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SENATE BILL NO. 1217

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 9, 2009)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 2.2-1001, 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, 2.2-3003, and 2.2-3006 of the Code of Virginia are 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 grievance hearing decisions may be appealed to the circuit court as provided by § 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.

§ 2.2-3003. Grievance procedure generally.

A. As part of the Commonwealth's program of employee relations management, the Department of

60 Employment Dispute Resolution shall develop a grievance procedure that includes not more than three
61 successively higher grievance resolution steps and a formal hearing as provided in this chapter.

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

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

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

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

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

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

92 H. Grievances qualified pursuant to § 2.2-3004 that have not been resolved through the grievance
93 resolution steps shall advance to a hearing that shall be the final step in the grievance procedure.

94 § 2.2-3006. Review of hearing decisions; costs.

95 A. Upon the request of a party to a grievance hearing for an administrative review of the hearing
96 decision, the Director of the Department of Human Resource Management shall determine, within 60
97 days of receipt of such request, whether the hearing decision is consistent with policy. *Upon the request*
98 *of a party to a grievance hearing for an administrative review of the hearing decision, the Director of*
99 *the Department of Employment Dispute Resolution shall determine, within 60 days of receipt of such*
100 *request, whether the hearing decision is consistent with the grievance procedure and grievance hearing*
101 *rules.*

102 B. Within 30 days of a final *hearing* decision, a party may appeal on the grounds (i) that the
103 determination is contradictory to law or (ii) *that an administrative reviewer, as provided by subsection*
104 *A, exceeded the scope of the reviewer's authority during the administrative review process. Circuit court*
105 *appeal is made* by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in
106 which the grievance arose. The agency shall request and receive prior approval of the Director before
107 filing a notice of appeal. After a notice of appeal has been filed by either party, the agency shall then
108 transmit a copy of the grievance record to the clerk of the court. The court, on motion of a party, shall
109 issue a writ of certiorari requiring transmission of the record on or before a certain date. Within 30 days
110 of receipt of the grievance record, the court, sitting without a jury, shall hear the appeal on the record.
111 The court may affirm the decision or may reverse or modify the decision. The decision of the court
112 shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The
113 circuit court hearing shall be at no cost to the Commonwealth or the grievant.

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

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

121 E. The court shall award reasonable attorneys' fees and costs to the employee if the employee

122 substantially prevails on the merits of a case brought under subsection B or D.