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SENATE BILL NO. 1783

Offered January 18, 2019

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

Patron—Boysko

Referred to Committee on Local Government

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 30 (§ 2.2-3000 et seq.) of Title 2.2 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 90 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. 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 part-time employees are eligible to file grievances with the following exceptions:

- (1) Appointees of elected groups or individuals;
(2) Officials and employees who by charter or other law serve at the will or pleasure of an

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SB1783

59 appointing authority;

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

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

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

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

64 (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose
65 grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected
66 to proceed pursuant to those provisions in the resolution of their grievance, or any other employee
67 electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

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

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

74 4. Grievance procedure availability and coverage for employees of community services boards,
75 redevelopment and housing authorities, and regional housing authorities. Employees of community
76 services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing
77 authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance
78 procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii)
79 a grievance procedure established and administered by the department, board or authority which is
80 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations
81 promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure
82 pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is
83 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations
84 adopted pursuant thereto for so long as it remains in noncompliance.

85 5. General requirements for procedures.

86 a. Each grievance procedure shall include not more than four steps for airing complaints at
87 successively higher levels of local government management, and a final step ~~providing for a panel~~
88 ~~hearing or a hearing before an administrative hearing officer upon the agreement of both parties as~~
89 ~~agreed upon by the aggrieved employee and the local government.~~

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

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

95 6. Time periods.

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

98 b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event
99 giving rise to the grievance, but local governments may, at their option, allow a longer time period.

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

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

103 7. Compliance.

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

110 b. The chief administrative officer, or his designee, at his option, may require a clear written
111 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his
112 designee, shall determine compliance issues. Compliance determinations made by the chief
113 administrative officer shall be subject to judicial review by filing petition with the circuit court within
114 30 days of the compliance determination.

115 8. Management steps.

116 a. The first step shall provide for an informal, initial processing of employee complaints by the
117 immediate supervisor through a nonwritten, discussion format.

118 b. Management steps shall provide for a review with higher levels of local government authority
119 following the employee's reduction to writing of the grievance and the relief requested on forms
120 supplied by the local government. Personal face-to-face meetings are required at all of these steps.

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

127 9. Qualification for panel or administrative hearing.

128 a. Decisions regarding grievability and access to the procedure shall be made by the chief
129 administrative officer of the local government, or his designee, at any time prior to the panel hearing, at
130 the request of the local government or grievant, within 10 calendar days of the request. No city, town,
131 or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of
132 grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative
133 officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction
134 in the locality in which the grievant is employed for a hearing on the issue of whether the grievance
135 qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or
136 his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative
137 officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all
138 other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall
139 transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief
140 administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished
141 to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his
142 designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the
143 grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on
144 or before a certain date.

145 b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear
146 the appeal on the record transmitted by the chief administrative officer or his designee and such
147 additional evidence as may be necessary to resolve any controversy as to the correctness of the record.
148 The court, in its discretion, may receive such other evidence as the ends of justice require. The court
149 may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the
150 decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the
151 conclusion of the hearing. The decision of the court is final and is not appealable.

152 10. Final hearings.

153 a. *If an agreement cannot be reached between the aggrieved employee and the local government on
154 whether to use a panel hearing or hearing officer, the three-person panel shall be used.*

155 b. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative
156 hearing officer *agreed upon by the aggrieved employee and the local government*, as set forth in the
157 locality's grievance procedure, as described below:

158 (1) ~~If the grievance procedure adopted by the local governing body provides that the final step shall
159 be aggrieved employee and local government select an impartial panel hearing, the panel may, with the
160 exception of those local governments covered by subdivision a (2) of this subsection, shall consist of
161 one member appointed by the grievant, one member appointed by the agency head and a third member
162 selected by the first two. In the event that agreement cannot be reached as to the final panel member,
163 the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third
164 panel member. The panel shall not be composed of any persons having direct involvement with the
165 grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance.
166 Managers who are in a direct line of supervision of a grievant, persons residing in the same household
167 as the grievant and the following relatives of a participant in the grievance process or a participant's
168 spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child,
169 sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of
170 the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel
171 member.~~

172 (2) ~~If the grievance procedure adopted by the local governing body provides for the final step to be
173 an impartial panel hearing, local governments may retain the panel composition method previously
174 approved by the Department of Human Resource Management and in effect as of the enactment of this
175 statute. Modifications to the panel composition method shall be permitted with regard to the size of the
176 panel and the terms of office for panel members, so long as the basic integrity and independence of
177 panels are maintained. As used in this section, the term "panel" shall include all bodies designated and
178 authorized to make final and binding decisions.~~

179 (3) ~~When a local government elects to use~~ *If the aggrieved employee and the local government select
180 an administrative hearing officer rather than a three-person panel for the final step in the grievance
181 procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the*

182 Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing
183 officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the
184 appropriate geographical region on a rotating basis. ~~In the alternative, the local government may request~~
185 ~~the appointment of an administrative hearing officer from the Department of Human Resource~~
186 ~~Management. If a local government elects both parties agree to use an administrative hearing officer, it~~
187 ~~the local government shall bear the expense of such officer's services.~~

188 (4) (2) When the local government uses a panel in the final step of the procedure, there shall be a
189 chairperson of the panel and, when panels are composed of three persons (one each selected by the
190 respective parties and the third from an impartial source), the third member shall be the chairperson.

191 (5) (3) Both the grievant and the respondent may call upon appropriate witnesses and be represented
192 by legal counsel or other representatives at the hearing. Such representatives may examine,
193 cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or
194 hearing officer without being in violation of the provisions of § 54.1-3904.

195 (6) (4) The decision of the panel or hearing officer shall be final and binding and shall be consistent
196 with provisions of law and written policy.

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

202 ~~b. c.~~ Rules for panel and administrative hearings.

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

207 (1) That neither the panels nor the hearing officer have authority to formulate policies or procedures
208 or to alter existing policies or procedures;

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

212 (3) That the local government provide the panel or hearing officer with copies of the grievance
213 record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel
214 or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing,
215 shall be allowed access to and copies of all relevant files intended to be used in the grievance
216 proceeding;

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

220 (5) That all evidence be presented in the presence of the panel or hearing officer and the parties,
221 except by mutual consent of the parties;

222 (6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing
223 officer in advance of the hearing;

224 (7) That the majority decision of the panel or the decision of the hearing officer, acting within the
225 scope of its or his authority, be final, subject to existing policies, procedures and law;

226 (8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

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

230 11. Implementation of final hearing decisions.

231 Either party may petition the circuit court having jurisdiction in the locality in which the grievant is
232 employed for an order requiring implementation of the hearing decision.

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