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## HOUSE BILL NO. 1992

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact § 2.2-3006 of the Code of Virginia, relating to the state grievance procedure; review of hearing decisions.*

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Patron—McClellan

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Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-3006 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3006. Review of hearing decisions; costs.**

A. Upon the request of a party to a grievance hearing for an administrative review of the hearing decision, the Director of the Department of Human Resource Management shall determine, within 30 days of the conclusion of any other administrative reviews, whether the hearing decision is consistent with policy based on the party's assertion that the hearing decision is inconsistent with a proper interpretation or application of a policy that constituted a material issue in the grievance that formed or should have formed in whole or in part the basis for the hearing decision, the Director of the Department of Human Resource Management shall determine, within 60 days of the request, whether the decision is consistent with policy. The Director's determination shall be made as an independent, de novo review of the grievance. In making the determination, the Director shall identify those factual findings in the hearing decision that are relevant and material to the policy in question and explain whether those findings support the hearing decision relating to the application of the policy in question.

B. Within 30 days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the Director before filing a notice of appeal. After a notice of appeal has been filed by either party, the agency shall then transmit a copy of the grievance record to the clerk of the court. The court, on motion of a party, shall issue a writ of certiorari requiring transmission of the record on or before a certain date. Within 30 days of receipt of the grievance record, the court, sitting without a jury, shall hear the appeal on the record. The court may affirm the decision 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 circuit court hearing shall be at no cost to the Commonwealth or the grievant.

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

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

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

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