

SENATE BILL NO. 378
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on _____)
(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact § 40.1-55 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 10 of Title 32.1 an article numbered 5, consisting of sections numbered 32.1-331.18 through 32.1-331.21, and 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 §§ 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 40.1 of the Code of Virginia, relating to collective bargaining by public employees; individual home care providers; Virginia Home Care Authority established; Public Employee Relations Board established; 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 10 of Title 32.1 an article numbered 5, consisting of sections numbered 32.1-331.18 through 32.1-331.21, and 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:

Article 5.

Virginia Home Care Authority.

§ 32.1-331.18. Virginia Home Care Authority; creation.

There is hereby created within the Department of Medical Assistance Services the Virginia Home Care Authority to ensure the effectiveness and quality of the services of home care programs in the Commonwealth.

§ 32.1-331.19. Definitions.

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

"Authority" means the Virginia Home Care Authority established pursuant to this article.

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

"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 Plus 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 Social Security Act.

"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.

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

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

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

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

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

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

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

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

D. Members of the Authority may serve successive terms.

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

§ 32.1-331.21. Powers and duties of Authority.

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:

1. A transportation district, including a transportation district established pursuant to § 33.2-1903;

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

3. Any other political subdivision that provides public transportation services.

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

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

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

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

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

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

§ 40.1-57.5. Collective bargaining by public employees.

Public employees may:

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

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

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

§ 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.*

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

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

1. Two members shall be representatives of management interests;

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

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

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

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

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

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

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

E. The Board shall:

1. Administer the provisions of this article;

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

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

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

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

§ 40.1-57.8. Powers of public employers.

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

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

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

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

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

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

workday; and

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

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

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

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

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

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

§ 40.1-57.10. Prohibited conduct.

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

B. No public employer or its designated representative shall:

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

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

3. Encourage or discourage membership in any employee organization, committee, or association 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*

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

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

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

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

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

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

§ 40.1-57.14. Elections.

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

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

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

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

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

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

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

§ 40.1-57.15. Duties of exclusive bargaining representative.

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

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

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

D. The scope of collective bargaining between a state agency and an exclusive bargaining representative of state employees shall include wages, hours, and other terms and conditions of employment and shall specifically include matters within the administrative discretion of the Director of the Department of Human 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

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

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

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

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

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

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

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

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

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

E. In making any decision under the impasse procedures authorized by this article for any public 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.**

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

§ 40.1-57.19. Strikes; lock-outs.

A. In accordance with the provisions of § 40.1-55, any public employee 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.

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

§ 40.1-57.20. Civil procedures; personal liability.

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

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

§ 40.1-57.21. Delivery of notices.

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

§ 40.1-57.22. Employee associations permitted.

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

§ 40.1-57.23. Individual providers.

A. For the purposes of this article, an individual provider shall be considered a public employee, and the 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

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

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

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

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

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

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

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 40.1 of the Code of Virginia are repealed.

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

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.