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**SENATE BILL NO. 378****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Second Joint Conference Committee  
on March 14, 2026)

(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 40.1-57.25; 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 Council 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 40.1-57.25, as follows:

*Article 5.**Virginia Home Care Council.***§ 32.1-331.18. Virginia Home Care Council; creation.**

There is hereby created the Virginia Home Care Council, responsible to the Secretary of Health and Human Resources, to promote the stability of the individual provider workforce in the Commonwealth.

**§ 32.1-331.19. Definitions.**

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

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

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

"Covered program" means a program to provide consumer-directed direct support services funded in whole or in part by the Department or the Department for Aging and Rehabilitative Services, including services under the Commonwealth Coordinated Care Plus program and development disability waiver programs established pursuant to home and community-based service waivers authorized under § 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. Council composition; membership; quorum.**

A. The Council shall consist of five members to be appointed in accordance with the provisions of this section. The Director of the Department, or his designee, shall be a permanent member of the Council. The Governor 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 Council by the Governor shall serve four-year terms.

C. If a vacancy occurs, a new Council 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 Council may serve successive terms.

E. A majority of the members of the Council shall constitute a quorum for the transaction of any business. The Council shall make its own policies and procedures and shall adopt bylaws not inconsistent with this article governing its operations. The Council 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 Council shall

meet at the call of the chair and as may be provided in the bylaws.

F. The Council shall elect a chair and vice-chair from among its membership.

**§ 32.1-331.21. Powers and duties of Council.**

The Council shall have the following powers and duties:

1. To establish and maintain a central registry of individual providers;

2. To create a system for participants who need direct support services to identify potential individual providers;

3. To serve as the public employer of individual providers solely for purposes of collective bargaining pursuant to Article 2.2 (§ 40.1-57.4 et seq.) of Chapter 4 of Title 40.1;

4. If there is no current exclusive bargaining representative for individual providers, to provide an employee organization, as defined in § 40.1-57.4, seeking certification as an exclusive bargaining representative of individual providers the following contact information within 10 business days after a request for such information and in an electronic format: the name, home address, home telephone number, personal cell phone number, and personal email address of each individual provider on file with the Council. Records of personal and home contact information described in this subdivision are not public records under the Virginia Public Records Act (§ 42.1-76 et seq.) and shall be exempt from public disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

5. To arrange for the provision of an orientation for newly hired individual providers. Such training program shall be developed in consultation with participants and participant representatives, individual providers, and any exclusive bargaining representative of individual providers. The Council shall establish requirements for the provision of such training;

6. To espouse, support, and work to preserve participant selection and self-direction of individual providers. Nothing in this article shall be construed to limit a participant's authority to hire or fire an individual provider, set schedules, direct daily care, and supervise job performance;

7. To serve as a communications hub for the individual provider workforce to share information relevant to individual providers;

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

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

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

11. To collaborate with the Department to ensure processes are in place to pay individual providers in a timely manner in accordance with applicable federal and state requirements; and

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

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

~~A.~~ Any employee of the Commonwealth, or of any county, city, town, or other political subdivision thereof, or of any agency of any one of them, or any individual provider, as defined in § 32.1-331.19, who, in concert with two or more other such employees, for the purpose of obstructing, impeding, or suspending any activity or operation of his employing agency or any other governmental agency, strikes or willfully refuses to perform the duties of his employment shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next 12 months by the Commonwealth, or any county, city, town, or other political subdivision of the Commonwealth, or by any department or agency of any of them.

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

Article 2.2.

Collective Bargaining by Public Employees.

**§ 40.1-57.4. Definitions.**

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

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

"Bargaining unit" means a group of public employees who share clear and identifiable interests in wages and conditions based on similar job duties, skills, or other criteria. A bargaining unit is represented by a single exclusive bargaining representative.

"Board" means the Public Employee Relations Board established pursuant to § 40.1-57.8.

"Collective bargaining" or "negotiation" means the performance of the mutual obligation of the public employer, by its representatives, and the representatives of its public employees to negotiate in good faith at

reasonable times and places with respect to wages, hours, and other terms and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement, and includes executing a written contract incorporating the terms of any agreement reached.

"Confidential employee" means an employee who is authorized to access confidential information pertaining to a public employer's budgetary and fiscal data or confidential personnel information relevant to matters within the scope of collective bargaining as described in this article.

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

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

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

"Exclusive bargaining representative" or "exclusive representative" means an employee organization (i) certified as the exclusive bargaining representative of a bargaining unit by the Board pursuant to the provisions of this article or (ii) recognized as an exclusive representative by any county, city, town, local school board, or other public employer as of July 1, 2028.

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

"Governing body" means the General Assembly; any board, council, authority, or commission, whether elected or appointed, of the Commonwealth; any local government; or any other public body that determines the fiscal appropriations or approves budgets for the operation of a political subdivision or public transportation provider.

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

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

"Local government" means:

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

"Local government employee" means any individual who is employed by a local government, except individuals exempted from the provisions of this article by § 40.1-57.7.

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

"Public employee" means any state employee or local government employee except an individual exempted from the provisions of this article by § 40.1-57.7. "Public employee" includes an employee of a local school board, an employee of a public transportation provider, and an employee of any public institution of higher education, as that term is defined in § 23.1-100, including a student employed in any capacity.

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

"Public transportation provider" means:

1. A transportation district established pursuant to § 33.2-1903 or other transportation district;
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 or combination thereof that provides public transportation services.

"State agency" means the Commonwealth or any agency, department, or institution thereof, including any public institution of higher education as defined in § 23.1-100 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 § 40.1-57.7.

"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

184 in the conditions, compensation, rights, privileges, or obligations of public employment.

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

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

194 "Virginia Home Care Council" or "the Council" means the Virginia Home Care Council established  
195 pursuant to § 32.1-331.18.

196 **§ 40.1-57.5. Individual providers.**

197 A. Only for the purposes of effectuating this article, an individual provider shall be considered a public  
198 employee. The Virginia Home Care Council shall only serve as the public employer of individual providers  
199 for purposes of collective bargaining as described in § 32.1-331.21. The scope of collective bargaining  
200 between individual providers and the Council shall include wages, health care benefits, and all terms and  
201 conditions of employment that are within the Council's control, including any adverse action impacting such  
202 terms and conditions of employment, but shall not extend to those rights reserved to participants and  
203 participants' representatives pursuant to subsection C.

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

207 C. Participants or participants' representatives shall retain the rights to select, hire, direct, supervise, and  
208 terminate the services of any individual provider providing direct support services for the participants.  
209 Nothing in this article shall be construed to alter such rights. No provision of any agreement reached  
210 between any exclusive bargaining representative of individual providers and the Council shall interfere with  
211 such rights.

212 D. Nothing in this article shall be construed to classify individual providers as employees of the  
213 Commonwealth. No individual provider shall be eligible for state retirement programs or health care  
214 benefits. The Commonwealth shall not be liable for any act or omission by an individual provider.

215 **§ 40.1-57.6. Collective bargaining by public employees.**

216 Public employees may:

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

222 **§ 40.1-57.7. Exemptions from article.**

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

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

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

231 3. Confidential employees;

232 4. Temporary public employees;

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

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

237 7. Employees working for the General Assembly;

238 8. Quasi-judicial employees of the Commonwealth, including commissioners and deputy commissioners of  
239 the Workers' Compensation Commission and hearing officers assigned to conduct grievance hearings  
240 pursuant to § 2.2-3005;

241 9. Employees of a public institution of higher education except for service employees. For the purposes of  
242 this subdivision, "service employee" means an employee employed at least 16 hours per week at a public  
243 institution of higher education performing work in connection with the care or maintenance of property,  
244 including a janitor, security officer, groundskeeper, concierge, clerical and administrative assistant, door  
245 staff, maintenance technician, handyman, superintendent, elevator operator, window cleaner, building

engineer, or food preparation services worker; and

10. Individuals who manage or have decision-making authority over any investment of state government funds.

B. The provisions of this article shall apply to law-enforcement officers, as defined in § 9.1-101. Any officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia may elect to be subject to the provisions of this article and to authorize his public employees to collectively bargain pursuant thereto. If a constitutional officer makes such election, the processes for certifying an exclusive bargaining representative and engaging in collective bargaining shall be determined by the Board. However, (i) no collective bargaining representative shall represent a law-enforcement officer or constitutional officer in a pending internal investigation involving serious misconduct as defined in statewide professional standards of conduct adopted by the Criminal Justice Services Board and (ii) no collective bargaining agreement shall limit, alter, or otherwise impact the procedures required by the Law-Enforcement Officers Procedural Guarantee Act (§ 9.1-500 et seq.), decertification pursuant to § 15.2-1707, or any regulations adopted pursuant to § 9.1-102 relating to the statewide professional standards of conduct applicable to certified law-enforcement officers and certified jail officers and procedures for decertification based on serious misconduct in violation of such standards. Additionally, to the extent that any collective bargaining agreement conflicts with any provision of a state or federal law, regulation, or local ordinance, such law, regulation, or ordinance shall control.

**§ 40.1-57.8. Public Employee Relations Board created; powers.**

A. Notwithstanding the provisions of § 40.1-1, the Public Employee Relations Board is established within the Department. 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 five 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 three years and the initial appointments of the members described in subdivisions A 2 and 3 shall be for a term of four 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 evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the Board or persons appointed or employed by the Board, including hearing officers, for the performances of its functions. In cases of refusal to obey a subpoena issued by the Board, the circuit court of the locality where the person refusing to obey such subpoena may be found, on application by the Board, may issue an order requiring such person to appear before the Board and to testify and produce evidence ordered relating to the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof; and

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

F. The Board shall have the power to:

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

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

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

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

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

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

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

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

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.

**§ 40.1-57.9. Powers of public employers.**

A. Except as expressly limited by the provisions of a collective bargaining agreement, the provisions of this title, or by any other statutory provision, a public employer shall reserve the right to:

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.

B. No provision of this section shall be construed to restrict a governing body's authority to establish the budget of or appropriate funds to the public employer.

**§ 40.1-57.10. 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 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 exclusive representative, the public employer of such employee shall honor a payroll deduction authorization for dues and fees paid to such exclusive representative only. Such public employer shall negotiate only with such exclusive bargaining representative on matters contained in this article. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

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

authorization.

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

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

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

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

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

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 unless otherwise prohibited by law. 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.

#### **§ 40.1-57.11. 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 § 40.1-57.16.

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;

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

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

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

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

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

b. The public employee requests representation;

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

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

10. Disclose to any private entity, other than the exclusive representative, personally identifiable information about public employees within a bargaining unit that is exempt from disclosure, including the contact information specified in § 40.1-57.10; or

11. Retaliate against a public employee for the exercise of rights under this article through adverse scheduling, reduction in hours, reassignment, delayed compensation, or manipulation of work assignments.

C. No employee organization or its agents shall:

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

2. Fail to represent an employee who is in a bargaining unit exclusively represented by the employee organization fairly and without discrimination, provided that (i) such failure is willful or deliberate and (ii) 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. Failure to pay costs and fees shall relieve the exclusive representative of further responsibility to the non-member regarding the grievance;

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

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

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

6. Disclose to any private entity, other than the exclusive bargaining representative, personally identifiable information about public employees within a bargaining unit that is exempt from disclosure, including the contact information specified in § 40.1-57.10.

**§ 40.1-57.12. Board procedures.**

A. Proceedings against a party alleging a violation of § 40.1-57.11 shall be commenced by filing a charge with the Board within six months of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in the manner of an original notice as provided in § 40.1-57.23. The accused party shall have 10 business days within which to file a written answer to the charge. The Board may extend such time frame for good cause shown. The Board may conduct a preliminary investigation of the alleged violation, and if the Board determines that the charge has no legal or factual basis, it may dismiss the charge. If it does not dismiss the charge, the Board shall promptly thereafter set a time and place for a hearing in the locality where the alleged violation occurred or in the locality where the Board maintains its principal office. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the Board to subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

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

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

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

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

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

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

H. Any order or decision of the Board may be modified, reversed, or set aside on one or more of the

grounds set forth in § 8.01-581.010 or 8.01-581.011.

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

**§ 40.1-57.13. Determination of appropriate bargaining unit.**

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

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

C. Bargaining units of state employees shall include employees in broad classification categories across the various agencies and departments of the executive branch. There shall be bargaining units for each of the following, subject to modification by the Board in the event that such occupational categories are revised by the Department of Human Resource Management:

1. Administrative services;
2. Education and media services;
3. Engineering and technology;
4. Health and human services counseling services and health care compliance;
5. Health and human services direct services;
6. Health and human services health care technology, rehabilitation therapies, pharmaceutical services, and nurse and physician assistant services;
7. Health and human services physician services, psychological services, and dental services;
8. Natural resources and applied science;
9. Security guards and protective services;
10. Corrections;
11. Juvenile justice;
12. Probation and parole;
13. Law enforcement, except for state police;
14. State police;
15. Firefighters;
16. Other public safety services not described in another subdivision of this subsection;
17. Trades and operations; and
18. Individual providers.

D. The Governor or his designee shall establish and chair a committee of state agency representatives, including the Department of Planning and Budget and the Department of Human Resource Management, to meet and negotiate with the exclusive representative of each of the units specified in subsection C. Upon the unanimous written request of the exclusive representatives of such bargaining units, the Governor or his designee may determine that negotiation be conducted for one or more such units in a common proceeding. The Governor, his designee, or the exclusive bargaining representative may request that supplemental negotiation be conducted for portions of a unit or units defined on the basis of appointing authority or geography or concerning matters uniquely affecting those public employees.

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

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

2. Licensed personnel, including non-administrative school board employees whose position requires a license from the Board of Education or Department of Health Professions and all school board employees who as a core job function provide instructional support to students and are required by their job description to have a postsecondary degree and state or national-level certification;

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

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

556 operations, administration, or education programs.

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

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

564 H. An exclusive representative may represent more than one bargaining unit. Upon the request of an  
565 exclusive representative that represents more than one bargaining unit, the employer shall negotiate a single  
566 agreement covering the represented bargaining units. Notwithstanding the provisions of this subsection, any  
567 bargaining unit certified on or after July 1, 2028, shall have a single exclusive bargaining representative.

568 **§ 40.1-57.14. Certification and decertification of exclusive bargaining representatives; representation**  
569 **elections.**

570 A. Board certification of an employee organization as the exclusive bargaining representative of a  
571 bargaining unit shall be upon a petition filed with the Board by a public employee or an employee  
572 organization and an election pursuant to § 40.1-57.15 or upon administratively acceptable evidence that a  
573 majority of bargaining unit employees authorized an employee organization to represent them for the  
574 purposes of collective bargaining.

575 B. A petition of an employee organization for a representation election shall be accompanied by  
576 administratively acceptable evidence that 30 percent of the public employees in an appropriate bargaining  
577 unit are members of the employee organization or have authorized it to represent them for the purposes of  
578 collective bargaining. Notwithstanding any other provision of law, an employee organization may petition for  
579 certification without an election by providing administratively acceptable evidence demonstrating that a  
580 majority of the public employees in an appropriate bargaining unit are members of the employee  
581 organization or have authorized it to represent them for the purposes of collective bargaining. Upon  
582 validating such evidence, a public employer may elect to recognize an exclusive bargaining representative,  
583 and the Board shall certify the employee organization as the exclusive bargaining representative of the  
584 bargaining unit, provided that no other employee organization submits evidence that at least 30 percent of  
585 the public employees in the appropriate unit support representation for purposes of collective bargaining by  
586 such other employee organization within 21 days of notification by the Board that it has received the petition  
587 as provided in subsection D. In such a case, the Board shall conduct a secret ballot election between such  
588 employee organizations to determine whether the public employees in the appropriate bargaining unit wish  
589 to be represented by any such employee organization.

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

598 D. The Board shall investigate the allegations of any petition and shall give reasonable notice of the  
599 receipt of such petition to all public employees, employee organizations, and public employers named or  
600 described in such petitions or interested in the representation question. When necessary, the Board shall call  
601 an election under § 40.1-57.15 within 30 days of receipt of a petition unless it finds that less than 30 percent  
602 of the public employees in the unit appropriate for collective bargaining support the petition for certification,  
603 or it finds that less than 50 percent of employees in the unit appropriate for collective bargaining support the  
604 petition for decertification, or the appropriate bargaining unit has not been determined pursuant to  
605 § 40.1-57.13.

606 E. For purposes of this article, administratively acceptable evidence to support a petition for certification  
607 without election, for a certification through a representation election, or for a decertification election may  
608 consist of a combination of membership cards, evidence of dues payment, petitions to be represented by a  
609 bargaining representative, or other evidence of a public employee's desire to be represented by an employee  
610 organization for the purposes of collective bargaining, including evidence that satisfies the Uniform  
611 Electronic Transactions Act (§ 59.1-479 et seq.), electronic authorizations, and voice authorizations. The  
612 determination by the Board of the sufficiency of a showing of majority support or sufficiency of support for a  
613 representation election shall not be subject to challenge by any person, employee organization, or public  
614 employer.

615 F. The hearing and appeal procedures shall be the same as provided for in § 40.1-57.12.

616 **§ 40.1-57.15. Elections.**

617 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.

**§ 40.1-57.16. 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, health benefit plans unless the local government participates in the health insurance program established pursuant to § 2.2-1204, 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 shall not be subject to bargaining. A collective bargaining agreement may not be inconsistent with the provisions of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, provided that all matters relating to wages or salaries shall be a subject of collective bargaining and enforceable in any collective bargaining agreement. The Governor or his designee will serve as the state agency's representative in collective bargaining.

680 E. Negotiating sessions, including strategy meetings of public employers or exclusive bargaining  
681 representatives, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of  
682 § 2.2-3707.

683 **§ 40.1-57.17. Negotiation and impasse procedures.**

684 A. Except (i) as otherwise agreed by the parties to the negotiations or (ii) in the case of an impasse  
685 between an exclusive representative of employees that are firefighters or emergency medical services  
686 providers and the public employers of such employees, which impasse shall be resolved according to the  
687 provisions of § 40.1-57.25, each state agency and exclusive representative of state employees shall comply  
688 with the provisions of this section, including the following negotiation and impasse procedures:

689 1. A request for negotiations shall be filed in writing by the exclusive representative to the Board and the  
690 public employer. Such request shall be made within 30 days after the initial certification of an employee  
691 organization as an exclusive representative. For existing collective bargaining agreements, a request for  
692 negotiations shall be made no sooner than 90 days prior to and no later than 30 days prior to the expiration  
693 of a collective bargaining agreement;

694 2. Negotiations shall begin no later than 10 days after the request is filed;

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

698 4. The mediator shall provide services to the parties until the parties reach agreement, the mediator  
699 believes that mediation services are no longer helpful, or October 1 of the year the request is filed, whichever  
700 occurs first. If the mediator determines that mediation services are no longer helpful or if the October 1  
701 deadline occurs, the parties shall jointly submit the unresolved issues to arbitration. The parties shall jointly  
702 select an arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of seven  
703 arbitrators from the Federal Mediation and Conciliation Service or the American Arbitration Association.  
704 Each party in turn shall strike a name from the list until only one name remains. An arbitrator shall be  
705 selected within five days after submission to arbitration. Negotiations may continue throughout the impasse  
706 procedures;

707 5. Each party shall submit its final offer on each separate item remaining at impasse to the arbitrator and  
708 the other party within 10 days after selection of the arbitrator. The arbitrator may extend such time frame for  
709 good cause shown. The arbitrator shall determine that either the final offer of the employer or the final offer  
710 of the employee organization on each separate issue shall be incorporated into the final collective bargaining  
711 agreement; however, the arbitrator shall not amend the offer of either party on any issue;

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

715 7. Either party may invoke arbitration in accordance with the provisions of subdivisions 4, 5, and 6 any  
716 time at least 90 days after the first negotiation session. Matters not requiring the approval of the General  
717 Assembly shall take effect in accordance with the terms of the agreement or award of an arbitrator. Matters  
718 requiring the approval of the General Assembly shall take effect in accordance with § 40.1-57.18; and

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

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

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

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

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

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

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

738 1. The lawful authority of the public employer;

739 2. Stipulations of the parties;

740 3. The interests and welfare of the public;

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

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

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

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

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

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

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

**§ 40.1-57.18. Funding for agreement implementation.**

A. After a negotiated agreement has been agreed to by both parties, or an arbitration decision has been rendered in accordance with § 40.1-57.17, the chief executive of the public employer shall submit to the relevant governing body a request for funds necessary to implement the agreement and for approval of any other matter requiring the approval of the governing body within five days after (i) the date on which the parties finalize the agreement or (ii) the date on which the arbitration decision is issued, unless otherwise specified in this section. If the governing body is not in session at the time, then the submission shall be within five days after it next convenes.

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

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

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

E. Upon the expiration of an agreement, the terms of such agreement not requiring the appropriation of funds by the governing body shall remain in effect until superseded by a new agreement.

F. This section shall not apply to any negotiated agreement or arbitration decision to which a state agency is a party.

**§ 40.1-57.19. Funding for agreement implementation; state employees.**

A. After a negotiated agreement has been agreed to by two parties, one of which is a state agency, or an arbitration decision has been rendered between a party and a state agency in accordance with § 40.1-57.17, the Governor shall include in the Executive Budget submitted pursuant to § 2.2-1509 a request for funds necessary to implement the agreement and for approval of any other matter requiring the approval of the General Assembly.

B. The General Assembly shall approve or reject the submission as a whole.

C. Any request that is not included by the General Assembly in a duly enacted general appropriation act shall not take effect. If the General Assembly rejects the submission of the Governor or his designee by electing not to include the request in the general appropriation act, either party may reopen negotiations. The Governor or his designee may resubmit his request for inclusion in the next Executive Budget or for consideration in the next Budget Bill immediately following rejection of his submission.

D. The parties shall specify that those provisions of the agreement not requiring action by the General Assembly shall be effective and operative in accordance with the terms of the agreement.

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

F. This section shall apply to every negotiated agreement or arbitration decision to which a state agency is a party.

**§ 40.1-57.20. 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.

**§ 40.1-57.21. 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.

**§ 40.1-57.22. 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

804 pursuant to Title 8.01.

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

807 **§ 40.1-57.23. Delivery of notices.**

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

814 **§ 40.1-57.24. Employee associations permitted.**

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

817 **§ 40.1-57.25. Firefighters and emergency medical services providers; arbitration process.**

818 A. Notwithstanding the provisions of § 40.1-57.17, if a dispute arises between an exclusive representative  
819 of employees that are firefighters or emergency medical services providers and the public employer of such  
820 employees in which the collective bargaining process reaches an impasse, or if the relevant governing body  
821 does not approve an agreement reached between such parties within 30 days after such agreement is  
822 reached, then either party to such dispute, after written notice to the opposing party specifying the issue or  
823 issues in dispute, may request the appointment of a board of arbitration.

824 B. Each board of arbitration shall consist of three members, of which one member shall be appointed by  
825 the public employer, one member shall be appointed by the exclusive representative of such public employer's  
826 employees, and one member shall be selected by the other two members. The two members appointed by the  
827 public employer and by the exclusive representative shall be appointed within five days after the date of the  
828 request to appoint such board of arbitration. If, after at least 10 days have passed since the appointment of  
829 such two members, the third member has not been selected by such two members, either of the two members  
830 may request a nonprofit organization in the field of alternative dispute resolution that administers arbitration  
831 proceedings to furnish a list of three members of such organization residing in the Commonwealth or within  
832 250 miles of the public employer. The member appointed by the public employer shall eliminate one name  
833 from such list within five days after such list is furnished, and the member appointed by the exclusive  
834 representative shall eliminate another name from such list within five days after such initial elimination. The  
835 individual whose name remains on such list shall be appointed as the third member and shall serve as the  
836 chair of the board of arbitration. The board of arbitration shall commence proceedings within 10 days after  
837 the chair is selected and shall make its determination within 30 days after proceedings commence.

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

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

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

847 F. The determination of the majority of the members of a board of arbitration established pursuant to this  
848 section shall be final on the issue or issues in dispute, subject to judicial review under § 40.1-57.20. Such  
849 determination shall be made in writing, and a copy thereof shall be sent to such parties.

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

852 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  
853 40.1 of the Code of Virginia are repealed.

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

862 4. That nothing in this act shall be construed to supersede the existing certification of any exclusive  
863 bargaining representative, as defined in § 40.1-57.4 of the Code of Virginia, as created by this act, or  
864 any active negotiation or existing collective bargaining agreement between an employer and employees  
865 entered into prior to July 1, 2028, provided that on or after such date, an existing exclusive bargaining

representative may be decertified through a petition pursuant to the process described in §§ 40.1-57.14 and 40.1-57.15 of the Code of Virginia, as created by this act.

5. That the Department of Labor and Industry shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), promulgate any regulations necessary to effectuate the provisions of this act, including to further define terms, processes, and procedures, by July 1, 2028. Upon the establishment of the Public Employee Relations Board (the Board) pursuant to § 40.1-57.8 of the Code of Virginia, as created by this act, such regulations shall be transferred to the Board, and the Board shall adopt such regulations once finalized. Until such regulations are adopted, no petitions or elections as described by § 40.1-57.14 of the Code of Virginia, as created by this act, shall take place except pursuant to an ordinance or resolution adopted prior to July 1, 2026, pursuant to subsection A of § 40.1-57.2 of the Code of Virginia, as it was in effect prior to July 1, 2026.

6. That the Public Employee Relations Board established pursuant to § 40.1-57.8 of the Code of Virginia, as created by this act, shall review and evaluate the list of collective bargaining units described in § 40.1-57.13 of the Code of Virginia, as created by this act, for state employees, independent agencies, public institutions of higher education, and local school boards to determine which bargaining units are most appropriate for the applicable entity. The Board shall also determine whether the authority to collectively bargain should be phased in by bargaining unit over an appropriate period of time and, if so, the schedule of such phase-in for each bargaining unit. The Board shall report to the Governor and the General Assembly its findings and recommendations no later than September 1, 2027.

7. That the governing board of each public institution of higher education, as defined in § 23.1-300 of the Code of Virginia, shall assess the potential impact of the provisions of this act on its tuition as part of the six-year plan that each such governing board is required to submit pursuant to § 23.1-306 of the Code of Virginia.

8. That the Secretary of Education (the Secretary), in collaboration with the Secretary of Labor and Industry, shall evaluate options and make recommendations to effectively administer the collective bargaining rights of the employees of each public institution of higher education, the Virginia Community College System, the University of Virginia Medical Center, and the Virginia Commonwealth University Health System Authority that take affect by July 1, 2028, pursuant to the first enactment of this act. Such evaluation shall include (i) a review of practices in other states and the methods by which such states allow collective bargaining by similar employees at public institutions of higher learning and (ii) a determination of best practices and recommendations for necessary administrative bargaining practices and procedures at each public institute of higher learning within the Commonwealth. Each public institution of higher education, the Virginia Community College System, the University of Virginia Medical Center, the Virginia Commonwealth University Health System Authority, and the State Council on Higher Education for Virginia shall provide assistance to the Secretary in conducting such evaluation and developing such recommendations. The Secretary shall report any findings and recommendations to the Governor and the General Assembly by November 15, 2026.