

LD2852733

SENATE BILL NO. 1008

Offered January 23, 1995

A BILL to amend and reenact §§ 8.01-418.2, 15.1-7.2, 15.1-687.16, 30-34.2:1, and 63.1-26 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.01, consisting of sections numbered 2.1-116.01 through 2.1-116.013; and to repeal §§ 2.1-114.5:1 through 2.1-114.5:6 of the Code of Virginia, relating to the Department of Employee Relations Counselors; grievance procedure.

Patrons—Schewel; Delegate: Way

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-418.2, 15.1-7.2, 15.1-687.16, 30-34.2:1, and 63.1-26 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.01, consisting of sections numbered 2.1-116.01 through 2.1-116.013, as follows:

CHAPTER 10.01.

THE DEPARTMENT OF EMPLOYEE RELATIONS COUNSELORS.

§ 2.1-116.01. Office of Employee Relations Counselors continued as Department of Employee Relations Counselors.

The Office of Employee Relations Counselors is continued and shall hereafter be known as the Department of Employee Relations Counselors (the "Department"). The Department shall be under the direct control and supervision of the Governor. Wherever the term "Office of Employee Relations Counselors" is used in any law of the Commonwealth, it shall mean the Department of Employee Relations Counselors.

§ 2.1-116.02. Appointment of Director.

The Department of Employee Relations Counselors shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

§ 2.1-116.03. 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 which includes alternative processes for resolving employment disputes;

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

3. Promulgate rules for conducting 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 the grievance procedure and advise the agency head of such findings, and (iv) rule on the qualification of a grievance or the question of access to the grievance procedure;

5. Render final decisions on (i) all matters related to procedural compliance with the grievance procedure and (ii) appeals from decisions by agency heads that deny employees access to grievance hearings;

6. In conjunction with the Office of the Executive Secretary of the Supreme Court, establish a process to select, train, and evaluate individuals to serve as hearing officers and assign such hearing officers to conduct grievance hearings;

7. Carry out those responsibilities assigned to the Department pursuant to §§ 15.1-7.2 and 15.1-687.16;

8. For local social service departments, social service boards, and community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 which elect to come under the state grievance procedure, review and authorize appropriate modifications to the grievance procedure established pursuant to this chapter;

9. Establish, in conjunction with the Department of Personnel and Training, a training program for human resources personnel on employee relations management and employment rights and responsibilities;

10. Implement a comprehensive training and instructional program for all supervisory personnel which 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

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60 use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged.
61 In-house resources shall be developed to allow the Department and its personnel to conduct on-site
62 training of this nature for units and agencies of state government throughout Virginia. The Department
63 shall assist agencies in establishing performance criteria for such supervisory personnel;

64 11. Provide information upon the request of any employee concerning personnel policies, rules and
65 regulations, and statutes applicable to the grievance procedure and counsel employees in the resolution
66 of conflict in the workplace;

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

69 13. Monitor and collect information and statistical data in regard to the use of the grievance
70 procedure and the effectiveness of employee relations management in the various state agencies;

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

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

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

77 § 2.1-116.04. Responsibilities of state agencies under this chapter.

78 A. To fully achieve the objectives of this chapter and to create uniformity, each executive branch
79 agency or department listed in Title 2.1 shall:

80 1. Require supervisory personnel to be trained in the grievance procedure, personnel policies, and
81 conflict resolution;

82 2. Familiarize employees with their grievance rights and promote the services of the Department of
83 Employee Relations Counselors;

84 3. Cooperate with investigations conducted pursuant to the authority granted by subdivision 4 (iii) of
85 § 2.1-116.03;

86 4. Participate in the mediation program; and

87 5. Evaluate supervisors on the effectiveness of employee relations management, including, but not
88 limited to, their handling of grievances.

89 B. The Department shall monitor agencies' activities under this section.

90 § 2.1-116.05. Grievance procedure generally.

91 A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of
92 employee problems and complaints. To that end, employees must be able to freely, and without
93 retaliation, discuss their concerns with their immediate supervisors and management. To the extent that
94 such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and
95 fair method for the resolution of employment disputes which may arise between state agencies and those
96 employees who have access to the procedure under § 2.1-116.09.

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

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

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

107 E. Upon receipt of a timely written complaint, management shall review the grievance and respond
108 to the merits thereof. Each level of management review shall have the authority to provide the employee
109 with a remedy. At least one face-to-face meeting between the employee and management shall be
110 required. The persons who may be present at this meeting are the employee, the appropriate manager,
111 an individual selected by the employee, and an individual selected by the manager. Witnesses may be
112 called by either party.

113 F. Pursuant to § 2.1-342 B 3 of the Virginia Freedom of Information Act and § 2.1-382 of the
114 Virginia Privacy Protection Act of 1976, all information relating to the actions grieved shall be made
115 available to the employee by the agency, except as otherwise provided by law. Information pertaining to
116 other employees that is relevant to the grievance shall be produced in such a manner as to preserve the
117 privacy of the individuals not personally involved in the complaint or dispute.

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

H. 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. The Director shall render all decisions related to procedural compliance, and such decisions shall be final.

I. Qualifying grievances that are not resolved through the grievance resolution steps shall advance to a hearing which shall be the final step in the grievance procedure.

§ 2.1-116.06. Grievances qualifying for a grievance hearing; grievance hearing generally.

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to: (i) formal disciplinary actions, including suspensions, demotions, disciplinary transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin or sex; (iv) arbitrary or capricious performance evaluations; (v) 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; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The employee may appeal the denial of a hearing by the agency head to the Director. Upon receipt of an appeal, the agency shall transmit the entire grievance record to the Department within five workdays. The Director shall render a final decision on whether the employee is entitled to a hearing upon the grievance record and other probative evidence.

E. Proceedings for review of the decision of the Director denying grievability shall be made by filing a notice of appeal with the Director within five workdays of receipt of the decision. Within five workdays thereafter, the Director shall transmit to the clerk of the circuit court in the jurisdiction in which the grievance arose a copy of the grievance record. The court, on motion of the grievant, may issue a writ of certiorari requiring the Director to transmit the record on or before a certain date. Within thirty days of receipt of such records, the court, sitting without a jury, shall hear the appeal on the record and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the Director 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 decision of the court is final and is not appealable.

F. The hearing shall be held in the locality in which the employee is employed or in any other locality agreed to by the employee, employer, and hearing officer. The employee and the agency may be represented by legal counsel or a lay advocate, the provisions of § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and be cross-examined.

§ 2.1-116.07. Hearing officers; duties; decisions; costs.

A. The Director shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 9-6.14:14.1. In addition to the training requirements imposed by the Supreme Court, each hearing officer shall attend annually at least one day of training in employment law or state personnel policies and organizations. Such training shall be conducted by the Department or an organization approved by the Virginia State Bar for continuing legal education.

B. Hearing officers shall have the following powers and duties:

183 1. Hold conferences for the settlement or simplification of issues;
184 2. Dispose of procedural requests;
185 3. Issue subpoenas requiring testimony or the production of evidence;
186 4. Administer oaths and affirmations;
187 5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive
188 proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee an accurate verbatim
189 recording of the evidence;
190 6. Order appropriate remedies, including reinstatement, back pay, full reinstatement of fringe benefits
191 and seniority rights, or any combination of these remedies; and
192 7. Take other actions as necessary or specified in the grievance procedure.

193 C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the
194 material issues in a case and the basis for those findings, and (iii) be final and binding if consistent
195 with law and policy. In grievances initiated by state employees, the Director of the Department of
196 Personnel and Training shall determine whether the decision is consistent with policy. The hearing
197 officer's decision is effective from the date issued and shall be implemented immediately unless
198 circumstances beyond the control of the agency delay such implementation.

199 D. Either party may petition the circuit court having jurisdiction in the locality in which the
200 employee is employed for an order requiring implementation of the hearing officer's decision. The court
201 may award attorneys' fees to either party.

202 E. Except for the employee's counsel or advocate fees, the agency from which the grievance arises
203 shall bear the costs for the hearing officer and other associated hearing expenses.

204 § 2.1-116.08. Certain employees of the Departments of Corrections and Youth and Family Services.
205 A. Employees of the Departments of Corrections and Youth and Family Services who work in
206 institutions or learning centers or have client, inmate, or resident contact and who are terminated on
207 the grounds of client, inmate, or resident abuse, criminal conviction, or as a result of being placed on
208 probation under the provisions of § 18.2-251, may appeal their termination only through the grievance
209 resolution steps.

210 B. If no resolution is reached by the conclusion of the last grievance step, the employee may advance
211 the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo
212 hearing on the merits. In its discretion, the court may refer the matter to a commissioner in chancery to
213 take such evidence as may be proper and to make a report to the court. Both the grievant and the
214 respondent may call upon appropriate witnesses and be represented by legal counsel or other
215 representatives before the court or the commissioner in chancery. Such representatives may examine,
216 cross-examine, question and present evidence on behalf of the grievant or respondent before the court
217 or commissioner in chancery without being in violation of the provisions of § 54.1-3904.

218 C. A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to
219 law or policy. The decision of the court shall be final and binding.

220 § 2.1-116.09. State employees.
221 A. Unless exempted under § 2.1-116 or other provisions of the Code, all classified nonprobationary
222 state employees shall be included in the grievance procedure established pursuant to this chapter and
223 any regulations promulgated pursuant thereto. Employees not covered by such grievance procedure may
224 be covered by an alternative grievance procedure established and administered by the Department which
225 is consistent with the provisions of this chapter and any regulations promulgated pursuant thereto.

226 B. Every legislative and judicial agency which is not subject to the state grievance procedure shall
227 promulgate and administer a grievance procedure.

228 § 2.1-116.010. Employees of local social service departments, social service boards, and community
229 services boards.
230 Employees of local social service departments, social service boards, and community services boards
231 shall be included in (i) the grievance procedure established pursuant to this chapter and any regulations
232 promulgated pursuant thereto, (ii) a local governing body's grievance procedure or personnel system if
233 agreed to by the local department or board and the local governing body, or (iii) a grievance procedure
234 established and administered by the local department or board which is consistent with the provisions of
235 this chapter and any regulations promulgated pursuant thereto and approved by the Director. The
236 Director may authorize modifications in the grievance procedure for such local departments or boards.

237 § 2.1-116.011. Employees of housing authorities.
238 A. Employees of redevelopment and housing authorities created pursuant to § 36-4 shall be included
239 in (i) the grievance procedure established pursuant to this chapter and any regulations promulgated
240 pursuant thereto, (ii) a local governing body's grievance procedure or personnel system if agreed to by
241 the authority and the locality, or (iii) a grievance procedure established and administered by the
242 housing authority which is consistent with the provisions of this chapter and any regulations
243 promulgated pursuant thereto and approved by the Director.

244 B. Employees of regional housing authorities created pursuant to § 36-40 shall be included in (i) the

grievance procedure established pursuant to this chapter and any regulations promulgated pursuant thereto, (ii) the grievance procedure or personnel system of a local governing body that contributes financially to the operation of the authority if agreed to by the authority and the locality, or (iii) a grievance procedure established and administered by the housing authority which is consistent with the provisions of this chapter and any regulations promulgated pursuant thereto and approved by the Director.

C. Any housing authority that wishes to establish and administer its own grievance procedure shall submit such procedure to the Director for prior approval. The Director may allow modifications in the procedure; however, the grievance procedure shall provide for a hearing before an administrative hearing officer, who shall be appointed by the Executive Secretary of the Supreme Court from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis. The decision of the administrative hearing officer shall be final and binding. The housing authority shall bear the per diem expenses and other costs of the administrative hearing officer.

§ 2.1-116.012. Employees of constitutional officers.

The employees of constitutional officers shall not be required to be covered by a grievance procedure; however, such employees may be accepted in a local governing body's grievance procedure or personnel system if agreed to by the employees, the constitutional officer, and the local governing body.

§ 2.1-116.013. Exemptions from chapter.

The provisions of this chapter shall not apply to:

1. Appointees of elected groups or individuals;
2. Agency heads or chief executive officers of government agencies and institutions of higher education appointed by boards and commissions;
3. Law-enforcement officers as defined in § 2.1-116.1 whose grievances are subject to Chapter 10.1 (§ 2.1-116.1 et seq.) and who have elected to resolve such grievances under those provisions; and
4. Employees in positions designated in § 2.1-116 as exempt from the Virginia Personnel Act (§ 2.1-110 et seq.).

§ 8.01-418.2. Evidence of polygraph examination inadmissible in any proceeding.

The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be admissible in any proceeding conducted pursuant to § 2.1-114.5:1 Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 or conducted by any county, city or town over the objection of any party except as to disciplinary or other actions taken against a polygrapher.

§ 15.1-7.2. Provision of grievance procedure; training programs.

If a local governing body fails to adopt a grievance procedure required by § 15.1-7.1, or fails to certify it as provided in this section, the state grievance procedure shall be applicable 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. A copy of the certification of each such procedure and amendment thereto, attested by the clerk of the circuit court, shall be thereafter filed with the Director of the Department of Employee Relations Counselors. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for ninety 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) acts of retaliation as the result of utilization of the grievance procedure or participation in the grievance of another local government employee; (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or sex; and (v) acts of retaliation 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, or has sought any change in law before the Congress of the United States or the General Assembly.

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 provision (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 appointing authority;

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

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

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

(6) Temporary, limited term and seasonal employees;

(7) Law-enforcement officers as defined in Chapter 10.1 (§ 2.1-116.1 et seq.) of Title 2.1 whose grievance is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

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

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

4. Grievance procedure availability and coverage for employees of local social service departments and boards, community services boards, constitutional officers, redevelopment and housing authorities, and regional housing authorities. - Employees of local social service departments and boards, community services boards, constitutional officers, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included within and covered by a grievance procedure to the extent and in the manner provided by ~~§ 2.1-114.5:1~~ *Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1.*

5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management, and a final step providing for a panel hearing.

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

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

6. Time periods.

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

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

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

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

7. Compliance.

a. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel hearing, without just cause shall

result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the chief administrative officer, or his designee.

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

8. Management steps.

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

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

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

9. Qualification for panel hearing.

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

b. Within thirty days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the chief administrative officer or his designee and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the chief administrative officer or his designee, 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 decision of the court is final and is not appealable.

10. Panel hearings.

a. Qualifying grievances shall advance to the final step as described below:

(1) With the exception of those local governments covered by subdivision a (2) of this subsection, the final step shall provide for a hearing before an impartial panel, consisting of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) Local governments may retain the panel composition method previously approved by the

Department of Employee Relations Counselors and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) Local governments shall not be required to have an administrative hearing officer in any case, but may do so in employee termination or retaliation cases at their option. When a local government elects to use an administrative hearing officer as the third panel member in an employee termination or retaliation case, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) In all cases there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

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

(6) The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy.

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

b. Rules for panel hearings.

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

(1) That panels do not have authority to formulate policies or procedures or to alter existing policies or procedures;

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

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

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

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

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

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

(8) That the panel decision be provided within a specified time to all parties; and

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

11. Implementation of panel decisions.

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

§ 15.1-687.16. Modification of grievance procedure.

Notwithstanding the provisions in §§ ~~2.1-114.5:1~~, Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1, and §§ 15.1-7.1; and 15.1-7.2 to the contrary, in any county which has the county manager plan of government provided for in this chapter, a grievance procedure may be established which permits an Equal Employment Opportunity officer to be present at any step of a grievance procedure established under § 15.1-7.1. Such officer shall not be an advocate or representative on behalf of either the grievant

or management.

§ 30-34.2:1. Powers, duties and functions of Capitol Police.

The Capitol Police may exercise within the limits of the Capitol Square and, when assigned to any other property owned or controlled by the Commonwealth or any agency, department, institution or commission thereof, all the powers, duties and functions which are exercised by the police of the city, or the police or sheriff of the county within which said property is located. The jurisdiction of the Capitol Police shall further extend 300 feet beyond the boundary of any property they are required to protect, such jurisdiction to be concurrent with that of other law-enforcement officers of the locality in which such property is located. Additionally, the Capitol Police shall have concurrent jurisdiction with law-enforcement officers of the City of Richmond and of any county contiguous thereto in any case involving the theft or misappropriation of the personal property of any member or employee of the General Assembly. Members of the Capitol Police, when assigned to accompany the Governor, members of the Governor's family, the Lieutenant Governor, the Attorney General, members of the General Assembly, or members of the Virginia Supreme Court, shall be vested with all the powers and authority of a law-enforcement officer of any city or county in which they are required to be. All members of the Capitol Police shall be subject to the provisions of Chapter 10.1 (§ 2.1-116.1 et seq.) of Title 2.1 and to the provisions of ~~§ 2.1-114.5:1~~ *Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1.*

§ 63.1-26. Establishment of entrance and performance standards.

The Board shall establish minimum entrance and performance standards for the personnel employed by the Commissioner, local boards and local superintendents in the administration of the succeeding chapters of this title and make necessary regulations to maintain such entrance and performance standards, including such regulations as may be embraced in the development of a system of personnel administration meeting requirements of the federal Department of Health and Human Services under appropriate federal legislation relating to programs administered by the Board. However, the state grievance procedure promulgated pursuant to ~~§ 2.1-114.5:1~~ *Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1* shall apply to the personnel employed by the Commissioner and employees, including local superintendents or directors of the local boards and local departments, unless the local governing body elects to include employees of local welfare departments and local welfare boards under the grievance procedure adopted pursuant to § 15.1-7.1.

2. That §§ 2.1-114.5:1 through 2.1-114.5:6 of the Code of Virginia are repealed.