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HOUSE BILL NO. 1698

House Amendments in [] — February 1, 1995

A BILL to amend and reenact § 14.1-52 of the Code of Virginia, relating to appeal from Compensation Board decisions.

Patrons—Croshaw, Abbitt, Cooper, Cunningham, Hall, Jackson, Stump and Thomas

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:**1. That § 14.1-52 of the Code of Virginia is amended and reenacted as follows:**

§ 14.1-52. Appeal from decision of Board.

A. Any officer whose budget is affected by a decision of the Board under this article made for the fiscal year pursuant to and at the time designated by §§ 14.1-50 and 14.1-51 and no other, or any county or city affected thereby, or the Attorney General as representative of the Commonwealth, shall have the right to appeal from any such decision of the Board, within forty-five days from the date of such decision. Such appeal shall lie to the circuit court of the county or city wherein the officer making the appeal resides. The court shall be presided over by three judges of circuit courts remote from that to which the appeal is taken. The three judges shall be chosen by the Chief Justice of the Supreme Court from a panel of fifteen active or retired judges selected to hear such matters by the Supreme Court. Such judges shall remain on the panel for a period of time determined by the Chief Justice of the Supreme Court. No judge may be appointed to hear an appeal involving a jurisdiction in his current or former circuit. Notice of such appeal shall be given within the time above specified by any such officer to the Compensation Board, the county or city affected and the Attorney General. The officer appealing shall, in the appeal, state with specificity what action of the Compensation Board the officer is contesting, the additional services provided to the locality not required by law, and the cost of providing such service. The Compensation Board shall notify the Chief Justice forthwith when all administrative remedies have been exhausted by the appellant and the three-judge court shall be designated upon receipt of the notice by the Chief Justice. The appeal shall be heard within forty-five days from the date such notice is filed by the Board with the Chief Justice. At least fifteen days' notice of the time and place set for the hearing shall be given the officer noting such appeal, the county or city affected, the Compensation Board and the Attorney General. On such appeal all questions involved in said decision shall be heard de novo by the court and its decision on all questions shall be certified by the clerk thereof to the officer affected, to the locality and to the chairman of the Compensation Board.

In making its decision, the Court shall give consideration to the amount of funds budgeted and expended by the local government for the constitutional officer which exceeds the amount reimbursed by the Compensation Board, the extent to which the officer provides additional services to the locality not required by law and to what extent, if any, the local government should participate in providing the additional funding requested by the constitutional officer. The Court shall also give consideration both to the officer's ability to perform his statutory duties without additional funding and the ability of the Compensation Board and local government to provide additional funding for the officer's functions. The Court shall also consider maximum staffing and funding levels set in the general appropriation act and any other statutory provisions which would otherwise prohibit the Compensation Board from granting the officer's request. The burden of proving the necessity of additional funding shall be borne by the officer. After due consideration of Compensation Board and local government statutory authority and the constitutional officer's demonstrated need for additional funding, the Court shall determine the extent to which the Compensation Board and local government shall share in the additional funding. Should the Court determine that additional funding is necessary for the officer to perform his duties, and that it is the responsibility of the Compensation Board to provide all or part of the additional funds, and that the Compensation Board does not have the ability to provide such additional funding, the Compensation Board shall request the necessary additional funding from the General Assembly at its next occurring session.

Should the Court determine that additional funding is necessary for the officer to perform his duties and that it is the responsibility of the local government to provide all or part of the additional funds, and that the local government does not have the ability to provide such additional funding, the chief administrative officer of the local government shall include such request in the budget submission to the local governing body.

From the decision of the court there shall be no right of further appeal. The decision of the court shall be within the difference between the amounts originally requested by the appealing officer pursuant

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60 to § 14.1-50 and the amounts fixed by the Compensation Board for such fiscal year; however, when the
61 appeal is filed by a county or city such decision shall be within the difference between the prior salaries,
62 expenses and other allowances of such officer and the amounts fixed by the Compensation Board for
63 such fiscal year. In the event an appeal is filed by both the officer affected and the county or city
64 affected, such decision shall be within the difference between the amounts originally requested by the
65 appealing officer pursuant to § 14.1-50 and the prior salaries, expenses and other allowances of such
66 officer.

67 *Constitutional officers may use such funds as are appropriated by [the State Compensation Board or*
68 *] their local governing body [~~for reasonable and necessary expenses~~] to employ independent counsel in*
69 *pursuing the provisions of this section.*

70 B. Notwithstanding the provisions of subsection A above, no appeal of any decision of the Board
71 shall lie to the circuit court from the date of enactment of this subsection B until July 1, 1993, at which
72 time said circuit court may consider appeals for all fiscal years affected by this moratorium and for
73 subsequent fiscal years.