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HOUSE BILL NO. 1036

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-116.03, 2.1-116.05, 2.1-116.06, 2.1-116.09, 2.1-116.012, 15.1-7.1, 15.1-7.2, and 15.1-687.16 of the Code of Virginia and to repeal §§ 2.1-116.010 and 2.1-116.011 of the Code of Virginia, relating to the Department of Employee Relations Counselors and the state grievance procedure.

 Patron—Reid

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-116.03, 2.1-116.05, 2.1-116.06, 2.1-116.09, 2.1-116.012, 15.1-7.1, 15.1-7.2, and 15.1-687.16 of the Code of Virginia are amended and reenacted as follows:

§ 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 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 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 all matters related to procedural compliance with the grievance procedure;

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 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;

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

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

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

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

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

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

§ 2.1-116.05. Grievance procedure generally.

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

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

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

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

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

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

G. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall 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~~ *Grievances qualified pursuant to § 2.1-116.06 that are have not been* 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, 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 ~~are not grievable and~~ 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 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~~ may be made by an employee filing a notice of appeal ~~with the Director~~ within five workdays of receipt of the decision. Within five workdays thereafter, the ~~Director~~ agency 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. The *circuit court* hearing shall be at no cost to the Commonwealth or the grievant.

F. The hearing pursuant to § 2.1-116.07 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.

§ 2.1-116.09. State employees.

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

B. The Office of the Attorney General and every legislative and judicial agency which is not subject to the state grievance procedure shall promulgate and administer a grievance procedure.

§ 2.1-116.012. Employees of local 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.

§ 15.1-7.1. Establishment of grievance procedure, personnel system and uniform pay plan for employees.

Notwithstanding any other provision of law to the contrary, the governing body of every county, city and town which has more than fifteen employees shall have a grievance procedure for its employees that affords an immediate and fair method for the resolution of disputes which may arise between the public employer and its employees and a personnel system including a classification plan for service and uniform pay plan for all employees excluding employees and deputies of division superintendents of schools. ~~Employees of local social service departments and local social service boards, unless otherwise provided by law, shall be excluded from such a personnel system.~~

§ 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~~

183 with the Director of the Department of Employee Relations Counselors. Local government grievance
184 procedures in effect as of July 1, 1991, shall remain in full force and effect for ninety days thereafter,
185 unless certified and filed as provided above within a shorter time period.

186 Each grievance procedure shall include the following components and features:

187 1. Definition of grievance. - A grievance shall be a complaint or dispute by an employee relating to
188 his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals,
189 disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting
190 from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies,
191 procedures, rules and regulations, including the application of policies involving matters referred to in
192 subdivision 2. (iii) below; (iii) acts of retaliation as the result of utilization of the grievance procedure or
193 participation in the grievance of another local government employee; (iv) complaints of discrimination
194 on the basis of race, color, creed, political affiliation, age, disability, national origin or sex; and (v) acts
195 of retaliation because the employee has complied with any law of the United States or of the
196 Commonwealth, has reported any violation of such law to a governmental authority, or has sought any
197 change in law before the Congress of the United States or the General Assembly.

198 2. Local government responsibilities. - Local governments shall retain the exclusive right to manage
199 the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i)
200 establishment and revision of wages or salaries, position classification or general benefits; (ii) work
201 activity accepted by the employee as a condition of employment or work activity which may reasonably
202 be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established
203 personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee
204 can show that established promotional policies or procedures were not followed or applied fairly; (v) the
205 methods, means and personnel by which work activities are to be carried on; (vi) except where such
206 action affects an employee who has been reinstated within the previous six months as the result of the
207 final determination of a grievance, termination, layoff, demotion or suspension from duties because of
208 lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment
209 and retention of employees within the local government; and (viii) the relief of employees from duties
210 of the local government in emergencies. In any grievance brought under the exception to provision (vi)
211 of this subdivision, the action shall be upheld upon a showing by the local government that: (i) there
212 was a valid business reason for the action, and (ii) the employee was notified of the reason in writing
213 prior to the effective date of the action.

214 3. Coverage of personnel.

215 a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and
216 part-time employees are eligible to file grievances with the following exceptions:

217 (1) Appointees of elected groups or individuals;

218 (2) Officials and employees who by charter or other law serve at the will or pleasure of an
219 appointing authority;

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

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

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

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

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

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

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

234 4. Grievance procedure availability and coverage for employees of local social service departments
235 and boards, community services boards, ~~constitutional officers~~, redevelopment and housing authorities,
236 and regional housing authorities. - Employees of local social service departments and boards, community
237 services boards, ~~constitutional officers~~, redevelopment and housing authorities created pursuant to § 36-4,
238 and regional housing authorities created pursuant to § 36-40 shall be included ~~within and covered by a~~
239 ~~grievance procedure to the extent and in the manner provided by~~ in (i) a local governing body's
240 grievance procedure or personnel system, if agreed to by the department, board, or authority and the
241 locality or (ii) a grievance procedure established and administered by the department, board, or
242 authority which is consistent with the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 and
243 any regulations promulgated pursuant thereto.

244 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

306 additional evidence as may be necessary to resolve any controversy as to the correctness of the record.
307 The court, in its discretion, may receive such other evidence as the ends of justice require. The court
308 may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the
309 decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the
310 conclusion of the hearing. The decision of the court is final and is not appealable.

311 10. Panel hearings.

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

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

325 (2) Local governments may retain the panel composition method previously approved by the
326 Department of Employee Relations Counselors and in effect as of the enactment of this statute.
327 Modifications to the panel composition method shall be permitted with regard to the size of the panel
328 and the terms of office for panel members, so long as the basic integrity and independence of panels are
329 maintained. As used in this section, the term "panel" shall include all bodies designated and authorized
330 to make final and binding decisions.

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

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

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

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

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

353 b. Rules for panel hearings.

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

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

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

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

366 (4) That panels have the authority to determine the admissibility of evidence without regard to the
367 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 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, *except the Director of the Department of Employee Relations Counselors appointed pursuant to § 2.1-116.02 and any employees thereof*, 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.

2. That §§ 2.1-116.010 and 2.1-116.011 of the Code of Virginia are repealed.