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HOUSE BILL NO. 336

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on February 10, 2022)

(Patron Prior to Substitute—Delegate Freitas)

A *BILL to amend and reenact § 40.1-57.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2.1 of Chapter 4 of Title 40.1 a section numbered 40.1-57.4, relating to public employees; bargaining representative certification.*

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-57.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 2.1 of Chapter 4 of Title 40.1 a section numbered 40.1-57.4 as follows:

§ 40.1-57.2. Collective bargaining.

A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for procedures for the *selection*, certification, and decertification of exclusive bargaining representatives, *pursuant to § 40.1-57.4*, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.

B. No ordinance or resolution adopted pursuant to subsection A shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.

C. For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.

D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

§ 40.1-57.4. Bargaining representative certification.

A. For purposes of this section:

"Bargaining representative" means any employee association that has been certified or designated as the representative of the employees in an appropriate collective bargaining unit to represent the employees in their employment relations with employers, if authorized by local ordinance pursuant to § 40.1-57.2.

"Collective bargaining unit" means a unit consisting of public employees determined by the governing body of any county, city, or town that has adopted an ordinance or resolution providing for collective bargaining pursuant to § 40.1-57.2 to be appropriate for the purposes of collective bargaining.

"Election" means a proceeding conducted by the governing body of any county, city, or town that has adopted an ordinance or resolution providing for collective bargaining pursuant to § 40.1-57.2 in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this section.

"Employee association" means any association or organization of employees and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

B. A bargaining representative chosen for the purposes of collective bargaining by a majority of the

60 public employees in a collective bargaining unit shall be the exclusive representative of all employees in
61 the unit for the purpose of collective bargaining. A bargaining representative shall be chosen by at least
62 51 percent of the public employees in a collective bargaining unit through a secret ballot election
63 conducted by the governing body of any county, city, or town that has adopted an ordinance or
64 resolution providing for collective bargaining pursuant to § 40.1-57.2. No bargaining representative
65 shall continue to represent public employees in a collective bargaining unit without the concurrence of
66 at least 51 percent of all public employees in the unit. A secret ballot election shall be conducted at
67 least every two years to determine majority support of the bargaining representative.

68 C. To select an exclusive bargaining representative for a collective bargaining unit or to certify an
69 existing bargaining representative, the governing body of any county, city, or town that has adopted an
70 ordinance or resolution providing for collective bargaining shall direct a secret ballot election. The
71 governing body directing the secret ballot election shall promulgate rules to conduct the election
72 process and preserve the integrity of the secret ballots and shall determine whether elections shall be
73 conducted in person, by mail, by telephone, by Internet-based systems, or by any other means
74 determined by the governing body to be fair and reliable. The governing body directing the secret ballot
75 election may establish a fee schedule from bargaining representatives participating in elections
76 conducted under this section for the purpose of funding the elections.

77 D. If a preexisting bargaining representative receives votes from at least 51 percent of all public
78 employees in a collective bargaining unit, the preexisting certification shall continue. If an existing
79 collective bargaining representative fails to receive votes from at least 51 percent of all public
80 employees in the collective bargaining unit, the governing body of the locality shall decertify the
81 bargaining representative and the public employees shall be unrepresented until another bargaining
82 representative is properly certified.

83 In the event of certification termination, the terms of any preexisting contract between the bargaining
84 representative and the public employer shall continue and remain in effect for the remaining contract
85 term, except for any provisions involving the collective bargaining representative, including security,
86 dues and fees, and grievance and arbitration.

87 E. Public employees may certify a new bargaining representative in accordance with subsection C so
88 long as the public employees are not represented by the same or a substantially similar or affiliated
89 employee organization as the decertified bargaining representative for 12 months from the date of
90 decertification.

91 F. The provisions of this section shall apply to each collective bargaining agreement or contract that
92 is entered into, modified, extended, affected by a new or changed memorandum of understanding,
93 amended, or otherwise changed or altered in any way on or after July 1, 2022. The requirements of this
94 section shall not affect any collective bargaining agreement or contract that is in effect prior to July 1,
95 2022, the terms of which shall remain valid until the adoption of a new collective bargaining agreement
96 or contract or the modification, extension, or alteration thereof.