

**REPORT OF THE  
DEPARTMENT OF EMPLOYEE  
RELATIONS COUNSELORS ON THE**

# **Statutory Compliance of Local Government Grievance Procedures**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **Senate Document No. 9**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1986**



# COMMONWEALTH of VIRGINIA

## Department of Employee Relations Counselors

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CAROLYN O. MARSH  
Director

December 17, 1985

TO: The Honorable Charles S. Robb, Governor of Virginia  
and  
Members of the General Assembly of Virginia

The 1985 General Assembly passed Senate Joint Resolution 98 which reaffirms that local government employees "should have access to a timely, effective and fair grievance procedure." The resolution also states that "Section 15.1-7.1 of the Code of Virginia provides that the grievance procedures of counties, cities and towns of the Commonwealth shall conform to the requirements of the state grievance procedure and shall be submitted to the Office [Department] of Employee Relations Counselors for approval."

The three specific directives of the Resolution are:

- "counties, cities and towns are urged to administer their grievance procedures in a timely, fair and effective manner
- counties, cities and towns whose grievance procedures are not in compliance with the requirements of Section 15.1-7.1 of the Code are urged to cause changes to be made forthwith which will bring the county, city or town into compliance
- The Office [Department] of Employee Relations Counselors is requested to submit to the 1986 General Assembly Session the names of those counties, cities and towns whose grievance procedures have not been approved because of a failure to comply with statutory requirements."

Enclosed for your review and consideration is the report I have prepared in response to this resolution.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Carolyn O. Marsh'.

Carolyn O. Marsh, Director  
Department of Employee Relations Counselors

cc: The Honorable David K. McCloud  
Secretary of Administration

## I. INTRODUCTION

### Background

The 1984 General Assembly passed Senate Joint Resolution 38 (Appendix A) establishing a Joint Subcommittee to Study the State Grievance Procedure. Although the study essentially focused on three areas, the one giving rise to this current report noted that questions had been raised as to the "procedural applications in some local government grievance procedures and the substantial compliance of those procedures with the state grievance procedure, as provided by law."

The Joint Subcommittee completed its review and issued its report, Senate Document 16, to the General Assembly in 1985. The Subcommittee report included recommendations for amendments to Section 15.1-7.1 of the Code of Virginia pertaining to local government grievance procedures. These proposals were incorporated in Senate Bill 642 (Appendix B) which was passed and enacted July 1, 1985.

The 1985 General Assembly also passed Senate Joint Resolution 98 (Appendix C) which is directed specifically to the issue of local government grievance procedures. The principal parts of the resolution have been identified in the cover letter of this report.

### Communication with Localities

The responsibility for reviewing and approving local government grievance procedures was transferred to the Department of Employee Relations Counselors in 1984. The Director of this Department has conducted several communication activities with local governments in an effort to acquaint them with the changes in the grievance procedure.

The Director's early communications included a written memorandum to local government officials in June 1984, a presentation to the state conference of local government attorneys, a speech at the state conference of the Virginia Chapter of the International Personnel Management Association (IPMA), and frequent personal conversations with executives in individual localities. The statutory changes effective July 1, 1985, and the provisions of Senate Joint Resolution 98, were communicated to the chief executive officers and personnel directors of local governments in two memoranda; one on May 30, 1985, and another on August 6, 1985. These letters highlighted changes in the grievance procedure, the necessity for submitting local procedures for review and approval, and guidelines for assuring compliance with statutory requirements. These documents also served to remind localities of the requirement that the Director report the status of this undertaking to the General Assembly in 1986. Additionally, the Director met with the Executive

Committee of IPMA and subsequently spoke at the IPMA conference in the fall of this year.

Finally, since so many localities, particularly the smaller areas, had not submitted their procedures for review by December 1, a concentrated telephone campaign was conducted. Every locality was contacted by a staff member to reemphasize the need for submission of procedures for review and approval by this department.

Copies of the written memoranda sent to local government officials are included in Appendix D.

## II. REVIEW PROCESS

Each local government grievance procedure submitted for review is analyzed for compliance with statutory requirements, specifically that each procedure "fully and closely complies with the definition of a grievance and the minimum provisions of the state grievance procedure." When necessary, recommendations for changes are made and personal consultation and assistance are offered the locality. After final revisions are agreed upon, written approval is issued by the Director.

In most cases, the procedures had not been updated for several years and the changes required were due to statutory amendments which needed to be incorporated. A frequently noted defect concerned the failure to specify time periods at various steps in the procedure. Serious procedural problems have been detected in a few instances and as of the date of this report, most have been resolved satisfactorily. In addition to the normal review process, when technical questions requiring legal interpretations have arisen, counsel and advice have been obtained from local government attorneys and the Office of the Attorney General.

The Director of the Department of Employee Relations Counselors wishes to recognize the exceptional cooperation demonstrated by local government officials in effectively updating and revising their procedures.

### III. SUMMARY

#### Review Status

The best available statistics indicate that there are 214 cities, towns, and counties in the Commonwealth. An estimated 43 of these localities employ fifteen or fewer employees and by statute are exempted from the requirement for establishing a grievance procedure. Thus, 181 local government grievance procedures are to be submitted for review and approval by the Department of Employee Relations Counselors. Effective today, the following data represents the status of the review process:

1. 42 procedures have been approved and deemed to be in compliance with all statutory requirements through July 1, 1985.
2. 67 procedures have been received by the Department and are in various stages of the review process.
3. 62 procedures have not been submitted to the Department for review (4 of these localities verbally specified that they have adopted the state procedure).

#### Conclusion

As of this date, no local government grievance procedure has been disapproved by the Department of Employee Relations Counselors for failure to comply with statutory requirements. It is anticipated that most, if not all, the procedures submitted for review will be revised as needed and will be approved.

If any of the remaining 58 grievance procedures are not submitted to the Department for any review prior to March 1, 1986, the Director will invoke the provisions of Section 15.1-7.1 of the Code of Virginia, as amended. Specifically, the affected localities will be provided written notice of the noncompliance and ninety calendar days will be extended to bring the procedures into compliance. The state grievance procedure will be applicable to any locality whose procedure remains in noncompliance after the deadline.

All localities are listed by review status in Appendix E.

## APPENDIX

APPENDIX A

**SENATE JOINT RESOLUTION NO. 38**

*Requesting a joint subcommittee to study the state grievance procedure.*

Agreed to by the Senate, March 8, 1984

Agreed to by the House of Delegates, March 6, 1984

WHEREAS, the state grievance procedure was enacted in 1978; and

WHEREAS, grievance procedures have provided employees with a means to protect their employment and to provide a forum for employees to address their work-related concerns, and to make employers more accountable for their personnel practices; and

WHEREAS, questions have been raised specifically on (i) the criteria for assuring that panel members are impartial; (ii) whether certain criminal convictions of an employee in specific work assignments are so serious and job related that the circuit court should hear the grievance at the panel hearing stage; and (iii) procedural applications in some local government grievance procedures and the substantial compliance of those procedures with the state grievance procedure, as provided by law; and

WHEREAS, it seems appropriate to address these procedural questions; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be created to study the present state grievance procedure. The joint subcommittee shall be composed of three members of the Senate appointed by the Senate Committee on Privileges and Elections, and five members of the House appointed by the Speaker.

The joint subcommittee shall complete its work and make any recommendations it deems advisable to the 1985 Session of the General Assembly.

The costs of conducting this study, both direct and indirect, shall not exceed \$15,610.



## 1985 SESSION

## VIRGINIA ACTS OF ASSEMBLY - CHAPTER 515

*An Act to amend and reenact §§ 2.1-114.5:1, 15.1-7.1 and 15.1-7.2 of the Code of Virginia, relating to state and local government grievance procedures.*

[S 642]

Approved MAR 24 1985

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-114.5:1, 15.1-7.1 and 15.1-7.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-114.5:1. Grievance procedure.—The Office of Employee Relations Counselors shall establish a grievance procedure as part of the state's program of employee-management relations. It shall be the policy of the Commonwealth to encourage resolution of employee problems and complaints wherein employees can freely discuss their concerns with immediate supervisors and upper management levels. However, to the extent such concerns cannot be resolved, the grievance procedure shall afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees. The grievance procedure shall include:

A. Definition of grievance. — A grievance shall be a complaint or dispute by an employee relating to his or her employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application or interpretation of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subsection B (iii) below; (iii) acts of reprisal as the result of utilization of the grievance procedure or of participation in the grievance of another state employee; and (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin or sex.

B. Management responsibilities. — Management reserves the exclusive right to manage the affairs and operations of state government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classifications 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 established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which such work activities are to be carried on; (vi) 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 agency; and (viii) the relief of employees from duties of the agency in emergencies.

C. Coverage of personnel. — All permanent state government personnel, excluding probationary employees, are eligible to file grievances as provided in this chapter with the following exceptions:

1. Appointees of elected groups or individuals;
2. Agency heads or chief executive officers of government operations, and institutions of higher education appointed by boards and commissions;
3. 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 of Title 2.1 and who have elected to proceed pursuant to Chapter 10.1 of Title 2.1 in the resolution of their grievance or any other employee electing to proceed pursuant to any other existing procedure in the resolution of their grievance; and
4. Managerial employees who are engaged in agency-wide policy determinations, or directors of major state facilities or geographic units as defined by regulation, except that such managerial employees below the agency head level may file grievances regarding disciplinary actions limited to dismissals.

Permanent classified employees of the Department of Mental Health and Mental Retardation who are terminated on the grounds of patient abuse, and permanent classified employees of the Department of Corrections who work in institutions or have client or inmate contact and who are terminated on the grounds of a criminal conviction, or are terminated as a result of being placed on probation under the provisions of § 18.2-251 of the Code of Virginia, may appeal such termination through the grievance procedure only

through the management steps. If resolution is not forthcoming by the conclusion of the last management step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred *for a de novo hearing on the merits* in lieu of a panel hearing. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54-44 of the Code of Virginia. *A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or written policy.* The decision of the court shall be final and binding.

Employees of local welfare departments and local welfare boards shall be included within the coverage of the state grievance procedure; however, these employees may be accepted in a local governing body's grievance procedure at the discretion of the governing body of the county, city or town but shall be excluded from such a locality's personnel system.

Notwithstanding the provisions of § 2.1-116 (1), constitutional officers' employees shall have access to the state grievance procedure; however, these employees may be accepted in a local governing body's grievance procedure at the discretion of the governing body of the county, city or town but shall be excluded from the locality's personnel system unless their inclusion in such local personnel system is agreed to by both the constitutional officer and the locality.

*Employees of regional housing authorities created pursuant to § 36-40 shall be included within the coverage of the state grievance procedure if the authority has more than fifteen employees. However, these employees may be accepted in the grievance procedure of a local governing body that contributes financially to the operation of the authority if agreed to by both the authority and the local governing body.*

Notwithstanding those exempt from this chapter, every legislative and judicial agency shall promulgate and administer a grievance procedure.

D. Grievance procedure steps. – The Office of Employee Relations Counselors shall develop a grievance procedure in compliance with the foregoing which shall include not more than four steps for airing complaints at successively higher levels of management and a final step providing for a panel hearing.

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

2. Management steps shall provide for a review with higher levels of management following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the agency or the Office of Employee Relations Counselors. *Personal face-to-face meetings are required at these steps.*

3. ~~In the second~~ *With the exception of the final management step*, the only persons who may be present *in the management step meetings* are the grievant, ~~one person representing the appropriate management manager at the level at which the grievance is being heard, and appropriate witnesses for each side.~~ At ~~subsequent the final management steps step~~, the grievant, at his or her option, may have present a representative of his or her choice. ~~In cases where the procedure has only two management steps, the grievant, at his or her option, may have present at the second step a representative of his or her choice. Personal face-to-face meetings are required at these steps.~~ Nothing in this section shall be construed to prevent a local government from having a representative present during the third or fourth steps of a grievance procedure. *If the grievant is represented by legal counsel, management likewise has the option of being represented by counsel.*

4. Qualifying grievances shall advance to the final step which shall provide for a hearing before an impartial panel, such panel to consist 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 ~~such~~ *the* third panel member. Such 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 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, descendents 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 such an attorney shall serve as a panel member. In cases of termination*

of state employees, the third panel member shall not be selected in the manner described above, but such panel member shall be appointed by the Director of the Office of Employee Relations Counselors from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 54-1.36 of the Code of Virginia, on a geographic and rotating basis. The employing agency of the grievant shall bear the per diem expenses and other costs of the administrative hearing officer. Local government shall not be required to have an administrative hearing officer in employee termination cases, but may do so at their option. In all cases the third panel member shall be chairperson of the panel. The decision of such panel shall be final and binding and shall be consistent with provisions of law and written policies. 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 § 54-44 of the Code of Virginia. The Director of the Office of Employee Relations Counselors shall promulgate rules of conduct for panel hearings.

The grievance procedure shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of grievance resolution. Such limits should correspond generally or be equivalent to the allotted time which is allowed for the response in each comparable situation.

After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will 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 work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the agency head. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party.

E. Determining issues qualifying for a panel hearing. — Decisions regarding whether or not a matter qualifies for a panel hearing shall be made by the agency head at the request of the agency or grievant and such decisions shall be made within ten five work days of such request. A copy of the ruling shall be sent to the grievant, to the Director of the Department of Personnel and Training, and to the Director of the Office of Employee Relations Counselors. Decisions of the agency head may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing de novo on the issues as to issue of whether or not the grievance qualifies for a panel hearing. Proceedings for review of the decision of the agency head shall be instituted by filing notice of appeal with the agency head within ten five work days after from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten five work days thereafter, the agency head shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the agency head, 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 agency head to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the agency head to transmit the record on or before a certain date. Within thirty days of receipt by the clerk of such records, by the clerk of the court, sitting without a jury, shall hear the appeal on the record transmitted by the agency head 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 decisions of the agency head 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. 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 decision of the panel.

§ 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 establish by June 30, 1974, have a grievance procedure for its employees to afford that affords an immediate and fair method for the resolution of disputes which may arise between such public employer and its employees and a personnel system including classification plan for service and uniform pay plan for all employees excluding employees and deputies of division superintendents of schools; provided, however, employees of loc

welfare departments and local welfare boards may be included in such a grievance procedure at the discretion of the governing body of the county, city or town but shall be excluded from such a personnel system.

Every such grievance procedure shall conform to like procedures established pursuant to § 2.1-114.5:1 and shall be submitted to the Director of the Office of Employee Relations Counselors appointed pursuant to § 2.1-114.5:4 for approval; however, any local government's panel composition method approved by the Director of the Department of Personnel and Training prior to the enactment of § 2.1-114.5:1 D and ensuring an impartial panel shall be considered in substantial compliance with such subsection. *Local governments shall not be required to have an administrative hearing officer in employee termination cases, as provided in the state grievance procedure, but may do so at their option.* Failure to comply with any provision of this section shall cause the grievance procedures adopted by the Commonwealth to be applicable in accordance with such rules as the Director of the Office of Employee Relations Counselors may prescribe and shall cause the noncomplying locality to promptly apprise its employees of the applicability of the grievance procedure adopted by the Commonwealth and shall cause such locality to disseminate copies of such grievance procedure to those employees covered by the procedure. *Every locality upon receiving written decision of noncompliance from the Director of the Office of Employee Relations Counselors shall have a period of not more than ninety calendar days to come into compliance. If the locality fails to bring its procedure into compliance within this time period, the locality shall within ten calendar days thereafter provide individual written notice to each of its employees of the ruling of noncompliance and the applicability of the state grievance procedure. The state grievance procedure shall be applicable for so long as the locality remains in noncompliance and the locality shall provide its employees copies of the state grievance procedure upon request.* The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries or fringe benefits.

§ 15.1-7.2. Provision of grievance procedure; training programs.—A. **Governing bodies** *Each governing body required to establish a grievance procedure under § 15.1-7.1 shall, no later than January one, nineteen hundred seventy-nine, amend such have a grievance procedures to procedure which fully and closely comply complies with the definition of a grievance and the minimum provisions of the State state grievance procedure as described in § 2.1-114.5:1; provided that any local government's panel composition method approved by the Director of the Department of Personnel and Training prior to the enactment of § 2.1-114.5:1 D and ensuring an impartial panel shall be considered in substantial compliance with such subsection ; and provided further, that questions . Local governments shall not be required to have an administrative hearing officer in employee termination cases, as provided in the state grievance procedure, but may do so at their option. Questions of grievability shall be resolved by the chief administrative officer of the locality or a department head authorized by such chief administrative officer to decide the issue of grievability. No city, town, county or Commonwealth's Attorney shall be authorized to decide the issue of grievability. Decisions of the chief administrative officer or the designated department head as to grievability may be appealed to the circuit court having jurisdiction in the locality wherein the grievant is employed for a hearing de novo on the issue of grievability. Such appeal shall follow the same procedures as those established in § 2.1-114.5:1 E.*

B. Each governing body required hereunder to establish an amended a grievance procedure may, in cooperation with the Director of the Department of Personnel and Training, develop a comprehensive training and instructional program ; to be implemented by July one, nineteen hundred seventy-nine . Such program may be implemented with the similar State state training program developed pursuant to the provisions of § 2.1-114.5:2 and shall include comprehensive training for all local government supervisory personnel with emphasis upon the importance of harmonious employee-employer relations.

The training program may also include methods for instruction of all nonsupervisory personnel by their supervisors in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged.

APPENDIX C

SENATE JOINT RESOLUTION NO. 98

*Requesting local governments to conform their grievance procedures to the state grievance procedure.*

Agreed to by the Senate, February 4, 1985

Agreed to by the House of Delegates, February 8, 1985

WHEREAS, the Joint Subcommittee Studying the State Grievance Procedure was established pursuant to Senate Joint Resolution No. 38 in 1984; and

WHEREAS, the joint subcommittee has heard testimony that, although most counties, cities and towns in the Commonwealth have timely, fair and effective grievance procedures, the grievance procedures of certain counties, cities and towns are not conducted in a timely, fair and effective manner; and

WHEREAS, the General Assembly feels that the employees of the counties, cities and towns of the Commonwealth should have access to a timely, effective and fair grievance procedure; and

WHEREAS, § 15.1-7.1 of the Code of Virginia provides that each county, city and town having more than fifteen employees shall have a grievance procedure which affords an immediate and fair method for the resolution of disputes which arise between the public employer and employee; and

WHEREAS, § 15.1-7.1 of the Code of Virginia provides that the grievance procedures of counties, cities and towns of the Commonwealth shall conform to the requirements of the state grievance procedure and shall be submitted to the Office of Employee Relations Counselors for approval; and

WHEREAS, § 15.1-7.1 of the Code of Virginia provides that the state grievance procedure shall be applicable in counties, cities and towns whose grievance procedures do not conform to statutory requirements; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That counties, cities and towns are urged to administer their grievance procedures in a timely, fair and effective manner; and be it

RESOLVED FURTHER, That counties, cities and towns whose grievance procedures are not in compliance with the requirements of § 15.1-7.1 of the Code are urged to cause changes to be made forthwith which will bring the county, city or town into compliance; and be it

RESOLVED FINALLY, that the Office of Employee Relations Counselors is requested to submit to the 1986 General Assembly Session the names of those counties, cities and towns whose grievance procedures have not been approved because of a failure to comply with statutory requirements.



# COMMONWEALTH of VIRGINIA

## Office of Employee Relations Counselors

CAROLYN O. MARSH  
Director

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MEMORANDUM

June 18, 1984

**To:** Local Government Officials

**From:** Carolyn O. Marsh *CM*

**Re:** State Grievance Procedure, Revised July 1, 1984  
Local Government Grievance Procedures

Attached for your information is a copy of the revised grievance procedure for state employees effective July 1, 1984. The brochure incorporates statutory and procedural revisions including rules for conducting a panel hearing.

As you know, there is no general requirement that all localities adopt the state grievance procedure, but I believe the material will be helpful to you in updating your local procedure. I am also enclosing a copy of my recent memorandum to state agency heads so that these additional comments may prove useful to those of you who use the state procedure.

On July 1, 1984, the responsibility for approving local government grievance procedures will transfer to the Director of the Office of Employee Relations Counselors. This statutory change does not withdraw or negate prior approvals or disapprovals of local government procedures rendered by the Department of Personnel and Training. It will be necessary, however, for you to submit a revised version of your grievance procedure incorporating all statutory changes for my approval and to ensure that we have updated local government grievance procedures on file.

I shall appreciate your cooperation in complying with this request and please let me know if you need additional information or assistance. In addition to our SCATS telephone number listed above, please note that we have a toll-free number which also includes a message recorder after normal hours. I am always willing to discuss any questions you may have by telephone; however, if the issues are complex, it is beneficial to have written inquiries.

Again, let me emphasize that I shall be pleased to personally assist with any information you need in implementing the new statutory and procedural changes. In my absence, the Assistant Director of our agency, Vance E. Helms, will be available to help you when needed.

STATE GRIEVANCE PROCEDURE

1978 General Assembly Action - Va. Code

Section 2.1-114.5:1 et seq.

Grievance Brochure

Reference

(July 1, 1984)

Grievance  
Procedure  
Authorization

- An administrative approach to Employee Grievance Procedure written into law.

III.B.3  
III.B.8

- The three-member grievance panel was given broad authority: their decisions were final and binding.

Grievance  
Procedure  
Authorization

- The Office of Employee Relations Counselors was created.
- Changes in local grievance procedures were mandated.

Subsequent Amendments to the Grievance Statute

1979

Grievance  
Procedure  
Authorization

- Open-door Policy: "It shall be the policy of the Commonwealth to encourage resolution of employee problems and complaints wherein employees can freely discuss their concerns with immediate supervisors and upper-management levels. However, to the extent such concerns cannot be resolved, the grievance procedure shall afford an immediate and fair method for the resolution of disputes which may arise between the agency and its employees."

Grievance  
Procedure  
Authorization

- Lines of authority delineated: Director of the Office of Employee Relations Counselors to "make and disseminate interpretations of the grievance procedure; to "rule on grievability of issues at the management steps of the grievance procedure; and "to direct full compliance with the grievance procedure process."

- III.B.8                   ● Director of Department of Personnel and Training - to establish and interpret all other personnel practices and policies affecting state employees and to direct full compliance with such policies.

Grievance Procedure Interpretive Bulletin No. 1

(July 24, 1979)

Grievability and qualification process clarified:

- III.A.4                   ● Management respondents determine grievability.
- III.A.1.e  
III.A.2.d  
III.A.4                   ● A non-grievable response at the first or second step can be appealed to the Office of Employee Relations Counselors.
- III.A.4  
III.A.5                   ● All grievances must be submitted to the agency head for qualification.

Subsequent Amendments to the Grievance Statute

1980

- III.C                   ● Termination for resident abuse was addressed.
- I.A.3                   ● The requirement that constitutional officers employ a minimum of 15 persons in order for their employees to have access to the state grievance procedure (where not covered by a local government grievance procedure) was removed.

Grievance Procedure Interpretive Bulletin No. 2

(July 7, 1980)

- IV.C                   ● Witnesses shall be those persons who have evidence pertinent to the grievance. They shall be called to offer such evidence and shall be excused upon completion of their statements.
- IV.C                   ● Witnesses, whether for the agency or the grievant, may be called at the second and/or third management step (as well as at the panel hearing).



IV.H

- The use of recorders is not permitted in the management steps.

IV.F

- Compensation and expense reimbursement guidelines issued:

- Non-state employees serving as panel members are not compensated or reimbursed for any expenses. State employees who serve as witnesses or panel members during normal working hours are compensated at their regular rate of pay and this compensation is not charged against any leave. Employees are also reimbursed for reasonable costs for transportation, meals and lodging. It is expected that the number of witnesses called would remain within reasonable limits.

- Grievants who are still employed by the state are compensated at their regular rate of pay for the time spent during normal working hours in the management-step meetings, the panel hearings and other hearings provided in this procedure. This compensation is not charged against any leave, and these employees are also reimbursed for reasonable costs for transportation, meals and lodging.

- Employees who are grieving termination are not compensated except in cases where a panel decision results in reinstatement with back pay. Also, reimbursement for travel expenses for these grievants will be limited to those incurred from the previous work location to the meeting locations.

IV.G

- The grievance procedure is designed for an employee to go through the process without the necessity for representation. While the employee has the freedom to select a representative of his/her choice if desired, there is no provision for any compensation or expense reimbursement for a representative, whether such person is a state employee or someone outside of state service.

- Management Step Respondents defined:

III.A.1.a

1st Step: The immediate supervisor who is responsible for (1) hiring, (2) evaluating performance, and/or (3) taking disciplinary action affecting employees under the Standards of Conduct Policy.

III.A.2.a            2nd Step: The next direct level of management and is, therefore, the person who supervises the first-step respondent.

III.A.3.a            3rd Step: In most cases the agency head; in some large agencies the facility director, regional administrator, deputy commissioner, or similar position may be so designated upon approval by the Office of Employee Relations Counselors.

Subsequent Amendments to The Grievance Statute

1981

III.A.5              ● Circuit court hearings on grievability appeals extended to 30 calendar days.

Attorney General's Opinion

IV.B                 ● That "work days" are to be defined as the normal work schedule of the person required by the procedure to take some action.

Subsequent Amendments to The Grievance Statute

1982

II.A.3              ● Acts of reprisal as a result of participation in the grievance of another state employee is added as a grievable issue.

III.A.5              ● In appeals of qualification of issues for panel hearings, the decision of the circuit court is final and not appealable.

III.B.8              ● 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 decision of the panel.

Joint Memorandum

(Department of Personnel and Training and the Office of Employee Relations Counselors) Leave Time for Visits to OERC:

IV.F                 State agencies are instructed to allow their employees a reasonable period of time away from the work site.

1983 - No amendments.

Subsequent Amendments to The Grievance Statute

July 1, 1984

II.A.1

- Expanded definition of dismissals as grievable issue.

Grievance  
Procedure  
Authorization

- Consolidated grievance procedure administration in the Office of Employee Relations Counselors.

IV.D

- Failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the non-compliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the agency head.
- Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party.

Senate Joint Resolution No. 38

July 1, 1984

Resolved: That a joint subcommittee be created to study the present state grievance procedure:

Study focus:

- criteria for impartial panel members;
- review of procedure for employees in certain work assignments;
- local government grievance procedure application.

Procedural Changes

July 1, 1984

TIME FRAMES

Grievance Initiation

- III.A.1.a ● Within 30 calendar days after the event or action which is the basis for the grievance. (A grace period to September 1, 1984 will be allowed on this time change.)

Advance, Meet, Respond in Management Steps:

- III.A.1.b ● 5 work days  
III.A.1.c  
III.A.1.d

Appeal of Grievability

- III.A.2.e ● An employee may appeal a non-grievable management response to the Office of Employee Relations Counselors within five (5) work days of receipt of the first or second step response.

Panel Selection

- III.B.4 ● The employee and the agency shall select their respective panel members within five (5) work days following the receipt of the decision that the grievance qualifies for a panel hearing.

Panel Decision

- III.B.8 ● The panel shall render its decision within ten (10) work days of the conclusion of the hearing.  
Appendix I.10

Appeal of Panel Decision

- III.B.8 ● If a written request to reconsider the panel decision is submitted by either party within five (5) work days of receipt of the decision, the panel by majority vote may elect to review its decision and/or reopen the hearing for a good cause shown.
- III.B.8 ● Any challenge of a panel decision on the grounds of inconsistency with law and written policy shall be submitted by either party within five (5) work days to the Director of Personnel and Training.

- The Director of the Department of Personnel and Training may on his/her own action remand to panel for further consideration a decision which appears to be inconsistent with law or written policy.

#### Management Steps

III.A.2.a

- In some large agencies the second-step respondent may be uniformly established at a higher management level, upon approval of the Office of Employee Relations Counselors.

IV.A

- The grievant is entitled to be heard at three successively higher levels of management if they are available within the agency organizational structure. However, in no case may the third step be higher than the agency head.

#### Employees Excluded as Panel Members

III.B.3

- To insure an impartial panel, such panel shall not be composed of any persons having direct involvement with the grievance being heard, or with the problem giving rise to the grievance; for example, the grievant, the agency head, supervisors replying at any management step, representatives of the grievant at the third step and witnesses who have appeared at any management step. In addition, managers who are in a direct line of supervision of a grievant are also excluded as panel members.
- Employees in the personnel classification series shall not serve as panel members.
- Employees of the Office of Employee Relations Counselors and the Department of Personnel and Training may not serve as panel members outside of their own agencies.

#### Panel Hearing

III.B.2

- The final step of the grievance procedure shall be the actual panel hearing.

#### Communication with Panel Members

III.B.5

- The parties should not discuss the substance of any grievance or the problem giving rise to the

grievance with any panel members prior to the hearing. Any matters requiring the attention of the panel should be communicated in writing with copies to all parties.

Rules for the Conduct of the Panel Hearing

Appendix I.1

- The agency shall provide each panel member copies of the grievant's Form A, Form B and The Grievance Procedure for State Employees brochure prior to the convening of the panel in order that each member may review the documents. Other information shall be submitted at the hearing in the presence of the parties.
  
- Panels are to decide cases on the merits, not on compliance matters occurring prior to or during panel hearings.



# COMMONWEALTH of VIRGINIA

## Office of Employee Relations Counselors

CAROLYN O. MARSH  
Director

405 Richmond Plaza Building  
110 South 7th Street  
Richmond, Virginia 23219

Richmond Area: (804) 786-7994  
Statewide  
Toll Free Number: 1-800-552-9720

MEMORANDUM

May 30, 1985

To: Local Government Officials

From: Carolyn O. Marsh *CM*

Re: 1985 Statutory Revisions to the State Grievance Procedure;  
Local Government Grievance Procedures

Effective July 1, 1985, important changes in the state grievance procedure will be implemented. Attached for your information is a copy of Senate Bill 642 which mandates these revisions and also includes amendments to Sections 15.7-1 and 15.7-2. While there is no requirement that localities adopt the state grievance procedure, I believe this material will be helpful to you in updating your current local procedures to conform to applicable statutory requirements.

During the past year, several localities have submitted and received approval from me on their revised grievance procedures. In those cases, the 1985 statutory and procedural changes as applicable will simply require additions to those existing procedures and only the additions need to be submitted for my approval. However, for those localities which have not sent in their procedures for approval, it will be necessary to submit an up-to-date version of your grievance procedure for my review, including any 1985 additions.

Please note the provisions of Senate Resolution 98 which is also enclosed. This document outlines legislative intent with regard to local government grievance procedures, specifies that they shall be submitted to our Office for approval, and states that I am to furnish a status report to the General Assembly in January 1986 with regard to compliance of local government grievance procedures with statutory requirements.

Our revised state grievance procedure brochures will be ready for distribution August 1 and at that time I will send you a copy for your information. These should be especially helpful to those localities which essentially follow the state procedure.

(over please)

As a matter of information, I would like to note that apparently there has been some misunderstanding with regard to procedural non-compliance issues. This topic was addressed by statute last year, Section 2.1-114.5:1D.4. in the Code of Virginia; procedural compliance violations are addressed only after the initial filing of a written grievance. This stipulation probably should be added to your procedure to avoid confusion. Of course, the requirement for verbally initiating a grievance within your specified time period is still in effect.

Please feel free to contact me if you need additional information or assistance relative to incorporating the statutory changes into your procedures. Though I can only render official approvals in writing, I am always willing to discuss any questions by telephone and you may reach me at the numbers listed above.

COM:ah

cc: Mr. Leonard Hopkins  
Assistant Attorney General





# COMMONWEALTH of VIRGINIA

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Statewide  
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CAROLYN O. MARSH  
Director

MEMORANDUM

August 6, 1985

To: Local Government Officials  
From: Carolyn O. Marsh *COM*  
Re: Local Government Grievance Procedures

In prior mailings to you I have forwarded copies of Senate Bill 642 and Senate Resolution 98 which outlined statutory revisions and amendments to the grievance procedure, including legislative intent with regard to local government grievance procedures and compliance with statutory mandates by January 1986. For those of you who have not submitted a revised procedure for my review, please do so as soon as possible. We are working our way through the considerable number on hand now, and want to avoid any deluge at the end of the year.

Through communication with some local government officials, a request was made that I provide more specific guidelines for you to bring your current procedures up to date. Attached for your information is a copy of the revised grievance procedure for state employees which may be helpful, especially to those localities who essentially follow the state procedure. I am also including a checklist which delineates some of the basic statutory requirements that we are reviewing for local government grievance procedural compliance. While not all inclusive, since each local procedure has its own individual characteristics which must be reviewed, I believe this material will assist you in revising your current procedures to bring them into compliance with applicable statutory requirements.

1. Definition of a Grievance: Section 15.1-7.2 states that a local government grievance procedure shall fully and closely comply with the definition of a grievance as described in Section 2.1-114.5:1. We believe the best and easiest way to meet this very specific requirement is to follow the code language in that section, paragraphs A and B.

2. Coverage: Each grievance procedure should address its coverage of personnel to identify those individuals who are covered and who are excluded.
3. Time Periods: The law specifies that time periods shall be "reasonable and specific" and shall be equivalent to time periods provided in each comparable situation.
4. Grievance Procedure Steps: The Code provides that a grievance procedure shall include steps for airing complaints at successively higher levels of management with a final step providing for a panel hearing. The first step in the procedure shall be an informal, non-written, discussion format. Following this step, the grievance is to be reduced to writing and processed through higher levels of management in personal face-to-face meetings. This is not to suggest that the meetings have to be lengthy, but a consistent process should be followed in all grievances, regardless of the issue being grieved. [Section 2.1-114.5:1(D) (1-3) of the Code of Virginia, as amended]
5. Determining Issues Qualifying for a Panel Hearing: The issue of grievability must be addressed and explained in some detail in a grievance procedure as provided in Section 2.1-114.5:1(E) of the Code of Virginia, as amended. Also, it should be noted that the decision of the court is final and not appealable. I might note that the issue of grievability cannot be decided by the City Attorney/Commonwealth Attorney. [Section 15.1-7.2 of the Code of Virginia, as amended]
6. Panel Hearing: Statutory provisions effective July 1, 1985 have provided for further restrictions with regard to panel members. In describing the panel composition, the specific individuals who are restricted from serving as panel members should be listed as provided in Section 2.1-114.5:1(D) (4) of the Code of Virginia, as amended. Also, any reference to the panel selecting a chairman should be deleted since the amended law requires that "the third panel member shall be the chairperson of the panel."

A procedure should clearly state that a panel decision is final and nonappealable and shall be consistent with law and written policy. [Section 2.1-114.5:1(D) of the Code of Virginia, as amended] Reference to petitioning the circuit court for implementation of the panel's decision is to be included. [Section 2.1-114.5:1(F) of the Code of Virginia, as amended]

I hope this information will assist you in implementing the statutory and procedural changes which are necessary for compliance with the law. Again, let me emphasize that I shall be pleased to help in any way possible and am always willing to discuss any questions by telephone or to respond to your written inquiries.

COM:ah

## APPENDIX E

### Approved Procedures

Alexandria, City of  
Altavista, Town of  
Ashland, Town of  
Augusta, County of  
Big Stone Gap, Town of  
Blacksburg, Town of  
Chatham, Town of  
Chilhowie, Town of  
Coeburn, Town of  
Culpeper, County of  
Fairfax, City of  
Franklin, City of  
Frederick, County of  
Fredericksburg, City of  
Galax, City of  
Gloucester, County of  
Greensville, County of  
Hampton, City of  
Henrico, County of  
James City, County of  
Loudoun, County of  
Lynchburg, City of  
Manassas, City of  
Martinsville, City of  
Newport News, City of  
Northampton, County of  
Norton, City of  
Petersburg, City of  
Portsmouth, City of  
Pound, Town of  
Prince Edward, County of  
Prince William, County of  
Pulaski, County of  
Scott, County of  
Smithfield, Town of  
Stafford, County of  
Suffolk, City of  
Sussex, County of  
Washington, County of  
Williamsburg, City of  
Winchester, City of  
Wythe, County of

Procedures Under Review

Abingdon, Town of  
Accomack, County of  
Albemarle, County of  
Amherst, County of  
Appalachia, Town of  
Appomattox, County of  
Arlington, County of  
Bedford, County of  
Blackstone, Town of  
Bluefield, Town of  
Brookneal, Town of  
Campbell, County of  
Caroline, County of  
Carroll, County of  
Charlottesville, City of  
Chesterfield, County of  
Chincoteague, Town of  
Christiansburg, Town of  
Clarke, County of  
Clarksville, Town of  
Colonial Beach, Town of  
Covington, City of  
Culpeper, Town of  
Dickenson, County of  
Emporia, City of  
Fairfax, County of  
Falls Church, City of  
Farmville, Town of  
Front Royal, Town of  
Harrisonburg, Town of  
Highland, County of  
Hillsville, Town of  
Hopewell, City of  
Kenbridge, Town of

King George, County of  
Leesburg, Town of  
Lexington, City of  
Luray, Town of  
Manassas Park, Town of  
Marion, Town of  
Mecklenburg, County of  
Montgomery, County of  
Norfolk, City of  
Onancock, Town of  
Pearisburg, Town of  
Pittsylvania, County of  
Poquoson, City of  
Pulaski, Town of  
Radford, City of  
Richmond, City of  
Roanoke, County of  
Rockingham, County of  
Salem, City of  
Saltville, Town of  
Shenandoah, Town of  
South Boston, City of  
Southampton, County  
Spotsylvania, County of  
Staunton, City of  
Vienna, Town of  
Vinton, Town of  
Virginia Beach, City of  
Waynesboro, Town of  
West Point, Town of  
Wise, Town of  
Woodstock, Town of  
Wythe, County of

Procedures Which Have Not Been Submitted

Alleghany, County of  
Appomattox, Town of  
Berryville, Town of  
Botetourt, County of  
Bridgewater, Town of  
Bristol, City of  
Buchanan, County of  
Buena Vista, City of  
Cape Charles, Town of  
Charles City, County of  
Charlotte, County of  
Chase City, Town of  
Chesapeake, City of  
Clifton Forge, City of  
Colonial Heights, City of  
Crewe, Town of  
Danville, City of  
Elkton, Town of  
Fauquier, County of  
Franklin, County of  
Giles, County of  
Goochland, County of  
Greene, County of  
Grundy, Town of  
Halifax, County of  
Hanover, County of  
Henry, County of  
Herndon, Town of  
Isle of Wight, County of

Kilmarnock, Town of  
King William, County of  
Louisa, County of  
Madison, County of  
Mathews, County of  
Narrows, Town of  
New Kent, County of  
Orange, County of  
Orange, Town of  
Patrick, County of  
Prince George, County of  
Richlands, Town of  
Roanoke, City of  
Rockbridge, County of  
Russell, County of  
Shenandoah, County of  
Smyth, County of  
South Hill, Town of  
St. Paul, Town of  
Strasburg, Town of  
Surry, County of  
Tazewell, County of  
Tazewell, Town of  
Victoria, Town of  
Warren, County of  
Warrenton, Town of  
Westmoreland, County of  
Wytheville, Town of  
York, County of

Localities Employing 15 or Less Persons

(Not required to have a grievance procedure)

Amelia, County of  
Bath, County of  
Bland, County of  
Boykins, Town of  
Broadway, Town of  
Brunswick, County of  
Buckingham, County of  
Cedar Bluff, Town of  
Cumberland, County of  
Dinwiddie, County of  
Essex, County of  
Floyd, County of  
Fluvanna, County of  
Glade Spring, Town of  
Glasgow, Town of  
Gordonsville, Town of  
Grayson, County of  
Gretna, Town of  
Halifax, Town of  
Independence, Town of  
King and Queen, County of  
La Crosse, Town of  
Lancaster, County of  
Lee, County of  
Lunenburg, County of  
Middlesex, County of  
Mount Jackson, Town of  
Nelson, County of  
New Market, Town of  
Northumberland, County of  
Nottoway, County of  
Page, County of  
Powhatan, County of  
Purcellville, Town of  
Rappahannock, County of  
Rich Creek, Town of  
Richmond, County of  
Rural Retreat, Town of  
Stanley, Town of  
Stephens City, Town of  
Tappahannock, Town of  
Urbanna, Town of  
Wakefield, Town of



