as a core job function provide instructional support to students and are required by their job description*

524     *to have a postsecondary degree and state or national-level certification;*

525         3. *Supervisors, as defined in § 40.1-57.4 and excluding school board employees included in the*

526     *bargaining unit for administrative personnel; and*

527         4. *Education support personnel, including all other school board employees who support division*

528     *operations, administration, or education programs.*

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

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

536       *G. Upon request of the exclusive representative involved, there shall be bargaining for state employees by*  
537    *a coalition of all or some exclusive representatives, irrespective of a bargaining unit of state employees*  
538    *described in subsection C, concerning wages, fringe benefits, and those matters that have applicability to*  
539    *more than one bargaining unit of state employees. Upon request of the exclusive representative, there shall*  
540    *be supplementary bargaining on behalf of public employees in a bargaining unit or part of a bargaining unit*  
541    *concerning matters uniquely affecting those public employees, or consolidated bargaining between two or*  
542    *more bargaining units concerning matters affecting those public employees.*

543       *H. An exclusive representative may represent more than one bargaining unit. Upon the request of an*  
544    *exclusive representative that represents more than one bargaining unit, the employer shall negotiate a single*  
545    *agreement covering the represented bargaining units.*

546       **§ 40.1-57.13. Certification and decertification of exclusive bargaining representatives; representation**  
547    **elections.**

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

553       *B. A petition of an employee organization for a representation election shall be accompanied by*  
554    *administratively acceptable evidence that 30 percent of the public employees in an appropriate bargaining*  
555    *unit are members of the employee organization or have authorized it to represent them for the purposes of*  
556    *collective bargaining. A petition by an employee organization for certification without an election shall be*  
557    *accompanied by administratively acceptable evidence alleging that a majority of the public employees in an*  
558    *appropriate bargaining unit are members of the employee organization or have authorized it to represent*  
559    *them for the purposes of collective bargaining. Upon validating the evidence that a majority of the public*

560 *employees in a bargaining unit are members of the employee organization or have authorized it to represent*  
561 *them for the purposes of collective bargaining, the Board shall certify the employee organization as the*  
562 *exclusive bargaining representative of the bargaining unit, provided that no other employee organization*  
563 *submits evidence that at least 30 percent of the public employees in the appropriate unit support*  
564 *representation for purposes of collective bargaining by such other employee organization within 21 days of*  
565 *notification by the Board that it has received the petition as provided in subsection D. In such a case, the*  
566 *Board shall conduct a secret ballot election between such employee organizations to determine whether the*  
567 *public employees in the appropriate bargaining unit wish to be represented by any such employee*  
568 *organization.*

569 *C. For the purpose of decertification, the petition of a public employee or employee organization shall*  
570 *allege that an employee organization that has been certified or recognized as the exclusive bargaining*  
571 *representative of an appropriate unit does not represent a majority of such public employees and that the*  
572 *petitioners do not want to be represented by an employee organization or seek certification of a different*  
573 *employee organization. Such petition shall be accompanied by administratively acceptable evidence that 50*  
574 *percent of such employees do not want to be represented by the exclusive representative employee*  
575 *organization or seek certification of a different employee organization. Upon validation of the 50 percent*  
576 *showing of interest, the Board shall conduct a secret ballot election in accordance with this article.*

577 *D. The Board shall investigate the allegations of any petition and shall give reasonable notice of the*  
578 *receipt of such petition to all public employees, employee organizations, and public employers named or*  
579 *described in such petitions or interested in the representation question. When necessary, the Board shall call*  
580 *an election under § 40.1-57.14 within 30 days of receipt of a petition unless it finds that less than 30 percent*  
581 *of the public employees in the unit appropriate for collective bargaining support the petition for certification,*  
582 *or it finds that less than 50 percent of employees in the unit appropriate for collective bargaining support the*  
583 *petition for decertification, or the appropriate bargaining unit has not been determined pursuant to*  
584 *§ 40.1-57.12.*

585 *E. For purposes of this article, administratively acceptable evidence to support a petition for certification*  
586 *without election, for a certification through a representation election, or for a decertification election may*  
587 *consist of a combination of membership cards, evidence of dues payment, petitions to be represented by a*  
588 *bargaining representative, or other evidence of a public employee's desire to be represented by an employee*  
589 *organization for the purposes of collective bargaining, including evidence that satisfies the Uniform*  
590 *Electronic Transactions Act (§ 59.1-479 et seq.), electronic authorizations, and voice authorizations. The*

591 determination by the Board of the sufficiency of a showing of majority support or sufficiency of support for a  
592 representation election shall not be subject to challenge by any person, employee organization, or public  
593 employer.

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

595 **§ 40.1-57.14. Elections.**

596 A. Whenever a petition for an election is filed by an employee or employee organization containing the  
597 signatures of at least 30 percent of the public employees in an appropriate bargaining unit, or in the case of  
598 decertification, the signatures of at least 50 percent of such public employees, the Board shall conduct a  
599 secret ballot representation election to determine whether the public employees in the appropriate  
600 bargaining unit wish to be represented by an exclusive bargaining representative. The ballot shall contain  
601 the names of the petitioning employee organization, any employee organization submitting within 21 days of  
602 the initial petition evidence that at least 30 percent of the public employees in the appropriate bargaining  
603 unit support representation for purposes of collective bargaining by that employee organization, and any  
604 incumbent labor organization. The ballot shall also contain an option of no representation.

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

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

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

618 E. A petition for decertification or certification of an exclusive bargaining representative shall not be  
619 considered by the Board for a period of one year from the date of the certification or noncertification of an  
620 exclusive bargaining representative or during the duration of a collective bargaining agreement not to  
621 exceed three years. A petition for decertification shall not be considered during the duration of a collective

622 *bargaining agreement unless the collective bargaining agreement has been in effect for more than three*  
623 *years or the petition for decertification is filed not more than 210 days and not less than 180 days prior to the*  
624 *expiration of the collective bargaining agreement.*

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

628 **§ 40.1-57.15. Duties of exclusive bargaining representative.**

629 *A. An employee organization certified as a bargaining representative shall be the exclusive representative*  
630 *of all public employees in the bargaining unit and shall represent all public employees fairly, provided that*  
631 *an exclusive representative may require a public employee who is not a dues-paying member to pay for the*  
632 *reasonable costs and fees of handling a grievance. The exclusive representative may require a non-member*  
633 *to pay any anticipated proportional costs and fees prior to a grievance or arbitration hearing. Failure to pay*  
634 *costs and fees shall relieve the exclusive representative of further responsibility to the non-member regarding*  
635 *the matter. Any individual public employee shall have the right at any time to present a grievance specific to*  
636 *that employee to their public employer and to have such grievance adjusted without the intervention of the*  
637 *exclusive bargaining representative so long as (i) the adjustment is not inconsistent with the terms of a*  
638 *collective bargaining agreement then in effect and (ii) the exclusive bargaining representative has been given*  
639 *the opportunity to be present and participate during the grievance process and at such adjustment. The right*  
640 *to self-representation does not include the right to present a grievance to arbitration.*

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

643 *C. The scope of collective bargaining between a local government and an exclusive bargaining*  
644 *representative of local employees shall include wages, hours, and other terms and conditions of employment,*  
645 *and the duty to bargain includes matters described in Chapter 15 (§ 15.2-1500 et seq.) of Title 15.2;*  
646 *however, benefits provided under Title 51.1 and Title 65.2 shall not be subject to bargaining unless such*  
647 *benefits are adopted at the discretion of a local government. To the extent that an agreement is inconsistent*  
648 *with the terms of Chapter 15 of Title 15.2, the terms of the agreement shall prevail.*

649 *D. The scope of collective bargaining between a state agency and an exclusive bargaining representative*  
650 *of state employees shall include wages, hours, and other terms and conditions of employment and shall*  
651 *specifically include matters within the administrative discretion of the Director of the Department of Human*  
652 *Resource Management or appointing authorities; however, benefits provided under Title 51.1 and Title 65.2*

653 shall not be subject to bargaining. A collective bargaining agreement may not be inconsistent with the  
654 provisions of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, provided that all matters relating to wages,  
655 salaries, health benefit plans, and employee and employer contributions to such plans shall be a mandatory  
656 subject of collective bargaining and enforceable in any collective bargaining agreement notwithstanding any  
657 other provision of law. The Governor shall appoint the state agency's representative in collective bargaining.

658 E. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining  
659 representatives, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of  
660 § 2.2-3707.

661 **§ 40.1-57.16. Negotiation and impasse procedures.**

662 A. Except (i) as otherwise agreed by the parties to the negotiations or (ii) in the case of an impasse  
663 between an exclusive representative of employees that are firefighters or emergency medical services  
664 providers and the public employers of such employees, which impasse shall be resolved according to the  
665 provisions of § 40.1-57.24, each state agency and exclusive representative of state employees shall comply  
666 with the provisions of this section, including the following negotiation and impasse procedures:

667 1. A request for negotiations shall be filed in writing by the exclusive representative to the Commonwealth  
668 no later than June 1 of each odd-numbered year for any collective bargaining agreement that is to become  
669 effective on July 1 of the following year;

670 2. Negotiations shall begin no later than July 1 of the year the request is filed;

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

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

682 5. Each party shall submit its final offer on each separate item remaining at impasse to the arbitrator and  
683 the other party within 10 days after selection of the arbitrator. The arbitrator shall determine that either the

684 *final offer of the employer or the final offer of the employee organization on each separate issue shall be  
685 incorporated into the final collective bargaining agreement; however, the arbitrator shall not amend the offer  
686 of either party on any issue;*

687 *6. The arbitrator shall (i) begin hearings no later than November 20 of the year the request is filed in  
688 accordance with procedures prescribed by the Board and (ii) render a decision in writing no later than  
689 December 15 of such year;*

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

697 *8. Any time limit specified in this subsection may be extended by mutual agreement of the parties.*

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

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

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

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

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

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

715        1. *The lawful authority of the public employer;*  
716        2. *Stipulations of the parties;*  
717        3. *The interests and welfare of the public;*  
718        4. *The financial ability of the employer to meet the costs of any items to be included in the contract;*  
719        5. *Comparison of wages, hours, and terms and conditions of employment of the employees involved in the*  
720 *arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons*  
721 *performing similar services in the public and private sectors;*  
722        6. *The average consumer prices for goods and services, commonly known as the cost of living;*  
723        7. *The overall compensation presently received by the employees involved in the arbitration, including*  
724 *wages, insurance benefits, vacations, holidays, and similar benefits;*  
725        8. *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and*  
726        9. *Such other factors that are normally or traditionally taken into consideration in the determination of*  
727 *wages, hours, and terms and conditions of employment through voluntary collective bargaining, mediation,*  
728 *fact finding, arbitration, or otherwise between the parties, in public service or in private employment.*

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

730        **§ 40.1-57.17. Funding for agreement implementation.**

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

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

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

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

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

745        **§ 40.1-57.18. Judicial review.**

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

752     **§ 40.1-57.19. Strikes; lock-outs.**

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

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

758     **§ 40.1-57.20. Civil procedures; personal liability.**

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

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

764     **§ 40.1-57.21. Delivery of notices.**

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

771     **§ 40.1-57.22. Employee associations permitted.**

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

774     **§ 40.1-57.23. Individual providers.**

775     *A. For the purposes of this article, an individual provider shall be considered a public employee, and the*  
776     *Virginia Home Care Authority shall be considered the public employer of individual providers, except as*

777 otherwise provided in this section. The scope of collective bargaining between individual providers and the  
778 Authority shall include wages, benefits, and all terms and conditions of employment that are within the  
779 Authority's control, including any adverse action impacting such terms and conditions of employment, but  
780 shall not extend to those rights reserved to participants and participants' representatives pursuant to  
781 subsection C.

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

785 C. Participants or participants' representatives retain the rights to select, hire, direct, supervise, and  
786 terminate the services of any individual provider providing direct support services for the participant.  
787 Nothing in this article shall be construed to alter such rights. No provision of any agreement reached  
788 between any exclusive bargaining representative of individual providers and the Authority shall interfere  
789 with such rights.

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

793 **§ 40.1-57.24. Firefighters and emergency medical services providers; arbitration process.**

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

800 B. Each board of arbitration shall consist of three members, of which one member shall be appointed by  
801 the public employer, one member shall be appointed by the exclusive representative of such public employer's  
802 employees, and one member shall be selected by the other two members. The two members appointed by the  
803 public employer and by the exclusive representative shall be appointed within five days after the date of the  
804 request to appoint such board of arbitration. If, after at least 10 days have passed since the appointment of  
805 such two members, the third member has not been selected by such two members, either of the two members  
806 may request a nonprofit organization in the field of alternative dispute resolution that administers arbitration  
807 proceedings to furnish a list of three members of such organization residing in the Commonwealth or within

808 *250 miles of the public employer. The member appointed by the public employer shall eliminate one name*  
809 *from such list within five days after such list is furnished, and the member appointed by the exclusive*  
810 *representative shall eliminate another name from such list within five days after such initial elimination. The*  
811 *individual whose name remains on such list shall be appointed as the third member and shall serve as the*  
812 *chair of the board of arbitration. The board of arbitration shall commence proceedings within 10 days after*  
813 *the chair is selected and shall make its determination within 30 days after proceedings commence.*

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

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

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

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

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

828 **2. That §§ 32.1-331.04 and 40.1-54.3 and Article 2.1 (§§ 40.1-57.2 and 40.1-57.3) of Chapter 4 of Title**  
829 **40.1 of the Code of Virginia are repealed.**

830 **3. That the initial appointments of the members of the Virginia Home Care Authority, established**  
831 **pursuant to Article 5 (§ 32.1-331.18 et seq.) of Chapter 10 of Title 32.1 of the Code of Virginia, as**  
832 **created by this act, shall be staggered as follows: one member representing participants and**  
833 **participant representatives, as those terms are defined in § 32.1-331.19 of the Code of Virginia, as**  
834 **created by this act, for a term of one year; one member representing a nonprofit organization that**  
835 **advocates on behalf of seniors or people with disabilities for a term of two years; one member**  
836 **representing participants and participant representatives for a term of three years; and one member**  
837 **representing such a nonprofit organization for a term of four years.**

838 **4. That nothing in this act shall be construed to supersede the existing certification of any exclusive**

839 bargaining representative, as defined in § 40.1-57.4 of the Code of Virginia, as created by this act, or  
840 any active negotiation or collective bargaining agreement between an employer and employees engaged  
841 in a collective bargaining process prior to July 1, 2026, provided that on or after such date, an existing  
842 exclusive bargaining representative may be decertified through a petition pursuant to the process  
843 described in §§ 40.1-57.13 and 40.1-57.14 of the Code of Virginia, as created by this act.