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SENATE BILL NO. 1217

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Deeds
on January 30, 2009)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 2.2-1001, 2.2-1201, 2.2-3003, and 2.2-3006 of the Code of Virginia, relating to the grievance hearings; Department of Employment Dispute Resolution; powers and duties of Director.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1001, 2.2-1201, 2.2-3003, and 2.2-3006 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-1001. Director to administer Department; powers and duties.

The Director shall, under the direction and control of the Governor, administer and supervise the Department and shall:

1. Establish a comprehensive program of employee relations management that includes alternative processes for resolving employment disputes;

2. Establish the grievance procedure and a statewide mediation program;

3. Adopt rules and set hearing officer fees for grievance hearings;

4. For employees who are covered by the grievance procedure, (i) provide forms necessary for the proper use of the grievance procedure; (ii) direct full compliance with the grievance procedure process; (iii) investigate allegations of retaliation as the result of use of or participation in the grievance procedure or of reporting, in good faith, an allegation of fraud, waste or abuse to the State Employee Fraud, Waste and Abuse Hotline and advise the agency head of the findings; and (iv) rule on the qualification of a grievance or the question of access to the grievance procedure;

5. Render final decisions, containing the reasons for such decision, on all matters related to procedural compliance with the grievance procedure. *All such decisions shall be final, with the exception that procedural compliance review of grievance hearing decisions may be appealed to the circuit court as provided by subsection A of § 2.2-3006;*

6. Establish a process to select, on a rotating basis, hearing officers for grievance hearings from (i) the list maintained by the Executive Secretary of the Supreme Court or (ii) attorneys hired as classified employees by the Department through a competitive selection process; train and assign such hearing officers to conduct grievance hearings; evaluate the quality of their services to determine eligibility for continued selection; and, if deemed ineligible for continued selection, establish policies for removing such hearing officers from consideration for future selection;

7. Publish hearing officer decisions and Department rulings;

8. Establish, in conjunction with the Department of Human Resource Management, a training program for human resources personnel on employee relations management and employment rights and responsibilities;

9. Implement a comprehensive training and instructional program for all supervisory personnel that includes the role of the grievance procedure in harmonious employee relations management. The training program shall also include methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged. In-house resources shall be developed to allow the Department and its personnel to conduct on-site training of this nature for units and agencies of state government throughout Virginia. The Department shall assist agencies in establishing performance criteria for such supervisory personnel;

10. Provide information upon the request of any employee concerning personnel policies, regulations, and law applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;

11. Establish and maintain a toll-free telephone number to facilitate access by employees to the services of the Department;

12. Collect information and statistical data regarding the use of the grievance procedure and the effectiveness of employee relations management in the various state agencies;

13. Make recommendations to the Governor and the General Assembly to improve the grievance procedure and employee relations management;

14. Exercise such other powers and perform such other duties as may be requested by the Governor; and

15. Perform all acts and employ such personnel as may be required, necessary, or convenient to carry out the provisions of this chapter.

§ 2.2-1201. Duties of Department.

60 The Department shall have the following duties:

61 1. Make recommendations to the Governor regarding the establishment and maintenance of a
62 classification plan for the service of the Commonwealth, and recommend necessary amendments thereto.

63 2. Make recommendations to the Governor regarding the establishment and administration of a
64 compensation plan for all employees, and recommend necessary amendments thereto.

65 3. Design and maintain a personnel information system that shall support the operational needs of the
66 Department and of state agencies, and that shall provide for the management information needs of the
67 Governor, his secretaries, and the General Assembly. The system shall provide at a minimum a roster of
68 all employees in the service of the Commonwealth, in which there shall be set forth as to each
69 employee, the employing agency, the class title, pay, status and such other data as may be deemed
70 desirable to produce significant facts pertaining to personnel administration.

71 4. Establish and direct a program of employee-management relations designed to improve
72 communications between employees and agencies of the Commonwealth.

73 5. Establish and administer a system of performance evaluation for all employees in the service of
74 the Commonwealth, based on the quality of service rendered, related where practicable to specific
75 standards of performance. In no event shall workers' compensation leave affect the total number of hours
76 credited during a performance cycle for purposes of calculating incentive increases in salary based on
77 such performance evaluations.

78 6. Establish and administer a system of recruitment designed to attract high quality employees to the
79 service of the Commonwealth. In administering this system, applicants shall be rated on the basis of
80 relative merit and classified in accordance with their suitability for the various classes of positions in the
81 service of the Commonwealth, and a record thereof shall be maintained in the open register.

82 7. Design and utilize an application form which shall include, but not be limited to, information on
83 prior volunteer work performed by the applicant.

84 8. Establish and administer a comprehensive and integrated program of employee training and
85 management development.

86 9. Establish and administer a program of evaluation of the effectiveness of performance of the
87 personnel activities of the agencies of the Commonwealth.

88 10. Establish and administer a program to ensure equal employment opportunity to applicants for
89 state employment and to state employees in all incidents of employment.

90 11. Establish and administer regulations relating to disciplinary actions; however, no disciplinary
91 action shall include the suspension without pay for more than 10 days of any state employee who is
92 under investigation without a hearing conducted either by a level of supervision above the employee's
93 immediate supervisor or by his agency head.

94 12. Adopt and implement a centralized program to provide awards to employees who propose
95 procedures or ideas that are adopted and that will result in eliminating or reducing state expenditures or
96 improving operations, provided such proposals are placed in effect. The centralized program shall be
97 designed to (i) protect the identity of the individual making the proposal while it is being evaluated for
98 implementation by a state agency, (ii) publicize the acceptance of proposals and financial awards to state
99 employees, and (iii) include a reevaluation process that individuals making proposals may access if their
100 proposals are rejected by the evaluating agency. The reevaluation process must include individuals from
101 the private sector. State employees who make a suggestion or proposal under this section shall receive
102 initial confirmation of receipt within 30 days. A determination of the feasibility of the suggestion or
103 proposal shall occur within 60 days of initial receipt.

104 13. Develop state personnel policies and, after approval by the Governor, disseminate and interpret
105 state personnel policies and procedures to all agencies. Such personnel policies shall permit an
106 employee, with the written approval of his agency head, to substitute (i) up to 33 percent of his accrued
107 paid sick leave, (ii) up to 100 percent of any other paid leave, or (iii) any combination of accrued paid
108 sick leave and any other paid leave for leave taken pursuant to the Family and Medical Leave Act of
109 1993 (29 U.S.C. § 2601 et seq.). On and after December 1, 1999, such personnel policy shall include an
110 acceptable use policy for the Internet. At a minimum, the Department's acceptable use policy shall
111 contain provisions that (i) prohibit use by state employees of the Commonwealth's computer equipment
112 and communications services for sending, receiving, viewing, or downloading illegal material via the
113 Internet and (ii) establish strict disciplinary measures for violation of the acceptable use policy. An
114 agency head may supplement the Department's acceptable use policy with such other terms, conditions,
115 and requirements as he deems appropriate. The Director of the Department shall have the final authority
116 to establish and interpret personnel policies and procedures and shall have the authority to ensure full
117 compliance with such policies, *with the exception that policy reviews of grievance hearing decisions may*
118 *be appealed as provided by subsection A of § 2.2-3006.* However, unless specifically authorized by law,
119 the Director of the Department shall have no authority with respect to the state grievance procedures.

120 13a. Develop state personnel policies, with the approval of the Governor, that permit any full-time
121 state employee who is also a member of the organized reserve forces of any of the armed services of

the United States or of the Virginia National Guard to carry forward from year to year the total of his accrued annual leave time without regard to the regulation or policy of his agency regarding the maximum number of hours allowed to be carried forward at the end of a calendar year. Any amount over the usual amount allowed to be carried forward shall be reserved for use only as leave taken pursuant to active military service as provided by § 2.2-2903.1. Such leave and its use shall be in addition to leave provided under § 44-93. Any leave carried forward for the purposes described remaining upon termination of employment with the Commonwealth or any department, institution or agency thereof that has not been used in accordance with § 2.2-2903.1 shall not be paid or credited in any way to the employee.

14. Ascertain and publish on an annual basis, by agency, the number of employees in the service of the Commonwealth, including permanent full-time and part-time employees, those employed on a temporary or contractual basis, and constitutional officers and their employees whose salaries are funded by the Commonwealth. The publication shall contain the net gain or loss to the agency in personnel from the previous fiscal year and the net gains and losses in personnel for each agency for a three-year period.

15. Submit a report to the members of the General Assembly on or before September 30 of each year showing (i) the total number of full- and part-time employees, (ii) contract temporary employees, (iii) hourly temporary employees, and (iv) the number of employees who voluntarily and involuntarily terminated their employment with each department, agency or institution in the previous fiscal year.

16. Administer the workers' compensation insurance plan for state employees in accordance with § 2.2-2821.

17. Work jointly with the Department of General Services and the Virginia Information Technologies Agency to develop expedited processes for the procurement of staff augmentation to supplement salaried and wage employees of state agencies. Such processes shall be consistent with the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The Department may perform contract administration duties and responsibilities for any resulting statewide augmentation contracts.

§ 2.2-3003. Grievance procedure generally.

A. As part of the Commonwealth's program of employee relations management, the Department of Employment Dispute Resolution shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

B. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

C. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within 30 calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

D. Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy, subject to the agency head's approval. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

E. Absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party, in a timely fashion. Upon such request a party shall have a duty to search its records to ensure that all such relevant documents are provided. Documents pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance. A party shall not be required to create a document if the document does not exist.

F. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

G. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency shall be made to the agency head. The Director of the Department of Employment Dispute Resolution shall render all decisions related to procedural compliance, and such decisions shall contain the reasons for such decision. ~~and All such decisions~~ shall be final, *with the exception that procedural compliance reviews of grievance hearing decisions by the Director of the*

183 *Department of Employment Dispute Resolution may be appealed to the circuit court provided by*
184 *subsection A of § 2.2-3006.*

185 H. Grievances qualified pursuant to § 2.2-3004 that have not been resolved through the grievance
186 resolution steps shall advance to a hearing that shall be the final step in the grievance procedure.
187 § 2.2-3006. Review of hearing decisions; costs.

188 A. Upon the request of a party to a grievance hearing for an administrative review of the hearing
189 decision, the Director of the Department of Human Resource Management shall determine, within 60
190 days of receipt of such request, whether the hearing decision is consistent with policy. *Upon the request*
191 *of a party to a grievance hearing for an administrative review of the hearing decision, the Director of*
192 *the Department of Employment Dispute Resolution shall determine, within 60 days of receipt of such*
193 *request, whether the hearing decision is consistent with the grievance procedure and grievance hearing*
194 *rules.*

195 B. Within 30 days of a final *hearing* decision, a party may appeal on the grounds that the
196 determination is (i) contradictory to law or otherwise plainly erroneous, or (ii) that an administrative
197 reviewer, as provided by subsection A of § 2.2-3006, exceeded the scope of his or her authority during
198 the administrative review process. *Circuit court appeal is made* by filing a notice of appeal with the
199 clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and
200 receive prior approval of the Director before filing a notice of appeal. After a notice of appeal has been
201 filed by either party, the agency shall then transmit a copy of the grievance record to the clerk of the
202 court. The court, on motion of a party, shall issue a writ of certiorari requiring transmission of the
203 record on or before a certain date. Within 30 days of receipt of the grievance record, the court, sitting
204 without a jury, shall hear the appeal on the record. The court may affirm the decision or may reverse or
205 modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the
206 date of the conclusion of the hearing. The circuit court hearing shall be at no cost to the Commonwealth
207 or the grievant.

208 C. The hearing officer's final decision shall be effective from the latter of the date issued or the date
209 of the conclusion of any administrative review and judicial appeal, and shall be implemented
210 immediately thereafter, unless circumstances beyond the control of the agency delay such
211 implementation.

212 D. Either party may petition the circuit court having jurisdiction in the locality in which the
213 grievance arose for an order requiring implementation of the final decision or recommendation of a
214 hearing officer.

215 E. The court shall award reasonable attorneys' fees and costs to the employee if the employee
216 substantially prevails on the merits of a case brought under subsection B or D.