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HOUSE BILL NO. 1944

House Amendments in [] — February 1, 2001

A *BILL to amend and reenact § 15.2-1507 of the Code of Virginia, relating to local grievance procedure.*

Patron Prior to Engrossment—Delegate Hull

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-1507 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-1507. Provision of grievance procedure; training programs.

A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to certify it as provided in this section, the local governing body shall be deemed to have adopted a grievance procedure which is consistent with the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The locality shall provide its employees with copies of the applicable grievance procedure upon request. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

Each grievance procedure, and each amendment thereto, in order to comply with this section, shall be certified in writing to be in compliance by the city, town or county attorney, and the chief administrative officer of the locality, and such certification filed with the clerk of the circuit court having jurisdiction in the locality in which the procedure is to apply. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for ninety days thereafter, unless certified and filed as provided above within a shorter time period.

Each grievance procedure shall include the following components and features:

1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision 2 (iii) below; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. ~~[In provision (iv), acts of retaliation include increasing the penalty that the employee has grieved or complained of at any time after the employee initiates, uses or participates in the grievance procedure. For the purposes of clause (iv) there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.]~~

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi) of this subdivision, the action shall be upheld upon a showing by the local government that: (i) there was a valid business reason for the action and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and

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59 part-time employees are eligible to file grievances with the following exceptions:

60 (1) Appointees of elected groups or individuals;

61 (2) Officials and employees who by charter or other law serve at the will or pleasure of an
62 appointing authority;

63 (3) Deputies and executive assistants to the chief administrative officer of a locality;

64 (4) Agency heads or chief executive officers of government operations;

65 (5) Employees whose terms of employment are limited by law;

66 (6) Temporary, limited term and seasonal employees;

67 (7) Law-enforcement officers as defined in Chapter 10.1 (§ 2.1-116.1 et seq.) of Title 2.1 whose
68 grievance is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those
69 provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to
70 any other existing procedure in the resolution of his grievance.

71 b. Notwithstanding the exceptions set forth in subdivision 3 a above, local governments, at their sole
72 discretion, may voluntarily include employees in any of the excepted categories within the coverage of
73 their grievance procedures.

74 c. The chief administrative officer of each local government, or his designee, shall determine the
75 officers and employees excluded from the grievance procedure, and shall be responsible for maintaining
76 an up-to-date list of the affected positions.

77 4. Grievance procedure availability and coverage for employees of local social service departments
78 and boards, community services boards, redevelopment and housing authorities, and regional housing
79 authorities. Employees of local social service departments and boards, community services boards,
80 redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities
81 created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or
82 personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance
83 procedure established and administered by the department, board or authority which is consistent with
84 the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 and any regulations promulgated
85 pursuant thereto. If a department, board or authority fails to establish a grievance procedure pursuant to
86 clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is consistent with the
87 provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 and any regulations adopted pursuant
88 thereto for so long as it remains in noncompliance.

89 5. General requirements for procedures.

90 a. Each grievance procedure shall include not more than four steps for airing complaints at
91 successively higher levels of local government management, and a final step providing for a panel
92 hearing.

93 b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to
94 submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

95 c. Nothing contained in this section shall prohibit a local government from granting its employees
96 rights greater than those contained herein, provided such grant does not exceed or violate the general
97 law or public policy of the Commonwealth.

98 6. Time periods.

99 a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability
100 of the parties to prepare for a fair consideration of the issues of concern.

101 b. The time for submitting an initial complaint shall not be less than twenty calendar days after the
102 event giving rise to the grievance, but local governments may, at their option, allow a longer time
103 period.

104 c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant
105 than the time which is allowed for local government response in each comparable situation.

106 d. Time frames may be extended by mutual agreement of the local government and the grievant.

107 7. Compliance.

108 a. After the initial filing of a written grievance, failure of either party to comply with all substantial
109 procedural requirements of the grievance procedure, including the panel hearing, without just cause shall
110 result in a decision in favor of the other party on any grievable issue, provided the party not in
111 compliance fails to correct the noncompliance within five workdays of receipt of written notification by
112 the other party of the compliance violation. Such written notification by the grievant shall be made to
113 the chief administrative officer, or his designee.

114 b. The chief administrative officer, or his designee, at his option, may require a clear written
115 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his
116 designee, shall determine compliance issues. Compliance determinations made by the chief
117 administrative officer shall be subject to judicial review by filing petition with the circuit court within
118 thirty days of the compliance determination.

119 8. Management steps.

120 a. The first step shall provide for an informal, initial processing of employee complaints by the

immediate supervisor through a nonwritten, discussion format.

b. Management steps shall provide for a review with higher levels of local government authority following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the local government. Personal face-to-face meetings are required at all of these steps. [~~In discipline cases, no increase in penalty above that initially imposed shall be added at any higher level.~~]

c. With the exception of the final management step, the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

9. Qualification for panel hearing.

a. Decisions regarding grievability and access to the procedure shall be made by the chief administrative officer of the local government, or his designee, at any time prior to the panel hearing, at the request of the local government or grievant, within ten calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative officer within ten calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten calendar days thereafter, the chief administrative officer or his designee shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on or before a certain date.

b. Within thirty days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the chief administrative officer or his designee and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

10. Panel hearings.

a. Qualifying grievances shall advance to the final step as described below:

(1) With the exception of those local governments covered by subdivision a (2) of this subsection, the final step shall provide for a hearing before an impartial panel, consisting of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) Local governments may retain the panel composition method previously approved by the Department of Employment Dispute Resolution and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) Local governments shall not be required to have an administrative hearing officer in any case, but may do so in employee termination or retaliation cases at their option. When a local government elects to use an administrative hearing officer as the third panel member in an employee termination or retaliation case, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers

182 maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate
183 geographical region on a rotating basis. If a local government elects to use an administrative hearing
184 officer, it shall bear the expense of such officer's services.

185 (4) In all cases there shall be a chairperson of the panel and, when panels are composed of three
186 persons (one each selected by the respective parties and the third from an impartial source), the third
187 member shall be the chairperson.

188 (5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by
189 legal counsel or other representatives at the panel hearing. Such representatives may examine,
190 cross-examine, question and present evidence on behalf of the grievant or respondent before the panel
191 without being in violation of the provisions of § 54.1-3904.

192 (6) The decision of the panel shall be final and binding and shall be consistent with provisions of
193 law and written policy.

194 (7) The question of whether the relief granted by a panel is consistent with written policy shall be
195 determined by the chief administrative officer of the local government, or his designee, unless such
196 person has a direct personal involvement with the event or events giving rise to the grievance, in which
197 case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the
198 grievance is pending.

199 b. Rules for panel hearings.

200 Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel
201 hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules
202 which are promulgated shall include, but need not be limited to the following provisions:

203 (1) That panels do not have authority to formulate policies or procedures or to alter existing policies
204 or procedures;

205 (2) That panels have the discretion to determine the propriety of attendance at the hearing of persons
206 not having a direct interest in the hearing, and, at the request of either party, the hearing shall be
207 private;

208 (3) That the local government provide the panel with copies of the grievance record prior to the
209 hearing, and provide the grievant with a list of the documents furnished to the panel and the grievant
210 and his attorney, at least ten days prior to the scheduled panel hearing, shall be allowed access to and
211 copies of all relevant files intended to be used in the grievance proceeding;

212 (4) That panels have the authority to determine the admissibility of evidence without regard to the
213 burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is
214 afforded to all parties for the presentation of their evidence;

215 (5) That all evidence be presented in the presence of the panel and the parties, except by mutual
216 consent of the parties;

217 (6) That documents, exhibits and lists of witnesses be exchanged between the parties in advance of
218 the hearing;

219 (7) That the majority decision of the panel, acting within the scope of its authority, be final, subject
220 to existing policies, procedures and law;

221 (8) That the panel decision be provided within a specified time to all parties; and

222 (9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that
223 the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do
224 not necessarily apply.

225 11. Implementation of panel decisions.

226 Either party may petition the circuit court having jurisdiction in the locality in which the grievant is
227 employed for an order requiring implementation of the panel decision.

228 B. Notwithstanding the contrary provisions of this section, a final panel decision rendered under the
229 provisions of this section which would result in the reinstatement of any employee of a sheriff's office,
230 who has been terminated for cause may be reviewed by the circuit court for the locality upon the
231 petition of the locality. The review of the circuit court shall be limited to the question of whether the
232 panel's decision was consistent with provisions of law and written policy.